

|  |
| --- |
| **Interim Order Decision** |
| Inquiry opened on 10 September 2019  Site visit made on 26 August 2021 |
| **by Susan Doran BA Hons MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 14 October 2022** |

|  |
| --- |
| **Order Ref: ROW/3213607** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Derbyshire County Council (Bridleway from Public Bridleway No.8 to Public Bridleway No.9 – Parish of Dale Abbey) Modification Order 2018. |
| * The Order is dated 28 June 2018 and proposes to modify the Definitive Map and Statement for the area by adding a public bridleway as shown in the Order plan and described in the Order Schedule. |
| * There were 30 objections outstanding at the commencement of the inquiry. |
| **Summary of Decision:** **The Order is proposed for confirmation subject to modifications set out below in the Formal Decision** |
|  |

Procedural Matters

1. The Order concerns the addition of a public bridleway at Vergers Farm (formerly known as Church Farm), Dale Abbey from point A on the plan attached to the Order, its junction with Bridleway No.8, passing through the farmyard, then continuing to B, its junction with Bridleway No.9 (‘the Order route’).
2. Although Derbyshire County Council (‘the Council’) resolved to make the Order, they adopted a neutral stance at the Inquiry. The case in support of the Order was made on behalf of the British Horse Society (‘the supporters’). The landowners and main Objectors (‘the objectors’) were represented by Robin Carr Associates.
3. The Inquiry opened at the Town Hall, Ilkeston and continued at Morley Hayes Golf Club. I adjourned on 12 September 2019 with the Inquiry due to reconvene on 28 April 2020. However, due to the Covid-19 pandemic, resumption was delayed until 11 August 2021 when, previously having consulted with and secured the agreement of the parties, it ran as a Blended Event (a mix of virtual and face-to face participation) for a further two days, with some people again attending at Morley Hayes Golf Club. I am grateful to everyone involved in enabling the case to be concluded in this manner. Regrettably, due to unexpected circumstances, the issuing of this decision has been delayed.
4. I have taken all relevant documents into account in reaching my decision, including those submitted (by agreement) during the adjournment, and those provided when the Inquiry resumed in 2021.
5. Applications for costs made by the objectors against the Council, and against the supporters, will be the subject of separate decisions.
6. I made an accompanied inspection of the Order route and surrounding area on 26 August 2021 with a representative of the Council, two representatives from the supporters, and the main objectors. Following the site inspection clarification of an Ordnance Survey (‘OS’) grid reference for point A on the Order plan was provided by the Council and the details copied to the parties for information. I subsequently sought from the Council details of grid references and distances between various points referred to in a plan (Appendix 1 of the objectors’ Statement of Case), which again were copied to the parties for information. In this decision, I have found it convenient to refer to this plan, which is attached as Appendix A.
7. Therefore, unless otherwise expressly stated, I shall refer to the various points by reference to Appendix A. From point A, its junction with the Order route, Bridleway 8 is shown running to point E, its junction with Footpath No.46. From there it continues and passes over a rock face, crosses the southern part of the farmyard then through a structure (point X1) to point X, its junction with Bridleway No.9. Point Y is located to the north on Bridleway No.9 and its junction with Footpath No.7, and point Z is located on Bridleway No.9, south of D. Point F is located on Bridleway No.8 in Hermit’s Wood east of point A.
8. I note that part of Bridleway No.8 has been the subject of closure notices under section 14 of the Road Traffic Regulation Act 1984, on safety grounds.

***Whether the Order should be modified, including the addition of further ‘events’***

1. The Order was made by the Council under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (‘the 1981 Act’), the discovery of evidence which, when considered with all other available evidence, shows that (in this case) a public bridleway subsists over the Order route such that the Definitive Map and Statement (‘DMS’) requires modification. The Council relied upon evidence of use by the public which they considered met the tests set out in section 31 of the Highways Act 1980 (‘the 1980 Act’).
2. Whilst the supporters sought confirmation of the Order as made and without modification (based on the user evidence under statute and at common law, supported by the documentary evidence), their research of documentary sources had led them to another view. They did not seek modifications to the Order but invited me to consider the alignments of Bridleways Nos.8 and 9 and Footpath No.46 in my decision, further to the evidence adduced.
3. In summary, they believed the records leading up to and including the DMS were mistaken and the alignment of Bridleway No.8 had always followed the Order route, A-B-C on Appendix A, terminating on Bridleway No.9; that Footpath No.46 terminated on Bridleway No.8 at A rather than E; and that Bridleway No.9 should follow the alignment D-X-B-C. Should I concur with the supporters’ view, this would mean that A-E ought to be downgraded from bridleway to footpath; A-B-C should be added to the DMS as part of Bridleway No.8; X-B-C should be added as part of Bridleway No.9; and X-C and E-X1-X should be deleted from the DMS.
4. Notwithstanding their stated position, the supporters requested modifications to the Order (as made) to remove a limitation, the gate recorded between B and C, as it was not installed until 2013; and to correct the grid reference for Point A (confirmed by the Council as GR SK 4375 3854). A similar request regarding point A had been made by the Council when the Order was submitted to The Planning Inspectorate. Should I decide to confirm the Order, this would require amendments to Parts I and II of its Schedule. However, such modifications on their own would not require advertisement.
5. In addition, the objectors asserted the continuation of Bridleway No.8 on the Definitive Map could be interpreted as from E-D, on the cliff top. Should I concur with their view, this would mean E-D should be recorded as the correct alignment of Bridleway No.8, and the alignment E-X1-X should be deleted from the DMS.
6. Where facts come to light during the course of an inquiry which persuade an Inspector that the Definitive Map should depart from the proposed order, then it should be modified accordingly, subject to any subsequent objections or representations that may lead to a further inquiry *(Trevelyan v Secretary of State for the Environment, Transport and the Regions [2001] EWCA Civ 266* (‘Trevelyan’)*).* Accordingly, I shall examine the documentary evidence adduced in the light of the assertions made and decide whether, as a consequence, the DMS requires modification. This could, for example, mean that a further ‘event’ or ‘events’ may be relevant. However, should I decide that is the case, I must also consider whether or not it is within my powers to make such modifications.
7. Provided that no-one’s interests are prejudiced, the Order is not misleading in its purpose, and incorrect information is not recorded in the DMS, then I consider it may be modified. However, if the modifications would be a significant departure from the Order as made, then modification may not be appropriate.
8. As regards possible prejudice, the owners of the land affected by the other DMS issues are also the objectors to the Order and, in presenting their case, have been aware of the arguments raised by the supporters, having addressed them prior to and at the Inquiry. Furthermore, the Inquiry has provided an opportunity for the matters to be aired through consideration and cross examination of the evidence adduced. Such modifications affecting the routes shown, if I were to propose to confirm the Order with them, would require advertisement. Consequently, there would be a further opportunity for the matter to be considered should objections and representations be made, and/or other and new evidence come to light.
9. If I were to decide on the evidence adduced that the Order should be modified by the addition of further events, as described above, these are:

* section 53(3)(c)(ii) of the 1981 Act, the discovery of evidence which shows that a highway shown in the DMS as a highway of a particular description ought to be shown as a highway of a different description

This enables a route to be downgraded to a different status, in this case, A-E from bridleway to footpath status. And,

* section 53(3)(c)(iii) of the 1981 Act, the discovery of evidence which shows that there is no public right of way over land shown in the DMS as a highway of any description, or any other particulars contained in the DMS require modification

This enables a route to be deleted from the DMS, and/or the details contained in the DMS to be amended, in this case, the deletion of X-C and E-X1-X.

1. Guidance (Defra, Rights of Way Circular 1/09, Version 2 October 2009 at paragraph 4.33) provides that *“The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement … will need to fulfil certain stringent requirements. These are that:*

* *the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made*
* *the evidence must be of sufficient substance to displace the presumption that the definitive map is correct*
* *the evidence must be cogent”*.

1. In this regard, the *Trevelyan* case is also relevant in that, *“Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put into the balance, if it is to outweigh the initial presumption that the right of way exists”.*
2. Section 56 of the 1981 Act provides that the DMS are conclusive evidence of what they show, but without prejudice to the existence of any other unrecorded rights, limitations, or conditions.

The Main Issues

1. The main issues to consider are the documentary evidence and the user evidence by reference to the events set out at paragraphs 9 and 17 above.
2. Section 32 of the 1980 Act requires that I take into consideration any map, plan or history of the locality, or other relevant document provided, giving it appropriate weight, before determining whether a way has been dedicated as a highway or that other modifications are required.
3. Section 31 of the 1980 Act requires me to establish the date when the public’s right to use the Order route was brought into question, then determine 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. Finally, I need to consider whether there is sufficient evidence to show the landowners did not intend to dedicate public bridleway rights during that period.
4. At common law, a right of way may be created through expressed or implied dedication and acceptance. An implication of dedication at common law may be shown if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. Such acceptance is usually shown through use of the route by the public. Use by the public must be as of right, however, there is no fixed period and, depending on the facts, may range from a few years to several decades.
5. I shall examine the documentary evidence first, and then go on to consider the user evidence.

Reasons

***Documentary evidence***

*Maps and other records*

1. A range of documentary sources refer to routes at Dale Abbey, though none identify the Order route itself.These include a 1781 Inclosure Award, an 1857 manorial court record, and the 1910 Finance Act records which note a deduction for public footpaths, but do not specify for which, although Footpath Nos.11 and 46, and Bridleway Nos.8 and 9 all lie within the relevant land parcel. Sanderson’s 1835 small scale County map shows a ‘crossroad’ consistent with Bridleway No.9 heading towards the village from the south and leaving the village from the north, though the section at Vergers Farm itself is absent.
2. The 1879/1880 OS 1:2500 map shows a track on the alignment of Footpath No.46 at E, continuing to join another track on the alignment of Bridleway No.8 at A where a solid feature suggests a gate or barrier. Beyond, Vergers farmyard is connected near B to a track following the alignment D-X-B-C, which appears gated at D. This route merges with a track on the alignment D-X-C which continues to Y where it is again gated. No route is shown between E and X, where there is a building (X1), nor between D and E.
3. The 1899 and 1913 1:2500 maps are similar although no building appears to be obstructing the line E-X1-X but perhaps an enclosure or similar feature (indicated by solid lines). What are now Footpath No.46 and Bridleways Nos.8 and 9 are annotated ‘FP’ or footpath. A gate or barrier is also present between the buildings at the north-western end of the farmyard, between A and (nearer) B. By 1959 (survey dated 1956), the alignment D-X-C is no longer mapped, therefore it must have disappeared or fallen into disuse at some point between 1913 and 1956 so was no longer mapped as a feature. A small structure is shown within the feature at X1, adjoining the pre-existing building. A separate triangular land parcel is now shown alongside E-X1-X, its south-western boundary following a similar line to E-D.
4. Whilst OS maps provide good evidence of the physical features in existence at the time of the surveys, since 1888 they have carried a disclaimer as regards status to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way, and this is presumed to apply to earlier editions. Accordingly, the maps do not establish whether the routes depicted (including the Order route) were public, and if so their status, or if the Order route was a private farm track as claimed by the objectors.

*Historic photographs*

1. A photograph of c.1900 shows the Church and farmhouse with part of the route C-B and a gate visible in the distance. Another, c1905, shows a double gate at Y and the route from there towards the farmhouse. Text accompanying these historic images describes the farmhouse as formerly the Blue Bell Inn, prior to 1820. A c1930 image shows a track curving round the farmhouse towards the farmyard buildings where a gate is seen in an open position. Finally, a photograph dating to the 1950s taken near Y shows the track at the Church (which adjoins Vergers Farm), but there does not appear to be a track corresponding to D-X-C, and this is consistent with the 1950s OS mapping (paragraph 28).
2. No gate is visible at A on a 1930s photograph taken from ‘Cardboard Hill’ a grassy slope which children used to slide down on pieces of cardboard between Footpath No.46 and Bridleway No.8, though a gate is visible at the far end of the farm outbuildings towards B.
3. An aerial photograph, dated 1955, shows a worn track entering the farmyard at A where they may be a barrier, although none appears at B. No clear evidence for a route at D-X-C is apparent, and this is consistent with the OS map of 1959. Similarly, there is no visible feature corresponding with E-X1-X or E-D.
4. The photographs provide evidence of the physical features present at the time they were taken rather than the status of any ways depicted. Whilst some do not show the route D-X-C, a route at this location had been mapped previously in the historic record (paragraph 27).

*Guidebooks and related records*

1. Two 19th century guidebooks describe visits to Dale Abbey village. An article in the 1835 Athanaeum describes Vergers Farm as an inn at the time, accessed on foot from the direction of Footpath No.46. Similarly, an 1891 guide to ‘Dale and its Abbey’ describes the inn, with directions again suggesting access from Footpath No.46. Having regard to the features described in these guides, together with the early OS mapping and historic photographs described above, it is more likely than not the route used passed through the farmyardon the alignment of the Order route, rather than following E-X1-X or E-D. Articles in the Ockbrook Parish magazine written in the early 1950s describing ‘Dales Ways’ refer to “taking tea” at Church Farm and also to passing through the farmyard to Hermit’s Wood.
2. Accessing the inn for refreshments, the farmhouse for tea, or the Church, is arguably, though not necessarily, access by invitation, permission, or by a private right. However, the guidebooks are describing much longer walks in the locality, taking in other sights, with the Church and inn/farmhouse ‘diversions’ from the route. Continuing a walk through the farmyard to/from (what are now) recognised public rights of way implies exercising a right to pass and repass, at least on foot.
3. Several recent walking guides and leaflets published in the late 1980s to 2002, some produced and/or endorsed by the Council, describe walks and rides which include the Order route. Discover Derbyshire and the Peak District’s website describes a 2003 walk from Dale Abbey village which includes a ‘detour’ to visit the Hermit’s Cave (in Hermit’s Wood, east of the Order route). However, the Council later acknowledged the Order route had been waymarked and promoted as the definitive alignment of Bridleway No.8, so these documents attract less weight. However, a website describing a walk in the area refers to when entering the farmyard in the post war years there were livestock in the outbuildings, and chickens pecking in the muddy track and cobbles, and it was not uncommon to see people walking through carrying bunches of bluebells from the wood (including the author themselves).

*Handover records*

1. The 1929/30 handover records of highways maintainable at public expense list and map routes which Shardlow Rural District Council maintained and repaired prior to their take over by the County Council. As well as roads, they include some bridle roads and field footpaths. Coloured green, representing ‘non-scheduled roads’, is the road now called “The Village” and its continuation described as ‘16a Village St, and Church Road’ (leading towards the Order route) with a length of 0.2 miles.
2. The Council’s current List of Streets now records 0.17 miles maintained as adopted highway for this length of ‘road’. This places the current recorded length of adopted highway as falling short of Y to the north (by 19 metres) compared to just south of Y in 1929 (by 2 metres), though this would not preclude part of that route being a bridleway rather than a ‘road’. However, these records do not include any part of the Order route itself.

*Definitive Map records*

1. The Parish Council carried out the surveys of claimed rights of way within the parish as part of the Definitive Map process. The survey record for Bridleway No.8 describes a footpath and bridle road from Stanton Lane End to All Saints Church, exiting the farmyard at the Church. The grounds for believing the way to be public are stated as over 60 years uninterrupted use. Bridleway No.9 is described as starting at the farmyard near the Church and is also claimed on the basis of over 60 years public use. Footpath No.46 is described as ending at the Church, being “Not now used” and in poor condition with little sign of the path. All the surveys were carried out over the same period in 1951.
2. Maps sent out to the parishes were pre-marked with highways maintained by the Council in green. The Parish Claim map does not distinguish claimed routes by different colouring and shows Bridleway No.8 and/or Footpath No.46 running via points A-E-X1-X and Bridleway No.9 running via points Z-D-X-C to meet the road marked in green, just short of Y. The OS base map used for the survey shows both the tracks D-X-C and D-X-B-C. The supporters believed routes were initially marked in pencil, then inked in after being checked, although Bridleway No.8 and Footpath No.46 remained unaltered.
3. Clearly, there are discrepancies between the written survey and the map. Both Bridleway No.8 and Footpath No.46 are described as terminating at/leading to the Church, the implication being, in particular given the reference to Bridleway No.8 exiting the farmyard, that both passed through on the alignment of the Order route. This is consistent with the early guidebooks, which described use on foot (paragraph 34). Of further note is that one of the guidebooks was published in 1891 some 60 years before the survey of rights of way, with the other published many years earlier. The Parish Claim map, on the other hand, does not show either route passing through the farmyard. It shows both, one leading to A the other to E with a link between them, and a route continuing (E-X1-X) over the rock face and through a pre-existing feature (to join Bridleway No.9), despite having been claimed on the basis of long use by the public. In addition, the map shows a bridleway, annotated ‘9’, connecting with the public highway north of the Church, unlike its description in the survey.
4. The objectors maintain it was a conscious decision to show the alignment via A-E rather than the more direct route A-B-C, therefore not a drafting error as those claiming the routes at the time knew what was actually being used. In addition, that the routes were described as starting/ending at the Church is consistent with the highways records (paragraph 37). Yet, the topography and geography here, together with the Parish Claim description for Bridleway No.8 and Footpath No.46, do not lend themselves to a route on horseback and on foot following the alignment marked on the Parish Claim map. It would require the user to turn through 90 degrees at A, to then climb uphill and turn through 90 degrees again and negotiate a sheer rock face then an obstruction, when a level route existed through the farmyard which the evidence indicates was already being used as a footpath at least. Furthermore, that the claim was based on more than 60 years use by the public is inconsistent with a route which required such obstacles to be scaled.
5. I am not aware that the draft or provisional maps were challenged. The resulting Definitive Map (relevant date 1 January 1953) has a scale of 1:10,000 and understandably routes are marked with thick lines, which is of limited assistance in terms of precision. The Definitive Statement describes Bridleway No.8 as terminating at path No.9 south of the Church which can, however, be interpreted as either at X or B. A photocopied enlargement of the Definitive Map was provided by the supporters, but it is the Definitive Map at its original scale that is the legally conclusive record and on which I must rely.
6. On balance, E-D is an unlikely alignment for Bridleway No.8 given the evidence from the definitive map process and the lack of a mapped feature representing a way on such an alignment in the documentary record considered above. Neither is there anything in the evidence available to support E-X1-X as a route.
7. It was suggested the building at X1 was constructed between 1951 (the date of the Parish Survey) and 1956 (the date the 1959 OS map was surveyed), so obstructed the claimed route after the Parish Survey was carried out. Thus, it caused users to follow the Order route through a right to deviate. However, it is clear from a review of the OS mapping above that a structure or feature has been present at this location (X1) since at least 1879/1880. There is nothing to suggest that these features were not present when the DMS was drawn up, or indeed were not longstanding.
8. The OS base map used for both the Parish Claim map and for the later Definitive Map shows a track on the alignment D-X-C over which Bridleway No.9 is drawn. Its presence on these maps is inconsistent with the (later) 1959 OS map where it is not shown. There is a potential discrepancy in that the Parish Claim description is of it commencing from the Church farmyard which could suggest it started at B. The subsequent Definitive Statement describes it leading to Dale, north of the Church, reflecting the termination point marked on the Parish Survey map.
9. Although the Council intended to revise its original DMS, there is no evidence that it did. A 1985 map provided in the supporters’ documents appears to have no such status but may be an example of a working copy of the definitive record, though not necessarily an accurate one. Whatever the case, at some point the correct alignment of Bridleway No.8 was thought to be through the farmyard and it was waymarked/signposted accordingly. In addition, the Council (or Borough Council acting as their agent)contributed half the cost (shared with the landowner) of a replacement gate at A.

*Parish Council Minutes*

1. In 1957 the local estate manager, Mr Scopes, requested information from the Parish Council about bridleways in the area and in particular the way from Stanton Lane End to Church Farm, presumably a reference to Bridleway No.8 as described in the Parish Survey (paragraph 39).
2. Other entries refer to signposting and waymarking bridleways, but there are no specific references to, or identification of, the Order route.

*Property records*

1. An agreement between the then owners and tenant in 1974, and documents concerning the sale of Vergers Farm in 1980, refer to the property being sold subject to any right of way or public right of way that may exist. Also, that the tenant had verbal permission to sell soft drinks to the public. Neither indicates the existence of a public right of way over the Order route, and the latter may imply access by invitation or permission, at least to the farmhouse.
2. Other documents relating to the sale/purchase of and alterations at Vergers Farm refer to a right of way and bridleway passing through the farmyard, the approach road to the property as a bridleway continuing past the outbuildings, and that B-C was considered to be a public footpath. The Parish Council objected to a 1985 planning application for a conservatory, as people would be walking past it, indicating they believed the right of way took users through the farmyard. However, these references do not attract significant weight as they coincide with the period when Bridleway No.8 was being waymarked here for the Council. Further, there is nothing to indicate on what basis these views were expressed.

*Council records*

1. Maintenance records are consistent with the presence of a gate at A, half the cost of which was funded by public monies in 2004 (paragraph 47) the remainder by the landowner. Complaints in the period 1974-1984 and again in 2007 and 2010 concerned a fingerpost at B indicating the route went through the farmyard; and, when the driveway to Vergers Farm was gravelled, that Bridleway No.9 was coincident with Y-C-B. All indicate the Order route was considered to be the correct one. However, all could relate to the belief that A-B-C-Y was the legally recorded definitive route. Records also show that steps were maintained between A and E suggesting this was considered to be part of Footpath No.46 rather than Bridleway No.8. There are references to a locked gate on Bridleway No.9 in 2010/2011which relate to the gate at Y.

*Recent photographs*

1. Two photographs, one from the period 1974-1984, the other taken in 2010, show the fingerpost at the entrance to the farmyard from the north. However, whilst pointing towards various routes, this again coincided with the period when the Council marked a way passing through Vergers farmyard.

***Conclusions on the documentary evidence***

*The alignment of Bridleway No.8 and the Order route*

1. The OS mapping demonstrates the existence of a track passing in front of the Church and farmhouse (from C to just beyond B leading to Vergers farmyard), which may have been capable of carrying riders on horseback. A track is shown leading to A on the other side of the farmyard and it is reasonable to assume they connected, providing a continuous link between what are now recorded as Bridleway Nos.8 and 9, and at the time annotated as footpaths.However, neither this nor any of the other evidence adduced (prior to the Parish Survey) points to the existence of a public bridleway over the Order route, a point on which the supporters conceded. However, the presence of a public right of way over the Order route, at least on foot, is indicated in the early guidebooks.
2. The evidence when weighed together indicates that a drafting error occurred in the Definitive Map process. There is a clear discrepancy between the description of the route claimed as passing through the farmyard, and the alignment marked on the Parish and later Definitive maps which has long been obstructed by the rock face and other features. Moreover, the evidence from the early guidebooks when taken together with all the other documentary evidence and the longstanding obstructions on the ground is of sufficient substance and cogency to conclude the correct alignment of the route claimed in the 1950s is that of the Order route. Furthermore, and having regard to *Trevelyan* (paragraph 19), the presumption is that bridleway rights existed when the route was claimed, and added to the DMS, as a bridleway.
3. Arguments that use of A-B-C was permissive when the inn/farmhouse refreshments operated and tolerated trespass when it was closed are unconvincing. Neither would a public route passing through the farmyard splitting the stables from the inn be unlikely. There are many examples of public rights of way, or indeed public roads, passing between buildings in similar situations.
4. It follows that the DMS should be modified to record Bridleway No.8 along the alignment A-B-C. Consequently, the alignment E-X1-X, which was wrongly recorded, should be deleted. I shall consider the status and alignment of A-E below.

*Bridleway No.9 D-X-C and a route following D-X-B-C*

1. The OS mapping indicates that both routes existed as physical features at least from 1879/1880, with the base map for the Parish Survey carried out in 1951 also showing them. The Definitive Map, whilst only showing the track D-X-C, records Bridleway No.9 following this alignment and is therefore consistent with the route claimed on the parish map. Between 1913 and 1956, however, the track D-X-C ceased to exist as a feature such that the 1959 OS map no longer showed it.
2. Photographic evidence helps to confirm the presence of various physical features including the tracks and gates both along parts of this as well as other routes. Nevertheless, neither this evidence nor the OS mapping provides anything other than confirmation of the physical existence of the features shown.
3. Accordingly, there is evidence that both routes existed as physical features prior to the DMS being drawn up, albeit none to confirm their status.
4. However, I do not share the supporters’ view that D-X-C was incorrectly claimed, and the route should follow D-X-B-C. Although the 1959 OS map did not record a track at this location, earlier maps did which is not inconsistent with the Parish Claim for the route D-C having been in use by the public for more than 60 years.Further, there is no new evidence, not known when the DMS was drawn up, of sufficient substance or cogency to overturn its current recording in the DMS.

*Footpath No.46 termination point at E or A*

1. The OS mapping points to a route having existed as a physical feature since at least 1879/1880, later marked FP, connecting with another route annotated FP at A. There is nothing in the documentary record available to indicate it continued to X. Indeed, the OS mapping, early guidebooks, and Parish claim point to it continuing as a footpath to/from the farmhouse and Church.
2. The evidence when weighed together is of sufficient substance and cogency to conclude that A-E is the correct alignment and should be shown as a continuation of Footpath No.46. Accordingly, the DMS should be modified to correct this error by downgrading A-E from bridleway to footpath.

*Overall conclusion on the documentary evidence*

1. Given my findings above, I conclude the Order should be modified as stated at paragraphs 57 and 63.Having reached these conclusions there is no need for me to address the user evidence. However, given the time and effort devoted in submissions and at the Inquiry to this, I shall, nonetheless, review the user evidence together with the landowner evidence.

***User and landowner evidence***

1. The earliest evidence of claimed use of the Order route predated the Parish Survey (1951) from the 1920s onwards with people passing through the farmyard going between the village and Hermit’s Wood. Use post the Parish Survey was described from the mid/late-1950s onwards on foot and from the early 1960s onwards on horseback until 2013 when it was challenged by the current landowner. Use on foot or on a horse was claimed as daily, several times a week, weekly, roughly monthly, or less often. It was a popular walking route and organised ride for local riding schools on a Sunday and to get to gymkhanas, with individuals often riding at weekends and during school holidays. Some people also used it with a pedal cycle. Most witnesses knew of others using the Order route on foot or on horseback, some known to them. None used E-X1-X or A-E, where steps had been in place for some time. Some described use of the route D-X-B-C on horseback.
2. In a signed statement, a former tenant (1974-1984) regarded the route through the farmyard and along the farm drive as a bridleway and footpath, as it had been before their tenancy. Its use was described as extensive (consistent with the user evidence) and without interruption, despite the farm being a working small holding at the time with geese in the yard which children came to feed. Users included the public on foot, horseback and with a bicycle; individuals, walking, riding and organised groups (including school parties); and tourists, going to and from Hermit’s Wood and Dale Abbey.
3. The objectors referred to permissive use, and there is evidence that some individuals had such rights in connection with working, or stabling horses, at the property or looking after it for the current owner, and others sought permission for organised events. There were also references to individuals having been challenged, and to notices. None were recalled by witnesses until more recent times. Before 1990 (when the current landowner purchased the property) they were mostly in the woods on Cardboard Hill and included ‘Private Property’ and ‘Close the gate’ signs, or similar wording, and some may have been within the farmyard. Latterly they included ‘‘Private’ and ‘Private Driveway’ signs and ultimately ‘No Public Right of Way’ when use of the Order route was prevented. The objectors also referenced gates either side of the farmyard as well as on the driveway being locked regularly from 1990 in connection with avoiding interruption to private events such as birthday parties and the like, as well as for security, preventing vehicular access and safeguarding purposes. However, such actions would not prevent the establishment of a public right of way where one already exists. Neither would any challenges or contrary notices on the Order route, or any temporary obstructions such as parked vehicles as described by the objectors.

*Conclusions on the user and landowner evidence*

1. The user provides strong evidence in support of my conclusions above. It demonstrates the exercise of an existing right to use the Order route on foot and on horseback as a bridleway. It further provides support for the alignment of Bridleway No.8 as passing through the farmyard (A-B-C) as well as of its status.
2. Whilst the landowners have taken steps to safeguard their family and secure their property by locking gates from time to time and challenging some users, none of these actions were effective given my finding further to the documentary evidence, that a public bridleway subsists over the Order route.
3. I have had regard to the case of *Dawes v Hawkins* (1860) whereby the objectors maintained that use of the Order route was by right due to the need to deviate, as the definitive alignment of Bridleway No.8 was unavailable. Whilst there are longstanding obstructions on the alignment A-E-X1-X, I do not consider that the caselaw referred to is relevant given my conclusions above that the DMS is in error and that the alignment should follow the Order route.
4. Whilst the user and landowner evidence formed the main emphasis at the Inquiry, and the parties did not rely on the historical evidence in this case, I have taken a different view and reached different conclusions on the basis of documentary evidence as a whole, as supported by the user evidence.

Other matters

1. Issues relating to safety and security at the property in relation to the Order route, whilst important concerns, are not ones relevant to the tests that can be considered under the 1981 Act and it follows that I have not taken them into account.
2. The modifications proposed will require advertising allowing an opportunity for new evidence and argument to be adduced. In the event that the modifications as proposed are confirmed then it would be open to the objectors to approach the highway authority about re-routing the way out of the farmyard under the relevant legislation, should they wish to do so.

Conclusion

1. Having regard to these and all other matters raised in the written representations and at the Inquiry, I conclude the Order should be proposed for confirmation with modifications described in paragraphs 57 and 63 above.

**Formal Decision**

1. I propose to confirm the Order subject to the following modifications:

* In line 4 of the first paragraph in the preamble to the Order, delete ‘an event’ and replace with “events”
* At the end of the first paragraph in the preamble to the Order, insert

“; section 53(3)(c)(ii) of the Act, namely the discovery by that authority of evidence which when considered with all other relevant evidence available to them shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; and section 53(3)(c)(iii) of the Act, namely the discovery by that authority of evidence which when considered with all other relevant evidence available to them shows that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.”

* In Part I of the Schedule to the Order, under the ‘Description of Path or Way to be added’, ‘A-B’ correct the Ordnance Survey Grid Reference in line 2 so as to read “SK 4375 3854”, and beneath the description insert

“Description of Path or Way to be downgraded to Footpath

A-E Bridleway in the Parish of Dale Abbey from Public Bridleway No.8 at Point A (GR SK 4375 3854) proceeding in a generally south south-easterly then south south-westerly direction to Public Footpath No.46 at Point E (GR SK 4374 3851), a total distance of 23 metres or thereabouts.

Description of Path or Way to be deleted

E-X Bridleway in the Parish of Dale Abbey from Public Footpath No.46 at Point E (GR SK 4374 3851) proceeding in a generally north-westerly direction to Public Bridleway No.9 at Point X (GR SK 4370 3854), a total distance of 49 metres or thereabouts.”

* In Part II of the Schedule to the Order, Modification of Definitive Statement, in the description of Path No 64, correct the Ordnance Survey Grid Reference where it occurs so as to read “SK 4375 3854”, delete “Field gate (GR SK 4372 3860)”, and in line 7 of the description of the route amend “tuning” to “turning”.
* On the plan attached to the Order, add a new point “E” at the junction of Footpath No.46 with Bridleway No. 8, and a new point “X” at the junction of Bridleway No.8 with Bridleway No.9, and in the Key to the plan, add “Bridleway to be deleted E-X” and “Bridleway to be downgraded to Footpath A-E”

Since the confirmed Order would not show part of a way shown in the Order as submitted and show as a highway of one description a way which is shown in the Order as a highway of another description, I am required by virtue 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. A letter will be sent to interested persons about the advertisement procedure.

S Doran

**Inspector**

**APPEARANCES**

**For the Council:**

Sarah Bond Solicitor, Derbyshire County Council

Angela Greatorex Legal Assistant, Derbyshire County Council

**For the Supporters:**

Diana Mallinson (presenting the case in support of the Order 10-12 September 2019 and speaking to the documentary evidence)

and Rosalinde Emrys Roberts (presenting the case in support of the Order 11-12 August 2021)

*both representing* The British Horse Society, assisted by Ann Wood

*who called*

Roger Allen

Ruth Allen

Stuart Barkway

Anthony Blackburn

Lynda Blackburn

Rachel Brown

David Bush

Alan Butler

Annette Dunn

Angela Foster

Nicola Foster

Stephen Foster

Ian Gooding

Paul Harvey

Barbara Housley

Lyndsay Jones

Lorraine Koban

Sydney Leleux

Diana Mallinson

Angela Nicholson

Pamela Saxton

Claire Wheatley

Ann Wood

**For the Objectors:**

Robin Carr Robin Carr Associates, *representing* Mr and Mrs Gee

*who called*

Linda Bunce

Samantha Casey

Andrew Doughty

Ann Fravolini

David Gee

Neil Gee

Mrs Olwen Gee

Jennifer Hulls

Robert Hulls

Sandra McMurdo

John Porter

Pam Rose

Roger Straw

Petronella Warman

**Others who spoke**

David Jenkinson

**DOCUMENTS SUBMITTED AT THE INQUIRY OPENED ON 10 SEPTEMBER 2019**

1. Letter dated 6 September 2019 from Mr and Mrs R Parkin, submitted on behalf of The British Horse Society
2. Revised proof of evidence of Robert Hulls; signed Statutory Declarations of Emma Breen, David McMurdo and Christopher Page, submitted on behalf of Mr and Mrs Gee
3. Letters dated 27 December 2013 and 19 February 2014 from Dr R Allen; and 22 December 2013 from Rev. R Allen, submitted on behalf of The British Horse Society
4. Full copy of Surveyors Report dated 12 January 1990, submitted on behalf of The British Horse Society
5. Letter and attachments from H J and P M Rose, dated 14 July 2018

**DOCUMENTS SUBMITTED DURING THE ADJOURNMENT**

1. Statement of Councillor Charles Just, dated 13 February 2020
2. Additional statement of Diana Mallinson on behalf of The British Horse Society together with appendices 42-49

**DOCUMENTS SUBMITTED AT THE RESUMED INQUIRY ON 11 AUGUST 2021**

1. Supplementary statement of Mrs Gee
2. Two ‘screenshots’ from the Derbyshire County Council mapping portal, submitted by David Jenkinson
3. Closing submission and caselaw attachments on behalf of Mr and Mrs Gee
4. Closing submission and caselaw attachments on behalf of The British Horse Society



