
Order Decision

Inquiry opened on 1 September 2016

Site visit made on 2 September 2016

by Martin Elliott BSc FIPROW

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

Decision date: 10 October 2016

Order Ref: FPS/U1050/7/98

- 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 (Upgrading of Public Footpath No. 22 (part) to Bridleway and addition of a Bridleway from Almshouses Lane to Public Footpath No. 22 and from Public Footpath No. 22 to A608 – Parish of Morley) Modification Order 2014.
- The Order is dated 29 May 2014 and proposes to modify the Definitive Map and Statement for the area by upgrading part of public footpath 22 to a public bridleway and adding two sections of public bridleway as shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I held a public local inquiry at Horsley Village Hall, Horsley on 1 and 2 September 2016. I carried out an unaccompanied inspection of the Order route and surrounding area on the evening of 31 August. Following the close of the inquiry I held an accompanied site inspection. This was limited to the section of the Order route C to D¹ and the entrance to Morley House Farm.
2. The Order arises following a direction of the Secretary of State to make the Order in consequence of an appeal under Schedule 14 of the 1981 Act. At the Inquiry the Council took a neutral stance and the case in support of confirmation of the Order was made by the applicant.

The Main Issue

3. The Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of an event specified in section 53(3)(c)(i) and (ii) of the 1981 Act.
4. The main issue is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show on the balance of probability that:
 - (i) a right of way which is not shown in the map and statement subsists over the land in the area to which the map relates (addition of public bridleway A to B and C to D); and

¹ Letters A, B, C and D refer to location points identified on the Order map.

- (ii) 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 (upgrading of footpath 22, B to C, to bridleway²).
5. The applicant relies on a statutory dedication under section 31 of the Highways Act 1980 and, in the alternative, on documentary evidence.
 6. Section 31 of the Highways Act 1980 provides that where a way, other than a way of such a character that use of it could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public, as of right and without interruption, for a period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that the landowner demonstrated a lack of any intention during this period to dedicate the route. The 20 year period applies retrospectively from the date on which the right of the public to use the way was brought into question.
 7. Should the test for statutory dedication fail under section 31 of the 1980 Act then it may be appropriate to consider the dedication of the way at common law. Dedication at common law requires consideration of three issues: whether any current or previous owners of the land in question had the capacity to dedicate a highway, whether there was express or implied dedication by the landowners and whether there is acceptance of the highway by the public. Evidence of the use of a path by the public as of right may support an inference of dedication and may also show acceptance by the public. For a dedication at common law the burden of proof rests on those claiming the public right of way.
 8. The applicant sought clarification as to the ownership of the most western section of the Order route between the gate and Morley Almshouses Lane. Although Mr Knifton indicated in his statement that all the land was in the ownership of Morley House Farm he advised the inquiry that he thought this land was common land. The Council provided an extract of the Commons Register which confirmed that the land is registered as common land in the ownership of Morley Parish Council.

Reasons

Background issue

9. The objector made the point, referring to *Gestmin SGPS S.A. v Credit Suisse (UK) [2013] EWHC 3560 (Comm)* that human memory is a frail thing. I accept that the evidence of use in support of the Order attempts to recall events no less than 34 years ago and as long ago as 54 years. Whilst witnesses to the inquiry may have been unable to recall certain events, some only with the aid of notes, there is nothing to indicate that they did not give evidence to the best of their ability and recollection. In many instances witnesses tied dates to memorable events such as going to college or acquiring a certain horse. Although witnesses were recalling events some years ago there is nothing to indicate that their evidence, which was subject to cross examination, should not be relied upon and some weight should be given to their evidence.
10. The applicant made reference to the decision of the Secretary of State in respect of the appeal under Schedule 14 of the 1981 Act; this decision is

² This route was referred to by some as Holly Bush Lane

without prejudice to any decisions which may be issued by the Secretary of State in accordance with powers under Schedule 15. I note that the Inspector concluded that there was nothing in the documentary evidence to preclude the earlier existence of a bridleway. However, it was concluded that the documentary evidence was insufficient to substantiate bridleway status. As regards evidence of user the Inspector concluded that there was sufficient evidence to reasonably allege the existence of a public bridleway on the unrecorded sections. The higher test was not met due to unanswered questions about the routes taken at each end of the route. However, the evidence was sufficient to satisfy the higher level of proof in respect of the section B to C. The Inspector points out that in the determination of any order resulting from the appeal the evidence will apply to the whole of the route and that the whole route would be proven or none of it.

11. Having regard to the above paragraph the inquiry provides an opportunity for the evidence to be tested and for the conflicts in respect of the route to be examined. For me to confirm the Order I need to be satisfied, on the balance of probabilities, that public rights subsist (the higher test) on the unrecorded sections of the Order route and that the section recorded as public footpath 22 ought to be recorded as a bridleway. My decision must be based on the evidence before me measured against the relevant tests.

Statutory dedication – Section 31 of the Highways Act 1980

When the right to use the way was brought into question

12. In March 1982 the landowner barred access to the Order route by the locking of the gate at point A. A stile was also erected at point D during road improvements to widen the A608. These events are recognised in the evidence of use forms. The applicant contended that a petition was assembled in May 1983 in response to the closure of the route. Although that is not clear from the wording of the petition it is more likely than not that the petition was in response to the closure. In any event the locking of the gate and the erection of the stile would have brought the right to use the way by equestrians into question. This sets a relevant twenty year period of March 1962 to March 1982. No other evidence has been put before me of any other event which was sufficient to bring the right to use the way into question.

Evidence of use 1962 to 1982

13. There are 47 evidence of use forms 46 of which indicate equestrian use of a route between Morley Almshouses Lane and the A608 road. Use was as of right and without interruption during the relevant period. However, with the exception of the section B to C the maps accompanying the evidence of use forms, where attached, show the use of a variety of routes between A and B. These are the Order route, the route of footpath 22 and a route around the southern field boundary marked with the number 21 although this is not the route of footpath 21 as recorded on the definitive map. In respect of the section C to D some of the accompanying maps show a route which equates to the Order route, others show a route through Morley House Farm. In respect of those showing a route through Morley House Farm the description of the route, in some cases, suggests that the route used was the Order route from point D. However, the conflict in the evidence diminishes the weight which can be attributed to these forms.

14. It is noted that a number of evidence of use forms do not include maps. In this respect the applicant referred me to Ordnance Survey maps at BHS 26 which it is stated were used during the processing of the application and subsequent appeal. The map highlights a route between Morley Almshouses Lane and the A608. However, the routes highlighted at the Morley Almshouses Lane end are not the Order route but are footpaths 21 and 22. In the absence of maps which show the Order route it is difficult to give these claim forms any weight to support use of the Order route. I acknowledge that some of those who claim use of a route have submitted more recent user evidence forms with maps however, there remain a number with no map and no additional form.
15. In addition to the evidence of use forms there are 8 additional statements which again indicate the use of a route between Morley Almshouses Lane and the A608.
16. The objector contends that the evidence of use between 1962 and 1964 is flimsy in the extreme and is insufficient to satisfy the test of making the landowner aware that a right was being asserted. The point is also made that there is significant confusion as to the route between points A and B and to the east of C. The objector outlines that ten of the evidence of use forms describe the route emerging on to the A608 via Morley House Farm yard. Evidence suggests that a cattle grid was constructed at the entrance to Morley House Farm between 1962 and 1964; this would have prevented equestrian use through the farm.
17. As regards the route between A and B I note that the initial application to add the route to the definitive map identified a route at the Morley Almshouses Lane end terminating at a wall which was constructed by the seventeenth or eighteenth century; this route is not the Order route. During the consideration of the application the applicant confirmed that the route marked on the committee plan was the route being claimed and not the route terminating at the wall. In my view, given the long standing existence of the wall it is more likely than not that the route would terminate at the location shown on the Order plan where a gateway exists, albeit now barred with a barrier with an adjacent gap. This is consistent with the evidence given to the inquiry. However, as noted above, between points A and B the evidence of use forms depict a variety of routes which in some instances do not correspond with the Order route.
18. For the presumption of dedication to be made out there must be use of the Order route by the public throughout the relevant twenty year period, as of right and without interruption, which is sufficient to bring it to the attention of a reasonable landowner that a right is being asserted. Bearing in mind the above, the first issue to be considered is whether the Order route between points A and B has been used and whether that use is sufficient, throughout the relevant period, to raise a presumption of dedication. I have carefully examined the evidence of use for the period 1962 to 1964 in respect of the section of route A to B.
 - i) Miss Brassington, who gave evidence to the inquiry, used the way weekly from 1950 to 1982. Her evidence of use form identifies that between A and B she used a route corresponding with footpath 22 with a dog-leg to the south to reach point B. Her statement (BHS 13) confirms that the route between A and B took a dog-leg close to point B.

- ii) Susan Comery, using a route from 1963 to 1978, describes crossing through the centre of a field from Morley Almshouses Lane turning slightly right before turning up Holly Bush Lane. The accompanying map appears to show a direct line between A and B marked 22 and a route following footpath 21. Given the description it is more likely that Susan Comery did not use the Order route between A and B.
- iii) Christine Creswick, using the route from 1951 to 1978, identifies in her form that she used the route of paths 21 and 22 and refers to a map. The map is not attached but if the map to which she is referring is that at BHS 26 then she did not use the Order route. In any event the Order route A to B is neither path 21 nor 22.
- iv) William Godfrey has known a route for around 60 years. Whilst his evidence of use form indicates that he stopped using the way in 1981 it is unclear as to when he commenced using the route. The table of use submitted by the applicant suggests use from 1962, the objector's summary identifies this as 1971. In my view the evidence of use form states from 1971 but given the lack of clarity it is difficult to give any weight to the form in respect of user. He used paths 21 and 22 and refers to a map. Notwithstanding my observations in respect of when he used the way I revert to my comments at paragraph 18 iii above which are equally applicable.
- v) In her evidence of use form, completed in September 2005, Fay Croxford identifies the use of both paths 21 and 22 and this is consistent with her earlier evidence of use form from June 1983.
- vi) Dorothy Hammersley claims use of footpath 21 and 22 from 1957 to 1981. Although the user evidence form refers to a map, no map is attached and I revert to previous comments.
- vii) Marjorie Jones does not identify the years that she has used a route although has known the route to be public for twenty years, her form being completed in 1983. This would suggest that use would have commenced in 1963. She refers to the use of 21 and 22 but again no plan is attached and previous observations are relevant.
- viii) Joan May, using a route on foot and horseback on a daily basis between the 1950s and early 1980s, identifies both paths 22 and 21 on the plan accompanying the evidence of use forms; the route marked 22 is more consistent with the Order route. Path 21 is marked as going around the southern edge of the field.
- ix) The map accompanying the evidence of use form of Patricia Moss completed in 2005 identifies a route between A and B, used less than monthly from 1960 to the 1970s. The precise route is unclear due to the thickness of the drawn line. Her earlier statement from 1983 refers to the use of paths 21 and 22 which suggests that she did not use the Order route between A and B.
- x) Pamela Wilson, in her 2005 form, refers to a path straight down the middle to the gate on Morley Almshouses Lane although the map shows a direct line and a route following the southern boundary. She claims use of

the path on a monthly basis. Her additional statement dated 20 April 2016 does not provide any detailed information as to the route between A and B.

19. As regards the additional statements, Jean Beardsley said that she started using the route at Morley in 1957. From the end of the enclosed lane at point B she would go directly across the field, however, there is no map accompanying the statement. Brenda Walker used the route from 1954 to about 1962. In her evidence in chief, in response to a question as to whether she went across the field from B to A, she said that she was a bit hazy. Linda White says in her statement that she used the route from 1960. Attached to her statement is a map of the Order route which has been highlighted and signed by her. Ann Wood started using the route from her 6th birthday on 21 October 1961. Her statement indicates that she would go straight across the field at the Morley Almshouses Lane end of the route unless there was a crop when she would go around the edge. This evidence was consistent with that given to the inquiry.
20. Mr Dakin observed use by horses from the 1950s and used a route from Morley Almshouses Lane on a motorbike. He described the route from A to B as being slightly raised but that the route was now directly across the field. The evidence from Mr Knifton is that he ploughed out the original line of footpath 22, because it was raised, in around in 1974. It is more likely than not that the use prior to that date observed by Mr Dakin was the route of footpath 22.
21. Mr Knifton was born on the farm and purchased the farm, with his brother, in 1984. Before 1964, when Mr Knifton was 18, very few people rode over Morley House Farm. From his childhood to his teenage years use was infrequent and unusual. He recalled that his father did not try and stop use. From 1964, after a Mr Ironmonger opened his riding stables, Mr Knifton acknowledged that the number of riders increased steadily and this subsequently led to complaints from walkers. Mr Knifton said that in the 1960s the path from the end of Holly Bush Lane turned northwards for 20 yards and curved around to the gateway on Morley Almshouses Lane. Before 1968 people used the route of footpath 22. Mr Knifton acknowledged that a direct line between points A and B was shown on the 1:1250 Ordnance Survey map revised in 1969 but had seen a route marked in a different place. He stated that the route had only been there since the land had been ploughed; this was after 1968 when his father abandoned dairy farming. As noted above the route of footpath 22 was ploughed out in around 1974.
22. Mrs Knifton lived in the most southerly cottage adjacent to Morley House Farm from 1962 until 1964. She did not recall the Order route being used by horses but accepted that there may have been equestrian use when she was not there.
23. Mr Wheeldon accepted that the route was used from the mid 1960s when Mr Ironmonger opened his stables. This was about two to three times a week with groups of riders. Between points A and B he said that the route kinked with the path about 20 yards north of point B before turning towards B. He said the path followed the old field boundary which he removed in about 1974, it did not go straight across as shown on the Ordnance Survey plan.

24. Bearing in mind the above there are eleven, possibly twelve, individuals who have used a route between Morley Almshouses Lane and the A608 since at least 1962, with a further two individuals using the way since 1963. However, looking at all of the evidence before me, the use of the Order route between points A and B between 1962 and 1964 is limited to only a few individuals. Although Mr Knifton acknowledges use by equestrians but before 1968 people used footpath 22. In my view the use of the Order route between 1962 and 1964 is insufficient for me to conclude that a presumption of dedication has arisen in consequence of use in the period 1962 and 1982. Use in the early part of the period is limited and the use of other routes cannot be used to support use of the Order route.
25. In view of my conclusion it is not necessary for me to consider the use of the Order route during the remainder of the twenty year period, nor is it necessary to consider the issue of interruption arising from the foot and mouth disease epidemic in 1967/8.

Dedication at Common Law

26. Given my findings it is appropriate to consider whether an inference of dedication can be drawn from the evidence of user. The applicant did not make a case for dedication at common law in consequence of use and as noted above (paragraph 7) the burden of proof rests with those that assert such a dedication.
27. Having regard to all of the evidence, bearing in mind the issue as to the route which was used between 1962 and 1964, an issue which in my view arises up to at least 1968, and possibly up to 1974 when footpath 22 was ploughed out, I do not consider that the use is sufficient to infer dedication at common law.

Documentary evidence

28. In view of my findings at paragraphs 24 and 27 above it is appropriate to consider the documentary evidence.

Morley Inclosure Act 1784

29. The 1784 Act provided for the inclosure, amongst other places, of Morley Moor. The Act authorised commissioners to set out and appoint public highways, private roads and passages over the land to be inclosed.

Morley Inclosure Award 1786

30. The award map shows what appears to be a track leading from what is now the A608 road on a line corresponding with the route of footpath 14 then turning northwards towards 'The Mound' then westwards to terminate at the old inclosure numbered 236. The track is numbered 233 and is identified as the Lane to the Moor; the land is occupied by a Thomas Mason.
31. The award provides for a '*private Horse Carriage and Drift Road beginning at a certain antient Gate called the Bridle Gate near to a place called the Almshouses in Morley aforesaid*'. The route is described as extending westwards over the southern end of Morley Moor along the southern side of allotment 63, a public stone quarry. The route continues to the south of the Almshouses into Breadsall Moor at the southwest corner of the allotment

- numbered 61. The road, called Quarry Road, was identified as for the use of the owners or occupiers of the allotments and ancient inclosures to which the route leads.
32. Whilst the award refers to a bridle gate the route was set out as a private horse carriage and drift road for the use of the owners or occupiers of the ancient inclosures. As suggested by the applicant the reference to a bridle gate does suggest that the route continued over the old allotments. However, the route was limited to those owners and occupiers of the old inclosures, this does not suggest a public route. The applicant indeed acknowledges that the route was set out on the line of an existing road over which there were private vehicular rights and either public or private bridle rights.
33. I note that the old inclosure 220 is named as '*the Highway Close*' and whilst this might suggest that a highway ran through or adjacent to it there is nothing to indicate the route of the said highway and the evidence indicates that any route was for the benefit of the owners and occupiers of the old allotments and not for public use. As regards the old inclosure 223 named as '*the Lane to the Moor*', although the land is identified as a lane the name gives no indication as to any rights along the lane. It is of note that the land is identified as in the occupation of Thomas Mason.
34. Overall, whilst the award provides evidence of a route between the A608 and Morley Almshouses Lane the evidence is insufficient to conclude that, on the balance of probabilities, such route was public. In any event the allotment numbered 223 does not follow the Order route at the eastern end up to point C and there is no indication as to the route through the old allotments to the west of point B.

George Sanderson Map 1835

35. The map shows a cross road between the A608 and Morley Almshouses Lane. However, the route shown does not follow the Order route between points A and B and C and D. There is nothing to indicate from the map whether the route is public or private. The evidence needs to be considered with all other relevant evidence.

Tithe Award 1843

36. The tithe map shows a route between the A608 and Morley Almshouses Lane on the same alignment as the Sanderson map. The route passes through the plots numbered 268 and 252. The tithe apportionment identifies these plots as pasture. However, there is no reference to the existence of a public highway of any description. Tithe documents were produced to identify titheable land and were not prepared with an intention to record public rights. The award does not assist in identifying the status of the Order route or the route shown on the map. I note that plot 27, over which the Order route passes, is identified as '*Highway Close*' the name given to the plot in the inclosure award. However, the tithe map and apportionment does not provide any information as to a route across this land.

Plan of the Township of Morley 1865

37. The map shows a route between the A608 and Morley Almshouses Lane in a similar way to the tithe map; the map uses the same plot numbers as the tithe

map of 1843. The map provides no information as to the status of the route shown on the map or the order route.

Ordnance Survey

38. The first edition 1:2500 scale maps were surveyed and published in 1888. The map shows a route leading from Morley Almshouses Lane along the route of footpath 22 continuing along Holly Bush Lane with a parcel number 108. From 'The Mound' there are a number of pecked lines one of which corresponds with the Order route. The second edition maps published in 1900 and 1901 show two routes leading from Morley Almshouses Lane which correspond with footpaths 21 and 22; the route of footpath 21 is annotated 'FP'. To the east of 'The Mound' the Order route is not shown with the exception of the most easterly section leading to the A608.
39. The 1:2500 scale Ordnance Survey map used for a County Council land use survey in October 1962 shows two routes leading from Morley Almshouses Lane one of which corresponds with the Order route. A route continues along Holly Bush Lane with the initial section annotated 'FP'. From 'The Mound' a route which corresponds with the Order route is annotated 'CT'. This route leads to Morley House Farm with a spur annotated 'FP' leading to the A608.
40. The Ordnance Survey maps show topographical features at the time of the survey, they were not produced to record public highways. Some maps do show a route, which in part corresponds with the Order route, between Morley Almshouses Lane and the A608. However, the maps provide no evidence as to status. Whilst the route is annotated 'FP' the object of the annotation is to advise the public that they may not mistake the routes as traversable by horses or wheeled traffic; this does not suggest a route for equestrians. The maps do not assist in establishing equestrian rights.

1910 Finance Act

41. The majority of the Order route falls within hereditament 64. The field book is incomplete however, under the heading '*Charges, Easements and Restrictions affecting market value of Fee Simple*' it is recorded '*Footpaths ... £100*'. This would indicate that the land was affected by the existence of footpaths but there is no information as to the routes concerned or that any of the routes referred to as footpaths were considered to be bridleways. The 1910 Finance Act records do not assist in determining the Order.

Journal of the Derbyshire Archaeological and Natural History Society 1912

42. In an article by Percy Currey reference is made to a bridle road which from its description passes adjacent to the Mound. Whilst the article suggests the existence of a bridle road there is nothing to indicate how the author reached this view. As such it is difficult to put any significant weight on this evidence. In any event, other than where the route is described by reference to 'The Mound' there is no indication that the route corresponds directly with the Order route.

Morley House Farm sale particulars

43. The sale plan for Morley House Farm in 1913 appears to be based on the Ordnance Survey second edition map. The section of the Order route B to C is

identified as 'Lane' and 'Grass'. Sales plans were produced to identify land for sale and the particulars provide no information as to public rights of way over the land. The sales particulars do not assist in identifying the Order route as a bridleway. I refer to my previous comments above in respect of Ordnance Survey mapping.

The Derbyshire Countryside

44. R W P Cockerton, a member of Derbyshire County Council, wrote a series of articles for the magazine on the course of a route identified as the portway. Cockerton refers to Currey's article but comments that the 'road' between Morley Almshouses Lane and the 'grassy lane' (A to B) has deteriorated. Reference is also made to the tithe map of 1843 and I refer to my comments above. Whilst his comments appear to accept Currey's findings there is again no evidence as to the basis of his conclusions. As such it is difficult to give his views any significant weight.

Definitive map survey

45. The survey map produced under the National Parks and Access to the Countryside Act 1949 identify the routes of footpaths 21, 22 and 14 (numbered 20, 21 and 13 respectively on the survey map). The section of Order route B to C is annotated 'BRF'. Footpath 8 is identified as 7.
46. The Schedule for footpath 21 is missing. The Schedule for footpath 22 describes a footpath from footpath 7 over one field up an old lane known as Mason Lane to finish at Morley Bridge. In response to question 2 the route is identified as 'FP & BR', 'BR' is identified in the memorandum³ as 'Bridle Road (including Driftway for Cattle)'. Although the response to question 2 identifies a footpath and bridleway the schedule clearly identifies the route as a footpath. The route also commences from footpath 7 (now 8) which is not supportive of equestrian rights.
47. The applicant argued that the description of the eastern termination suggests that the line of footpath 22 ran east from Mason Lane along the track shown between 'The Mound' and the A608 on the Ordnance Survey base map, the route C to D. Whilst the termination point is described as Morley Bridge Mrs Mallinson accepted that this could describe the termination point of footpath 14. I have not been provided with any information as to the extent of Morley Bridge however, it is clear from the survey map that the route does not follow the alignment of the Order route between C and D but terminates on the A608 where footpath 14 now terminates.
48. Looking at the parish survey records as a whole they show the existence of a number of routes between Morley Almshouses Lane and the A608. However, they do not provide evidence in support of the Order route being a bridleway. The only section of route identified in the survey which corresponds with the Order route is the section B to C. Although the route of footpath 22 is identified as a 'BR', as well as 'FP', the memorandum indicates that this term includes a driftway for cattle. This could describe the section B to C but would not preclude the existence of bridleway rights. Nevertheless the route is described in the schedule as a footpath.

³ Surveys and Maps of Public Rights of Way published by the Commons and Open Spaces and Footpaths Preservation Society, January 1950

Morley Parish Meeting and Parish Council records

49. Minutes from April 1896 refer to the repair of the two footpaths leading from the two moors to the village. In August 1937 the minutes report that complaints had been made about the bad state of the road on the footpath to the moor. However, in July 1946 it was reported that the bridle road from Morley Bridge to the Moor needed attention and that the chairman would contact Derbyshire County Council about repairs. Minutes from February 1947 refer to a route from Morley Bridge to the Moor still being questioned by Derbyshire County Council who did not seem to favour taking over care of the route. It is noted that the meeting of the Bridges and Highways Committee of the County Council held in June 1947 considers the 'Bridle Road from Morley Bridge to Breadsall Moor' and states that no action be taken to the request of Morley Parish Council to carry out repairs. This would appear to be in response to the Parish Council and therefore the reference to bridle road may reflect the minute of 1946. There is nothing to suggest that the reference to bridle road was based on any evidence that the way was considered to be a bridleway. The minute of February 1952 refers to the condition of the footpath from Morley Bridge to the Moor; the issue was ongoing in 1957.
50. In March 1974 the minutes advise that the County's planning officer had been informed of the harm being done by horses on the path from 'Almshouses lane Heanor Rd. path'. Whilst the minutes refer to use by horses the minute does not evidence bridleway rights. In May 1982 the minutes report that the chairman had been contacted by a member of Stanley Parish Council about the blocking of a 'bridle path' from the A608 to Morley Almshouses Lane by stiles. The chairman had explained that the route was a footpath and not a bridleway. This indicates that the Parish Council were of the view that the route was a footpath.
51. In September 1983 Mr P Knifton sought support from the Parish Council in respect of a petition claiming the right to ride on footpaths 14 and 22. The Parish Council agreed to give Mr Knifton full support and to write to the County Surveyor to state Mr Knifton's case and that the Parish Council did not wish horses to be ridden on footpaths. Whilst the minute refers to the use of footpaths 14 and 22 by horse riders the Parish Council maintained the view that the routes were footpaths. It should be noted that, other than the section of Order route B to C, footpath 22 does not follow the Order route and footpath 14 forms no part of the Order route.
52. In June 1984 further discussions took place as to the status of footpaths 14 and 22. The minutes indicate that the Parish Council was of a view that there had never been an acknowledged bridleway along the route. Reference is made to a stile at each end of the footpath. Whilst it is clear that in 1984 there was a dispute as to the status of footpaths 14 and 22, noting my comments at paragraph 51 above, the Parish Council maintained a view that the routes were not bridleways.
53. Minutes from November 1984 refer to the reinstatement of footpath 22 following ploughing.
54. Overall, whilst the minute from July 1946 refers to a bridleway and reference is made to the use of footpaths 14 and 22 by horse riders the Parish Council have

maintained a view that these routes are footpaths. The minutes do not evidence bridleway rights on the Order route.

Correspondence from T E Knifton & Sons to Derbyshire County Council

55. In September 1983 Mr P J Knifton wrote to the County Surveyor advising that permission had not been given and will not be given to ride horses on footpaths 14 and 22. It is further stated that in the past horse riders have been chased off and that branches used for jumps have had to be removed from the footpath. Although the correspondence refers to the use of footpaths 14 and 22 it provides no evidence as to bridleway rights.

Newspaper report concerning the ploughing of footpath 22

56. A newspaper report from 1984 refers to the ploughing of footpath 22. Whilst there was anger at the ploughing out of the footpath the newspaper report provides no evidence as to bridleway rights on the Order route.

A History of the Parish of Morley 1977

57. The book written by Morley Village History Committee provides an interesting insight into certain aspects of village history but provides no evidence which assists in determining the Order.

Village Trails in Erewash, Morley, 1994

58. The leaflet published by Erewash Groundwork Trust describes a route from Morley Church over farmland to Morley Moor and the Almshouses. The map shows a route from the A608 to the south of Morley House Farm, around the north of 'The Mound' along Holly Bush Lane, continuing to Morley Almshouses Lane. The leaflet provides no evidence of bridleway rights on the Order route.

Country Walks in and around Erewash, The Roman's Walk, 1999

59. The leaflet published by Erewash Borough Council describes a walking route including footpath 22 and part of footpath 14. Whilst the leaflet indicates that footpath 22 starts from a gate at Morley Almshouses Lane the leaflet provides no evidence as to bridleway rights over the Order route.

Response to consultation in 2007

60. The applicant submits one of the responses to the Council's consultation in respect of the application to add the route to the definitive map. The correspondence, from a Mrs Eade, is dated 10 June 2007. Mrs Eade describes her walk to work in the 1950s from Morley Almshouses Lane over arable fields, along Holly Bush Lane, past the cottages to the bus stop at the end of Church Lane. The letter describes the termination point of her walk as being at point D adjacent to the cottages on the A608 now demolished. Mrs Eade did not recall horses on the route and whilst she considered some sections were wide enough for horses, other sections were not.

61. Whilst the correspondence supports the existence of a route terminating at point D it does not provide evidence to support the existence of bridleway rights; Mrs Eade used the way on foot and thought that parts of the route were too narrow for equestrian traffic.

Conclusions on documentary evidence

62. Having regard to all of the above, the documentary evidence does indicate the existence of a route between the A608 and Morley Almshouses Lane. However, when considered as a whole is insufficient to show that public bridleway rights subsist on the route. It should be noted that the route shown on the inclosure, tithe, township and Sanderson maps does not correspond, with the exception of the section B to C, with the Order route.
63. The definitive map and Parish Council records point more to the route of footpath 22 having the reputation of a footpath. Again the Parish Council records refer to the route of footpath 22 and 14 and not the Order route. Other items of documentary evidence, as identified above, do not assist in determining the Order.

Other Matters

64. I note that a number of evidence of use forms and additional statements refer to the need for, and the loss of, safe equestrian routes. Whilst I note the concerns I am unable to take such issues into account in determining the Order. My decision must be based on the evidence before me measured against the relevant tests set out at paragraphs 3 to 7 above.

Conclusion

65. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should not be confirmed.

Formal Decision

66. The Order is not confirmed.

Martin Elliott

Inspector

APPEARANCES

For Derbyshire County Council:

Ms S Boyle

Solicitor, Derbyshire County Council

The applicant in support of the Order:

Mr B Benest

British Horse Society, Access and Bridleways
Officer for Derbyshire

who called
Mrs S Deighton
Miss J Brassington
Mrs A Wood
Ms H Rhodes
Ms L White
Mrs P Boddy
Mrs E Bird
Ms V Bagworth
Ms V Garton
Mrs B Walker
Mrs D Mallinson

Applicant

Also assisting Mr B Benest, Access and
Bridleways Officer for Derbyshire

Also in support of the Order:

Mr Dakin

In opposition to the Order:

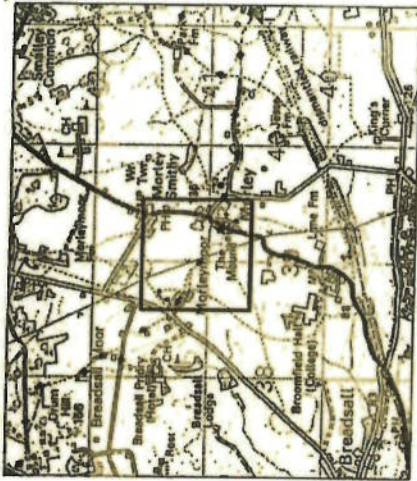
Mr J Howlett

Of Counsel

Who called
Mr P Knifton
Mrs B Knifton
Mr G Wheeldon

Documents handed in at the inquiry

- 1 4 No. signed statements submitted by the applicant
- 2 Photograph of rosettes
- 3 Updated analysis of evidence of use forms submitted by the objector
- 4 Opening Statement of the British Horse Society
- 5 Folkestone Corporation v Brockman [1914] AC 338
- 6 Jones v Bates [1938] 2 All ER 237
- 7 The foot and mouth disease (Infected Areas Restrictions) Order of 1938 No. 1434
- 8 2 No. extracts from the Pioneer newspaper (1956 and 1961)
- 9 Extracts from Register of Common Land.
- 10 Closing Statement of Mr Benest for the British Horse Society
- 11 Closing statement of Mrs Mallinson for the British Horse Society



Wildlife and Countryside Act 1981 S. 53
The Derbyshire County Council
(Upgrading of Public Footpath
No. 22 (part) to Bridleway and addition
of a Bridleway from Almshouses Lane to
Public Footpath No. 22 and from Public
Footpath No. 22 to A608 - Parish of
Morley) Modification Order 2014

KEY

Bridleway to be added **A** ——— **B**
 Footpath to be upgraded to bridleway **C** ——— **D**
 Existing footpaths ———

DERBYSHIRE
County Council
 Improving life for local people

Mike Ashworth
 Strategic Director - Economy, Transport & Environment

Shand House
 Dale Road South
 Matlock
 Derbyshire
 DE4 3RY

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