



Order Decision

Inquiry opened on 5 November 2019

by Sue M Arnott FIPROW

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

Decision date: 02 December 2019

Order Ref: ROW/3214771

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Derbyshire County Council (Byway open to all traffic along non-classified highway along Pin Dale (including non-classified highway spur to Dirtlow Rake) Parishes of Castleton and Bradwell) Modification Order 2017.
- The Order is dated 8 June 2017. It proposes to modify the definitive map and statement for the area by recording a byway open to all traffic at Pindale¹ near Castleton, as shown on the Order map and described in the Order schedule.
- There were five letters of objection² and one representation outstanding when Derbyshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I held a public local inquiry into the Order at the Peveril Centre in Castleton on 5 November 2019. I had been unable to view the route in question before the event so, at the end of the day, I adjourned to the site the following morning so as to allow for any remaining issues to be addressed should any such matters arise as a result. In fact no further points did arise and I formally closed the proceedings on 6 November after completing a full inspection of the Order route and a connecting highway. For the record I was accompanied by a representative of the applicant: the Trail Riders' Fellowship (Mr Cleary), representatives of objectors: the Peak District Green Lanes Alliance and Peak Horse Power (Mrs Mallinson and Ms Stubbs), and the order-making authority: Derbyshire County Council (Mr Jackson).
2. Although Derbyshire County Council (DCC) had made the Order having been satisfied that a public right of way was reasonably alleged to subsist, it chose to adopt a neutral stance as regards its confirmation. At the inquiry the Council's representatives took a passive role although Mr Jackson offered assistance on a number of factual matters.
3. In the absence of direct support for the Order from DCC, Mr Kind presented a case on behalf of the Trail Riders' Fellowship (TRF) to demonstrate the existence of an ancient public right of way for all classes of traffic along the Order route. However he did not present evidence or argument that the route should be recorded as a byway open to all traffic (BOAT).

¹ Pindale is spelt 'Pin Dale' in some documents but mostly it is written as 'Pindale'; therefore for consistency in this Decision I refer to it as Pindale.

² Two objections have since been withdrawn.

The Main Issues

4. The Order was made by DCC under the Wildlife and Countryside Act 1981 on the basis of events as specified in sub-section 53(3)(c)(i), proposing to add to the definitive map and statement a byway open to all traffic (BOAT) along the route marked on the Order map as A-B-C-D. 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.

Reasons

5. The route in question has historically been connected to three roads: Siggate, which extends from Castleton to the parish boundary near point C, of which section C-D once formed a part; Pindale Road which leads from Hope to point A (and arguably continued via A-B-C), and Pindale Lane which connected the two, leading from point A towards Castleton and joining Siggate at what was referred to at the inquiry as 'the Y junction'.
6. South of point C the extension of Siggate leading towards Tideswell was stopped up on two occasions in the mid and late twentieth century to enable quarrying to take place. Each time an alternative road was established further to the west. The records of these alterations are scant and it is questionable whether public rights over the early road between points C and D were ever extinguished.
7. Given this background, it is clear that the basis for recording C-D differs considerably from A-B-C. Consequently my examination of the early historical evidence relates almost exclusively to the latter.
8. The Order route (A-B-C and C-D) is recorded by the highway authority (DCC) as a non-classified highway (NCH)³. This designation recognises the public responsibility for maintenance of the way although it is not conclusive evidence of any particular class of highway⁴. Therefore 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.
9. None of the parties submitted that the Order route is a public footpath; at the inquiry Mrs Mallinson and Ms Stubbs argued that it should be recorded as a bridleway, whereas Mr Kind supported the existence of a right of way for all types of traffic (although not explicitly the BOAT defined in the Order).
10. On the basis of the historical documents it had examined, DCC formed the conclusion that a public carriageway was reasonably alleged to subsist along the Order route long ago, relying on the legal maxim '*once a highway, always a highway*'.

Historical documentary evidence

Pre-inclosure evidence

11. The earliest evidence of the Order route appears in a map of wastes and commons belonging to the Lord of the Manor of Castleton in 1691. Although essentially a sketch map, it clearly depicts a road leading from "Pindall End" (point A) along the line of the Order route to a gate which appears to lie on the

³ Also referred to as 'unclassified county roads' or UCRs.

⁴ A matter discussed further at paragraph 50 below

- parish boundary (point B). A similar road is shown extending from A towards Castleton via what is now the tarmac road to the village (Pindale Lane). In addition, the road known as "Siggate" is shown linking the two and leading to a gate in the boundary of the common⁵ at or around point C; the southernmost section of Siggate as shown in 1691 now comprises the Order route C-D.
12. The only other road shown on this map extract in much the same notation is a route via Cavedale. I do not have before me all the available historical evidence to support the status of that route but I note it is currently recorded on the definitive map as a bridleway. Mrs Mallinson submitted this is a significant comparison since she argues that the Order route also carries that status.
 13. She also drew attention to the survey sketch notes of a local surveyor, William Fairbank. In his field book from 1760, he recorded an enclosed route called "Pindale Lane", a way identified as "Bridle way to Hope from Pindale" leading to another enclosed route near "Eccles". It was her submission that the bridleway noted by Fairbank was what is now Pindale Road between Hope and Pindale. That supports her submission that most routes in this locality (including the Order route) were essentially still packhorse trails at that time.
 14. Although Mrs Mallinson's interpretation of these sketches was not directly challenged, I have some reservations. It is a difficult document to decipher and I am not wholly convinced that the route labelled as "Bridle way" is in fact Pindale Road (or Lane). Whilst the field systems illustrated by Mr Fairbank in the mid-eighteenth century were not necessarily still in use almost 60 years later when the inclosure map was prepared in 1819, I find any reliable correlation between the two surveys hard to identify.
 15. The purpose of Fairbank's survey appears to have been the preparation of a map of "Denner's Estate" although the final document he produced is not available here. Having been made for essentially private purposes, in my view it is not an entirely reliable indicator of the status of the ways shown.
 16. In 1767 Burdett published a map of Derbyshire at a scale of 1": 1 mile. This showed the new Turnpike Road along the Hope Valley (now the A623) and Siggate (as a cross road) winding uphill and continuing to Little Hucklow and Tideswell. The Order route is not shown, but neither is the Castleton to Hope road via Pindale Lane and Pindale Road. I agree with Mrs Mallinson's submission that these roads were regarded by Burdett as less important than Siggate but I consider that must apply as much to the Castleton-Pindale-Hope road as to the Order route.
 17. In the records of the Surveyor of Highways for Hope (*The Measure of the Highways within the Township of Hope taken November 27th 1811*) the road from the village "to Pindale adjoining the Castleton Liberty there" was clearly listed. The Order route was not but this lay outside the Hope boundary.
 18. Mrs Mallinson observed that 8 years before the inclosure award in 1819, this was considered to be the road from Hope to Pindale and not to any destination beyond that (in particular to Peak Forest as it was later named in the inclosure award). She argues that this is consistent with the 1760 surveyor's notes and submits these show that prior to the inclosure process, Pindale Road was a

⁵ Mrs Mallinson submitted that it was significant that this gate was named ("Tidswall Yate") whereas the gate on the Order route was not, suggesting the former was of greater local significance at the time. However, on the version of this map available at the inquiry neither gate was named. I am therefore somewhat reluctant to attach any significant weight to this argument.

bridleway which was probably upgraded to a carriageway in or around that period.

19. The Surveyor described the road as "*From the Turnpike at N. Woodroffe House to Pindale adjoining Castleton Liberty there*". In fact few of the roads listed are named; most are identified as "From ..." and "To ...". Following this convention, I would not expect to see mention of Peak Forest in this list, even if the road were known by that name pre-inclosure. I am therefore not inclined to attribute any significance to the absence of any mention of Peak Forest in this particular record.
20. Having examined this pre-inclosure evidence, I consider it possible that Mrs Mallinson is correct in her submission that the Order route and the roads which connect to it were no more than bridle roads at the beginning of the nineteenth century but on balance I do not regard it as probable.

The Hope, Bradwell, Aston and Thornhill Inclosure Award 1819

21. Key documents in this case are the Inclosure Map and Award for Hope, Bradwell, Aston and Thornhill of 1819 and the Act which facilitated these. Of particular relevance is the "public carriage road and highway" called "Peak Forest Road" that was set out in two parts. In very general terms, one section ran from Hope to Pindale and the other stretch lay along Batham Gate near Berrystall Lodge above Bradwell.
22. Neither included the Order route which lay outside the areas to be inclosed. However it is submitted by Mr Kind that A-B-C is the logical extension of the former, the "Peak Forest Road" leading from Hope village to a point a short distance north of point A described as "the south end of Pindale Lane in Castleton Liberty".
23. Mrs Mallinson's argument is that, prior to inclosure, the Hope to Pindale road, was a bridleway, as was A-B-C; whilst the Inclosure Commissioners set out the Peak Forest Road as a public carriageway, the continuation turned along Pindale Lane towards Castleton then via Siggate to Peak Forest, not along A-B-C which remained a bridleway.
24. She submits that other documentary evidence and works by local historians support the early origins of routes as packhorse trails in the Middle Ages. Further, they may have been private ways associated with the numerous lead mines in the area. In her view, it was significant that the Inclosure Commissioners described the "Peak Forest Road" as leading to "the south end of Pindale Lane" since Pindale Lane was its intended continuation, and Siggate was already of sufficient importance in the 1760s to be shown on Burdetts map as a cross road.
25. Mr Kind challenged this argument on several counts. Firstly, he said there is nothing in the description of Peak Forest Road to imply that it turned along Pindale Lane from the direct straight line that would take it via A-B-C; the reference to a point 'south of Pindale Lane' was no more than a convenient junction to describe the termination of the awarded section of Peak Forest Road. The Order route is a linear continuation of an undisputed public carriage road and runs to a junction with another undisputed carriage road. He submitted it is therefore improbable that it was of a lesser highway status⁶.

⁶ Mr Kind relied on the case of *A G (at relation of A H Hastie) v Godstone RDC (1912) JP 188* on this point.

Further, the naming of Pindale *Lane* suggests it was a lesser way than Pindale *Road*; the name 'Pindale Road' is applied both to the highway from Hope to Pindale and to A-B-C⁷.

26. Secondly, he highlights the words of the Award where it describes the Peak Forest Road "*extending in its ancient direction over the said waste called Eccles Bank through private and mesne inclosures to the south of Pindale Lane in Castleton Liberty*". This, he said, shows that Peak Forest Road existed before 1819 (*'in its ancient direction'*) and that it ran through pre-existing inclosures. In his submission it was not a new road.
27. Thirdly, Mr Kind disputed Mrs Mallinson's assertion that the alternative route to point C via Pindale Lane and Siggate offered a more gentle gradient and was therefore more commodious for horses, carts and carriages. The Order route up Pindale is undoubtedly shorter, quicker and, in his submission, the practicalities of the turn required at the "Y" junction (where Pindale Lane meets Siggate) weigh against this being a route utilised by horse-drawn vehicles.
28. It seems to me an obvious deduction in this case to conclude that the Inclosure Commissioners envisaged the two sections of Peak Forest Road would be linked by roads of a similar status.
29. If the sections set out by them were previously bridleways as suggested by Mrs Mallinson, there must have been a reasonable prospect that the connecting routes would achieve the same status by some means so as to make sense of the network and justify their action. In the alternative scenario, in 1819 Peak Forest Road was already in existence as a public carriageway as well as being on its original alignment but needed to be set out in the inclosure award nonetheless.
30. Whichever of those two possibilities was fact, the question that needs to be answered here is which route did the Inclosure Commissioners believe would form the Peak Forest Road between the two sections they set out.
31. Looking solely at the inclosure documents and simply as a matter of construction, I am more inclined to interpret the wording they used to describe the Hope-Pindale section of Peak Forest Road as inferring that it carried on in the same line rather than turning onto 'Pindale Lane in Castleton Liberty'. I regard the reference to Pindale Lane as a convenient junction to define the end of the awarded section but with no implication that Peak Forest Lane turned into it. In fact I am inclined to deduce the opposite.
32. Whilst I agree with Mr Kind that the use of the word 'ancient' is evidence that it was a pre-existing highway, I cannot dismiss too lightly the possibility that pre-inclosure it was only a bridleway and subsequently remained so.
33. Yet, in my opinion, the geography of the locality leans towards the continuation of the Peak Forest Road proceeding in a direct line up Pindale via A-B-C rather than winding its way along Pindale Lane and Siggate. Both involve a significant gradient but the Order route provides a shorter and more direct option. Research has shown that an area now marked as a turning circle to the west of the Y junction is not part of the highway but probably originated as an entrance to the parish tip (noted in the 1910 Finance Act records). Whilst Ms Stubbs submitted that the width of the roads at the junction between Pindale Lane and

⁷ As noted on Ordnance Survey maps – see paragraph 43

Siggate would be sufficient for a horse-drawn vehicle to turn, Mr Kind challenged her view, highlighting the gradient combined with the acute angle which would have added to the difficulties of turning here. Even today, the junction is testing for modern day vehicles. Whilst the matter is not clear cut, on balance I consider the nature of the Order route to have been marginally less challenging than the longer alternative.

34. An examination of a contemporary map of Castleton dated 1819 appears to make no distinction between the status of the two routes. The purpose of this map is not clear but it shows the road from the settlement of Pindale to Hope (labelled "To Bradwell"), the Order route A-B-C and Siggate (including C-D) in a similar fashion. Despite lying outside the Castleton boundary, the section B-C is shown as an enclosed lane leading up to the road (Siggate) labelled "From Bakewell" (at C).
35. Although the colours are not clear on my copy, I understand that all roads are shown in sepia, whether public or private (including the Cavedale route now recorded as a bridleway). Whilst the colouring may not assist to any great extent, it does not weigh against the Order route being regarded as having the same status as Pindale Lane and the remainder of Pindale Road.
36. The matter is not irrefutable, but I consider the Castleton map tends to support the conclusion that all three roads (Siggate, Pindale Lane and Pindale Road) were considered to have the same status. That was put beyond doubt by the 1819 inclosure award on the Hope side, leaving a strong inference that the corresponding parts in Castleton were likewise reputed to be – or possibly anticipated to be – public carriageways.
37. An examination of the post-inclosure evidence should shed some light on whether these carriageways were duly established as highways.

Post-inclosure evidence

38. Map-maker Greenwood produced a map of the county 5 years after the inclosure in Hope. His 1824 map showed all three roads: Pindale Road including the Order route, Pindale Lane and Siggate, each depicted in a similar manner⁸. Twelve years later, a county map produced by Sanderson in 1836 likewise showed all these roads.
39. They also appeared on the Castleton Tithe Map 1841, coloured sepia⁹ and in a similar fashion to the 1819 map. Both these maps included the enclosed section B-C although it lay outside the Castleton boundary¹⁰ and, on both, the Order route splits into two roads and re-joins, forming a short loop to the south-west of the Pindale settlement.
40. This loop is better illustrated some 50 years later by the 25": 1 mile Ordnance Survey (OS) map of 1898. This map shows the southernmost half of the loop deviated into the adjacent parish in order to service a limekiln and quarry although whether that was also the case in 1819 and/or 1841 could not be established from the available information.

⁸ Although his accuracy was questionable.

⁹ As were other non-titheable public and private roads

¹⁰ I note this is not included on the Bradwell Tithe Map of 1844 but, whilst its omission remains speculation, I do not attach any particular significance to this.

41. The records prepared under the 1910 Finance Act show that the Order route was excluded from adjacent hereditaments (including this loop and the land between the two branches of the road). This appears to reflect land ownership boundaries and is usually regarded as good evidence of the existence of a highway, often - but not always - a vehicular one.
42. Mr Kind submitted that this loop formed part of the highway and therefore that it should be recorded with an appropriate width. However I am not wholly convinced there is evidence that this area has been used to 'pass and repass' as part of the highway as opposed to servicing activities associated with adjacent mining or quarrying.
43. It is evident there were a great many old lead mines and quarries in this area but most notable on the OS map is the naming of the Order route as "Pindale Road". This is a label that is carried through from the 6": 1 mile map of 1899, the 1922 edition of the 25", to the 1:25,000 map published in 1951 and continues on present day mapping.
44. However, from the 1951 OS map onwards there is a discernible difference in the way the Order route is shown in terms of the road classification portrayed by the OS. Whereas Siggate and Pindale Lane are shown as secondary roads, the Order route A-B-C is classed as "poor or unmetalled". The 1962 map at 1" to 1 mile shows Siggate and the Castleton-Hope road via Pindale Lane as "tarred" whereas A-B-C is "untarred". Thus the evidence suggests that from the mid-twentieth century onwards (at least) A-B-C was not maintained to the same standard as connecting roads. None of the earlier evidence had distinguished in any way between the standard of these roads¹¹.
45. Nevertheless there is clear evidence that the Order route was included in the County Surveyor's list of highways maintainable at the public expense, having been 'handed over' in 1929 from the district councils. Being split between two parishes, it fell into the jurisdiction of two rural districts: Chapel-en-le-Frith Rural District (for A-B in Castleton¹²) and Bakewell RDC (for section B-C in Bradwell parish).
46. The schedules for Chapel-en-le-Frith survive but not the accompanying map. However, all parties agreed that the Order route A-B was listed as "Road" number 56b, described simply as "Pindale"¹³. Both map and schedules are still available for Bakewell and show that the Order route was not recorded. Even so, there is no doubt that at some time since then it has been added to the list so that the whole of A-B-C (and C-D) are recorded as non-classified highways (NCHs) by DCC.
47. In May 2012 DCC confirmed its position that inclusion in its list of streets held under Section 36(6) of the Highways Act 1980 is not proof of the existence of public vehicular rights of way as other routes that do not carry that status are also included.
48. In his evidence Mr Kind submitted a letter from DCC's County Surveyor dated 3 June 1987. This indicated that, at the time, the authority considered

¹¹ Excepting the map in 1767 by Burdett which did not show it at all and (possibly) the sketches by Fairbank in 1760 which suggested it was a bridleway.

¹² And also C-D which is discussed below

¹³ Mr Kind provided a useful analysis of the schedule, matching road numbers, descriptions and recorded lengths.

unclassified county roads¹⁴ held public vehicular rights, simply by virtue of their designation, an interpretation (then) broadly endorsed by Defra. This continued to be its position until subsequent research had caused DCC to retract the County Surveyor's 1987 stance on the basis a significant proportion of NCH routes do not carry public vehicular rights.

49. It is not surprising to find that NCHs were not claimed as public rights of way under the 1949 National Parks and Access to the Countryside Act when the first definitive map and statement was being prepared. Indeed it is accepted that NCHs were pre-drawn onto maps provided to the parish surveyors in the early 1950s in Derbyshire so there would be an assumption as to its public vehicular status. Similarly, it is no surprise to find the footpaths claimed as connecting with the Order route were described as starting on "Pindale Road¹⁵".
50. Turning finally to section C-D, there is no dispute that this once formed part of Siggate and its continuation to the parish boundary just south of point C. As I noted above in brief (at paragraph 6), the Tideswell Road was stopped up in the early 1960s southwards from a point near C and diverted to the west. This was diverted again in the late 1990s and today still follows this line.
51. No formal orders have been discovered to substantiate these highway diversions although there is no doubt they took place on the ground. A plan attached to correspondence between the quarry operators and the planning authority in the 1960s identified the new line for the road (which diverges from Siggate at point D) and identifies the "Road End" some 100m or so south east of point C¹⁶ where a new quarry access road began. The letter noted that "*In due course, however, the section of the highway where the new access emerges will cease to be a public highway*". This appears to have been a reference to the highway order that is assumed to have been made but which, to date, has not been discovered.
52. The 1960s plan also labelled section B-C as "*Pindale Footpath*". Mrs Mallinson submitted this indicated that the landowner considered the Order route to be a footpath, not a public vehicular road at that time. I am not convinced by that argument as the basis for this description is unknown. Ownership of Pindale Road itself has not been identified and, at best, the labelling of the Order route as a footpath by the quarry company would be evidence of its reputation and/or its character at the time.
53. A further quarry application in 2001 included a plan which identified B-C as 'Pindale Road' and showed D-C as continuing into the quarry working area as a haul road although it is not in use today.
54. Mr Kind submitted that in light of DCC's view (until 2012) that NCH's were vehicular roads, it is unlikely that C-D would have been stopped up by formal procedures either in the 1960s or 1990s when to have done so would have left Pindale Road a cul-de-sac ending at point C. I find that to be a very persuasive argument.

¹⁴ Later termed 'non-classified highways'

¹⁵ I have noted Mrs Mallinson and Ms Stubbs' submission that the surveyor in this case was probably not a local person but it seems to me the same assumption as to the highway status of A-B-C would have been made if the way was already pre-drawn onto the maps supplied. In any event there is no evidence its status was ever queried.

¹⁶ The spur road to this point is still recorded as a NCH.

Conclusions on the historical evidence

55. Having examined all the available historical and mapping material, I note firstly that, with the exception of the plan assumed to have been prepared in connection with planning permission for quarrying nearby in the 1960s, there is no reference in any of the direct evidence to the Order route being a public footpath.
56. The recording of three footpaths on the first definitive map and statement in the 1950s each connecting with the Order route imply that it carried a public right of way of at least that status. That is also a deduction that can be made from its recording as a highway maintainable at the public expense since the handover of responsibility to DCC in 1929.
57. It is also true to say that, with the exception of a reference in Mr Fairbank's survey notes in 1760, there is no reference in any of the direct evidence to the route being a bridleway. I accept that local historians have published material explaining the plethora of packhorse trails which still existed into the late eighteenth century, but there is no reference to this particular route in those publications. Having studied the Fairbank sketch, I am far from convinced that the track labelled as "Bridle way to Hope from Pindale" was what is now the public road although I do not completely dismiss that possibility.
58. Even if that were the correct interpretation and Pindale Road was a bridleway in the late eighteenth century, there is no later evidence of A-B-C carrying only the status of bridleway, for example with the inclusion of "BR" on OS maps.
59. There is no dispute that the 1819 inclosure award set out a public carriageway and highway along Pindale Road in Hope township. Being named 'Peak Forest Road' implies the Inclosure Commissioners viewed it as being of greater strategic value than simply a road to Pindale. As a direct extension of the awarded road, the Order route A-B-C would be the most obvious line to take to continue along the Inclosure Commissioners' intended long-distance route to Peak Forest; however, I recognise it is not the only one.
60. Post-inclosure, the commercial maps of the early nineteenth century showed A-B-C as being indistinguishable from Pindale Lane and Siggate, as did the tithe map for Castleton although I accept that none of these offer conclusive evidence and do include some private roads and bridleways. The OS has consistently named A-B-C as Pindale Road, the obvious explanation being that it was a continuation of the awarded road. The 1910 Finance Act records are consistent with the Order route having no known owner and also with it being a highway, most probably a vehicular one.
61. The location of the Order route on the boundary of, and being split between, two parishes may have been the explanation for its decline in relation to Pindale Lane and Siggate. In terms of travel within the local highway network, it seems likely that neither Castleton nor Bradwell would historically have gained the use from this route as would the village of Hope, yet Hope was not responsible for its maintenance. That may have been a factor that influenced its decline; similarly, its importance may have reduced as lead mining in the area came to an end and quarrying in Pindale itself ceased.
62. Looking at the direct documentary evidence before me, I find that on balance this leans firmly towards the conclusion that the Order route A-B-C was,

throughout the nineteenth and into the early twentieth century, regarded as an all-purpose vehicular highway.

63. That adds weight to my final conclusion that the Order route C-D was most probably retained as a public carriageway when sections of the Tideswell Road south of point C were stopped up to enable quarrying to take place.
64. In summary, on a balance of probability, I conclude that both parts of the Order route were once full vehicular highways and that they have retained those rights despite a relative decline in terms of the standard of maintenance.

The definition of a BOAT

65. Having determined that the way is a public vehicular one, its inclusion in the highway authority's recent maintenance records provides exemption¹⁷ from the effects of Section 67(1) of the Natural Environment and Rural Communities Act 2006 which would otherwise remove any public right of way for mechanically propelled vehicles. A full public carriageway therefore continues to subsist along the Order route.
66. However it is still 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*".¹⁸ If not, the route may be a vehicular highway but not one which should be recorded on the definitive map.
67. There are two main sources of guidance on interpretation of that definition: Defra Circular 1/09 and the case of *Masters v the Secretary of State for the Environment, Transport and the Regions [2000]*¹⁹. 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.*"
68. The character of the Order route is reasonably consistent throughout its length, except insofar as it ceases to be enclosed on both sides in its central section as it passes through the more open area which once formed the 'loop'. Being a rough stony track, it appears capable of being used by 4-wheel drive vehicles and by motor bikes and I have before me the written evidence of the 28 people who claim to have done so, having ridden the route at some time over the last 46 years.
69. Even so, in my view the nature of the road renders it generally more suited to use by non-motorised traffic and overall I consider it to have the character of a road which fits the description of a BOAT.

¹⁷ 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)"

¹⁸ Section 66 of the 1981 Act

¹⁹ *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*

Evidence of recent usage

70. Whilst the inquiry focussed primarily on the historical evidence, Mr Cleary presented the statement of Mr Higgins on his behalf and then supported this with details of his own recollections of use of the Order route. No other submissions were made to me in relation to the significance of, or weight to be attached to, the statements from the 27 people who provided evidence to support their claim to have ridden the route in the past. No structured analysis of this evidence has been undertaken against the framework provided by Section 31 of the Highways Act 1980 or at common law.
71. Given my finding that the Order route A-B-C probably attained highway status for all types of traffic in the early nineteenth century (if not earlier), there is no need for me to carry out my own analysis of the user evidence to establish whether dedication of the way to the public can be presumed or is implied on the basis of long usage at some more recent date. Nevertheless, I acknowledge the detailed submissions made by Ms Stubbs in relation to this evidence, and the attendance of Mr Burling and Mr Sissons who both gave evidence to the inquiry of their personal use on foot.
72. Further, I note that Mrs Mallinson challenged the validity of the definitive map modification order application and, as a consequence of the failings she highlighted, argued that the application itself could not be relied upon to have 'brought into question' the extent of the public's rights here. Again, given my conclusion that the Order should be confirmed on the basis that the route was established as a highway around two centuries ago, there is no longer a need for to me to address this argument.

Other matters

73. Some objectors expressed concern over the effects of motor vehicles using (and mis-using) the Order route and in particular the impact on the sensitive areas of the Site of Special Scientific Interest that is designated adjacent to Pindale Road. Safety and nuisance issues have also been raised. Whilst I recognise these are continuing problems that present management challenges, 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

74. Having regard to the above and all other matters raised at the inquiry and in the written representations, I confirm the Order.

Formal Decision

75. I confirm the Order.

Sue Arnott

Inspector

APPEARANCES

Appearing in a neutral capacity

Ms K Zasada Solicitor; Derbyshire County Council

Who called

Mr P Jackson Senior Legal Assistant; Derbyshire County Council

Mr A Darlington

In support of public vehicular rights

Mr A Kind Representing the applicant, the Trail Riders' Fellowship

Mr H J Clearly

Mr C Mitchell Representing GLASS (Derbyshire Area) *Interested Party*

In objection

Mrs D Mallinson *Statutory objector*; representing Peak District Green Lanes Alliance and Peak Horse Power, assisted by:

Ms P Stubbs

Who called

Mr J Burling

Mr D Sissons

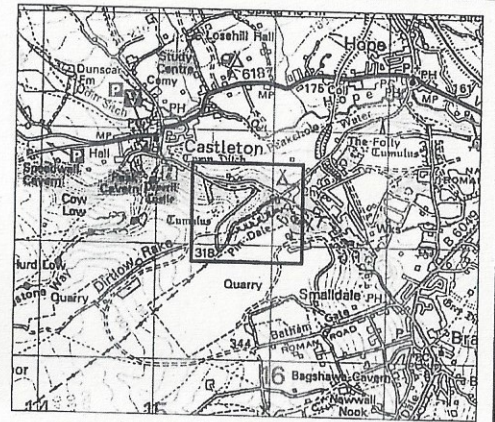
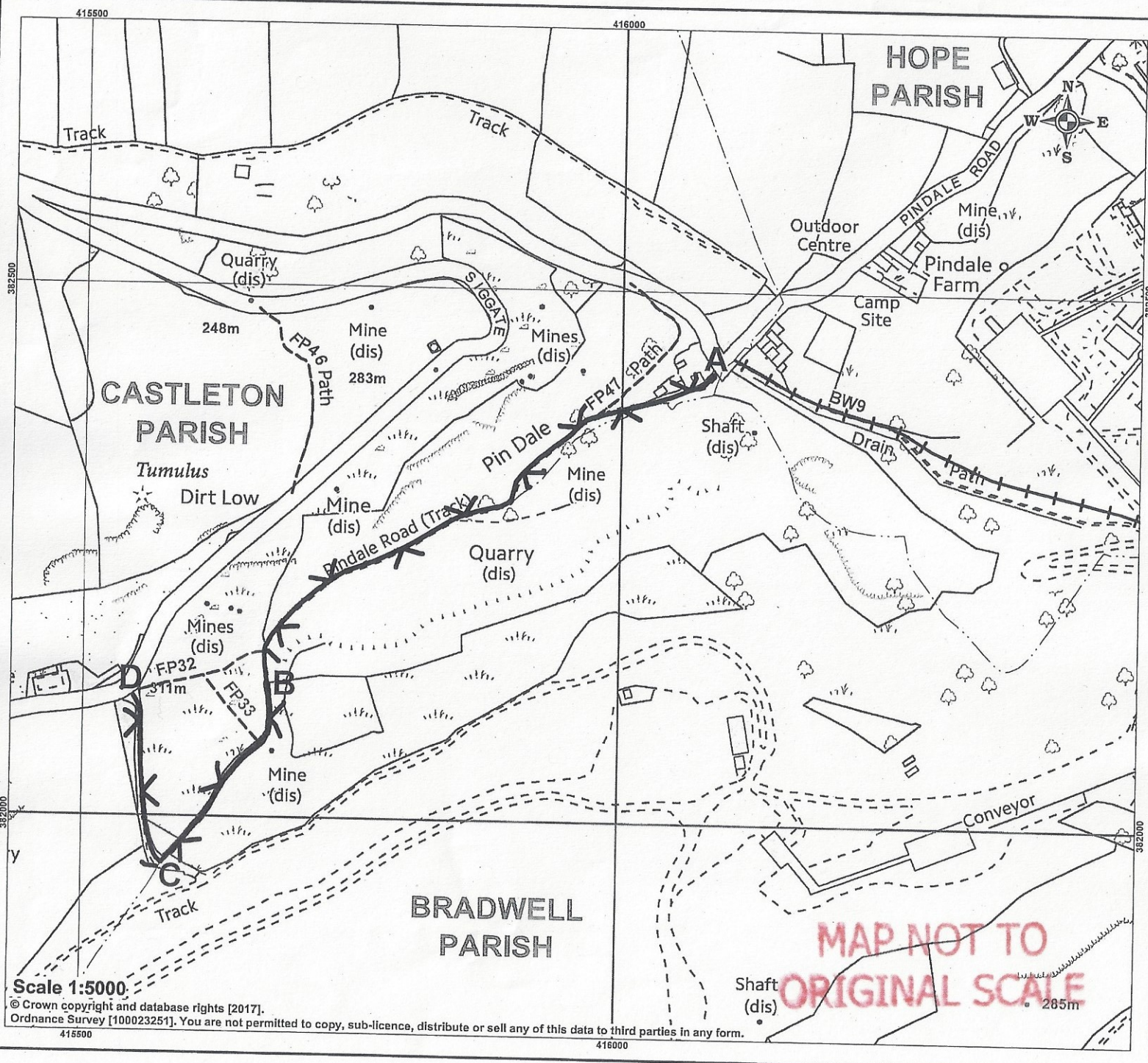
Mrs R Barnett *Statutory objector*; Courts and Inquiries Officer (Derbyshire) for the Peak and Northern Footpaths Society

DOCUMENTS

1. Copy of the statutory objections and representation
2. Statement of reasons for making the Order submitted by Derbyshire County Council and comments on the objections together with bundle of relevant case documents
3. Statement of case of the Trail Riders' Fellowship with accompanying documents submitted by Mr Kind dated 31 August 2019
4. Statement of case of Mrs Barnett on behalf of the Peak and Northern Footpaths Society dated August 2019
5. Statement of case of Mrs Mallinson dated 7 September 2019
6. Proof of evidence of Mrs Mallinson & Ms Stubbs with summary proof and additional appendices dated October 2019
7. Correction note submitted to the inquiry by Mr Kind
8. Further submission from Mr Kind in relation to interpretation of the Inclosure Award together with copy of the Inclosure Act
9. Extract from the Oxford English Dictionary showing the definition of "Lane"
10. Additional documents submitted by Peak District Green Lanes Alliance and Peak Horse Power
11. User evidence form completed by Mr R E Higgins
12. Map submitted by Mr H J Cleary

Submitted after the inquiry

13. Copies of relevant parish claim forms and map from 1950s
14. Information concerning 'the turning circle' submitted by DCC
15. Copy of letter to the Planning Inspectorate dated 13 July 2019 from Mr H Cleary
16. Copy of letter concerning unclassified roads dated 3 June 1987 from DCC
17. Photograph of part of the inclosure plan of 1819 submitted by Mr Kind
18. Email sent to the Planning Inspectorate on 19 November 2019 from Mr Kind
19. Letter to the Planning Inspectorate dated 21 November 2019 from Mrs Mallinson and Ms Stubbs

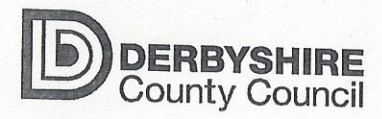


Wildlife & Countryside Act 1981 Section 53
The Derbyshire County Council
 (Byway Open to All Traffic along
 non-classified highway along
 Pin Dale (including non-classified
 highway spur to Dirtlow Rake)
 Parishes of Castleton and Bradwell)
 Modification Order 2017

Key:

- BOAT to be added (A-B)
- (B-C)
- (C-D)
- Existing Footpath
- Existing Bridleway
- District boundary
- Parish boundary

Ref: TE/CH/X3250/Order/2017
 Date: 1 June 2017



Mike Ashworth
 Strategic Director
 Economy, Transport & Communities
 Derbyshire County Council
 Shand House
 Dale Road South
 Matlock
 DE4 3RY

Scale 1:5000

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MAP NOT TO ORIGINAL SCALE