
Order Decision

Inquiry opened on 8 December 2015

Site visit made on 9 December 2015

by Susan Doran BA Hons MIPROW

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

Decision date: 11 January 2016

Order Ref: FPS/J1155/7/108

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Devon County Council (Footpath No.2, Culmstock (part) & Bridleway No.38, Culmstock and Restricted Byway No.1 Hemyock) Definitive Map Modification Order 2012.
- The Order is dated 6 January 2012 and proposes to modify the Definitive Map and Statement for the area by adding a length of public footpath, bridleway and restricted byway, and upgrading a length of public footpath to bridleway as shown in the Order plan and described in the Order Schedule.
- There were 26 objections and representations 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

Procedural Matters

1. This case concerns a route known as Pitt Lane. If confirmed without modification, the overall effect of the Order would be to record a public bridleway running from points A to C on the Order plan, and a restricted byway running from C to D.
2. The Order had been made by Devon County Council ('the Council') following a direction by the Secretary of State. The Council adopted a neutral stance as regards the Order, and its officers assisted with the smooth running of the Inquiry. Mrs Parsons, representing the British Horse Society, made the case in support of the Order, although it was her view that it should record a restricted byway throughout (points A-D). The principal case against the Order was made by Mr Garrett, who opposed the recording of a public bridleway between points A and C.
3. I carried out an unaccompanied inspection of the Order route between points A and C on the afternoon prior to opening the Inquiry. After closing the Inquiry, I made a further visit, to all but a short section between C and D which was overgrown, accompanied by representatives of the Council, Mr Garrett, Mr Firth and Mrs Parsons. Mr Gray joined us briefly between points C and D.

The Main Issues

4. The criteria for confirmation of the Order are contained in Section 53(3)(c) of the Wildlife and Countryside Act 1981 ('the 1981 Act'), in this case subsections 53(3)(c)(i), 53(3)(c)(ii) and 53(3)(c)(iii). These require me to consider
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whether the evidence discovered shows that a public footpath, bridleway and restricted byway should be recorded in the Definitive Map and Statement ('DMS'). For this to be the case, the evidence must show that those sections of the Order route that are not currently recorded in the DMS should be recorded with bridleway or restricted byway status, and that an anomaly regarding a short length of footpath on the Definitive Map be corrected, and this length be then upgraded to bridleway status, and as a consequence that the particulars contained in the DMS should be amended to reflect this.

5. As regards the documentary evidence, Section 32 of the Highways Act 1980 ('the 1980 Act') requires me to take into consideration any map, plan or history of the locality, or other relevant document provided, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway. I shall therefore consider whether the documentary evidence available to me, when considered as a whole, shows that footpath, bridleway and restricted byway rights exist historically over the Order route.
6. As regards claimed use by the public, I shall consider whether dedication of part of the Order route as a public bridleway has occurred through public use. This may be either by presumed dedication as set out in the tests laid down in Section 31 of the 1980 Act, or by implied dedication under common law.
7. In this case, it is presumed dedication under Section 31 of the 1980 Act that is relied on to demonstrate that public bridleway rights have been established. This requires me to consider the date on which the right of the public to use the claimed bridleway was brought into question; whether it was used by the public as of right and without interruption for a period of not less than 20 years ending on the date on which their right to do so was brought into question; and whether there is sufficient evidence that there was during this 20 year period no intention on the part of the landowners to dedicate the claimed bridleway.

Reasons

Documentary evidence

1829 Stopping up Order

8. In March 1829, part of Pitt Lane within the Parish of Culmstock (points A-C) was stopped up, as it was deemed to be an "unnecessary public highway". This legal document provides evidence that the Lane was a public highway until 1829, when rights were extinguished in Culmstock. Some rights of access, however, were retained, and I interpret these as being for those people with property or land accessed from the Lane itself, and their successors. Consequently, I do not share Mrs Parsons' view that the Stopping up Order allowed the public to continue using the Lane, with only the maintenance responsibility altering.
9. Although some routes in Hemyock Parish were also determined to be unnecessary at this time, no corresponding stopping up order has been found for the remainder of the Lane (points C-D), meaning that the eastern end of the Order route remained a full public highway.

Tithe records

10. Mr Field, objecting to the Order, argued that the documents presented as Tithe records could have been mistaken for records of the Overseers of the Poor,

specifically an 1852 map, derived for an entirely different purpose. He did not support his assertion with evidence that this was the case with regard to the Order route. Consequently, in the absence of unequivocal evidence to the contrary, I have treated the extracts provided to me as the respective Tithe records for Culmstock and Hemyock.

11. Whilst acknowledging that Tithe maps were not drawn up to show or differentiate between public and private roads, Mrs Parsons provided examples of routes shown elsewhere on the Culmstock Tithe Map of 1841 that were both numbered and described in the Tithe Apportionment as private roads, unlike Pitt Lane. However, a Tithe Map extract for Culmstock provided to the Inquiry showing Pitt Lane numbers it to the west of the Order route at its junction with Weather Lane, another route that was stopped up as an unnecessary highway by a formal legal order in 1829. It is numbered '847'. A copy of the Culmstock Tithe Apportionment in the Council's documents shows this as "Waste and Road".
12. The Hemyock Tithe Map of 1843 shows the eastern end of Pitt Lane, unnumbered and, as on the Culmstock Tithe Map, open throughout. In addition it is shown connecting, and in similar fashion, to known public roads.
13. Tithe records were concerned with the identification and apportionment of tithe rent charges. They provide good evidence of the topography of the routes shown, but generally can give no more than an indication as to whether a way shown is public or private. Indeed, both public and private roads were capable of reducing the productiveness of land for the purposes of tithe assessment. There is no key provided to identify how public roads are shown on the maps, and whilst the Culmstock Tithe Apportionment identifies some private roads, it cannot be established from the Map and Apportionment what rights may have been enjoyed over the Order route. I therefore consider that the tithe documentation does not provide any significant assistance in determining the status of the route.

Small scale and commercial maps

14. Two maps pre-dating the stopping up of Pitt Lane in Culmstock, the 1809 Ordnance Survey ('OS') 1-inch Map and 1827 Greenwood Map show the Order route, the latter as a "cross road". Its depiction remained essentially consistent throughout the documentary record with the route existing as a topographical feature on the ground today, almost unchanged. Of interest are buildings marked to the north and south of Pitt Lane on these maps, consistent with the location of soap makers' houses described by Mr Garrett, which he said existed into the 1840s.
15. By 1888, the OS 1st Edition Map shows buildings at Pitt Farm, and both this and the 1906 2nd Edition OS Map show the railway running through the Culm Valley to the south of the Order route. Bartholomew's 1902 Map marks Pitt Lane as a "Good Secondary Road", and Bacon's 1905 Map depicts it as a "Best Cycling Road". Both were produced for tourists and cyclists, and arguably would not have shown routes that were not available to such users. However, whilst it is known that the Cyclists Touring Club corresponded with Bartholomew regarding routes used by their members, I agree with Mr Field that Bartholomew did not carry out their own surveys on the ground. Further, although highly regarded as map makers, there does not appear to have been

any investigation by Bartholomew into the legal status of routes shown on their maps for use by cyclists or motorists.

16. An OS Map of 1919 shows the route at Pitt Farm, uncoloured, as a road under 14 feet wide with a bad surface, and the remainder as a "minor road". The key also identifies that private roads are shown uncoloured. In addition, the Map contains the OS disclaimer that the representation on the map of a road, track or footpath is not evidence of the existence of a right of way. Bartholomew's 1923 Map shows Pitt Lane uncoloured, as an inferior road not to be recommended.
17. The categorisation of the Order route on the later small scale touring maps appears to me consistent with a decline in the condition of the Lane, perhaps reflecting a decline in its use. This in turn is consistent with the 1829 Order (paragraph 8) stopping up the western section of the route, which provided for use only by those accessing land from it, coupled with a likely reduction in its maintenance.

Parish Council Minutes

18. The Order route can be identified in Minutes for Culmstock Parish Council between 1887 and 1899, though as regards responsibility for its maintenance, the entries appear contradictory. An 1887 request to repair part of "Pitt Road" from Pitt Farm House towards Hemyock was not entertained, whereas in 1899 the District Council was to be approached about the hedges obstructing the "ancient right of way" leading from the Farm towards Clements, but there is no record of the outcome of this. In 1892 repairs were to be carried out, although it is not clear whether on the Order route or on the Lane west of Pitt Farm.
19. Of note is "A List of Footpaths (or) and Rights of Way ordered to be prepared 10th July 1899", which includes Pitt Lane. The List states the paths named "are known to have been used by the public for years past". The inclusion of the Order route in the List taken together with the 1899 Minute referring to it as an ancient right of way indicate that, notwithstanding the 1829 Order, it was regarded by Culmstock Parish Council (in 1899) as being used by the public. However, the manner in which it was used is not stated. It seems to me unlikely though that it was considered to be a public road as the list did not purport to include such a category of way. Indeed, the List was later relied upon when the Parish Council submitted its claims under the 1949 National Parks and Access to the Countryside Act.
20. No entries in the Hemyock Parish Council Minutes relating specifically to the Order route have been adduced.

Finance Act records

21. The 1910 Act 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.
22. A deduction of £75 was claimed and attributable to three footpaths at Pitt Farm (hereditament reference Pt 175). There is nothing recorded in relation to Pitt

Lane, which is shown as a mapped feature on the base plan. An examination of the sheets over which Pitt Lane is portrayed shows a consistent approach was adopted by those marking them up. Where a hereditament, or land parcel, straddled a "road", the coloured line marking the boundary of the hereditament stops, leaving a gap, as in the case of Pitt Lane in both parishes; elsewhere hereditaments are shown abutting a "road" leaving it uncoloured and excluded from adjoining land parcels. In both cases, it was argued by Mrs Parsons that the road itself does not form part of the hereditament, and was therefore public. In further support of this view, Mrs Parsons highlighted a hereditament to the west of Pitt Lane straddling public roads and within which a private road is 'closed' by a short line in the same colouring as that of the land parcel. A further example is provided of a private road north of Pitt Farm at Benshayne Farm 'closed' by the hereditament colouring, whilst a public road passing through the land parcel is left 'open'. Notwithstanding the 1829 Order, there is no reflection of its effect on the Valuation Map.

23. Mr Field maintained that although there were instructions to Valuation Officers regarding the completion of the valuation maps, they were not sufficiently detailed to allow a conclusion to be drawn that a break in the line was indicative of a public road.
24. Where a route shown on the OS base map is both uncoloured and unnumbered, and excluded from the hereditaments, there is a strong possibility that it was a public highway, normally but not necessarily vehicular. However, the recording of public rights of way was not the primary purpose of the valuation exercise, and there may be other reasons for the exclusion of a route, for example where a private or accommodation road provided access to a number of landholdings in different ownerships, or where its ownership is not assigned to any individual. The former could be true for Pitt Lane in Culmstock Parish having regard to the 1829 Order, though may not be applicable to the route in Hemyock which was shown in the same manner and had not been subject to any stopping up of public rights, or indeed to the county road to the west of Pitt Farm. As Mrs Parsons pointed out there would be no deduction claimed for a public road. However, whilst I note consistency in the drawing up of the plans, there is no explanation of what the line breaks are intended to demonstrate, and the route is not unambiguously excluded from hereditaments. Thus, whilst it remains possible that Pitt Lane enjoyed public rights, I do not consider this evidence demonstrates that it was a public road throughout, available to all classes of user.

Accommodation roads

25. In 1944, the Council embarked on an exercise to establish which accommodation roads in the County were necessary for public use and should be taken over and maintained at public expense, and which County Roads had become unnecessary for public use. The help of the Rural District and Parish Councils was enlisted in this extensive task. Although it is recorded that Culmstock Parish Council responded, no list of routes has been found. However, Hemyock Parish Council put forward, amongst others, the "Road from Clements to Pitt Farm, Culmstock" to be made into a highway.
26. The Council defined 'accommodation roads' as private or occupation ways or roads used by those living alongside or accessing land from them, but with no right conferred on the public generally, that is roads over which the public have

- a right of passage, but that are not highways repairable by the inhabitants at large, and were not intended to include footpaths and bridleways.
27. There is no indication whether or not Culmstock and Hemyock were provided with this definition. However, Hemyock Parish Council apparently regarded the Order route as an accommodation road, privately repairable, that should become a public highway. This appears at odds with the status of the route in 1829 when the section in Culmstock was stopped up. Nevertheless, they must have considered it to be used by the public and therefore "necessary" to be so retained. Whist they did not state what type of public use was made of it, the Council's interpretation above would support a vehicular way.
28. The Council set up a Committee to consider which accommodation roads should be recommended for adoption, subject to them falling within certain criteria. Although this Committee operated into the mid-1950s, the route claimed by Hemyock Parish Council was not listed amongst those approved for adoption. However, as an existing public highway for which no stopping up order has been found, this is not necessarily surprising. There is no evidence before me that the remainder of the route in Culmstock Parish was adopted either.

National Parks and Access to the Countryside Act 1949

29. It was under this Act that the DMS was prepared. The route described in the Culmstock Parish Council List of 1899 (paragraph 19) was claimed by them for inclusion as two separate paths. The relevant path, given the number 17, was described as "Pitt Farm to Clements" and claimed as a "CRF", or public carriage or cart road or green unmetalled lane used mainly as a footpath, which was considered required for use in the future. Pencil notes made by "CS", most likely the County Surveyor, state it appeared to be a public accommodation road, being a continuation of the Unclassified County Road at Pitt Farm. They go on to say that if it is usually used by vehicular traffic it should not be included in the Draft Map. A further annotation in what looks to be a different hand states "Pub Rd", most likely meaning a public road.
30. This suggests to me that the Council was unaware of the 1829 Order, and furthermore this was a desk exercise, as clearly the route's main use was not known. Further to the Parish claims, the Council instructed its Divisional Surveyors to augment the information provided by the Parishes in drawing up the DMS. Maps and statements provided by the Parishes were then checked by Road Foremen who were given detailed instructions as to their role.
31. A Footpath (No.2) was claimed by the Parish "From Pitt to Pithayne", again considered required for use in the future. Pencil notes again by "CS" seek further information about the path and the extent of the private accommodation road crossed by it. I take this to be a reference to the section A-B on the Order plan.
32. The Draft Definitive Map shows Footpath 1 from Weather Lane along Pitt Lane and then turning south at the entrance to Pitt Farm; CRF 17 following the Order route from Pitt Farm to the parish boundary; and Footpath 2 east of the Farm, heading north from Pitt Lane. Claimed route 17 was subsequently withdrawn. This, I consider, explains why Footpath 2 appears on the Definitive Map without a continuation to join Pitt Lane to the west.

33. The evidence shows there was an inconsistency in how Pitt Lane was described, as both a private and apparently a public accommodation road in Culmstock Parish. No claim was made for it to be included in the DMS for Hemyock Parish. The Hemyock Draft Map is marked in pencil "Not CR", although it is not clear what this meant; not a carriage, cart, classified or county road, or some other meaning. That it was not included could mean that no public rights were considered to exist over it or, possibly, given Hemyock Parish Council's claim in 1944 for it to become a highway, it was not considered by the Council to be a route required to be recorded in the DMS.
34. It seems that in the 1950s the Council had clarified its definition of accommodation roads (paragraph 26), and regarded public accommodation roads as routes that should not be recorded in the DMS, and should thus remain uncoloured (white), and private accommodation roads where footpath or bridleway rights were claimed as routes that were to be recorded as one or other category. A public accommodation road would show up on the DMS, Mrs Parsons argued, where the coloured lines of a footpath or bridleway met an uncoloured route. In the case of Pitt Lane this was reflected in Footpath 2 and, furthermore, in the user evidence (considered below) which during this period included claimed use with vehicles. Had the route not been used by vehicles, she said, it would have been recorded as a Road Used as a Public Path.
35. The evidence here is both contradictory and confusing. The Council's definitions of accommodation roads reflected maintenance, and neither a public nor private route would have fallen within their or the Parish Council's maintenance responsibilities. This may be relevant to Pitt Lane in Culmstock Parish where public rights had previously been stopped up, but would not be relevant to Pitt Lane in Hemyock Parish. The annotation 'public road' to the Culmstock Parish claim for Pitt Lane suggests the Council regarded it as a public road used by vehicles, one that was not required to be recorded in the DMS. However, there is no indication of the evidential basis for reaching this conclusion, especially given the Parish claim and the inconsistency reflected in the descriptions of Pitt Lane as both a public and private accommodation road. In any event, the reason given for withdrawing the route claimed in Culmstock was that Hemyock did not claim its continuation¹.
36. Furthermore, the Council had no maps showing public accommodation roads and relied on local knowledge and information supplied by Parish Councils. A 1977 Council review of the Definitive Map described public accommodation roads as a very unusual designation, and that "none was shown on the original Definitive Map".
37. I therefore take the view that public rights of at least footpath status existed over the Order route in Culmstock Parish, as reflected in the Parish Council claim. There is evidence that the Parish Council had sought to maintain the Order route in 1899 (paragraph 18) after the 1829 Stopping up Order; and it was recorded in their list of footpaths and rights of way (paragraph 19). The Hemyock end of the route remained a full public highway.

Aerial photograph 1946/9

¹ This is referenced in a document in the Council's bundle, a "List of paths as agreed with the Sub-Committee of the Parish Council on the 4th December, 1957"

38. The Order route is a clearly visible feature, other than where obscured by trees on this photograph². Field accesses north and/or south of it can be seen, in particular either side of the parish boundary. The photograph suggests that in the late 1940s the route was accessible, though it does not assist in establishing whether any use that may have taken place was public or private. There is some indication of a wear line running to the north and parallel with or towards Clements Farm, although it cannot be determined by what or by whom it was used.

Conclusions on the documentary evidence

39. Pitt Lane was, without doubt, a public highway or road, between points A and D, prior to 1829 when the section in Culmstock Parish between A and C was stopped up by legal order. There is no evidence of any similar legal event affecting the Hemyock section of the Order route at that time or subsequently. Therefore it remains a public road³.
40. The 1829 Order provided that those who required access to land and property from the Lane retained those rights of access. It is not surprising therefore that the subsequent documentary record is consistent in depicting the Order route as open and un-gated. However, none of the small scale maps considered provides categorical evidence that it was a public vehicular way as asserted by Mrs Parsons. In particular there is no evidence that the touring maps were based on enquiries into the legal status of the routes they showed for use by cyclists and motorists.
41. I do not find the Tithe or Finance Act records of any great assistance in establishing the status of the Order route, and it was not the purpose of either to do so.
42. Parish Council records are contradictory but record that the route in Culmstock was regarded as a footpath or right of way in 1899, and this is consistent with their subsequent claim for adding it to the DMS as a CRF, a cart track used mainly as a footpath. Accordingly, some public rights had been re-acquired over this part of the Order route subsequent to the 1829 Order. The description of Footpath 2 following a private accommodation road along Pitt Lane is also consistent with the Parish Council's view regarding the status of Pitt Lane. However, the Council also, confusingly referred to it as a public accommodation road, with regard to the Parish claim for it to be added to the DMS, although the pencilled note was not categorical and sought that further investigations be made. The reason given for its removal from the Draft Map was that its continuation in Hemyock was not claimed, rather than it was determined to be a public accommodation road. Hemyock Parish Council had not claimed their section of the Order route, although they seemed uncertain of its status having sought that it be adopted as an accommodation road in 1944.
43. Whilst there is a possibility that public bridleway rights were re-acquired over the section A to C, I do not consider on the basis of the historical documentary evidence that the balance tips in favour of reaching such a conclusion.
44. Mr Field suggested that Pitt Lane could be a postal route. However, I consider this to be unlikely given in particular that it was a public road prior to and, in

² I note that the copy provided has later (public rights of way) information superimposed on it

³ Subject to the effects of the Natural Environment and Rural Communities Act 2006

part, post 1829, and given that Culmstock Parish Council claimed it as a public right of way for inclusion in the DMS.

45. As regards Footpath 2, there is an anomaly between the Definitive Map which shows it terminating on Pitt Lane to the east of the Farm, and the Definitive Statement which describes it as commencing at the unclassified road (point A on the Order plan). It is then described as continuing "along a private accommodation road (not repairable by the inhabitants at large) for 100 yards in an easterly direction" before turning northwards. The anomaly appears to have arisen when claimed Footpath 17 in Culmstock Parish (Pitt Lane) was removed at the Draft Map stage. There is nothing in the evidence adduced that would lead me to conclude that the particulars of the DMS should not be amended to correct this.

User evidence

46. It was Mr Garrett's belief that the Order route was obstructed near point B in 1961 when his father purchased the property, although he said it was not blocked to prevent access, but used to store scrap materials and farm implements. However, several of the user evidence forms give 1968⁴ as the date when Mr Garrett blocked it. Three people referred to the route being blocked with farm implements and general waste, one believing this to be the late 1960s, and another possibly the early 1970s. Three people also mentioned wire blocking the route, associated with the obstruction near B. However, Mr Garrett has no recollection of a meeting said to have been held about this in 1968, and no supporting documentary evidence of it having taken place has been found.
47. A statutory declaration of the late Mr D Farmer of Clements Farm refers to his father entering into an agreement with Unigate Dairies in the early 1960s to allow them to use the Order route to access adjacent land used as a tip, this practice continuing into the mid-1970s. The route was gated by the Dairy near point D to prevent public access, although Mr Farmer does not say when this happened. Three user evidence forms refer to a gate, one stating it blocked the route when it was accessed for the tip, another that it occurred "latterly". In addition, Mr Farmer put two gates across the route east of point C in the 1960s to facilitate cattle movements, although none of the evidence forms mentioned these. It is not known whether any of these gates was locked.
48. Mr Field considered 1972 was the date of bringing into question, but gave no reasoning beyond his knowledge of the area when growing up there.
49. The evidence is conflicting as to when the Order route became impassable, with obstructions described at either end in the 1960s. It is not surprising that with the passage of time people's recollections about when events took place in the past may vary. However, it seems less likely from the evidence that the gate at point D prevented use as, had it done so, I consider more people would have mentioned it. On balance, I conclude that 1968 is the likely date when obstructions near point B were such that the public were unable to pass along the Lane, and it was this that brought into question the public's right to use it. I shall therefore consider a 20 year period of 1948 to 1968.

⁴ Although some claimed use extends into the early 1970s

50. There are 16 user evidence forms claiming use between 1925 and around 1970, one as late as 1975/6. One form had been withdrawn and another had been submitted by the daughter of a former tenant of Pitt Farm. It is possible that her use was in a private capacity and accordingly I have discounted it, although her form provides anecdotal evidence of use by others.
51. I heard from two witnesses, Mr Bowden and Mrs Griffin both of whom claimed use in the relevant period. Unfortunately, the route described at the Inquiry by Mr Bowden as the one he used was not the Order route, but one passing through Pithayne to the north. Accordingly, I have discounted his evidence. Mrs Griffin described riding the Order route on horseback in the 1960s for pleasure, as part of a circular route, around a dozen times, until it was blocked.
52. Of the remaining forms, use described was on foot, horseback, bicycle, pony and trap and tractor, with use by horses reported, vehicles seen and that it was well used by locals. However, the latter is anecdotal evidence and it is not stated with what frequency such use took place, and it is unclear whether the use described was in a public or private capacity. Accordingly the weight I can attach to it is limited.
53. None of the users had been challenged. None claimed use with the hunt. Most of the use claimed (by 9 users) was on foot, dating back to 1925. Excluding Mrs Wheeler's personal use, 6 people claimed use on horseback. However, all of their use took place from 1959 onwards and varied from once or twice only, once a year, 3 to 4 times a year, or 10 times a year. One of these users, Dr Griffin, claimed use 10 times a year, but in a subsequent letter to the Council referred to its use by his wife and children, but that he could not actually remember whether he had ridden Pitt Lane himself.
54. Some use was claimed to access a mill and a nearby blacksmiths, although Mr Garrett disputed that Pitt Lane was the most direct route to access the mill of which there were 3 in the neighbourhood. One of these users, Mrs Chave, who claimed use on foot between 1958 and 1962, wrote that she had led horses along Pitt Lane in 1949 on route to the blacksmith. This is within the 20 year period, but it is not stated to have been a regular or ongoing activity by this user. In addition, Mr Lowman who used the route on foot from 1925 wrote that horses used it as well, but he did not say when or how often this was, nor whether this was use by the public, or in a private capacity.
55. Two users described use with bicycles and with mechanically propelled vehicles, one also with a pony and trap; and another with a bicycle. Use claimed with a tractor was said not to be in connection with the land and so is likely not to have been private. However, none of these users described how often they used Pitt Lane with the different modes of transport, but rather gave an overall frequency of use. In any event, such use is very limited in extent, even though I note that some of it took place during the period that the Council was investigating accommodation roads and compiling the DMS in the 1940s and 1950s respectively.
56. Mr Garrett, however, disputed much of the user evidence. He suggested that 4 of the users had connections with or were employed at either Clements or Pitt Farms; that claimed use by some was out of character as he knew them; and did not believe that one user could have waved to passing trains from the Order route. As regards the latter, it was evident at the site visit that the

former railway line could be seen from parts of Pitt Lane, more particularly on the Hemyock side, albeit a field or two away.

57. In addition, Mr Garrett disputed that a traction engine could have negotiated Pitt Lane due to the difficulty of manoeuvring it, and the route's narrowness in part. Whilst I note this view, the 1829 Order (paragraph 8) described the route as having "a breadth of 9 feet or thereabouts" suggesting a width in the region of 2.7 metres, perhaps a little more or a little less in places. It seems to me that it would have been possible for such traffic to use the route.
58. Mr Garrett indicated he would have used the route himself in the 1960s if it had not been overgrown. Accordingly, his belief was that people would have deviated to a track to the north of the Order route which ran parallel with it between B and C. However, there is no evidence that this occurred in practice. In addition, he referred to pheasant pens along the route on the Hemyock side that would have prevented use. However, none of the user evidence forms referred to them. The late Mr Farmer had not seen people using the Order route before about 1960 other than tenants of Pitt Farm, though it is unlikely that he would have been able to see the entire route from his land.

Conclusions on the user evidence

59. Since I have already concluded that the Hemyock part of the Order route (C-D) has retained its existing public rights, the evidence of use described above can only add support to its status as a public road. However, the Natural Environment and Rural Communities Act 2006 ('the 2006 Act') extinguished public rights for mechanically propelled vehicles, unless preserved by one or more of the exceptions set out in Section 67 of the Act. It is not argued, and there is no evidence before me, that any of the exceptions apply in this case, and I am satisfied that rights for mechanically propelled vehicles have not been saved over the Order route in Hemyock.
60. The evidence of use must then be considered to establish what public rights may have been re-dedicated over the section of Pitt Lane in Culmstock Parish.
61. My findings are cautioned having regard to Mr Bowden's evidence and Dr Griffin's letter to the Council, which cast doubt on at least some of the use claimed and, due to the passage of time, much of the evidence cannot now be tested. Nevertheless, I find that there is evidence of use by the public during the 20 year period 1948 to 1968 and that this was predominantly on foot. There is use by horse riders for a period of 9 or 10 years dating back from 1968, and reported use in 1949, but no substantiated evidence that use of the route by the public on horseback took place throughout the 20 year period. There is evidence of use with vehicles but this is very limited in nature, and in my view insufficient in volume and frequency to raise a presumption of dedication over the route in Culmstock.
62. Claimed use appears to have been as of right, without force, secrecy or permission, and without interruption. There do not appear to have been any actions during the 20 year period to suggest the landowners did not intend to dedicate a right of way. However, I find on the available evidence, that claimed use is insufficient to support a public right of way on horseback subsisting over the Culmstock section of the Order route as it has not taken place throughout the 20 year period. It is though, in my view sufficient to support a public right of way on foot subsisting.

63. My conclusions would, for these reasons, be the same had I taken either the early or mid-1960s, or indeed the early 1970s, as the date when public rights to use Pitt Lane in Culmstock were challenged. I further conclude that there is insufficient evidence in volume and frequency to support the existence of a bridleway at common law between points A and C.
64. Mr Garrett accepted that between A and B, the route is a well-established footpath, based on his knowledge since the early 1960s.
65. It follows that I conclude the Order should be confirmed as regards the addition of a footpath between points A and B on the Order plan, that a footpath should be added between points B and C, and the Order should be confirmed as regards the addition of a restricted byway between points C and D.

Other matters

66. I understand the concerns expressed by many of those objecting to the Order, as regards the suitability of the Order route for use by the public, health and safety issues, the impact on farming operations and so forth. However, these are not matters that I can take into account in reaching my decision under the 1981 Act, and I have not done so.
67. Mr Field introduced to the Inquiry documents relating to previous inquiries in the area and to other matters, most of which were not relevant to my consideration of the Order. In reaching my decision I have not taken into account inappropriate content or matters referred to in his submissions that were not relevant to the Order before me for determination.
68. Mr Garrett explained he had offered an alternative route to the Council running parallel to Pitt Lane, but to the north of it between points B and C. This is not a matter for me. However, in the event the Order is confirmed, it is open to Mr Garrett to apply for a diversion order under the appropriate legislation should he so wish.
69. I note a typographical error in the Order whereby Restricted Byway No. 1 Hemyock is erroneously described as a "Restricted Bridleway" and I shall correct the Order in this regard.

Overall Conclusions

70. 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 that require advertising.

Formal Decision

71. I propose to confirm the Order subject to the following modifications:
- References to Bridleway in the Order and on the Order plan be replaced with the word "Footpath"
 - In the preamble to the Order, delete "(ii)" in line 5, and delete "that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description" in lines 9 to 11

In Part I of the Schedule to the Order

- under the modified heading "Footpath No.38, Culmstock" delete "with cross bars in the intervals" in the last sentence of the description
- under the heading Restricted Byway No. 1, Hemyock, replace the word 'Bridleway' with "Byway" in the first sentence
- delete the heading "Description of Path to be Upgraded" and the paragraphs beneath

In Part II of the Schedule to the Order

- under the heading "Footpath No.2, Culmstock", after the word "From" delete "Bridleway No.38" and insert "The county road at Pitt Farm,"; and, in line one of the description after the words "It starts at" delete "Bridleway No.38, Culmstock" and replace with "the county road at Pitt Farm and proceeds south eastwards to where the path continues north through a gate into a field"; and, in line five, after the word "approximately" insert "120 metres long and 2.5 – 4 metres wide as defined by the farm track, then"
 - under the modified heading "Footpath No.38, Culmstock", after the word "From" delete "minor county road" and insert "GR (ST 1104,1437)"; and, in line one of the description after the words "It starts at" delete "the minor county road" and insert "Footpath No.2, Culmstock at GR (ST 1104,1437)"; and, in line five, delete "335" and replace with "215"
 - On the plan attached to the Order (drawing Number HTM/PROW/11/76) amend the notation for modified Footpath No.38 to a broken line
72. 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 Wildlife and Countryside Act 1981 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

Supporters:

Mrs J Parsons

Mid-Devon Access and Bridleways Officer for the
British Horse Society

who called

Mr L Bowden

Mrs B Griffin

Objectors:

Mr I Firth

Bondstones Planning & Design *assisting* Mr
and Mrs Garrett

Mr R Garrett

Mr J Field

Others who spoke:

Mrs E Spurway

Definitive Map Review, Devon County Council

Mr G Bass

Supporting the Order

Mr W Gray

Opposing the Order

DOCUMENTS

1. Photocopy extracts from Hemyock Tithe Map 1843 together with map title dated 1843, Culmstock Tithe Map 1841, and an undated and un-named parchment map, submitted by Mrs Parsons
2. Bundle of documents submitted by Mr Field concerning Cripple Lane, Uffculme; Devon County Council (Bridleway No.1, Uffculme) Definitive Map Modification Order 2006; a claimed Footpath at Five Fords Farm, Uffculme; and extracts concerning Devon County Council and Government policy
3. Closing statement submitted by Mr Field