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| **Interim Order Decisions** |
| Site visit made on 29 April 2025 |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 04 June 2025** |

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| **Order Ref: ROW/3327436 The 2021 Order** |
| * 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 to Bridleway of Public Footpath No. 41 – Parish of Cromford) Modification Order 2021. |
| * The Order is dated 14 October 2021 and proposes to modify the Definitive Map and Statement for the area by upgrading a public footpath to bridleway as shown in the Order plan and described in the Order Schedule. |
| * There were objections and representations outstanding when Derbyshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs, but I have not been provided with any details. |
| **Summary of Decision: The Order is not confirmed.** |
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| **Order Ref: ROW/3327437 The 2022 Order** |
| * 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 to Bridleway of Public Footpath No. 41 – Parish of Cromford) Modification Order 2022. |
| * The Order is dated 21 July 2022 and proposes to modify the Definitive Map and Statement for the area by upgrading a public footpath to bridleway as shown in the Order plan and described in the Order Schedule. |
| * There were nine objections and representations 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 proposed for confirmation subject to the modifications set out below in the Formal Decision.** |
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Procedural Matters

1. Both Orders intend to upgrade Public Footpath No. 41 to bridleway. The 2021 Order was made by Derbyshire County Council (the Council) without relevant authority. Therefore, the Council have requested that the 2021 Order is not confirmed. As it is only necessary to consider one Order, I agree that the 2021 Order should not be confirmed.
2. The making of the 2022 Order was advertised twice due to the Council realising that some of the land has no known owner. Dispensation was granted to display notices to the unknown landowner on site and the Order was readvertised. I am satisfied that all the requirements to give notice of the 2022 Order have been met.
3. Some of the objections were made outside of the objection periods but have been submitted for consideration.
4. As user evidence is submitted in support of the 2022 Order, a public inquiry to hear all the available evidence was arranged. However, statements of case were only submitted in relation to the objections concerning the structures and width of the Order route. Therefore, I considered this matter would be better determined by the written representations procedure. All parties were contacted regarding the proposed change in procedure and no objections were made.

The Main Issues

1. The 2022 Order has been made under section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 which requires me to consider if on the balance of probabilities, the evidence shows that a public right of way shown on the definitive map and statement as a highway of a particular description ought to be shown as a highway of a different description.
2. Historical documents and maps have been submitted in support of the 2022 Order. I need to consider if the evidence provided is sufficient to infer the dedication of higher public rights over the claimed route at some point in the past. Section 32 of the Highways Act 1980 (the 1980 Act) 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 highway.
3. User evidence has also been submitted in support of the 2022 Order. User 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 bridleway during this period.

Reasons

***Documentary Evidence***

*Commercial Maps*

1. Burdett’s map of 1767 shows a route with double dashed lines between Cromford Bridge, Nether Holloways, Lea Bridge and Lea which corresponds with the line of the Order route between Castle Top and Lea Bridge. The key indicates it is a *‘cross road’*. Restricted Byway 50 (RB50) between Castle Top and Cromford Bridge is shown partly on a different alignment to its current line.
2. On Sanderson’s 1835 map the Order route is shown with double dashed lines from Lea Bridge, through Lea Wood to Sunny Bank Farm. It is then shown with double solid lines to RB50 then continues along its western end to rejoin Lea Road. The Order route appears to form a through route with the western end of RB50.

*Matlock Inclosure Award 1784*

1. The Matlock Inclosure Award map shows a route called Castle Top Road coloured sienna. This route corresponds with the northern end of what is now Hearthstone Lane (RB50). The map does not show this route continuing to Castle Top. However, the Award describes Castle Top Road as a *‘private Carriage and Drift Road or way … branching out of the said Little Moor Road… from thence extending in a southwardly direction to Castle Top and Bowed Wood House’* indicating it continues to the Order route at point A.
2. The Commissioner went on to *‘order direct and appoint that the same shall at all times for ever hereafter be repaired and kept in repair in the same such manner as the public highways and roads within the said Manor are by Law Directed to be repaired’*. *‘Castle Top Road’* is also listed under the heading *‘Private Carriage & Public Drift Roads’*.

*Matlock Tithe Map and Apportionment 1848-1850*

1. On the Matlock Tithe map the Order route is shown with a dashed line from Lea Bridge through the woods to point B. From point B it is shown with double solid lines past Sunny Bank Farm to RB50 then continues along its western end to Lea Road. The Order route appears to form a continuous through route with RB50. The woods are parcel 2979 which is described in the apportionment as *‘Part of Bow Wood, including Lane’*. The western end of the Order route does not have a separate apportionment number which suggests it is part of apportionment 2979. There is a line across the Order route at point C which could indicate a gate.

*Plan of the Proposed Diversion of the Castle Top Road 1854*

1. The western end of the Order route is shown with double solid edges on the plan of the Castle Top Road diversion. There is a line across it where it joins Castle Top Road at point A which could indicate a gate. The original western end of the *‘public Highway’* called Castle Top Road ran to Lea Road along what is now FP40 then through Wood End. The proposed new road is along the western end of what is now RB50 and had previously existed but would become a *‘new highway’*.

*Conveyance and Map 1898 between Louis Hilary Shore Nightingale and John Smedley Ltd.*

1. The eastern end of the Order route is shown on the 1898 conveyance map with double dashed lines through Bow Wood. There are solid lines across it at point C and in the woods north of the bend in Lea Road. The vendors reserved a right of way through the wood, but this is not along the Order route.

*Finance Act Map 1910*

1. The Order route runs through hereditaments 269, 1343, 1344, and 1222 on the Finance Act map. There is a deduction of £125 for *‘Public Rights of Way or User’* in the field book for hereditament 1343 but there is no indication as to which routes this deduction is for and FP40 and RB50 also run through it. There are no deductions for *‘Public Rights of Way or User’* within hereditaments 1344 or 1222. I have not been provided with the field book for hereditament 269. The parties consider the very eastern end is part of hereditament 1232, I do not consider this to be the case, and it appears to be part of hereditament 269. It is also suggested that section A-B is excluded from the surrounding hereditaments, but I consider it is within hereditament 1222 particularly when comparing it to how other routes are shown.

*Ordnance Survey Maps*

1. The first edition 1 inch to the mile Ordnance Survey (OS) maps of 1836 and 1837 show the Order route between Castle Top and Lea Bridge. The Order route appears to be a continuous route with the western end of RB50.
2. On the 1889 second edition OS map the Order route is shown from Lea Bridge with double dashed lines through Bow Wood to point B then with double solid lines past Sunny Bank Farm to RB50. It is labelled *‘B.R.’* at two points within the woods. There are lines across it at points A, B, and C, and in the woods north of the bend in Lea Road which could indicate gates. It is shown in the same way on the third edition OS map.
   1. *Childhood Reminiscences IV- Lea Bridge and Holloway by Bert Yeomans*
3. This book describes making deliveries through Bow Wood by horse and cart during and just after the First World War. It states *‘At that time it was possible to reach Bow Wood with the dray from the entrance at Lea Bridge and emerge just below Castle Top… As we entered Bow Wood proper another gate had to be opened… the road then took us up a narrow cutting at the side of a large rectangular area which had been cleared and ploughed… After that we went along a level, sandier stretch where grand beeches and soft grasses thrived. The final gate let us out onto a grassy lane… Down to our left the lovely hamlet of Bow Wood. We did our deliveries and went to Castle Top… I like to think, however, that Frank and young Bert were probably among the last who used the road as a right of way for delivery by vehicles.*
4. From the description provided and comparisons with the historic and current OS maps it is clear the route described is the Order route.

*The Peak and Northern Counties Footpath Preservation Society Report for 1940*

1. This report lists issues with rights of way in 1940. Under the heading *‘Bridle Path Near Lea Mills, Cromford’* it states, *‘complaints having been received that a notice, “Private Road- no right of way here” have been erected on this bridle path which runs from Riber via Hearthstone Lane and Breck’s Wood, in a south-easterly direction to Lea Bridge, the Matlock District Council was asked to investigate the matter and has requested the landowner to remove the notice’*. There are a number of routes running between Hearthstone Lane and Lea Bridge, so it is not clear if this route is the Order route.

*Definitive Map Records*

1. The Order route is shown on the 1952 Matlock District Council Footpath Survey 1952 and labelled CRF (carriage road footpath) and 64. In the schedule it was originally numbered 58 but changed to 64. It is described as a *‘CRF’* starting from Lea Bridge and ending at *‘Dark Lane nr. Bow Wood Farm’*. It is *rough but passable’* with no obstructions, limitations, or restrictions. It is claimed to have uninterrupted use for 20 years plus. Dark Lane is RB50, numbered 58 and its northern end is also labelled CRF on the map.
2. The Order route is shown as a footpath on the first definitive map, relevant date 1 June 1953. The definitive statement records it as a footpath but does not record any width or structures.

*Peakland Roads and Trackways A E & EM Dodd 1980*

1. A pre-turnpike route to Holloway, as shown on Burdett’s map, is described from FP40 as joining *‘the tarmac’d farm lane from Castletop,* [RB40] *but leaves again a bridleway just below Bow Wood Farm: the old way, for long lengths roughly paved though grass-grown, continues through the woods, before descending to Lea Bridge’*. This route described includes the eastern end of the Order route from Footpath 42 (FP42) to point C, but there is also a route between RB50 and FP42 which runs south of Bow Wood Farm which is likely to be the first part of the route describe.
2. It is suggested that the reference to *‘below Bow Wood Farm’* is an error as there are no rights of way through Bow Wood Farm. The route shown on Burdett’s map corresponds with the full length of the Order route, rather than running through Bow Wood Farm supporting this suggestion.

*Castle Top, Lea Bridge & High Peak Junction Conservation Area Appeal*

1. This report describes various historical and archaeological features. In a section about Bow Wood the Order route is described as *‘the main path through the wood is broad and contours the hill providing a relatively level surface. It is bound with gritstone pitching in various places, important for continual activity from packhorses’*. In the Archaeological Significance of the Area section, it refers to evidence of white coal and charcoal production within Bow Wood and Lea Wood stating white coal production remains *‘are associated with well-preserved packhorse routes’*. Another section on Bow Wood describes the Order route ‘*from Lea… following a fairly level route through woodland that emerges above Bow Wood Farm, and continues in a narrow walled footpath to meet Dark Lane, just below Castle Top Farm… the steepest parts of the packhorse route are finished in stone pitching to prevent erosion. In other places the path is retained by large lumps of gritstone’*.

*Conclusions on the documentary evidence*

1. The documentary evidence shows the Order route has physically existed since at least 1767. Burdett’s map shows it as a *‘cross road’* between the bridge at Cromford, Nether Holloways and Lea. This route pre-dates Lea Road and the northern section of RB50 is also not shown. In *Hollins v Oldham [1995] C94/0206* the judge concluded a cross road *‘must mean a public road in respect of which no toll is payable. This map was probably produced for the benefit of wealthy people who wished to travel either on horseback or by means of horse and carriage’*.
2. The Inclosure Award identifies the northern section of RB50 as Castle Top Road, a *‘public drift road’* (a route for driving animals) which joined the Order route at point A. As the Order route and the western end of RB50 existed from at least 1767 as a through route, it would indicate they carried the same public rights otherwise Castle Top Road would have been a cul-de-sac. When part of Castle Top Road was diverted, it was also referred to as a *‘public highway’* and the Order route’s depiction on the diversion map suggests it was likely to have carried the same public rights. I consider the Inclosure Award and Burdett’s map indicate the Order route was part of a longer public route with at least bridleway rights.
3. Other maps suggest the Order route was a through route with the western end of RB50. The later OS maps show the Order route as a bridle road suggesting it appeared to the surveyor to be used as a bridleway or capable of carrying horse riders. Although OS maps since the late 19 century have carried a disclaimer stating tracks and paths shown provide no evidence of the existence of public rights, I consider they are suggestive of public bridleway rights.
4. Historical accounts and reports refer to the Order route as part of a longer packhorse trail and there is physical evidence of surfacing to maintain it for packhorses. There is also an historical account of its use with a horse and cart, and it was originally claimed as a carriage road used mainly as a footpath along with RB50 when the first survey for the Definitive Map and Statement was undertaken.
5. Taken as a whole, I consider the documentary evidence is sufficient to show that, on the balance of probabilities, public bridleway rights exist over the Order route.

***Widths and Structures***

1. Concerns are raised about the structures and widths recorded in the 2022 Order. A field gate is recorded at point B and a squeeze stile at point C. In the 2021 Order squeeze stiles and field gates are recorded at both points. I have to determine if the structures existed when bridleway rights were dedicated and the widths at that time.
2. The historical maps show lines across the Order route at points, A, B, C, and in the woods north of the bend in Lea Lane from the mid-1800s which coincide with boundaries and are likely to indicate gates or other access controls. The earlier maps either do not show these points or are small scale maps with limited details.
3. On my site visit, I saw a field gate and small gap between the gatepost and a low stone wall at point B and a field gate and stone squeeze stile at point C. There is also a set of gateposts but no gate in the woods north of the bend in Lea Lane. The gate posts, stone wall, and squeeze stile appear to be historic features.
4. Taking the maps together with the historic nature of the gateposts, stiles, and walls, I consider they are likely to have existed since the Order route was dedicated. Therefore, the gap, gates, and squeeze stile should be included in the 2022 Order.
5. Regarding the widths, it is also questioned if the widths stated in the 2022 Order are those that would have been available when the bridleway was dedicated. It is also pointed out that there was no width stated for point A as this is not within the shaded area on the 2022 Order map.
6. The Order route from point A to Sunnybank Farm is shown on Sanderson’s 1885 map as an enclosed route. Section A to B is shown as an enclosed route on all the maps since the 1850 Tithe map and the width appears to be consistently shown. Therefore, I consider the widths shown on the 2022 Order plan and in the statement for this section are accurate, but the shading should be extended to point A.
7. None of the documents before me indicate a width for section B to C. A level track of 3 metres is available along this section between the slope on either side, that suggested this had been levelled out at some point in the past. Therefore, I consider the width in the 2022 Order accurately reflects the width of the bridleway.

***User Evidence***

1. I have concluded above that the documentary evidence is sufficient to show public bridleway rights over the Order route. Therefore, it is not necessary for me to consider if the user evidence demonstrates a presumption of dedication arising from the tests set out in section 31 of the 1980 Act. However, use of the route by horse riders between 1958 and 2014 indicates its continued reputation as a public bridleway.

**Other Matters**

1. A number of issues relating to suitability and desirability were raised by the objectors and representatives to the Orders. These issues include health and safety concerns, potential motorbike use, damage to the track and trees, access points, the narrow widths, low tree canopy, stability of the track, maintenance issues, conflict between horse riders and residents, and environmental impact. Although I understand these are concerns of the landowners, residents, and path users, they relate to issues of suitability and desirability which I am unable to take into consideration when determining the Orders.

Conclusions

1. Having regard to these and all other matters raised in the written representations I conclude that the 2022 Order should be confirmed with modifications. I also conclude that the 2021 Order should not be confirmed.

Formal Decision

1. I do not confirm the 2021 Order.
2. I propose to confirm the 2022 Order subject to the following modifications:

In Part I of the Order Schedule

* After ‘walled lane to gate’ add ‘and gap’
* After ‘through gate’ add ‘or squeeze stile’

In Part II of the Order Schedule

* Before ‘Stone Squeeze Stile’ add ‘Field Gate and’
* After ‘Field gate’ add ‘and Gap’

On the Order Map

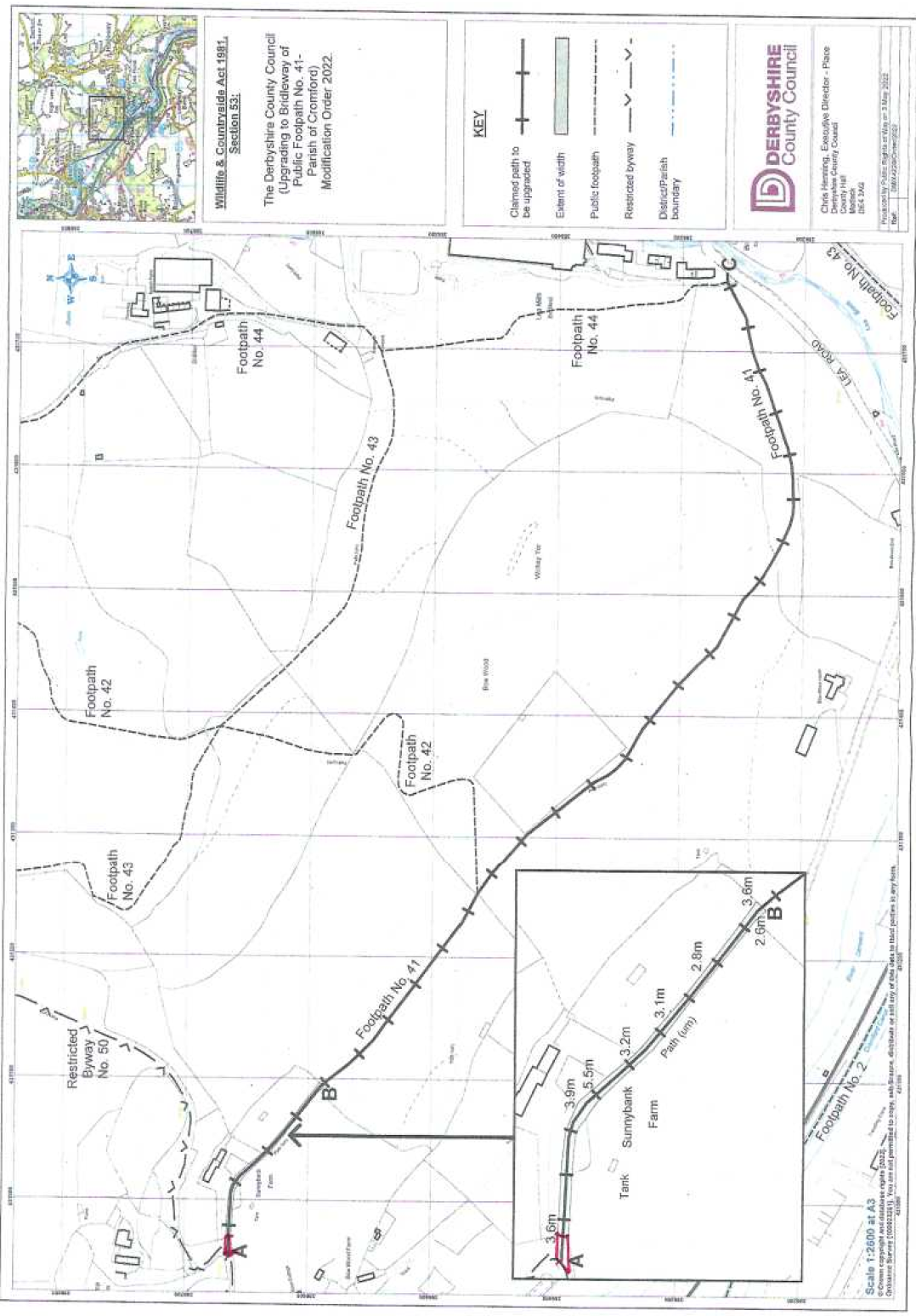
* Extend the shaded area to point A.

1. Since the confirmed Order would affect land not affected by the Order as submitted, paragraph 8 (2) of Schedule 15 to the Wildlife and Countryside Act 1981 requires that notice shall be given 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.

Claire Tregembo

INSPECTOR

**Order Plan**

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