



Order Decision

Inquiry held on 22 October 2019

by Sue M Arnott FIPROW

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

Decision date: 19 November 2019

Order Ref: ROW/3207429

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Derbyshire County Council (Addition of a Bridleway from Parkside Drive to Canal Towpath and Upgrading to Bridleway of Public Footpath Nos 60 (part) and 20 – Alfreton (now Parish of Ironville) Modification Order 2017.
- The Order is dated 11 May 2017. It proposes to modify the definitive map and statement for the area by recording a public bridleway from Parkside Drive via the canal towpath eastwards to the county boundary in Ironville, as shown on the Order map and described in the Order schedule.
- There were four letters of objection outstanding¹ (together with one in support) when Derbyshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

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

Procedural Matters

1. I held a public local inquiry into the Order at the Church Hall in Ironville on 22 October 2019 having inspected the route in question, unaccompanied, during the previous afternoon. After closing the proceedings, I made a further visit to the claimed bridleway, on that occasion accompanied by Mr Jackson (representing Derbyshire County Council) and Cllr Brown (an objector).

The Main Issues

2. The Order was made by Derbyshire County Council (DCC) under the Wildlife and Countryside Act 1981 on the basis of events specified in sub-section 53(3)(c)(i) and (ii), proposing to add to the definitive map and statement a short section of bridleway (shown as A-B on the Order map) and to upgrade to bridleway status an existing definitive footpath² between points B, C and D. If I am to confirm it, I must be satisfied that the evidence shows that the public bridleway described in the Order subsists on a balance of probability.

Reasons

3. On the basis of historical documents it had discovered, DCC formed of the conclusion that a public bridleway was probably established along the whole Order route long ago, relying on the legal maxim *'once a highway, always a highway'*.

¹ Two of these have since been withdrawn

² Definitive Footpaths 60 (part) and 20

4. The key pieces of evidence in this case relate to the diversion of a highway in 1873. Documents enrolled at the Derby Quarter Sessions in the late nineteenth century show that the Butterley Company formally sought the stopping up and diversion of a public bridleway which in 1873 proceeded directly through its iron works at Codnor Park on a line broadly similar to Station Road and its extension eastwards to and over³ the Cromford Canal. The "Bridle Road and Footpath"⁴ proposed as an alternative at that time included the present Order route and extensions to the east (into Nottinghamshire) and west via what is now Parkside Drive and Monument Lane.
5. However, whilst the documentation held by the Court shows that all the required legal procedures were followed, no copy of the actual order has been discovered.
6. Nevertheless, documents associated with a proposal in 1891 to widen the Midland Railway in this area show that, where the railway crosses the canal (around point C on the Order map) the present Order route was identified as a "Towing-path, bridle-road and footpath". This provides support for DCC's conclusion that the intended bridleway diversion was duly implemented⁵.
7. Although later Ordnance Survey (OS) mapping in 1898 shows the Order route in existence, the latter marks it as "FP" (footpath). This may explain the recording of the route as a footpath when the first definitive map and statement was compiled in the 1950s.
8. In assessing this evidence I place less weight on the classification of the way by the OS and more on the Court records and the deposited railway plans. The latter are recognised as documents in the public domain that had both been subject to scrutiny; in contrast the OS surveyors generally made local enquiries to ascertain the use of a way but were not in any position to determine its true status in law.
9. I note that the Nottinghamshire section of the new bridleway proposed in 1873 is now recorded on the definitive map and statement for that county as a bridleway. In my view that accords with the conclusion I reach having considered the historical evidence available for its continuation in Derbyshire, that is the route at issue here (A-B-C-D).
10. During the course of the inquiry Mr Jackson provided an extract from the Highways Act of 1835 so as to highlight the procedures for diverting highways in section 85. Cllr Brown took the opportunity to point out the provisions of section 80 which required the Surveyor of Highways to maintain public "cartways⁶, horseways and footways" to specified widths. In the case of bridleways (horseways) these were to be "Eight feet wide at the least" (2.44 metres). He drew attention to parts of the Order route, and A-B in particular, which are not 2.44m wide, arguing that the 1873 diversion cannot therefore be assumed to have been implemented in accordance with the requirements of the day.
11. Cllr Brown raises a very fair point but, having considered all the information before me, I do not consider that fatal to the case for the following reasons.

³ Via the bridge referred to by Mr Baylis of Friends of Cromford Canal as "Lawn Bridge".

⁴ In highway law, a bridleway is recognised as including rights of way for the public on foot.

⁵ In addition, research presented by Mr Baylis confirmed that Lawn Bridge, which formerly carried the old bridleway over the canal deteriorated to the point it was demolished in 1902.

⁶ Where these led to a market town

12. Nowhere in the Quarter Sessions records is the intended width of the proposed bridleway stated. Instead, the present Order Schedule relies on the width as it appears on the OS map of 1898 (as is the usual practice in such circumstances); this is defined as varying between 2m and 6.2m. That is clearly less than the 2.44m provided in section 80 of the 1835 Act. However, that section applies to ways which were maintainable by the Surveyor of Highways at the public expense. I note that in the 1891 railway records, the owner of the canal towpath was the "Midland Railway Company" and the "Butterley Company Limited". As owners having dedicated the new bridleway for use by the public, responsibility for maintenance of the new route would not necessarily transfer to the Surveyor of Highways. Indeed, the latter is not listed as having any interest in the way as is often found in railway records where the highway is repairable by the public.
13. Therefore, on balance I consider it likely that, at the outset, the Order route did not fall to be maintained by the Surveyor of Highways and consequently the provisions of section 80 of the 1835 Act did not apply. I would add that I also note the route has since been included on the definitive map and therefore maintenance for the surface does now rest with the highway authority.

Conclusions on the historical evidence

14. Having examined all the available historical and mapping material, I draw the conclusion that at some point in or around 1873-4, the route in question was created as a public bridleway as an alternative to a pre-existing route which was stopped up. On a balance of probability, I consider later evidence supports the conclusion that the Order route came into existence as a public bridleway and therefore that, in the absence of any record of formal closure, it should now be recorded on the definitive map and statement as a public bridleway.

Other matters

15. I recognise that many local people have expressed concern over the potential impact of horses using a route which has been mainly used by pedestrians for some years. However these are not issues I am able to take into account in determining the extent of the public rights that have been established long ago over the Order route. Future management of the bridleway will be a matter for the highway authority.
16. In addition to recording A-B on the definitive map as a bridleway and upgrading B-C-D to that same status, Part II of the Order Schedule also proposes consequential changes to the remaining parts of Footpath 60. The Order route would become listed in the definitive statement as Bridleway 12; the part of Footpath 60 continuing south eastwards from point C would become Footpath 13 and Footpath 60 west of point B would become Footpath 20.
17. The inclusion of these further details (most particularly a width where none is defined in the current definitive statement) is a matter of evidence on which the owners of land affected have been consulted. No adverse response has been submitted from any of those notified of the Order. This may appear to be a simple and uncontentious administrative exercise, being one that is normally carried out under sub-section 53(3)(c)(iii)⁷. However this particular sub-section is not listed in the Order.

⁷ Sub-section 53(3)(c)(iii) provides for circumstances where there is "no public right of way over land ... or any other particulars contained in the map and statement require modification".

18. The public has an interest in understanding the reasons that lie behind an order; if such reasons are not fully stated, the decision whether or not to make a representation with respect to an order may be affected. Where more than one relevant 'event' should have been specified but was not (in this case sub-section 53(3)(c)(iii)), the question is whether the error is minor or substantive.
19. In my view this is not a substantive error. The Order is perfectly clear in its intention, and the likelihood of any prejudice arising is resolved by the service of notice of the proposals in the Order on the individual landowners concerned. I am therefore satisfied that in this instance the powers available to me to modify the Order extend to rectifying this omission.

Conclusion

20. Having regard to the above and all other matters raised at the inquiry and in the written representations, I propose to confirm the Order with the modification noted in the preceding paragraph.

Formal Decision

21. The Order is confirmed subject to the following modification:
- In the Order recitals: in line 5, after "53(3)(c)(i) and 53(3)(c)(ii)" and "and 53(3)(c)(iii)".

Sue Arnott

Inspector

APPEARANCES

In support of the Order

Mr P Brent Solicitor; Derbyshire County Council

Who called

Mr P Jackson Senior Legal Assistant; Derbyshire County Council

Objecting to the Order

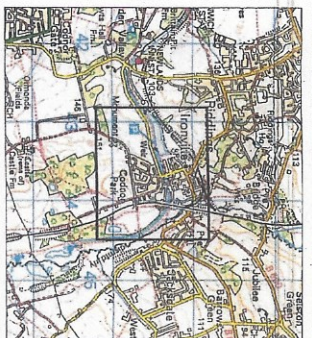
Cllr J Brown Statutory objector

Cllr Mrs P Cope Chair, Ironville Parish Council; Statutory Objector

Mr J Baylis Executive Secretary, Friends of Cromford Canal

DOCUMENTS

1. Copy of the statutory objections and representations
2. Statement of reasons why it is considered the Order should be confirmed submitted by Derbyshire County Council and comments on the objections together with bundle of relevant case documents
3. Copy of Order Decision reference FPS/U1050/7/99 issued 28 September 2016
4. Proof of Evidence of Mr P Jackson on behalf of Derbyshire County Council
5. Letter to the Planning inspectorate from Mrs H Limb on behalf of Two Counties Bridleways Group dated 26 August 2019
6. Email to the Planning Inspectorate from Cllr J Brown sent 29 August 2019
7. Extract from the 1891 Midland Railway Plan & accompanying Book of Reference
8. Relevant extracts from the Highways Act 1835
9. Notes and photographs concerning Friends of Cromford Canal work party and towpath figures 2015-2019 submitted by Cllr Brown
10. Extract from Ripley & Heanor News August 8 2019
11. Cromford Canal: Lawn Bridge – preliminary site investigations (draft) dated August 2017 submitted by Mr Baylis



Writtle and Countryside Act 1981, S.53.
 Definitive Map & Statement for the
 County of Derbyshire.

The Derbyshire County Council
 (Addition of a Bridleway
 from Parkside Drive to Canal
 Tompath and Upgrading to
 Bridleway of Public Footpath
 Nos 60 (part) and 20 (Alfreton
 (now Parish of Ironville))
 Modification Order 2017.

KEY

- Bridleway to be added: A ——— B
- Footpath to be upgraded to Bridleway: C ——— D
- Other Footpaths: - - - - -
- Other Bridleways: + + + + +
- Restricted byway: ~ ~ ~ ~ ~
- Parish Boundary: ○ ○ ○ ○ ○
- County Boundary: ———



Mike Ashworth
 Strategic Director - Economy, Transport & Communities

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Produced by Public Rights of Way on 28 April 2017
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MAP NOT TO ORIGINAL SCALE

Scale 1:5000
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