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| **Final Order Decision** |
| First inquiry opened on 15 June 2021Second inquiry opened on 8 November 2022Site visits undertaken on 13 June 2021 and 8 November 2022  |
| **by Mark Yates BA(Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 February 2023** |

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| **Order Ref:** **ROW/3238626M1** |
| * This Order was made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) and is known as the Devon County Council (Bridleway No. 48, East Down & Bridleway No. 48, Marwood) Definitive Map Modification Order 2017.
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| * The Order was made by Devon County Council (“the Council”) on 6 June 2017 and proposed to add a bridleway to the definitive map and statement, as detailed in the Order Map and Schedule.
* The Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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| * In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I have given notice of my proposal to confirm the Order with modifications.
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| **Summary of Decision:**  **The Order is confirmed subject to modifications set out below in the Formal Decision.**  |
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Procedural Matters

1. I proposed in my Interim Decision (“ID”) of 13 October 2021 to modify the status of the route claimed (“the claimed route”) to a restricted byway. This Final Decision should be read in conjunction with my ID with the numbers in square brackets representing particular paragraphs in the ID. I note that there is an error in the ID where reference is made to the Bryant map rather than the Cary map [28].
2. Two objections were made in response to the advertising of the proposed modifications. These relate to both the modified and unmodified parts of the Order and the second inquiry was therefore held in accordance with paragraphs 7 and 8 of Schedule 15 to the 1981 Act. In essence, the objectors dispute that the route is a public right of way. The objection for the landowner (Mr Berry) has been pursued by Mr Dunlop and Ms Gatrell gave evidence at both inquiries for the Council in support of the confirmation of the Order.
3. Given that the decisions of two previous Inspectors were quashed [9-10], I have had to consider matters afresh and form my own conclusions from the evidence presented to me. I reached the conclusion that the evidence is supportive of the claimed route being a historical vehicular highway which should now be recorded as a restricted byway. In these circumstances, there was no need to consider whether the user evidence alone is supportive of the dedication of a public right of way [52].
4. I noted the nature of my first inquiry [1] and concerns expressed regarding the holding of virtual events generally [2]. Ultimately, there was nothing to suggest that anything improper occurred when witnesses gave their evidence virtually from the venue provided or elsewhere. Despite the inference made by Mr Dunlop that witnesses could have been influenced by others off camera, no evidence has been provided in support of this being case. Nor did any party raise the matter at the time.
5. Applications for an award of costs were made at the first and second inquiries and these will be the subject of separate decisions.

**Main Issues**

1. I outlined the relevant matters in relation to the Order in the ID [4-7]. The main issues now are whether any new evidence and/or argument presented, when taken in conjunction with the previously considered evidence, has a bearing on my conclusion that the claimed route was dedicated as a vehicular highway at some point in the past.
2. If I am persuaded to alter my conclusion [52], consideration will need to be given to the user evidence by itself and whether it is supportive of the dedication of a public right of way under statute or common law.

**Reasons**

***The status of the claimed route***

1. I considered the available early Ordnance Survey (“OS”) and commercial maps [17-19 and 24-26] and concluded that a road is shown broadly on the same alignment as the claimed route. Although the evidential weight of these maps is limited to some extent, they provide support for this route being part of the local road network. They show that prior to the enclosure of land in the locality there was a less direct network of roads between Ashelford and Claw Lane which incorporated RookbearLane and the claimed route.
2. A newspaper article advertising Greenwood’s map of Yorkshire contains the comment that it represented both public and private roads. Notwithstanding that the article does not relate to Greenwood’s map of Devon, I do not doubt that some private roads were depicted on commercial maps, and this is a factor that serves to limit their evidential weight.
3. In terms of the Cary map originally tendered [24], Ms Gatrell’s evidence is that a survey was undertaken on behalf of Cary in 1807 and this was used for the 1821 map and other editions.In contrast, the 1813 Cary map is likely to be based on a survey by the OS and therefore it adds nothing to the early OS mapping. In the circumstances, it remains the case that some reliance should be placed on the 1821 Cary map in terms of the existence of the physical features shown on it.
4. I concluded that the evidence in relation to the enclosure of land during the early part of the nineteenth century [20-22] is supportive of the claimed route being a historical public road. A short section of the route at its eastern end and the connecting awarded public road going westwards towards Ashelford are clearly shown on the enclosure plan. This awarded road is described in the award as commencing from Bowden Corner. An impact of the award was to provide a more direct public road between Bowden Corner and Ashelford with RookbearLane being downgraded to a private road. When taken in conjunction with the early maps, the award is strongly supportive of the relevant route having public status. It is evident that the network of roads, including the claimed route, would have provided access to two turnpike roads.
5. It is acknowledged that the claimed route is not shown on the relevant tithe maps [30]. However, other maps produced before and after the tithe surveys show a route across Hewish Down. Tithe maps were primarily concerned with showing land for the purpose of the payment of tithes. It is noticeable that some acknowledged public roads are also not shown on the tithe maps.
6. The claimed route would have proceeded through plot 101 on the Marwood tithe map which is described in the accompanying apportionment as ‘*pasture*’. Mr Dunlop submits that this plot was glebe land and therefore it had a bearing on whether a highway could have been dedicated. However, from looking at the extractprovided I consider it more likely that plot 101, along with the previous entry attributed to Swindon Down (plot 351), lay outside of land belonging to the church. It is also notable that the next entry after plot 101 is described in the apportionment as public roads. Additionally, there is evidence both before and after the tithe process whichprovides support for the claimed route being a highway. The key later document being the 1910 Finance Act map [37].
7. The current Devon hedges and the width of the route do not assist in relation to the status of the claimed route**.** It cannot be determined when the hedges were put in place, but this could have occurred by reference to a highway when land at Hewish Down was enclosed during the latter part of the nineteenth century. The lack of evidence of any stopping up or diversion of the claimed route is not necessarily supportive of private status [48].
8. Overall, I do not find on balance that the further submissions presented at the second inquiry are sufficient for me to alter my view that the evidence is supportive of the existence of a historical public road crossing Hewish Down.

***The alignment of the route***

1. Mr Dunlop asserts that the road shown on the early maps is a different route to the one shown on the later mapping, notably the large-scale OS map of 1889. It is submitted that the black line shown on the 1809 OS map to the south of the road is where the claimed route is located by reference to the Devon hedges now in place.
2. It is evident that the road network in the locality was altered following the enclosure process with the claimed route previously being a continuation of Rookbear Lane. In terms of the relevant black line shown on the 1809 OS map, this most likely represented the southern extent of Hewish Down at the time. Given that the parish boundary only crosses the route near to its eastern end, it does not appear to assist in determining the alignment of the route. Nor can it be determined that any depression in the land on site corresponds to another historical route to the north of the claimed route.
3. It remains my view that weight should be attached to Ms Gatrell’s evidence regarding the alignment of the claimed route shown on various maps as supported by her overlaying exercises [27]. Her view is that given the difference in surveying techniques the differences between the roads shown fall within a reasonable level of tolerance. She also believes that Rookbear Lane is virtually on the same alignment as its historical route. In contrast, no comparable exercise has been undertaken to cast doubt on Ms Gatrell’s evidence. It is evident from the overlaying exercise undertaken in connection with the enclosure map that a short section of the claimed route corresponds with the northern edge of the road continuing westwards from Bowden Corner. This does not suggest that there was any significant difference between the historical route and the claimed route at this point.
4. There may have been some variation in the alignment of the route given that it was previously an unenclosed road across Hewish Down. It is apparent that the claimed route was later enclosed by the substantial hedges now in place. However, the various maps only show one route running east to west across Hewish Down. It is not the case of the maps showing multiple routes in existence at any one time. Ms Gatrell has also pointed to highways in this locality that have a different alignment following the enclosure of land.
5. Overall, the evidence is more supportive of the majority of the claimed route corresponding broadly with the road shown on the early maps. The enclosure map also provides support for the eastern end of the claimed route running over a similar alignment as the continuation of the awarded public carriage road. It is apparent that there is some variation in the alignment of the road shown on the early maps and the claimed route towards its western end. It is noticeable that the section concerned is shown unenclosed on its southern side on the 1889 OS map.
6. Nonetheless, I do not view the apparent variation towards the western end to be significant in terms of the route as a whole. It is applicable to only a section of the route and does not support the assertion that the claimed route is a different route to the road shown on the early maps. The more recent evidence is supportive of the route used at the western end corresponding to the claimed route.

***Conclusions***

1. I have re-visited the conclusions I reached on the various pieces of evidence in light of the submissions of the parties at the second inquiry, including the issue of the alignment of the claimedroute. It remains my view on balance that the evidence as a whole is supportive of the claimed route being a historical vehicular highway which was dedicated at some point in the past and the route should now be recorded as a restricted byway.
2. Having regard to these and all other matters raised at the inquiries and in the written representations I conclude that the Order should be confirmed subject to the modifications proposed in the ID.

**Formal Decision**

1. I confirm the Order subject to the following modifications:
* Delete all references to “*bridleway*” and insert“*restricted byway”*.

Delete the last sentence from each description in Part I of the Order Schedule.

* Include the notation for a restricted byway on the Order Map rather than the notation for a bridleway and amend the map key accordingly.

Mark Yates

**Inspector**

**APPEARANCES**

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| **For the Council**  |
| Mr P. WadsleyHe called: Ms C. Gatrell **The Objectors**Mr A. DunlopHe additionally called:Mr R. Berry | Counsel appearing on behalf of the Council Public Rights of Way Officer  |

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| **DOCUMENTS TENDERED AT THE SECOND INQUIRY**1. Letter to the inquiry of 2 November 2022 from Mrs Baxter
2. Email to the inquiry of 7 November 2022 from Mr Baxter
3. Closing submissions on behalf of the Council
4. Closing submissions for Mr Berry
5. Application for an award of costs by the Council
6. Response to the application for costs
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