

|  |
| --- |
| **Order Decision** |
| Site visit made on 9 April 2024 |
| **by Claire Tregembo BA (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 8 May 2024** |

|  |
| --- |
| **Order Ref: ROW/3315799** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Derbyshire County Council (Restricted Byway from St Helens Lane to Breamfield Lane - Wirksworth) Modification Order 2021. |
| * The Order is dated 27 May 2021 and proposes to modify the Definitive Map and Statement for the area by adding a restricted byway as shown in the Order plan and described in the Order Schedule. |
| * There were four 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 confirmed.** |
|  |

Preliminary Matters

1. On 10 of April 2024 a letter withdrawing one of the objections was received. The withdrawal letter was circulated to the other parties for information. It did not contain any new evidence regarding public rights over the Order route, so the other parties were not invited to make any comments.
2. I have appended a copy of the Order map to the end of my decision.

The Main Issues

1. The Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of an event under section 53(3)(c)(i) which requires me to consider if on the balance of probabilities, the evidence shows that a public restricted byway subsists along the Order route. This is a higher standard of proof than the reasonably alleged to subsist test to determine if an Order should be made.
2. The Order has been made on the basis of documentary evidence. Section 32 of the Highways Act 1980 (the 1980 Act) requires me to take into consideration any map, plan or history of the locality, or other relevant document provided, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.
3. User evidence was submitted in support of the Order. This evidence relies on the presumption of dedication arising from tests laid out in section 31 of the 1980 Act. This requires me to consider if the public have used the route as of right and without interruption, for a period of twenty years immediately prior to its status being brought into question. I must establish the date when the public’s right to use the Order route was brought into question and determine if use by the public occurred for a twenty year period prior to this that is sufficient to raise a presumption of dedication. If this is the case, I must then consider if there is sufficient evidence that there was no intention on the part of the landowner to dedicate a public right of way (PROW) during this period.
4. I shall examine the evidence as a whole to establish whether a PROW for vehicles exists along the Order route. However, the Natural Environment and Rural Communities Act 2006 (the 2006 Act) extinguished rights for mechanically propelled vehicles (MPVs) subject to certain exceptions set out under section 67. In this case, it is not argued they have been saved by any of the exceptions set out under section 67 of the 2006 Act. Accordingly, should I find in favour of public vehicular rights existing, the way should be recorded as a restricted byway.

Reasons

***Documentary Evidence***

*Wirksworth Inclosure Award 1806*

1. The Inclosure Award served to divide, allot, and enclose commons and waste land, protect springs and to secure a water supply for Wirksworth. It was made pursuant to the powers of the Local Inclosure Act of 1802 and incorporated the provisions of the Inclosure Consolidation Act of 1801 (the 1801 Act). This gave commissioners powers to award public carriage roads with a minimum width of 30ft (9.1m).
2. The Order route is shown on the Wirksworth Inclosure map between St Helens Road (now Lane) and Shootle Road (now Breamfield Lane) with double solid lines. It is set out in the Award as Breamfield Road, a ‘public carriage, horse and drift road from St Helens Road on the said common to Shootle Road near Breamfield Houses’. The adjoining parcels state they are ‘bounded by the Breamfield Road’. A width is not specified, but the map shows it narrower than the connecting roads. There are solid lines at either end of the Order route which could indicate gates. Restricted Byway 98 (RB98) is also set out as a ‘public carriage, horse and drift road’ called Gorsey Bank Road.
3. The numbered parcels on the Inclosure map have T symbols marked around their edges. These indicate who is responsible for maintaining the boundaries of the new parcels. The houses at Breamfield are referred to in the Award and shown on the map. The houses and some abutting parcels are not numbered indicating they were not awarded and existed before the Inclosure.

*Wirksworth Tithe Map 1849*

1. The purpose of tithe records was to identify titheable land that was capable of producing crops. They were not produced to record public rights of way, but they can assist in determining the existence and status of such routes. Public and private roads were not capable of producing crops so were not subject to tithes.
2. The Wirksworth Tithe map shows the Order route coloured brown between double solid lines, in the same manner as other public roads. However, some private access roads are also shown in the same way. There are solid lines at either end of the Order route which could indicate gates. It is not numbered and there is no reference to it in the apportionment schedule.

*Finance Act Maps*

1. The Finance Act 1910 imposed a tax on the increase in land value, which was payable when the land changed hands. Maps were produced to show taxable land following a survey by the Board of Inland Revenue. The existence of PROWs over land reduced its value and the liability for tax, so were recorded in the survey. The exclusion of part of the appeal route from the adjoining hereditaments usually indicates public highways which are more likely to be vehicular. Footpaths and bridleways are usually included within hereditaments.
2. The Order route is excluded from the surrounding hereditaments of land in the same way as Breamfield Lane, St Helens Lane and RB98. Footpath 36 is shown within a hereditament.

*Ordnance Survey and Commercial Maps*

1. Sanderson’s 1835 map of 20 miles around Mansfield shows the Order route with solid bold lines which the key indicates to be a cross road. Breamfield Lane, St Helens Lane and RB98 are shown in the same way. There is a line across the Order route where it joins St Helens Lane, which could indicate a gate. Brook Wall is shown on Sanderson’s map, but its access is not shown; the nearby public footpaths are also not shown. This would suggest that Sanderson only showed routes that were considered to carry public vehicular rights.
2. The Order route is shown on the 1884 six inch to the mile and the revised 1898 25 inch to the mile Ordnance Survey (OS) maps with double solid edges. Breamfield Lane, St Helens Lane and RB98 are shown in the same way.
3. The 1947 one inch to the mile OS map shows the Order route coloured brown with double solid edges. The key indicates it is an ‘other motor road’ which is possibly narrow but good. It is shown in the same way on the 1960 map but the key for this edition indicates a ‘road under 14ft of metalling untarred’.
4. The OS and commercial maps provide evidence of the physical existence of the Order route since 1835. However, since the late 19th Century, OS maps have carried a disclaimer that tracks and paths shown provide no evidence of the existence of public rights. Sanderson’s map was produced for travellers and there would have been little point in showing a road if the public did not have a right to use it.

*Land Registry and Conveyancing Documents*

1. The Order route is not registered with Land Registry, and I have been informed that the title deeds for the properties off it do not include any rights of access. Vehicular highways of ancient origin are often excluded from the title deeds of the adjoining land and properties. Breamfield Lane, St Helens Lane and RB98 are also excluded from the surrounding land parcels.
2. I am advised that the search responses from Wirksworth Urban District Council and Derbyshire County Council, produced when the abutting properties were purchased, do not indicate any highways, PROWs, or maintenance responsibilities along the Order route. The Definitive Map and Statement (DMS) and List of Streets would have been consulted as part of the search. However, because the Order route is not currently recorded, no highway rights or maintenance responsibilities would have been identified. Furthermore, the DMS is a minimum record of PROWs and does not preclude the existence of unrecorded rights.
3. Previous owners provided statutory declarations to confirm the track had always been used to access their properties when selling them. If the Order route had been a public road or PROW, the current owners consider these would not have been necessary. However, the statutory declarations relate to private not public rights. Reference to private rights is not evidence that public rights do not exist and does not preclude the existence of unrecorded rights.

*Width*

1. The Order describes the width as varying between 3.1m and 10.6m as shown by continuous bold lines on the Second Edition 1:2500 OS map 1898. Section 8 of the 1801 Act specified that public carriage roads must have a minimum width of 30ft (9.1m) which is wider than most of the width of the Order route.
2. None of the documents before me specify the width of the Order route, but the maps all show it as narrower than the roads at either end. The 1960 OS map indicates the Order route has a width of less than 14ft.
3. The omission of numbers and T symbols from some parcels and properties at Breamfield suggests that the Order route may have existed before 1806. One of the property owners has also stated the houses and access track existed before it was set out in the Inclosure Award. If this is the case, it suggests the Commissioners may have awarded it with the intention of it remaining at its existing width.
4. The Order route is consistently shown on the historical mapping as running between boundaries with some buildings directly abutting it. These boundaries align with those shown on the modern OS base map used in the Order. There is no evidence to show a 30ft width has ever been available, and the boundaries do not appear to have changed between 1806 and the modern OS map. Therefore, I am satisfied the width in the Order accurately reflects the width of the Order route.

*Conclusions on the Documentary Evidence*

1. I must consider the evidence before me as a whole, weighing up the evidential value of each document accordingly. A consistent depiction of the appeal route over many years can be a positive indication of status. I need to consider if there is synergy in the documents that point, on the balance of probabilities, to the Order route having public vehicular rights.
2. The setting out of the Order route in the Inclosure Award as a public carriage, horse and drift road is good evidence of public vehicular rights over it. In Inclosure Awards, the term ‘one other’ normally means ‘another’. It is common practice to set out several rights over awarded routes and specifying several rights does not mean only one of the rights applies. The springs may no longer be needed to supply water to Wirksworth, but there is no evidence the Inclosure Act or Award have been repealed; therefore, they remain in effect.
3. The exclusion of the Order route from surrounding parcels in the Finance Act map is consistent with the Order route being a public vehicular highway. The exclusion of the Order route from the surrounding property titles also suggests an ancient vehicular highway.
4. Commercial and OS maps provide evidence of the physical existence of the Order route, and it is consistently shown in the same manner as other minor public roads. I consider these maps to be suggestive of public vehicular rights.
5. The Tithe map shows public and private roads in the same way. Therefore, it does not provide evidence of the rights over the Order route.
6. The Inclosure Award shows public vehicular rights over the Order route and most of the documents support their continued existence. There is no evidence to show vehicular rights have been extinguished by due legal procedure prior to the 2006 Act, which only extinguished rights for MPVs. Therefore, I consider, on the balance of probabilities, that vehicular rights exist over the Order route.

***User Evidence***

1. As I consider the documentary evidence is sufficient to show vehicular rights exist over the Order route, I do not have to consider the user evidence. However, in the interests of completeness, I will briefly comment on it.
2. Fifty-seven user evidence forms show use of the Order route between 1934 and 2018. All path users used it on foot and a few people also used it with a horse, bicycle, or motor vehicle. Frequency of use was low with most people using it less than once a month; a couple of people used it daily, and ten people used it weekly. Some path users recall gates on the Order route but there is no suggestion they were ever locked and some recall stiles. None of the path users recall being granted permission to use the Order route. They also do not recall any notices denying public rights, obstructions, or challenges until 2018, although residents dispute this.
3. As the user evidence is predominantly of use on foot, it is not sufficient to support the existence of public rights at a higher status than footpath. However, the user evidence shows the Order route was available for use and had a reputation as a PROW which supports the documentary evidence.

**Other Matters**

1. The Order route provides access to several residential properties and issues were raised about privacy, security, dog fouling, wear and tear, devaluation of property, increased maintenance costs, increased public use, use by motorbikes, noise, safety issues and animal safety. Whilst I understand these concerns, the legislation does not allow me to take these issues into consideration. The legislation also does not allow me to consider the availability of alternative routes, any benefits to the public or the safety of path users once they reach the roads at either end of the Order route.

Conclusions

1. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed.

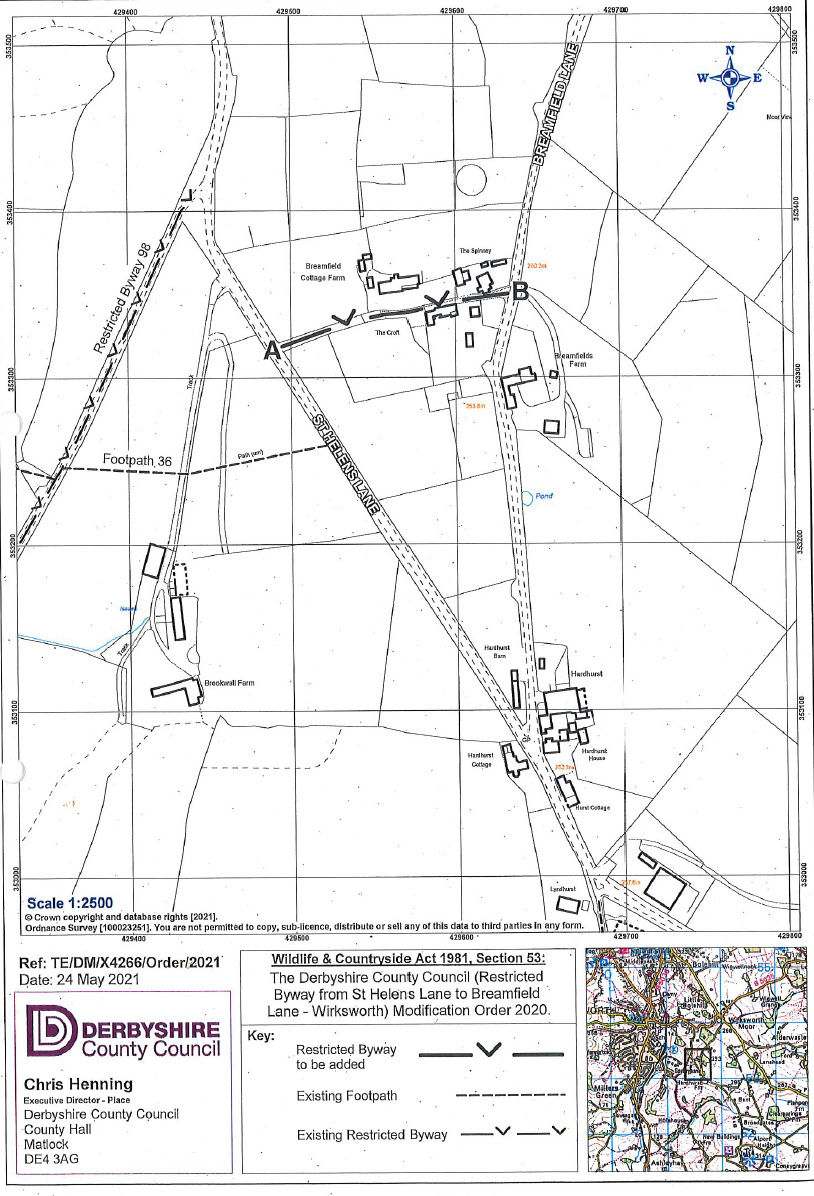
Formal Decision

1. I confirm the Order.

Claire Tregembo

INSPECTOR

**Order Map**

****