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| **Order Decision** |
| Site Visit on 31 August 2022 |
| **by G D Jones BSc(Hons) DipTP DMS MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 23 September 2022** |

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| **Order Ref: ROW/3278153** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Derbyshire County Council (Upgrade Public Footpath No 91 to Restricted Byway and Addition of Gypsy Lane as a Byway Open to all Traffic – Parish of Chapel en le Frith) Modification Order 2007.
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| * The Order is dated 3 May 2007 and proposes to modify the definitive map and statement for the area by upgrading Public Footpath No 91 to restricted byway and by adding the route known as Gypsy Lane as a byway open to all traffic, as shown on the Order map and described in the Order schedule.
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| * There were ten objections outstanding when Derbyshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.
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| **Summary of Decision: The Order is confirmed.** |

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**Procedural Matters**

1. The original application for a Definitive Map Modification Order was made over 30 years ago by the British Horse Society (BHS) to upgrade Public Footpath No 91 to at least bridleway status. Following the discovery of further evidence related to historical mapping and documentation, however, it was concluded by Derbyshire County Council (DCC) that it is reasonable to consider that the existing Public Footpath No 91 should be upgraded to a restricted byway and that the route known as ‘Gypsy Lane’ should be added to the definitive map and statement for the area as a byway open to all traffic (BOAT) as reflected in the Order.
2. For ease of reference I shall refer to these two parts of the Order route as the ‘No 91 section (A-B)’ and ‘Gypsy Lane (B-C)’ henceforth. They are shown as A to B and B to C respectively on the Order map and described as A-B and B-C in the Order. To assist with orientation it is also worth noting that the western end of the Order route joins the road that links Slackhall and Stonyford, while to the east it joins Sheffield Road, the former A625, also referred to in the evidence as Castleton Road.

**The Main Issue**

1. DCC made the Order under Section 53(2)(b) of the Wildlife and Countryside Act 1981 on the basis of events specified in sections 53(3)(c)(i) and 53(3)(c)(ii). The main issue, therefore, is whether the discovery by DCC of evidence which, when considered with all other evidence available, is sufficient to show:
* In relation to the No 91 section (A-B), that a highway shown in the Definitive Map and Statement (DMS) subsists as a highway of a particular description which ought to be there shown as a highway of a different description (section 53(3)(c)(ii)), specifically a restricted byway; and
* In relation to Gypsy Lane(B-C), that a right of way which is not shown in the DMS subsists over land in the area to which the map relates (section 53(3)(c)(i)), specifically a BOAT.
1. Whilst it suffices under section 53(3)(c)(i) for a public right of way to be reasonably alleged to subsist, the standard of proof is higher for the Order to be confirmed. At this stage, evidence is required on the balance of probabilities that a right of way subsists. That is the same test which applied for the Order to be made to upgrade the existing footpath, section No 91 (A-B), under section 53(3)(c)(ii). In that regard, the test is not whether the existing path was inaccurately recorded in the DMS, but whether the evidence suffices to upgrade its public status.

Reasons

***Documentary Evidence***

*Enclosure Map*

1. The private enclosure map of 1712 shows a route marked *The way from Edall to Chappell to Slack Hall.* From the copies of the map before me, the route appears to broadly correspond with the entire Order route. The wording used to describe the route, while not confirming right of way status, suggests that it was of some importance as a means of travelling to and from Edale [*Edall*] and Chapel en le Frith [*Chappell*] via Slack Hall prior to the construction of the first turnpike road from Chapel en le Frith to Castleton.

*Burdett’s Map*

1. P P Burdett’s map of Derbyshire, 1767, shows a network of ‘cross roads’ in the vicinity of the Order route. While a section of one of those roads may correspond with the Order route, due chiefly to the scale of the map and limited level of detail, in isolation it is not possible to conclude that it does. The map does not identify whether the roads in question are public.

*Tithe Map*

1. The Tithe Map of 1847 for the Parish of Chapel en le Frith clearly shows Gypsy Lane (B-C) as having solid boundary lines suggesting that it was enclosed to each side. In contrast, the section of the route to the east, which broadly corresponds with Public Footpath No 91, is denoted by dashes, indicating an absence of enclosure to this part of the route. The Tithe Map does not state whether the route is private or public.

*Ordnance Survey Maps*

1. Ordnance Survey Maps dating from 1880, 1883, 1898, 1899, 1921, 1923 and 1945 all show the route in a similar manner to the Tithe Map, albeit that the No 91 section (A-B) appears to follow more closely the alignment of the public footpath on the DMS today.

*Map of the Environs of Buxton*

1. This map is described as having been *published with Able Heywood & Son’s Series of Penny Guide Books.* It is said to have been produced in around 1900 as a cycling and touring map. Due mainly to the scale of the map, it is not possible to identify the Order route with any confidence such that it is of very limited value to this exercise.

*Finance Act*

1. The evidence includes extracts of the land values working plan and record books compiled under the Finance (1909-10) Act 1910. The plan is based on the Ordnance Survey sheet for the area. It shows Gypsy Lane (B‑C) separate from the coloured parcels of land that are assessed. In contrast, the No 91 section (A-B) is within one of the coloured parcels of land, numbered 1035. The associated record of parcel number 1035 shows a deduction of £15 due to rights of way through the land.

*Handing Over Schedule*

1. The ‘Handing Over Schedule’ for maintainable highways pursuant to the Local Government Act 1929 refers to Breck Edge Lane, which the evidence indicates is another name for Gypsy Lane. Accordingly, Gypsy Lane (B-C) appears on DCC’s highways records as a non-classified maintainable highway.

*Parish Survey*

1. A form completed as part of a survey of rights of way under the National Parks and Access to the Countryside Act 1949, dated 17 June 1951, refers to ‘Gypsy Lane’ as ‘CRB mainly’ with uninterrupted public use for 40 years. ‘CRB’ means carriage road bridleway. The description of the ‘path’ states, *From Stoneyford Road bridleway runs in north-easterly direction (well defines) to field gate and stile; then through second field gate and stile into Castleton Road*. It appears, therefore, to concern the entire Order route, including the No 91 section (A-B), not only Gypsy Lane as expressed in the Order.

*DCC Committee Reports*

1. The evidence includes three DCC Committee reports concerning the Order route to its Highways and Transport Sub-Committee of 20 June 1995, its Highways Transport and Countryside Sub-Committee of 26 September 2000 and its Regulatory, Licencing and Appeals Committee of 26 March 2007. The latter two of these reports refer to DCC’s investigation of another route known as Chapel Gate, which at that time was recorded as non-classified highway, as is Gypsy Lane (B-C).
2. The outcome of that work was to modify the recorded status of all the paths that formed the Chapel Gate route to a byway open to all traffic. The 26 September 2000 report states that it became clear that the issue of the status of the Gypsy Lane route required further investigation in light of the evidence that was considered in relation to the Chapel Gate route. The report specifically raises the matter of whether the Gypsy Lane route is historically part of the same overall route, between Chapel en le Frith and Edale, as the Chapel Gate route.
3. In this regard the report refers to *The way from Edall to Chappell to Slack Hall* annotation on the 1712 enclosure map as evidence that Gypsy Lane, and presumably by extension the No 91 section (A-B) of the Order route, might have formed part of such an ‘overall’ route with the Chapel Gate route. From the evidence I have it seems to me likely that it may have done. The 26 September 2000 report also refers to Burdett’s Map showing a leg of the network of cross roads extending eastwards from a junction of cross roads, which represents a route to Castleton and incorporates the south-westernmost part of the Chapel Gate route on Public Footpath No 144 Chapel and a section of Sheffield Road, which at that time formed part of the A625, between its junction with Footpath 144 Chapel and its junction with Public Footpath No 91 Chapel.
4. Unfortunately, beyond the documents referred to above, none of the wider evidence associated with the Chapel Gate route cited by DCC in these reports is before me. The reports are nonetheless of assistance in terms of providing context and support for the evidence that I have been provided with. From my own observations I agree with the assessment in the 26 September 2000 report that the depiction on Burdett's map of the relevant lengths of cross road is consistent with the Gypsy Lane route still having formed part of a route of some importance at the time of Burdett's survey, 1763 to 1767, even though the only road shown leading to Edale on it is the route from Hope, also shown as a cross road.

***User Evidence***

1. A number of user evidence forms, dating from the 1980s, were submitted in association with the original application made by the BHS. Submissions were also received by DCC in response to consultation on the application, including from parties with local knowledge objecting to the proposed changes to the DMS. There is a great deal of conflict between these two sets of evidence such that it is difficult to draw any clear conclusions from the totality of the user evidence either for or against the Order.

***Analysis***

1. The user evidence at large is inconclusive. None of the individual elements of the documentary evidence is conclusive either, however, when taken together it builds a reasonably clear picture.
2. The 1712 enclosure map shows a route that broadly corresponds with the Order route. It is marked as ‘the way’ from Edale to Chapel and Slackhall. DCC’s wider research of the area indicates that the Order route may have formed part of a much longer route, including the Chapel Gate route, consistent with the description on the enclosure map.
3. This is also consistent with Burdett’s Map in terms of it showing a leg of the network of cross roads extending eastwards. Although the scale of this map makes detail, including precise locations, difficult to discern, it appears likely that that eastward leg corresponds with the Order route and an adjoining section of Sheffield Road and Public Footpath No 144 Chapel, the latter of which DCC separately concluded form part of the Chapel Gate route.
4. The evidence does not include the wider documentary sources associated with the Chapel Gate route referred to in DCC’s Committee reports, such that the reports are of limited weight. Nonetheless, they lend some, albeit limited, contextual support to the theory that the Order route formed part of the route described above and that it was, at least in part, public. This is also broadly consistent with the Tithe Map, published some 37 years later, and with subsequent Ordnance Survey Maps.
5. The Finance Act evidence offers greater detail. It indicates that the No 91 section (A-B) was a right of way at that time, as it is now. It also suggests that Gypsy Lane (B-C) may have been a highway given that it is shown separate from the coloured parcels of land that were assessed. The ‘Handing Over Schedule’ also indicates that Gypsy Lane (B-C) was a maintainable highway at that time, and it continues to be recorded as a non-classified maintainable highway by the local highway authority. This is also consistent with the Parish Survey documents.
6. The documentary evidence when considered collectively, therefore, indicates that Gypsy Lane (B-C) meets the statutory description of a BOAT as “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”. Moreover, that evidence is sufficient to show on the balance of probabilities that:
* In relation to the No 91 section (A-B), that the Public Footpath shown in the DMS should be upgraded to a restricted byway; and
* In relation to Gypsy Lane (B-C), a byway open to all traffic subsists and should be added to the DMS.

**Conclusion**

1. Based on the evidence before me I am satisfied on the balance of probabilities that a restricted byway subsists along the section of the route A-B and that a byway open to all traffic subsists along the section of the route B-C, and that the DMS should be modified accordingly.

Formal Decision

1. I confirm the Order.

G D Jones

INSPECTOR

