



Order Decision

Inquiry opened on 28 November 2017

by **Michael R Lowe** BSc (Hons)

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

Decision date: 16 May 2018

Order Ref: ROW/3173659 (U1050)

Ockbrook & Hopwell, Derbyshire

- 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 (Upgrading to Bridleway of Public Footpath No 27 - Parish of Ockbrook and Public Footpath No 1 - Parish of Hopwell) Modification Order 2015.
 - The Order is dated 16 April 2015 and proposes to modify the Definitive Map and Statement by upgrading a footpath between The Ridings, Ockbrook and the vicinity of Hopwell Hall to bridleway status as detailed in the Order map and schedule.
 - There were one objection and two representations outstanding when Derbyshire County Council (the Council) submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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Decision

I confirm the Order.

Preliminary Matters

1. I held a public inquiry into the Order at Ockbrook Parish Hall on 28 and 29 November and 28 December 2017. I visited the site on 30 November 2017.
2. The Council made the Modification Order following an application by the British Horse Society in October 1997. The application was supported by the evidence of the Ockbrook Enclosure Award, cartographic and public user evidence. I am satisfied that such evidence was discovered in the sense of the Council considering evidence that was previously unknown to them. In March 2004 the Council's Regulatory, Licensing and Appeals Committee authorised the making of the Modification Order.
3. Section 32 of the Highways Act 1980 requires me to take into account any map, plan or history of the locality or other relevant document and to give such weight to it as is justified by the circumstances.

Main Issue

The Order has been made under section 53(2)(b) of the 1981 Act relying on the occurrence of events specified in sections 53(3)(c)(ii). The events are the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows 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.

Reasons

The Ockbrook Enclosure Award of 1773

4. A Local Act of Parliament entitled 'An Act For dividing, and inclosing several open fields, meadows, pasture, common and waste grounds within the Liberties of Ockbrook, in the County of Derby' 1772.
5. The Act made provision for the appointment of Commissioners and before they valued the land, prior to its division, they were required:

"in the first place, to assign and set out such public highways and bridleways in, over, through, or between the allotments to be made by virtue of this Act, in all or any part of the lands and grounds hereby intended to be divided and inclosed, as are necessary and convenient; provided such public highways (except bridleways) be sixty feet wide between the ditches or other fences; all said public highways and bridleway shall for ever after be repaired and amended in the same manner as the public highways and bridleways within the said Liberties of Ockbrook now are or by law ought to be repaired and amended."
6. The Act also required:

"That the said Commissioners, or any two of them, shall and may set out and appoint public and private footways over all or any of the lands and grounds hereby intended to be divided and inclosed, and also all private horse, carriage, and drift roads to any of the allotments to be made by virtue of this Act, or to any old inclosures lying and being within the said Liberties of Ockbrook, of such size and breadth, and to and for such uses and purposes as the said Commissioners, or any two of them, shall in their Award order and appoint; ..."
7. The Ockbrook Enclosure Award 1773 sets out:

"One other public bridle road and private horse carriage and drift road from a Lane in the Town of Ockbrook called Near Lane over the said Upper Field towards Hopwell into and over the lands allotted to the said Thomas Cooper (No. 43) and the said Dame Mary Lake (No. 42) to an ancient Gate or Gate [place?] in the Liberty of Hopwell where the public bridle road and private horse carriage and drift road has usually been from Ockbrook to Hopwell."
8. A 'Plan of Ockbrook in the County of Derby 1773'¹ appears to relate to the enclosure process. The plan details land parcels 'No. 43 Thomas Cooper' and 'No. 42 Dame Mary Lake' and from this plan it is clear to me that a track depicted on the plan by pecked lines clearly relates to the 'public bridle road and private horse carriage and drift road' described in the Award on a similar alignment to the western part of the Order route (the part shown A - B on the Order plan). To the west of the land detailed in the Award, at the parish boundary, the 1773 Plan indicates that the way continues and is called 'Hopwell Road'. The public road now known as 'The Ridings' appears to be the 'Lane in the Town of Ockbrook called Near Lane' as detailed in the Award.
9. The Order route is shown in its entirety on various maps and plans after 1773. Greenwood's Map of 1825, at a scale of 1" to the mile, an 1826 Plan of the Liberty of Ockbrook, an 1826 Poor rate valuation map of Ockbrook and an 1835 Map of the County Twenty Miles round Mansfield by George Sanderson all show the Order route consistent with a minor road or track and along a similar alignment. The 1st Edition Ordnance Survey map, c.1840 at 1" to the mile, is also consistent with these earlier maps.

¹ Held in the County archives as a copy of an original.

10. The first large scale Ordnance Survey map at a scale of 1:2500 is dated 1880 and shows the Order route exactly as depicted on modern maps and on the Order map. There are some minor discrepancies between the 1880 map and the earlier maps that are explicable by the inaccuracies of old maps and the limitations of a small scale mapping².

Conclusion on the Award of 1773

11. I am satisfied that the 1773 Award set out part of the Order route as a public bridleway and that the 1772 Act gave the Commissioners the authority to do so. When a highway is set out in an inclosure award under statute, that is a legal event which declares that the right of way existed at that time. Distinct from common law dedication, no public user is required. I am satisfied that the series of maps detailed above are cogent evidence that the route described in the 1773 award is part of the Order route. It follows that the evidence of the Finance Act records, the survey for the original definitive map of public rights of way, and events after 1773 are of limited assistance in establishing the status of the Order route. There is no evidence to suggest that the way has been subsequently extinguished and it therefore exists to the present day.
12. I note that the Award describes the way as 'where the public bridle road and private horse carriage and drift road has usually been from Ockbrook to Hopwell'. This indicates that the Award was confirming the existence of a public bridleway and private carriageway that existed before enclosure process. My conclusion, based upon the synergy of the Award and subsequent cartography, is that the Order route is a long established public bridleway along a private carriageway and that it has existed since at least the 18C. The question of the ultimate destination of the Order route and the precise location of 'Hopwell' is not a matter before me. There is no rule of law that a cul-de-sac cannot become a highway at common law or under statute.
13. That is sufficient to dispose of the Order and I therefore have no need to consider the submissions that the Order route was established as a public bridleway by virtue of presumed dedication under the provisions of the Highways Act 1980. Nonetheless, in deference to the submissions by the parties, I wish to indicate that the evidence of public equestrian user would not have been of sufficient quality and quantity to establish the rebuttable presumption of dedication. I also think it was more likely than not that there was once a public footpath sign at the junction of the Order route and The Ridings.

Conclusion

14. 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.

Michael R Lowe

INSPECTOR

² See *The Commission for New Towns et al. v Gallagher* [2002] EWHC 2668 (Ch) at paragraph 84.

APPEARANCES

Derbyshire County Council

represented by

Lisa Edwards

Solicitor

who called

Linda Phillips

Legal Assistant - Rights of Way

Peter Jackson

Senior Legal Assistant - Rights of Way

In support of the Order

Diana Mallinson

British Horse Society

Barbara Housley

Carolyn Tong

William J Hayburn

Michael Gillett

The Objectors

Michael Shaw

in his own right and representing

Mrs Dorothy E Shaw

Parties to the Inquiry making representations

Barry Thomas

DOCUMENTS (submitted at the inquiry)

- 1 Letter from Petra Willan
- 2 Overlay of 1773 map and OS 2nd Edition at Hopwell Nook.
- 3 1826 survey map showing land of Near Lane Farm.
- 4 1826 survey map showing plot 204 as the only building
- 5 Additional bundle Mrs Shaw
- 6 Additional bundle Diana Mallinson
- 7 E-mail from Barry Thomas dated 22 December 2017
- 8 The Commission for New Towns et al. v Gallagher [2002] EWHC 2668 (Ch)



Wildlife and Countryside Act 1981 S.53

The Derbyshire County Council
 (Upgrading to Bridleway
 of Public Footpath No 27
 - Parish of Ockbrook
 and Public Footpath No 1
 - Parish of Hopwell)
 Modification Order 2015

KEY

Footpath to be upgraded to bridleway
 A B C

Existing footpaths

Existing bridleways

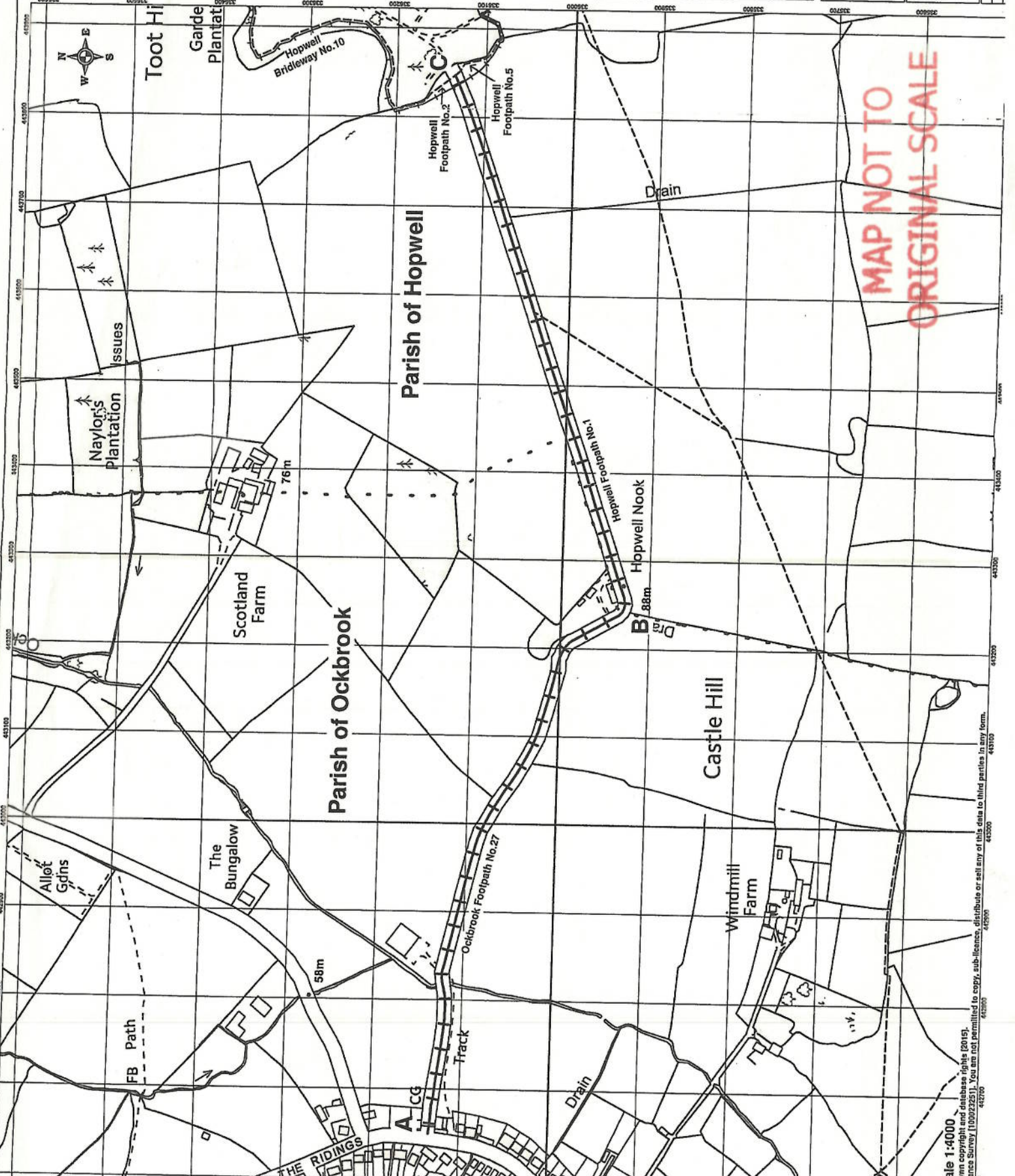
DERBYSHIRE
 County Council

Improving life for local people

Mike Ashworth
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