

|  |
| --- |
| **Order Decisions** |
| Hearing held on 10 June 2025  Site visit undertaken on 9 June 2025 |
| **by Mark Yates BA(Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 01 July 2025** |
|  |

|  |
| --- |
| **Order Ref: ROW/3367428 Order A** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Bedford Borough Council (Definitive Map and Statement for The Former North Bedfordshire Borough) (Odell: Byway Open to All Traffic No. 42) Modification Order 2022. |
| * The Order was made by Bedford Borough Council on 1 September 2022 and proposed to add a byway open to all traffic to the definitive map and statement in the parish of Odell. * There were objections and representations outstanding to the Order at the commencement of the hearing. |
|  |
| **Summary of Decision:** **The Order is not confirmed.** |
|  |
| **Order Ref: ROW/3339981 Order B** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Bedford Borough Council (Definitive Map and Statement for The Former North Bedfordshire Borough) (Odell: Byway Open to All Traffic No. 42) Modification Order 2022. |
| * The Order was made by Bedford Borough Council on 6 October 2022 and proposed to add a byway open to all traffic to the definitive map and statement in the parish of Odell. * There were fifteen objections and representations to the Order outstanding at the commencement of the hearing. |
|  |
| **Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision.** |
|  |

Preliminary Matters

1. Following the discovery of an error in Order A, Bedford Borough Council (‘the Council’) made a replacement Order (Order B). In these circumstances, it would not be appropriate to confirm Order A, and consideration needs to be given to whether Order B (‘the Order’) should be confirmed.
2. The Council confirmed at the hearing that it has complied with all of the statutory requirements of Schedule 15 to the Wildlife and Countryside Act 1981 (‘the 1981 Act’). This included consulting with Odell Parish Council before making the Order.
3. An acknowledged highway initially known as Church Lane leads out of High Street and proceeds past the Church of All Saints towards Hobbs Green Farm. The extent of the way currently recorded in the Council’s list of streets continues beyond the farm and through to point A on the Order Map. However, it ceases to have a metalled surface at the point it diverges from the present access road to Yelnow Farm. The Order route itself runs between point A and the junction with a byway open to all traffic (‘BOAT’) known as Yelnow Lane at point B.
4. The applicant for the Order (the British Horse Society) has requested that the Order is modified to include the unsurfaced section between the access road and point A. Odell Parish Council also suggest that the Order route could be extended southwards albeit as a bridleway. I see no reason why the connecting section could not be included in the definitive map and statement as well as the list of streets. However, for such a modification to be made the section concerned needs to be capable of being represented on the map included in the sealed Order. In this case, only a proportion of the relevant section is included on the Order Map. Further, I consider it would not be appropriate to modify the Order by including an additional section of route that stops at an arbitrary point at the edge of the Order Map.

**Main Issues**

1. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, I need to determine whether the evidence shows that a right of way which is not shown in the definitive map and statement subsists on the balance of probabilities.
2. Reliance is placed on various historical maps and documents in support of the dedication of a highway 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.
3. 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 (‘the 2006 Act’).

**Reasons**

***The implications of the 2006 Act***

1. The 2006 Act had the effect of extinguishing any unrecorded public rights of way for mechanically propelled vehicles subject to certain exemptions found in Section 67(2) or (3) of the Act. Where public vehicular rights are found to subsist and no exemption is applicable, a route should be recorded as a restricted byway.
2. In this case, reliance is placed by the Council on the exemption found in Section 67(2)(b) of the Act. This is applicable to ways that immediately before the commencement date (2 May 2006) were not shown in a definitive map and statement but were shown in a list of streets kept under Section 36(6) of the Highways Act 1980. This exemption is relied upon as the way continuing to the south of point A on the Order Map is recorded in the list of streets. No other exemption is considered to be applicable.
3. Firstly, the exemption needs to be assessed by reference to what was shown in the list of streets on 2 May 2006 and any recording of a way in previous highway records is not relevant to this exemption. Secondly, the exemption clearly applies only to ways shown in the list of streets and no part of the Order route is recorded in this document. I do not consider the inclusion of a highway or section of highway in the list of streets leads to this exemption being engaged for a connecting route.
4. In light of the above, if the evidence is supportive of the Order route being a historical vehicular highway, the route should be recorded as a restricted byway.

***Consideration of the documentary evidence***

*Inclosure award*

1. There is no available map to accompany the Odell Inclosure Award. However, an extract from the award refers to a parcel of land being bounded by Church Lane. This reference provides no indication of what rights were considered to exist over Church Lane. There is also uncertainty regarding the location of the parcel mentioned in the award and the reference cannot be said to relate to any part of the Order route. Nonetheless, this reference indicates that Church Lane is a feature of some antiquity irrespective of where it terminated.

*Commercial maps*

1. A through route is generally shown on Cary’s map of 1818-23 running between the church on High Street and Yelnow Lane. Bryant’s map of 1826 also shows a route between these points under the ‘*lanes and bridleways’* category, but this has a much straighter alignment. Although not particularly clear, the point where this route joins Yelnow Lane is more likely to correspond with the Order route.
2. The depiction of a through route running between known vehicular highways provides some support for the Order route being part of the local highway network. Whilst the depiction of the route in this manner can provide support for the existence of a public bridleway or road, the purpose of commercial 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 these maps.

*Tithe map*

1. A short section of the Order route is shown leading out of Yelnow Lane on this map. There is some uncertainty regarding the extent to which it is coloured in a similar manner to YeInow Lane and Bridleway 6 to the north of point B. However, the route is annotated ‘*To Odell’* in the same way as the section of Yelnow Lane is stated at each end to lead to a particular destination.
2. I do not consider it has been demonstrated that the use of colouring for particular routes on this map provides a reliable indication of status. The fact that only a short section of the route is shown is not surprising given that it appears to cross land outside of the scope of the tithe award. The annotation that appears at the northern end of the Order route is supportive of it being part of a through route to Odell. This provides a little support for the route being a section of highway and potentially either a bridleway or road.

*Ordnance Survey (‘OS’) maps*

1. OS maps from the late nineteenth century onwards commonly record a road from the church towards Hobbs Green Farm by way of solid lines to indicate that it was bounded on both sides by physical boundaries. This route continues beyond the farm by way of double dashed lines to indicate an unenclosed road or track through to Yelnow Lane. No conclusion can be drawn as to the status of the different sections from the manner they are represented on the OS maps. The OS maps only provide a good indication of the physical features present on the date of the survey, namely that this route was partly enclosed and partly unenclosed.
2. Reference has been made to a solid line shown across the through route at Hobbs Green Farm. Given the road or track is depicted continuing northwards beyond this line and that the track provided a means of access to the farm I consider it more likely that there was a gate at this point. There is also general agreement that the OS maps provide support for the existence of a gate at point A. However, the presence of gates would not have prevented the route from being a vehicular highway. Minor roads were sometimes subject to the limitation of gates.
3. Overall, the primary value of the OS maps is that they record the physical nature of the different sections of the route between the church and Yelnow Lane. They do not assist in determining the status of the Order route. These points will also be applicable for the OS base maps used in relation to other documents addressed below.

*1910 Finance Act map*

1. The Order route is shown within an area of land extending south from Yelnow Lane on the map used for the Finance Act. This area was shown excluded from the surrounding coloured hereditaments marked on the OS base map. The exclusion of a route in this manner can provide good evidence of highway status and is more likely to be indicative of a vehicular highway. No evidence has been provided in support of an alternative explanation for the depiction of the Order route in this manner.
2. There is a discrepancy whereby the connecting section of route between Hobbs Green Farm and point A appears to be located within Hereditament 505. It is also not possible to determine whether the claimed deduction for a public right of way within this hereditament relatedto this section of the route. This may cast doubt on the status of the section to the south of point A. However, I find that this map still carries a fairly significant amount of weight in support of the Order route being a section of vehicular highway. At the very least it appears to have been an extension of Yelnow Lane.

*Rating valuation documents*

1. A map was produced in relation to a survey of properties for rating purposes under the 1925 Valuation Act. The boundaries of each property are marked in colour on the OS base map. The map itself shows the Order route outside of the landholdings and forming part of Yelnow Lane. In contrast, the section to the south of point A is shown within land forming part of Hobbs Green Farm. This document again provides support for the Order route being an extension of Yelnow Lane irrespective of the way the continuation southwards is depicted.
2. An entry in the accompanying schedule for the farm contains a reference to a very bad road with a length of 1.5 miles. Although the approximate length specified far exceeds the actual length of the route between the church and Yelnow Lane, the reference to the road in poor condition is likely to relate to the road serving the farm. This document contains no indication regarding the status of the road mentioned.

*Handover records*

1. Handover records were compiled under the Local Government Act 1929 when Bedfordshire County Council took over responsibility for urban and district roads. There is an entry in the schedule for the road numbered 289 known as ‘*Hobbsgreen Road (Church Lane)*’ which had a stated length of 0.85 miles. The Council has calculated that 0.85 miles equates to the length of the route between the church and Yelnow Lane. A similar calculation was reached by the applicant. In the absence of an accompanying map or stated termination points there will be some uncertainty regarding the precise extent of the roads listed in the schedule. However, it seems to me that the road is likely to have terminated either at the junction with Yelnow Lane or Hobbs Green Farm. The distance specified points more in favour of the former destination.
2. Although an internal document, the handover schedule is supportive of the route being viewed by the highway authority as a highway maintained at public expense. The calculations provided indicate that Road 289 is more likely to have included the Order route. Whilst not necessarily always the case, this may provide support for the route being part of the local road network.
3. A map has been provided which shows Road 289 as a cul de sac at its northern end. There are no features that identify the precise location for the northern end of this road. Further, details of who compiled this map and when this was undertaken are unknown. It is potentially a hand drawn working map. Overall, in light of these issues, little reliance can be placed on this map.

*Sales catalogue*

1. A 1934 auction sales catalogue covers land belonging to Hobbs Green and Yelnow Farms and a private right of way was reserved for the benefit of these properties. The stated private right of way could indicate that no public right of way was considered to exist. However, this provision could have been included in property documents simply to ensure that a means of access was protected. It needs to be borne in mind that these documents were concerned with the sale of land and not the identification of highways and this will limit the weight attached to them. The fact that land was included in a sale does not mean that public rights did not exist over the land.
2. The sales catalogue plan records the Order route in a similar manner as the Finance Act map in that it is shown extending from Yelnow Lane and outside of the plots included in the sale. This is distinct from the remainder of the track between Hobbs Green Farm and point A which passes through plot 7. It could be inferred that the Order route was an extension of Yelnow Lane but the weight to be attached to this plan will be limited given that its purpose was to identify the plots within the sale.

*Definitive map process*

1. The records available from the process commenced in the 1950s are limited. An extract from the parish map on which the alleged public rights of way were marked shows a purple line extending along the track to the north of Hobbs Green Farm to point A. The Order route is again shown as an extension of Yelnow Lane and is uncoloured. The initials ‘*FG*’ denoting the presence of a field gate have been marked near the farm and at point A.
2. The draft map produced by the relevant surveying authority also shows the Order route within the parcel containing Yelnow Lane. The track between the farm and point A is coloured green on the map in the same way as Yelnow Lane, and this would have typically denoted an alleged bridleway. The current Bridleway 6 to the north was at that time shown as a footpath.
3. In the absence of any further information it is not possible to reach a meaningful conclusion from these maps. They could potentially provide support for the Order route being viewed as an extension of Yelnow Lane and having the same status. The notation is clearly indicative of the presence of gates, most notably at point A.

*Correspondence*

1. In response to a query from the Bedford Rambling Club regarding whether the route between the church and Yelnow Lane was a public right of way, the County Surveyor stated in a letter of 18 March 1964 that it was an unclassified road numbered 289 and known as ‘*Hobbsgreen Road (Church Lane)*’. This indicates that the Order route was considered to be part of Road 289 or part of Yelnow Lane.
2. A letter of 16 July 1973 from the landowner’s agent to the county council queried the extent of Church Lane. It appears from an internal memorandum that the unclassified road was considered to go beyond Hobbs Green Farm, and this is evident from a plan provided at the time. However, the plan shows the unclassified road terminating at point A and this is consistent with the current list of streets. It is also apparent that this point is consistent with the uncoloured land extending from Yelnow Lane on the Finance Act map. The Order route itself potentially fell within the extent of the highway known as Yelnow Lane.

*Other evidence*

1. Reference is made to the lack of vehicular use during living memory. However, the case in support relies on historical documents and maps and the more recent lack of use may simply be reflective of the route falling out of favour during the twentieth century. In terms of the previous lack of a metalled surface beyond Hobbs Green Farm, this has no bearing on whether historical public vehicular rights exist over the Order route.

*Conclusions*

1. The map evidence reveals that the Order route was part of a through route of some antiquity linking with known vehicular highways. This evidence when taken as a whole provides support for the route being a section of highway. There is the potential for the route shown on the early maps to have been a public road or bridleway. However, there is no positive evidence that points specifically to the route being a bridleway. In contrast, there are later documents that provide support for the Order route being part of a vehicular highway extending from Yelnow Lane.
2. In light of my conclusions regarding the various pieces of evidence, I find on balance that the Order route was dedicated in the past as a section of public road and should now be recorded as a restricted byway.

***Other modifications***

1. There is general agreement that the larger scale maps are supportive of the existence of a gate at point A and the parties at the hearing supported a modification to record this gate. I accept on balance that the Order should be modified accordingly.
2. In the absence of a clearly defined width in the historical documents, the Council considers that 3 metres is an appropriate width for the Order route, and nothing has been provided to persuade me to take a different view.
3. As the confirmation of the Order now resides with the Secretary of State, the text in relation to the Council confirming the Order should be deleted.

**Other Matters**

1. Some matters have been raised that sit outside of the relevant considerations which I need to determine. These include safety concerns and the potential motive behind the making of an Order.

**Overall Conclusions**

1. Having regard to these and all other matters raised at the hearing and 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 ‘*byway open to all traffic*’ and insert ‘*restricted byway*’.
* Insert within Part II of the Order Schedule ‘*Limitation:* *Field gate at OSGR SP9677/5918*’.
* Delete the text relating to the confirmation of the Order by the Council.
* Show the route on the Order Map by way of the notation for a restricted byway and remove the references to byway open to all traffic from the map.

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**

**APPEARANCES**

|  |  |
| --- | --- |
| **For the Council**  Ms G. McDadeDefinitive Map Officer  Mr A. Prigmore Manager for Transport Operations | |
| **Objectors**  Mr M. Cheadle  Mr A. Ingrey-Senn  Mr D. Wajzner  Mr G. Sansom  **Interested Parties**  Mr W. Steel  Mr S. Dodgshom    **HEARING DOCUMENT**  Map of requested modifications | For Odell Parish Council  Landowner  Landowner  CPRE for Bedfordshire  British Horse Society  Green Lanes Association |

**Order Map – Copy Not To Scale**