



## Order Decision

Inquiry opened on 15 September 2015

Site visit made on 17 September 2015

**by Susan Doran BA Hons MIPROW**

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

**Decision date: 17 NOV 2015**

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### **Order Ref: FPS/U1050/7/86**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Derbyshire County Council (Bridleway and Footpath along the non-classified highway known as Brushfield Lane – Parishes of Brushfield and Little Longstone) Modification Order 2014.
- The Order is dated 23 January 2014 and proposes to modify the Definitive Map and Statement for the area by adding to them a bridleway and footpath as shown in the Order plan and described in the Order Schedule.
- There were 19 objections outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision**

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### **Procedural Matters**

1. This case concerns the addition of a bridleway and a footpath along a route known as Brushfield Lane. The proposed Bridleway runs between Brushfield, point A on the Order plan, and Bridleway 8 Little Longstone, point C, crossing the boundary between Brushfield and Little Longstone parishes at point B. The proposed Footpath runs from point C to point D, at Upperdale.
2. The original application made to Derbyshire County Council ('the Council') was to record Brushfield Lane as a Byway Open to All Traffic ('BOAT'). However, its investigations led the Council to conclude (from the historic documentary evidence) it was a bridleway with a footpath spur to Upperdale. When it reached its decision, three user evidence forms claiming use with motorised vehicles were available which were considered by the Council to be insufficient evidence to raise a presumption that the route had been dedicated as a BOAT. After the Order was made, an additional 30 evidence forms were submitted claiming use of Brushfield Lane by recreational motorists.
3. In addition to the statutory objections received by the Council, 8 representations were submitted in support of the Order, together with a further representation.
4. The Council adopted a neutral stance at the Inquiry and the case in support of the Order was made by Mrs Mallinson and Mrs Stubbs representing the Peak District Green Lanes Alliance and Peak Horsepower ('the Supporters'). Opposing the Order, in seeking that higher rights be recorded, were Mr Kind representing the Trail Riders Fellowship ('TRF'), Mr Sparkes representing the

Green Lane Association, Derbyshire ('GLASS'), and Mr Peachey representing The Motor Cycling Club Ltd ('MCC').

5. I visited the Order route prior to the commencement of the Inquiry and carried out an accompanied visit with representatives of the Council, Supporters and Objectors, following the close of the Inquiry.
6. A modification to the Order is sought by the Supporters to record the section between points C and D on the Order plan, as a bridleway.

### **The Main Issues**

7. The Order has been made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 ('the 1981 Act') which requires me to consider whether, on a balance of probabilities, the evidence shows that a bridleway and footpath subsist along Brushfield Lane, or whether the Definitive Map and Statement ('DMS') ought to record a BOAT along the Order route. There is both documentary and user evidence to examine. In this case, it is not disputed by the parties that public rights exist; the issue to be determined is the extent of those rights.
8. Also relevant to my decision is the effect of the Natural Environment and Rural Communities Act 2006 ('the 2006 Act'). The 2006 Act extinguished public rights for mechanically propelled vehicles ("MPVs"), unless preserved by one or more of the exceptions set out in Section 67 of the Act.

### **Reasons**

#### ***Documentary evidence***

##### *Early Maps*

9. Burdett's Map of Derbyshire (surveyed 1762-67) shows a 'cross road' corresponding with the Order route between points A and C. At its western end is 'Brushfield' and to the south 'Brushfield Hough', both consistent with the locations of the present day hamlet and farm (the latter south of point B). The route heads east, crossing the River Wye to meet the turnpike road (now the B6465) at what is now Monsal Head. Cary's 1794 Map shows a 'Bye Road' corresponding with this route.
10. It was accepted that both maps omitted details, so the absence from either of other routes (e.g. the Inclosure route Hays, or Haydale, Road which it was agreed was a road pre-existing the inclosure process) is not evidence that it did not exist when the maps were surveyed.
11. Greenwood's Map of 1825 shows a 'cross road', here continuing west beyond Brushfield. Hough Farm is also marked. To the south is the present A6, shown as a turnpike road. Cary's 1825 Map depicts it as a 'Parochial Road' (as opposed to 'Carriage Roads which are Parochial Roads'), here linking with the turnpike road to the south beyond Brushfield, which is marked.
12. Sanderson's 1836 map in an 1881 reprint, shows a 'cross road', consistent with the Order route including the section between point C and the River Wye. This map shows the railway passing through Monsal Dale. 'Putty Hill' is marked, as are Brushfield Hough and Brushfield from where a route branches to the north-west, and another to connect with the turnpike road to the south.

13. The designation 'parochial road' was considered by the TRF more likely to indicate a public vehicular route than one for horses. However, the term is not defined although it is possible it meant a vehicular, perhaps public, rather than a non-vehicular route. Cary's 1825 map distinguishes between those parochial roads which are carriageways and those which are not, and I understand some of the routes shown on these maps as cross roads are now recorded as bridleways or even footpaths, and not as carriageways.

#### *Turnpike records*

14. A plan of a proposed turnpike road from Buxton to Ashford, dated 1809, depicts the turnpike road in red and other roads in brown. Brushfield is marked and a route (uncoloured) is shown connecting to the proposed turnpike. A route leaves Brushfield to the north-west annotated 'From Priestcliff' and another leaves to the east annotated 'to Longstone' (corresponding with point A), both uncoloured. References to a destination suggest these were highways of some description.
15. It was suggested its eastern destination was the 'Longstones', i.e. Little Longstone and Great Longstone to the east of the Wardlow turnpike and arguably further, as no map showed the road through the Longstones terminating there. Or, alternatively, it referred to the Parish of Longstone rather than to the village(s). My reading of the script is 'Longstone' in the singular, which I take as a reference to one or other of the villages, given the destinations marked elsewhere on the plan. The question that arises is whether the route heading east was the only road from Taddington leading towards the Wardlow turnpike road at Monsal Head and beyond before 1809. The particulars of the proposed turnpike road suggest it was formed from a combination of existing roads and new lengths of road. The lack of colouring of the route connecting Brushfield with Taddington Lane (the latter part of the proposed turnpike) suggests it was not a public vehicular one. The likelihood is then that Brushfield Lane was not the only route heading east at that time. There is some evidence of the existence of a highway between Monsal Dale and Ashford in the 1770s as described in a tour of Derbyshire and Yorkshire, raising the possibility of another route continuing to Taddington.

#### *Inclosure Records*

16. An Act for inclosing lands in the Townships of Great Longstone, Little Longstone, and Wardlow is dated 1810, and incorporates the 1801 Inclosure Consolidation Act. Commissioners were authorised to set out public roads, private roads and ways over the lands to be inclosed as well as over old inclosures. They were also authorised to stop up or divert existing ways subject to an order of the Justices of the Peace. There is no explicit authorisation to create new public bridleways and footpaths.
17. The 1810 Act enabled the 1824 Great Longstone, Little Longstone, and Wardlow Inclosure Award. It sets out, "*One other Public Bridle and Private Carriage and Drift Road called Brushfield Road twenty four feet wide from Monsall Dale Road at Monsall Dale in an Easterly and Southerly direction over the Commons and Waste Lands in the Township or Hamlet of Little Longstone to an Ancient Gate in the Liberty of Brushfield.*" This is shown on the Inclosure Map corresponding with the Order route between points B and D, crossing the river to meet Monsal Dale Road and Haydale Road opposite. A route corresponding with Bridleway 8 Little Longstone is also shown (although not set

- out in the Award). Both in part run between or alongside old enclosures, and in part over new enclosures. Putty Hill is marked and, to its east, the route is named Brushfield Road.
18. However, the original description for Brushfield Road was a "public carriage road" between the "ancient gate" in Brushfield "in its present course" to the Wardlow turnpike road (B6465). This is as described by the Inclosure Commissioners in their Notice of 1817 which lists the routes to be set out and appointed. The TRF considered this description to be consistent with the route shown on the Cary maps (paragraphs 9 and 11) and indicated on the proposed turnpike plan (paragraph 14), and unlikely to have been a mistake.
  19. Objections were received to this Notice, however, and a further Notice was advertised in 1819 in which the Inclosure Commissioners set out and appointed a public carriage road, Hays Road, from the Wardlow turnpike road to Monsal Dale Road and from there a public bridle and private carriage and drift road "*from Monsall Dale Road, continued in its present course to Brushfield Gate...*".
  20. The description 'in its present course' might indeed suggest, by comparison with that shown on the early maps (paragraphs 9-12), a route incorporating (part of) Bridleway 8. The routes described in the 1819 Notice, however, correspond with those set out in the 1824 Inclosure Award, the present Haydale Road, a carriage road between the B6465 and Monsal Dale Road, and the Order route from Monsal Dale Road at Upperdale, point D, through C to B.
  21. I consider it is significant that what is now Bridleway 8 was not set out or described at all by the Inclosure Commissioners. They were able to stop up and divert existing public carriage roads anywhere within the three townships, but only by an order of the magistrates. The reference to an 'ancient gate' suggests the route was a pre-existing one. However, if Brushfield Road, whether B-C-D or B-C and Bridleway 8, had been a public carriage road, then there is no evidence of any magistrate's order regarding it. This suggests it was neither a public carriage road, nor had been diverted. I prefer the view that Hays Road, which both parties agreed was more likely than not a pre-existing way, was not omitted from the 1817 Notice but formed part of the route described therein as Brushfield Road, a public carriage road. The two routes were initially regarded as one enjoying the same status, but objections led the Inclosure Commissioners to revise this. As a consequence they became two routes, a public carriage road between the Wardlow turnpike and Monsal Dale Road (Hays Road) and a public bridle road and private carriage road beyond (Brushfield Road). No objections were made to this status.
  22. Applying the judgement in *Andrews* [2015]<sup>1</sup>, the Inclosure Commissioners were acting within their powers in setting out a public bridle road at 24 feet in width.

#### *Tithe records*

23. The 1847 Brushfield Tithe Map shows part of the Order route (including part within Longstone Township), annotated 'To Longstone' at its eastern end. Like other routes marked it is coloured brown, but there is no key to identify status. The Little Longstone Tithe Map 1847 shows the remainder of the Order route, coloured, annotated 'Brushfield Road' and un-numbered, but passing alongside plot 273 and through plot 288. Bridleway 8, numbered 282, is shown

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<sup>1</sup> John Andrews v Secretary of State for Environment, Food and Rural Affairs [2015] EWCA Civ 669

continuing from Brushfield Road, the two separated by a solid line, most likely a gate. Plot 288 (part of C-D) is recorded as 'Common and Occupation Road' in the Tithe Apportionment.

24. The Tithe records show Brushfield Lane with both the route through to Netherdale (Bridleway 8) and C-D to Upperdale, confirming the existence of the spur (C-D), awarded as part of Brushfield Road in 1824. GLASS believed the route C-D arose as a means of avoiding the steep descent to (or ascent from) Netherdale. In particular it was suggested that it would have been preferable for the ore-laden carts travelling from the adjacent mine workings. However, I consider that such use was more likely to have been private. Nevertheless, whether or not its origin was due to the steepness of Bridleway 8, the Order route was in existence by 1817 at the latest by reference to the Inclosure records.

#### *Railway records*

25. Four railways affecting the Order route around point D, or between C-D, were proposed. Plans for the Manchester, Buxton, Matlock and Midlands Junction Railway (1845) show this proposed railway crossing Haydale Road. Between point D and the river, passing between the buildings at Upperdale, the route is numbered 436. Marked by pecked lines, it then crosses the river to continue towards C, through plot 449. Plot 436 is described in the Book of Reference as 'public highway and ford' owned by the Surveyor of Highways. To the west, in the river, is plot 448 a 'footway across river' in the same ownership. Plot 449 is described as 'slip of land and road' owned by the Duke of Devonshire. This indicates that between D and the south bank of the river, the Order route (and footway to the west) was considered to be publicly maintainable highway. The route south of the river was in private ownership.
26. Plans for the Manchester, Buxton, Matlock and Midlands Junction Railway deviations (1846) show this proposed railway crossing the Order route between C-D. It is shown similarly to the earlier record, with a westerly crossing of the river, and the Book of Reference describing plot 118 as 'Ford' owned by the Surveyor of Highways, and the easterly crossing, plot 119, described as 'Road and Ford' in the same ownership. Passing through plots to the south of the river, the Order route is not described. However, a plan reveals by reference to the cross section that it is identified as an 'Occupation Road'.
27. The Rowsley, Buxton and Bakewell Railway plan (1858) again shows the proposed railway crossing the Order route between C-D through plot 239, described as a 'pasture field' owned by the Duke of Devonshire. The cross section describes it as a 'Road 25 S. 15 H.' indicating the height and span of the bridge required for it to cross the road. These dimensions are consistent with those necessary for a public carriage road as required by Section 49 of the Railway Clauses Consolidation Act 1845 ('the 1845 Act'). Whilst these dimensions suggest the Order route was considered to be a public carriage road, this is inconsistent with its stated private ownership.
28. The 1859 Midland Railway, Rowsley and Buxton Lines plan is of the railway that was built. The Order route is shown to the south of the river, numbered 33, and described as 'Public Highway' owned by the Surveyor of Highways and George Ashton. It then runs through plot 34, described as 'Field' owned by the Duke of Devonshire. The cross section plan shows the railway crossing the Order route, as "Road level unaltered. Arch 16ft. Span 15 ft. high". This

specification is of a lesser width than that required for a public carriage road under Sections 49 or 51 of the 1845 Act.

29. The TRF argued that, in this case, as the railway company had no power to bridge a public footpath or bridleway they had to be crossed on the level. The railway had to be carried over or under a public carriage road, and whilst the 1845 Act specified widths for so doing, failure to comply with such specifications (as here) did not affect the status of the road crossed - examples exist elsewhere of bridge arches over public roads narrower than the 1845 Act specification.
30. I am not convinced that is the case here. The railway company had no power to construct bridges over public or private carriage roads narrower than the specifications in Sections 49 and 51 of the 1845 Act, and the bridge as built is narrower than specified for a public carriage road. Accordingly the Order route must not have been considered a public carriage road. This is not inconsistent with the description in the Book of Reference. Section 46 of the 1845 Act refers to crossing turnpike roads "or public highways", suggesting a public highway is not limited to public carriage roads, but could include public bridle roads and foot roads. The Supporters pointed out that the 1845 Act provides that railway companies could bridge public bridleways and footways, and indeed were obliged to where an application to cross a public bridleway or footway on the level had not been granted consent by the Justices.

#### *Finance Act records*

31. With the exception of two short lengths either side of the railway, Brushfield Lane is included within hereditaments. From the hamlet of Brushfield a deduction of £15 is claimed for Footpaths, this being recorded by the Valuer who considered there was a footpath through the farmyard. A deduction of £15 is claimed over the section passing through land belonging to Brushfield Hough. A £10 deduction is claimed in the next hereditament for a footpath recorded as an easement, and the same amount in the following hereditament for a public right of way, with the Valuer noting a footpath across fields containing the Order route and Bridleway 8. From C, a £10 deduction is claimed for a public path.
32. The recording of public rights of way was not the primary purpose of this information gathering exercise, but the deductions point to the recognition of a public right of way on land through which the Order route passes, considered at that time to be a public path of footpath status.

#### *19<sup>th</sup> Century Ordnance Survey maps*

33. The 1:2500 1st edition 1880 and 2<sup>nd</sup> edition 1898 Ordnance Survey ('OS') maps (the latter used as the base map for the Finance Act records) show Monsal Dale Station accessed by a gated route from the west side of the Order route. At the river, the track is shown dividing, with the northern branch crossing it over a footbridge, and (as shown on the 1898 map) a ford at the southern branch. The 1883 6" map shows a footbridge over the river.
34. The TRF pointed out it is not unusual to have a footbridge next, or close, to a public vehicular road. However, whilst the OS maps are helpful in terms of the physical existence of the Order route and various features associated with it, they are less so as regards status.

### *Highway Authority records*

35. The state of repair of the footbridge and access over the river became an issue towards the end of the 19<sup>th</sup> and into the early 20<sup>th</sup> centuries. In summary, improvements for workers and carts crossing the river between Cressbrook Mill and Monsal Dale Station were sought, and Bakewell Rural District Council ('RDC') was approached. However, as neither the County Council nor Railway Company was willing to contribute towards the cost of a cart bridge, no action was taken further to plans drawn up by the RDC. By 1917 a bridge, funded by Cressbrook Mill and proposed to be handed over to the RDC for public use, had been built, but by 1924 was in a state of disrepair. The RDC resolved to take over the cart bridge as a public highway and take down the footbridge they were responsible for. However, the Railway Company refused to contribute towards the costs of widening and strengthening it. It was not until 1927 that the cart bridge was reconstructed and replaced the footbridge, which was then demolished.
36. The TRF argued the RDC had no power to expend money on providing a private cart bridge carrying only a public footpath, so must have regarded the Order route as a public vehicular right of way. However, the minutes indicate the RDC was prepared to replace the bridge if the cost was shared, and this did not happen. When the bridge was constructed, the RDC resolved it would remain private until such time as they were able to take it over and maintain it as a public right of way. It seems to me the Order route had not been regarded as a public vehicular way.
37. When highway responsibilities were passed from the RDC to the County Council, the 1929/30 Handover records show Brushfield Lane coloured blue as an "other" unscheduled or non-classified "District Road". It is named as 'Putwell Hill and Brushfield Road'. The records included a handful of routes described as 'bridle road', indicating not all routes were vehicular. Brushfield Lane was not amongst them. Nevertheless, these documents are a record of maintenance rather than of rights.

### *Definitive Map records*

38. In the early 1950s, Derbyshire County Council sent maps to Parish Councils, as part of the Definitive Map process, with the highways they were responsible for maintaining marked in green. The Parish Councils then marked on the maps the routes they were claiming for addition to the DMS. The Order route was shown in green on the parish maps for Brushfield (including from A to the A6) and for Little Longstone.
39. Brushfield Parish claimed a route from the A6 to A and from A to B as a "CRB" (which they qualified as a carriage road and bridle road), describing it as a carriage road at the beginning. It is described as reaching a wooden gate at Brushfield and proceeding through the farmyard and ending at a wooden pole across the road. The Schedule, however, has been crossed through and "county road" written over. It was not included on the Draft definitive map as it was already a publicly maintainable highway.
40. Little Longstone did not claim C-D, but in describing Footpath 10 which connects to it south of the railway, referred to it as an occupation road, suggesting that public vehicular rights were not considered to have been acquired since the RDC had taken over the bridge in 1927. From C-B the Order

route was included in the description of what is now Bridleway 8 as a grass track and cart road, probably an old packhorse road. The Schedule has been altered to note that the last part of the route described is a 'county road'.

#### *Recent Highway Authority records*

41. In the late 1970s and in the 1980s the Council's stance as regards non-classified highways, such as the Order route, was that they always carried public vehicular rights by virtue of their non-classified highway designation. In 2012 the Council acknowledged that such routes could include narrow ginnels in built up areas, public bridleways and private access or accommodation roads. Their current view is that a non-classified highway, as shown on their List of Streets, does not necessarily demonstrate the existence of public vehicular rights, and other documents need to be examined to determine the existence of such rights. The current (2015) List of Streets carries a disclaimer that it does not record what highway usage rights may exist.

#### *Other documents*

42. A late 19<sup>th</sup> century sketch, and a photograph dated 1860, illustrate the pedestrian crossing of the river. Whilst the ford may not be apparent this does not mean it did not exist – its presence as a physical feature is well documented in the records considered above.
43. Bartholomew's RAC map, probably dating to pre-1930, shows Brushfield Lane as 'other roads'. Bartholomew, however, did not employ independent surveyors to carry out surveys on the ground, nor to determine the nature and status of the roads shown on their maps.
44. Articles in a Motorsports magazine from 1933, 1934 and 1935 refer to competitors from the west Midlands on Putwell Hill, and photographs from a Vintage Sports Car Club Magazine of 1991 show Derbyshire Trial competitors on the same stretch.
45. A 1971 photograph shows the bridge and south bank of the river. What appear to be public vehicles are parked, one to the side of the Order route and another partly on it. The Supporters considered that use of the land between the river and former station for parking in 1982 and as proposed in 1990 was by permission of the landowner, the Chatsworth Estate.
46. Brushfield Lane has been included in a walks guidebook. The 1985 edition refers to it being a "by-road", and the 2009 edition refers to use by "off-road vehicles", describing it as unwelcome.

#### *Conclusions on the documentary evidence*

47. I have considered whether or not the Order route together with Bridleway 8 was the route east from Taddington prior to the turnpike road in 1809, and so was a public carriage road prior to the 1824 Inclosure Award. The evidence for this period is to be found in the early maps. I find that these confirm the antiquity of a route at this location, but they are not determinative as regards its status. It may be significant that Brushfield Lane was mapped, as opposed to a route that may have existed but was not shown. However given the accepted limitations of these maps, it does not follow that because a cartographer depicted the Order route, it was necessarily in use by the public in carriages rather than used as a private carriage road, or had some other



designation. Accordingly I find these maps provide no clarification as regards the status of the Order route. It is likely that the turnpike road planned in 1809 was largely based on existing roads, and the way in which the route leading to, and east from, Brushfield is shown suggests it was not the only route east from Taddington prior to the turnpike.

48. What is clear is that the status of 'Brushfield Road' within Little Longstone Parish as initially described in 1817, was challenged and revised in 1819 through a public process. This, in my view, is important evidence that the Inclosure Award should be regarded as conclusive as to the Order route's status in 1824. Having investigated the matter, the Inclosure Commissioners set out and awarded the route as a public bridle road and private carriage road. It is more likely than not, in my view, that its continuation in Brushfield Parish enjoyed the same status, otherwise it would have been a cul-de-sac if higher rights existed beyond, serving no useful purpose. This does not mean, however, that the Order route could not have acquired higher rights subsequently. Of particular note too, is that a public bridle road was set out between C and D.
49. The Tithe records are consistent with the awarded route in describing the section C-D as an occupation road. The Railway records are consistent at least in recognising a public highway over the Order route in the area of Upperdale. Given references to part of the route crossing the Duke of Devonshire's land, the status of a public bridleway and private carriage road, as awarded in 1824, is not inconsistent with these records. The 1858 proposal however, allowed for a bridge with the specification of that for a public carriage road, suggesting higher rights existed. However, this was not the railway (and bridge) that was eventually built. The Finance Act records are generally supportive of the existence of a public highway, but not of a public vehicular way which are often shown by a route being excluded from the hereditaments.
50. Highways records are consistent with the earlier evidence of a publicly maintainable highway. However, the Handover records do not necessarily demonstrate the existence of public vehicular rights and must be considered alongside all of the available evidence. When the DMS was being prepared both Parish returns recognised public bridleway rights with the western end of the route at Brushfield (noting the route described included the section between the hamlet and the A6) having public vehicular rights and the section from C to D being an occupation road presumably with private vehicular rights. That it was not claimed appears to have resulted from the Council having marked on the Parish Claim Maps those routes it already maintained (including Brushfield Lane between A and C), and striking through claims that were made such that they did not reach the DMS.
51. Overall it is my view that the evidence considered as a whole is consistent with the Order route enjoying public bridleway status. I note the arguments above, and those put forward by GLASS that the Order route may have been a quicker route, avoiding the turnpike road via Ashford, and that it met a cross roads at D with access to Cressbrook, Hay Dale and to Monsal Head. However, I am not satisfied that, on balance, the documentary evidence is sufficient to demonstrate that public vehicular rights exist over it. Nevertheless, it is possible that such rights have been acquired on the basis of use by the public, and I consider this next.

### ***User evidence***

52. Section 31 of the Highways Act 1980 requires me to consider whether there has been use of the way by the public, as of right and without interruption, for a period of twenty years prior to its status having been brought into question. If satisfied on these issues, then I shall consider whether there is evidence that any landowner demonstrated a lack of intention to dedicate the way, in this case as regards public vehicular rights.

#### *When the claimed route was brought into question*

53. It was in April 2004 that an application was made to the Council for the Order route to be added to the DMS as a BOAT. I note, however, that the route marked on the map accompanying the application enters the farmyard from the east but does not continue as far as point A. Nevertheless, the grid references given are, in my view, adequate to identify it as the Order route as a whole. Furthermore, the route itself is readily identifiable and not one that, in my view, could be mistaken for another. I am not convinced, therefore, that this diminishes the application or prevents it from bringing the status of the Order route into question. Nor do I consider that it was not until 2014, when the Order was made and advertised, that rights for motorised vehicles at the hamlet of Brushfield (the 'missing link' on the map) were brought into question.

54. The application does not appear to have coincided with any particular event, although a former owner of Lower Brushfield Farm padlocked a gate accessing the route from the farmyard in 2004/5 and put up advisory signs further to issues concerning vehicles passing through when children were playing. I agree with the Supporters that it is likely this happened subsequent to the application. Previously, another former owner of Lower Brushfield Farm apparently blocked the Order route two to three times a year for days or weeks at a time in the late 1990s, to prevent his neighbour and visitors accessing Brushfield Hough Farm. However, there is nothing to suggest this came to the attention of users, and in any event was not intended to prevent public use in motorised vehicles.

55. I consider the application brought use of the Order route by the public in motorised vehicles into question and the 20 year period is April 1984 to April 2004.

#### *Use by the public*

56. Evidence of use for the 20 year period is provided in some 36 user evidence forms, together with use as part of the "Edinburgh Trial". I heard evidence from two witnesses.

57. Mr Peachey had taken part in the Edinburgh Trial every year between 1973 and 1988. This is an annual motor vehicle trial event organised by the MCC, which I consider further below. Mr Bennett started driving in the 1970s and had used Brushfield Lane once or twice a year then and likewise in the 1980s and 1990s, usually from east to west.

58. As regards the untested user evidence, I calculate that 6 individuals were using Brushfield Lane throughout the 20 year period, and a further 4 were using it in the period up to or in 1990. From then on use began to increase with a further 8 individuals commencing use from 1992, 1994 or 1995, and others from 1999 or 2000 onwards, and a further 5 beginning their use in 2003 or 2004,

- although as regards the latter it is not clear for two individuals when in 2004 their use began. Frequency of claimed use varied from a single date to from two, three, four or six to ten times a year, monthly, less than monthly, and weekly in 2004 for one person and twice a week since 1988 for another.
59. As regards the 6 individuals who claimed use throughout the 20 year period, one indicated their use had been infrequent in the 1980s and 1990s, and two described their use as "less than monthly". One of these was Mr Bennett who clarified at the Inquiry his actual use as once or twice a year. One claimed monthly use, another claimed monthly use between April and December, and another described use as "several times a year". For others claiming use up to 1994, frequency varied from about 4 times a year, twice in 1990 and once in 1994, 4-5 times a year, monthly and less than monthly. Some stated they had also used the Order route by other means, for example on foot or with a bicycle, but do not state how often each type of use took place. Almost all users, however, stated they had seen others in MPVs, and several noted they had used the route with a small number of other vehicles, and/or as part of an organised event, although they did not specify what it was.
60. The oral evidence of those who lived alongside the Order route, nearby, or who used it regularly on foot or horseback, was that use of the Order route by recreational motorists (apart from the annual Edinburgh Trial) had not been noticed until the mid to late 1990s. These were witnesses who had known the Order route in some cases for 40 years or more, and all (with the exception of Mr Proctor and Mrs Hilburn) had known it during the 20 year period. The earliest reported recollection of anyone meeting a motorbike was in 1992. Towards the late 1990s and into the 2000s use began to increase, as recalled by Mr Allen.
61. That local residents and others had not seen recreational motorists in the earlier part of the 20 year period, does not mean they were not present. Mr Bennett remarked that in the early years most vehicles would have been the same type as those used by farmers and would not necessarily have been noticed. I consider therefore that use may have gone unnoticed, but it is not clear how frequent it was as the responses of some users are vague.
62. In addition, after the date of the application in 2004, signs were erected at Brushfield by the Council in conjunction with Derbyshire Police and the Peak District National Park Authority asking off-roaders to respect residents and drive slowly, which GLASS suggested demonstrated there must have been sufficient use prior to 2004 to warrant them being put up.
63. Supporters criticised the user evidence commenting on inaccuracies in the map attached to evidence forms, that some forms were only partially completed or had not been completed entirely by the user, that many repeated incorrect information and some failed to describe the route or gates along it. Mr Bennett pointed out there is no legal requirement for users to log their activities, the user evidence forms themselves have limitations, and people going out for a recreational drive may not be concerned to remember how many gates were on a route, but rather to enjoy themselves; and for GLASS it was noted that people forget, so may not have noted previous use. However, having examined the forms, and whilst I note some inconsistencies, the matters referred to do not lead me to conclude that users were mistaking the route for another, or had not used it themselves.

*Whether use was permissive*

64. The MCC motor vehicle trials using the Order route first took place in the early 1930s then re-commenced in 1969 with no event taking place in 1977 or 2001, the Putwell Hill section, where the vehicles make a hill ascent, being observed. The annual event attracts an average of 180 competitors.
65. The issue regarding the Edinburgh Trial and its use of Brushfield Lane is whether or not such use was permissive. The Supporters said the residents of Upperdale and Brushfield are notified of the event by letter and following comments from residents, timings or other details had been modified. Therefore it was likely such use was permissive.
66. By contrast the MCC said that permission to use Brushfield Lane is not sought, however, under the 1969 Regulations<sup>2</sup> it is required to notify relevant Parish Councils, members of the public and so forth. In addition, the Council is notified of the routes intended to be used. Whereas, in the case of private land, permission is required. GLASS indicated it had sought permission to use land adjoining Brushfield Lane on occasion.
67. Here, much of the land is owned by the Duke of Devonshire, and witnesses for the Supporters believed that permission had, or would have been sought from the Chatsworth Estate. It may be the case that the notifications have been interpreted as seeking permission, but I have no evidence of any formal permission having been granted by the Chatsworth Estate for use of the Order route other than what witnesses believed to be the situation, or what was said in correspondence from the MCC in 2010, some years after the 20 year period, when the status of the route was by then in question.
68. It seems to me, on the available evidence therefore, possible that use by the Edinburgh Trial in this case was not permissive during the 20 year period under consideration. There is nothing to suggest that the use claimed by others with MPVs was with permission.

*The actions of the landowners*

69. Other than the issues concerning parking that took place between the river and the former railway station, there is no concrete evidence of any actions on behalf of the landowner. In 1982 there was discussion about parking problems in Monsal Dale and it was considered by the Agent for the Chatsworth Estate that a sign could be put up indicating there was no parking across the bridge. As mentioned above, there is evidence in 1971 of vehicles parked beside, or partly on, the Order route across the bridge (paragraph 45). A traffic regulation order has been implemented at Upperdale, which affects part of the Order route south of point D, as evidenced by yellow lines and signage. However, I am not convinced by the Supporters that this is evidence that the landowner did not consider the Order route had public vehicular rights. The matter concerned parking rather than use as a through route to go between Upperdale and Brushfield. Nor is there any actual evidence that parking on the other side of the bridge had only been with the permission of the landowner.

*Conclusions on presumed dedication*

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<sup>2</sup> The 1969 Motor Vehicles (Competition and Trials) Regulations

70. There is conflicting evidence as regards use. On balance and taking into account the evidence on both sides, I conclude that use by MPVs has taken place throughout the 20 year period 1984 to 2004. However, the use described by those who gave evidence to the Inquiry was slight during this period. The remaining user evidence is untested and accordingly must attract less weight, and some regarding frequency of use is vague. At face value, the use reported individually is perhaps best described as sporadic during the first few years of the 20 year period, then increasing in volume from the mid to late 1990s onwards.
71. If their use was not permissive, then there is that of those taking part in the Edinburgh Trial to take into account in addition to use claimed by those completing user evidence forms. This event happens on one day a year, albeit involving a large number of individuals, and is not typical of other use of the way by MPVs. I also note that the Order route has had the reputation of being a public vehicular highway, probably due largely to its inclusion in the Council's List of Streets, when in the 1970s and 1980s the Council was of the view that it carried such rights (paragraph 41).
72. I consider that the issue is finely balanced. However, on the available evidence I am not convinced that public rights for MPVs have been demonstrated under Section 31 of the 1980 Act given the low frequency of use in particular during the early years of the 20 year period and the conflict between the largely untested user evidence and that of witnesses who gave evidence of their knowledge during the relevant period. For these reasons also, I do not consider on the available evidence that a case can be made out under common law.

*Public nuisance*

73. A great deal of evidence was presented to the Inquiry that use of the Order route by motorised vehicles had been causing a problem for residents and adjoining landowners since it had become more frequent in the early 2000s, and in particular up to the present day. Consequently, it was argued that such use amounted to public nuisance.
74. It is a criminal offence to drive MPVs on a footpath, bridleway or elsewhere other than on a road, without lawful authority, and this has been the case since the Road Traffic Act 1930. Such lawful authority, however, may be granted by a landowner, or may be presumed, so long as it does not constitute a public nuisance.
75. Examples referred to by witnesses included gates being left open and stock escaping, meeting vehicles on narrow sections, horse riders and walkers having stopped using the Order route, choosing to use other routes in preference or altering the times they used it so as to avoid encountering vehicles, noise and disturbance at night, groups of vehicles exceeding the recommended group size, damage to the surface, damage to adjoining walls, damage to a nearby ancient monument, taking action to avoid injury, and so on. A 'sustainability analysis' carried out by the Peak District National Park Authority in 2007 and subsequent monitoring had concluded use of the Order route had increased, that parts showed signs of damage, and that free passage for non-motorised users was an issue.

76. Several of the user evidence forms, on the other hand, referred to treating other users with courtesy, to opening and closing gates and so forth; and I note the codes of conduct operated by motorised user groups, indicated through signage on the Order route.
77. From point A the Order route passes through the hamlet at Brushfield. The evidence here is that issues had arisen between residents and some motorised vehicle users after the application in 2004 as evidenced by the installation of advisory signage (paragraphs 54 and 62). From here there is a narrow section initially, before the route passes through open fields, or in part alongside a wall. At C there is a bend as the route turns north, then a section heading downhill to the former railway line that is narrow and steep.
78. There are sections of the Order route where the surface has deteriorated. These include the section downhill from C towards the former railway line where the bedrock has become exposed and ruts have formed. Also, at C continuing up Putwell Hill a photograph taken in around 1980 showed an earth surface, and one taken on Putwell Hill in 1991 showed a less earthy surface, which subsequently has eroded to a predominantly stone/bedrock one.
79. Nevertheless, evidence concerning the 20 year period is limited, with the majority of issues that have been raised post-dating it, indeed relating largely to the last few years. In any event, it is not necessary for me to reach a finding on this issue as I have concluded above that rights for MPVs have not been established on the available evidence.

### **Overall Conclusion**

80. Having regard to these and all other matters raised both at the Inquiry and in written representations, I conclude that the Order should be confirmed with modifications to record the section C-D as a bridleway on the strength of the documentary evidence.

### **Formal Decision**

81. I propose to confirm the Order subject to the following modifications:

- Delete the words "and Footpath" in the Order title wherever they occur in the Order and Order plans and replace the word "Footpath" with the word "Bridleway" elsewhere in the Order
- Amend the notation on the Order plans to show the length C to D as a Bridleway

Since the confirmed Order would show as a highway of one description a way which is shown as a highway of another description in the Order as submitted, I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*S Doran*

**Inspector**

## **APPEARANCES**

### **Representing the Order Making Authority:**

Mary Fairman    Solicitor, Derbyshire County Council

### **Supporting the Order:**

Diana Mallinson and Patricia Stubbs    *representing* Peak District Green Lanes Alliance and Peak Horsepower

    who called

Fred Allen

Kay Chapman

Margaret Hilburn

Pauline Kerslake

Mary Landon

Barbara Piaseca

Joyce Poulter

Peter Proctor

Hilary Stephens

Peter Wright

### **Opposing the Order:**

Alan Kind    *representing* the Trail Riders Fellowship, Derbyshire Group

David Sparkes    *representing* the Green Lane Association, Derbyshire

Richard Peachey, Chairman                      *representing* The Motor Cycling Club Ltd

J Nigel Bennett

## **DOCUMENTS**

1. Documents relating to the evidence of Pauline Kerslake, Joyce Poulter, Hilary Stephens and Richard Peachey submitted by the Peak District Green Lanes Alliance and Peak Horsepower
2. Case Summary Notes submitted by the Trail Riders Fellowship, Derbyshire Group
3. Article from the Vintage Sports Car Club Magazine, Summer 1991 and extracts from the Motor Sport Magazine 1933-1935, submitted by the Green Lane Association, Derbyshire
4. Statement of Pauline Kerslake
5. Brushfield Traffic Summaries, January to April 2015, for motorcycles and large vehicles, submitted by Mr Bennett
6. Closing Summary on behalf of the Trail Riders Fellowship, Derbyshire Group
7. Closing Submission on behalf of the Peak District Green Lanes Alliance and Peak Horsepower

Submitted after the Inquiry for information, by agreement

8. An Act for making and maintaining a Turnpike Road from Ashford to or near Buxton, in the County of Derby, 1810, submitted by the Peak District Green Lanes Alliance and Peak Horsepower