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## 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**

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### **Order Ref: ROW/3223258**

- 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 of Public Footpath No. 12 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 12 Hodthorpe and Belph to a public bridleway as shown in the Order plan and described in the Order Schedule.
- There were five objections outstanding 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.**

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### **Procedural Matters**

1. Although the making of the Order attracted five objections one of those objections was subsequently withdrawn.
2. 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 a site visit on the afternoon of 4 August.

### **The Main Issues**

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**

### ***Background issues***

6. An objection is raised on the basis that the Order route is a 'highway' by which I understand from the correspondence from the objector that the route is a considered to be highway which carries public vehicular rights. I have been provided with a copy of a tracing believed by the objector to be the plan annexed to the Whitwell Inclosure Award of 1823. Whilst the Order route and known vehicular highways are shown coloured brown it does not necessarily follow that the Order route is a vehicular highway. In the absence of a copy of the inclosure award, the award plan on its own is not sufficient to reach such a conclusion.
7. The objector also provides correspondence, dated 2 February 1984, showing the neighbouring road to the Order route was 'a highway and unclassified County road'. It is accepted that the plan shows neighbouring routes as being highways proposed to be stopped up and retained as bridleways and given the location of these routes it might follow that the Order route was also considered to be a vehicular highway. However, the plan is silent as to the status of the Order route and in the absence it is difficult to attach any significant weight to this plan in support of the vehicular highway status of the Order route. The Council advises that the Order route is not an adopted highway and is only responsible for maintenance as a footpath.
8. It is further asserted that the public have used the Order route with vehicles and in consequence has been dedicated as a highway. Whilst I note the assertion I have not been provided with the evidence from which I can reach that conclusion. It is also stated that in consequence of use by vehicles the classification of the route as a bridleway is incorrect and in direct conflict. Again I note the observation but the recording of the route as a bridleway will not remove any existing vehicular rights and will not preclude such rights from being shown to exist at a later date.
9. Although I note the evidence put forward by the objector, even when considered as a whole, it is not sufficient for me to reach a conclusion, on the balance of probabilities, that the Order route is a public vehicular highway. A further issue is raised in relation to the width of the Order route specified in the Order. I consider this below at paragraph 14.

### ***Statutory Dedication – Section 31 Highways Act 1980***

#### *When the right to use the way was brought into question*

10. 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 and in the absence of any other event sets a relevant twenty-year period of 1993 to 2013.

*Evidence of use 1993 to 2013*

11. 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. One evidence of use form, whilst highlighting the Order route, marks the route used as bridleways 15 and 16 and refers to bridleway signs at each end of the route with the route leading from Belph to Perry Green Cottages. A further form, again completed in connection with the Order route, also marks the route of bridleways 15 and 16 as the route used. Nevertheless, these forms have been completed in respect of the upgrade of the Order route to a public bridleway and use may also relate to the Order route. In my view, and in the absence of further information, these forms are ambiguous as to the route used and I therefore have not given them any weight.
12. The evidence of use has not been disputed in any of the objections and whilst the evidence of use is not substantial it is sufficient to raise the presumption that the way has been dedicated as a public bridleway.

*Lack of intention to dedicate*

13. 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. Consequently the statutory dedication is made out and the Order should be confirmed.

**Width**

14. The Schedule to the Order sets out the width of the route as varying between 3.5 and 12.2 metres; the greatest width being the splay at the southwestern end of the Order route. There is a rebuttable presumption that the width of any highway extends between any boundaries. There is no evidence before me to suggest that the dedication of the bridleway did not extend between the boundaries or that the widths set out in the Order are incorrect. It is noted that vehicles park on the Order route but this does not rebut the presumption as to the width.

**Other Matters**

15. A number of objections raise concerns in respect of the maintenance of public rights of way, the suitability of adjacent routes, alternative routes, issues of safety and implications for the parking of vehicles. Whilst I note and can appreciate these concerns the 1981 Act does not enable such matters to be taken into account in determining the Order. The relevant criteria are those set out above at paragraphs 3 to 5 above.

**Conclusion**

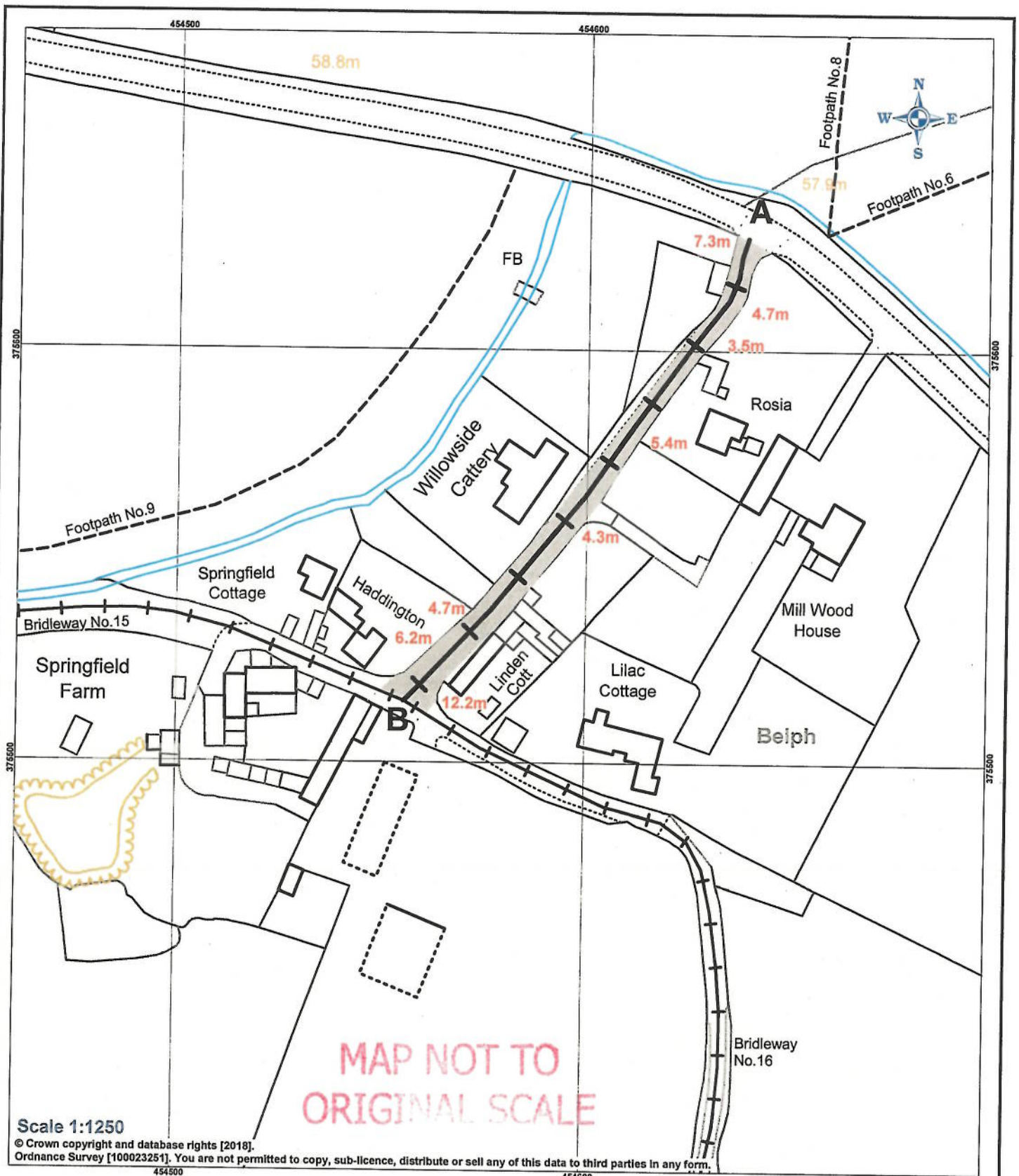
16. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed.

**Formal Decision**

17. I confirm the Order.

*Martin Elliott*

Inspector



MAP NOT TO ORIGINAL SCALE

Scale 1:1250

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Ref: TE/CH/X3963/Order/2018



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Produced by Public Rights of Way on 13 June 2018

**Wildlife & Countryside Act 1981 Section.53**

**The Derbyshire County Council (Upgrading Public Footpath No. 12 to a Bridleway - Parish of Hodthorpe and Belph) Modification Order 2018**

- Key:**
- Path to be upgraded
  - Existing Footpath
  - Existing Bridleway

