
Order Decision

Site visit made on 3 November 2015

by Susan Doran BA Hons MIPROW

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

Decision date: 18 NOV 2015

Order Ref: FPS/U1050/7/89

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Derbyshire County Council (Byway Open to All Traffic along non-classified highway known as Haydale Road – Parishes of Wormhill, Wheston and Tideswell) Modification Order 2014.
- The Order is dated 30 January 2014 and proposes to modify the Definitive Map and Statement for the area by adding to them a right of way as shown in the Order plan and described in the Order Schedule.
- There were two objections and one representation outstanding when Derbyshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to a modification set out below in the Formal Decision

Procedural Matters

1. This Order concerns the addition of a Byway Open to All Traffic ('BOAT'), known as Haydale Road, between Back Lane (point A on the plan attached to the Order) and Wheston Lane (point D), lying to the north-west of Tideswell and to the south of Peak Forest, Derbyshire. The eastern part of the Order route (points B-C-D on the Order plan) forms part of a promoted long distance walking trail known as the Limestone Way. The Pennine Bridleway, a long distance national trail, follows the length of the Order route. However, the Order route itself is not recorded in the Definitive Map and Statement ('DMS'), the legal record of public rights of way held by Derbyshire County Council ('the Council'), and neither of the promoted trails confers any legal status on it. The purpose of my decision is to establish, from an examination of the evidence adduced, what public rights exist over the Order route.
2. None of the Objectors requested to be heard, and this matter has been considered on the basis of the written submissions and an unaccompanied visit to the Order route.
3. The Council points to a typographical error in Part II of the Schedule to the Order regarding the date given for the Wormhill Inclosure Award, which I shall correct if the Order is to be confirmed.

The Main Issues

4. 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 BOAT exists along the Order route. A BOAT is a highway over which the public has a right of way for

vehicular and all other kinds of traffic, but which is used mainly by the public for the purpose for which footpaths and bridleways are so used. There is both documentary and user evidence to consider in this case.

5. Also relevant to my decision is the effect of the Natural Environment and Rural Communities Act 2006 ('the 2006 Act'), which 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

6. The earliest documents available to me are inclosure records which can provide conclusive evidence of public rights of way and of the status of a route. The Wormhill Inclosure Award of 1822 set out the western part of the Order route, between points A and B on the Order plan, as a public carriage road with a width of 30 feet. The route awarded is described as "Small Dale Road" and includes the road continuing west of point A on the Order plan. Its eastern end terminates at "Haydale Gate", the boundary with Tideswell parish. The route described is shown as an enclosed road which is coloured on the accompanying Inclosure Plan. The remainder of the Order route, points B-C-D, was also set out as a public carriage road of the same width in the Wheston and Tideswell Inclosure Award of 1821, and named "Haydale Road". The accompanying Inclosure Plan shows it in the same way as its continuation in Wormhill. Both the Inclosure Awards were enabled by Acts, for Wormhill dated 1803 and for Wheston and Tideswell dated 1807. An extract from the latter has been provided which describes the powers of the Inclosure Commissioners to set out public roads¹.
7. The Order route appears on the Tithe Maps for Wormhill (1849), Tideswell (1844) and Wheston (1842). In all cases it is shown as an enclosed feature, un-numbered and coloured in like manner to other routes depicted, and does not form part of the land subject to a tithe rent. The Wheston Tithe Map names it 'Haydale Road'. These records are consistent with the enclosure records in their depiction of the Order route.
8. The Finance Act 1910 provided for the levying of a tax on the incremental value of land. In calculating the 'assessable site value' of land it allowed for deductions to cover such things as public rights of way and easements, should the land be sold. These were reflected in the records either by references to public rights of way in the documents forming the valuation process, or the exclusion of a route from assessable land parcels or hereditaments marked on an OS base map. Here, the Order route is shown on the Valuation Plans coloured along its length, but I agree with the Council that this relates to the parish boundary along which it runs. The Order route itself does not fall within the coloured hereditaments either side. The recording of public rights of way was not the primary purpose of this information gathering exercise, but the exclusion of the route from the hereditaments is strongly suggestive of public rights, and in this case I consider such rights are more likely to be public vehicular rights, reflecting its awarded status some 90 years or so earlier.

¹ An extract provided for the Wormhill Award does not relate to roads. However, it has not been suggested that the Inclosure Commissioners did not have the power to set out public roads in that Parish

9. The earliest County Map provided which shows the Order route is Greenwood's Map of Derbyshire dated 1824/5, where it is depicted as a 'cross road'. It is also shown on Sanderson's 1836 Map of Derbyshire. Both maps are known to show private as well as public roads, however, the route shown corresponds with that awarded in 1821/2.
10. Ordnance Survey ('OS') maps are helpful in providing evidence of the physical characteristics of the routes mapped, though not necessarily their status. The 1840 OS map shows the Order route as an enclosed feature connecting with the 'road' network, and it is similarly shown on the c1880 1st edition and 1898 2nd edition maps. A 'guide post' is marked at its western end where it forms a cross roads with the north-south route which links with Peak Forest to the north. The 1962 1-inch Buxton and Matlock OS map shows it as an uncoloured 'Road, under 14ft of metalling, untarred', and OS mapping from the late 1990s show it as an "Other route with public access".
11. Highway Authority records can provide useful information, although this often relates to maintenance rather than to public rights. Highway maintenance responsibilities were passed from the Rural District Councils to the County Council following the Local Government Act 1929. The 1929/30 'Handover' records include for Chapel-en-le-Frith, responsible for the western section of the Order route, a written schedule describing "Dale Head Lane..." which the Council believes corresponds with the Order route. However, the eastern section was not included in the records handed over by Bakewell Rural District Council. The Order route is included in the Council's List of Streets as a "non-classified highway", again a record of maintenance rather than status.
12. The DMS was drawn up further to the National Parks and Access to the Countryside Act 1949 to record public rights of way, these being footpaths, bridleways and roads used as public paths. In the early 1950s, Derbyshire County Council sent maps to Parish Councils, as part of the 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. Despite the eastern part of the Order route having been omitted from the Bakewell handover records, it was marked on the Wheston Parish map, along with an annotation indicating it was a County Council road, suggesting it was considered public by the 1950s, at least as regards its maintenance. Footpaths terminating on the Order route were claimed by the Parishes, and the Tideswell Parish Map includes an annotation which appears to be a reference to the width and name of the route as awarded under the enclosure process in 1821. The Order route may not have been considered to be the type of route required to be claimed for the survey, and/or may have been omitted because it appeared on the Council's List of Streets.

Conclusions on the documentary evidence

13. The documentary evidence demonstrates that the Order route was awarded and set out in the 1820s as a public carriage road. The subsequent maps and plans considered above, although not conclusive themselves in demonstrating the existence of public vehicular rights, are both consistent in their depiction of the Order route and with the existence of such rights. No evidence has been adduced to counter this. There is no evidence of any legal event stopping up or altering the public rights conferred by the Inclosure Awards. I conclude therefore, that public vehicular rights exist over the Order route.

User evidence

14. Ten user evidence forms claiming use with MPVs were provided. Of these, eight individuals claimed use prior to 2004, the date of the application to the Council to add the route to the DMS. Claimed use ranges between eight and twenty years with frequency of use ranging between once and eight times a year. These users had seen walkers, cyclists and horse riders when using the Order route. I find this evidence of claimed use with MPVs slight prior to 2004.
15. The Objectors refer to historic use of the Order route only by local farmers, farm labourers, people walking to church and so forth; and that the Limestone Way, which coincides with the eastern section, is extensively used by walkers. Use of the Order route by horse riders, it is said, has declined in more recent years, as use by MPVs has increased. Given my conclusions above (paragraph 13), I consider use by MPVs is in exercise of an existing public right. Overall, I consider the use described and claimed, taken together with the character of the Order route reflects the status of a BOAT (paragraph 4).

The 2006 Act

16. I have concluded that public vehicular rights subsist. Under the provisions of Section 67(1) of the 2006 Act, rights for MPVs have been saved from extinguishment, as the Order route is not shown on the DMS but was shown on the Council's List of Streets as of 2 May 2006, the date of commencement of the 2006 Act. Accordingly, the Order route should be recorded as a BOAT.

Other matters

17. Many of the issues raised against the Order concern the effect of current use of the Order route by MPVs, in particular to the surface (described as formerly grassy but now exposed limestone rock), and the impact of this on other users such as walkers and horse riders. I understand these concerns and their importance to those raising them. However, matters such as the suitability or otherwise of the Order route for a particular type of use by the public, or the effect on the environment, are not ones I can take into account under the 1981 Act legislation. My determination of the Order must be based on the evidence with regard to what public rights are shown to exist. Issues regarding the maintenance and management of the Order route are matters for the Highway Authority, in the event the Order is confirmed.

Conclusions

18. Having regard to these and all other matters raised in written representations, I conclude that the Order should be confirmed subject to the modification described in paragraph 3 above, which does not require advertising.

Formal Decision

19. The Order is confirmed subject to the following modification:
 - In Part II of the Schedule to the Order, amend the date of the Wormhill Inclosure Award from "1821" to "1822"

S Doran

Inspector