



Order Decision

Inquiry held on 10 January 2017

by Mark Yates BA(Hons) MIPROW

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

Decision date: 24 February 2017

Order Ref: FPS/U1050/7/105

- 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 (Bridleway along non-classified highway known as Monksdale Lane – Parishes of Tideswell and Wheston) Modification Order 2014.
- The Order was made by Derbyshire County Council ("the Council") on 26 June 2014 and proposes to add a bridleway ("the claimed route") to the definitive map and statement, as detailed in the Order Map and Schedule.
- There were six objections and four representations outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I held a public inquiry into the Order on 10 January 2017 at the Nightingale Centre, Great Hucklow. I walked a proportion of the claimed route on 13 December 2016 from Millers Dale and I walked the remainder of the route from Wheston on 11 January 2017.
2. The Council and the main supporters of the Order (Mrs Mallinson and Ms Stubbs) have made submissions regarding the quality of the evidence from the people who state that they have used the claimed route by means of mechanically propelled vehicles ("MPVs"). Mr Kind, on behalf of one of the objectors, the Derbyshire Group of the TRF¹, accepted at the inquiry that the user evidence is not sufficient to infer the dedication of a vehicular highway. Having considered the user evidence and the submissions of the parties, I do not disagree. Therefore, the Order needs to be determined in light of the historical documentary evidence provided. This means that there is no need for me to consider the public nuisance which is alleged to arise out of the recent use by MPVs.
3. All of the points referred to below correspond to those delineated on the Order Map.

Main Issues

4. The Order is made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(3)(c)(i) of the Act. Therefore, if I am to confirm the Order, I must be satisfied that the evidence discovered shows that a right of way, which is not shown in the map and statement, subsists. The burden of proof to be applied is the balance of probabilities.
5. I shall assess whether the documentary evidence is sufficient to infer the dedication of a public right of way at some point in the past. Section 32 of the

¹ Trail Riders Fellowship

Highways Act 1980 requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway.

6. If the claimed route is found to be a vehicular highway, as alleged by the objectors, it is accepted by the parties that the rights for MPVs are preserved by virtue of Section 67(2)(b) of the Natural Environment and Rural Communities Act 2006.

Reasons

Consideration of the evidence

7. The A-D² section of the claimed route is shown as a cross road on Burdett's map from the 1760s. It is shown continuing northwards to Wheston via the present section of public road and southwards to Millers Dale by way of the current Bridleway 52. The status of the latter was confirmed following a public inquiry held in 2007. Mr Jackson, on behalf of the Council, outlines that routes shown as cross roads on Burdett's map have been found on occasions to be a public bridleway or private carriage road rather than a vehicular highway. Mrs Mallinson also makes reference to the depiction of particular non-vehicular highways in this manner on the Burdett map.
8. This section is also shown on Cary's map of 1794 as a bye road. Mr Kind draws attention to the route shown continuing southwards via other highways ultimately to Ashbourne. In support, reference is made to the name "*Ashborne Lane*" which appears on the later inclosure award map. I accept it is possible that a section of the claimed route historically formed part of a long distance route. However, any such route may have been a bridleway or a carriageway. Reference is again made by Mr Jackson to the depiction of historical non-vehicular highways on the Cary map as bye roads.
9. The commercial maps provide no confirmation regarding the status of the routes shown. They could nonetheless be supportive of a section of the claimed route being part of the highway network. Both carriageways and bridleways have historically served as a means of transporting goods, livestock and people. In this case, the claimed route links with highways of different status at points A and D. Whilst the absence of the D-E section from the small scale commercial maps does not necessarily mean that this feature did not exist, it could have come into existence at a later time.
10. A 1799 map intended to show land held by John Archer depicts sections of the claimed route. In this respect, the majority of the D-E section is shown. The A-D section is annotated "*To Whetstone*³" and a section of Bridleway 52 is annotated "*From Whetstone*". This map shows that a proportion of the claimed route existed as an enclosed lane prior to the subsequent inclosure award addressed below. The annotation is supportive of the A-D section being part of a through route to Wheston.
11. The 1821 Wheston and Tideswell Inclosure Award covered land crossed by the claimed route. This award has to be considered in conjunction with a local Act of 1807⁴. The inclosure award map shows the claimed route coloured in the

² This map does not appear to record the kink which is shown at point D on the larger scale maps

³ Taken to relate to the place presently known as Wheston

⁴ Unless specified otherwise it imported the provisions of the Inclosure Consolidation Act of 1801

same way as other highways in the area, including the road to the north of point A and Bridleway 52. These connecting highways are both annotated as "*Ashborne Lane*". A section of the latter is also annotated as "*Fuesdale Road 20ft*". The D-E section is annotated separately as "*Goosefoot Lane*", "*Old Field Road 14ft*" and "*Stanter Lane*". As Mr Kind points out the numbered plots on the map related to the land which was to be inclosed. The unnumbered plots shown on the plan were therefore old inclosures. In terms of Goosefoot Lane and Stanter Lane, these mainly proceeded between old inclosures. Mr Jackson says the assumption must be that these names applied to the particular roads prior to 1821. It is also apparent that the A-D section proceeded for the most part adjacent to old inclosures.

12. It is apparent from looking at the 1799 estate map that the claimed route existed prior to the inclosure award. However, the history of the D-E section is unclear due to the lack of evidence regarding its existence prior to this map. Mr Kind points to the practical difficulties that would have faced the Inclosure Commissioners in making provision for a public carriage road of the required 30 feet width in this location (Old Field Road). Nonetheless, the Commissioners could have made provision for a public road of the required width if it was part of an existing public road that they wished to retain. Mr Jackson points to an awarded 30 feet public road nearby⁵ where the topography of the land suggests that this width is unlikely to have been originally available.
13. The inclosure award made express provision for Fuesdale Road and Old Field Road. These were set out as private carriage roads with a width of 20 feet and 14 feet respectively. Old Field Road is described as proceeding between Stanter Lane and Goosefoot Lane. Although the award does not say for whose benefit these roads were awarded, the conclusion to be drawn from the inclosure award is that the awarded section of the claimed route and a section of Bridleway 52 were set out as private roads. It is possible that lesser public rights also existed over the awarded sections but this cannot be determined from the award.
14. The information supplied by the Council reveals that the advertising process undertaken in relation to the roads to be set out in the award attracted no objections. This suggests that no concerns were raised in relation to the status of Old Field Road. The commercial maps provided could offer some support for the A-D section historically being part of the highway network. However, any such highway could have been a bridleway or a carriage road. Its direct continuation to the south has been found to be a public bridleway. In the circumstances, I am not convinced that the cases cited by Mr Kind provide assistance on this issue.
15. The 1842 tithe map for Wheston shows the A-D section coloured brown, unnumbered and annotated as "*Ashbourne Lane*". A short section of the claimed route north eastwards from point D is shown in the same way. The 1844 Tideswell tithe map shows the whole of the route unnumbered and excluded from the tithed parcels of land. Highways were incidental to the tithe process and this will usually serve to limit the evidential weight of these maps. The exclusion of a route from the surrounding parcels of land could be indicative of a public or private route as both would have impacted upon the productivity of the land being assessed.

⁵ Miln House Dale Road

16. The claimed route is shown on the circa 1840 Ordnance Survey ("OS") map between solid lines and annotated near point D as '*Wheston Lane*'. It is also shown on the 1880 OS map with the D-E section annotated as '*Monksdale Lane*'. The route is shown in the same way on the 1898 OS map. Mr Jackson identifies points where gates appear to be shown on the 1880 map but it is not argued that this issue has any material bearing on the status of the claimed route.
17. The OS maps are clearly supportive of the physical existence of the claimed route when the land was surveyed. Although these OS maps do not provide any clarification regarding the status of the routes shown, they may offer some support for the claimed route being part of the local highway network.
18. A map produced for the purpose of the 1910 Finance Act shows the claimed route excluded from the surrounding taxable parcels of land. This can provide good evidence of highway status. However, there may be other reasons for the exclusion of a route and it should be borne in mind that the existence of highways was incidental to this Act. The exclusion of a route from the surrounding parcels is more likely to be indicative of vehicular status. Nonetheless, it could be supportive of bridleway status. The depiction of the route in this manner may reflect that it was delineated by physical boundaries. It is apparent that the section of Bridleway 52 to the south is shown excluded from the surrounding parcels in the same way.
19. The claimed route is shown on a map⁶ produced in accordance with the Local Government Act 1929. This Act provided for the transfer of maintenance responsibility for highways from the Rural District Councils to the County Councils. It is shown on the handover map within the '*Other District Roads*' category. The A-D section is included in the handover schedule as part of the route numbered 67, which proceeds between the A623 Road and Millers Dale. On this issue, Mr Jackson says that the whole of route 67 will not necessarily have the same status and the numbering system was applied for administrative purposes. This is apparent in terms of the different status of the route to the north and south of the A-D section. There is also a note in the relevant part of the schedule which states "*Part Green – Horse traffic only*". It appears that the remainder of the claimed route falls within the description of a green lane.
20. These maps would usually provide conclusive evidence of the highway authority's acceptance of its maintenance responsibility. In this respect, they will be supportive of the route being a highway but they would not ordinarily serve as a definitive record of the highway rights in connection with the ways shown. I find this to be the case irrespective of when the route became maintainable at public expense. The route is now recorded as a non-classified highway ("NCH") on the Council's list of streets.
21. The information supplied by the Council in relation to the routes included in its maintenance records is that a proportion of these have been found to be non-vehicular highways. One example is Bridleway 52, which was recorded as a NCH at the time of the inquiry to determine its status. Mr Jackson outlines that it is rare for an NCH to ultimately be found to be a footpath. The annotation relating to horse traffic appears to encompass the A-D section and indicates that the route was not viewed as being subject to public vehicular use or maintained to a standard for vehicular traffic at the time of the handover of maintenance responsibility to the Council.

⁶ Commonly referred to as the 'handover map'

22. Wheston Parish Council claimed the B-C section, which lies within this parish, as a bridleway⁷ at the initial stage of the process in relation to the production of the original definitive map in the 1950s. The reason for believing it to be public was stated to be public user. Tideswell Parish Council claimed the remainder of the route as a carriage road mainly used as a bridleway. This claim was based on public user for 60 years. On both forms there is additional annotation⁸ which states that the route was maintained by the Council as an unclassified road. No part of the claimed route was subsequently recorded on the definitive map and I concur with the Council that this is likely to have arisen from its inclusion in the highway maintenance records.
23. The 1962 Buxton & Matlock OS map shows the claimed route under the category of "*Minor Roads in towns, Drives and Unmetalled Roads*". There is no suggestion that the depiction of the route in this manner should be given any significant degree of weight. In my view, it points to the physical nature of the claimed route at that time.
24. The Council points to some references to the claimed route in relatively recent publications. Dodd and Dodd suggest in the publication titled '*Peakland Roads and Trackways*'⁹ that the A-D section was once part of a drove road to Ashbourne. The existence of this longer route is supported by Eric Heaf in the 1999 booklet titled '*Tideswell Tracks*'. He also refers to the triangular area of land at around point D as Goose Green. The Council says that the name Goosefoot Lane specified in the inclosure award for a section of the route is suggestive of it having been used for the driving of animals. However, the use of a route for the driving of animals could potentially apply to a bridleway or a carriageway.

Conclusions

25. It is apparent that the claimed route is a feature of some antiquity. This potentially applies to a greater extent to the A-D section and there is some evidence in support of this section historically being part of a longer route. The depiction of the claimed route on the OS maps in the same manner as the connecting highways could be supportive of it forming part of the highway network. However, these maps were not concerned with recording the status of the routes shown. The tithe maps could be indicative of the route being a highway or a private road.
26. The inclosure award clearly made provision for a private road over a section of the claimed route. There is nothing to suggest that public rights were considered to extend over the route. The continuation of the historical route to the south of point D was also awarded as a private road. I am not satisfied that the early map evidence is sufficient to infer that any part of the route was viewed as a highway of a particular status prior to the inclosure of the land. The extracts from the later publications do not provide any further assistance on this matter.
27. Some weight should be given to the exclusion of the route from the surrounding parcels on the Finance Act map. This could be supportive of public vehicular rights but would not be inconsistent with bridleway status. The

⁷ It is later described in the form as a bridle road on cart road

⁸ This appears to have been added after the form was submitted by the parish council

⁹ 2000 edition

Finance Act evidence also needs to be considered in conjunction with the relatively contemporaneous handover records.

28. The various highway records do not provide a definitive guide to status. In this case, a note in relation to the A-D section points to a route used or maintained for horse traffic. This would not be supportive of this section being viewed by the highway authority as a public road. The later claims made by the parish councils provide some evidence in support of bridleway use.
29. The evidence is clearly supportive of the claimed route being a highway. Having regard to my conclusions regarding the various pieces of evidence, I conclude that the evidence as a whole tips the balance slightly in favour of the route being a bridleway rather than a vehicular highway. I therefore find on the balance of probabilities that a public bridleway subsists.

Overall Conclusion

30. 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.

Formal Decision

31. I confirm the Order.

Mark Yates

Inspector

APPEARANCES

For the Council:

Mrs M. Fairman

Solicitor employed by the Council

She called:

Mr P. Jackson

Senior Legal Assistant for the Council

Other Supporters:

Ms C. Reading

Mrs D. Mallinson and Ms P.
Stubbs

Representatives of the Peak District
Green Lanes Alliance and Peak
Horsepower

Additional witnesses called:

Mr C. McFarlane Baxter
Mrs J. McFarlane Baxter
Mr R. Walker

The Objectors:

Mr A. Kind

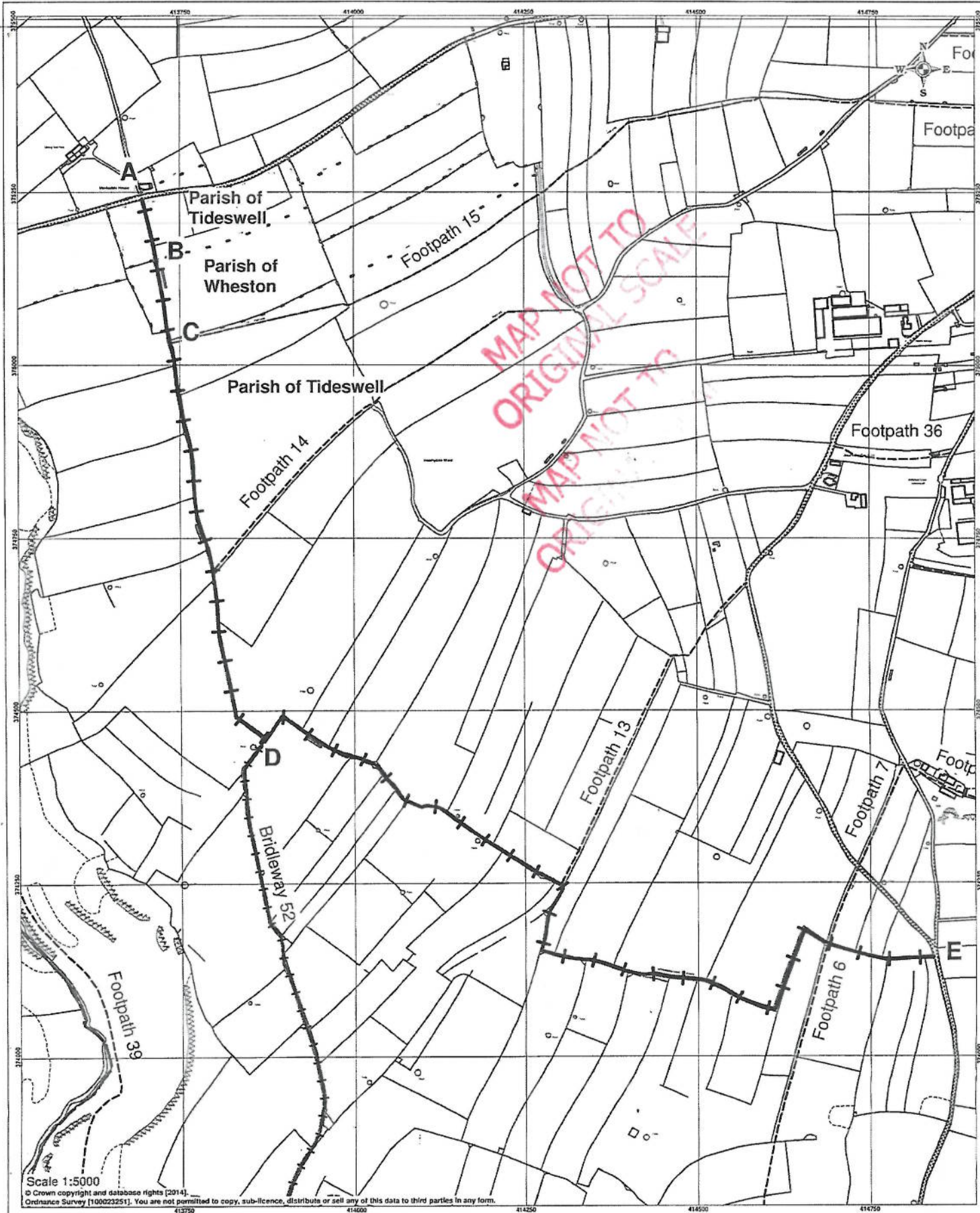
Representing the Derbyshire Group
of the TRF

Mr N. Bennett

For the Peak & Derbyshire Vehicle
User Group

DOCUMENTS

1. Schedule of potential witnesses to be called in support of the Order
2. Rebuttal documents tendered by Mrs Mallinson and Ms Stubbs
3. Additional legal submissions made by Mr Kind
4. Copy of inclosure map
5. Closing submissions on behalf of the Derbyshire Group of the TRF
6. Closing submissions for Mrs Mallinson and Ms Stubbs
7. Closing submissions for the Council



Ref: PE/JV/X3185/X3186/ORDER/2014

DERBYSHIRE
County Council
improving life for local people

Mika Ashworth
Strategic Planner - Economy, Transport & Environment

Shand House
Dale Road South
Matlock
Derbyshire
DE4 3RY

Produced by Public Rights of Way on 25 June 2014

Wildlife & Countryside Act 1981, Section 53

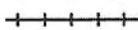
The Derbyshire County Council (Bridleway along non-classified highway
known as Monksdale Lane - Parishes of Tideswell and Wheston)
Modification Order 2014

Key:

Bridleway to be added



Existing Bridleways



Existing footpaths



Parish Boundary - - - -

