



Order Decision

Site visit made on 4 June 2019

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 10 July 2019

Order Ref: ROW/3207311

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Metropolitan Borough of Barnsley (West Riding of Yorkshire County Council Definitive Map and Statement) (Hunshelf) Modification Order (No. 7) 2017.
- The Order is dated 9 October 2017 and proposes to modify the Definitive Map and Statement for the area by changing the status of parts of public footpaths Nos 4, 6 and 8 at Hunshelf from footpath to bridleway and by changing the description of the recorded length of public footpath No 8 as shown on the Order Map and Schedule.
- There were five objections outstanding when Barnsley Metropolitan Borough Council (the "Council") submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to a modification set out below in the Formal Decision

Preliminary matters and general description of the claimed route

1. No party requested an inquiry or hearing into the Order, therefore I considered the written representations supplied. I made an unaccompanied site inspection around noon on a clear day when the full length of the route was unobstructed. Notices at each end of the claimed route warn against motor vehicle and motor cycle use upon penalty of prosecution. There are several accesses and gates along the route affording access to and egress from adjacent fields.
2. The claimed bridleway runs along the full length of Blackmoor Lane in the parish of Hunshelf, starting on Pond Common Lane and proceeding north-east, then north-west and north-east along Black Moor and finally north-west to Sheffield Road at Thurgoland Bridge. The full length is currently recorded as public footpath, taking in sections of Hunshelf footpaths Nos 4, 6 and 8 as shown on the Order Map.

The Main Issue

3. The main issue is whether the evidence discovered by the Council, taken with all other relevant evidence is sufficient to show on a balance of probabilities that a right of way, in this case a bridleway, not shown in the Definitive Map and Statement, subsists over land in the area shown on the Order Map.
 4. Issues about loss of privacy, safety and security, suitability of the route, the possibility of encouraging illegal motor vehicle use and the existence of other alternatives, although they may be legitimate concerns generally expressed by the objectors, are not relevant to the main issue. That the route at either end would not lead onto other bridleway networks is also irrelevant.
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The relevant law

5. By s32 Highways Act 1980 I have to take account of any “map, plan or history of the locality or other relevant document” offered in evidence and give such weight to it as is justified by the circumstances, including its antiquity, the status of the person who made or compiled it, including for what purpose, and the “custody” in which it has been kept and from which it is produced.
6. Section 31 of the 1980 Act sets out a statutory presumption of dedication: if public use of a way (in this case a bridleway) for twenty years or more is shown, the way is deemed to have been dedicated as a highway of that description unless there is sufficient evidence from which it can be concluded there was no such intention during that period to dedicate it. The twenty-year period must be calculated retrospectively from the date when the public’s right to use the way as claimed is brought into question.

When was the use of the route as a bridleway brought into question?

7. There is no evidence that any effective challenge was made by notices, barriers or the like placed across the route. However in October 2016 the owner of Blackmoor Farm, which land includes the central part of the claimed bridleway, made use of a statutory right¹ to deposit with the Council a plan of the route and then make a declaration that no additional rights of way have been dedicated since the deposit date. In the absence of proof to the contrary these actions serve to negate the intention of the owner (or his successors in title) to dedicate any additional way as a highway, as from the date of deposit.
8. The objectors signed a letter referring to confrontations with horse riders over the use of the route but it lacks specific detail. I note the incident reported to the police in 2015 in which an objector, Mr Williams, was held up in his car behind a horse rider and afterwards warned the rider “verbally that [the route] was a footpath”. Mr Williams owns adjoining property, Little Blackmoor and may have been exercising private rights of vehicular access.
9. Use by the public may be brought into question by someone not the landowner but in any event this was the only episode recounted in any detail, which I consider as a matter of fact and degree to be of insufficient local notoriety for the “right of the public to use the way” as a bridleway to be “brought into question” as set out in s31(2) of the 1980 Act.
10. Therefore as the deposit date was the earliest date when use as a bridleway was effectively brought into question, for the purposes of the statutory test of deemed dedication such use must have subsisted for twenty years from 1996 to 2016.

Documentary evidence

11. The Council’s report states that the order route is in the Hunshelf Inclosure Award (1810-13). The report goes on to say that the southernmost section of the route is shown on the plan. However there is no plan or map submitted in evidence or other indication that such a document still exists. The copy and transcript of the Award as provided do not refer to a plan or map but they are incomplete and it is not therefore possible to be certain whether such reference was made elsewhere in the full document.

¹ Highways Act 1980, section 31(6)

12. The Council asserts that the full length of the order is included in the text of the Award as Blackmoor Road in the following terms:

Public Bridle and Private Carriage Road of the width of twenty one feet beginning at Penistone Road at the south west corner of the stone quarry allotment on Ponds Common and continuing in an Eastward direction across Ponds Common and the Wire Mill Common otherwise Blackmoor to an ancient homestead belonging to George Bustard Greaves Esquire called Black Moor thence Northward in the direction of the Road by another ancient homestead belonging to the honourable James Archibald Stuart Wortley Mackenzie in the occupation of John Hague to the north west corner of an ancient Inclosure in the occupation of the said John Hague called Lower Hill Field and thence Eastward in the direction of the ancient Road over Dawson Common otherwise Blackmoor to the Turnpike Road leading from Penistone to Sheffield which said Road I distinguish by the name of Blackmore Road.

13. The Council's report refers to other documentary evidence such as various commercial maps and successive OS maps, but no copies are provided for me to examine.
14. Without an Award map it is difficult enough to be satisfied that the description of the road corresponds in all respects to the order route, and the lack of copies of the other documentary evidence compounds that difficulty. For example several paths emerge from the north side of Pond Common Lane and the position of the stone quarry allotment is unclear. I have no evidence of the present or historic boundaries of Pond Common or Black Moor. The Order map and the Definitive Map which are based on different OS editions both show that Black Moor is a large area surrounding the order route whereas several other footpaths traversing Black Moor are also shown in the vicinity.
15. It may be that the Council thought it was unimportant to supply copies of the other maps since according to its report they do not identify in terms any bridleway or way of higher status within the order route and the Award would provide the only formal authority for the proposition that a bridleway has been created. The Council has not linked the stages of the route described in the Award to sections in the order route. Sight of other evidence referred to in its report might have enabled a comparison between successive alignments of the route and features described in the Award.
16. It is a reasonably strong possibility that the Award does describe a route from Point A on the Order map to Point B and thence to Point C, which two latter points would correspond to the homesteads known respectively as Black Moor and an unnamed homestead occupied by Mr Hague. However Point A to Point B is clearly north-eastward and Point B to Point C is north-westward, and furthermore the property now known as Black Moor is at Point C, not Point B which is Little Black Moor (Penhallows).
17. Point C to Point D (mostly a north-easterly direction) contains at its end a significant dog leg turn to the north-west. This is not reflected within the Award where the description is merely of an "eastward" trajectory to the turnpike road. The Council's report states the Cary and Fowler maps do not show the "turn in the lane immediately before joining the road". This is apparently inconsistent with other OS maps but the Council dismisses the anomaly on the basis that "the scale and detail of the commercial maps are [sic] very limited".

18. Unfortunately the Council has not detailed precisely which OS maps were consulted, referring to plans "dating from 1841 through to 1990". Apparently, earlier OS plans show an alternative connection to the road at the northern end. From the evidence available to me it is very possible that although the 1810 deed might have awarded a bridleway for most of the order route, there was no bridleway created in respect of the current alignment of the last section of Point C to Point D which may well have come into existence at a later date.
19. Some allowance could be made for vagaries in the compass points set out over two hundred years ago in the Award, but overall and on the balance of probabilities I am not satisfied from what I have seen and read in this application at least, that the description of the public bridle road corresponds with the order route.
20. Taken together the commercial maps may show a generally consistent depiction of the route but no conclusion can be derived as to its status. The northern end of the route is apparently shown in the Sheffield Ashton under Lyne and Manchester Railway (1836) plans and book of reference as an "occupation" road but this does not of itself provide evidence of public bridleway status. Similarly no inference as to the status of the route can be drawn from the OS maps I have been able to examine.
21. In summary therefore the Council has not shown on the balance of probability that the documentary evidence in its individual context, as well as all the evidence taken together, demonstrates the use and reputation of the order route was such as to justify the inference that it was dedicated as a bridleway. I must therefore consider the evidence of claimed use.

User evidence

22. I have examined the thirteen user evidence forms submitted in support of the application. All forms indicate a bridleway use, nine also declare a use on foot and in three cases a cycle use is declared.
23. The evidence forms are poorly designed to elicit information as to how frequently or over what period a specific type of user occurs. I am not prepared to infer from the information as set out in the forms that, where several user types are given, the stated frequency or overall period of use *necessarily* applies equally to each user type. That is why I question the firmness of the conclusion the Council comes to that eight users are able to claim the use of the route on horseback for the full twenty-year period.
24. That said it nowhere appears from the forms that use on horseback is less than other uses. In six of the evidence forms the stated purpose of the use highlights use as a bridleway and the reference to "leisure" purposes in the other forms cannot sensibly be read in context as excluding equestrian use. Where the stated purpose emphasises a bridleway use it is mostly for exercising horses safely off-road, and in one case (not also a cyclist) explicitly as part of "circular ride routes".
25. There are four users who declare they have only ever used the route on horseback. They all indicate it is the whole of the claimed route that has been ridden. One such person used the route four to five times weekly from 1985 to 1999 and six to seven times weekly from 1999 to 2013. Another has used it on horseback from 1975 to the present on a weekly basis. A third person has

- used it from the mid 1970's to the present each week, as has the fourth user from 1985 to the present. Therefore I am satisfied, this evidence being uncontested, that three users have ridden the route for the requisite period.
26. In the other nine forms, where the overall period and frequency of a user type cannot be precisely determined, the route is mostly stated to have been used on a weekly basis. In five of these the stated period of (general) use covers the period 1996 to 2016 and two users specifically highlight an equestrian purpose. I do not have the confidence to conclude as does the Council that these five cases *definitively* show a twenty-year period of equestrian use. However on reading all the replies in each of the forms and considering the reply to the "period of use" question in context, I consider it more likely than not that these users have exercised a bridleway use over the required period.
27. One user who has used the route monthly from 1985 to the present and has lived nearby since 1975 states that there "used to be a bridleway sign" at the top of Blackmoor Lane but no further detail is given. Another user, resident in the area for 36 years who has used the route weekly since 1985 solely for horse riding also recalls a "public bridleway sign" in the same location.
28. One user states there were gates on the railway across the route in the 1960's, opened on request by a signman nearby. However they were removed on the railway's closure, well before 1996 when the twenty-year period began.
29. In an email responding to consultation on the application Mr and Mrs Williams stated there had been a "gate across the lane for farm use" in the last twenty years but no further detail is forthcoming. The user evidence is that there are no obstructions such as gates, stiles or fences on the route, and no user has ever been stopped, turned back or sought permission from anyone.
30. I am satisfied that on the balance of probability the user evidence in terms of its quantity and quality shows public use of the order route from 1996 to 2016, sufficient to raise a presumption of dedication and acceptance by the public of a bridleway under s31 of the 1980 Act. No compelling evidence has been forthcoming to show a lack of intention by any landowner to so dedicate the way as a bridleway during the relevant period.

Lengths and widths specified in the Order

31. It is undisputed that the recorded length of Footpath No 8 has been found to be much shorter than its actual length, and the Order therefore substitutes the description of the length of this path in the Definitive Statement to reflect the actual length.
32. Nearly all the user forms indicate that the width of the order route is 6 metres save in one case 20 feet and in another 5-6 metres. Overall the user evidence is clear and consistent and corresponds with observations during my visit, notwithstanding the assertion in the letter of objection that the route is narrower in parts. I note that the same objection letter accepts that cars and farm machinery use the route frequently, which would be in the exercise of private rights of access, albeit there are no dedicated passing places.
33. I therefore consider the claimed width of 6 metres reflects both the way and the use made of it and is appropriate. The instances of "21 ft/6.4m" width specified in the Order are based on the Inclosure Award, therefore I will make a minor modification to substitute the slightly lesser width of 20 feet/6 metres.

Conclusion

34. For the above reasons and considering all other matters raised in the written representations I conclude that the Order should be confirmed with a modification (paragraph 32 above) that does not require advertising.

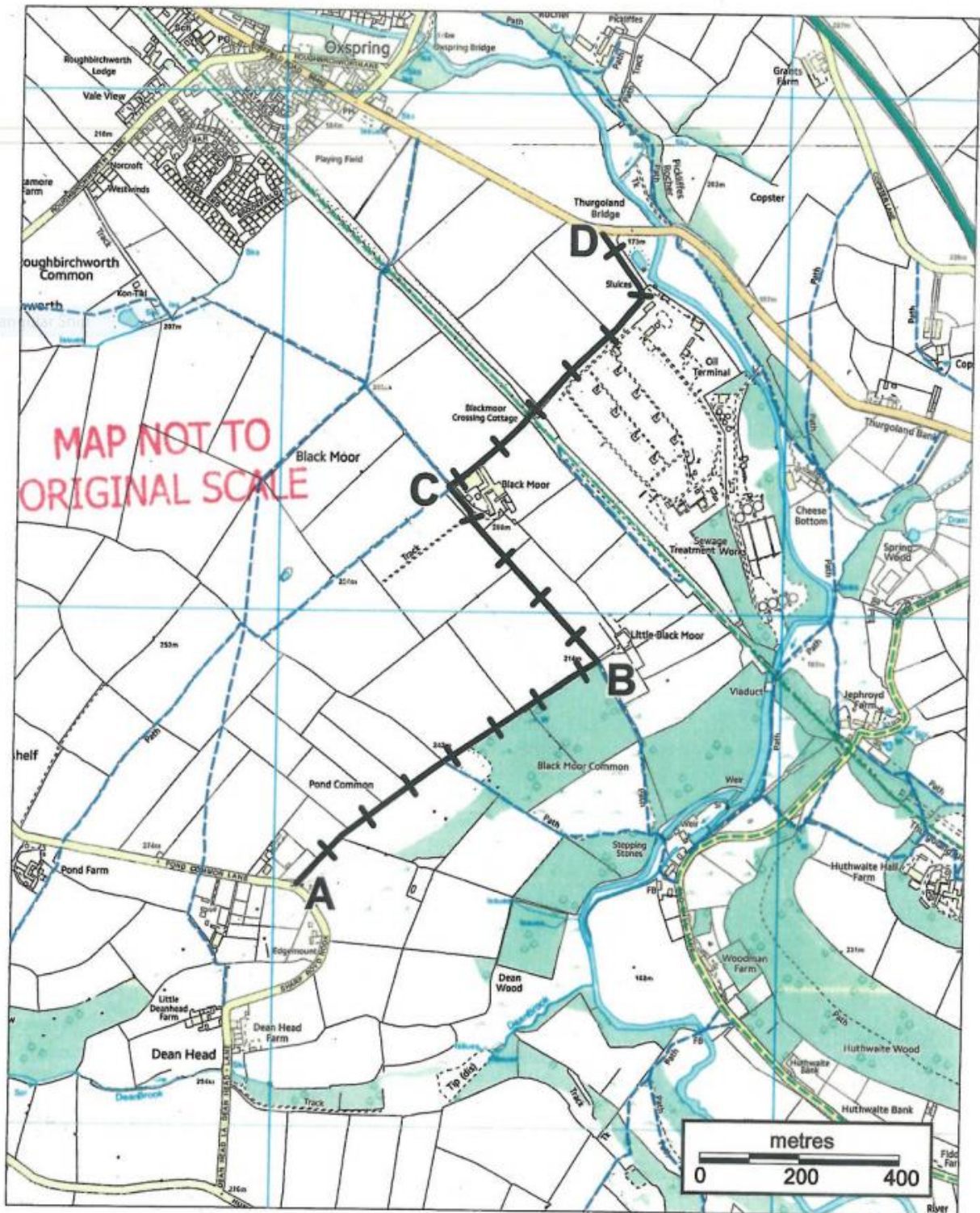
Formal Decision

35. I confirm the Order subject to the following modification:

- In Part I of the Schedule to the Order, replace "21 feet (6.4 metres)" whenever it occurs with "20 feet (6 metres)"
- In Part II of the Schedule to the Order, replace "21 ft / 6.4m" whenever it occurs with "20 ft / 6 m".

Grahame Kean

INSPECTOR



Map 1 referred to in The Metropolitan Borough of Barnsley (West Riding of Yorkshire County Council Definitive Map and Statement) (Hunsheaf) Modification Order (No. 7) 2017

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| Drawn by BMBC | Scale 1 : 10000 |
| Map 1 | - |

Footpaths to be upgraded to bridleway status

Unaffected rights of way

