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## Order Decision

Site visit made on 10 August 2015

**by Barney Grimshaw BA DPA MRTPI(Rtd)**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 19 August 2015**

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### **Order Ref: FPS/U1050/7/83**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Derbyshire County Council (Byway Open to All Traffic along Sough Lane – Parish of Taddington) Modification Order 2014.
- The Order is dated 16 January 2014 and proposes to modify the Definitive Map and Statement for the area by adding a Byway Open to All Traffic (BOAT) running along Sough Lane between The A6 road and Moor Lane, Taddington, as shown on the Order Map and described in the Order Schedule.
- There was 1 objection outstanding when Derbyshire County Council, the Order Making Authority (OMA), submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

### **Summary of Decision: The Order is confirmed.**

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#### **Procedural Matters**

1. I made an unaccompanied site inspection on 10 August 2015 when I was able to walk the whole of the Order route.
2. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.

#### **The Main Issues**

3. The requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.
4. Some of the evidence in this case relates to usage of the route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
5. Common law also requires me to consider whether the use of the path and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.

6. As this Order is concerned with a possible unrecorded BOAT, it is also necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) which extinguished unrecorded rights of way for mechanically propelled vehicles (MPVs) subject to certain exceptions.

## **Reasons**

### ***Documentary Evidence***

#### *The Taddington and Priestcliff Inclosure Award 1795*

7. This award included the setting out of a public carriage road to be known as Priestcliff Road. From the description of the route and the accompanying map, it is clear that the current Order route formed part of this road, except that according to the award map, the route appeared to join what is now Moor Lane slightly further to the west than Point B, opposite the junction with Green Lane. It is also clear from the Inclosure Act of 1793 which enabled the award to be made that the commissioners were given authority to award such roads.
8. The wording of the 1793 Act suggests that the awarded route probably followed a pre-existing one that was already subject to public maintenance and the award may thus have had the effect of requiring the road to be improved and subsequently maintained to a higher standard than previously.

#### *The Taddington Tithe Apportionment 1847*

9. The Tithe plan of 1848 shows most of the Order route on its current alignment coloured brown in the same way as other roads, and excluded from adjoining titheable fields. However, the tithe apportionment identifies the majority of the route as an 'Occupation Road' owned by William Brittlebank and others whereas various other routes are described as public highways owned by the surveyors of highways. One section of the Order route (between Points X1 and X2) is shown uncoloured and included within plot 849, which is identified as 'Top of Sough –exclusive of road' and described as 'Waste'. This plot includes the steepest part of the route. Again, this perhaps suggests that the road was not itself subject to tithe but it was not identified in the same way as other public roads.
10. In some respects, therefore, the tithe records differ from the inclosure award in the way the Order route is described. However, it should be noted that the tithe survey was undertaken to identify productive land for the primary purpose of apportioning the payment of tithe and not to record public rights of way. In addition, the OMA points out that several other routes now accepted to be public highways were also described as 'Occupation Roads' in the tithe documents

#### *The Finance Act 1910*

11. The 1910 Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. This survey was carried out by the Board of Inland Revenue under statutory powers and it was a criminal offence for any false statement to be made for the purpose of reducing liability. The existence of public rights of way

over land had the effect of reducing the value of the land and hence liability for the tax; they were therefore recorded in the survey.

12. In this case, the majority of the Order route is excluded from taxable hereditaments in the same way as other public roads. The only exception is a relatively short section at the steepest part of the route (between Points X1 and X2). This is included within hereditament 487 in respect of which the valuation book records a deduction of £10 for 'Public Rights of Way or User'. The base map used for the survey shows both the Order route and a footpath within hereditament 487.
13. Overall, the depiction and recording of the Order route in the Finance Act survey is indicative of the existence of public rights over it, probably vehicular rights, as footpaths and bridleways were usually dealt with by means of deductions from the value of land rather than by excluding them from hereditaments.

#### *Early Commercial Maps*

14. Burdett's map of Derbyshire (c.1760s) does not show the Order route. Greenwood's map (1824/25) shows the northern part of the route as a cul de sac. Sanderson's map (1836) shows the full length of the route as a 'cross road'.
15. The depiction of a route as a 'cross road' on early commercial maps is not in itself proof of the existence of public rights as private access roads were often depicted in the same way. However, where routes appear to form part of a road network and provide links between other (public) roads, it is suggestive of the likely existence of public rights.

#### *Ordnance Survey (OS) Maps*

16. The 1<sup>st</sup> edition 1" to the mile OS map (c.1840) shows the whole of the Order route on its current alignment. The 2<sup>nd</sup> edition 1:2500 map (c.1898) also shows the route labelled as 'Sough Lane'. Several footpaths are shown either crossing or joining the route. The accompanying 'Name Book' describes Sough Lane as "*A public road extending from Moor Lane to the Waterloo Hotel*".
17. A more recent OS 1" map (1962) shows the route as a 'minor road'.
18. Although OS maps contained a disclaimer to the effect that routes shown were not necessarily public rights of way, the 2<sup>nd</sup> edition map and Name Book is nevertheless indicative of a belief at the time that the Order route was a public road.

#### *Highway Records*

19. Under the provisions of the 1929 Local Government Act, highways that were previously maintained by rural district councils (RDCs) became the responsibility of county councils. Accordingly, schedules and plans were prepared by the RDCs showing the routes being transferred. The documentation for Bakewell RDC shows that Sough Lane was one of the highways handed over.
20. Subsequently the route has been recorded in Derbyshire County Council's highway maintenance records as a non-classified highway. However, a note on

the records states that the inclusion of a way is not proof of the status of a particular highway.

### *The Definitive Map*

21. The Order route was not claimed as a right of way when routes were being identified in the 1950s for inclusion on the first definitive map. However, several rights of way connecting with it were claimed suggesting that it may have been regarded as carrying pre-existing highway rights.

### *Conclusions regarding Documentary Evidence*

22. The Order route, or a route very similar, has existed since at least 1795 and probably earlier. It was clearly awarded as a public carriage road in 1795 and there is no evidence of it having subsequently been extinguished.
23. Subsequent documents are generally consistent with it having retained the status of a public vehicular route on its present alignment. Although the tithe records are not necessarily supportive of this status, these were not concerned with the recording of public rights and, in my view are outweighed by other evidence.
24. Overall, it is my view that the available documentary evidence indicates on the balance of probability that the Order route has been a public vehicular route since at least the time of the inclosure award.

### **Evidence of Use**

25. Five User Evidence Forms (UEFs) were submitted in support of the application to add the Order route to the definitive map. These describe use of the route with motor vehicles from the 1970s to 2013. Users stated that they had not been obstructed or challenged regarding their use nor had they received permission to use the route. However, the amount of use claimed is limited; three people claim to have used the route less than once per month and one person did not specify the frequency of his use. The fifth person claimed to have used it twice per month but this included use on foot and on a pedal cycle as well as with a motor vehicle and the frequency of each type of use was not specified.
26. As I have already concluded that the route has been a public vehicular highway since at least the time of the inclosure award, the question of subsequent dedication under the provisions of the 1980 Act or at common law does not arise. Nevertheless, the limited evidence of vehicular use of the route that is available is to some extent suggestive of the continued reputation of the route.

### **The 2006 Act**

27. As mentioned before, this act extinguished rights of way for MPVs subject to certain exceptions, one of which is that contained in Section 67(2)(b) which states that extinguishment of MPV rights will not apply if immediately before commencement (2 May 2006) the right of way was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (list of highways maintainable at public expense). In this case, the Order route was shown in Derbyshire County Council's list as a non-classified highway and, accordingly, MPV rights have not been extinguished by the 2006 Act.

### **Other Matters**

28. The sole objection to the Order is concerned primarily with the condition of the Order route. This is very uneven and rutted and in wet periods is said to become extremely muddy with pools of standing water in some parts. This is said to mean that the route becomes effectively impassable for most users. The objector is concerned that use of the route by vehicles will only exacerbate these problems. I understand this concern but the current condition of the route is not a matter that can be given any weight in determining the present Order. The future management and maintenance of the route is a matter for the highway authority.
29. The nature of the route is such that it is unlikely to be used more by the public with vehicles than on foot or horseback and therefore it is appropriate that it be included on the definitive map as a BOAT.

### **Conclusions**

30. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

### **Formal Decision**

31. I confirm the Order.

*Barney Grimshaw*

**Inspector**

