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| **Order Decision** |
| Inquiry held on 26 and 27 November 2019Site visits on 27 and 28 November 2019 |
| **by Paul Freer BA(Hons) LLM PhD MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 21 July 2022** |

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| **Order Ref: ROW/3222938M1** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Derbyshire County Council (Bridleway from Main Street Over Haddon via Lathkhill Dale and Meadow Place Grange to Back Lane – Parishes of Over Haddon and Youlgreave) Modification Order 2018.
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| * The Order is dated 6 September 2018. It proposes to modify the definitive map and statement for the area by adding a Bridleway linking Main Street Over Haddon with Back Lane as shown on the Order map and described in the Order Schedule.
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| In accordance with Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 I have given notice of my proposal to confirm the Order with modifications. Four representations have been submitted in response. |
| **Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.**  |

 **Preliminary Matters**

1. If confirmed with the modifications set out in paragraph 65 of my interim Order Decision (IOD) issued on 14 August 2020, the Order would record on the definitive map and statement a Bridleway from the bridge/ford over the River Lathkhill (a point identified as Bx) to Back Lane. Further, the Order Route Bx to C would be recorded as “The width of the way varies between 2.7 metres and 12.6 metres”. There would, addition, be other alterations to the wording of the Order as set out in paragraph 65 of my interim Order Decision.
2. Following advertisement of my proposal to confirm the Order with these modifications four representations were received: from Mr Peter Jackson, Senior Legal Assistant at Derbyshire County Council; Mrs Diana Mallinson: Mr Kind on behalf of the Green Lane Association (GLASS); and Mr Alan Kind.
3. These representations contained submissions which were relevant to my proposed modifications, as well as to my recording of evidence heard at the Inquiry.

**The main issue**

1. The main issue remains whether the evidence is sufficient to show, on a balance of probability, that the public rights of way claimed over the Order route (as proposed to be modified) subsist.

**Reasons**

*Evidence heard at the Inquiry*

1. In paragraphs 5 and 7 of my interim Decision Order, I refer to questions over the status of the inclosure ‘plan’ for the 1810 Bakewell & Over Haddon Parliamentary Enclosure Award (1810 Enclosure Award). In his representation, Mr Kind fairly points out that in giving his evidence to the Inquiry he was referring to the validity of the award as a whole rather than the plan alone. I acknowledge that but, as Mr Kind himself acknowledges, my recording of ‘plan’ in the IOD has no bearing in my decision or the weight I attached to the evidence.
2. In their representations, both Mr Jackson and Mrs Mallinson take the view that I ‘glossed over’ the historical evidence presented to the Inquiry in my interim Order Decision. The historical evidence presented to the Inquiry, including the 1810 Enclosure Award, was in my view inconclusive when read as a whole. I did have regard to that evidence, but the stronger evidence was that contained in the user evidence forms. Consequently, whilst the historical evidence was there in the background, I focused on the more reliable evidence in the latter.
3. Both the historical and user evidence pointed in the same direction. There was therefore no need for me to balance competing evidence pointing to alternative conclusions, and as such there was no reason to set out in detail in my IOD historical evidence that was itself inconclusive. In any event, it is neither necessary nor practical to rehearse in detail all the evidence presented at an Inquiry. Moreover, neither Mr Jackson nor Mrs Mallinson go so far as to say that the overall conclusion in my interim Order Decision was wrong. Indeed, Mr Jackson expressly states in his representation that in his view the correct decision was reached.

*The proposed modifications*

1. Mr Jackson considers that, in the interest of clarity, the Order title ought to be amended to: ‘The Derbyshire County Council (Bridleway from Lathkill Dale **via** Meadow Place Grange to Back Lane – Parishes of Over Haddon and Youlgreave) Modification Order 2018’ (his emphasis). I can see the logic of that, and am content to make that further correction.
2. The location of the point ‘Bx’ was inadvertently missed off the Order Plan as I propose to modify it, but has now been added. I am now advised of the grid reference for point Bx, and Mr Jackson requests that this is added at the appropriate points in both Part I and Part II of the Order. I agree that this would provide greater clarity and will add that grid reference as suggested.
3. Both Mr Jackson and Mrs Mallinson point out that, in Parts I and II of the Order, the description should read “and crossing open field in SSW direction to Meadow Place Farm”. The County Council did acknowledge this mistake in the original schedule at the Inquiry, and I am content to make that further correction.
4. Similarly, Mr Jackson and Mrs Mallinson also point out that in Parts I of the modified schedule the wording should be “Then crossing, the description should read “Then continuing S then E then S through farmyard”. Again, I am content to make that further correction.
5. In my interim Order Decision, I proposed that Part II of the Order be modified by deleting the words ‘to add’. To place this in proper context, the full wording in Part II of the Order is “Variation to add of particulars of Path or Way”.
6. Both Mr Jackson and Mrs Mallinson consider that it would be incorrect to delete the words ‘To add’ because the purpose of the Order is to add a bridleway to the Definitive Way and Statement, rather than to vary an existing right of way. Neither suggests that I delete ‘variation’ instead.
7. The difficulty is that, on my reading, the wording in Part II of the Order is contradictory: it refers to both variation of and addition to the particulars of the path or way. I sought to overcome that contradiction in my proposed modifications by deleting the words ‘to add’. However, I take the point that the purpose of the Order is to add a bridleway to the Definitive Map and Statement, and that the word ‘add’ should remain. But to my mind the corollary is the word ‘variation’ then becomes superfluous, as does the word ‘of’, which is associated with variation. I therefore now propose to modify the Order deleting those words.
8. Mr Jackson raises concerns about what he considers to be the wide range of width stated on the Order as proposed to be modified. It is suggested by Mr Jackson that the width column should be amended to record the narrowest and widest width of the river crossing, and varying between 2.7 metres and 4.5 metres elsewhere. In addition, Mr Jackson requests that the reference to the Second Edition of the 1:2500 Ordnance Survey plan of 1898 in Order, which I proposed be deleted, is reinstated in allow the opportunity to resolve any disputes that may arise in the future.
9. On reflection, I agree that the Order, as I propose to modify it, could be more precise in specifying the width of the route. As measured at the site visit, the minimum combined width of the ford and footbridge crossing the River Lathkill was 5.6 metres (north side); the maximum width was 12.6 metres (south side). I take the point made on behalf of GLASS that the ford itself is the way, and not water that flows over it, which may rise and fall. For that reason, in the interests of consistency with other measurements of the width of the way, I propose to use a specific width for the combined ford and footbridge rather than adopt a ‘nominal’ width to cater for any rise or fall in water levels.
10. Elsewhere, the measurements taken at the site visit confirmed that the width of the route varied between 2.7 metres and 4.5 metres, as indicated by Mr Jackson. I will therefore further modify the Order to refer to those widths.
11. I am not persuaded that reference to the Second Edition of the 1:2500 Ordnance Survey plan of 1898 in Order would greatly assist the Council in resolving any disputes that may arise in the future, which is why I deleted reference to it in my proposed modifications. Nevertheless, reference to it would be consistent with guidance and because the Council considers that it would be assisted by including reference to that plan in the Order, I am content to reinstate reference to it.
12. I remain satisfied, on a balance of probability, that the evidence shows that a Bridleway subsists along the route described in the Order between the points labelled Bx and C. Having regard to the above and all other matters raised at the inquiry and in the written representations, I propose to confirm the Order with the modifications set out in the Formal Decision below, which represent an amalgam of the modifications previously proposed and the further modifications set out above.

 **Formal Decision**

1. The Order is confirmed subject to the following modifications
* In the title of the Order, delete the words in parenthesis and insert there “(BRIDLEWAY FROM LATHKILL DALE VIA MEADOW PLACE GRANGE TO BACK LANE - PARISHES OF OVER HADDON AND YOULGREAVE)”
* In the citation at paragraph 3 of the Order, delete the words in parenthesis and insert there “(BRIDLEWAY FROM LATHKILL DALE VIA MEADOW PLACE GRANGE TO BACK LANE - PARISHES OF OVER HADDON AND YOULGREAVE)”
* In Part I of the Schedule to the Order, delete the letters “A-B” and the description of path or Way to be added insofar as it relates to A-B.
* In Part I of the Schedule to the Order, delete the letter B-C and substitute there “*Bx-C*”. Delete the description of path or Way to be added insofar as it relates to both A-B and B-C, and substitute there “*Bx to C*” and “*Bridleway starting in the Parish of Over Haddon (SK 2027 6613) proceeding in a southerly direction across the River Lathkill, then continuing in the Parish of Youlgreave in an ESE then WSW direction ascending through Meadow Place Wood on stone track, then passing through field gate and crossing open field in SSW direction to Meadow Place Farm. Then continuing S then E then S through farmyard then ESE then SE on tarmacadam farm access to N side of Back Lane (SK 2087 6536) at E side of cattle grid*.”
* In Part II of the Schedule to the Order, delete the words ‘Variation’ and ‘of’ in the second sentence of title.
* In Part II of the Schedule to the Order, insert beneath the title the headings: ‘*Path Number; 1:10,000 OS Sheet Ref Number; Status and Description of the Route; Nature of Surface; Length; Width; and Remarks*.’
* In Part II of the Schedule to the Order, delete “24 Parish of Over Haddon” and all the description of the path or way associated with that.
* In Part II of the Schedule to the Order, insert “*24 Parish of Over Haddon and*” before “41 Parish of Youlgreave”
* In Part II of the Schedule to the Order, delete the description of the path or way in relation to “41 Parish of Youlgreave” and substitute there: “*Bridleway from the north side of the stone clapper bridge over the River Lathkill (2027 6613), continuing for a short distance via the ford or the adjacent stone clapper bridge to the south side of the River Lathkill (2026 6611) at the Over Haddon parish boundary, continuing in the parish of Youlgreave in an ESE then WSW direction ascending through Meadow Place Wood on stone track, then passing through field gate and crossing open field in SSW direction to Meadow Place Farm. Then continuing S then E then S through farmyard then ESE then SE on tarmacadam farm access to N side of Back Lane (2087 6536) at E side of cattle grid.*”
* In Part II of the Schedule to the Order, insofar as it relates to “41 Parish of Youlgreave”, delete reference to ‘Varying between 3.5 and 4.5 metres as shown between boundaries on the Second Edition of the 1:2500 Ordnance Survey plan of 1898’ and substitute there “*The width of the way varies between 5.6 metres (north side) and 12.6 metres (south side) at the crossing of the River Lathkill, and between 2.7 metres and 4.5 metres elsewhere, as shown between the boundaries on the* Second Edition of the 1:2500 Ordnance Survey plan of 1898”.
* On the Order Plan, delete the way between point A and Point B, and insert Point Bx.
1. The modifications would increase the width of the way to a maximum of 12.6 metres on the south side at the crossing the River Lathkill. Since the confirmed Order would affect land not affected by the Order and would not show as a way in the Order as submitted, I am required by reason of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. I am satisfied that the other modifications proposed above would not, in themselves, normally warrant readvertising. However, for ease and in the interests of completeness, A letter will be sent to interested persons about the advertisement procedure.

Paul Freer

INSPECTOR

