
Order Decision

Inquiry opened on 4 November 2014

Site visit made on 10 November 2016

by Susan Doran BA Hons MIPROW

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

Decision date: 5 January 2017

Order Ref: FPS/U1050/7/78

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Derbyshire County Council (Addition of a Bridleway between Far Lane – Parish of Ockbrook and Potato Pit Lane – Parish of Dale Abbey including upgrading of lengths of Footpath) Modification Order 2011.
- The Order is dated 3 February 2011 and proposes to modify the Definitive Map and Statement for the area by adding lengths of bridleway and upgrading lengths of footpath to bridleway forming a single continuous route as shown in the Order plan and described in the Order Schedule.
- There were 23 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed

Procedural Matters

1. The Inquiry which opened on 4 November 2014 had been scheduled to sit for 2 days. However, it soon became apparent that it would not be possible to hear and examine all of the evidence without adjourning after the second day. Circumstances were such, however, that the Inquiry was unable to reconvene until 8 November 2016. The Inquiry concluded on 10 November when I carried out an accompanied site inspection with representatives of the Supporters and Objectors to the Order. I had previously made an unaccompanied visit to the Order route on the afternoon of 3 November 2014 when I was able to walk and/or to view it.
2. The Order had been made by Derbyshire County Council ("the Council") following a direction by the Secretary of State. The case in support of the Order was made by the British Horse Society ("BHS"), and the main case against the Order was made on behalf of Mr and Mrs Just, landowners at Boyah Grange. The Council opposed the Order.
3. When the Inquiry initially opened I agreed to accept documents from the parties, some of which contained new evidence that had only recently come to light. The parties were content that they had had sufficient opportunity to consider them during the first two days of the Inquiry and to comment on them and/or provide rebuttal statements where necessary. I am satisfied that no party was prejudiced by the late submission of this material outside the timescales provided as regards the Inquiry Rules. During the adjournment further evidence came to light and I agreed a timetable by which documents and/or statements could be submitted prior to the Inquiry resuming. I accepted further documents when the Inquiry reconvened and again I am satisfied that all parties had sufficient time to consider and respond to them.

Background

4. The Order seeks to record a bridleway between Far Lane (point A on the plan attached to the Order) and Potato Pit Lane (point G) passing Little Hay Grange and Little London before crossing the Parish Boundary between Ockbrook and Dale Abbey Parishes (point C) and continuing to and passing through Boyah Grange and Boyah Grange Farm. Parts of the Order route, points A - B and D- E, are already recorded on the Definitive Map and Statement ("DMS") as public footpaths. Although the section B-C-D is not currently recorded as a public right of way, it is the route that had (until early 2016) been in use on the ground by the public on foot, and waymarked as such.
5. The evidence adduced in this case is both documentary and user evidence.

The Main Issues

6. The criteria for confirmation of the Order are contained in Section 53(3)(c) of the Wildlife and Countryside Act 1981 ("the 1981 Act"), in this case subsections 53(3)(c)(i), 53(3)(c)(ii) and 53(3)(c)(iii). These require me to consider whether the evidence discovered shows that a bridleway should be recorded in the DMS between points A-B-C-D-E-F-G. For this to be the case, the evidence must show that those sections of the Order route that are not currently recorded in the DMS should be recorded with bridleway status, and those sections that are currently recorded as footpaths should be upgraded to bridleway status, and as a consequence that the particulars contained in the DMS should be amended to reflect this.
7. As regards the documentary evidence, Section 32 of the Highways Act 1980 ("the 1980 Act") requires that I take into consideration any map, plan or history of the locality, or other relevant document provided, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway. So I shall need to consider whether the documentary evidence available to me, when considered as a whole, shows that bridleway rights have existed historically over the Order route.
8. As regards claimed use by the public, I shall consider whether dedication of the Order route as a public bridleway has occurred through public use. This may be either by presumed dedication as set out in the tests laid down in Section 31 of the 1980 Act, or by implied dedication under common law.
9. In this case, it is presumed dedication under Section 31 of the 1980 Act that is relied on to demonstrate that public bridleway rights have been established. This requires me to consider the date on which the right of the public to use the claimed bridleway was brought into question; whether the claimed bridleway was used by the public as of right and without interruption for a period of not less than 20 years ending on the date on which their right to do so was brought into question; and whether there is sufficient evidence that there was during this 20 year period no intention on the part of the landowners to dedicate the claimed bridleway.
10. Should these tests not be met, I shall consider the evidence under common law. At common law a right of way may be created through expressed or implied dedication and acceptance. The onus of proof is on the claimant to show that the landowner, who must have the capacity to dedicate, intended to dedicate a public right of way; or that public use has gone on for so long that it

could be inferred; or that the landowner was aware of and acquiesced in public use. Use of the claimed way by the public must be as of right (without force, secrecy or permission) however, there is no fixed period of use, and depending on the facts of the case, may range from a few years to several decades. There is no particular date from which use must be calculated retrospectively.

11. In considering the evidence, my decision is reached on the balance of probabilities.

Reasons

Documentary evidence

1681 Oldfield Survey of Dale

12. Mr and Mrs Just considered that buildings marked "Boyer Grange" on this map represented the location of earthworks (visible on the Order plan either side of Footpath 43, north of E) which had been subject to recent archaeological investigations. However, they produced no evidence to support this view. With some seven buildings marked on the Map arranged along what could be the Order route between E and F, the BHS believed Boyah Grange was a substantial settlement at the time, almost as large as the village of Dale Abbey and likely to have been connected to it by a highway.
13. However, whilst the 1681 map shows buildings grouped around what could be part of the Order route between E and F which was accessed from the adjoining Common, and further to the east a partially enclosed track which could be part of Footpath 48¹, there is no indication of any route extending beyond where point E would be on the Order plan. Furthermore, it is not clear whether the buildings actually represented those existing at the time or were figurative.
14. I am unable to draw any conclusions from this document other than that, in 1681, there were buildings that could represent the location of the present Boyah Grange, which were accessed from the Common to the east.

Ockbrook Inclosure Act 1772 and Inclosure Award 1773

15. In 1773, a public bridle road and private horse carriage and drift road was awarded between Far Lane and an allotment named "Prior Pingle" the parish boundary between Ockbrook and Dale Abbey from where it led to "Boya Grange". The Inclosure Award plan shows a route from Far Lane passing Little Hay Grange and Little London² where it skirts around a building and then follows a generally direct route between there and point C on the Order plan running broadly parallel with and to the south east of the Order route.
16. The BHS argued that the termination points of the awarded route are the same as those of the Order route and it passed through the same fields.
17. It is not known what alignment any corresponding route in Dale Abbey parish may have taken, and there is no inclosure award for land at Boyah Grange. The 1681 map shows no route there at that time, and the next piece of evidence after 1773 showing a continuation from Ockbrook to Boyah Grange is Sanderson's Map of 1835 (paragraph 25).

¹ Now recorded as a public bridleway

² No buildings are shown at the location of Little Hay Grange and only one building appears at Little London

18. I find that the Award provides no evidence as regards any alignment in Dale Abbey parish and, furthermore, the route awarded does not follow the alignment of the Order route.

Quarter Sessions Diversion Order, Dale Moor, 1778

19. This document refers to a road to "Boyer Grange" and a road from "Boyer Grange" to Stanton. It confirms there were highways across Dale Moor that led to and from Boyah Grange at the time, and it is likely that they went at least as far as point G. However, I draw no conclusions as regards the existence or otherwise of the Order route as a public right of way from this evidence.

Stanton and Dale Inclosure Award and Plan 1781

20. The documents provided show a route annotated "Footway from B... Grange to Stanton" which meets Potato Pit Lane to the west. The Award refers to "Cunnery Close" (the field lying to the north of point E) and to an ancient stile, suggesting this footpath predated the 1781 Award. Footpath 44 passes through the Cunnery field, although its present alignment differs to that recorded on an 1828 Stanton Estate plan (paragraph 36), and the 1781 documents provide no indication of its course.
21. The BHS argued that given the existence of an ancient footway at this location it was unlikely that any bridleway from Ockbrook would have continued on this alignment as an alternative to the Order route E-F-G. However, I do not consider the documents add much in terms of the existence or otherwise of the Order route at Boyah Grange.

Little Hay Grange Estate Plan 1790

22. An enclosed route is shown passing buildings at Little Hay Grange along the centre of which is a red/brown line. It is annotated at one end "to Ockbrook" and at the other "to Dale Moor", a destination beyond Boyah Grange, and includes part of Far Lane and part of the Order route from A towards Little London. It reveals nothing about the status of the route shown, although a route annotated with a destination is more likely to be a public one. The depiction is consistent with the existence here of a route as described in the 1773 Ockbrook Inclosure Award, but not of its alignment beyond Little Hay Grange and Little London.
23. It is known that all-purpose highways existed on Dale Moor by this time (paragraph 19). However, the alignment of any route that may have connected to them beyond Little Hay Grange is not evident from the estate plan.

Small scale County and commercial Maps

24. A range of maps are available dating between 1791 (Burdett) and 1921 (Bacon), although some, due to their small scale, have limitations as regards what is shown, or lack keys to identify the status of the routes depicted. Some copied earlier maps produced by other cartographers. Some do not show the Order route at all whilst others show parts of it, or a through route. Those maps most close in date to the 1773 Inclosure Award (Burdett, Cary and Smith) do not show the Order route or a route in Ockbrook Parish on the awarded alignment.

25. Greenwood's County Map of 1825 shows a cul-de-sac cross road as far as Little Hay Grange and Little London, and again at Boyah Grange extending just beyond point E. There is nothing shown connecting these points. Sanderson's 1835 Map shows a cul-de-sac cross road named Hepwood Lane which includes points F-G. Another cross road leads from there through Boyah Grange and turns to the south west. Where it enters the field at D, another cross road is shown on its southern side which continues to the Parish boundary then follows a similar alignment in Ockbrook to that shown on the 1826 Plan and 1828 Poor Rate Valuation Map (paragraphs 28 and 31) to Far Lane. Sanderson's 1836 Map is similar, although the alignment is more direct in the area of B-C-D.
26. The 1835 Map is the earliest to show a through route between A and G, and on a similar alignment. However, its large size suggests it was published to be admired rather than produced as a map for travellers. Some routes depicted are annotated "Bridle Road", but this does not include the Order route.
27. Overall, these County and commercial maps are not consistent in depicting the Order route. Of those that do show part or all of it, none depicts its alignment as awarded in 1773 in Ockbrook. The alignment shown on Sanderson's 1835 Map resembles the Order route save at B-C-D, but only resembles the 1773 Inclosure route at points A from Little Hay Grange to Little London, and at C.

Plan and survey of Ockbrook 1826

28. No physical route is shown passing the buildings at Little Hay Grange or Little London, but a double pecked track runs from roughly half way between points A and B following the alignment of Footpath 21, the Order route (rather than the Inclosure route), in the direction of B. It is shown crossing the solid lines of field boundaries, suggesting it is gated, and where it enters the field named "Prior Pingle" it crosses it diagonally to reach C. Here it is annotated "to Boyah Grange". Correspondence from the Erewash Riders Association indicated that prior to being ploughed in World War II the route in use went diagonally across the field adjacent to the parish boundary. Riders subsequently followed the field edge route to B and then C. This is consistent with the route's depiction on this Plan, and also on Sanderson's 1835 Map (paragraph 25), but is not consistent with later Ordnance Survey ("OS") mapping (paragraph 34) or the alignment claimed in the 1950s (paragraph 56).
29. The survey notes that the fields adjacent to Little Hay Grange³ were "Subject to a Road" and fields named "Thack Meadow" and "Prior Pingle" (now forming a single field which contains points B and C) were "Subject to a Bridle Road". The survey does not state whether these enjoyed public or private rights.
30. Accordingly, a route corresponding with the Order route from A towards B was in existence by 1826, the last section of which crossed Prior Pingle diagonally to C, part of which was subject to a bridle road.

Plan and poor rate valuation of Ockbrook 1828

31. This Plan was produced by the same surveyor (G Cuming). Routes are colour washed with an enclosed route equivalent to Far Lane shown gated before continuing through fields passing Little Hay Grange and Little London as a double pecked track, following the alignment of the Order route as far as

³ As far as Footpath 20, marked as a 'Track' on the Order plan

Footpath 20. From there it continues, veering away from the field boundary to cross the field diagonally to point C, where it is annotated "Road to Boya Grange". Neither of these two plans shows the onward alignment of the route into Dale Abbey Parish, although the annotation in both cases is suggestive of a north-north-easterly direction rather than that following the Order route.

32. The Plan was not drawn up to show public rights of way and does not indicate whether the routes depicted were public or private; some, coloured in the same manner, are cul-de-sac routes.

Ordnance Survey maps

33. The 1840 1 inch to 1 mile OS map shows a route passing Little Hay Grange and Little London and reaching the Parish boundary at B, the alignment is similar to the Order route except from Little London where it appears to be further to the north. A route is shown at Boyah Grange between G and just short of D. The continuation between the two is indistinct.
34. The OS First Edition Map shows a route generally along the alignment of the present Footpaths 21 and 45, although in the field to the north-east of Little London it is shown taking a direct line between field boundaries rather than following the field edge. In addition, the route is no longer shown diagonally crossing a field to C, but following the field edge to B and then directly across the next field to D. Solid lines most likely representing gates are encountered at several field boundaries and again at Boyah Grange, the latter consistent with 20th century photographs, submitted on behalf of Mr and Mrs Just, showing the position of gates. There is no indication of a physical feature representing a route from B-C-D.
35. The Second Edition Map of 1900, which formed the base map for the Finance Act 1910 Valuation Map, depicts the same alignment with the section south of D annotated "FP" or footpath. This indicated that the route was not traversable by horses or wheeled traffic. Sections of the Order route, for example D-E, are hedged tracks which in all likelihood would have been traversable by such traffic, which at Boyah Grange would be consistent with farming needs. Indeed, Ward's book (paragraph 39) refers to an "old cart track" in 1881 when describing a route on foot between Ockbrook and Dale Abbey. And, in the 1950s when preparing the DMS, the Parish Schedule for Ockbrook records a "CRF" or "CRB" indicating a cart road. The indication is that the route shown did not follow the Order route in its entirety, and part was not traversable by horses. However, OS maps are not indicative of public rights, but rather record the physical existence of the features they portray.

Earl of Stanhope memoranda 1828 and Estate Plans and Surveys 1828-1897

36. Instructions were issued by the Earl of Stanhope as to how maps of his estate were to be annotated. Roads were to be shown with double dotted lines where not bounded by hedges, and footpaths by a single dotted line. The 1828 estate plan, contemporary with the instruction, shows several dotted lines annotated "Foot Way" and some double dotted lines annotated "Bridle Road". Footpath 48 is annotated as a "Carriage Road". Footpaths are recorded in the Cunnery field north of Boyah Grange, though on slightly different alignments than recorded today on the DMS. No route is recorded or marked beyond the bounded track midway between D and E.

37. No onward route is shown on subsequent estate plans of 1839, 1856 (which does not show footpaths but shows unbounded tracks elsewhere), a map of Derbyshire Farms of c1875, and an estate plan of 1878. Neither is it described in surveys of 1840, 1878 or 1897 for Boyah Grange itself, comprising house, yard, buildings etc., but is referred to as a "road" between D and E. It was not until 1892 that Earl Stanhope acquired all of the land through which the Order route passes. He had owned about two thirds of the field through which D-C passes, but not the adjoining field through which runs Footpath 45 (D-B).
38. Estate plans were private documents and would not necessarily include any public rights of way crossing the land, but they can be reasonably accurate in what they show. In the present case the Earl was seeking to have routes on his land marked: it seems his predecessor may not have been managing the estate effectively. Accordingly I consider it is significant that no onward route is marked south to Ockbrook once the hedged track ceases at D-E, and that no "road" was described at Boyah Grange. This is interesting when considering Sanderson's map of 1835, a document that was in the public domain, which does show a continuous route passing through Boyah Grange.

Guidebook to Dale Abbey 1891

39. This 19th century guide book written for the travelling and holidaying public described a route to Dale Abbey from Far Lane via an "obvious field path" and "old cart track" to Boyah Grange, on foot. The author mentions elsewhere a bridle path through Locko Park, which is recorded as a bridleway on the DMS.

Ockbrook and Borrowash Parish Council Minutes 1895

40. In August 1895 a bridle road to Dale Abbey crossing land occupied by Mr Just was obstructed and he was requested to keep the route open. No further references are reported, suggesting the matter was resolved. A report of the Meeting in the Derby Mercury newspaper refers to the same issue, describing the route as "near Boyah Grange".
41. Mr Just occupied land comprising Lot 87 of the Stanhope Estate when put up for sale in 1912. However, it is not known what land he may have occupied in 1895. Neither is it clear from the Parish Council Minute where the obstruction was: in Ockbrook where the Parish Council would have had authority to act, or in Dale Abbey, where it might be expected that the Clerk be instructed to write to the neighbouring Parish Council to resolve the matter.
42. The BHS argued that there were only two possible routes this could refer to by reference to Mr Charles Just's occupation of land in the 1912 Sale documents and earlier 1910 Finance Act records. One is the Order route between the Parish boundary at B-C and the buildings at Boyah Grange and the other is part of what is now Dale Abbey Footpath 10. A deduction for public rights of way was made for the relevant hereditament (54) under the Finance Act (see below), but it was not recorded whether for a footpath or bridleway. The OS base map shows the continuation of what is now Footpath 10 as "FP", a route not traversable by horses at this time. It is some 800 metres from Boyah Grange and much shorter in length than the relevant section of the Order route. Accordingly the BHS concluded that it must have been the Order route that was being described in the Minutes.

43. I consider it possible that the reports referred to the Order route, but also possible they referred to something else. The OS mapping for this period annotates what is now Footpath 45 and part of the Order route as "FP" (paragraph 35) and no other route is shown in this location, and nothing along the alignment B-C-D. Similarly the 1878 Estate Plan shows no route here corresponding with the Order route. In addition, there is a bridleway at Ockbrook Wood recorded in the DMS (Dale Abbey Bridleway 9 continuing as Ockbrook Bridleway 25) to which Footpath 10 connects, and which is on the boundary of land occupied by Mr Just in 1912. Whilst again it is not known whether he occupied this land in 1895, I do not consider that it can be concluded, on balance, that the obstruction referred to was on the Order route.

Finance Act records 1910

44. Between A and C, the Order route fell within hereditaments 762 and 733, and from C to F within hereditaments 54 and 73. None of the Order route was excluded from hereditaments, with the exception of points F to G.
45. However, by this time, the underlying OS base map shows a change in the alignment of the Order route. When leaving the track at Little London it is shown crossing the field directly rather than following the field boundary, and from point B it follows a route marked "FP" or footpath to D, the course of the present Footpath 45 (paragraphs 34 and 35).
46. It was accepted that the Valuation Books indicate that most of the route was considered by the valuers to be a footpath, but part, in hereditament 733, the BHS argued, included a bridleway. Under the heading 'Charges, Easements and Restrictions' is recorded a deduction for "Footpaths and bridle road say £20", and in another extract under the heading 'Public Right of Way or User', a deduction of £20.
47. A footpath status is consistent with the 1891 description of a field path by J Ward in his book 'Dale and its Abbey, Derbyshire' (paragraph 39). As regards the deduction for a "bridle road" it is possible that it referred to the Order route. The BHS argued that all other routes shown on the OS base map and which correspond to the OS parcel numbers recorded in the Field Book entry, are today recorded in the DMS as footpaths, the only one not so recorded being the Order route. However, the valuation included two other holdings in Ockbrook and two in Dale Abbey. Furthermore, the adjoining hereditament (762), Little London, records a deduction of £10 for "Footpaths". The only route visible on the OS base mapping within this land parcel is the Order route (in part), and it seems unlikely that its status would have changed from a footpath to a bridleway where it crossed into the adjacent hereditament 733(part). If the deduction applied to the Order route, then the entries are inconsistent in recording deductions for a continuous route that changed status from a footpath then to a bridleway, and back to a footpath.

Sales Particulars 1912

48. These were drawn up in respect of land at Dale Abbey and include Boyah Grange which formed Lot 86. Adjacent was Lot 85 which included within its boundary the Order route from F as far as the gate to Boyah Grange farmyard. Here the Order route was described as a "Road" as was the route which forms part of Footpath 48 (now a bridleway). This Lot was sold with a "a right of way

for all proper and accustomed purposes as at present enjoyed over Nos 223a and 223 from and to Lot 87...", the route to Boyah Grange. Similarly, Lot 86 was sold with the same right of way. The sale documents do not refer to any public rights, although for example Footpaths 43 and 44 are shown on the plan, and it is clear that Lot 86 would have been landlocked were it not for the reservation of a (private) right of way to access it. F-G does not form part of any sale lot, it may be that it was regarded as part of the road to Sandiacre and Dale, or simply did not fall within the lands of the Estate being sold.

49. Although the BHS considered the documents are compatible with bridleway or footpath status between points E and F, I do not consider they take the issue of the existence or otherwise of public rights here any further. The Order route, with the exception of F-G, fell within private landholdings.

Highway maintenance records

50. The Shardlow Rural District Council ("RDC") 1930 Handover Map shows Far Lane up to point A, and points F-G coloured black indicating they were "non-scheduled roads". The List of Roads repairable by the RDC on 31 March 1930 includes road 17a (points F-G) as "Cul de Sac Road to Boyah Grange Farm..." from No Man's Lane, with a length of 0.12 miles (193 metres). This appears inconsistent with what is shown on the Map, depending on where the measurement is taken from, as it could include part of the Order route from Point F towards E. The 1912 sales particulars (paragraph 48) described the whole of the route to the gate at Boyah Grange as a "Road". In any event the RDC was responsible for maintaining F-G when it was the highway authority.
51. On this evidence, the BHS argued it was unlikely the RDC maintained Far Lane and part of the Order route to Boyah Grange unless they considered the remainder was a public highway too, possibly a bridleway.
52. It is unlikely to have been a road made up under the Agricultural (Improvement of Roads) Act 1955. This applied to the improvement of unclassified or un-adopted roads. Part of the Order route at Boyah Grange had been recorded in the 1930 records, and more of the section E-F was added to the list of publicly maintainable highways, the List of Streets ("LoS") in 1991. This followed correspondence between Mr F Just and the Council when it was agreed that the access to Boyah Grange was part of the adopted highway.
53. Accordingly, part of the Order route from G-F and beyond towards Boyah Grange has become publicly maintained highway: the Council's records indicate to a point stopping short of the gate at Boyah Grange. The LoS is a record of maintenance responsibility that would not have been undertaken lightly, rather than one of status: the current LoS carries a disclaimer to that effect. In other words, it does not indicate whether a route shown is a public carriageway, a public bridleway, or a public footpath. Further, whilst public rights of some description may exist over the section recorded, it is conjecture that they continue beyond, in the absence of evidence to support such a finding. Under the Finance Act, deductions were recorded for public rights of way over Boyah Grange land, accepted as being public footpaths. The existence of Footpaths 44 and 45 is consistent with this, but it is not clear whether or not any such rights existed between E and F.

Definitive Map records

54. In 1951 Dale Abbey Parish claimed points F-G as part of Footpath 51 (later becoming Footpath 48) describing it as a footpath also used as a bridle road to Keys Farm, although the latter use appears to have been private rather than public. Footpaths 43, 44 and 45 (then 47, 46 and 48) were also claimed, but nothing was claimed linking points E and F.
55. Footpath 45, which forms part of the Order route, was surveyed by William Bacon and Harvey Cross both of Dale Abbey. A 2003 statement of Harvey Cross, a former Parish Councillor, states that it was a footpath rather than a bridleway, and that there was no public right of way through the farmyard at Boyah Grange.
56. In Ockbrook Parish, Footpath 21 (then 16a) was recorded as a "CRB" or cart road used mainly as a bridleway between Far Lane and the junction of Footpath 17 (now 20⁴). However, the typed annotation "CRB" had been crossed through, as had the options for footpath and bridleway (though less clearly) leaving "CRF", or cart road used mainly as a footpath, whilst the Parish Map seems to show the claimed route continuing to the Parish boundary at B. The annotations on the Map are made by at least three different hands so it is not clear when and by whom they were made. Further, the Schedule contains no description of the route to clarify matters, and the extract reveals no details of who carried out the Survey, or when. I do not consider that these documents are of much assistance, and in any event the route came to be recorded in the DMS as a footpath, apparently unchallenged.
57. Mr Archer of Little Hay Grange was one of those conducting the Parish Survey in Ockbrook, so must have been aware of the claimed route passing through his property, although what status he believed it to have at that time is not clear. Later documentation indicates he regarded it as a bridleway.
58. There are written declarations from people who knew the area in the early part of the 20th century – Mr and Mrs Cope and Mrs West – who believed the route to be a bridleway. And there is written evidence from others associated with Boyah Grange who knew it from the 1930s into the period when the DMS was being compiled, who did not believe it to be a bridleway.

Other

59. From F - C, Mr F Just had a private right to drive animals which ceased in 1930.

Strict settlement

60. Mr and Mrs Just argued that from 1736 (and probably earlier) until 1912 when the land at Boyah Grange was sold by the Earl of Stanhope, it was in strict settlement. Consequently, dedication of a public right of way over the land would have been prevented due to the tenants for life and the landowners' limited interest under a settlement and lack of capacity to dedicate in perpetuity. In addition, specific lands in Dale were subject to mortgage from the early 19th century to the mid-1830s, such that unless there is evidence that the mortgagees concurred in any dedication, dedication cannot be inferred. Furthermore, the Stanhope's were absentee landlords, and it would not be possible to infer dedication unless they were aware of public use.

⁴ Marked 'Track' on the Order plan to the southwest of B

61. The BHS maintained the evidence showed the Earls of Stanhope dedicated new highways and acknowledged existing highways over their land during the period when it is argued they did not have capacity to dedicate. Further, the 1912 Sales particulars (paragraph 48) show Boyah Grange was in strict settlement between 1869 and 1912. Yet the Finance Act documents which were compiled after the sale in 1912⁵, record deductions for public rights of way (paragraph 46). It is unlikely the valuer would have accepted a claim by the landowner for such rights having been dedicated during the short period between the end of the settlement and the valuation. In other words, such rights must have been dedicated before the strict settlement, with the concurrence of the parties to the settlement, or that it could be implied.

Analysis

62. I find the 1681 Survey of little assistance as regards the existence or otherwise of a bridleway at Boyah Grange. I agree with the BHS that it is likely the cluster of buildings (whether dwellings, farmsteads, or a single farmstead) would have been connected by a highway to other locations, such as Dale Abbey: indeed the 1771 Inclosure records and 1778 Diversion Order suggest this. However, there is no indication on the map of the alignment any such highway may have taken across the Common to reach the buildings. Early commercial maps, such as Burdett's, shed no further light on this. A century later, in 1781, a public footway is known to have linked Potato Pit Lane to Boyah Grange through the Cunnery field, north of the present buildings.
63. With the exception of the length from A to Little London, the bridleway awarded in Ockbrook in 1773 between Far Lane and the Parish boundary to Boyah Grange, is shown on the Inclosure Plan following a different alignment to the Order route. A 1790 Estate Plan confirms the existence of a route between point A and Little London, but not its status or the alignment beyond. It is though suggestive of a public status of some sort as it gives destinations, one being to Dale Abbey which is beyond Boyah Grange. By 1826 and again in 1828, a route is shown and/or described in Ockbrook that is similar to the Order route in following field edges, though taking a diagonal cross-field route to C. However, I do not share the BHS's view that this amounted to an informal diversion or diversion by substitution by reference to *R v Cricklade*⁶ and *Dawes and Hawkins*⁷.
64. *Cricklade* concerned a public bridleway crossing a common, in part with no definite track. Under Inclosure, a bridle road with the same termini was set out, but on the same line as the old route, only now with a defined width. In this case the alignment was not at issue – it was held the old route had not been stopped up, but the new defined route was in effect the same route – the issue was one of responsibility for repair. In *Dawes and Hawkins*, a road was diverted by an adjoining landowner and a new route substituted, which the public went on to use. When the original road was reopened, the alternative route was blocked. It was held there was no reasonable evidence that the alternative route had been dedicated, but rather that the public had a right to deviate where a highway had been stopped up or had become out of repair. In

⁵ Hereditaments 54 and 73 which concerned Boyah Grange and Boyah Grange Farm are recorded as belonging to the Stanton Iron Works in the Field Books

⁶ *R v The Inhabitants of Cricklade Saint Sampson* [1850]

⁷ 1860

my view neither circumstance is applicable to the Order route as there is no evidence to support this. There is nothing within the *Dawes and Hawkins* judgement that entitles a landowner to divert a highway without following the correct procedure. Furthermore, there is no evidence adduced of any Quarter Sessions Order to divert a public bridleway here. Accordingly there is no evidence on what basis the route was moved, and in my view this casts some doubt about whether the bridleway set out was in fact established on the ground. In my view, it cannot be concluded that the Order route originated as the inclosure route then moved over time to meet the needs of the landowners. In any event, the 1773 documents provide no evidence of the alignment of any route that may have existed in Dale Abbey Parish, although they suggest a pre-existing route through an old enclosure (Prior Pingle). Even so, this did not follow the alignment of the Order route.

65. Sanderson's Map of 1835 is the first to show a route resembling the Order route throughout, as a "cross road". It appears on the 1840 OS map. However, later more detailed OS maps show some variations in alignment from previous maps in particular north-east of Little London, approaching B and between B-D, there being no physical route recorded between B-C-D. OS maps carry a disclaimer and are not evidence of status, although the section B-D is annotated as a footpath and thus regarded by those surveying the map as not a route traversable by horses.
66. A series of Stanhope Estate Maps are consistent in not showing the Order route beyond Boyah Grange from mid-way between E and D. Whilst such maps were drawn up for private purposes and were not in the public domain, here the Earl of Stanhope instructed his surveyors in how to depict routes. Accordingly, I consider in this case, a little more weight attaches to these documents. Nevertheless, it is evident from OS maps and from an 1891 guidebook that a through route on foot was in existence in the late 19th century.
67. I do not consider that a bridleway obstructed by Mr Just near Boyah Grange in 1895 is the Order route as there is insufficient detail to reach such a finding.
68. Overall the Finance Act evidence does not support the existence of bridleway rights over the Order route: it is potentially conflicting where a deduction for such rights is claimed, and this cannot be attributed unequivocally to the Order route. Sales particulars for Boyah Grange concern private rather than public rights. There is evidence of maintenance of parts of the route between G-F and F-E at public expense during the early part of the 20th century, but these records provide no evidence as regards status. Neither does it follow that with publicly maintained cul-de-sac lengths of highway at either end of the Order route that a highway of public bridleway status connected them.
69. There is some confusion in the recording of what became Footpath 21 in the Parish Claim for Ockbrook when the DMS was compiled, it seemingly being regarded as a cart road used both as a footpath and a bridleway. It is difficult to determine when and by whom the various annotations to the map were made. There is conflicting evidence from people who knew the Order route at this time as regards its use. However, those parts of it that came to be recorded in the DMS were determined to be public footpaths at the time.
70. Taken together I find the evidence is of a route the alignment of which has been inconsistent over the years in particular in Ockbrook Parish and also in

Dale Abbey Parish between B-D and B-C-D. On balance I am not satisfied that a bridleway has been shown to subsist over the Order route on the basis of the documentary record. I turn next to consider the evidence of claimed use.

Presumed dedication under Section 31 of the 1980 Act

The date on which the right of the public to use the claimed bridleway was brought into question

71. On 15 January 1971 a user referred in correspondence to a notice on a gate at Boyah Grange stating "This is not a Bridle Path". There is evidence that the occupiers of Boyah Grange were unhappy with the behaviour of some riders around this time and took steps to address their concerns, including by painting the sign.
72. Robert Parkinson said he had found the gate at C (the Parish boundary) locked in 1970, although the general consensus amongst other users was that they found locked gates on the route in or around 1972, or had been told about them. Carolyn Tong referred to a locked gate in the early 1970s which she avoided, but had been told by someone at Boyah Grange that there was no bridleway. There are other references in the user evidence to verbal challenges, for example made by Mrs Just, which may have occurred in the late 1960s, although none can be dated with any accuracy. In addition, these challenges do not appear to have been communicated to others beyond the individuals involved.
73. I do not consider there is a reliable challenge prior to the painting of the sign. I find this was a clear challenge to use that would have been evident to those using the Order route. Furthermore, the documentation provides the date when the sign was first observed. I therefore agree with the view expressed by the BHS and conclude that January 1971 is the date from which the 20 year period should be calculated, giving a relevant period of January 1951 to January 1971.

Whether the claimed bridleway was used by the public as of right and without interruption for a period of not less than 20 years ending on the date on which their right to do so was brought into question

74. Claimed use is provided in 25 user evidence forms (UEFs), statements or declarations, extending from the late 1940s up to the early 1970s. I heard from 8 witnesses⁸ who spoke of their personal use on horseback. It is this evidence, which has been tested, that attracts the greatest weight in my consideration of the use claimed. The untested evidence accordingly attracts much less weight, in particular where details of claimed use, such as frequency cannot be clarified.
75. Of those giving evidence, only Pat Chatwin had used the Order route in the early 1950s. Her use continued to the mid-1960s. For a period she stabled her horse with the Archers at Little Hay Grange from where she would ride to the end of the track from Little London before retracing her route. She rode out from Little Hay Grange in the late 1950s/early 1960s, and thereafter rode the route intermittently. She always rode with others including Ruth Archer and Peter Harling (although his UEF states he rode it between 1968 and 1970, after

⁸ One of whom spoke in their own right as a neutral witness

- Mrs Chatwin said she had stopped using the route). She said she had known the Order route before she knew the Archers. Her use was regular, perhaps twice a week, followed by a gap.
76. Robert Parkinson had ridden it from 1955 until the late 1960s. He tended to ride alone, several times a year, although sometimes with others. Carolyn Tong had also used it since 1955 and continued until the early 1970s. She rode it with others, or alone, on average 2-3 times a year. Peter Tacey had known of the Order route from 1955, but only began riding it in the early 1960s up until 1967. A friend told him it was a bridleway. He always rode it with others, about once a month. Carol Hall's use began in 1959 and continued to the late 1960s. She rode with others once every month or two as one of five routes they used. She was active with the Spondon Saddle Club and was familiar with Little Hay Grange when she used the Order route.
 77. Kim Turner had used it from 1967 and knew of it through friends including Susan and Christine Barton and Hilary Lane. She rode it once or twice a month. She sometimes went to see Gwyneth Knight (née Just) or Charles Just, and remarked that the route took a long time to ride. Her mother also rode it, though not often. Hilary Lane began using it in 1968 and rode with Susan King (née Barton), Kim Turner, Christine Barton and Gwyneth Knight. She used it monthly. She saw other riders, and in the later years rode alone.
 78. Susan King had no clear memory of the route and considered it likely she had permission to use it. She often rode to the Just's farm and rode out from there with her friends Kim Turner, Gwyneth Knight and Hilary Lane, although her recollection is that she rode it less frequently than others suggest.
 79. The evidence indicates most users rode with others so there is likely to be a larger body of users who may or may not have provided evidence of use. Most appear to have ridden the route as part of a longer circular ride for pleasure.
 80. Claimed use extends back over a long period and I recognise the issue for witnesses, whether supporting or opposing the Order, to recall details of events that occurred 40, 50, or more years ago, when their use or knowledge of the route served other purposes than to bear witness at an Inquiry. There are instances of imprecise recall, recollections having altered over the years and between the completion of evidence forms and/or statements at different times.
 81. A c.1972 petition gathered 35 signatories who claimed knowledge of the Order route as a bridleway. However, limited weight can be attached to it in the absence of knowing whether the signatories rode it themselves, for how long and how often and so forth. It provides some limited evidence of the reputation of the way as a bridleway, as do statutory declarations of claimants who used and believed it to be a bridleway. For example, Kathleen Noble claimed use from 1958 to 1972 monthly on Saturday mornings, and often met riders coming the other way. Susan Waldron claimed use from 1963 to 1968 every three weeks with friends (including Peter Tacey and Carol Hall) and often saw a landowner at the farmyard.
 82. By contrast to the evidence of the claimants, Charles Just said his mother, whose kitchen window overlooked the farmyard, did not see riders, although he recalled Mrs Archer and friends visiting his sister. As a child he played in the

farmyard and said his mother would not have allowed this if there was a bridleway passing through it. He also recalled that until the mid-1960s there were cattle in the fields and at the milking parlour which riders would have passed through, although users did not mention them. Similarly, Gwyneth Knight did not recall seeing riders when she used the route with her friends, other than the Archers by agreement. John Martin, a rider, believed the route was a dead end at Little Hay Grange. Nick Jukes who milked the cows and knew Boyah Grange from 1953 to the late 1960s said he did not see any riders, other than people associated with the family, or evidence of hoof prints. Tim Maloney who visited the farm regularly between 1961 and 1967 did not recall seeing riders. Neither did Messrs Hart who knew Boyah Grange in the early 1950s. In written statements, Harvey Cross (who had surveyed the paths in 1950 for the Parish claim, paragraph 55) had not known of a bridleway through the Farm, nor had others who lived or worked in the area from the late 1930s to the mid-1980s.

Notices, challenges and interruptions

83. It was suggested that the Justs' would not have allowed riders to pass through the farmyard, with its milking herd and hens, without challenge. None of those giving evidence of use to the Inquiry recalled seeing any notices along the Order route, although there is untested evidence referring to three notices. However, there is no indication of where they were or of their wording, and it is possible the claimant may not have been referring to the Order route.
84. None described having been challenged when using the route. There is untested evidence of a challenge by a farmer to a user who rode the Order route between 1965 and 1968, but no further clarification of the event. Another (Mr Harling) whose untested evidence was of an encounter with Mrs Just in 1969 or 1970, who indicated she did not object to use by responsible horse riders, but objected to people leaving gates open enabling their cattle to stray. Other reported challenges refer to 1972, after the date I have concluded that use of the Order was brought into question.
85. None used force. Neither would I regard use as carried out in secret. Some took place in the evenings and at weekends, for example by Pat Chatwin, Carolyn Tong and Kim Turner at weekends; or by Carol Hall and Peter Tacey on Sunday mornings. However, he recalled an elderly gentleman asking him to shut a gate, and remembered seeing Mr and Mrs Archer, their children Carol and Philip at Little Hay Grange, and possibly Mrs Just saw him through the kitchen window of Boyah Grange. Pat Chatwin "passed the time of day" at Boyah Grange. Robert Parkinson recalled that he and the farmer at Boyah Grange greeted one another. Carol Hall recalled sometimes seeing someone in the farmyard at Boyah Grange. In other words, riders were seen and not challenged. Other use took place in the summer months, for example by Pat Chatwin, or Hilary Lane and Kim Turner who used it less often in the winter months; or school holidays, for example by Carolyn Tong.
86. There is no evidence of any interruptions with the aim of preventing use by horse riders. The 20 year period does include an outbreak of Foot and Mouth disease in 1961 and again in 1967/8 when for several weeks no-one would have been using the route. However, I would not regard this as an effective interruption: over a period of 20 years or more there may well be periods when, for a variety of reasons, a way has not been used.

Route description and gates

87. Robert Parkinson gave a clear description of the Order route, including gates at various locations, those at the farmyard all easily opened. He recalled an occasion when the farmer opened and closed a gate for him to pass through. Peter Tacey recalled details including a threshing machine beside the track at Little London, as did Carolyn Tong. She recalled gates at Little Hay Grange and Little London and encountered a locked gate at the parish boundary in the early 1970s. Hilary Lane recalled the Order route was difficult to ride as there were a lot of gates to open. Pat Chatwin referred to gates at the end of the track from Far Lane and to Boyah Grange. Carol Hall described the route passing through gates. Hilary Lane described the route and recalled gates at Boyah Grange which were always open, as did Peter Tacey and Carolyn Tong. Kim Turner described the route and a gate that was difficult to open.
88. The latter is consistent with Charles Just's evidence that the gate entering Boyah Grange was stiff. He also described a wooden gate at the end of the yard with chicken mesh to prevent the hens accessing the farmyard, and several other gates between there and point D which were to keep the cattle in. If these were left open, there was a danger of cattle straying towards the road. However, he acknowledged in cross examination that these gates could have been open at times. Users apparently did not encounter the cows or hens, in the farmyard. A wooden gate was in place at the Parish boundary. This is consistent with the description by some users of an old stone gatepost at this location.
89. Between points C and D all the users described going around the field edge if the field was cropped: none rode through a crop. Peter Tacey described it as usually a grass field and would ride through it unless the grass was 'deep'. Kim Turner described being able to pick up some speed towards point D if no other riders were coming in the opposite direction. Approaching E some recalled buildings which Charles Just said were not there until after the relevant period.

Permission

90. It would appear that express permission was not given to those claiming use of the Order route. And, none of the claimants believed that their use was with express or implied permission. However, there is evidence that an agreement was reached between Mr Just at Boyah Grange and Mr Archer at Little Hay Grange regarding use of the route.
91. Philip Archer's evidence was that through this agreement he, his sister Carol and mother Ruth Archer were allowed to ride the Order route to reach Dale Abbey, and Mr Just's daughter Gwyneth was allowed to ride in the other direction towards Ockbrook. In 1968, Philip Archer's father sold their dairy herd and began a livery at Little Hay Grange. At around the same time a field close to the Order route⁹ was set aside for use by the Spondon & District Saddle Club ("SDSC") for gymkhanas and similar events. This field was accessed from the Order route to the north-east of Little London Farm.
92. Gwyneth Knight's evidence is consistent with Philip Archer's recollections. By reference to a contemporary diary written in 1971 and to rosettes won competing at SDSC events in 1970, she believes the agreement was in

⁹ Adjacent to and north-west of the annotation 'FP 21' on the Order plan

operation, and probably began in 1969, just before she started to win competitions. Mr Just's sworn statement indicates it was in 1972-1973. Gwyneth Knight rode the Order route with her friend Susan King¹⁰ (with whom she rode frequently, as evidenced in her diary), and then with Susan, Hilary Lane and Kim Turner one way, and Carol Archer would ride with her friends the other way. She also rode elsewhere on the farm with her friends. Her father then locked the gate between the two farms as it was said Mrs Archer took advantage of the agreement in connection with their livery business. It seems more likely than not that this was around 1972 (paragraph 72), and therefore after the agreement. Charles Just also believed that the gate was locked after Ruth Archer began riding with other people through Boyah Grange in late 1970.

93. A number of those claiming use of the Order route stabled their horses at Little Hay Grange. Pat Chatwin said she rode it before she knew Ruth Archer and although she used it in the late 1960s with her (when the agreement was in place) she believed her use was without permission, although this is contrary to her evidence that she stopped using it in the mid-1960s. Robert Parkinson stated no-one had said the route could or could not be ridden.
94. The BHS believed the agreement was made after the date of bringing into question, on Mr Just's written evidence, making it necessary by virtue of the notice put up on the route. Further, that Gwyneth Knight used the Order route to access the SDSC events which she entered through a gate from it by permission of the Archers and it is this agreement to which she referred in her evidence rather than the agreement made between her father and Mr Archer over use of the route. The evidence of Ruth Archer in 1978 was that she and her husband had no objections to riders using the Order route so long as they stayed on it. However, this is contradictory to the agreement made between the Just's and the Archer's to allow their daughters to use the Order route.
95. I conclude that at least some of the use, in particular by friends of the Just's and Archer's daughters, was not as of right but rather by agreement or invitation (by either Mr Just or Mr Archer) in the latter part of the 20 year period, from 1969 onwards. In addition, the Archers were tenants of Little Hay Grange. The tenancy agreement between the landowners, the Locko Park Estate, and the tenant, means it more likely than not that Ruth Archer's use would have been permissive, at least as far as the Parish boundary.
96. The evidence also points to a period when the Order route at Little London Farm was overgrown and either unavailable to horse riders or difficult to use. Philip Archer referred to this being the case in the early 1970s when farm machinery further reduced the width of the route to one more suited to use on foot. Both Peter Tacey and Carolyn Tong referred to a threshing machine at Little London, but indicated that it was possible to get through. However, a 1971 photograph which shows the SDSC events field also shows a track leading from there to the Order route. Philip Archer's recollections were that riders who had livery at Little Hay Grange tended to use a route from the farmyard through a field to reach the Order route, thus avoiding the overgrown section at Little London. This would have been from 1968 onwards. Accordingly, the Order route appears not to have been used in its entirety towards the latter part of the 20 year period at least by some of those claiming use.

¹⁰ They started riding together in 1969

Whether there is sufficient evidence that there was during this 20 year period no intention to dedicate the claimed bridleway

97. During the relevant period, Boyah Grange, Little Hay Grange and Little London were tenanted.
98. Whilst Mr Just and Mr Archer reached an agreement regarding use of the Order route by their daughters in the latter part of the 20 year period, there would have been no need for this had the route been considered to be a public bridleway. On the other hand, it seems earlier use was tolerated, so long as riders were responsible, whether on Boyah Grange or Little Hay Grange land.
99. There is some suggestion that one or two users had been verbally challenged in their use of the route prior to 1971 – one UEF refers to a challenge by a farmer at Boyah Grange, the claimant having used it between 1965 and 1968. Both Charles Just and Gwyneth Knight believed their mother had challenged a rider or riders in the farmyard at Boyah Grange. One occasion was in 1971 when she challenged two girls. However, these challenges appear to have been irregular and not communicated to other users.
100. I find on balance there is insufficient evidence of a lack of intention to dedicate during the 20 year period.

Conclusions

101. I conclude that the reality lies somewhere between the opposing accounts as regards use of the Order route on horseback during the 20 year period that I have established as 1951 to 1971. There are some inconsistencies in the recollections of some witnesses. Nevertheless, I am satisfied that use of the route as a bridleway has taken place, mostly after school, in the evenings, or at weekends. That those working or present on the land did not see use is not evidence in my view that it did not happen. Indeed, several witnesses remember seeing farm workers and or landowners, in particular at Boyah Grange when riding. However, it does suggest that use was infrequent.
102. Furthermore, I find that the number of users was very low in the early part of the 20 year period, and use was infrequent. Only Pat Chatwin gave evidence of use in the early 1950s and her evidence was that she did not ride the entire route, but only as far as the end of the track from Little London. Robert Parkinson's use from 1955 (several times a year), I would not regard as frequent. The same applies to Carolyn Tong's use in the latter part of that decade (2-3 times a year). There is more evidence of use into the 1960s. However, into the later 1960s/early 1970s the frequency of use claimed by some who said they rode together appears inconsistent, and in any event low. Also, use by some of the claimants who rode with Gwyneth Knight or as friends of the Archer's falls into the period when an agreement was in place between the Just's and the Archer's enabling each other's daughters to ride on their respective land. I would regard this use as permissive. Earlier use made by the Archer's of the Order route on the land they tenanted may also be regarded as permissive, or private.
103. Notwithstanding that the Order route passed through a working farmyard with cows, hens and at the time young children present, there is no evidence to suggest that the landowners took actions to indicate a lack of intention to dedicate. With the exception of isolated incidents that were not communicated

to other users, there was no clear challenge to use, in this case by the tenants, until the date of bringing into question.

104. Nevertheless, and notwithstanding there being insufficient evidence of a lack of intention to dedicate, on balance I conclude for the reasons given that claimed use is insufficient to raise a presumption of dedication, and accordingly the claim fails under Section 31 of the 1980 Act.

Implied dedication at Common Law

105. There is no evidence that the landowners intended to dedicate a public bridleway. The Locko Park (an objector to the Order and landowner of the route in Ockbrook) referred to a Statutory Declaration as to the rights of way acknowledged on their land. However, this post-dates the evidence of use on horseback and does not apply retrospectively.
106. In 1978, the landowner in Dale Abbey, then British Steel, wrote to Mr Just advising him to continue to prevent use of Footpath 45 as a bridleway except by express permission, which he was advised not to give, and that no permission would be given from the estate office. This suggests that during their ownership there was no intention to dedicate.
107. There is evidence that when the land was held by Lord Stanhope it was in strict settlement and there is no evidence that any intention to dedicate the Order route occurred during such periods.
108. As regards the evidence of use, I conclude that some was permissive, and that when considered as a whole, use is insufficient in volume and frequency for a case to be made out under common law.

Other matters

109. Issues raised in submissions as to the suitability of the Order route as a bridleway are not relevant to my determination of the Order under the legislation. Accordingly I have not attached weight to them.
110. Issues were raised as regards the Human Rights Act, specifically with regard to Mr and Mrs Just receiving a fair trial within a reasonable time. In this case, the application had been made in 1997. Between then and now several key witnesses had passed away. I understand Mr and Mrs Just's concerns. However, as I have concluded the Order should not be confirmed I do not consider it necessary for me to comment further.

Conclusions

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

Formal Decision

112. I do not confirm the Order.

S Doran

Inspector

APPEARANCES

Supporters:

Mr Ben Benest

BHS Access and Bridleways Officer (Derbyshire)
assisted by Mrs Ann Wood, Applicant

who called

Mrs Pat Chatwin
Ms Carol Hall
Mrs Hilary Lane
Mr Robert Parkinson
Mr Peter Tacey
Mrs Carolyn Tong
Miss Kim Turner

Mrs Diana Mallinson

Objectors:

Dr Karen Jones

of Counsel, *representing* Mr Charles and Mrs
Anne Just

who called

Mr Philip Archer
Mr Bruce Broughton
Mr H Hart
Mr Ray Hart
Mr Nick Jukes
Mrs Anne Just
Mr Charles Just
Mrs Gwyneth Knight
Mr John Martin
Mr Tim Maloney

Mrs Lisa Edwards

Solicitor, Derbyshire County Council

Others who spoke:

Mrs Susan King

DOCUMENTS

Submitted to the Inquiry in November 2014

1. Copy of 1839 Estate Plan and sketch of the same (Ref.U1590/P25/1 & U1590/P25/2) produced on a CD, submitted on behalf of Mr & Mrs Just
2. Notes on behalf of Mr and Mrs Just concerning further evidence recently discovered, dated 22 October 2014, Statement of Jennifer Killick, with Attachments 1-6 comprising photocopied extracts from 1839 Estate Plan, 1840 Survey, 1828 Memoranda regarding Roads, 1875 Farm Map, 1878 Survey and Map and 1897 Survey, landholdings in Dale Abbey belonging to the Earl of Stanhope, submitted on behalf of Mr & Mrs Just
3. Extracts from the Finance Act 1910 Valuer's Field Book and Finance Act Map showing hereditament 762, submitted on behalf of Mr & Mrs Just
4. Replacement document (Public Way Evidence Form of K Noble) CJ4a, Proof of Evidence of Mr C Just, submitted on behalf of Mr & Mrs Just
5. Photographs GK13, GK14, GK15 and GK16, Proof of Evidence of Mrs G Knight, submitted on behalf of Mr & Mrs Just
6. Supplementary Proof of Evidence in rebuttal of Objectors Proofs of Evidence and late evidence, dated November 2014, with Appendices 22-26 comprising information about the Ward Lock Guide Books, 1601 Oldfield Survey of the Lordship of Dale, extracts from Finance Act 1910 Field Book and Map showing hereditament 733, transcript of 1773 Ockbrook Inclosure Award and Picture the Past, National Archives and Derbyshire Record Office website extracts, submitted by Mrs Mallinson on behalf of the British Horse Society
7. Copy of Public Path Creation Order made under the Highway Act 1980, The Derbyshire County Council (Bridleway over part of Public Footpath No.48 off Potato Pit Lane – Parish of Dale Abbey) Public path Creation Order 2011, dated 9 November 2011; Notice of Confirmation of the Order dated 15 November 2012; and copy of Public Path Agreement between Erewash Borough Council, Derbyshire County Council, Barclays Bank plc and Mr J B Sisson dated 10 September 2012
8. Opening Statement on behalf of the British Horse Society
9. Undated Ordnance Survey map showing land around Little London, submitted on behalf of Mr & Mrs Just
10. Undated letter submitted by Mrs S King
11. Email concerning a visit to the Order route at Boyah Grange by a group on 4 June, submitted on behalf of Mr & Mrs Just
12. Summary Proof of Evidence of Mr C Just, submitted on behalf of Mr & Mrs Just

Submitted during the adjournment

1. Late evidence comprising statement and Appendices 27-33, formed of 1778 Quarter Sessions diversion order, 1781 Act for Dividing and Inclosing a certain Common called Dale Moor or Stanton Moor, within the Manors of Dale and Stanton, or one of them, in the County of Derby, 1781 Inclosure Award, Plan and transcript, 1790 Estate Plan, 1895 Ockbrook and Borrowash Parish Council Minutes, 1895 extract from The Derby Mercury, 1912 Sale Catalogue, submitted by Mrs Mallinson on behalf of the British Horse Society
2. Correspondence dated 18 May 2016 from Mrs P Chatwin
3. Supplementary Statement and Appendices SS1-22, comprising 1828 Estate Plan, 1856 Estate Plan, extract from Sauvain Highway Law 4th Edition, Statutory Declaration of Professor B English, notes on this history and structure of settlements, Family trees of the Stamford's and Stanhope's, 1681 Map, 1857 Gazetteer and Directory of the County of Derby, Stamford Paper, extracts from Stamford family settlement 1736, extracts from 1747 Private Act of Parliament concerning Stamford settlement, 1778 Conveyance, letter from Dr Wicker, 1774 Stanhope marriage settlement, 1781 Stanhope marriage settlement, 1808 report Mahon v Stanhope, 1914 transcript of 3rd Earl Stanhope's will, c.1816 list of tenants, background papers to 1833/4 settlements, extracts of 1834 settlement, Disentailing deed, 1869 settlement, submitted on behalf of Mr & Mrs Just
4. Addendum Proof of Evidence and Appendices 35-38 comprising Derbyshire Mapping Portal, public rights of way layer, 1857 Estreat of amerancements, 1781 transcript of Stanton and Dale Inclosure Award extract, 2014 and 2016 photographs of point B on the Order plan, submitted by Mrs Mallinson on behalf of the British Horse Society
5. Additional statements of Mrs A Just and Mr P Archer, submitted on behalf of Mr & Mrs Just

Submitted to the Inquiry in November 2016

1. 1828 Stanhope Estate Plan on CD, submitted on behalf of Mr & Mrs Just
2. Statutory declaration of Professor B English, submitted on behalf of Mr & Mrs Just
3. Clarification of date of 17th century Oldfield map, submitted on behalf of Mr & Mrs Just
4. Summary statement of Mrs A Just, submitted on behalf of Mr & Mrs Just
5. Statutory declaration of K Noble, submitted on behalf of the British Horse Society

6. Note on walking the Order route, submitted on behalf of the British Horse Society
7. Extract from Rights of Way, A Guide to Law and Practice 4th Edition concerning Extent of Rights and Trespass, Riddall & Trevelyan, submitted on behalf of the British Horse Society
8. Extract from the 1929 Handover Map, submitted on behalf of Mr & Mrs Just
9. Plan showing extent of maintenance, submitted by Derbyshire County Council
10. Closing submission on behalf of Mr & Mrs Just together with extract from Rights of Way, A Guide to Law and Practice 4th Edition concerning Roads Used as Public Paths and Byways Open to All Traffic, extract from Appeal Decision Ref: FPS/J11155/14A/2R, and *Berry v Secretary of State for Environment, Food and Rural Affairs and another* [2006], extract from Cloisters Witness Evidence: A Practical Guide, extract from Sauvain Highway Law 4th Edition concerning public right to pass along a defined route, extracts from *Farquhar v Newbury Rural District Council* [1909] and *R v Petrie* [1855]
11. Closing Statement of Mr Benest and closing submission of Mrs Mallinson on behalf of the British Horse Society



Wildlife and Countryside Act 1981 S.53

The Derbyshire County Council
(Addition of a Bridleway between
Far Lane - Parish of Ockbrook
and Potato Pit Lane - Parish of
Dale Abbey including upgrading
of lengths of footpath)
Modification Order 2011

KEY

Bridleway to B + C + D
be added E + F

Lengths of
footpath to be
upgraded to
bridleway
A + B
D + E
F + G

Existing footpaths -----
Parish boundary - - - - -

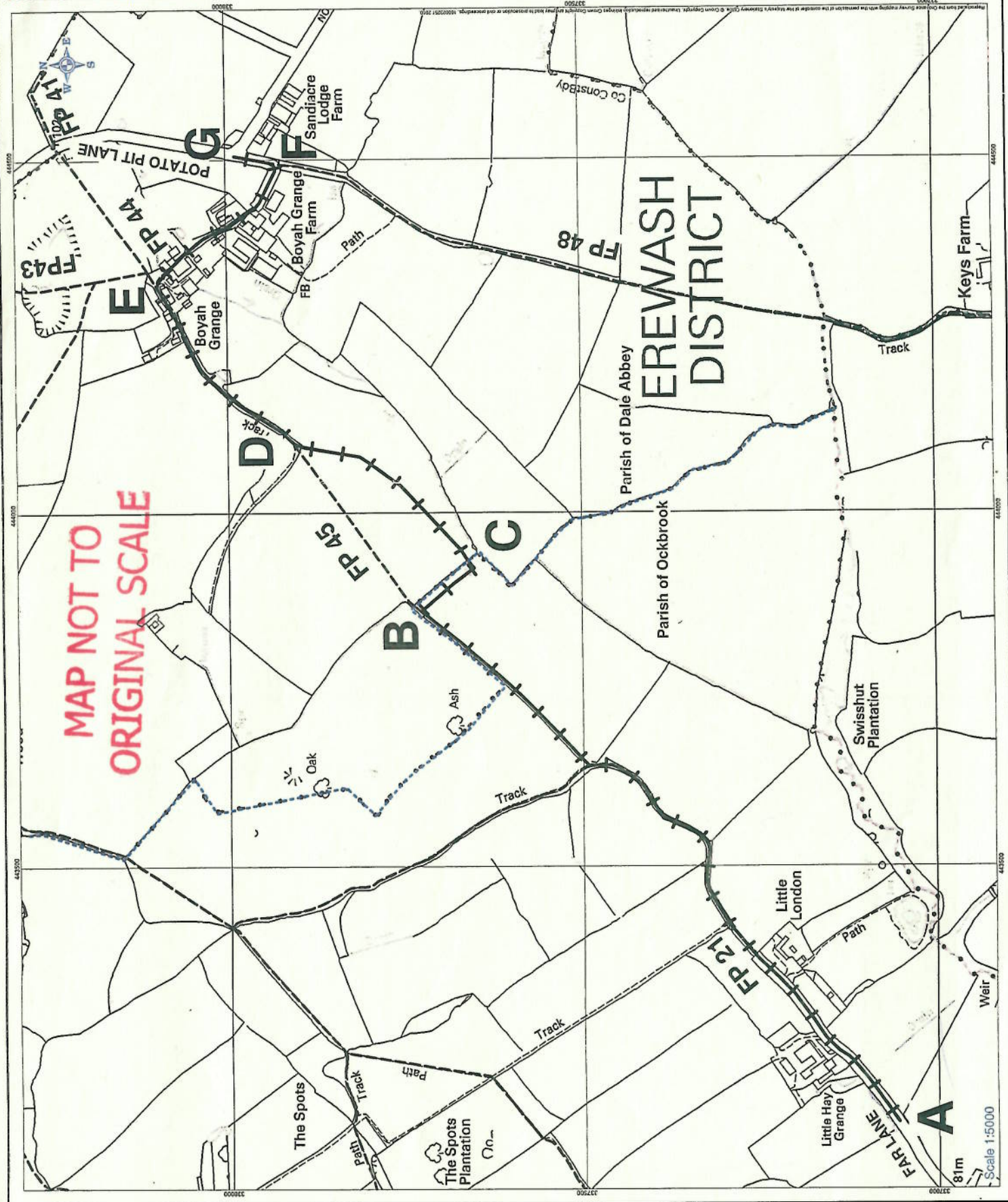


DERBYSHIRE
County Council
Improving life for local people

IAN W. STEPHENSON
Shropshire Director of Environmental Services

Shand House
Dale Road South
Mallock
Derbyshire
DE4 3RY

Produced by Public Rights of Way on 18 January 2011
Ref: PEJUB2377/Order2011



ОТТОМ 94М
ЭЛСОН ДАМБЛО