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| **Appeal Decision** |
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| **by Mark Yates BA(Hons) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 3 January 2025** |

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| **Appeal Ref: ROW/3348753** |
| * This appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (‘the 1981 Act’) against the decision of Derbyshire County Council (‘the Council’) not to make an order under Section 53(2) of that Act.
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| * The application was dated 14 October 2018, and this appeal relates to the Council’s decision of 27 June 2024 to not make an order.
* The application was made to upgrade Footpath No. 8 in the parish of Abney and Abney Grange to bridleway status (‘the appeal route’).
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| **Summary of Decision: The appeal is dismissed.**  |
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Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine the appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the 1981 Act.
2. Written submissions have been received from the appellant, the Council and three other parties who are opposed to the appeal. I have not been provided with copies of all of the documents referred to by the parties. Nonetheless, there is no apparent dispute regarding what is stated to be included in the missing documents.
3. I have not visited the site, but I am satisfied that I can make my decision without the need to do so.

**Main Issues**

1. Where it is proposed that an existing public footpath should be upgraded to a higher status, consideration needs to be given to Section 53(3)(c)(ii) of the 1981 Act. This specifies that an order should be made following the discovery of evidence which, when considered with all other relevant evidence, shows that *“a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description*”. The evidential test to be applied is the balance of probabilities.
2. Reliance is placed by the appellant on various historical documents and maps in support of the dedication of a public right of way at some unknown date in the past. Section 32 of the Highways Act 1980 requires a court or tribunal to 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 appropriate, before determining whether or not a way has been dedicated as a highway.
3. None of the exemptions in Section 67(2) or (3) of the Natural Environment and Rural Communities Act 2006 are stated to be applicable and therefore any public right of way for mechanically propelled vehicles is extinguished. This means that if historical vehicular rights are shown to subsist, the appropriate status for the route would be a restricted byway.

**Reasons**

***Discovery of evidence***

1. Paragraph 26 of the judgment from the case of *Burrows v Secretary of State for Environment, Food and Rural Affairs (QBD) [2004] EWHC 132 (Admin)* states, in respect of the discovery of evidence, that: ‘*It is plain that the section intends that a definitive map can be corrected, but the correction… is dependent**on the ‘discovery of evidence’.**An Inquiry cannot simply re-examine the same evidence that had previously been considered when the definitive map was previously drawn up. The new evidence has to be considered in the context of the evidence previously given, but there must be some new evidence which in combination with the previous evidence justifies a modification*’.
2. It is apparent that Footpath 8 was included on the original definitive map for the area. The soundness of the decision to include the path on the definitive map is not an issue for me to determine. However, as outlined above, an order to modify the definitive map cannot be founded on a re-examination of the same evidence that was considered when the map was first drawn up.
3. The annual report of the Peak and Northern Footpaths Association (‘PNFA’) for 1960 provides details of the documents submitted in support of the retention of particular footpaths on the draft definitive map. The documents listed in relation to Footpath 8 are the 1825 Greenwood map, 1833 Glover map, 1848 tithe map, 1840 First Edition Ordnance Survey (‘OS’) map and 1799 Archer map. Reference was also made to the collection of witness statements gathered from older residents.
4. The maps submitted when consideration was given to whether Footpath 8 should be included on the definitive map form a substantial part of the case made by the appellant in support of the upgrading of the path. These documents cannot therefore be viewed as being discovered for the purpose of Section 53(3)(c)(ii) of the 1981 Act. This means I need to consider the other ‘new’ pieces of evidence in the context of the previously considered evidence.

***Consideration of the documentary evidence***

1. The 1825 Greenwood map and 1833 Glover map were previously considered but an additional Greenwood map of 1830 has now been provided. Despite the potential for the Greenwood maps to be based on the same survey, there are some differences between the two versions. Reference has been made by the objectors to inaccuracies in the depiction of particular features shown on the maps. Nonetheless, a cross road is shown on the Greenwood maps in the general location of the appeal route between Abney Village and the parish boundary. A route is shown on the other side of the parish boundary which continues southwards in the direction of Eyam. The objectors also refer to the Glover map being compiled rather than based on a fresh survey and I note It is similar in nature to the later Greenwood map.
2. Two additional commercial maps produced by Burdett (1762-70) and Sanderson (1836) have been provided by the appellant. In terms of the Burdett map, this only shows a short section of the route leading out of Abney as a cross road. The appellant says that this arises where the route crossed open land or common. Whilst this point is disputed by the objectors, I note that the route is depicted in an open-ended manner to indicate that a road continued onwards beyond the section shown. However, the alignment of the remainder of the route cannot be determined. It is apparent that the Sanderson map shows the appeal route as a cross road which continued beyond the parish boundary north-eastwards towards Highlow Hall. The road shown towards Eyam on the Greenwood and Glover maps does not appear to be represented on the Sanderson map.
3. Reference is made by the objectors to some additional commercial maps which do not show the appeal route. However, I do not consider that this significantly undermines the depiction of the route on other commercial maps. The physical existence of the route is supported by other maps detailed below.
4. The appeal route is depicted to varying degrees on the previously considered maps and newly discovered commercial maps as a cross road. A cross road in this context meaning a road running between two other roads**.** Although the depiction of the route in this manner can provide some support for the existence of higher public rights, the purpose of these maps was to show the physical features which existed when the land was surveyed, including all roads. This will invariably lessen the weight that can be attached to them. The Council points to research revealing that routes shown as cross roads have been found on occasions to be private access roads and in other cases to be bridleways or public roads. On this matter, I address below the features shown on other maps. It also needs to be borne in mind that there is presently no recorded public bridleway or vehicular highway that links with the appeal route at the parish boundary.
5. Whilst I note there is a discrepancy between the year of the tithe map specified by the PNFA (1848) and the references by other parties to the Abney and Abney Grange tithe map being produced in 1849, there is nothing to suggest that two tithe maps were produced for this parish. It is therefore likely that the tithe map was previously considered when the definitive map was draw up. The OS drawing provided formed the basis for the 1840 OS map which has also previously been considered.
6. The appeal route is shown on these maps leading out of the village of Abney and proceeding through to the parish boundary. The OS map shows that beyond the parish boundary there was a road going eastwards to the former Highlow Mill and another road going north eastwards towards the present day public road to Leadmill and Highlow Hall. A road from the direction of Eyam appears to terminate just beyond Gotherage Barn and not at the parish boundary. On the tithe map there is an additional road shown leading out of the appeal route to the west of the parish boundary which leads only to the former Coarse Low Farm.
7. Footpath 8 is mainly depicted on the tithe map as an unenclosed road crossing numbered parcels of land. Information in relation to each numbered parcel should be included in an accompanying tithe apportionment. The route has also been coloured yellow in common with other roads on this map, including cul de sac roads leading to named farms. At the parish boundary there is the annotation ‘*To Highlow Mill*’, which indicates that the onward destination at this point was the mill. The words ‘*Mill Croft Stile’* also appear at this location but there is no explanation as to what is meant by this annotation. In contrast, the present public road to the north is annotated ‘*To Bakewell’.*
8. The parties have referred to information contained in the tithe apportionment (copy not provided) and the tithe maps for neighbouring parishes and these documents do not appear to have previously been considered. The Highlow tithe map of 1849 shows the routes to the mill and towards Highlow Hall that are evident on the 1840 OS map. A crossing point at the watercourse continuing from the junction of these routes is shown towards the parish boundary and the appellant has referred to the presence of a ford in this locality. However, there is no annotation near to the eastern termination point of the appeal route. The Eyam Woodland tithe map of 1844 shows the route shown on some of the maps continuing southwards of the parish boundary, but nothing is shown in relation to the appeal route.
9. Whilst fords can provide access for various types of user, it does not necessarily follow that a particular ford served as a public crossing for vehicles or horse riders. It is also evident that an order to record higher public rights over a route leading southwards towards Eyam was not confirmed (Decision Ref. ROW/3273599). The status of other routes is not a matter for me to determine. However, at the present time, only public footpath rights are recorded continuing beyond the parish boundary.
10. The stated references in the apportionment to a route as a ‘*road*’ or ‘*lane*’ could be indicative of public or private status. In terms of a separate section within the apportionment dealing with public roads, this potentially indicates that roads within the numbered plots were not public. However, I exercise caution on this matter given that the relevant extracts have not been provided. Further, the purpose of the tithe survey was to identify productive land for the purpose of taxation and highways could be included in the numbered plots.
11. Overall, I do not consider the additional tithe evidence to provide anything of note, when taken in conjunction with the previously considered tithe map, in support of the appeal route being a historical public bridleway or road. There is clearly the potential for the various roads shown on the tithe maps to have had public or private status. On this issue, the clear inference to be taken from the Abney and Abney Grange tithe map is that the appeal route continued on to the mill and there will be doubt as to whether this was a place of public resort**.**
12. Estate maps were not drawn up for the purpose of representing highways and their evidential value will usually be limited. The failure of the 1872 Parkin’s estate map to show the appeal route does not necessarily mean that no higher public rights existed, and the route is shown as a physical feature on other maps provided. Additional estate maps provided by the appellant do not appear to add anything to other maps in terms of the depiction of a route heading southwards towards Eyam and a potential crossing point where this route meets the watercourse.
13. The previously provided 1799 Archer estate map shows a short section of route at the parish boundary annotated ‘*from Abney*’. Dashed lines are also shown running for a short section to the south of the watercourse. The Archer map only serves as an indication of a route leading to Abney and potentially Eyam. However, nothing can be taken from this map in relation to the extent of any public rights over the appeal route. In contrast, reference has been made by the objectors to another route on the Archer map located to the north of the appeal route being annotated as ‘*Bridle Road from Abney*’. Although the extract covering this area has not been provided, this point is not disputed. Nonetheless, I have pointed out above the limited evidential value of estate maps.
14. The appeal route is shown on the First Edition OS map of 1880 between dashed and solid lines to indicate the absence or presence of a boundary feature. It is shown in a similar way on subsequent OS maps of 1896, 1898, 1922 and 1947. The evidential value of OS maps, including the 1840 edition addressed above, is that they generally provide a reliable indication of the presence of particular physical features on the date of the survey. However, they do not provide clarification regarding the status of the paths and roads shown. Whilst the map key for the 1947 edition shows the appeal route falling within the ‘*Minor Road*’ category, no reliance can be placed on this map as to whether the route had public status.
15. The appellant has referred to an extract from the publication titled ‘*Peakland Roads and Trackways*’ by A.E. Dodd and E.M. Dodd (found within chapter 5 – Packhorse Ways and Drove Roads). This refers to a way from Eyam which continued over Eyam Moor to the north-west to the bottom of Bretton Clough and through to Abney. The route described appears to correspond in part to the appeal route. This is suggestive of the historical existence of the route in line with the map evidence. However, this extract by itself is of limited value in terms of the status of the route.
16. An extract from the Sheffield Clarion Ramblers Handbook (1933-34), titled ‘*Another Lost Right of Wa*y’ contains a description of a route between Abney and Leadmill. The route described corresponds to the appeal route and a continuation onwards to Leadmill. The publication refers to the route as an old bridle road but adds that the current view is that it was an occupation road leading to the ancient Highlow Corn Mill. Another explanation is stated to be that the route went across estate land, and this was the reason to prevent access. This extract points to the route potentially serving as an historical means of access to the mill and this would be consistent with some of the map evidence. The only potential route to Leadmill evident on some of the maps is the route heading north-eastwards from the parish boundary towards Highlow Hall**.**
17. There is a reference in the Sheffield Clarion Ramblers Handbook (1937-38) to a bridleway which again appears to relate to the appeal route. The author was of the opinion that it was part of an original road from Abney to Highlow Hall and Leadmill Bridge before the construction of the more modern road. Although the author considered the appeal route to be part of an original road serving particular locations, it cannot be determined how they reached this view. This conclusion could have potentially been reached from the historical maps. Overall, I find the extracts from the ramblers handbook to be of limited value.
18. Reference has also been made to a response by a longstanding local resident (Mr Townsend) in 1946 to a request for information from the PNFA regarding the appeal route. He stated that he had never known the route to be a public road and referred to an annual payment being paid by his father and grandfather to use it. Mr Townsend refers to his grandfather telling him the road was used by farmers in Abney to take corn to the mill. This document points in favour of the appeal route being considered a private road. In my view, it should carry a little more weight than the extracts above from the ramblers’ handbook given the source of this information.
19. A letter on behalf of the landowner’s solicitor of 24 November 1947 to the PNFA appears to relate to an ongoing dispute regarding the status of the appeal route. However, the issue related to whether the route was a public footpath.Again attention is drawn to the route previously being an access road to the mill until the mill ceased to operate with later use confined to one or two tenants for a fee. The source of this information is not known, and it couldhave potentially been obtained from Mr Townsend.
20. It is evident that the witness statements gathered from older residents mentioned in the 1960 annual report of the PNFA were previously before the Council. Nor is anything known about the content of these statements. There is an additional reference in the report to ‘*No Road’* signs being in place from 1919.
21. The various pieces of information outlined above from the twentieth century do not generally point to the route being viewed as a public road or bridleway. They also indicate that there may have been some dispute regarding whether the route was a public footpath.
22. The appellant has drawn attention to the existence of paving stones and drainage channels in connection with the appeal route. However, it cannot be determined when these were first put in place. As the Council points out they could have resulted from maintenance undertaken in relation to the current designated public footpath or a private means of access. The existence of a particular width between historical gate posts only indicates that the route could have been used by equestrian or vehicular traffic in the past. It does not demonstrate that any such use was of a public nature.
23. Public rights of way can co-exist with private rights of access granted for the benefit of particular parties. The granting of a private right of way over the appeal route does not have any bearing on the existence or otherwise of unrecorded public rights over the route. It may have been considered appropriate for rights of access to be granted in the absence of any recorded vehicular highway.

***Conclusions on the documentary evidence***

1. As outlined above, a proportion of the documents tendered in support of this application were previously considered when Footpath 8 was first included on the definitive map. In my view, the newly discovered evidence does not have any significant bearing on the previously considered evidence. In light of my conclusions regarding the various pieces of evidence, I do not find that the evidence is of sufficient weight to show on the balance of probabilities that higher public rights should be recorded over the appeal route.

***Evidence of recent use***

1. The appellant’s case relies on documentary evidence rather than evidence of recent use. No user evidence forms or statements have been provided in support of use by horse riders or cyclists. The consultation exercise undertaken by the Council reveals that there were some responses which pointed to use of the route by horse riders and other responses referred to a lack of any such use. Overall, the information provided is not sufficient to make a judgement on whether the dedication of higher public rights could have arisen in light of more recent use of the appeal route. Clearly, if user evidence were provided this could support a fresh application in relation to the route.

**Other Matters**

1. A number of issues were raised in response to the consultation exercise undertaken by the Council that are not a relevant consideration for the purpose of the 1981 Act. These include the current nature of the route, its suitability for bridleway users, erosion, safety concerns, potential problems arising from use by motor vehicles and the desire for the route to be a bridleway.

**Conclusion**

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

**Formal Decision**

1. The appeal is dismissed.

Mark Yates

**Inspector**