
Order Decision

Site visit made on 4 October 2016

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 7 October 2016

Order Ref: FPS/U1050/7/103

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Derbyshire County Council (Footpath between Clowne Road and Church Road – Bolsover) Modification Order 2014.
- The Order is dated 2 January 2014 and proposes to modify the Definitive Map and Statement for the area by adding a footpath running between Clowne Road and Church Road, Stanfree, Bolsover, as shown on the Order Map and described in the Order Schedule.
- There were 15 objections outstanding when Derbyshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map to which I have added two additional points (Points X and Y).
2. I made a site inspection on Tuesday 4 October 2016 accompanied by Mr and Mrs Swinden, objectors, and P Shimwell, Derbyshire County Council. On this visit we were able to walk sections of the Order route between Points A-B-C and D-E but between Points C and D there was no discernible route and passage was not possible on account of dense vegetation. The route was also obstructed by a locked gate at Point Y and at Point E by an overgrown gate secured with barbed wire which made it impossible to gain access to or from Church Road.

The Main Issues

3. 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.
4. All 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.

5. Common law also requires me to consider whether the use of the path and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.

Reasons

6. The claimed route crosses land which had been occupied by the former Oxcroft Colliery which closed in 1974. The area around the former mine shaft to the south of Point B is currently fenced off and land formerly occupied by colliery buildings (between Points X and Y) is now an engineering yard and also fenced off. On my visit gates at Point X were open but gates at Y were locked and a key had to be obtained from nearby premises.
7. No documentary evidence helpful in the determination of the status of the claimed route has been discovered by Derbyshire County Council, the Order Making Authority (OMA). The status of the route must therefore be determined by reference to the available evidence of public use and whether this is sufficient to raise a presumption of statutory dedication under the provisions of the 1980 Act or for dedication to be inferred at common law.

Statutory Dedication

Date when public use was brought into question

8. An application for the route to be added to the definitive map was made in 2007 following the erection of a notice stating that the route was not a public footpath and the fencing off of the route where it passed through or around an engineering yard (Points X-Y).
9. There is also evidence that the same area of land was fenced off in 1990 but that an alternative concessionary path had been established around the outside of the engineering yard. Between 1990 and 2007 this concessionary path seems to have been used by members of the public.
10. In the late 1980s landscaping work took place on some of the former colliery land and may have interrupted public access temporarily.
11. On balance, it is my view that public use of the Order route was brought into question in 1990 when the route through the engineering yard was obstructed and an alternative was provided only on a concessionary basis. The 20 year period of use which would raise a presumption that the route had been dedicated as a public right of way in accordance with the provisions of the 1980 Act therefore runs from 1970 to 1990 in this case.

Evidence of users

12. Fifteen User Evidence Forms (UEFs) were submitted in support of the application for the route to be added to the definitive map describing use between 1955 and 2007.
13. Maps attached to the UEFs only showed part of the claimed route, roughly from Point A to Point Y. Accordingly, the OMA sent further maps to people who had

completed forms and asked them to mark the route they had used. Ten replies were received, none of which showed a route corresponding precisely to the Order route or the route applied for (except that of the applicant himself). Five of the maps showed routes significantly different from the Order route between Points B and E.

14. Seven people claimed to have used the route throughout the relevant 20 year period and seven for part of it. One person had only used the route after the end of the period. Frequency of use claimed by the 14 people who used the route during the relevant period varied. Six people claimed to have used it weekly, six, monthly or less and 2, daily but only for part of the period.
15. Some users stated that when the colliery was operational public access was still possible and a few mentioned signs on colliery buildings directing path users. However, the location and wording of these signs is not known. On the other hand, owners and occupiers of agricultural land crossed by the Order route stated that no path existed and that public access had been as a result of fences being forcibly damaged.
16. I have seen no substantive evidence of action taken by landowners before 1990 to discourage public use of the Order route.

Conclusions regarding Statutory Dedication

17. Although there is some evidence that a route between Clowne Road and Church Road was used by members of the public during the period 1970-1990 it is by no means clear that people consistently followed the current Order route. The amount of user evidence available is limited and various routes appear to have been used between Points B and E. It is my view that, on the balance of probabilities, the available evidence does not indicate that the Order route or any other single route has been used by the public throughout the period from 1970-90 to such an extent or in such a manner as to raise the presumption that it has been dedicated as a public right of way of any sort in accordance with the provisions of the 1980 Act.

Common Law

18. 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.
19. In this case, although there is some evidence of public use of a route since the 1950s, there is no evidence which suggests that owners of the land crossed have intended to dedicate a public footpath over it. The evidence also suggests that no single route has been consistently used. It would therefore not be reasonable to infer that the Order route has been dedicated as a public right of way under common law.

Other Matters

20. Objectors to the Order raised a number of concerns should the Order be confirmed, which included:
 - depreciation in the value of industrial units
 - reduced security of industrial premises

- danger to path users from industrial traffic
- dog fouling and litter on agricultural land
- loose dogs disturbing livestock
- damage to fences
- possible increase in illegal and anti-social activities

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.

Conclusions

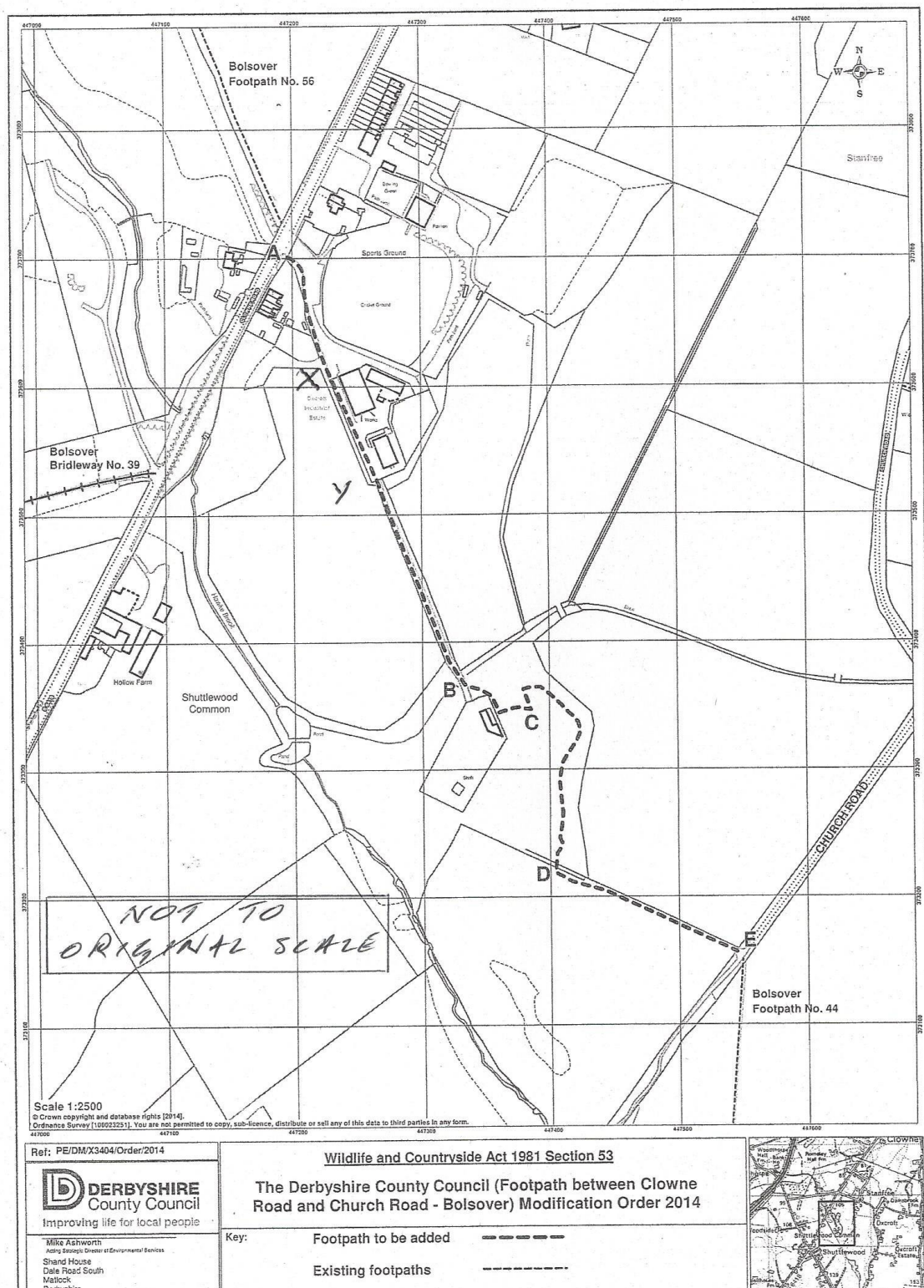
21. Having regard to these and all other matters raised, I conclude that the Order should not be confirmed.

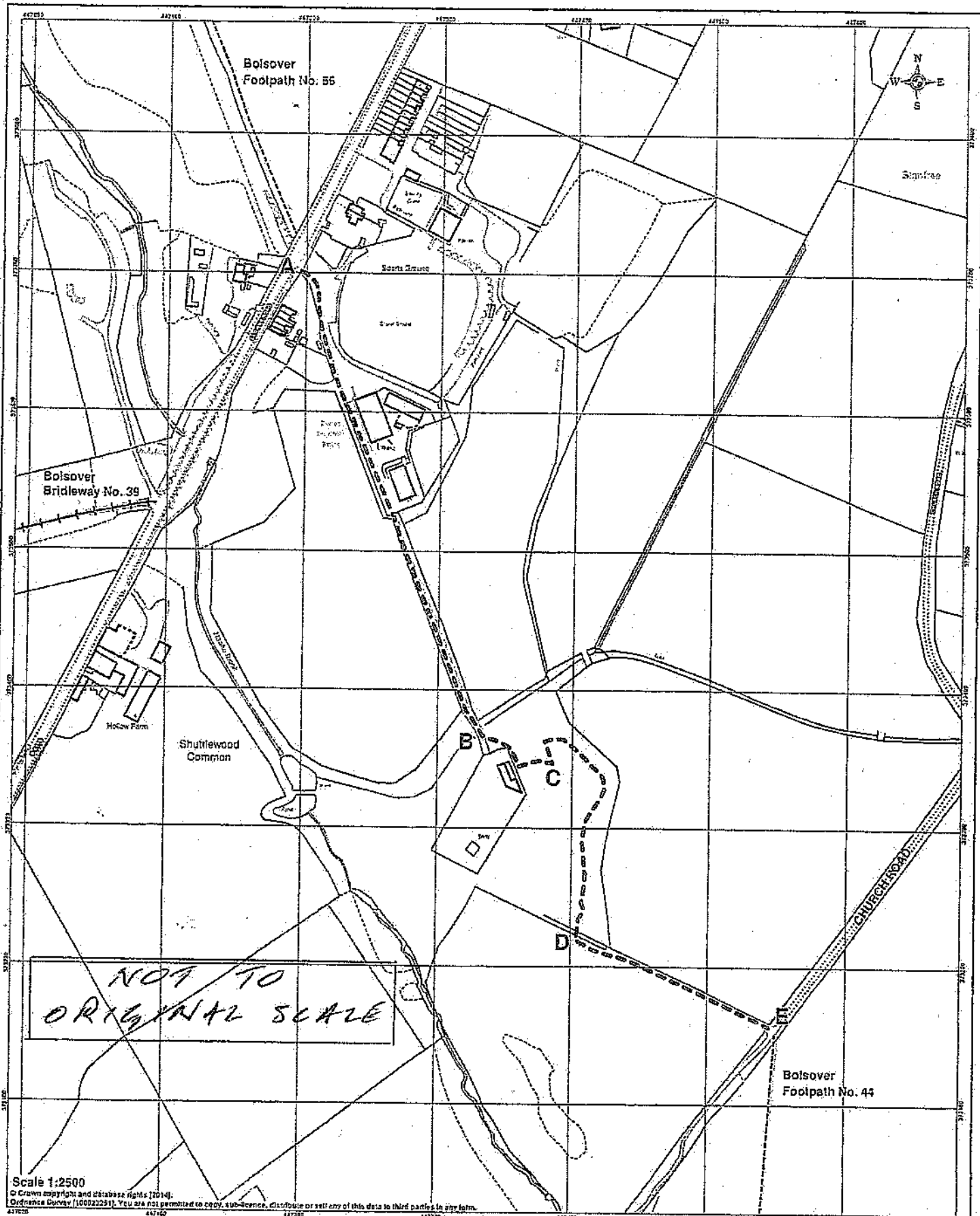
Formal Decision

22. I do not confirm the Order.

Barney Grimshaw

Inspector





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The Derbyshire County Council (Footpath between Clowne
Road and Church Road - Bolsover) Modification Order 2014

Key:	Footpath to be added	---
	Existing footpaths	---
	Existing bridleway	+

