



Order Decision

Site visit on 3 October 2017

by Sue M Arnott FIPROW

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

Decision date: 16 October 2017

Order Ref: ROW/3168965

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Tameside Metropolitan Borough Council Definitive Map (Ashton Moss) Modification Order 2015.
- The Order is dated 23 November 2015. It proposes to modify the definitive map and statement for the area by upgrading to bridleway status the public footpath(s) linking Sandy Lane, Droylesden with Rayner Lane, Audenshaw, as shown on the Order map and described in the Order schedule.
- There were four objections and one representation outstanding when Tameside Metropolitan Borough Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed.

The Main Issues

1. The main issue here 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 bridleway can be presumed to have been established.
2. The Order was made under the Wildlife and Countryside Act 1981 on the basis of events specified in sub-section 53(3)(c)(ii). If I am to confirm it, I must be satisfied that, on a balance of probability, the evidence shows a public right of way on horseback or leading a horse subsists along the route described in the Order in addition to the public footpath already recorded on the definitive map.
3. The case in support is based primarily on the presumed dedication of a public right of way under statute, the requirements for which are set out in Section 31 of the Highways Act 1980. For this to have occurred, there must have been use of the claimed route by the public on horseback or leading a horse, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question, thereby raising a presumption that the route had been dedicated as a public bridleway. 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 bridleway will be deemed to subsist.

Reasons

4. Tameside Metropolitan Borough Council (TMBC) made this Order in response to an application in March 2009 from the West Pennine Bridleway Association, supported by evidence of use supplied by fourteen local riders.
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Bringing into question

5. The application was prompted by restriction of the width of the route which prevented access for horses but allowed pedestrian use to continue. Large concrete blocks had been placed at points B and D some years earlier but the space between these was reported to have been narrowed in 2008, thereby challenging use of the path by horse riders.
6. TMBC regarded the restriction in 2008 as the point at which the status of the way was brought into question, setting a retrospective twenty year period of 1988-2008. I do not disagree with that conclusion but the evidence suggests the rights of horse riders may also have been challenged on two earlier occasions.
7. Prior to the Order being made, agents for the landowners, Stayley Developments Limited, made representations to TMBC in relation to the proposed upgrading from footpath to bridleway. This included evidence to show that, as a result of a temporary traffic regulation order (TRO), Footpaths ASH/109 and ASH/110 (including the present Order route) were closed to the public between 24 May 2002 and 24 November 2004. Photographs taken in March 2003 show clearly that at or near point B (a point shown on the Order map) a substantial fence prevented the passage of all traffic, not only the pedestrians lawfully entitled to use the definitive footpath.
8. Shortly after the path was re-opened in 2004, complaints were made to the Council concerning the inappropriate use of the route by youths riding quad bikes and motor cycles. In order to prevent these activities, the site contractor placed two concrete cubes at the entrances of both public footpaths. No date is given for this installation but the blocks are shown in place at point D in a photograph taken in March 2006¹.
9. There are therefore two other points in time when the legitimacy of horse riding use may have been challenged: in May 2002 and between November 2004 and March 2006.
10. However it seems that after the concrete blocks were first installed, horses continued to use the route until finally stopped when the blocks were moved closer together in 2008. I am therefore inclined to dismiss the possibility that the status of the way was brought into question when the concrete cubes first appeared, despite a statement by the Agent² that these (together with temporary fencing on both sides of the Order route) were "*a clear indication that there is no intention by Stayley Developments Limited to dedicate the footpath as a bridleway.*"
11. The second possible challenge was on 24 May 2002 when the Order route was temporarily closed to the public and a physical barrier was erected across the path. At this point in time, public pedestrian rights had been suspended but any higher rights would not have been affected by the TRO. Since it is apparent from the photograph taken some months later that horse riders could not continue along the route whilst this obstruction was in place, it seems to me that the rights of horse riders were brought into question by this blockage, albeit one seemingly legitimised by the TRO.

¹ According to the Agent, the concrete blocks were placed on site sometime after November 2004 but before March 2006. This differs considerably from the date of 2000 accepted by TMBC.

² In an email dated 2 March 2011

12. I therefore conclude that the status of the Order route was brought into question in May 2002 and again during 2008. Consequently I need to examine use by the public during two periods: 1982-2002 and 1988-2008.

Claimed use by horse riders

13. Fourteen people signed user evidence forms identifying the period of their use of the claimed bridleway on horseback, with use dating as far back as 1958.
14. During the period 1982-2002, 9 of these people did so for the whole of the relevant 20 years, one for 18 years, one for 17 years with 3 for lesser periods.
15. During the period 1988-2008, 5 people rode the route throughout the whole 20 years, four for 19 years and the remainder for periods of over 10 years each.
16. Taking the earlier period first, there is no evidence to suggest these riders were ever challenged whilst using the path, by notice or otherwise, or used the route in secret or with express permission. Consequently it seems their use was 'as of right', regular, and therefore capable of establishing a right of way.
17. I am satisfied that this evidence, albeit limited in terms of numbers, would be sufficient to raise a presumption that the way in question had been dedicated as a public bridleway.
18. In relation to the second period, there remains a question over use during the period of temporary closure. Although TMBC recognised the conflict between the user claims of continuous use and the TRO, no follow-up letters or interviews ever sought to clarify the evidence given. The fact that none of the claimants make reference to this at all on their forms does cast a degree of doubt over the veracity of the claimed use. However, other than one correspondent who has lived in the locality for 22 years³ and comments "*we have yet to see any horses using the footpath*", none of the objections actually challenge the claimed usage by horse riders in the past. Nevertheless, given the unanswered questions over use between 2002 and 2004, I am reluctant to consider further the implications of the claimed use during the period 1988-2008.

Intentions of the landowner

19. No evidence has been provided to demonstrate actions by or on behalf of the owner of the land affected by the Order route during the period 1982-2002 to challenge the claimed use or to otherwise rebut the presumed intention to dedicate a right of way for the public on horseback or leading a horse. I conclude therefore that any presumption of dedication raised would not have been rebutted.
20. Consequently I conclude that, on a balance of probability, a public bridleway has been established along this line.

Other matters

21. All the letters of objection raise concerns about the practical implications of pedestrians sharing the Order route with horse riders and the additional demands horse use may make in terms of future maintenance of the path surface. Whilst these are clearly matters of importance to local users of the

³ In 2016

route and for the highway authority, they are not relevant to my consideration of this Order which seeks to determine whether or not the right to ride a horse has already been established in law through long unchallenged use.

Conclusion

22. Having regard to the above and all other matters raised in the written representations, I confirm the Order.

Formal Decision

23. The Order is confirmed.

Sue Arnott

Inspector

Modification Order

Upgrade of footpaths to bridleway

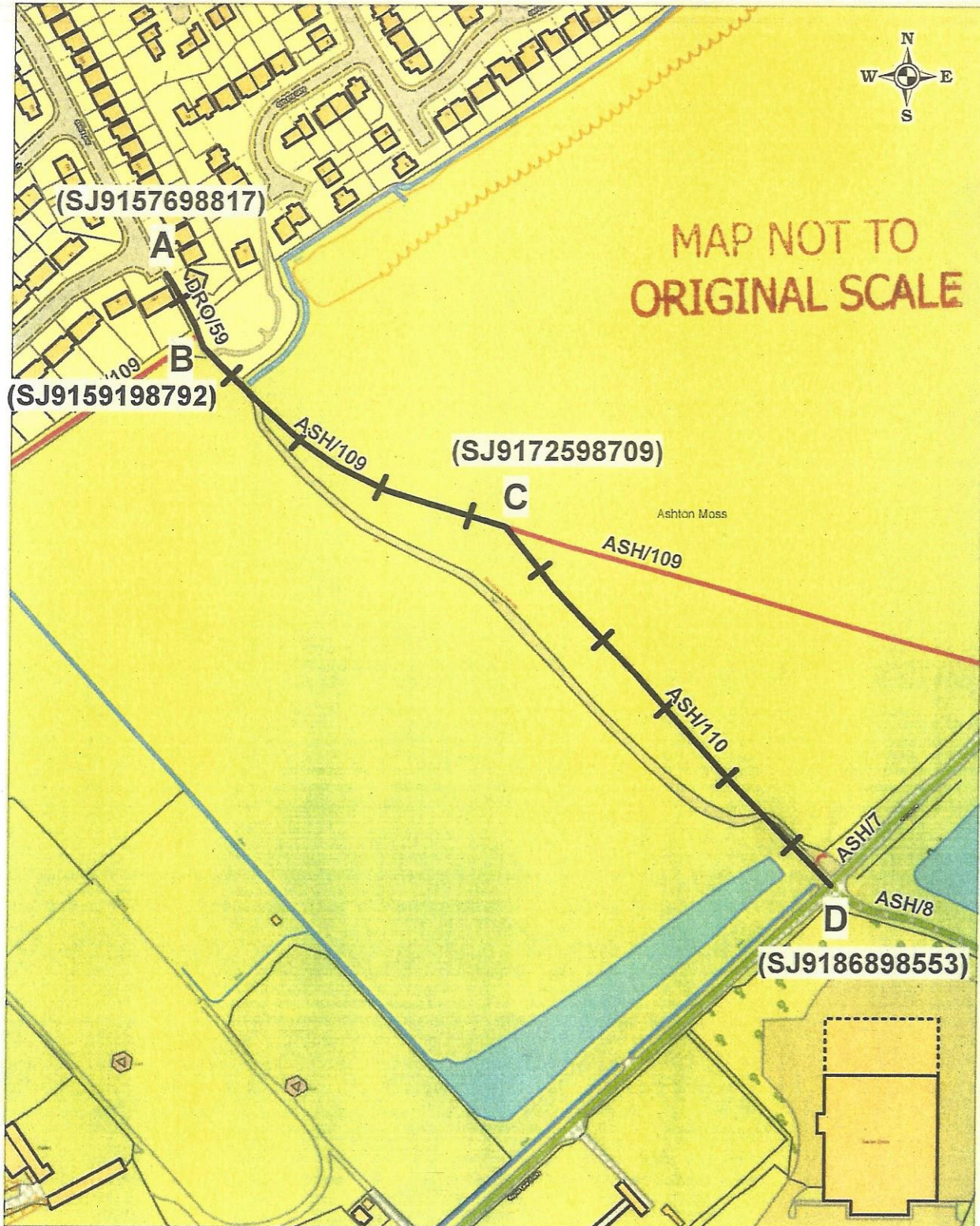
Scale 1:2500

Compiled by MH on 2 March 2015

Robin Monk
Executive Director of Place
Council Offices
Wellington Road
Ashton-under-Lyne
OL6 6DL



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—+— Footpaths to be upgraded to bridleway

— Existing definitive footpath

— Existing definitive bridleway

— Existing definitive restricted byway