



Order Decision

Site visit made on 4 August 2020

by Martin Elliott BSc FIPROW

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

Decision date: 20 August 2020

Order Ref: ROW/3223257

- 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 Public Footpath No. 11 to a Bridleway – Parish of Hodthorpe and Belph) Modification Order 2018.
- The Order is dated 26 July 2018 and proposes to modify the Definitive Map and Statement for the area by upgrading public footpath 11 to a public bridleway as shown in the Order plan and described in the Order Schedule.
- There were two objections 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. A public inquiry was due to be held on 4 August 2020. However, in response to the Notice of Order only one statement of case was submitted. As a consequence parties were contacted to establish if anyone wished to be heard by way of a public inquiry. No one requested to be heard and in my view the determination of the Order by way of written representations was appropriate. The Inquiry was therefore cancelled, albeit that in any event it would have been postponed due to the current Covid-19 pandemic. I have therefore reached my decision based on the submissions made by the parties. I carried out an unaccompanied site visit on the afternoon of 4 August.
2. Two objections were raised to the making of the Order. The Council has provided correspondence from one of these objectors, the Parish Council, to indicate that the objection has been withdrawn. However, the Parish Council has not written directly to the Planning Inspectorate and consequently the objection remains. The Parish Council objects on the basis that the route is unsuitable for use by horses and cycles. Correspondence to the Council from the other objector, Creswell Heritage Trust, suggests that their objection stands based solely on safety grounds. Whilst I note the issues raised in the objections in relation to suitability and safety these are not matters which can be taken into account in respect of the determination of an Order under the 1981 Act. The relevant criteria are set out below at paragraphs 3 to 5.

The Main Issue

3. The Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of an event specified in section 53(3)(c)(ii). Namely that a highway shown on the definitive map and statement as one description (public footpath) ought to be shown as a highway of a different description (public bridleway).

4. Section 31 of the Highways Act 1980 provides that where a way, other than a way of such a character that use of it could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public, as of right and without interruption, for a period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that the landowner demonstrated a lack of any intention during this period to dedicate the route. The twenty year period applies retrospectively from the date on which the right of the public to use the way was brought into question.
5. The main issue in this case is whether the use of the Order route (currently recorded as a public footpath) raises a presumption that the way has been dedicated as a public bridleway. I have considered the statutory dedication of the way under section 31 of the Highways Act 1980. If the use is sufficient to raise a presumption of dedication then I will need to consider whether any landowner demonstrated a lack of intention to dedicate the way as a public bridleway. The test to be applied to the evidence is on the balance of probabilities.

Reasons

Statutory Dedication – Section 31 Highways Act 1980

When the right to use the way was brought into question

6. The Council say that the right to use the way was brought into question in 2013 when the application under the 1981 Act was made to add the route to the definitive map and statement. Such an application would have brought the right to use the way into question. However, the applicant has submitted a Statutory Declaration, dated 21 September 2012, from the landowner, made in accordance with Section 31(6) of the Highways Act 1980 stating that the Order route is a public footpath. This would have set an earlier date on which the right to use the way was brought into question and in the absence of any other relevant events sets the twenty year period to be considered as 1992 to 2012.

Evidence of use 1992 to 2012

7. The evidence of use forms submitted by the Council indicate use of the Order route on horseback or by bicycle generally on a weekly or monthly basis. The use covers the full twenty year period although the use increases towards the end of the period. Use was as of right and there is no indication that use was interrupted or that there were any notices on the route such as to deter use. A number of evidence of use forms refer to seeing other horse riders and cyclists on a regular basis.
8. The evidence of use has not been disputed in any of the objections, indeed the Creswell Heritage Trust state in their objection that horse riders do occasionally use the route although not in significant numbers. In my view the evidence of use is sufficient to raise the presumption that the way has been dedicated as a public bridleway.

Lack of intention to dedicate

9. There is no evidence before me that any owner of the land demonstrated a lack of intention to dedicate the route as a public bridleway. The Statutory Declaration made by the landowner falls outside the relevant twenty year period and does not serve to demonstrate a lack of intention during the

relevant twenty year period. Consequently the statutory dedication is made out and the Order should be confirmed.

Conclusion

10. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed.

Formal Decision

11. I confirm the Order.

Martin Elliott

Inspector



Wildlife & Countryside Act 1981 Section.53
The Derbyshire County Council
(Upgrading Public Footpath No. 11
to a Bridleway - Parish of Hodthorpe
and Belp) Modification Order 2018

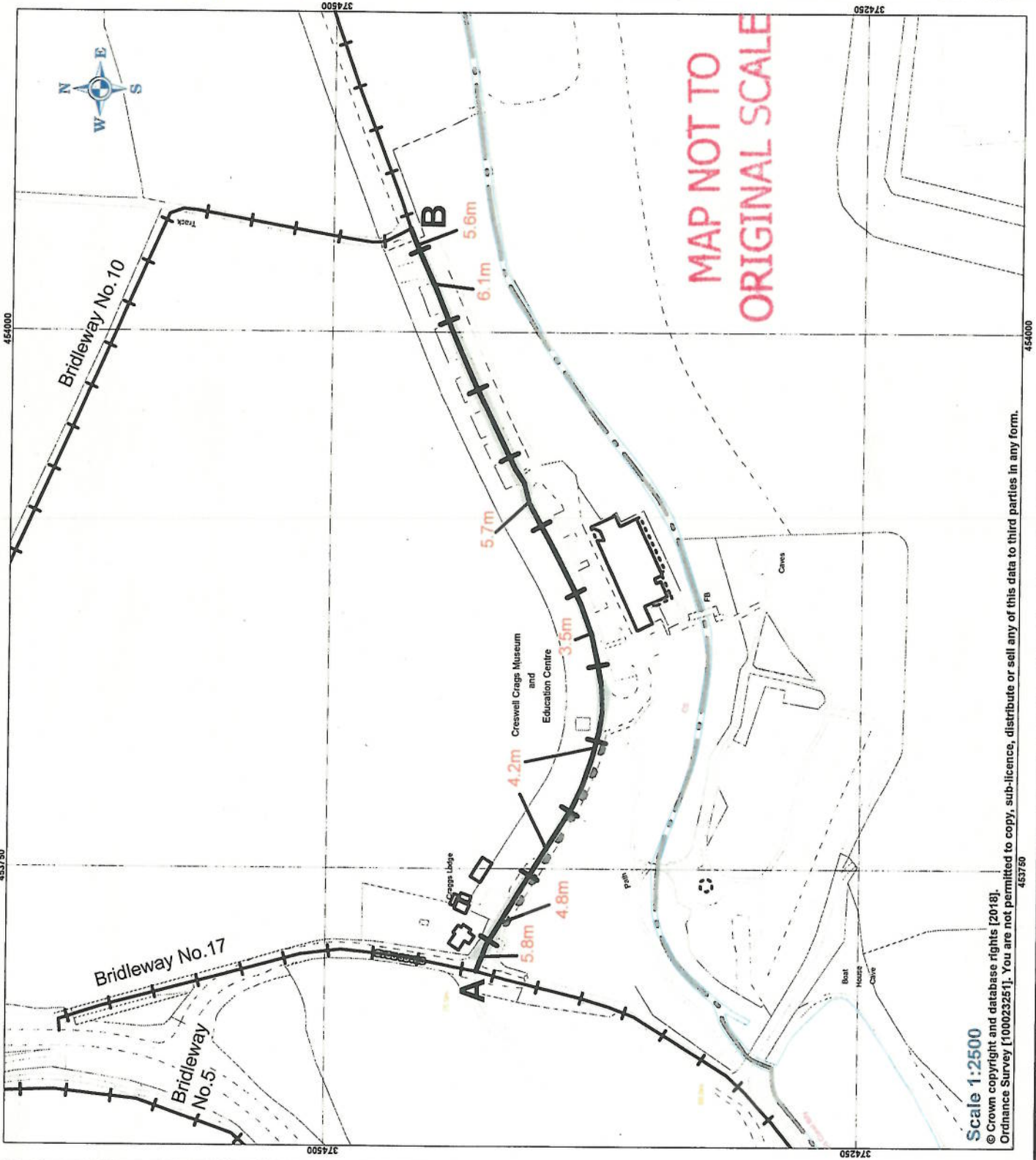
KEY

- Footpath to be upgraded to Bridleway (A-B)
- Existing Bridleway



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