



Order Decision

On papers on file

by Sue M Arnott FIPROW

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

Decision date: 21 March 2017

Order Ref: ROW/3168019

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Derbyshire County Council (Footpath from Beech Avenue to Lydford Road - Alfreton) Modification Order 2016.
- The Order is dated 24 November 2016. It proposes to modify the definitive map and statement for the area by adding a footpath from Beech Avenue to Lydford Road in Alfreton, as shown on the Order map and described in the Order schedule.
- Derbyshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs although there were no objections to the Order.

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

Procedural matters

1. No objections have been submitted in relation to this Order. Being unopposed would normally enable the order-making authority to confirm it. However in this case Derbyshire County Council (DCC) has discovered an error in the description of the route in question as it appears in the Order Schedule and consequently has submitted the Order to the Secretary of State seeking confirmation with a modification to correct the mistake.

The Main Issues

2. There are two main issues here. The first is whether the evidence is sufficient to show that in the past the Order route has been used in such a way that a public footpath can be presumed to have been established. The second issue concerns the accuracy of the description of the footpath that will be recorded.
 3. The Order was made under the Wildlife and Countryside Act 1981 on the basis of events specified in sub-section 53(3)(c)(i). Therefore if I am to confirm the Order I must be satisfied that, on a balance of probability, the evidence shows that a public right of way subsists along the Order route.
 4. The case in support of the Order is based primarily on the presumed dedication of a public right of way under statute, the requirements of which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this to have occurred, there must have been use of the claimed route by the public on foot, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated as a public footpath. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant
-

landowner(s) during this period to dedicate the way for use by the public; if not, a public footpath will be deemed to subsist.

Reasons

5. DCC investigated the evidence in support of the claimed path following the submission of an application by Mr D Johnson in 2009. Since there had been no earlier event that had brought into question the status of the route, the date of the application itself was taken to represent the challenge which marked the end of a relevant twenty year period for the purposes of sub-section 31(1), and as provided by sub-section 31(7) of the 1980 Act.
6. An examination of the evidence from the claimants¹ showed there to have been regular use between 1989 and 2009 by the public throughout that period, 'as of right' and without interruption.
7. No evidence has been provided by or on behalf of the owner(s) of the land affected by the Order route to rebut the claimed use or to otherwise negative the presumed intention to dedicate a right of way for the public on foot. Indeed a chicane-style barrier placed on the site by one of the landowners (Amber Valley District Council) suggests acknowledgement of the public's right of passage.
8. DCC therefore concluded, as do I, that the evidence is sufficient to show that, on a balance of probability, a public footpath can be presumed to subsist between the points marked A, B, C and D on the Order map, that is between Beech Avenue to the south and Lydford Road to the north.
9. On the basis of the information provided, I am satisfied that the relevant statutory test is met and, subject to consideration of the description of the path, I conclude that the Order should be confirmed.

Description of the proposed new footpath

10. The Order Schedule describes the route thus: "*Footpath from the E end of adopted cul-de-sac off Beech Avenue (4164 5681) in a generally W direction...*". DCC points out that this should read: "*Footpath from the E end of adopted cul-de-sac off Beech Avenue (4164 5681) in a generally E direction ...*".
11. It seems to me that the overall intention of the Order is very clear and that the likelihood of anyone being misled by the typographical error in the Schedule is remote. Indeed it was not noticed by any other party when the Order was publicised. I am satisfied that no-one will have been prejudiced by this minor mistake but consider it nonetheless important to correct the text of what will be the legal record.
12. I therefore propose to modify the Order as requested but do not consider further advertisement² will be necessary.

Conclusion

13. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed with the modification requested and as noted in the preceding paragraphs.

¹ I note that in its analysis, DCC had good reason to exclude the evidence of some of the claimants.

² As required by paragraphs 8(1) and 8(2) of Schedule 15 to the 1981 Act

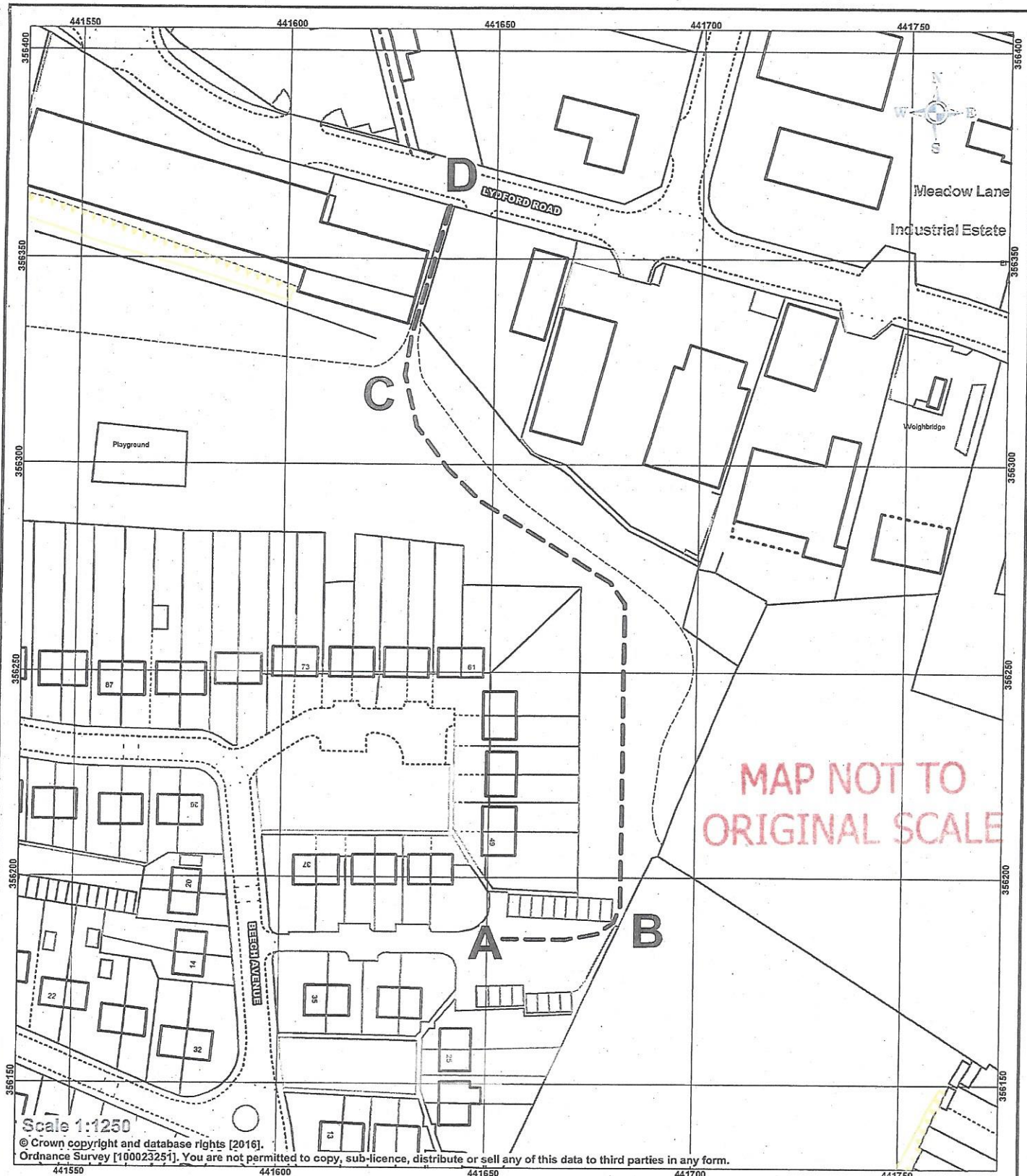
Formal Decision

14. I confirm the Order subject to the following modifications (which do not require further advertisement):

- In the Order Schedule **PART II: Modification of Definitive Statement:**
In lines 4 and 5 of "Status and Description of Route in Alfreton", delete "... in a generally W direction ..." and substitute "... in a generally E direction ...".

Sue Arnott

Inspector

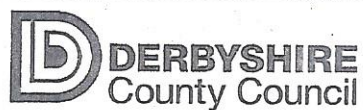


Scale 1:1250

© Crown copyright and database rights [2016].

Ordnance Survey [100023251]. You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form.

Ref: TE/PW/X3802/Order2016



Improving life for local people

Mike Ashworth

Strategic Director
Economy, Transport & Communities
Derbyshire County Council
Shand House
Dale Road South
Matlock
DE4 3RY

Produced by Public Rights of Way on 17th November 2016

Wildlife and Countryside Act 1981 S.53

**The Derbyshire County Council
(Footpath from Beech Avenue
to Lydford Road - Alferton)
Modification Order 2016**

Key:

Footpath to be added — — — — —

Existing Footpaths - - - - -

