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## Order Decision

On papers on file.

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

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

**Decision date: 15 March 2016**

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### **Order Ref: FPS/U1050/7/101**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Derbyshire County Council (Byway Open to All Traffic along non-classified highway known as Beeley Bar Road – Parish of Beeley) Modification Order 2015.
- The Order is dated 26 March 2015 and proposes to modify the Definitive Map and Statement for the area by adding a Byway Open to All Traffic (BOAT) running between the B6012 road and Beeley Lane, Beeley, Derbyshire, as shown on the Order Map and described in the Order Schedule.
- There was 1 objection 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.**

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#### **Procedural Matters**

1. I have not visited the site but I am satisfied I can make my decision without the need to do so.
2. In writing this decision I have found it convenient to refer to points marked on a plan prepared by Derbyshire County Council, the Order Making Authority (OMA). I therefore attach a copy of this map.

#### **The Main Issues**

3. The requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.
4. Some of the evidence in this case relates to usage of the route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
5. Also, as it is proposed that the Order route be recorded as a BOAT, it is necessary to have regard to the provisions of Section 67 of the Natural

Environment and Rural Communities Act 2006 (the 2006 Act) which extinguished unrecorded rights of way for mechanically propelled vehicles (MPVs) subject to certain exceptions.

### **Reasons**

6. The application that was submitted for the addition of a BOAT to the definitive map did not refer to the whole of the current Order route but only to the section between Points A and B on the attached map. In the course of its investigation of the claim the OMA concluded that the evidence indicated that the section between Points A and X should also be recorded as a BOAT and therefore this was included in the Order.

### **Documentary Evidence**

7. I have not seen copies of the documents referred to but the OMA's description of these has not been disputed and I have therefore relied on it.

### *Enclosure Award*

8. The enabling act for the Beeley Enclosure Award is dated 1811 and the award itself 1832. The claimed route (Points A to B) was awarded as a public carriage road and highway named Beeley Bar Road. The remainder of the Order route (Points A to X) fell outside the scope of the award but was described as an ancient lane. There is also evidence from a Quarter Sessions document of 1820 that by then the roads referred to in the award had already been set out.
9. This award provides good evidence that the claimed route was a public route for all traffic. The award does not specifically indicate the status of the remainder of the Order route but the fact that its continuation was awarded as a public carriage road suggests that this section was also considered to be a highway of that status.

### *The 1910 Finance Act*

10. The 1910 Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. This survey was carried out by the Board of Inland Revenue under statutory powers and it was a criminal offence for any false statement to be made for the purpose of reducing liability. The existence of public rights of way over land had the effect of reducing the value of the land and hence liability for the tax; they were therefore recorded in the survey.
11. In this case the whole of the Order route was excluded from taxable land holdings in the same manner as public vehicular routes were generally shown. Routes that only carried public footpath or bridleway rights were more often dealt with by means of deductions from the value of land.

### *Ordnance Survey (OS) maps*

12. OS maps at the scale of 1" to the mile produced in around 1840 and 1880 show the whole Order route connecting to the wider road network. 1:2500 scale maps of around 1880 and 1898 also showed the route in a similar way.
13. OS maps provide good evidence of the existence of the route at the time they were surveyed but do not indicate its status.

### *Highway Records*

14. When responsibility for highways passed from Rural and Urban District Councils to County Councils in the 1920s the route which corresponds with the current Order route was recorded as Beeley Hill Top Lane. The route is currently recorded in the County Council's highway maintenance records (the List of Streets) as a non-classified highway (NCH). However, the records carry a note stating that the designation NCH does not of itself indicate that the route carries public vehicular rights.

### *Other documents*

15. Early commercial maps prepared by Burdett (1760s), and Sanderson (1835) show the Order route indicating that it was regarded as route of some significance but not necessarily that it carried public vehicular rights.

### *Conclusions regarding documentary evidence*

16. The documentary evidence shows that the Order route has existed for a long time and the Enclosure Award and Finance Act records provide strong evidence that it carried public vehicular rights. No evidence that such rights have subsequently been extinguished has been produced and therefore it is my view that the Order route remains a public vehicular route.

### **Evidence of Use**

17. It would appear that public use of the Order route was brought into question in 2005 as a result of the application for most of the Order route to be added to the definitive map. Accordingly, the relevant 20 year period of public use before dedication of the route as a BOAT can be presumed in accordance with the provisions of the 1980 Act runs from 1985 to 2005 in this case.
18. Sixty-eight User Evidence Forms (UEFs) were submitted in support of the application. Nineteen of the people completing these claimed to have used the route with motor vehicles throughout the relevant 20 year period and a further 23 for part of it. The frequency of use claimed was not great with nearly all users stating that they used the route monthly or less often.
19. Some other users also claim to have used the route on foot, pedal cycle and/or horseback often on a more frequent basis than vehicular users.
20. Overall, it is my view that the available evidence of public use of the route is sufficient to raise the presumption that the Order route is a public vehicular route of some sort and the character of the route and the nature of its use suggests that it fits the definition of a BOAT. It therefore appears to me entirely appropriate that the order route should be shown on the Definitive Map and Statement as a BOAT.

### **The 2006 Act**

21. The 2006 Act extinguished public rights of way for MPVs over every highway not already shown on the Definitive Map and Statement as a BOAT, subject to a number of exceptions. One of these exceptions, set out in Section 67(2)(b) of the Act, refers to ways that immediately before commencement (2 May 2006) were not shown on the Definitive Map but included in the List of Streets. This exception applies in this case and therefore MPV rights have not been

extinguished and the route should be recorded as a BOAT rather than as a Restricted Byway.

### **Other Matters**

22. The objector has expressed concern about the possible adverse effects of vehicular use of the Order route on the condition of the route and the safety of other users. I understand these concerns but they are not matters to which I can attach any weight in reaching my decision in this case.

### **Conclusions**

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

### **Formal Decision**

24. I confirm the Order.

*Barney Grimshaw*

**Inspector**

APPENDIX 1

