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| **Order Decisions** |
| Site visit made on 8 August 2023 |
| **by Paul Freer BA (Hons) LLM PhD MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 11 April 2024** |

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| **Order A Ref: ROW/3273599** |
| * 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 (Upgrade to Restricted Byway Footpath Nos 3 and 2 (part) – Parish of Eyam and Footpath Nos 14 and 10 (Part) – Parish of Eyam Woodlands) Modification Order 2014. |
| * The Order is dated 31 July 2014 and proposes to modify the Definitive Map and Statement for the area by upgrading to Restricted Byway Footpath Nos 3 and 2 (part) – Parish of Eyam and Footpath Nos 14 and 10 (Part) – Parish of Eyam Woodlands as shown in the Order plan and described in the Order Schedule. |
| * There were 35 objections outstanding when 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 not confirmed** |
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| **Order B Ref: ROW/327600** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as Derbyshire County Council (Upgrade Footpath No 2 (part) to Restricted Byway Footpath Nos 2 (part) and addition of Restricted Byway from Footpath No 2 to Footpath No 3– Parish of Eyam) Modification Order 2014. |
| * The Order is dated 31 July 2014 and proposes to modify the Definitive Map and Statement for the area by upgrading to Restricted Byway Footpath Nos 2 (part) and addition of Restricted Byway from Footpath No 2 to Footpath No 3– Parish of Eyam) as shown in the Order plan and described in the Order Schedule. |
| * There were 35 objections outstanding [when 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 not confirmed** |
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Background

1. When Derbyshire County Council (DCC) made the Orders in July 2014, the principal evidence relied on was the Eyam Inclosure Award of 1812. However, following a full review of the case, DCC are now of the view that the evidence for the Orders is not as strong as previously thought. Accordingly, DCC now opposes confirmation of the Orders and requests that they are not confirmed.

**Main Issues**

1. The main issues here are whether:

* the evidence is sufficient to show that in the past the Order routes have been used in such a way that a Restricted Byway can be presumed to have been established, and.
* the highway shown in the map and statement as a footpath ought to be there shown as a highway of a different description, specifically a Restricted Byway.

Reasons

1. Order A was made under the 1981 Act on the basis of events specified in sub-section 53(3)(c)(ii). If I am to confirm it, I must be satisfied that, on a balance of probability, the evidence shows that the highway shown in the map and statement as a footpath ought to be there shown as a highway of a different description, in this case specifically a Restricted Byway.
2. Order B was made under the 1981 Act on the basis of events specified in sub-section 53(3)(c)(i) and sub-section 53(3)(c)(ii). If I am to confirm it, I must be satisfied that, on a balance of probability, the highway shown in the map and statement as a footpath ought to be there shown as a highway of a different description, specifically a Restricted Byway, and that a Restricted Byway subsists along the routes described in the Order.
3. The evidence in relation to both Orders comprises primarily documentary evidence.

*Documentary evidence*

1. The entries recorded on the Eyam Inclosure Award of 1812 include two public carriage roads identified as Edge Road and Gotheredge Road respectively. Both are shown on the map that accompanies the Award.
2. In relation to Order A, the Order route closely follows the route of Gotheredge Road from Point A to Point B as shown on the Order map (Footpath No. 3 continuing as Footpath No. 14). The Order route also closely follows the route of Edge Road from Point B to Point E as shown on the Order map (Footpath No. 10 in part and Footpath No 14).
3. There is some (albeit limited) physical evidence that is consistent with the identification of Gotheredge Road as a public carriage road in the Eyam Inclosure Award of 1812. Between Point A and Point B, there is an obvious track which is generally consistent with an old cart track and designation as a public carriage road. However, beyond Point B, the physical characteristics of the Order route change significantly, becoming narrower and in some places noticeably steeper in gradient. In particular, parts of the section of Footpath No. 14 between Point D and Point E of the Order route are relatively steep, narrow and are over rough ground. There is some evidence of banked sides in this section which is consistent with the route being set out as a public carriage road. However, overall, I have great difficulty in reconciling the physical characteristics of that section of the Order route with designation as a public carriage road.
4. In that respect, the physical characteristics of the Order route today are derived from the landscape and terrain over which it crosses, including the steep gradient and/or narrowness of some sections. Notwithstanding that more than 200 years have passed, it is more likely than not that the physical characteristics that are present today also pertained at the time of the Inclosure Award. The physical characteristics of the Order route would not have been conducive to use by the type of traffic of the day. In particular, the steepness and narrowness of the approach to Stoke Ford (now part of Footpath No 14 and between Section D and E of the Order route) would not have been conducive to use by carts and carriages.
5. In relation to Order B, the Order route closely follows the route of Edge Road from Point A to Point C as shown on the Order map (Footpath No. 2 in part). The section of the Order route between Point B and Point C is across open moorland. There is no reason to believe, and there is no evidence to show, that the physical characteristics of this terrain were any different in 1812 when the Eyam Inclosure Award was made. Objections received consistently refer to the existing footpath being waterlogged, and there is no physical evidence to suggest that the public carriage road identified as Edge Road in the Eyam Inclosure Award of 1812 was set out.
6. The Enclosure Carriage Roads Justices of the Peace Certification dated 6 June 1810 certifies that the roads set out in the Eyam Inclosure Award of 1812 (including Edge Road and Gotheredge Road) are “fully and sufficiently formed, completed and repaired and made fit for the Passage of Travellers and Carriages…”. Where, as in this case, there is no evidence that the Inclosure Award was not properly made, certification by the Justices of the Peace is usually taken as is very strong evidence of the legal status of the highways described.
7. However, in this case, different evidence points in the other direction. The Eyam Inclosure Award of 1812 states that the “….Public Carriage Roads… shall be to and remain of the width of thirty feet.”. In addition to its steepness, the aforementioned approach to Stoke Ford (currently Footpath No 14) is barely 1.5 metres in width at its widest point. That is wholly inconsistent with the description of Gotheredge Road as a public carriage road of 9.1 metres (30 feet) in the Eyam Inclosure Award of 1812. Indeed, it is difficult to envisage that a steeply winding path of that limited width could in practice have been used as a public carriage road by the type of traffic of the day.
8. I am aware that what may now be regarded as extremely difficult conditions (in relation to gradient, etc) may well have been relatively commonplace and frequently met by stagecoaches, hauliers and drovers in times past. However, the issue in this case is the narrowness of the way on the approach to Stoke Ford at barely 1.5 metres. The nature of terrain at this point (i.e its narrowness) and the underlying geology is such that it is unlikely to have charged to any significant degree over the intervening period. I therefore have great difficulty in reconciling the physical characteristics of the route on this point with use by non-mechanically propelled vehicles at any time.
9. I recognise there is some (albeit limited) physical evidence that the public carriage road in the Eyam Inclosure Award of 1812 were set out in some places (for example, section A of Order route A). However, there is no contemporaneous or later evidence before me that either Edge Road or Gotheredge Road were ever fully set out or, if that was the case, were accepted by the public and then fell into disuse due in part to the physical characteristics of the route.
10. In this latter respect, DCC consider that a route over that type of terrain would probably have required a metalled surface if was to be viable as a public carriage road. The same is true for Order route B which passed over terrain that is likely to have been prone to becoming waterlogged. However, neither of the Order routes shows any evidence of being metalled, with the vast majority of both routes being of natural earth. Both routes generally have the appearance of rough moorland paths rather than an old cart track or public carriage road. This tends to suggest that neither Edge Road nor Gotheredge Road were ever fully set out as public carriage roads, notwithstanding the certification by the Justices of the Peace in 1810.
11. Neither Edge Road nor Gotheredge Road are included on DCC’s current List of Streets as being publicly maintainable. In this respect, these roads can be distinguished from other public carriage roads identified in the Eyam Inclosure Award of 1812, which are recorded on the List of Streets as being publicly maintainable. Furthermore, neither Edge Road nor Gotheredge Road were included on the schedule of roads ‘handed over’ to the control of DCC from the previous highway authority (Bakewell Rural District Council) in 1929.
12. In their respective objections, the two landowners both acknowledge that the Order routes have been used by walkers for many years. They point to stiles being formed as an integral part of the boundary walls and to metal signposts indicating public footpaths erected by the Peak District and Northern Footpaths Preservation Society in the 1930’s. They also refer to the existing gates being kept closed and padlocked. Neither record any use of the routes other than on foot. I recognise that this evidence relates to a more recent period but is nonetheless consistent with the use of the Order routes only having been on foot. The existence of stiles being an integral part of the boundary walls, which are obviously long-standing, is evidence that tends to suggest that the routes have not been used as public carriage roads.

*Other matters*

1. Several of the objections received refer to the perceived impact of upgrading the Order routes to Restricted Byways on biodiversity, including damage to sensitive habitats and on protected species. Other objectors refer to safety concerns arising from potential conflict between walkers and people on cycles and mechanised vehicles. Whilst these are clearly matters of importance to the those who made objections, they are not relevant to my consideration of this Order which must be determined on the evidence of status of the routes as Restricted Byways.

**Conclusion**

1. Having regard to the above documentary evidence and all other matters raised in the written representations, I conclude that on the balance of probabilities neither Edge Road nor Gotheredge Road as recorded in the Eyam Inclosure Award of 1812 were set out as public carriageways. There is no other evidence to show that use of these routes as Restricted Byways has ever taken place: indeed, the evidence that is available points in the other direction. I therefore conclude that use of the Order routes as Restricted Byways has not subsisted and ought not to be there shown as a highway of a different description.

**Formal Decision**

1. I do not confirm the Orders.

Paul Freer

INSPECTOR



