



Order Decision

Site visit made on 09 September 2019

by Susan Doran BA Hons MIPROW

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

Decision date: 27 September 2019

Order Ref: ROW/3212465

- 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 from Public Footpath No.54 to the junction of Public Footpath Nos. 100 and 101 – Parish of Denby) Modification Order 2018.
- The Order is dated 19 April 2018 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown in the Order plan and described in the Order Schedule.
- There was one objection 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. The Order concerns the addition of a public footpath from Footpath 54 at Lumb Farm, Ripley (point A on the plan attached to the Order) running in an east-south-easterly direction for approximately 626 metres along an enclosed way to its junction with Footpaths 100 and 101 (point B). Together with existing public rights of way, the Order route provides part of a through route between the B6179 Derby Road, Ripley and Codnor-Denby Lane.
2. I visited the Order route accompanied by a representative of Derbyshire County Council ('the Council') the Objector and two members of Denby Footpath Group.

The Main Issues

3. The Order has been made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, which requires me to consider whether, on a balance of probabilities, the evidence shows that a public footpath subsists over the Order route. The evidence adduced is user.
4. In this case, the objector does not dispute that a public right of way subsists but maintains that the width of the route as set out in the Order should be modified to record a lesser width. Therefore, this is the main issue for my consideration.
5. Nevertheless, I must be satisfied that a public right of way on foot subsists. In this case reliance is placed on dedication through public use under Section 31 of the Highways Act 1980 ('the 1980 Act'). This requires me to establish the date when the public's right to use the Order route was brought into question; whether use by the public has been as of right (without force, secrecy or

permission) and without interruption for a period of not less than 20 years ending on that date; and whether the landowner did not intend to dedicate public footpath rights during that period.

Reasons

Presumed dedication under section 31 of the 1980 Act

6. There is no identifiable event which brought into question the public's right to use the Order route. Accordingly, I agree with the Council that the application itself is the trigger for the purposes of section 31(2) of the 1980 Act. It was made in March 2015, which gives a 20-year period of March 1995 to March 2015.
7. Evidence of use is provided in 12 user evidence forms ('the forms'). Of these 8 people claim use during the 20-year period, on foot. All refer to having seen other users. The frequency of their claimed use varies from monthly to once or twice a year and up to 6 times a year.
8. There is nothing to suggest that use was with force or that it was not carried out openly. There is some reference to use by permission granted by former landowners, but nothing that categorically links any such permission to the Order route or to the 20-year period¹. There is nothing to suggest that use was interrupted², and no challenges to use or obstructions are reported.
9. There is no evidence that, during the 20-year period, any landowner expressed an intention not to dedicate the Order route as a public footpath. Indeed, no landowner has objected to the route being so recorded.
10. There is a limited amount of claimed use with a bicycle or in a vehicle and, similarly, observed use in this regard, as well as people seen on horseback. However, I find this use insufficient to support higher rights than those claimed on foot.
11. Although the claimed use is relatively low in volume, I am satisfied that there has been use of the Order route by the public for the 20-year period under consideration, and that use has been as of right and without interruption. I am satisfied that there is no evidence on behalf of the landowners which rebuts a presumption of dedication based on use by the public on foot. It follows that the relevant tests are met and the Order should be confirmed.

Evidence concerning the width of the Order route

12. The Order route follows a track and the Order provides for a width of 5 metres throughout its length. The Council took this as the appropriate width as the public could have walked the full width between the fixed boundaries at any point along its length.
13. Ordnance Survey map evidence indicates that the boundaries were not in place in 1962 but were mapped from 1974. They have been present throughout the 20-year period of claimed use.

¹ The references appear to relate to an alteration to part of the path users followed south-east of the Order route; and to permission to use the track with vehicles - one user recalls the route being constructed and the landowner allowing such use by local people

² Reference is made to the land being subject to open cast mining in the 1960s, before the 20-year period under consideration

14. I consider that the width of the proposed route should be determined on the evidence, and as accurately as possible. The width may be greater than the 'trodden path', and factors such as the nature of the surface and other physical features may dictate what may be considered reasonable.
15. In this case, the Order has been made on the basis of user evidence (considered above). The forms provide varying figures for the width of the Order route, ranging between 7 and 12 feet (2.1 and 3.6 metres) and 1-4 metres. Measurements taken by the Objector provide an available width varying between 1 metre and 2.5 metres, with, it is argued, ditches, hedgerows, established trees, ground cover and fences preventing availability of the full width claimed, both now and in the past.
16. The user evidence provides no single width, although the widths described are broadly consistent. At the site visit it was evident that the Order route is bounded by a mix of fencing and/or hedging. Within the boundaries there is encroachment from overhanging branches and brambles rather than vegetation or trees growing on and restricting the width of the surface between them. A shallow ditch was apparent for a short length on the northern side of the Order route. Measurements taken at various points provided a width of 5 metres or thereabouts between the fence/hedge boundaries. The trodden width was much narrower, though variable, more in keeping with the measurements described by the Objector. Taking into account the evidence of the Objector, my observations at the site visit and the forms, I consider the appropriate width to be that between the boundaries as provided for by the Order, rather than the current trodden width.

Conclusion

17. Having regard to these and all other matters raised in the written representations, I conclude the Order should be confirmed as made.

Formal Decision

18. I confirm the Order.

S Doran

Inspector



Wildlife and Countryside Act 1981 Section 53

The Derbyshire County Council
 (Footpath from Public Footpath
 No. 54 to the junction of Public
 Footpath Nos. 100 and 101
 - Parish of Denby)
 Modification Order 2018

KEY

Footpath to be added  
 Existing Footpaths  

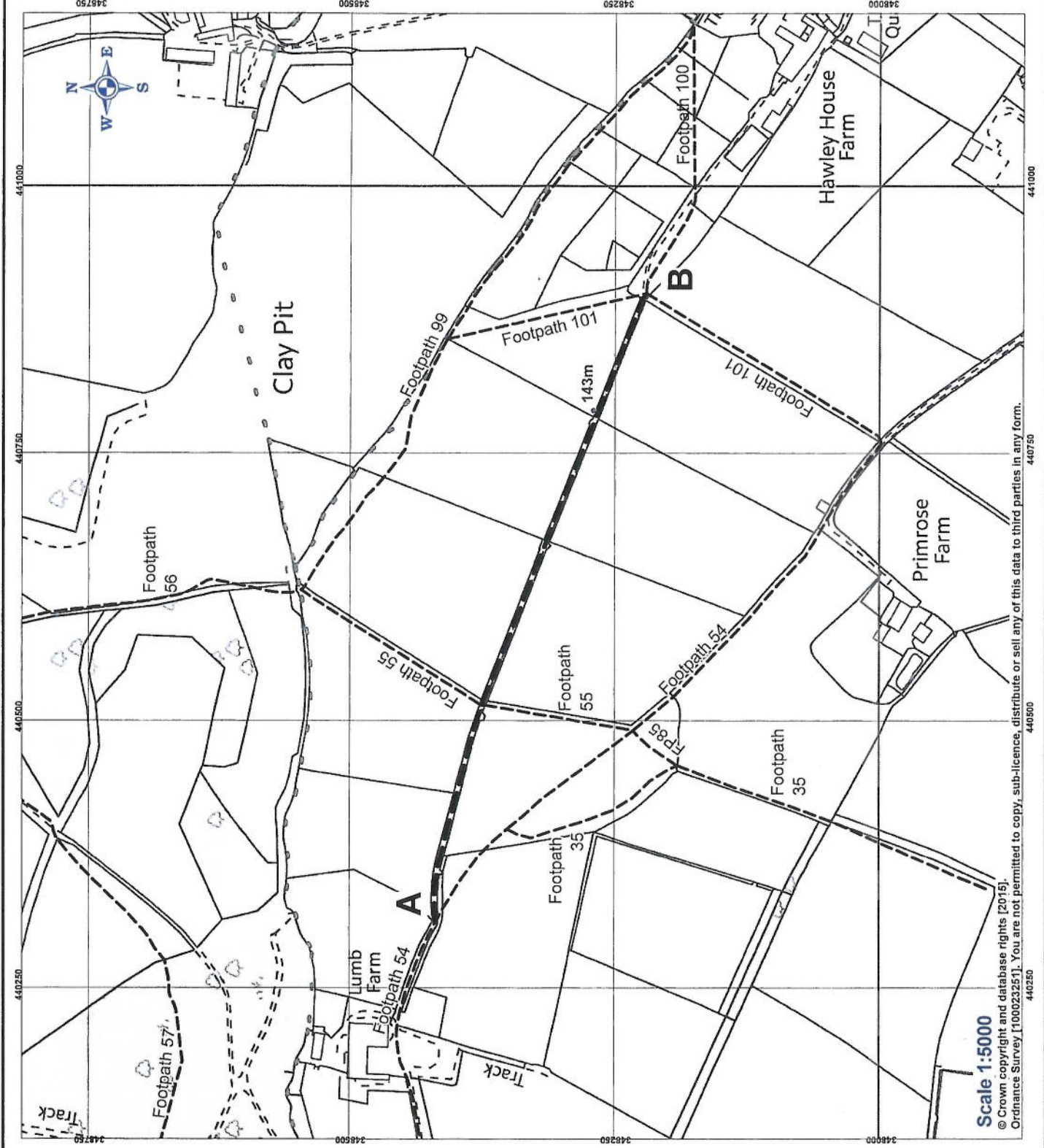
**MAP NOT TO
 ORIGINAL SCALE**



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