



Order Decision

Inquiry held on 13 December 2016

by Mark Yates BA(Hons) MIPROW

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

Decision date: 08 February 2017

Order Ref: FPS/U1050/7/104

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Derbyshire County Council (Upgrading of Public Footpath No. 50 to Bridleway – Parish of Ashover) Modification Order 2016.
- The Order was made by Derbyshire County Council ("the Council") on 4 February 2016 and proposes to upgrade Footpath No.50, in the parish of Ashover, to bridleway status, as detailed in the Order Map and Schedule.
- There was one objection¹ and eight representations outstanding at the commencement of the inquiry.

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

Procedural Matters

1. I held a public inquiry into the Order on 13 December 2016 at Ashover Parish Hall. I visited the site accompanied by the interested parties following the close of the inquiry.
2. The status of the route is no longer disputed and there is general agreement between the parties regarding the width and the limitations that should be recorded for the way in the definitive statement. There was considered to be no need to hear evidence from the respective parties but I invited Mr Jackson, on behalf of the Council, to address certain matters before closing the inquiry. Additional information provided by Mr Jackson following the close of the inquiry has been circulated to the other parties for information.

Main Issues

3. The Order relies on the occurrence of an event specified in Section 53(3)(c)(ii) of the 1981 Act. Therefore, if I am to confirm the Order, I must be satisfied that the evidence shows that the existing public footpath ought to be recorded as a bridleway in the definitive map and statement. The burden of proof to be applied is the balance of probabilities.
4. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980 ("the 1980 Act"). This requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.

¹ Submitted on behalf of the Marsh Green Estates Limited and Mr and Mrs Atkinson

5. An implication of dedication may also be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication.

Reasons

Consideration of the evidence

6. It is apparent that the status of the route was brought into question for the purpose of statutory dedication in 2008. There is evidence of challenges being made to equestrian users which triggered the making of an application to upgrade the route to bridleway status on 4 August 2008. This means that the relevant period for the purpose of statutory dedication is 1988-2008.
7. Thirty-six user evidence forms are relied upon in support of use of the claimed bridleway. The majority of the users state that they used the route on horseback. There is also some supporting evidence of cycling use. However, it should be borne in mind that a proportion of the use was on foot, which cannot support the dedication of higher rights over a footpath. Further information is contained in additional statements from fourteen of the users. It is apparent that a proportion of the users were prepared to give evidence in relation to their use of the route at the inquiry.
8. From looking at the user evidence, I am satisfied on balance that it is sufficient in terms of its quantity and quality to demonstrate equestrian use during the relevant period, as of right and without interruption, to such an extent to raise a presumption of the dedication of a bridleway. Further, I do not find that the challenges mentioned were sufficient to indicate to the public that there was a lack of intention by any landowner to dedicate a bridleway during the relevant period.
9. In light of the above, I conclude on the balance of probabilities that a public bridleway has been dedicated in accordance with Section 31 of the 1980 Act. This conclusion means that there is no need for me to consider the evidence in the context of common law dedication.

The Order

10. In terms of the limitations to be included in the Order, the Council requests that gates are recorded at particular points in line with information contained in the parish schedule completed for the path in 1950. This was compiled following a survey of the claimed public rights of way in the parish. I note that a solid line is shown across the route at these points on the 1964 Ordnance Survey map provided, which could denote the existence of gates. It is also requested that the gates now comply with the relevant British Standard. The right to place gates at these points is not disputed and there is some further evidence in support of the existence of gates at times in the written statements. I accept on balance that the definitive statement should be modified to make provision for these limitations. However, there is no evidence to support the inclusion of a limitation for the cattle grid that now exists, should this extend over the way.

Other Matters

11. Issues relating to whether it is desirable for the route to be recorded as a public bridleway are not relevant to my decision.

Conclusion

12. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed with modifications.

Formal Decision

13. I confirm the Order subject to the following modifications:

- Delete all of the references in the Order to the existing grid reference specified for point B and insert "GR SK 3442 6375".
- Delete within the remarks column in Part II of the Order Schedule "*Field gate posts*" and insert "*Gate*".
- Insert at the end of the text within the remarks column in Part II of the Order Schedule "*Gates at GR SK 3405 6374 and GR SK 3442 6375. All gates to be compliant with BS 5709:2006*".

Mark Yates

Inspector

APPEARANCES

For the Council:

Mrs M. Fairman
Mr P. Jackson

Solicitor employed by the Council
Senior Legal Assistant

Objector:

Mr D. Atkinson

DOCUMENT

Opening statement for the Council



**Wildlife and Countryside
Act 1981, Section 53**

**The Derbyshire County
Council (Upgrading of
Public Footpath No. 50
to Bridleway - Parish of
Ashover) Modification
Order 2016**

KEY

**Footpath Claimed as
Bridleway**

**Other Existing
Footpaths**

**Existing Byway Open
to All Traffic (BOAT)**



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Produced by Public Rights of Way on 23 January 2016

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