
Order Decision

Inquiry held on 13 September 2016

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 28 September 2016

Order Ref: FPS/U1050/7/99

- 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 (Restricted Byways along New Lane and part of Monument Lane – Parishes of Codnor, Ironville and Riddings) Modification Order 2013.
- The Order is dated 30 May 2013 and proposes to modify the Definitive Map and Statement for the area by adding Restricted Byways running along New Road, Riddings and Codnor and Monument Lane, Ironville, as shown on the Order Maps and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: I propose to confirm the Order subject to modifications that require advertising.

Procedural Matters

1. I held a public inquiry into this Order on Tuesday 13 September 2016 at Ironville Church Hall. I made an unaccompanied site inspection on Monday 12 September when I was able to walk the whole of the Order routes. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary.
2. In writing this decision I have found it convenient to refer to points marked on the Order Maps. I therefore attach copies of these maps.
3. In the Order, the route between Points A and B is referred to as both New Lane and New Road. The route is annotated 'New Road' on Ordnance Survey (OS) maps. However, from written evidence and what was said at the inquiry it became clear that this route is more commonly known as Long Lane (or Penny Long Lane) in the locality. In this decision I refer to this route as 'New Road (Long Lane)' in the hope that this avoids any confusion.

The Main Issues

4. The requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.

5. Some of the evidence in this case relates to usage of the route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
6. Common law also requires me to consider whether the use of the routes and the actions of the landowners have been of such a nature that the dedication of the routes by the landowners can be inferred.
7. As this Order is concerned with possible unrecorded vehicular routes, it is also necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) which extinguished rights of way for mechanically propelled vehicles (MPVs) subject to certain exceptions.

Reasons

8. The section of Monument Lane that links the two Order routes (Points B-C) is already a Restricted Byway as a result of a Creation Agreement in 2012. The fact that the owner of this section agreed to its dedication as a Restricted Byway does not in my view indicate that the Order routes are necessarily of a similar status. As no similar agreement has been reached regarding the Order routes, their status must be assessed on the basis of the evidence now submitted with regard to the current Order.

Documentary Evidence

9. A map published by Sanderson in 1835 and the 1st Edition OS map of c1840 show routes roughly similar to the Order routes but not on their present alignments.
10. In 1873 an application made on behalf of the Butterley Company (the Company) was considered at Derby Quarter Sessions. The Company wished to stop up and divert an existing public bridleway which ran along a route similar to the present Station Road. The section of bridleway to be stopped up ended at the eastern end of the current Order route, Point D, and this therefore suggests that its continuation along the Order route was also regarded as being of at least public bridleway status, otherwise the route to be diverted would have been a cul de sac.
11. The proposed new route was longer and more circuitous than the existing bridleway but the Company also offered to 'throw open' a public carriage road which included the current Order routes. The Justices concluded that the proposed diversion would be a public advantage "*...taking into consideration the position of the present road through the Codnor Park Works, and the great advantage to the district of throwing open the new carriage road...*". Subsequent mapping (OS maps of 1881 and 1900) would seem to confirm that the diversion of the bridleway had subsequently taken place and that a route existed along the line of the proposed public carriage road.
12. There is evidence that from 1889 at least, people wishing to use New Road (Long Lane) with vehicles were charged a toll although pedestrians and horse

riders could use the route freely. Tolls were apparently collected at the western end of New Road (Long Lane) close to Point A. This might suggest that the Company's interpretation of 'throwing open' the route stopped short of actually dedicating it as a public vehicular highway and that whilst they allowed the public to use the route with vehicles this was on a permissive basis in return for the payment of a toll.

13. It appears that the collection of tolls ceased at some unknown date but was briefly resumed in 1967.
14. There is no evidence of any formal dedication of the carriage road to the public, no record of any public body having accepted responsibility for it and no record of any formal provision having been made to allow the charging of tolls for use of a public road.
15. Basford Rural District Council highway maintenance records of 1917 and 1929 show that the Order routes were not publicly maintainable at those dates.
16. In 1973, after locked gates had been erected across the Order routes, action was taken by Heanor District Council in the magistrates court against the alleged criminal offence of obstructing the highway. This was unsuccessful and has been interpreted by some objectors as indicative of the fact that the routes could not then have been public highways. However, at that time no public rights over the routes were recorded and it is understood that the district council did not adduce any documentary evidence of the existence of such rights. Also, as the proceedings were brought in respect of a criminal offence, the standard of proof required by the court would be that the offence had to be proved 'beyond reasonable doubt'. In respect of the current Order, a considerable amount of evidence has been adduced and the appropriate test that must be applied before the Order can be confirmed is the 'balance of probabilities'. Accordingly, the magistrates' 1973 decision does not in my view preclude the confirmation of the current Order.

Conclusions regarding the Documentary Evidence

17. The Order routes have existed on their current alignments since the late 19th century at least.
18. The 1873 Quarter Sessions decision indicates that the Order route C-D was already regarded as being at least a public bridleway at that time and that it was intended that the whole of both Order routes should become a public carriage road. Subsequent evidence indicates that the routes were made freely available for public bridleway use but that vehicular use was only allowed subject to the payment of a toll.
19. In the absence of evidence of any formal dedication of the routes as public vehicular highways or of public acceptance of them, it is my view that, on the balance of probabilities, it can reasonably be concluded that the routes either were already bridleways or became such soon after 1873 but not that they became public vehicular routes.

Evidence of Use

20. Forty nine User Evidence Forms (UEFs) were submitted in 1972 in support of an application on behalf of the Derbyshire Footpath Preservation Society in respect of 3 claimed footpaths which included the current Order routes. Several

of these were accompanied by statements providing additional information. A further 16 UEFs were submitted in 1986 and 3 more in 1994 when an application for the routes to be recorded as bridleways was submitted by the Two Counties Bridleway Group. In addition an affidavit was submitted in 1972 by Mr GH Roadley.

21. The UEFs predominantly describe use of the Order routes on foot over a period of 50 years or more prior to 1972. They include only limited references to use of the route on horseback, on bicycles or with vehicles. Most of the forms also refer to public use being stopped by the erection and locking of gates in the late 1960s, in particular a gate near the entrance to Monument Lodge. At the inquiry it was made clear that this gate was probably erected in 1968. Accordingly, the 20 year period of use which would raise a presumption that the routes had been dedicated as public rights of way in accordance with the provisions of the 1980 Act runs from 1948 to 1968 in this case.
22. The great majority of people who completed UEFs claimed to have used the route throughout the relevant 20 year period and many for longer. Many had also used the route on a frequent basis mainly for recreation.
23. Many users made reference to tolls being charged for use of the routes by vehicles and to the presence of a sign near Point A stating that the route was a 'Private Road' and detailing the tolls to be paid for different vehicles. No toll was payable by pedestrians or horse riders and a hand gate allowing passage to such users was never locked. The period when the sign referred to was in place is not known. Mr Roadley in his affidavit stated that as a child he lived in the Toll House at the western end of Long Lane and his father collected tolls on behalf of the Butterley Company. He confirmed that no toll was charged for pedestrians and horse riders.
24. A few references were also made to there having been 'Private Road' signs at other points along the Order routes although no specific details were provided. Such signs appear to have been interpreted as applying only to vehicular traffic and not to pedestrians, horse riders or cyclists. This seems reasonable in the light of the way in which tolls were charged and it is not uncommon for private roads to also carry public footpath or bridleway rights.
25. No substantive evidence was adduced of actions taken by landowners before 1968 to indicate their lack of intention to dedicate the routes as public footpaths or bridleways.

Conclusion regarding Evidence of Use

26. It is my view that the available evidence of public use of the Order routes during the period 1948–1968 would have been enough to raise the presumption that the routes had been dedicated as public footpaths if they had not previously become public rights of way of a higher status.

Common Law

27. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.

28. In this case, it would appear that the public have used the Order routes over a long period of time and the actions of the landowners following the 1873 Quarter Session decision would seem to indicate that they were happy for them to be regarded as public bridleways at least. It is therefore reasonable in my view for it to be inferred that the routes have been dedicated as public bridleways at common law.

The 2006 Act

29. As mentioned before, this act extinguished rights of way for MPVs subject to certain exceptions. In this case none of the exceptions apply so, if rights for MPVs had been established along the Order routes they would have been extinguished as a result of the 2006 Act.

Other Matters

30. Objectors generally were not opposed to the routes being recorded as public bridleways but raised a number of concerns regarding the possibility of them being Restricted Byways, these included:
- Fears that it would not be possible to prevent the routes also being used by motorcycles and other motor vehicles which would detract from the enjoyment of the routes by walkers;
 - The possibility of fly tipping;
 - The likelihood of vandalism and theft.

They also pointed out that there was no local demand for routes for vehicles other than MPVs.

I understand these concerns but, as they lie outside the criteria set out in the relevant legislation, I have given them no weight in reaching my decision.

31. The Schedule to the Order includes a reference to a gate on Monument Lane at GR SK 4336 5121. However, I have concluded that this route became a public bridleway either before or soon after 1873 and there is no evidence to suggest that a gate existed at this point at that time. It would therefore be appropriate for this reference to be omitted and I propose to modify the Order accordingly. Similarly, there are currently other gates across New Road (Long Lane) but again no evidence that they were in place when the route became a public bridleway and it would therefore not be appropriate to add references to these to the Order.
32. To avoid any confusion, I propose to modify references in the Order to New Lane or New Road so as to read 'New Road (Long Lane)'

Conclusions

33. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to modifications to amend the status of the Order routes to bridleways rather than Restricted Byways and to make the other changes referred to above.

Formal Decision

34. I propose to confirm the Order subject to the following modifications:

Wherever the terms 'New Road' or 'New Lane' occur, substitute the term 'New Road (Long Lane)';

Wherever the terms 'Restricted Byway' or 'Restricted Byways' occur, substitute the terms 'Bridleway' or 'Bridleways';

In the Schedule to the Order, Part II, delete the reference to a gate at GR SK 4336 5121;

Amend the Order Maps accordingly.

35. The proposed modifications would have the effect of showing as highways of one description ways which are shown in the Order as highways of another description. It is therefore required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act that notice of the proposal to modify the Order be given and an opportunity for objections and representations be made regarding the proposed modifications.

Barney Grimshaw

Inspector

APPEARANCES

For the OMA

Lisa Edwards	Solicitor, Derbyshire County Council (DCC)
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Who called:

Peter Jackson	Senior legal Assistant, DCC
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Linda Phillips	Legal Assistant –Rights of Way, DCC
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Supporters

Councillor Jack Brown	Ironville Parish Council and Amber Valley District Council
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Ken Goodwin	User of the routes and owner of adjoining land
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Mr D Fretwell	User of the routes
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Lesley Orange	User of the routes
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Objectors

Mrs A Darrington-Mosley	Owner of adjoining land
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Rob Turner	Owner of adjoining land
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Lesley Williams	Owner of adjoining land
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DOCUMENTS

1. Statement of Case and supporting documents, DCC.
2. Proof of Evidence and summary of Peter Jackson, DCC.
3. Proof of Evidence and summary of Linda Phillips, DCC.
4. Appendage to previous statement on behalf of Mr & Mrs Darrington-Mosley, Mr D Fox, Mr & Mrs Turner and Mr J O'Brian.
5. Letter dated 05/09/16 and statement of Mr & Mrs Darrington-Mosley
6. Statement of Joan Colebrook and Email of 27/06/16.
7. Statement of Councillor Brown.
8. Statement of Chris Hook.
9. Copies of additional documents relating to the possible closure of the Coach Road in 1972, walks along the Order routes and a photograph of a stile near Monument Lodge submitted by Councillor Brown.



