

|  |
| --- |
| **Order Decisions** |
| Site visit made on 1 May 2024 |
| **by J Ingram LLB (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 21 May 2024** |

|  |
| --- |
| **Order Ref: ROW/3319631 ‘the 2021 Order’** |
| * 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 (Bridleway from Dam Lane (Eaton and Alsop) to Public Footpath No.17 (Newton Grange) and Upgrading to Bridleway Part of Public Footpath No.17 (Newton Grange) and Public Footpath No.14 (Eaton and Alsop) – Parishes of Newton Grange and Eaton and Alsop) Modification Order 2021. |
| * The Order is dated 10 June 2021 and proposes to modify the Definitive Map and Statement for the area by adding a bridleway and by upgrading a length of footpath to bridleway as shown in the Order plan and described in the Order Schedule. |
| * There were two 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.** |
|  |

|  |
| --- |
| **Order Ref: ROW/3319632 ‘the 2022 Order’** |
| * 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 (Bridleway from Dam Lane (Eaton and Alsop) to Public Footpath No.17 (Newton Grange) and Upgrading to Bridleway Part of Public Footpath No.17 (Newton Grange) and Public Footpath No.14 (Eaton and Alsop) – Parishes of Newton Grange and Eaton and Alsop) Modification Order 2022. |
| * The Order is dated 21 July 2022 and proposes to modify the Definitive Map and Statement for the area by adding a bridleway and by upgrading a length of footpath to bridleway as shown in the Order plan and described in the Order Schedule. |
| * There was one objection 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 subject to the modifications set out below in the Formal Decision.** |
|  |

Preliminary Matters

1. I carried out an unaccompanied site visit on 1 May 2024.
2. In writing this decision I have found it convenient to refer to points marked on the Order Plan. I therefore attach a copy of this plan.
3. Derbyshire County Council, the Order making authority (OMA) was directed to make an Order following an Appeal Decision dated 29 July 2020. The first Order ‘the 2021 Order’ was made without the council officer obtaining the relevant authority. The officer obtained the authorisation, and the Order was then re-made in July 2022. The OMA have therefore requested that the 2021 Order is not confirmed.
4. Two objections were made to the 2021 Order; however, they are effectively from the same person. One is from an affected landowner and a letter was also received from their representative confirming the landowners’ objection. One representation in support of the Order was also received. The same landowner who objected to the 2021 Order has confirmed their continued objection to the 2022 Order.
5. The representation in support of the Order noted two minor modifications that may be needed to the Orders. These are to correct a minor error in the recording of the width for the section D-E, and a typographical error in the spelling of ‘Alsop’. The OMA have stated that they agree to the request for the modifications to be made. These minor modifications to the Orders would not require advertising if the Orders were confirmed.
6. The OMA have stated they are unable to support the confirmation of the 2022 Order and are therefore taking a neutral stance.

The Main Issues

1. The OMA made the Orders under Section 53(2)(b) of the 1981 Act on the basis of events specified in sub-sections 53(3)(c)(i), (ii) and (iii). As a result, the main issues are whether the discovery by the Council of evidence (when considered with all other evidence available) is sufficient to show that a public right of way which is not shown in the map and statement subsists over land in the area to which the map relates.
2. Section 53(3)(c)(ii) of the 1981 Act requires me to consider whether the evidence discovered, when considered with all other relevant evidence available, is sufficient to show that footpath No.14 and part of footpath No.17 should be upgraded to a bridleway, and that the Definitive Map and Statement (DMS) require modification.
3. Section 53(3)(c)(iii) of the 1981 Act relates to other particulars contained in the map and statement which require modification. This section is referred to as the particulars for the unaffected section of footpath No.17 would require modification if part of the footpath was upgraded.
4. The evidence submitted in support of this case is documentary evidence, there is no evidence of user. As regards to documentary evidence, Section 32 of the Highways Act 1980 (the 1980 Act) requires that I take into consideration any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway. My decision is reached on the balance of probability.

Reasons

*Tithe Map and Apportionment for Alsop en le Dale 1846*

1. This Tithe Map pre-dates the construction of the railway. A track is shown on a similar alignment to the Order route, linking Dam Lane at point A, through to what is now known as the A515. However, rather than turning south to point B, the route continues in a south westerly direction to join the road to the north of point E. The route is shown as a double dashed line throughout.
2. The route is within the field numbered 217, also in this field is the route of Dam Lane. Dam Lane is also shown between double dashed lines but is coloured sienna the same as the other public roads. The apportionment describes plot 217 as “Dale side and road” for which a tithe was payable. The apportionment confirms that public roads were not subject to tithe payments.
3. I consider that Dam Lane does appear to be coloured on the map, therefore it would be reasonable to conclude that it was regarded as a public road. Consequently, I consider the reference to ‘road’ in the apportionment for plot 217 to be referring to the order route. The footpath to the south of the order route is shown as a single dashed line. Therefore, as the order route is shown as a double dashed line this suggests it was of more importance than the footpath. As the route links two public roads, I consider it would have been likely to have been used as a public through route.

*Ordnance Survey (‘OS’) Mapping*

1. The 1 inch to 1 mile first edition OS map c1840 shows a route with two solid lines on a similar alignment to the order route. The distinctive north westerly then south westerly route from Dam Lane is clear, as shown on the Tithe Map, the track then continues in a straight line through to the A515. I consider this to be supportive of public rights higher than footpath. Due to the scale of the map only routes of some importance were depicted.
2. The first edition OS map of 1880 shows part of the order route as double dashed lines. From point A the route curves and follows a north westerly direction, it then curves again, however, rather than continuing south westerly it appears to turn southerly towards a field and ends at the field boundary. A track is shown on an alignment similar to the footpath from Dam Lane to the A515, which includes the section of the order route between points C-D-E.
3. The second edition OS map of 1899 similarly shows the order route from point A heading north westerly but then coming to an end in the field. The map shows the course of the railway, which was under construction at the time, and the track between points C-D-E is shown as going through a subway. The section which is now FP3 is annotated F.P.
4. The third edition OS map is dated 1922, it now shows the railway lines. The order route from point A is not shown. The order route between points C-D-E is shown as a double dashed track, it is again shown as going through the subway.
5. The three OS maps from 1880 onwards do not record the physical existence of the order route in its entirety, although it is partly shown from the Dam Lane end. The route of C-D-E is also shown as a feature and is shown as going through the subway. This could indicate that the full extent of the route did not exist, or that the OS did not record it. One explanation could be if the route was so little used it was not evident on the ground. These maps are of limited assistance regarding the status of the route.

*Railway Plans and Records*

1. A route is shown through plot 109 on the extract of the deposited railway plan dated 1889. The alignment corresponds with part of the order route, but rather than turn southerly to point B, it continues in a straight line to meet what is now the A515. This is the same alignment as shown on the Tithe Map and the 1 inch to 1 mile first edition OS map. The book of reference describes plot 109 as “Field, pond and public bridle road”. The ownership is assigned to Lord Hindlip and The Surveyor of Highways of the Township of Eaton and Alsop.
2. The London and North Western Railway Act 1897 conferred power to stop up and divert certain specified roads and paths. This included a diversion of the bridle road onto the alignment of the order route plus another route extending further northwards. The Quarter Session documents include an extract from the Act, this describes the plans to stop up a section of the bridle road leading from Alsop-en-le-Dale to the Ashbourne and Buxton Road in lieu of a new bridle road, this would be from a point opposite Oxclose Lane, and the bridle road would go under the railway by means of a subway.
3. The deposited plan and book of reference dated 1897, show the proposal for diversion. The original alignment of the route is numbered 9 and described as “Bridle Road” and owned by The Ashbourne Rural District Council. The plans clearly show the proposed diversion on the alignment of the order route.
4. Handwritten notes from 1892 and 1896 and stamped by the Clerk of the Peace are attached to the Book of Reference. They confirm receipt of the notice of intended application to parliament. I acknowledge that these confirm only that an application was to be made for the diversion, it does not prove that the diversion had formally taken place.
5. A further Railway Plan originally from 1909 appears to have been used to show the land that was sold to the Peak Park Planning Board in 1969. A route annotated ‘Bridle Road’ is shown on the eastern side of the railway, the route continues under the railway and through to the road. This alignment is the same as the diverted route on the 1897 railway plan, it is marked with the letters A, B and C. The plan is annotated “Ry Co. to make and maintain bridle road between A.B.C.”. It has been submitted by the applicant that this shows the railway company had accepted responsibility for making and maintaining the diverted bridleway, if the diversion had not legally come into effect it would not have done so. I agree that the annotation does show acceptance by the railway company, and it would be unlikely to appear on such a document if this was not the intention. The plan does not show the remaining unaffected section of the bridleway, it does however show a route on the alignment of footpath 17.

*Other Evidence*

1. An Indenture for the conveyance of parcels of land to the railway company dated 1899 has been submitted. This shows the original alignment of the route, in field 109 between a solid line and a dashed line, it is annotated ‘Bridle Road’ in red ink. There is a red ‘X’ at the point where the diverted route would cross the railway. Also in red ink is a route annotated ‘Bridle Road Diversion’, this runs from point C on the order plan and follows the field boundary in a north westerly direction. The Indenture states that the Bridle Road in field 109 is to be diverted over the vendor’s land on the east side of the railway and under the archway to be built by the Company under the railway at the point marked X. A supporter of the Order states, and I would agree, that this document shows that the landowners considered that the part of the bridleway that was unaffected by the diversion remained on its original alignment. I would conclude that this document is supportive of the bridleway rights continuing on an alignment towards Dam Lane.
2. The applicant has submitted minutes from meetings held between the British Rail Estates Department and the Peak Park Planning Board to discuss the handover of the railway. A reference is made in a minute dated November 1967 that “the diversions of the footpath and bridleroad had been carried out but not maintained”. A further undated record states that the railway company had been released from its liability under section 68 of the Railway Clauses Consolidation Act 1845 (as incorporated in the 1890 Act) for certain works except for an archway under the railway and diversions of footpaths and bridle road. I consider that this is further evidence that the diversion of the order route did take place and the subway was constructed.

*Conclusions on the documentary evidence*

1. The Tithe Map of 1846 and the OS 1 inch to 1 mile map dated 1840 both show a through route between two public roads. This was the pre-diversion alignment of the order route. Therefore, I consider that this was a significant route at this time and would have been the most direct westerly route from the village of Alsop-en-le-Dale. It appears to have carried higher rights than the footpath just to the south.
2. I consider that the railway documents show a clear intention to divert the route, and there are many references to its status being that of bridleway. The railway company would not have considered a diversion necessary if the rights had not existed. I agree with the applicant that it would seem unlikely that a subway would have been built purely to accommodate pedestrians given that there was no obligation on the railway company to bridge footpaths under the Railway Clauses Consolidation Act 1845. Although it is clear from the 1922 OS map that a route passes under the railway, this then continues on the alignment of footpath no.17.
3. Although there is no firm evidence that the diversion was legally implemented, I consider that the evidence shows on balance that it probably was. Indeed, the minutes from 1967 clearly state that the diversion had been carried out. There is no evidence to suggest that the remaining section of the order route, that was not affected by the diversion, was ever stopped up. I am satisfied that the evidence is sufficient, on the balance of probabilities, that public bridleway rights subsist.

**Other Matters**

1. The landowners submitted objections to the OMA for the 2021 and 2022 orders. Their concerns were regarding the consequences of the public leaving gates open on the route. They also stated a bridleway would impact the way they farm the land, as it is used for grazing. These concerns are not related to the existence or status of the order route, based on the historical evidence, and are therefore not relevant to my decision.

Overall Conclusion

1. Having regard to the above and all other matters raised in the written representations I conclude that the 2022 Order should be confirmed. On the balance of probabilities, I consider that there is sufficient evidence for the addition of the claimed route from point A to C on the Order plan. Furthermore, on the balance of probabilities, I consider that there is sufficient evidence for the sections of existing footpaths between points C-D-E to be upgraded to bridleways. Therefore, the Order should be confirmed subject to the minor modifications accepted by the OMA to correct the errors identified. In consequence of this finding, I am satisfied that the existing particulars contained in the Definitive Statement for footpath No.17 require modification to reflect the partial upgrade of this footpath.
2. The 2021 Order is identical to the 2022 Order and as there is no reason for a duplicate Order. Therefore, I conclude that the 2021 Order should not be confirmed.

Formal Decision

**Order Ref: ROW/3319631 (the 2021 Order)**

1. The Order is not confirmed.

**Order Ref: ROW/3319632 (the 2022 Order)**

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

* Part I of the Order, under the description of D-E on the final line, replace ‘**5.5** metres’ with ‘**5.4** metres’.
* Part II of the Order, under the ‘Status and Description of Route’ for Path No.26, replace **‘Allsop’** with **‘Alsop’**.

J Ingram

INSPECTOR



