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| **Order Decision** |
| Accompanied site visit undertaken on 7 January 2025 |
| **by Mark Yates BA(Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 February 2025** |
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| **Order Ref: ROW/3327513 Order A** |
| * This Order is made under Section 53(2)(a) of the Wildlife and Countryside Act 1981 and is known as the Derbyshire County Council (Upgrading of Public Footpath No. 1 and Public Footpath No. 7 (Part) - Parish of Hopton and Public Footpath No. 7 - Parish of Callow to Bridleway and Bridleway Along Sumer Lane - Wirksworth) Modification Order 2021. |
| * The Order was made by Derbyshire County Council on 24 June 2021 and proposed to upgrade sections of public footpaths to bridleway status and add a section of bridleway to the definitive map and statement in the parishes of Hopton, Callow and Wirksworth. |
| * There was one objection and one representation outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs. |
| **Summary of Decision:** **The Order is not confirmed.** |
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| **Order Ref: ROW/3327522 Order B** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Derbyshire County Council (Upgrading of Public Footpath No. 1 and Public Footpath No. 7 (Part) - Parish of Hopton and Public Footpath No. 7 - Parish of Callow to Bridleway and Bridleway Along Sumer Lane - Wirksworth) Modification Order 2023. |
| * The Order was made by Derbyshire County Council on 11 January 2023 and proposed to upgrade sections of public footpaths to bridleway status and add a section of bridleway to the definitive map and statement in the parishes of Hopton, Callow and Wirksworth. |
| * There were two objections outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs. |
| **Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.** |
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Preliminary Matters

1. Following the discovery of errors contained within Order A, Derbyshire County Council (‘the Council’) made a replacement Order (Order B). In these circumstances, I accept that it would not be appropriate to confirm Order A and consideration needs to be given to whether Order B should be confirmed in light of the main issues outlined below.
2. All of the points referred to below correspond to those delineated on the map attached to Order B. The claimed bridleway (‘the claimed route’) forms a continuous route in the parishes of Hopton, Callow and Wirksworth. At least a proportion of the route is known as Summer Lane and the historical continuation north eastwards from point E is now an adopted road serving a number of residential properties.
3. The Council requests that, if confirmed, Order B is modified to record a squeeze stile rather than a ladder stile in relation to a footpath which connects with the claimed route. This modification would address the objection from the Peak and Northern Footpaths Society (‘PNFS’).
4. Submissions in support of the confirmation of Order B have been made by the Council and Mrs Mallinson (on behalf of the British Horse Society) and the PNFS. The objection (from Mr Lemon) is on the ground that the claimed route should be recorded as a byway open to all traffic.

**Main Issues**

1. The Order relies on the occurrence of events specified in Section 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 (‘the 1981 Act’). Therefore, for me to confirm the Order, I must be satisfied that the evidence shows on the balance of probabilities that:
2. a right of way subsists (Points D-E), and
3. 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 (points A-B-C-D).
4. The case in support relies on documentary evidence in relation to the dedication of a bridleway 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 tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway.
5. In respect of the alleged public vehicular rights, consideration needs to be given to the provisions of the Natural Environment and Rural Communities Act 2006 (‘NERC’).

**Reasons**

***The implications of NERC***

1. NERC has the effect of extinguishing public rights of way for mechanically propelled vehicles unless any of the exemptions found in Section 67(2) and (3) of the Act are applicable. It is not argued that any of these exemptions are applicable in this case. However, I address some of the exemptions below in light of matters raised by the parties.
2. It is apparent that an application was made prior to NERC but this was not considered by the Council to be compliant for the purpose of the exemption found in 67(3)(a) of NERC. The Order followed on from an application submitted to record the claimed route as a bridleway. In terms of the references to use of the route by motor vehicles, it cannot be determined that the main lawful use prior to the commencement date of NERC was by mechanically propelled vehicles in order to satisfy the exemption found in 67(2)(a). Nor has the claimed route been included in the Council’s list of streets for the purpose of the exemption contained in (67(2)(b).
3. In light of the above, if the evidence is supportive of the claimed route being a historical vehicular highway, the route should be recorded as a restricted byway.

***Historical origins of the claimed route***

1. Reference is made by Anton Shone and Dean Smart in their archaeological assessment of the Derbyshire Portway published by the Wirksworth Roman Project in 2012 to an agreement between Anthony Gell and John Wigley (1558). They state that the manor court was attempting to keep open an access to Summer Lane from Pithay Wood Farm. An entry from the Derbyshire Archives refers to a 1558 document relating to a right of way across John Wigley’s land and a carriageway to Wirksworth. This could potentially provide a little support for Summer Lane being viewed as a highway. It is apparent that the access road to Pithay Wood Farm currently meets the claimed route at point E.
2. A subsequent publication titled ‘*Wirksworth A Histor*y’ (2016) by Anton Shone and Mary Wiltshire outlined their view that the route did not form part of an old Roman road. They believe that Summer Lane is a corruption of Sumpter Lane with a sumpter being a driver of a packhorse. Reference is also made to most of the lead mined in the Wirksworth area being transported by pack horses and that this was the case from the Roman period to the Victorian age. This academic research should be ascribed a little weight in support of the claimed route originating as a route used by packhorses.

***Draft map of lands in Wirksworth of circa 1709***

1. This map shows the extent of the land owned by the Gell family of Hopton Hall. Parts of Summer Lane are shown with the continuation to the north east of point E being annotated ‘*To Wirksworth’* and near to point D it is annotated ‘*Way to Milk Houses*’. The latter reference may well refer to agricultural buildings for cattle.
2. It is apparent that there is some variation between the route shown and the claimed route beyond point D. The absence of any evidence of a diversion of the route does not necessarily have any bearing on its status. It is also the case that estate maps will generally be of limited value in terms of determining the status of routes shown on them. However, it appears that notwithstanding the alignment issue, the claimed route was a historical through route which provides some support for it being a highway. I note that there are other routes shown on this map as foot ways which suggests that the use of the claimed route was not confined to pedestrians.

***Inclosure Award evidence***

1. Most of the claimed route along with the continuation to the north east of point E is shown on the Wirksworth Inclosure map (1806) as an enclosed lane and annotated as ‘*Summer Lane*’. However there is nothing in the actual award to give any indication regarding the status of the route.

***Commercial maps***

1. The claimed route is not shown on Burdett’s map of Derbyshire (1762-67). However, the Greenwood map (1824-25) and Sanderson map (1834-35) both show the route as a cross road. A cross road in this context meaning a road running between two other roads. The depiction of the claimed route in this manner on these commercial maps provides some support for the route being part of the local highway network. Whilst this may be indicative of a vehicular way, as recognised in the case of *Hollins v Oldham* (1995), it could potentially have been a bridleway. Nonetheless, 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.

***Tithe maps***

1. The claimed route is shown on the tithe maps covering the three parishes it passes through.
2. The C-D section is shown on the 1844 Callow tithe map between solid lines to represent the presence of boundary features on each side. It is shown outside of the numbered parcels of land to indicate that it was not subject to the payment of tithes. A distinction is drawn with the depiction of the current Callow Footpath No. 3 by means of single pecked lines running through the tithe parcels of land. The absence of any destination being annotated at points C and D is not necessarily an indication of status. It is shown open-ended at each end to suggest that it continued onwards at both ends of the section shown.
3. The 1846 Hopton tithe map shows the A-C section unnumbered, coloured sienna and annotated as ‘*Summer Lane’*. Again, no destination is specified at the end of the section shown. In contrast, the 1849 Wirksworth tithe map shows the B-E section and the north eastward continuation annotated ‘*From callow’*. It is also depicted as an enclosed lane which is unnumbered and coloured sienna. In terms of the sienna colouring it is evident that two recorded footpaths are also coloured in this way.
4. The exclusion of the claimed route from the tithed parcels could be indicative of a public or private road as both would have impacted upon the productivity of the land being assessed. This will generally lessen the weight that can be attached to the tithe maps. Nonetheless, it was clearly a though route linking with recognised public roads. This provides some support for the route being part of the local highway network with a higher status than a footpath but not necessarily vehicular.

***Quarter Sessions Order of 1887***

1. This Order related tothe diversion of ‘*a certain Highway …, to wit, a footway leading from a certain Highway or Lane called or known as Summer Lane to a certain place called Milnhouse Green’.* It is apparent that the diverted footway is the present Wirksworth Footpath No. 57 which leads out of the adopted section of Summer Lane to the north east of point E. The reference to Summer Lane as a highway is clearly supportive of this section having public status. However, this document does not give any indication of the extent of the public rights that were considered to exist over Summer Lane.

***Ordnance Survey (‘OS’) maps***

1. The claimed route is shown on the first edition OS map of 1884 (surveyed 1879) running between physical boundaries and annotated ‘*Summer Lane’*. The second edition map, revised in 1898 and published in 1900 shows the route in the same way.
2. The first 1:25,000 map, revised between 1929 and 1949 (published in 1951) shows some properties had been built along the section of Summer Lane to the north east of point E and the relevant section had been metalled. It seems to me that the remainder of this section and the claimed route were recorded as ‘*poor, or unmetalled’* ‘*Other roads.* Notwithstanding my comments below regarding the evidential values of OS maps, the footpath notation near to part of the route seems to relate to paths leading to the claimed route.
3. A later 1:25,000 map, revised in 1988 and published in 1989, shows the claimed route as a fenced ‘*Other road, drive or track’*, with the public footpath notation shown in relation to the A-D section reflecting its current recorded status. The section of Summer Lane to the north east of point E is also shown as an “*Other road, drive or track*”. This map shows the more extensive residential development along Summer Lane that is evident today.
4. The evidential value of OS maps 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. This is evident in terms of the OS maps outlined above and no meaningful conclusions can be drawn from them in relation to the status of the claimed route.

***1910 Finance Act map***

1. The issue to be determined is how the claimed route is represented on maps produced in relation to the Finance Act. Where a route is shown excluded from the numbered hereditaments this can provide good evidence of highway status and is more likely to be indicative of a vehicular highway.
2. The majority of the claimed route is clearly shown outside of the surrounding hereditaments (C-D-E) on the final record plan. It is shown in the same way as the continuation of Summer Lane to the north east of point E. The A-B-C section is generally shown on the record plan within hereditament number 64.
3. However, I note that at around points A and C the route is shown separate from the surrounding hereditaments. These sections are shown in the same manner as the two public roads which also pass through hereditament 64. It is apparent that where a road crosses this hereditament the coloured boundaries are not shown continuing on either side. Instead the road was identified as excluded by showing a deliberate break in the coloured boundary at the points it entered or exited the hereditament. Additionally, there would be no apparent reason for a highway to terminate at point C.
4. Having regard to the above, I consider that this map is supportive of the whole of the claimed route being viewed as a highway and that it is more indicative of the route being a vehicular highway.

***Local authority records***

1. The handover records compiled under the Local Government Act 1929 when the Council became the highway authority for the parishes of Callow and Hopton show that the A-D section was not considered to be publicly maintained. The Council became the highway authority for Wirksworth in 1974 and the D-E section is not currently recorded in the Council’s list of streets. This indicates that no part of the route was viewed by the local authorities as being maintained at public expense. It does not demonstrate that no historical public rights existed over the route.
2. The maps and schedules compiled for the three parishes in connection with the production of the original definitive map have been provided. However, I do not find that they provide any support for higher public rights over the claimed route. The subsequent recording of parts of the claimed route on the definitive map as sections of footpaths does not preclude unrecorded higher public rights from now being found to exist.

***Other evidence***

1. The case in support relies upon the historical documentary evidence. There is a little evidence of more recent use by horse riders which I consider to be of limited value. Mr Lemon has provided some personal evidence of use by motor cyclists dating back to 2009. He also states that he has been informed of some vehicular use dating back to 1970. Again I find this evidence to be fairly limited and it would fall way short of what would be expected to support the dedication of a vehicular highway. Additionally, NERC has had the effect of extinguishing any public right of way for mechanically propelled vehicles.

***Conclusions***

1. The academic research indicates that the claimed route could have originated as a route used by packhorses. Overall, the evidence points to the route having a higher status than a footpath. Whilst the depiction of the claimed route as a cross road on commercial maps provides some support for it being a historical public road, this could potentially be supportive of bridleway status. This also applies to other pieces of evidence. I find the issue of whether the route can be viewed as a historical bridleway or road to be finely balanced. However, I consider that the depiction of the claimed route on the Finance Act map in the same way as the adjoining public roads tips the balance in favour of vehicular status.
2. It follows that I conclude that Order B should be confirmed with modifications to record the claimed route as a restricted byway.

**Other Matters**

1. Some matters have been raised that sit outside of the relevant considerations which I need to determine (set out in the main issues above). These include whether it would be suitable or desirable for the claimed route to have a particular status and the future maintenance of the route.

**Overall Conclusion**

1. Having regard to these and all other matters raised in the written representations I conclude that Order B should be confirmed with modifications. In the circumstances it would not be appropriate to confirm Order A.

**Formal Decisions**

***Order A***

1. I do not confirm the Order.

***Order B***

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

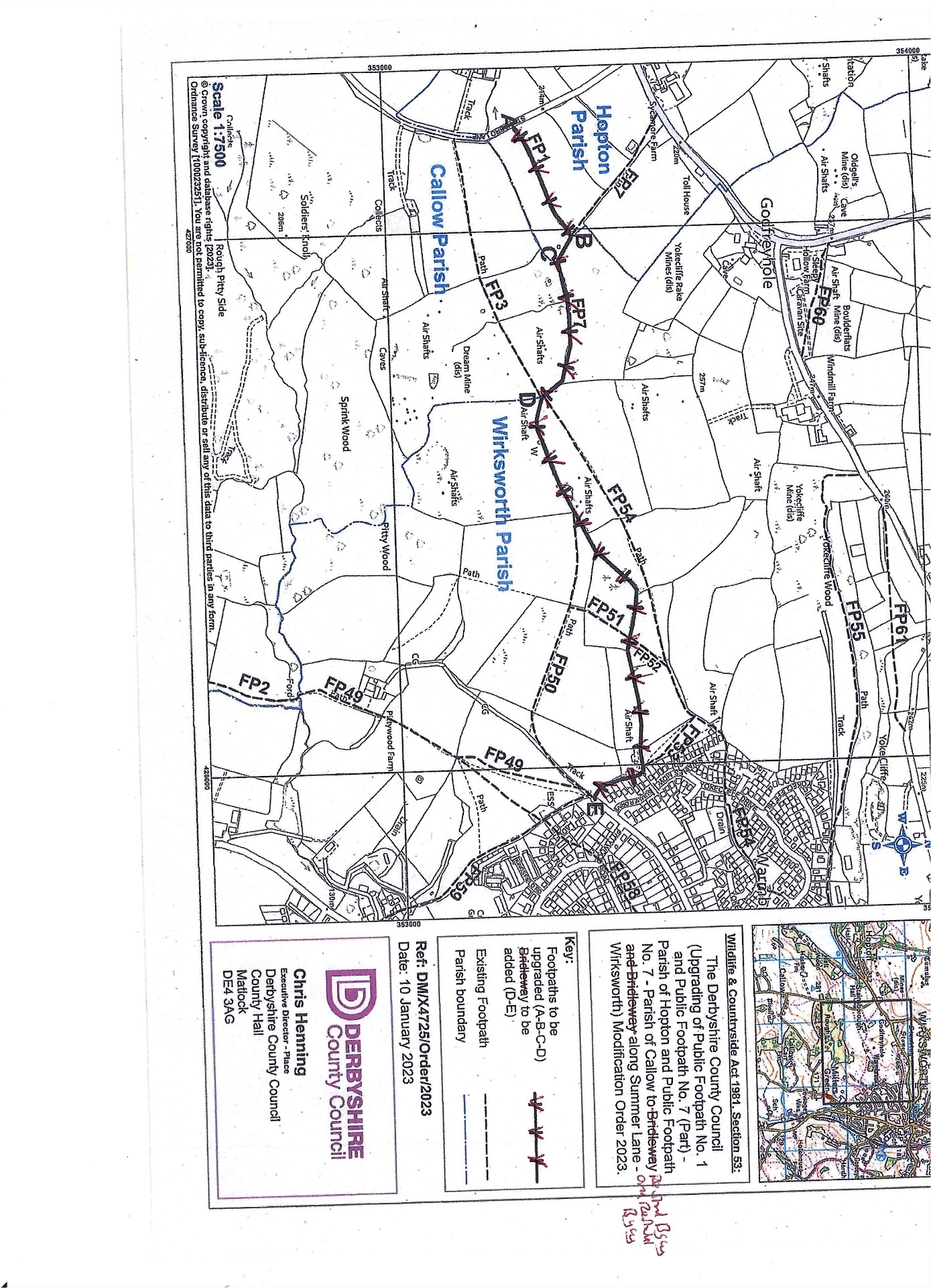
* Delete all references to ‘*bridleway*’ and insert ‘*restricted byway*’.
* Delete the reference to a ‘*Ladder Stile’* in relation to Hopton Footpath 7 in Part II of the Order Schedule and insert ‘*Squeeze Stile’*.
* Show the route on the Order Map by way of the notation for a restricted byway and remove the references to a bridleway.

1. Since the confirmed Order would show as a highway of one description a way which is shown in the Order as a highway of another description I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Mark Yates

**Inspector**

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