
Order Decision

On papers on file

by Martin Elliott BSc FIPROW

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

Decision date: 07 August 2017

Order Ref: ROW/3167904

- 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 (Addition of a Bridleway between Well Lane and Burton Road, including the upgrading of parts of Public Footpaths Nos 35 and 37 – Parish of Repton) Modification Order 2014.
- The Order is dated 9 January 2014 and proposes to modify the Definitive Map and Statement for the area by adding a bridleway and upgrading parts of public footpaths 35 and 37 to a bridleway as shown in the Order plan and described in the Order Schedule.
- There were two 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 confirmed.

Procedural Matters

1. I was due to hold a public inquiry in respect of the Order on 18 July 2017. However, the two objections to the Order were withdrawn and the inquiry cancelled. I have therefore made this decision on the basis of the papers on file. I have not visited the site but am satisfied that I can make my decision on the information before me.

The Main Issues

2. The Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of an event specified in section 53(3)(c)(i) and (ii) of the 1981 Act.
3. The main issue is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show, on the balance of probability, that:
 - (i) a right of way which is not shown in the map and statement subsists over the land in the area to which the map relates (addition of public bridleway B¹ to C and D to E); and
 - (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description (upgrading of parts of public footpath 35 and 37, A to B and C to D, to public bridleway).

¹ Letters A to E refer to points on the Order map

4. The Council rely on documentary evidence in support of confirmation of the Order.

Reasons

Map of part of the Lordship of Repton circa 1762

5. The map which is understood to predate the inclosure award does not show the Order route. However, the map identifies the various areas of land including the Good Field and Nun Flatt.

Repton inclosure award 1769

6. The 1769 inclosure award was enabled by an Act, of 1766, for dividing and inclosing the open fields of Repton. The award sets out and appoints a public bridle road, private cart carriage and drift road over the Good Field from the west end of Well Lane to Newton Road. The award refers to the route leading to an inclosure called Nun Flatt Close after which the route proceeds in a northward direction. The award plan is missing but the award provides good evidence of a bridle road between Well Lane and Newton Road (known today as Burton Road). The map of 1762 (paragraph 5) identifies the locations of the Good Field and Nun Flatt. The Order route crosses land known as the Good Field and turns northwards at Nun Flatt Close.
7. As noted by the Council the award does not make it clear as to the extent of Well Lane. However, bearing in mind the map of 1762 which shows a route which corresponds with Well Lane ending at the boundary of the Good Field, it is more likely than not that the western end of Well Lane at the time of inclosure was at the boundary of the land to be inclosed. If Well Lane extended beyond this point, although this is not supported by the 1762 map, it is reasonable to presume that the lane carried at least rights of a private cart, carriage, drift road and public bridleway. If this were not the case then it would be unlikely that the award would set out a route of such status leading from Well Lane
8. The Council also identify a route called Cocky Lane on the 1762 map (now recorded as public footpath 32) and a route branching off this route (now recorded as public footpath 38). Cocky Lane is set out in the award as a private cart, carriage and drift road. The fact that this route leads off the route identified at paragraph 6 above is supportive of the existence of the awarded route.
9. In withdrawing their objection one of the objectors contends that the awarded route changes, over the Good Field, to a private cart carriage and drift road. I do not agree, the award clearly sets out a public bridle road, private cart, carriage and drift road from the west end of Well Lane to Newton Road. The awarded route does not change status over the Good Field.

Burdett's Map of Derbyshire surveyed 1762 to 1767

10. The map shows a 'cross road' corresponding partly with Well Lane and quite possibly continuing westwards on a route identified previously as Cocky Lane. The map shows a route turning northwards to Newton Road but this does not correspond with the Order route. It should be noted given the date of the survey it is likely that the map reflects the road network prior to inclosure and not necessarily the post-inclosure landscape.

Plan of the Parish of Repton in the County of Derby 1829

11. The map is the earliest post-inclosure plan found by the Council and shows a route which corresponds with the route described in the inclosure award and the Order route. The map is suggestive that the route set out in the award is the Order route although the map provides no evidence as to status.

A map of Repton and Milton from the last survey by M R Benton in 1930

12. This plan is essentially the same as the 1829 plan and I revert to my comments at paragraph 11 above.

Ordnance Survey mapping

13. The 1st edition Ordnance Survey map circa 1840 shows a route which corresponds with the Order route. The Council refer to a deviation in the alignment of the route in the vicinity of point B. However, as concluded by the Council, this deviation is likely to be in consequence of scale. The 1st edition 1:2500 map of 1880 and the 2nd edition 1:2500 map of 1899 show the Order route as an enclosed or unenclosed track. Ordnance Survey maps were not produced with the intention of identifying public rights but show topographical features at the time of the survey. The maps therefore show the physical existence of a route but provide no evidence as to status.

Plan of Repton showing Burdett and Crewe estate ownership 1881

14. The plan shows the Order route as a significant route which is excluded from the adjacent landholdings. The map provides no evidence as to status.

1910 Finance Act records

15. The Order route passes through a number of hereditaments. The only hereditament for which a deduction is made for 'public rights of way or user' is plot 483. However, in the absence of information as to the extent of this hereditament and other information it is not possible to reach any conclusion as to whether or not the deduction relates to the Order route. In respect of the other hereditaments, the absence of any claim for a deduction does not preclude the existence of a public right of way.

Sale particulars 1921

16. The 1921 auction documents relating to property in Repton (lot 15) refer to an awarded occupation road leading from Repton Road over field number 355. This corresponds with the section of the Order route leading from point A and supports the inclosure award evidence of a route from Repton Road. The sale particulars also refer to an 'awarded occupation road from Well Lane to the Cocky Farm'. This might in part relate to the Order route but in the absence of further details this is not necessarily the case. It is noted that the plan shows two routes leading from Well Lane through lot 15.

Definitive map and statement

17. In the parish surveys undertaken as part of the process of producing the definitive map and statement the parish claimed a public footpath (public footpath 35) which terminated on the current Order route near to point E. In 1981 the District Council made a diversion order diverting the route around the field edge and along part of the Order route. Objections were received and the

order was referred to the Secretary of State for the Environment. The subsequent Inspector's decision refers to objections which stated that part of the proposed route was to run over a route which already carried higher rights of public bridleway. Although the Inspector was not in the position to determine whether or not part of the alternative route was a bridleway the decision supports a view that at the time part of the alternative route was considered to be a bridleway.

18. The parish survey for public footpath 37 refers to the Order route as being a cart road repairable by the relevant owners. The parish survey does not assist in establishing bridleway rights.

Correspondence between Repton Parish Council and Derbyshire County Council

19. On 21 May 1954 the Clerk to the Parish Council wrote to the County Council raising concerns as to the condition of the 'public cart road from the gateway just West of Field Houses which is the junction of Well Lane'. It is stated that the 'roadway is used considerably as access to Burton Road from Well Lane'. The County Council responded and stated that there was no highway repairable at public expense beyond Danesgate on Well Lane. Subsequent correspondence from the Parish Council, 13 July 1954, indicates that on consulting the parish award the road from the west end of Well Lane is a public bridle road and private cart, carriage and drift road. The correspondence further indicates that the Repton survey was correct in not claiming the route as a public carriage way but that it should have been shown as a public bridle and footpath. The reply from the County Council confirms the content of the award. However, whilst reference is made to a proposal to amend the draft map there is no evidence before me that the route was included on the draft map as a bridleway; the route west of Field Houses, subject to the correspondence, was recorded as a public footpath.
20. The correspondence is supportive of the inclosure award evidence and although the route to the west of Field Houses was not recorded as a public bridleway this does not preclude such rights from being shown to exist at a later date.

Conclusions on evidence

21. Having regard to all of the above, the inclosure award provides clear evidence as to the awarding and setting out of a public bridleway. The description of the route is consistent with a route corresponding with the Order route. Although the award plan is missing the subsequent map evidence is highly supportive of the existence of a route which corresponds with that identified in the inclosure award and is again consistent with the description in the award. It is more likely than not that the route set out in the award is the route subsequently mapped. Whilst the route was not recorded on the definitive map and statement as a bridleway the correspondence from the Parish Council indicates that they considered the route to be a public bridleway. I conclude therefore that the Order should be confirmed.

Other Matters

22. The original objectors raise concerns in respect of conflicts of use and misuse by motor vehicles. The point is also made that there is no demand for a public bridleway. Whilst I note these matters the 1981 Act does not allow such

considerations to be taken into account. The relevant considerations are those set out at paragraph 3 above.

Conclusion

23. Having regard to these and all other matters raised in the papers on file I conclude that the Order should be confirmed.

Formal Decision

24. I confirm the Order.

Martin Elliott

Inspector

