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## Order Decision

Inquiries held on 15-17 September 2015 and 25-26 October 2016

Site visit made on 17 September 2015

**by Susan Doran BA Hons MIPROW**

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

**Decision date: 21 December 2016**

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

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Derbyshire County Council (Bridleway and Footpath along the non-classified highway known as Brushfield Lane – Parishes of Brushfield and Little Longstone) Modification Order 2014.
- Derbyshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- The Order is dated 23 January 2014.
- The Order proposes to modify the Definitive Map and Statement for the area by adding to them a bridleway and footpath as shown in the Order plan and described in the Order Schedule.
- In accordance with paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 notice has been given of my proposal to confirm the Order with modifications.
- Nine objections and representations were received in response to the notice.

**Summary of Decision: The Order is confirmed subject to the modifications that I previously proposed**

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### **Procedural Matters**

1. The Order as made would add to the Definitive Map and Statement ('DMS') for the area a bridleway (points A-C on the Order plan) and a footpath (points C-D) along a route presently known as Brushfield Lane<sup>1</sup>.
2. The effect of the Order if confirmed with the modifications that I previously proposed<sup>2</sup> would be to record the length of the proposed footpath as a bridleway, such that the route (A-B-C-D) would be recorded as a public bridleway throughout its length.
3. Two objections were made as regards the status of the Order route, six representations supported the Order as proposed to be modified, and a further representation expressed no objection to the proposed modifications.
4. I held a second Inquiry into the unmodified and modified parts of the Order when new evidence, both historical documentary evidence and user evidence, was adduced together with case law.

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<sup>1</sup> Also referred to in submissions and documents as 'Brushfield Road'

<sup>2</sup> In my interim decision dated 17 November 2015

## **The Main Issues**

5. The main issues are whether there is any new evidence or argument which might cause me to reconsider my findings in respect of the unmodified part of the Order; and whether there is any evidence or argument which has a bearing on the modifications I proposed, and which might indicate that those modifications should be amended or not pursued.
6. Also relevant to my decision is the effect of the Natural Environment and Rural Communities Act 2006 ('the 2006 Act') in the event I conclude that public vehicular rights exist. The 2006 Act extinguished public rights for mechanically propelled vehicles ("MPVs"), unless preserved by one or more of the exceptions set out in Section 67 of the Act.

## **Reasons**

### ***New documentary evidence or argument***

#### *Taddington and Priestcliffe Inclosure Records 1795 and the issue of a through route*

7. An Act for inclosing lands in the hamlet of Taddington and Priestcliff is dated 1793. It authorised the Inclosure Commissioners to set out public carriage roads. One such route, set out in the 1795 Inclosure Award and illustrated on the Inclosure Map, is, "*One other public carriage road extending in an Easterly and Northerly direction from the east end of Taddington Town to Brushfield Nether Gate...*", named Brushfield Road. The Inclosure Map shows the awarded route meeting 'Litton Bridle Road', and 'Nether Gate' is marked with the indication of a route extending beyond it (and the scope of the Award), represented by double pecked lines. Nether Gate lies to the west of Brushfield and point A on the Order route.
8. Linking with the route set out in 1795, the Trail Riders Fellowship ('TRF') argued it was probable that the whole of the Order route, including the length not subject to inclosure (A-B), enjoyed the same status. They argued as a public carriage road it would have been the main, or only, east-west carriage road linking Taddington and Brushfield with the Longstones and ultimately Sheffield. Further, the 1810 Act for inclosing lands in the Townships of Great Longstone, Little Longstone, and Wardlow, gave the Commissioners powers to set out and appoint such public roads as they judged necessary. Accordingly, they had discretion to decide Brushfield Lane was no longer needed as a public carriage road. In this regard, the turnpike road (which I considered at paragraphs 14-15 of my interim decision) would have been influential since the turnpike trustees would not have wanted to lose revenue from tolls to what was effectively a parallel route. It was the TRF's case that pre-existing public carriage road rights over the Order route in the Parish of Little Longstone were never stopped up by the Commissioners.
9. The 1795 Inclosure Award documents show, insofar as their geographical extent, that the only other route heading east from Taddington in this location, named 'Lees bottom watering Road', was set out by the Commissioners as a private carriage and public bridle road. This effectively follows the route which became part of the later Buxton to Ashford turnpike road: the present A6.
10. At paragraph 15 of my interim decision, I considered whether other routes existed in the vicinity in addition to Brushfield Lane before 1809, the date of the proposed turnpike. The evidence available to me then suggested a route

between Monsal Dale and Ashford existed in the 1770s. The 1795 Inclosure records show that Lees bottom watering Road extended to the boundary with Ashford parish. It may well have linked with that earlier route, albeit only as a public bridle road and not as a public carriage road. The Peak District Green Lanes Alliance and Peak Horsepower ('the Supporters') suggested that at some point, probably between 1795 and 1810, it was upgraded to a public vehicular road prior to the turnpike road being opened, in like manner to a section of private road dedicated with public rights by the Duke of Devonshire and which later became part of the turnpike road near Buxton.

11. Earlier small scale maps show a through route between Taddington and the Longstones via Brushfield, as do later maps which now also show the turnpike road (paragraphs 9-12 of my interim decision). An Estate Plan surveyed in 1811, by the surveyor who also produced the 1809 turnpike plan (paragraph 14 of my interim decision), shows the Order route within the parish of Brushfield. Although it provides no evidence as to the status of the routes depicted, it is a detailed plan and indicates the continuation of the Order route towards C as "To Monsal Dale and Longstone", and that the turnpike road opened in 1812.
12. It is known that the land between Brushfield Nether Gate and Brushfield Gate (point B on the Order plan) was not subject to the inclosure process. Accordingly, there is no evidence which could be regarded as conclusive as to the status of Brushfield Lane between points A and B. It is also known that, east of point B Inclosure Commissioners acting under the 1810 Inclosure Act initially regarded 'Brushfield Road' (in 1817) in its present course (from the Wardlow turnpike road (B6465) to Brushfield Gate) as a public carriage road. The public carriage road set out in 1795 to Nether Gate (later realigned further to the turnpike road coming into operation) may well have served the hamlet of Brushfield. It is therefore possible that any continuation from Brushfield (A to B) was also a public carriage road, thus resulting in a through route of the same status.
13. However, this does not necessarily follow. The Supporters point to an example of a cul-de-sac public carriage road to the nearby hamlet of Priestcliffe in 1795, and routes connecting Priestcliffe with the parishes of Brushfield and Litton that were set out as public bridle roads in 1795. Thus it was not unusual for a route (that may have the appearance of a through route) to change status along its length at, in this case, a destination in the form of a settlement.
14. Of greater significance, in my view, against the conclusion the Order route was a public carriage road is the documentary evidence concerning the 1810 Inclosure Act. Further to the Commissioners' 1817 notice, objections were received to the proposed setting out of 'Brushfield Road' to the east of Brushfield Gate as a public carriage road. The content of these objections is not known. However, it was as a direct result of them that the Commissioners amended their proposal and ultimately set out and awarded this part of the Order route as a public bridle and private carriage and drift road (points D-C-B) in the 1819 notice (paragraphs 19 and 20 of my interim decision) to which no objections were received, and in the subsequent 1824 Inclosure Award. This scrutiny of the route suggests the Commissioners did not, through a mistake or deliberate action, describe the Order route in Little Longstone (points B-D) as a public bridle road and private carriage road in error.

15. As stated above the status of a way can change along its length. Point B is the boundary between Brushfield and Longstone parishes where a change in status would have served no practical purpose. It seems to me there would have to have been good reason on the part of the Commissioners to award a status east of B that meant the route as a whole (west to A) could not be used as a through route for all types of user entitled to so use it.
16. The Commissioners were empowered to divert, stop-up, discontinue, alter or change any public carriage or private road or footway over the unenclosed land or the old inclosures. However, this required an order of two Justices of the Peace. There is no evidence of any such order having been made. I consider that if public carriage road rights existed west from D to Brushfield Gate (point B) prior to the inclosure process, these would have been lost in the setting out and awarding of a public bridle road in 1824 over this part of the Order route. However, given that there is no Justice's order, it is more likely that there were no public carriage road rights. In addition, applying the judgement in *Andrews [2015]*<sup>3</sup>, the Inclosure Commissioners were acting within their powers in setting out a public bridle road at 24 feet in width (paragraph 22 of my interim decision).

#### *Cary's 1825 Map and the term 'Parochial Road'*

17. I considered this map at paragraphs 11 and 13 of my interim decision. It shows the Order route (at least from points A to C). The key to the map identifies 'Mail Roads', 'Turnpike Roads', 'Carriage Roads which are Parochial Roads' and 'Parochial Roads'. Brushfield Lane is represented as the latter category. I concluded that this could mean a vehicular route, possibly public, rather than a non-vehicular route.
18. The TRF cites the findings of the Judge in *Gallagher*<sup>4</sup> that Cary's 'Parochial Road' was a little more likely to represent a public carriage road than a public bridle road. The Judge concluded that this was a factor that provided a little support for the case the route in question was a public carriageway, albeit was by no means clear what the term meant.
19. The Supporters believed parochial roads were those maintained by the parishes (as opposed to turnpike roads maintained by turnpike trusts) and these were subdivided into those which were carriage roads and those that were not.
20. As before, I consider that the depiction of the Order route on this map was more likely to be that of a vehicular route than of a bridleway. In *Gallagher*, the Judge found it difficult to draw confident conclusions from any of the historical maps before him as to whether or not that route in question was a public carriageway, but, and I accept, placed most reliance on the Cary map in that regard.

#### *Highway Authority records: the cart bridge over the River Wye*

21. I considered Highway Authority records at paragraphs 35-37 of my interim decision.

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<sup>3</sup> John Andrews v Secretary of State for Environment, Food and Rural Affairs [2015] EWCA Civ 669

<sup>4</sup> Commission for New Towns v JJ Gallagher Ltd [2002] EWHC 2668 (Ch)

22. The Order route crossed the River Wye by means of a ford and, as detailed in highway authority records and by photographic evidence<sup>5</sup>, also by means of a footbridge. The TRF argued the cart bridge that was constructed to one side of Brushfield Lane would have provided an alternative to the ford (which fell out of repair) and would have had to be adopted under the procedures of the 1835 Highways Act. If so, then it raised a strong presumption that the existing route into which the cart bridge and connecting 'bridge roads' would be spliced was the same status as the road to either side of the bridge, and of the bridge itself. Bakewell Rural District Council ('the RDC') had no power to change the status of Brushfield Lane. Therefore, the TRF argued, by facilitating the construction of a cart bridge using public money part-way along the Order route, raised a strong presumption that at least part of Brushfield Lane was regarded by the RDC, the highway authority, as being a public vehicular road.
23. However, as the Supporters argued, the minutes<sup>6</sup> demonstrate that the cart bridge was private, initially constructed for use by Cressbrook Mill. From the 1890s through to 1927, they record various attempts to construct and/or repair the cart bridge with financial contributions sought from those with a private interest in its existence. These were the County Council who leased a quarry above the railway station, the Midland Railway Company to access the (former) station, Cressbrook Mill owners for workers and carts to and from the Mill, and the Duke of Devonshire. Further, the RDC stated in the minutes that the bridge, which had been offered to them previously, should remain private until such time as they were in a position to take over and maintain it. This remained so until 1927 when the cart bridge was reconstructed jointly funded by the RDC, County Council and Mill owners, and the public footbridge demolished. At the time the RDC had the option of repairing the public footbridge at a cost of £100, or contributing (with others) towards the total £300 cost of reconstructing the cart bridge. Accordingly, I do not share the TRF's view that the RDC considered the Order route had the reputation of, or was, a public cart road when they contributed towards the cost of repairing the cart bridge in 1927. Its private use would be consistent, in my view, with the status awarded to Brushfield Road at inclosure in 1824<sup>7</sup>, which at the time would have been by way of the ford. There is no evidence that it was a county bridge, the responsibility of the County Council, in 1927.
24. By 1929 when highway responsibilities transferred to the County Council, the RDC regarded Brushfield Lane, as publicly maintainable highway. This is strong evidence that the highway authority accepted a maintenance liability, which would not have been undertaken lightly. However, the handover records did not purport to be a record of public rights.

*Conclusions on the documentary evidence as a whole*

25. As regards the 1795 Inclosure records, I conclude that this new evidence shows that a public carriage road was set out as far as Brushfield Nether Gate. However, on balance I find that it provides no evidence from which I can conclude that Brushfield Lane either connected to it or itself enjoyed the same status. There is an indication in the early maps, the turnpike records and later OS maps of a route linking Taddington via Brushfield to the Longstones, following the Order route to C and then Bridleway 8. Cary's 1825 map, when

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<sup>5</sup> Paragraph 42 of my interim decision

<sup>6</sup> From the RDC and Derbyshire County Council

<sup>7</sup> As a public bridle and private carriage and drift road

weighed in the balance, adds a little weight in favour of public carriage road status rather than of a public bridle road. However, the evidence of the 1824 Inclosure records is that the way east of B (to C and D) was awarded as a public bridle road rather than as a public carriage road. This was after some investigation by the Commissioners through a public process. It is speculation that this was to prevent the newly established turnpike road being avoided through use of the Order route, if it had been a public carriage road, as a toll-free bypass.

26. The new Inclosure evidence and argument does not lead me to conclude from reconsidering the evidence as a whole that the Order route east of B was not validly set out. There is no evidence of any magistrates orders stopping up public carriage road rights indicating there were none that required to be stopped up. I conclude the status was that of a bridleway and that such rights were more likely than not enjoyed over the remainder of the route west to A. If public carriage road rights did extend to Brushfield hamlet (i.e. between the route awarded in 1795 to Brushfield Nether Gate and point A) then a change in status here from public carriage road to public bridle road is not inconsistent with the evidence from the Parish Claims in the 1950s<sup>8</sup> or from the Finance Act evidence in 1910<sup>9</sup> (albeit deductions were claimed for a footpath).
27. Given that I have concluded the new evidence and argument does not lead me to find that the Order route east of A to B enjoyed the status of public carriage road, I do not share the TRF's view that it should be recorded with BOAT status.
28. As regards the Highway Authority records, I conclude they show that the nearby cart bridge was not considered by the RDC to carry public vehicular rights. The RDC part funded its repair and took over the cart bridge in 1927. The 1929 handover records, when the County Council took over highway responsibilities, are consistent with maintenance of the Order route having been undertaken by the RDC rather than evidence of its rights. The later Parish Claim for Little Longstone in the 1950s is consistent in that it does not support public carriage road status subsequent to the RDC's taking over of the cart bridge in 1927.
29. On balance and having regard to the evidence as a whole, I am not persuaded that the new historical evidence and argument is sufficient to tip the balance in favour of the existence of public vehicular rights existing over Brushfield Lane. I remain satisfied that the evidence considered as a whole is consistent with the Order route enjoying the status of a public bridleway.

### ***New user evidence and whether use went unnoticed***

30. Evidence of use was provided in a further 10 user evidence forms (UEFs) or statements and I heard from 8 witnesses claiming use with motorcycles. Stephen Hyde claimed use of Brushfield Lane on a motorcycle, and on foot, during the 20 year period 1984 to 2004. He used it "hundreds of times" in the 1980s, between 20 and 25 times during the 1990s, then about 12 times a year, with later use increasing. Richard Marshall's use began in the 1960s and he stopped riding in 2000. He used it 2 or 3 times a year. David Giles rode it every fortnight or every month from 1984, but rarely saw other users, or

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<sup>8</sup> Paragraphs 38-40 of my interim decision

<sup>9</sup> Paragraphs 31-32 of my interim decision

anyone, along the route. Hugh Cleary used it from 1973 and was never stopped. He spoke to farmers along the way. He rode it in the 1980s, possibly very occasionally or not at all during the 1990s. Andrew Richardson first used Brushfield Lane in 1984. His use increased from 4 times a year in the 1980s to 4 times a month. His father and brother also used it. Shaun Merrick began use in late 1985/early 1986 and it was his main hobby then and in the early 1990s. He recalled seeing fewer users then. Graham Chinnery used it in 1978, but kept no later record of use. Chris Street used it 1992-4 every other weekend or 6-7 times a year.

31. Supporters considered there were omissions, inconsistencies and inaccuracies in the claimed evidence of use, inability to recall facts such as the presence of cattle at one end of the route for a year during the relevant period, or to accurately recall surface conditions during the period, and that some UEFs failed to provide clear descriptions of the route used. In addition, the evidence of landowners, notably at the Brushfield or western end of the route, and of the gamekeeper who were using it every day was that during the 1980s in particular, MPVs had not been seen or heard along the route. Seeing an unknown vehicle, it was suggested, would have been noteworthy at this time. The same was true for users who spent periods of time on the Order route and did not recall use by MPVs. In common with evidence previously given, use by MPVs was observed more frequently in the latter years.
32. Again there is conflicting evidence between those claiming to have used Brushfield Lane with MPVs and those who live, work or recreate there who say such use was absent in the early part of the 20 year period. I accept it can be difficult to accurately recall events that took place some 30 or so years ago. I consider that the reality lies somewhere between the two versions of events.
33. Taking the user evidence heard together with that heard and considered previously (at paragraphs 56-63 and 70-72 of my interim decision), I remain satisfied that there has been use of Brushfield Lane throughout the 20 year period. Nevertheless, use that has now had the benefit of being tested is, in my view, still low for the early years from 1984 onwards. Other than one witness whose claimed use appears to be an exception, inconsistent with that claimed by others (and included use on foot), use is given as 2, 3 or 4 times a year by 2 claimants, or at best fortnightly or monthly by one individual, with few if any other such users seen; and unspecified frequency of use by others. I agree that use may have taken place unobserved, for example where the lie of the land is such that a vehicle may only be in sight infrequently. I note that the evidence previously considered demonstrated wear consistent with use by MPVs, such as vehicle ruts and a full track width in the 1990s as referred to by GLASS<sup>10</sup>, although use would also have included that by landowners and their visitors in a private capacity. I further note that claimed use went unchallenged.
34. However, weighing as a whole the claimed MPV use together with the lack of observed use until the early 1990s (both by other MPV users and by local people), I reach the conclusion that use by MPVs was both low in volume and infrequent during the early years of the 20 year period. Use increased from the 1990s onwards becoming more frequent towards the latter part of the 20 year period, as evidenced both by users, residents and landowners.

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<sup>10</sup> For example in photographs from Trials events, paragraph 44 of my interim decision

### *Conclusions on the user evidence as a whole*

35. There remains conflicting evidence as regards use. However, I am not persuaded to depart from my finding that there has been use of Brushfield Lane throughout the 20 year period 1984 to 2004. Nevertheless, and notwithstanding the evidence that has been adduced and has now had the benefit of being tested, I find it adds little in terms of the volume and frequency of claimed use. When the user evidence is considered as a whole, both the volume and frequency of use remain, in my view, low, particularly so during the early part of the 20 year period such as to be insufficient to meet the test. Neither in my view would it, in the early part of the period, be sufficient to alert a landowner that a right to use the way with vehicles was being asserted. I therefore conclude that a presumption of dedication under Section 31 of the Highways Act 1980 is not made out. Further, the new evidence when considered with the evidence previously available does not lead me to alter my previous conclusion as regards a case not being made out at common law.

### **Public nuisance**

36. The Supporters presented a further body of oral and written evidence alleging that use of the Order route by MPVs, both towards the end of the 20 year period and in the years since then, more particularly latterly, amounted to public nuisance. In addition they relied on various legal judgements.
37. Rebuttal arguments, including reliance on statute, were provided by the Peak & Derbyshire Vehicle User Group and comments provided by the TRF and GLASS.
38. In view of my conclusions above, on both the documentary and user evidence, that public rights for MPVs have not be shown to exist over Brushfield Lane, it is not necessary for me to consider further the submissions made.

### **Overall Conclusion**

39. 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 subject to the modifications I previously proposed in paragraph 81 of my interim decision dated 17 November 2015.

### **Formal Decision**

40. The Order is confirmed subject to the following modifications:
- Delete the words "and Footpath" in the Order title wherever they occur in the Order and Order plans and replace the word "Footpath" with the word "Bridleway" elsewhere in the Order
  - Amend the notation on the Order plans to show the length C to D as a Bridleway

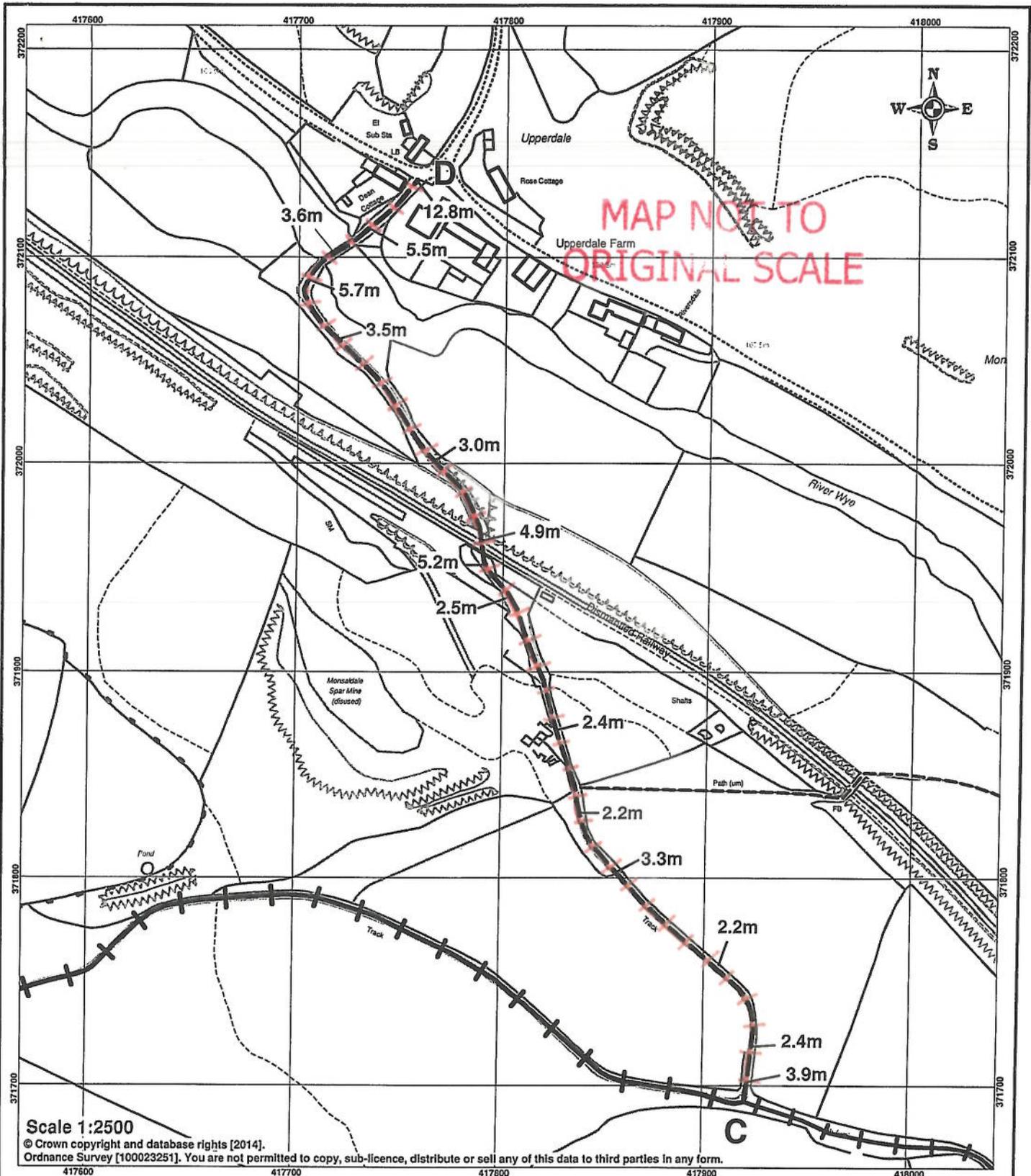
*S Doran*

**Inspector**



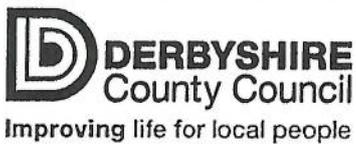
## **DOCUMENTS**

1. Photographic extracts from the Taddington and Priestcliffe Inclosure Award Map 1795, including overlays with the Ordnance Survey 1<sup>st</sup> Edition Map and current Ordnance Survey Explorer Map, submitted by the Trail Riders Fellowship, Derbyshire Group
2. Opening remarks on behalf of the Green Lane Association
3. Statement of Richard Marshall
4. Bundle of documents submitted on behalf of Peak District Green Lanes Alliance and Peak Horsepower comprising, letter from Pam Brunskill dated 17 October 2016; letter to Sarah Whiteley from the Motor Cycling Club Ltd dated 13 October 2016; web posting by Hugh Cleary on Adventure Bike Rider website 16 October 2016 concerning a route known as Chapel Gate; emails concerning the history of the café at Stoney Middleton; 5 photographs of the Order route and scheduled ancient monument provided by Sarah Whiteley
5. User evidence forms of Hugh Cleary and Graham Chinnery concerning a route known as Peak Pasture, submitted on behalf of Peak District Green Lanes Alliance and Peak Horsepower
6. Three photographs taken by John Beatty, submitted on behalf of Peak District Green Lanes Alliance and Peak Horsepower
7. Screenshots from website for holiday cottages at Brushfield, provided by Hugh Cleary
8. Statement of Chris Street
9. Submission on behalf of Peak & Derbyshire Vehicle User Group
10. Peak District National Park Authority Archaeology Service Report, Brushfield Hough, Brushfield, Great Longstone, Ashford, Taddington & Sheldon, 1994, submitted on behalf of Peak District Green Lanes Alliance and Peak Horsepower
11. Supplementary evidence of Joyce Poulter
12. Trail Riders Fellowship Business card, submitted on behalf of Peak District Green Lanes Alliance and Peak Horsepower
13. Closing submission submitted on behalf of Peak District Green Lanes Alliance and Peak Horsepower
14. Closing submission on behalf of the Trail Riders Fellowship, Derbyshire Group
15. Closing submission on behalf of the Green Lane Association



MAP NOT TO ORIGINAL SCALE

Ref: PE/GM/X3098/Order/2014/MAP 2



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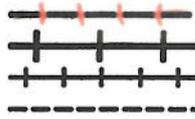
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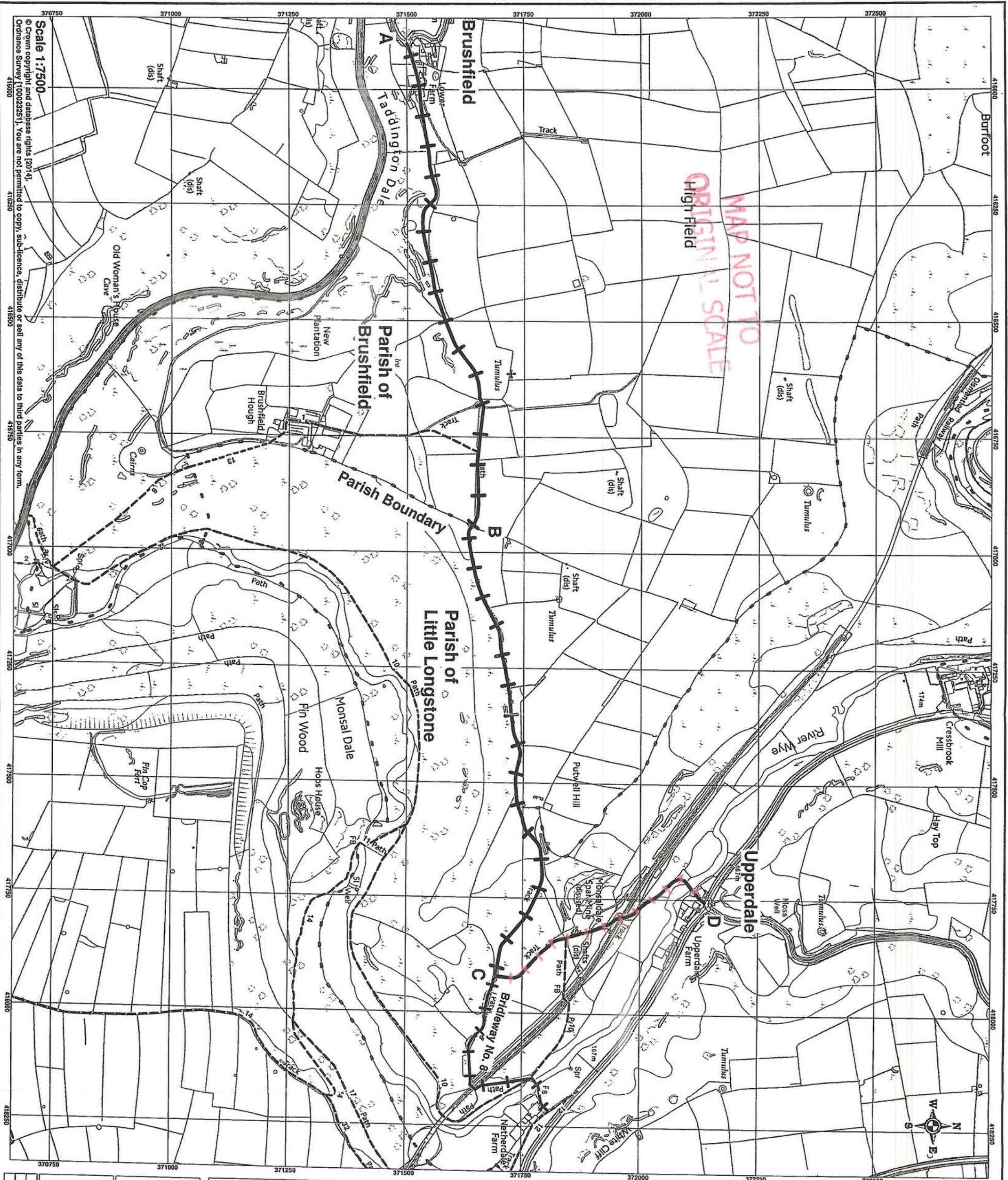
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Wildlife and Countryside Act 1981 Section 53

The Derbyshire County Council (Bridleway and Footpath) along the non-classified highway known as Brushfield Lane - Parishes of Brushfield and Little Longstone) Modification Order 2014

Key:  
 Footpath to be added  
 Bridleway to be added  
 Existing bridleway  
 Existing footpath





MAP NOT TO ORIGINAL SCALE



**Wildlife and Countryside Act 1981 S.53**

**The Derbyshire County Council**  
 (Bridleway and Footpath County Council)  
 the non-classified highway  
 known as High Field Lane  
 - Parishes of Brushfield  
 and Little Longstone)  
 Modification Order 2014

**KEY**

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

**DERBYSHIRE**  
**County Council**

Improving life for local people

**Mike Ashworth**  
 Strategic Director - Economy, Transport and Environment

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