



Order Decision

Inquiry opened on 16 January 2018

by Sue M Arnott FIPROW

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

Decision date: 22 March 2018

Order Ref: ROW/3177165

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Derbyshire County Council (Bridleway and Byway open to all traffic along Back Lane – Darley Dale) Modification Order 2016.
- The Order is dated 21 January 2016. It proposes to modify the definitive map and statement for the area by recording a public bridleway and a byway open to all traffic along Back Lane, Darley Dale, as shown on the Order map and described in the Order schedule.
- There were five letters of objection outstanding (together with two in support and one representation) when Derbyshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: Confirmation of the Order is proposed, subject to the modifications set out in the Formal Decision below.

Procedural Matters

1. I held a public local inquiry into the Order at the offices of the Derbyshire Dales District Council in the Town Hall, Matlock on 16 and 17 January 2018, having inspected the route in question, unaccompanied, during the afternoon of 15 January. At the close of the proceedings, none of the parties present considered it necessary for me to make a further visit to the site.

The Main Issues

2. The Order was made by Derbyshire County Council (DCC) under the Wildlife and Countryside Act 1981 on the basis of events specified in sub-section 53(3)(c)(i), proposing to add to the definitive map and statement a bridleway along the lower section of Back Lane (shown as A-B on the Order map) and a byway open to all traffic (BOAT) along the upper part (B-C). If I am to confirm it, I must be satisfied that the evidence shows that the public rights of way described in the Order subsist on a balance of probability.
3. The route in question is recorded by the highway authority (DCC) as a non-classified highway (NCH). This designation recognises the public responsibility for maintenance of the way although it is not conclusive evidence of any particular class of highway. Nevertheless, there can be little doubt that there is a public right of way of some description along Back Lane.
4. Consequently the main issue in this case is not whether there is a public right of way along the Order route but which category of highway should be recorded on the definitive map and statement – if any.

5. If the way is found to be a public vehicular one, its inclusion in the highway authority's maintenance records provides exemption¹ from the effects of Section 67(1) of the Natural Environment and Rural Communities Act 2006 which would otherwise remove any such rights for mechanically propelled vehicles (MPVs).
6. However it would still be necessary to consider whether or not the route fits the statutory description of a BOAT insofar as it is "*a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used*".² If not, the route may be a vehicular highway but not one which should be recorded on the definitive map.
7. Although historical documentary evidence has been discovered and needs to be considered, the case in support is argued partly on the basis of presumed dedication of a public right of way under statute, the requirements for which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this to have occurred, there must have been use of the claimed route by the public, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated as a public highway. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner during this period to dedicate the way for use by the public; if not, a public right of way will be deemed to subsist.
8. In the alternative, if not satisfied the requirements for dedication under statute have been met, I may consider the common law approach. In addressing this possibility I would need to explore whether, during any relevant period, there was express or implied dedication by the owner of the land in question (having the capacity to dedicate a public right of way) and whether there is evidence of acceptance of the claimed right by the public. In this instance, the burden of proof would lie with those that assert the existence of a highway.
9. None of the parties submitted that the Order route is a public footpath; that remains a possibility (although the evidence does not point in that direction).

Reasons

10. On the basis of the historical documents it examined, DCC formed of the conclusion that a public bridleway was probably established along the whole Order route long ago, relying on the legal maxim '*once a highway, always a highway*'. Other parties offer alternative interpretations of this historical evidence. I propose to consider this first.

Historical documentary evidence

11. A key document in this case is the Darley Inclosure Award of 1769 which followed the Darley Common Inclosure Act of 1766. Before considering these records, and to put their interpretation into better context, I shall first examine the evidence pre-dating the Act and Award. This includes the 1760 Turnpike

¹ Sub-section 67(2)(b) of the 2006 Act provides as follows: "(2) Sub-section (1) does not apply to an existing public right of way if ... (b) immediately before commencement [2 May 2006] it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 ... (list of highways maintainable at public expense)"

² Section 66 of the 1981 Act

Act, a map by Burdett surveyed between 1762 and 1767 and the remains of two old stone guide stoops.

Pre-inclosure evidence

12. The Turnpike Act was enacted for the repair and widening of three roads including the present B5057, described then as the current high road, this being "*in a ruinous condition*". The Order route is not mentioned. The Burdett map shows the turnpike roads but not the Order route although it does locate 'Darley Flash' on the moor. Whilst it is entirely possible Back Lane was in existence at this time, and that it could have pre-dated the turnpike road as the main way to Chesterfield, there is no substantive evidence to support this.
13. Along the Order route (between A and B) an old stone guide stoop now serves as a gate post. An extract from a local guidebook '*Peakland Roads and Trackways*³ makes reference to this "*early eighteenth-century guidestone*", it bearing the inscription "*Chasterfield Road*" (sic) with a pointing hand. The book notes that the stone is to be found on what it describes as "*an alternative packhorse route from Darley Dale up to Beeley Moor*". However the source for this assertion is not given.
14. Further highlighted⁴ is the use of another guide stoop, this time in the walls of Darley Forest Grange, a building said to have been substantially re-built in 1784. The part of the stone visible in the wall shows "*Winster Road*".
15. Tempting as it is to attach weight to these apparently ancient features, there is no evidence to confirm that either is in, or close to, its original location. Judged alone, this pre-inclosure evidence offers little in support of a pre-existing highway or packhorse route although neither is ruled out.

The 1766 Darley Common Inclosure Act and 1769 Darley Inclosure Award

16. It is not disputed that the 1769 Award required the Inclosure Commissioners to set out public highways to "*contain Sixty Feet in Breadth, at the least, between the Walls or Ditches*". Neither is there any doubt that they set out the Order route as "*Hazle well Road*", a "*private road for horses carts and carriages of the breadth of seven yards*" (6.4m)⁵.
17. In the case of private roads for which individual users were not specified, the Commissioners made clear that these ways were to be "*for ever hereafter ... appropriated and set apart ... to and for the sole use and benefit of all and every the Inhabitants of the said Parish or Manor of Darley to be by them enjoyed and used with horses carts and carriages or otherwise as before directed...*"
18. The Commissioners' directions continued: "*... it shall not be lawful for any person or persons whomsoever to use any other roads or ways over the said new intended allotments either with horses cattle carts or carriages*". Indeed the Act itself made clear that, once the new roads were set out and appointed, "*it shall not be lawful for any Person then after, to use any public Highways, or private Roads or Passages, over the said Lands and Grounds so to be inclosed, either with Foot or with Horses, Carriages or Cattle, other than such as shall be ascertained, set out, and appointed ...*"

³ By Dodd & Dodd, 2000

⁴ In 'Derbyshire Guide Stoops'; www.derbyshireheritage.co.uk

⁵ Except at a particular corner where it was to be 12 yards (c 11m) wide

19. Both DCC and Mr Kind interpret this to mean that whatever public rights may have existed pre-enclosure (if any), these were effectively stopped up unless set out by the Commissioners. Further, any public maintenance liability would be lost unless set out as a highway and maintained accordingly. As Hazle Well Road had been set out at substantially less than the minimum width for public carriageways, there could be no question that any pre-existing highway had survived the process. As a result it is argued that the Award 'wiped the slate clean' as regards Back Lane so that thereafter this was purely for the use of local inhabitants.
20. Mr Kind referred to the judgement in *Buckland and Capel v the Secretary of State for Environment, Transport and the Regions* [2000]⁶. In this case the Court concluded that "*The Commissioners did not have power under the Act of 1797 to create a public highway otherwise than in accordance with the precise powers given under the statute. It was not open to them to circumvent the conditions necessary before a road would become a public highway by purporting to create a private way but to make it open to the public at large.*" However, notwithstanding the Commissioners' lack of power to create new highways at less than 60 feet wide, the way could subsequently be dedicated as public.
21. However Mrs Mallinson took a slightly different view, submitting that pre-existing highways were only extinguished in this process where they were not set out; she argues that here the road was set out, albeit the existence of any rights for the public were not formally recognised. However there are instances where public footpaths and bridleways meet private roads⁷, implying that these continue along the road, despite it being set out as a private carriageway. She highlights a further entry in the Award which refers to a water channel into Hazle Well Road to be made "*for the use of the several proprietors of Darley aforesaid and other persons passing on the said road*". Such "other persons" could, she argues, only be referring to the public. Further, if the Order route were a pre-existing public bridleway (or footpath), the parish would continue to be responsible for maintaining it as a public path.
22. I recognise there is a significant degree of ambiguity here. Following the authority of *Buckland* and other relevant caselaw, I can have no hesitation in concluding that the Commissioners had no explicit power to preserve a pre-existing highway by setting it out as a road for the exclusive use of the inhabitants of Darley. I tend to agree with Mr Kind that this may simply have been a pragmatic approach on the part of the Commissioners but nonetheless the effect was that no public rights survived the process. Yet, if there had indeed been a pre-existing highway along Back Lane, there was nothing in the Award to prevent re-dedication of the way to the public, either with its pre-enclosure status or otherwise.
23. However the matter is further blurred by a key omission in the Award; there is no reference by the Commissioners to responsibility for maintaining these 'communal' private roads, that is those which were not set out for the use of specified allotment holders. Whilst the Act states that private roads are to be maintained either by the proprietors of the allotments "*or in such manner as the Commissioners direct*", the Award is silent on the matter.

⁶ *Buckland & Capel v SSETR* (QBD)[2000] EWHC Admin 279, [2000] 1 WLR 1949, [2000] 3 All ER 205

⁷ However there are no such paths connecting with Back Lane.

24. Aside from Mrs Mallinson's debateable point about the water channel, on balance I am led to the conclusion that there is no acknowledgement of any public right of way along Back Lane in the Inclosure Award in 1769. A strict interpretation of the Award inevitably leads to the conclusion that any pre-existing highway was extinguished at that time, yet the physical setting out of Hazle Well Road as a way enclosed on both sides for most of its length, effectively preserved a route between Sydnop Hill and Flash Lane, although not necessarily on the original alignment throughout. Whilst I am attracted by Mrs Mallinson's proposition that pre-existing public rights were somehow preserved where they coincided with routes that were physically set out, there is no actual evidence to show that the line of Back Lane pre-1769 followed the line shown in the inclosure map.
25. The layout of the inclosure fields and the differences between the lower and upper sections suggest to me that there was a pre-existing route bounded by the walls of old enclosures leading from 'the high road' on Sydnop Hill up towards Darley Common. Once it reached the open moor, it would not be surprising had the way ceased to be as well-defined so that it was not until the land was being divided by the Inclosure Commissioners that the present route was established beyond the lower 'original' section leading up from point A. That may be conjecture to a degree, but it would fit the evidence.
26. To determine whether or not the route was subsequently dedicated (or re-dedicated) as a public highway after the Award requires examination of the post-1769 evidence.

Post-enclosure evidence

27. Mr Kind supplied an extract from John Cary's map of Derbyshire dated 1787. Like Burdett's map, this shows only the turnpike road (B5057) but, similarly, this is not surprising given the scale of map.
28. However by the 1820s and 30s, Back Lane was included in commercial county mapping as a 'cross road'⁸. Greenwood showed it on his map of Derbyshire in 1824/5, as did Sanderson a decade later in 1835 and 1836. Both map-makers differentiated only between turnpike roads and cross roads. By 1840, the first 1" to 1 mile Ordnance Survey (OS) map was published, showing Back Lane in a similar manner to other roads in the local highway network.
29. All four maps are reasonably consistent in their depiction of Back Lane but with sufficient differences overall to dismiss any suggestion of copying. The description 'cross road' is not easily defined but analysis suggests that whilst it could be applied to a bridleway, a carriage road is most probable; it is unlikely to represent a public footpath.
30. The 1838 Tithe Map for Darley shows the whole of Back Lane (and Butcher's Lane) coloured in the same manner as other roads – both public and private ones. Roads are not named on the map and remain un-numbered with no separate reference in the accompanying apportionment. Whilst this is not proof of public status, the depiction of Back Lane is entirely consistent with this being part of the public road network, with nothing to distinguish it from Flash Lane other than its width. By this period, buildings had been constructed at what is now Woodside Farm and two barns are shown along section A-B, none of which had been noted on the inclosure map seventy years earlier.

⁸ And so too was Butcher's Lane which links Back Lane with the B5750 at Sydnop Hill

31. The OS First Edition 25" to 1 mile map of 1880 is the first to identify Back Lane (and Butcher's Lane) by name⁹. Likewise, the 1898 edition labelled both lanes, with road junctions shown in the same manner as other known highways with no gates at any point cross them. On the 1897 1" to 1 mile map Back Lane is shown in the category "Metalled Roads; Third Class", as was Butcher's Lane and Flash Lane.
32. Moving into the twentieth century, the records compiled under the Finance Act of 1910 show Back Lane and Butcher's Lane were excluded from adjacent hereditaments¹⁰ for taxation purposes. There is therefore a strong possibility that the route was considered to be a public highway, and most probably a vehicular one since footpaths and bridleways were usually dealt with by deductions recorded in the accompanying records. However, there can be other explanations for the exclusion, for example where (as here) a private road was set out in an inclosure award as a way for a large number of people but without its ownership being assigned to any individual.
33. As Mrs Mallinson points out, in the case *Fortune v Wiltshire County Council [2012]* Lewison J concluded that Finance Act records are not definitive but "simply one part of the jigsaw puzzle" to be considered along with other relevant material. I entirely agree; however, combined with all the early mapping and historical documents I have considered so far, I find the balance tilting towards vehicular highway status rather than public bridleway.
34. Indeed that conclusion is wholly in line with the highway authority's maintenance record, referred to as the 'list of streets' which shows the full length of Back Lane (and Butcher's Lane) as NCH¹¹.
35. On 21 May 2012 DCC accepted a report which reinforced the authority's interpretation of NCH status that was to apply when processing definitive map modification order casework. The stance now taken is that inclusion in the highway maintenance records as NCH does not necessarily demonstrate the existence of public vehicular rights and that other documents need to be examined in order to establish the existence of such rights¹².
36. Mr Jackson was able to produce plans from the former Matlock Urban District Council which showed Back Lane as a NCH. This was not from the original list of streets for the district, required of an urban authority since 1925; nor, judging by the date of the modern OS base map used, was it the record of publicly maintainable highways dating from the late nineteenth century following the Public Health Act 1875 which, in urban districts, saw responsibility for publicly repairable highways transferred from the parishes, highway boards and highway unions. Responsibility for highways remained with the UDC until the Local Government Act of 1972 when it transferred to DCC.
37. If a road achieved 'public highway' status before 1835, it would automatically become repairable by the inhabitants at large and therefore be maintainable at

⁹ And the first to show Victoria Cottages (now Moorlands)

¹⁰ Although the plans do not obviously exclude the road through a large enclosure at its northern end, the written records are said to clearly omit the OS parcel number for the road itself.

¹¹ I noted that in its closing submissions, DCC stated that there is a lack of evidence to show the route has historically been maintained for use by the public with wheeled vehicles. That is difficult to reconcile with the fact that Butcher's Lane and the middle section of Back Lane now have a tarmac surface, apparently provided by the highway authority.

¹² I noted that Mr Jackson was not able to offer an estimate of the proportion of NCHs in Derbyshire which are accepted to be vehicular highways. Such a figure would have assisted when considering whether a route is more likely to carry such rights than not.

- the public expense. On the other hand, if it became a highway after 1835, it would not become publicly repairable unless subject to a formal statutory 'adoption' procedure¹³.
38. Mr Kind referred to this principle, articulated by Widgery J in the case *Roberts v Webster* [1967]¹⁴ but suggested this might here be applied in reverse: Back Lane is a NCH and therefore maintainable at the public expense; in the absence of any formal adoption agreement, it must be presumed that the public maintenance liability is founded on having been established as a highway before 1835.
39. Such a conclusion would be consistent with the commercial maps of the early nineteenth century which, as I have already noted, show Back Lane in a similar manner to other roads in the local highway network. However, it does not necessarily confirm the lane is a vehicular highway as opposed to one carrying lesser public rights.
40. Back Lane was not surveyed for inclusion on the first definitive map and statement when preparations began following the National Parks and Access to the Countryside Act in 1949 and has not been added to this record since. Although DCC suggested that in the 1950s Back Lane may have been overlooked on account of it being a private road, I find that somewhat implausible. Had that been the case (which would have been unusual given its NCH status), at the very least one might have expected a claim for a public footpath if not a bridleway. It seems to me more likely that the Parish (and DCC) considered it to be a full vehicular highway and thus not appropriate for inclusion on the definitive map, even as a 'road used as public path'.
41. The 1947 1" series OS map had shown the Order route as a "Minor Road", not in the category "Bridle & Footpaths". Later, on the 1962 revision, it is shown as a white road: "Minor Roads in Towns, Drives and Unmetalled Roads".
42. However, moving onto the latter part of the twentieth century, there is a marked change. The 1989 1:50,000 OS Landranger map showed the majority of Back Lane as "Other road, drive or track" but the lowermost section was shown by single black dashes representing a "Path". In fact the route is not shown at all on the Matlocks and Wirksworth Street Plan published by Derbyshire Dales District Council in March 1989.
43. There are three further points I have noted: firstly, as highlighted by Mr Kind, no evidence has been produced of any prosecutions for driving on a non-vehicular highway along Back Lane, or of any direct challenges to the rights of vehicular users; secondly, that I have no evidence before me to indicate that any of the residents of Back Lane (or other parties holding land along the route) rely on an express private right of way in their deeds in order to gain vehicular access to their property.
44. The third point concerns the cattle grid installed by the highway authority near point A in the early 1990s. At the hearing, Mr Hardy (a former employee of DCC in charge of highway maintenance) explained the circumstances leading to its installation which had been essentially to address the problem of surface material being washed down the lane and onto the main road.

¹³ There is no evidence of any such procedure having taken place in relation to Back Lane.

¹⁴ *Roberts v Webster* [1967] 66 LGR 298, 205 EG 103

45. The unintentional effect of this cattle grid had been to prohibit horse-drawn carriages from using this lower section of Back Lane¹⁵. I heard from Mrs Dale-Leech that this, together with the increased vehicular traffic and deteriorating surface, had eventually caused her to close her riding stables, as well as deterring several other witnesses from using A-B, both on foot and with horses.
46. Section 82 of the 1980 Act allows a highway authority to install cattle grids in highways¹⁶ but only where these are public carriageways. Having heard Mr Hardy's evidence, given in good faith, I doubt the thought had crossed the minds of those putting in the cattle grid with the best of intentions, but in fact the presence of the cattle grid could only be lawful if the public enjoyed a vehicular right of way over it.
47. Given the lack of adequate provision for non-motorised traffic, I offer no comment on the lawfulness of the cattle grid but as it is a relatively recent installation in terms of the history of Back Lane, I do not consider it appropriate to consider recording it as a valid limitation on public use in the definitive statement and therefore propose to delete it from the Order schedule.

Conclusions on the historical evidence

48. Having examined all the available historical and mapping material, I draw the conclusion that, at some point between 1769 and 1836, the Order route became (or possibly reverted to) a publicly maintainable all-purpose highway. Although it is clear that the 1769 Inclosure Award did not confer that status, I consider the lane's depiction on all subsequent maps until the mid-twentieth century to be more consistent with that conclusion than that it continued as a private road carrying a public bridleway. Both the 1910 Finance Act records and the highway authority's maintenance records also lean towards that conclusion although none of these documents offer conclusive evidence of vehicular status.
49. Whilst there has always been a limitation on the available width along the southern section of A-B, since 1769 at least, I find nothing amongst the evidence that would swing in favour of a public bridleway rather than a vehicular road. On balance, I conclude that a public vehicular highway did and still does exist along the whole of Back Lane.
50. I note Mr Kind submits that the considerable number of statements from vehicular users of the Order route should be taken as evidence of the reputation of the route as a vehicular road. I exercise a degree of caution over that approach insofar as I cannot be sure that any such reputation amongst motor cyclists and 4-wheel drive enthusiasts originates from a long-standing knowledge of the way as opposed to a (possibly misconstrued) reliance on the list of streets.

The definition of a BOAT

51. Having been satisfied that a public vehicular right of way has been shown to subsist, the question arises as to whether the route satisfies the statutory requirements to warrant addition to the definitive map as a BOAT: that it is "*used by the public mainly for the purpose for which footpaths and bridleways are so used*".

¹⁵ Ridden horses were able to squeeze through the pedestrian gap on the west side of the cattle grid

¹⁶ With appropriate gates provided to facilitate the passage of non-motorised traffic

52. No detailed submissions were made on this point from any of the parties. However guidance is contained in Defra Circular 1/09 (v2) and in the leading case on this issue: *Masters-v-the Secretary of State for the Environment, Transport and the Regions [2000]*¹⁷ (the *Masters* case).
53. When deciding whether a way ought to be shown on the definitive map and statement as a BOAT, Paragraph 4.38 of Circular 1/09 advises authorities to “*examine the characteristics of the way. Relevant case law suggests that, for a carriageway to be a BOAT, it is not a necessary precondition for there to be equestrian or pedestrian use or that such use is greater than vehicular use. The test also relates to its character or type and whether it is more suitable for use by walkers and horse riders than vehicles.*”
54. However, in the *Masters* case, Roch LJ concluded that “*The purpose of the definition (in the 1981 Act) was to identify the way Parliament intended should be shown on the definitive map and statement by its type or character.*”
55. He continued: “*Parliament was setting out a description of ways which should be shown in the maps and statements as such byways. What was being defined was the concept or character of such a way. Parliament did not intend that highways over which the public have rights for vehicular and other types of traffic, should be omitted from definitive maps and statements because they had fallen into disuse if their character made them more likely to be used by walkers and horse riders than vehicular traffic because they were more suitable for use by walkers and horse riders than by vehicles.*”
56. Thus a consideration of recent public use by pedestrians, equestrians and by vehicular users can be relevant in determining the character or type of a particular way but it is not necessarily the defining factor.
57. From the evidence I heard at the inquiry from users of the Order route, in recent years use of the lower part (A-B) by horse riders and pedestrians has declined proportionally as vehicular use has increased and as damage to the narrow section has been exacerbated by a lack of maintenance. Yet, (erosion aside) the ‘character’ of the lower section now fits more closely the concept of a BOAT than of a mainstream public road, although vehicular users possibly now outnumber horse riders and pedestrians.
58. That may not be the case for the upper section C-D. I heard of horse riders who prefer the dangers of the B5057 to using A-B, riding up the main road and via Butcher’s Lane to access C-D. Some pedestrians may do the same, or possibly approach from a public footpath to the east of Sydnope Hill. As a result there is possibly more non-motorised use of C-D than A-B so that the balance is slightly different, yet still it seems to me that the number of vehicles possibly exceeds hoofs and feet.
59. I deliberately use the word “possibly” because no survey of current (or even recent) use has been undertaken to inform my decision on this issue, and I am reluctant to rely on the user statements before me as being representative of the overall picture of present use.
60. Falling back on a consideration of the “type and character” of the Order route (but *not* its suitability for vehicular use¹⁸), I cannot ignore the sections of Back

¹⁷ *Masters-v-the Secretary of State for the Environment, Transport and the Regions [on application of the Court of Appeal judgment] [2000] 4 All ER 458*

¹⁸ The suitability of the way for vehicular use is not the test to be applied here.

Lane which now have a tarmac surface. From the B5057 the tarmac extends along Butcher's Lane then a short distance southwards from the junction with Back Lane and northwards past Moorlands to Woodside Farm.

61. I have noted that, in his written statement, Mr Waterfall of Hazel Farm offers information about the surface of Back Lane and its gradual deterioration. He recalls that three years ago part of the lane south of B had to be repaired after his tractor tipped up in the ruts and potholes. He writes: "*The Council agreed the surface had to be patched up and brought in a load of old tarmac planings which I then spread with the tractor and loader bucket.*" He also mentions Mr Strutt who recently bought some woodland on Back Lane south of Butcher's Lane; he too had to patch up the surface with tarmac to produce a usable access to his land.
62. Highway authorities are required to maintain the surface of publicly maintainable highways to a standard that is "reasonably passable for the ordinary traffic of the neighbourhood"¹⁹. The application of tarmac is unlikely to be warranted on a way where the majority of users are non-motorised.
63. Whilst this is not a precise science, I am inclined to regard the provision of tarmac between point B and Woodside Farm as an acknowledgement by DCC's Highways Department that the 'ordinary traffic' on this section is such that the level of vehicular use demands a more robust surface. That leads me to conclude that this section should more properly be regarded as part of the main highway network and that it is therefore not of a character which the 1981 Act envisages should be recorded on the definitive map and statement.
64. I am not persuaded that the same can be said for the short length of tarmac to the south of point B, reputed to have been laid by adjacent landowners rather than the highway authority itself.
65. Consequently I consider the character of the public carriageway along Back Lane between points A and B and between Woodside Farm (at a point I shall call X) and point C is such as to satisfy the statutory description of a BOAT, but that the length of Back Lane between point B and Woodside Farm does not.
66. It follows from this that I should propose to modify the Order so as to (a) show A-B as a BOAT rather than a bridleway and (b) to remove from the Order the section of BOAT shown between B and X (at Woodside Farm).

Evidence of recent usage

67. Since I have concluded that the historical evidence discovered by DCC, together with supplementary material from other parties, is sufficient to show that Back Lane probably attained highway status for all types of traffic in the early nineteenth century (if not earlier), there is no necessity for me to analyse the claimed use in recent times to determine whether dedication of the way to the public can be presumed or is implied on the basis of long usage. All the use claimed, whether by local people or 'recreational motorists', will be attributable to its status as a publicly maintainable vehicular highway, even though Back Lane was initially set out as a private carriageway for the inhabitants of Darley.

¹⁹ R v High Halden [1859] 1 F & F678, 175 ER 128

68. It is intended as no disrespect to the considerable time and effort that has clearly been put in by both supporters of and objectors to this Order that, in these circumstances, I decline to examine in detail the evidence relating to recent use.
69. I acknowledge the evidence forms completed by 59 people together with the additional witnesses who attended the inquiry who claim to have used Back Lane in the past with a vehicle, either on 2 wheels or 4. I have also read each of the submissions from the 8 local people who completed similar forms relating their experience of Back Lane and how it has changed over the last 20-25 years. In particular I have noted the many testimonies I heard of people who live closest to the Order route and the impact the increased use of Back Lane by motor vehicles has had, both on them personally and in terms of enjoyment of the route by other lawful users.
70. I have noted the submissions made in relation to the validity of the claimed vehicular use where this has caused nuisance or has the potential to cause nuisance²⁰ in the future. However this argument only arises when addressing the concept of dedication and acceptance through long usage, whether under statute or at common law.

Other matters

71. The use of Back Lane by members of the public in (or on) motor vehicles is clearly a contentious issue, the practical resolution of which goes beyond the scope of this Order. However clarification of the legal status of the road should provide a firm basis from which to initiate debate over appropriate future usage and/or management measures.
72. Objectors highlight the effects of motor vehicles using (and mis-using) the Order route on residents and other users of Back Lane, public and private. Serious concerns are raised over safety and nuisance issues, the potential for accidents and the costs of repairing the damage that has been done to the highway, especially at the lower end. Whilst I recognise these are continuing problems of the utmost concern to many local people, they are not matters I have been able to take into account in determining the extent of the public rights that exist over the Order route.

Conclusion

73. Having regard to the above and all other matters raised at the inquiry and in the written representations, I propose to confirm the Order with modifications to amend the status of the Order route as referred to in paragraphs 47 and 66 above.

Formal Decision

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

In the Order title

- Delete the words "Bridleway and" wherever they occur;

²⁰ I noted a point made by Mr Bennett who argued that the only nuisance is to horse riders and carriage drivers as a result of the installation of a cattle grid near point A in the early 1990s

In the Order schedule: Part I

Section as indicated on map:

- Delete "B-C" and substitute "X-C"

Description of Path or Way to be added:

For section A-B

- In line 1 delete "Bridleway" and substitute "Byway Open to All Traffic";

For section B-C (X-C)

- In line 1 delete Point B and substitute Point X;
- In line 2 delete "SK2869 6397" and substitute "SK28806439";
- In line 5 delete "1627 metres" and substitute "1192 metres";

In the Order schedule: Part II

For No 66:

Status and Description of Route

- In line 1 delete "Bridleway" and substitute "Byway Open to All Traffic";

Remarks

- Delete "Cattle grid SK 2841 6320"

For No 58

Status and Description of Route

- In lines 2-4 delete "junction with Butcher's Lane (GR SK 2869 6397)" and substitute "Woodside Farm (GR SK 2880 6439)";

Length

- Delete "1627 metres" and substitute "1192 metres";

On the Order map

- Amend notation used to depict section A-B from bridleway to byway open to all traffic;
- Delete the section shown as byway open to all traffic between point B and Woodside Farm at point X.

75. Since the confirmed Order would (if modified) (a) not show a way as it is shown in the Order as made, and (b) show as a highway of one description a way shown in the Order (as made) as a highway of another description, I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of my proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Sue Arnott

Inspector

APPEARANCES

In support of bridleway status for A-B & neutral as regards B-C

Mrs M Fairman Senior Solicitor; Derbyshire County Council

Who called

Mr P Jackson Senior Legal Assistant; Derbyshire County Council

In support of bridleway status for A-B & objecting to BOAT status for B-C

Mrs D Mallinson *Statutory objector*; also representing Peak District Green Lanes Association and Peak Horsepower, assisted by

Ms P Stubbs

Who called

Mr D Gourtorbe

Ms C Bostock (Junior)

Ms S Marshall* *Statutory objector*

Mr A Salt

Mrs J Holroyd

Mrs G Stewart

Mrs C Dale-Leech

Mr A Derbyshire

Mr S Ashton

Mrs C Bostock (Senior)

Ms H Hunter

Mr R Hardy

Mrs M Swannell

Mr Littlewood *Statutory objector*

Mr R Tomlinson

In support of BOAT status for B-C & objecting to bridleway status for A-B

Mr N Bennett *Statutory objector*; Chairman, Peak & Derbyshire Vehicular User Group, also representing Derbyshire Green Lanes Association

Mr S J Marston

Mr B Mouny

Mr R Entwistle

Mr H Cleary

Appearing in a neutral capacity

Mr A Kind

* An objection was lodged on behalf of Ms Marshall by agent Mr A R Yarwood supporting BOAT status for B-C & objecting to bridleway status for A-B

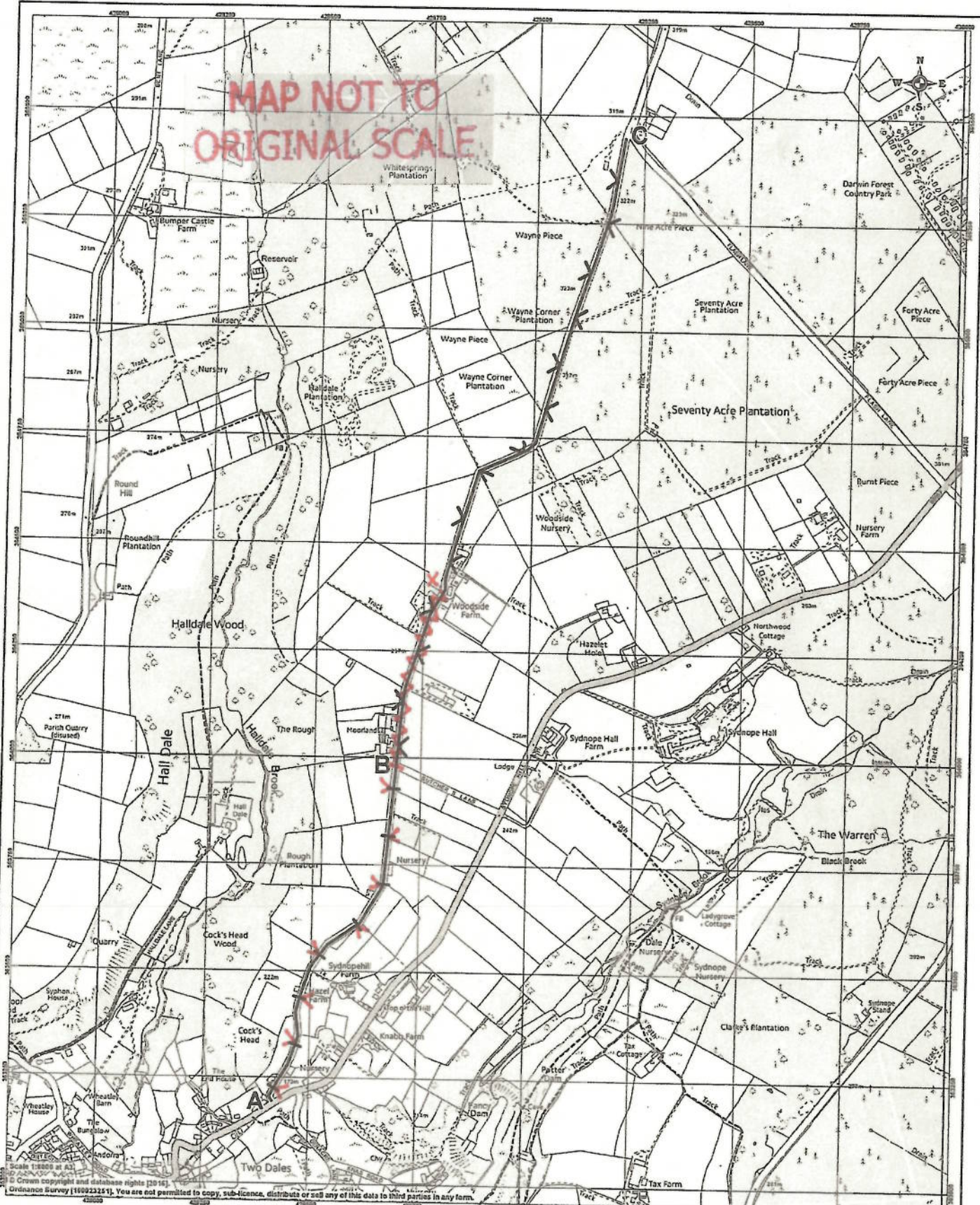
DOCUMENTS

1. Copy of the statutory objections and representations
2. Statement of reasons why it is considered the Order should be confirmed submitted by Derbyshire County Council and comments on the objections together with bundle of relevant case documents
3. Statement of case of Derbyshire County Council with accompanying documents received 13 October 2017
4. Proof of Evidence of Mr P Jackson on behalf of Derbyshire County Council including summary proof and documents referred to
5. Statement of case from Mr Bennett on behalf of P&DVUG received 20 November 2017
6. Proof of evidence of Mr Bennett with 2 appendices received 18 December 2017
7. Statement of case from Mrs Mallinson & Ms Stubbs received 20 November 2017 & appendices 1-9
8. Proof of evidence of Mrs Mallinson & Ms Stubbs with summary proof and additional appendices 10-15 received 19 December 2017
9. Statement of case from Mr Kind received 10 November 2017

Additional documents submitted at the inquiry

10. Copy of plans held as DCC's 'List of Streets' prior to the current electronic version
11. Additional submission to the inquiry by Mr Kind
12. Letter from Mrs Swannell to DCC dated 25 April 2006
13. Letter from DCC to consultees dated 19 December 2012
14. Report to DCC's Regulatory, Licensing and Appeals Committee dated 2 June 2014 relating to claimed BOAT at Peak Pasture
15. User evidence form completed by Mr Cleary in respect of Hassop Road
16. Colour photograph taken in 2013 by Mrs Holroyd
17. Colour photographs taken by Ms Marshall
18. Copy of Order decision FPS/U1050/7/107 issued 27 January 2017
19. Copy of letter from DCC to Mr Bennett dated 19 December 2012
20. Photograph of Birchover Lane (Google Streetview)

MAP NOT TO ORIGINAL SCALE



Scale 1:2500 at A3
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Ref: YEDCX3269/Order2616

DERBYSHIRE
County Council

Improving life for local people

Mike Ashworth
Strategic Director - Economy, Transport & Environment

Shand House
Dale Road South
Matlock
Derbyshire
DE4 3RY

Produced by Public Rights of Way on 19 August 2015

Wildlife and Countryside Act 1981 Section 53

The Derbyshire County Council (Bridleway and Byway Open to All Traffic along Back Lane - Darley Dale) Modification Order 2016

Key:

- Bridleway to be added
- Byway Open to All Traffic to be added
- Existing Footpaths

