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| **Order Decision** |
| Inquiry opened on 8 July 2025 |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 27 August 2025** |

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| **Order Ref: ROW/3339282** |
| * This Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Borough of Trafford (Brooks Drive, Hale Road to Thorley Lane) Definitive Map Modification Order 2023 (the 2023 Order). |
| * The Order is dated 24 August 2023 and proposes to modify the Definitive Map and Statement for the area by adding a restricted byway as shown in the Order plan and described in the Order Schedule. |
| * There were three objections outstanding at the commencement of the inquiry. |
| **Summary of Decision: The Order is confirmed subject to the modifications set out below in the Formal Decision.** |
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Procedural Matters

1. Trafford Borough Council (the Council) took a neutral stance to the confirmation of the 2023 Order. The Peak and Northern Footpath Society (the PNFS), whose representative made the application for the Definitive Map Modification Order, supported the confirmation of the 2023 Order at the Inquiry.
2. I undertook a site visit on 7 July 2025 where I was able to walk the Order route between points A and C. I also viewed the Order route from Point D and part of Hale Footpath No. 16 (FP16) which joins the Order route at point B. A map of the Order route is attached to the end of my decision which shows the various points referred to for ease of reference.

**Preliminary Matters**

1. Several new witnesses gave evidence at the Inquiry in support of the 2023 Order who did not provide written submissions. Counsel for Brooks Drive Residents Association (the Association) were given short adjournments to allow them to prepare questions before cross examining these witnesses. To ensure I could make a robust and properly reasoned decision, I also asked my own questions to test and ensure my understanding of the evidence given.
2. At the start of the Inquiry Counsel for the PNFS advised that the applicant would be their witness for the documentary evidence. The Statement of Case for the PNFS was prepared by Sue Rumfitt, Public Rights of Way Consultant who instructed Counsel on their behalf. No concerns were raised at this time by Counsel for the Association.
3. On day two of the Inquiry, Counsel for the Association raised concerns that the evidence being presented by the applicant about the physical nature of the Order route was unknown to them. They also implied that the documentary evidence was new evidence which they were not aware of.
4. The applicant prepared the Statement of Grounds submitted by the Council when the Order was sent to the Planning Inspectorate which included a list of documentary evidence relied upon. Some of these documents were considered by the Council when they made the decision to make the 2023 Order. Furthermore, the Statement of Case submitted for the PNFS included a summary of the user and documentary evidence relied on in support of the 2023 Order and copies of the documents were provided. The Statement of Case was submitted in accordance with the timetable for submitting documents and circulated to the other parties. The Council confirmed copies of these documents were made available and also sent digitally.
5. I am satisfied the procedural requirements for the submission and provision of documents has been met. I am also satisfied that the documentary evidence was available to all parties prior to the Inquiry and was not new evidence. The comments on the physical state of the Order route and surrounding area were statements of fact which the Association could dispute in cross examination. Therefore, I allowed the applicant to present their evidence. I also gave the Association’s Counsel a short adjournment to allow them to prepare before cross examining the witness. This gave the Association an opportunity to clarify any differences in their assessment of the documentary evidence and Order route. If the witness had not given their evidence, this opportunity would not have been available to the Association and the documentary evidence would have been considered solely on the written submissions. I also asked my own questions to clarify information about the documents presented.

The Main Issues

1. The 2023 Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of the occurrence of an event specified in section 53(3)(c)(i). This requires me to consider if, on the balance of probabilities, the evidence shows that a public restricted byway subsists along the Order route. This is a higher standard of proof than the reasonably alleged to subsist test to determine if an Order should be made.
2. The evidence submitted in support of the 2023 Order relies on the presumption of dedication arising from tests laid out in section 31 of the Highways Act 1980 (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 restricted byway during this period.
3. Section 32 of the 1980 Act also requires me to take into consideration any map, plan or history of the locality, or other relevant document provided, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.

Reasons

1. Local history indicates that Brooks Drive was built in the 1860s between Brooklands Station and Hale Barns as part of a 4 mile long route originally called Ashley Road. It consisted of the Order route at the southern end, the pre-existing Roaring Gate Lane, a section between Whitecarr Lane and the Brookland Roundabout on the A560, and what is now Brooklands Drive between there and Brooklands Station.

**Documentary Evidence**

*Finance Act 1910 Records*

1. On the 1910 Finance Act Map avenues of trees on either side of the Order route are included in the surrounding hereditaments, but the Order route is excluded. There is a red line across the southern end of the Order route, but the road is not valued and there are no other red lines or braces to indicate it is part of a hereditament. Public roads are excluded from the surrounding hereditaments in the same way.
2. A deduction of £32 is given to parcel 2013 for *‘footpaths across fields 452, 451 old numbers’*. A deduction of £10 is also given for a *‘public right of way or user’* across hereditament 2351 and £32 for hereditament 2022. These parcels are all crossed by FP16.
3. The Finance Act 1910 imposed a tax on the increase in land value, which was payable when the land changed hands. Maps were produced to show taxable land following a survey by the Board of Inland Revenue. It was a criminal offence to make false statements to reduce tax payments. The existence of public rights of way over land reduced its value and the liability for tax, so were recorded in the survey. The exclusion of Order route from the adjoining hereditaments could indicate public rights which were more likely to be vehicular. However, it could also be argued that private rights had the same effect on the land.

*Sale Catalogue 1919*

1. The sale catalogue for *‘Farm and Smallholdings of the Estate of Sir William Cunliffe-Brooks’* shows Lot 13 on either side of the Order route. The key map shows Lots 5 to 24 coloured red, but the Order route is uncoloured, as are other public roads including Hale Road, Roaring Gate Lane, and Hasty Lane. The page with the details of Lot 13 is missing from the catalogue.

*Ordnance Survey Maps and Records*

1. The 1877 1:2500 Ordnance Survey map (OS) shows the Order route with double solid edges called Ashley Road. There is a line across the northern end of the route which is likely to indicate a gate. There is an avenue of trees on either side for most of its length which appear to be enclosed by hedges with double solid edges on the edges further from Ashley Road. FP16 is shown off the Order route at Davenport Green Wood. A mile post is shown on the Order route near point A indicating *‘Brooklands Station 4 Ringway Church 1’*. The Order route is shown in a similar way on 1898, 1909, 1935, and 1968 1:2500 OS map but the avenues of trees are now shown with single solid outer edges and FP16 is labelled *‘F.P.’*. The mile post is not indicated on the 1898 and 1968 editions. There are houses shown on the 1935 edition at the southern end of the Order route. It is labelled Brooks Drive on the 1968 edition, there are more houses, and the avenue of trees no longer exists along the frontages of some of the properties on the west side.
2. The OS maps show the physical existence of the Order route. However, since the late 19th Century, OS maps have carried a disclaimer that tracks and paths shown provide no evidence of the existence of public rights.
3. Edwin H Storey Agent to the Trustee of the Brooks Estates of the late Sir William Brooks Bank made a return dated 15 February 1908 for the Object Name Book stating the Order route was a *‘Private Road’.* J G Whyatt, an Assistant Overseer for Hale and Ringway also made a return for the OS Name Book dated 27 February 1908 suggesting an alternative name for Ashley Road was *‘Brooks’s Road’*. The OS name book dated 1907 Revised 1935-1936 lists both names under the heading *‘Various Modes of Spelling the Same Name’* and it is described as *‘Private Road extending from Davenport Green Farm to ~~Eastern Lane~~ Hale Road at Eastern Lane Farm’*.

*Definitive Map Records*

1. Hale was in Cheshire when the first Definitive Map and Statement (DMS) was produced, and the Council do not have copies of the parish survey records or the Original Definitive Map. A 1950 map for the Urban District of Hale shows FP16 labelled ’*16’* and *‘S.2’* and *‘S.3’* which most likely indicate its number and the location of stiles. The original Definitive Statement (DS) has a relevant date of 1 June 1953 which records FP16 running *‘From Brooks Drive in a south easterly direction to Ringway Parish Boundary.’*
2. Cheshire County Council received a letter from Mr N D Crocker in May 1958. The copy of Mr Crocker’s letter is not legible, but the reply and a sketch map he drew indicates it was about Order route. The response from the County Surveyor dated 11 June 1958 states *‘the road referred to is Brook’s Drive was formerly known as Ashley Road and was not included on the draft map as a public right of way. The Surveyor to Hale U.D.C. informs me that Mr. Crocker’s inquiry may be as a result of some controversy which has arisen regarding the erection by a resident of notices prohibiting the use of the road by equestrian traffic’*. No additional details are available.
3. A map produced by Greater Manchester Council in preparation for the current DMS shows FP16 between Brooks Drive and the parish boundary. The current DMS, relevant date 10 February 1984, also shows FP16 in the same way with the same description as the original DS.
4. A Definitive Map Modification Order application was made in 1998 for the Order route and another section of Brooks Drive as a cycleway (the 1998 Application). Following its determination, The Borough of Trafford (Bridleway No. 30 and 30A) Order 2001 (the 2001 Order) was made. The 2001 Order refers to a gate at point D with a 2 metre gap to the western side and a field gate near point C with a gap to the western side. It states the width is approximately 11 metres between Roaring Gate Lane and the gate at point C with a track in the middle and overgrown grass on either side. From point C it becomes *‘metalled’* with a width of 3.5 to 5.6 metres with verges on either side. The 2001 Order refers to a milestone with distances to Brooklands Station (3 1/2 miles) and Prospect House (1/2 mile). It records a sign stating private road at the southern end. The approximate length is stated to be 1141 metres with a width of 9 metres. The line style used on the 2001 Order maps is not as prescribed in the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 therefore the 2001 Order is fatally flawed and not capable of confirmation. The 2001 Order has not been submitted for determination, but I have advised the Council that they need to submit it with a request for it to not be confirmed.
5. Twelve objections were received to the 2001 Order, although five state it should be a byway open to all traffic. Seven were from residents on Brooks Drive who mostly refer to the road being private, with one referring to *’Private Road’* notices. One resident states *‘we do currently allow pedestrians, cyclists, and horses to use the Drive, but this is at our discretion and the gate at reference 80288622 was erected to retain control. We may wish to withdraw permission if the Drive is misused’*. Another resident states *‘currently, as I understand, non-residents including horse riders who pass down Brooks Drive do so on a grace and favour basis’*. Another resident states, *‘no right of way is authorised by us other than granted in the deeds to the property’*. The 2001 objection letters do not indicate how permission was made known to path users or other actions to indicate use was challenged.

*Published Guides and Local History*

1. The Altrincham Circular: 11 Discovery Trails 1989 Walk 3: Dobbinets Lane to Hale Road includes the full length of the Order route. Online guides for The Walking Englishman and the Long-Distance Walkers Association also include the Altrincham Circular. One of the routes in Best Pub Walks In and Around Manchester includes the northern end of the Order route to FP16. It states Brooks Drive was *‘a carriage road “double hedged, tree lined and eight yards wide” according to documents of the day’*.The Bollin Valley Way leaflet No. 4 The Bollin Valley Way & other recreational routes between Hales Barn & Bowdon including Altrincham – Town meets Country shows Brooks Drive as both *‘Off Road Track/ Lane’* and *‘Permissive Bridleway’*.
2. The Transport for Greater Manchester Cycle Network Map 8 (Trafford) and 8 (Manchester) first published in 2006 and regularly updated to 2019 shows most of Brooks Drive between Hale Road and Roaring Gate Lane as an *‘On Road Route -advisory/suggested’* and the northern end as *‘Traffic Free Route - rough surface’*.
3. The published guides indicate the Order route had a reputation as a public way available for use on foot, bicycle, and horseback.
4. An article in the January 2007 edition of The Milestone Society on Brooks Drive by Allan Brackenbury states the road built by Samuel Brooks *‘was private; a toll gate and cottage were built at the A560, but residents travelled for free… Maps of around 1900 mark the road as having a surface equal to, or better than, other major roads in the area. Usually there is no indication of its private status… The scale of construction and the provision of milestones suggest that it was Brooks’ long-term intention to make the road into a major public highway… The present day situation is… Roaring Gate Lane follows, still rural, then Brooks Drive resumes as a footpath, soon becoming a tarmac lane serving large modern houses’*.
5. In the journal of the Railway and Canal Historical Society (1993) Allan Brackenbury states *‘the scale of construction and the provision of milestones suggest that it was the long term intention to make the Drive into a major public highway, thereby encouraging development on the Brooks estates’*. He went on to say, *‘changes occurred in the 1920s after the sale of the Brooks Estate… the Drive was recognised as a route for cyclist and walkers journeying through the Cheshire* Countryside’.
6. An article called *‘The Road from Brooklands Station’* by the Railway and Canal History Society in 1993 describes the history and use of Brooks Drive including the Order route. Brooks Drive was built by Samuel Brooks in 1862 as a private road from Brooklands railway station in Timperley to the Altrincham-Wilmslow Road (the A538) in Hale to service land he owned in North Cheshire.

*Photographs*

1. A photograph of the *‘Toll Bar, Brooks Drive, Timperley’* taken in the 1910s shows an open gate across the part of the road to Brooklands Station. There are bollards on either side that restrict access, but allow sufficient space for walkers, cyclists, and possibly horses to pass through. The building in the photograph appears to be at Brooklands Roundabout, rather than being on the Order route.
2. A 1940s photograph of Brooks Drive shows a row of posts across it with space between them for walkers, cyclists, and horse riders to pass through. Two people are walking along it. However, it is unclear if this photograph is of the Order route or another section of Brooks Drive.
3. A photograph of the former milepost on Brooks Drive shows it was 3 ½ miles to Brooklands Station and ½ mile to Prospect House. The milepost has the date 1863 on top of it.
4. Photographs taken in November 2000 on the Eyewitness in Manchester home page by Aidan O’Rourke show a white field gate with a notice attached stating *‘PRIVATE ROAD NO VEHICLES’*, a worn line, and gaps on both sides, a street name plate with a no through road symbol, a wide worn line with vegetation on either side, and at the Hale Road end a tarmac road with verges on either side and a notice which states *‘Brooks Drive (PRIVATE ROAD) CUL-DE-SAC 15 mph SPEED LIMIT BEWARE OF RAMPS Access to Hale Barns Cricket Club’*. It is described as an *‘ancient tree-lined by-way… the drive is mostly muddy and overgrown, though at the Hale Barns end, it’s a private cul-de-sac. I’m told that in past centuries Brooks Drive was used by stagecoaches – in any event, it was much more important in times past than it is now’*.
5. A photograph taken on 1 June 2014 shows a tree across the Order route close to the gate at point C which is also visible. There is a clear worn line which appears to have bicycle tyre marks leading up to the gates.
6. A photograph of the gate at point C taken on 4 October 2017 shows a metal gate, which appears to have a chain around it, with a wide gap to one side. The vegetation on the ground through the gap appears worn and there is no vegetation obstructing it.
7. Various photographs of the Order route at point E show a wide gap on either side of the gate. The gate is open in some of the images but closed in others.

*Planning Documents*

1. An Environmental statement submitted with planning application number H/OUT/44149 on 2 October 1997 for Davenport Green refers to the Order route as *‘Brooks Drive – private carriageway with public rights of way on foot or horseback’*.
2. The Officer report for Davenport Green Hall planning application number 84892/FUL/15 received on 13 February 2015 states it abuts *‘Brooks Drive to the south of the site which is an unadopted and unmade highway’*.A highway is a route over which the public have a right to pass and repass.
3. The Greater Manchester Spatial Framework 2020 refers to the Order route in the Timperley Wedge Allocation as including *‘the traffic free pedestrian and cycle route along Brooks Drive’* although the Order route is not within this area. It is identified on a plan as *‘potential cycle routes within the site to be created or enhanced’* and described in the surrounding area section as *‘a key cycling and pedestrian route’*.

*Land Registry Documents*

1. Land Registry Title Deeds for several of the properties along the Order route include covenants about needing to keep the road *‘open and unbuilt’* and payments of *‘due proportion attributable thereto of the expenses thenceforth of forming sewering paving maintaining and keeping in repair the same until such roads be taken over by the Local Authority’*.

*Temporary Traffic Regulation Order*

1. In 2014 a Temporary Traffic Regulation Order (TTRO) closed the bridge over the motorway for over a year. The TTRO does not specify the Order route as part of the alternative route to be used during the closure. An email from an Engineer at Amey Consulting states the Streetworks Officer recalled this diversion was marked on the webpage associated with the TTRO and to his knowledge use of Brooks Drive for this temporary diversion was not challenged.

*Strava Data*

1. Strava records indicate that the Order route was used from Hales Road to Roaring Gate Lane 172 times by 85 runners between 2013 and 2019 and 295 times by 155 cyclists between 2012 and 2019. In the opposite direction, it was used 212 times by 84 runners between 2012 and 2019 and 488 times by 178 cyclists. However, the data does not indicate if this use was public or private use or use with permission.

*Conclusions on the Documentary Evidence*

1. The exclusion of the Order route from the surrounding hereditament in Finance Act records suggests public rights, which are more likely to be vehicular. Showing it in the same way as public roads in the sale catalogues also suggests public rights.
2. The OS maps show the existence of the Order route since 1877, and the milestone indicates it existed in 1863. However, the OS object name book indicates the Order route was a private road in 1908.
3. The Order route is not recorded in any of the DMSs. However, FP16 is shown in the DMSs joining the eastern side of Brooks Drive with no continuation on the western side or any places of public resort. The Finance Act records also indicate the existence of FP16 in 1910. Footpath users are unlikely to retrace their steps; therefore this suggests public rights of at least footpath status continue over at least part of Brooks Drive.
4. The published guides, local history, Strava data, and planning documents indicate use of the Order route by the public on foot, bicycle, and horseback with a reputation as a right of way of at least bridleway status.
5. The photographs do not provide evidence for or against public rights, but they indicate use of the Order route was possible on foot, bicycle, and horseback, but not by motor vehicles.
6. Although some of the documentary evidence is suggestive of public rights over the Order route, I am not satisfied there is sufficient evidence to show, on the balance of probabilities, that public rights exist over the Order route.

**User Evidence**

1. User evidence was submitted with the applications for the 2023 and 2001 Orders.

*Bringing into question*

1. To bring into question the right of the public to use the Order route some actions or events must have occurred that brought home to at least some of those using it that their right to do so was being challenged. These must have been sufficiently overt to bring that challenge to the attention of the public using the route.
2. A green metal paling fence was erected across the Order route at point C on 7 June 2019 which prevented access to the public. Some of the pre-Order consultation letters indicate this fence was erected to deter criminals following a spate of burglaries and anti-social behaviour, but it clearly brought use of the Order route by the public into question.
3. Several of those living along the Order route also claimed to have challenged individuals using the Order route advising them that it was a private road and not open to the public. No specific dates were given and most of those giving evidence indicated this only occurred occasionally. Where specific examples were given, they were to individuals taking photographs of the houses, people on quad bikes, and a cyclist who asked for a dog to be put on a lead. It is also claimed that security firms patrolled the area and challenged people, but no information was provided from these companies. None of those using the Order route recalled being challenged when using it before 2019. These challenges do not appear to have been sufficient to make it known to at least some of the users that their right to use the Order route was being challenged in accordance with *‘R v Secretary of State for Transport and the Regions ex parte Dorset County Council* [1999] NPC 72. Therefore,I do not consider there is sufficient evidence of challenges to the public to bring into question use of the Order route.
4. A sign has existed at the southern end of the Order route for many years and photographs were provided. The current sign states *‘BROOKS DRIVE. Residents Only. Private Road. Monitored by 24 Hour Security. No Loitering. No Trespassing. No School Drop off. CCTV Security.’* However, this sign was not there on 1 July 2019 when a Council officer visited. The sign present at that time stated, *‘Brooks Drive (PRIVATE ROAD) CUL-DE-SAC 15 mph SPEED LIMIT BEWARE OF RAMPS Access to Hale Barns Cricket Club.’* This is the sign in the November 2000 photograph.
5. The Association considered these signs indicated that the public could not use the Order route at all. The PNFS considered the new sign demonstrates this, but the earlier sign did not. They cite *Patterson v Secretary of State for the Environment, Food and Rural Affairs* [2010] EWHC 394 where it was held that *‘the inspector was entitled to take into account the evidence of users that they did not understand any signs erected… to challenge the public use... How a range of members of the public have in fact understood signs in a particular context may well be a helpful indicator of how a reasonable person would interpret a sign in that context’*.
6. I agree that the current sign indicates that the public cannot use the Order route at all, but it was not erected until after the fence prevented access. Path users understood the earlier signs indicated that Brooks Drive was not available to the public with a motor vehicle but believed they could use it on foot, bicycle, or horseback. Those using the Order route were aware that it was a through route, but motor vehicles could not get past point C, supporting this view. The sign stating *‘PRIVATE ROAD NO VEHICLES’* on the gate in the November 2000 photograph, which some path users also referred to, supports this view as does FP16 which would be a cul-de-sac route if walkers could not continue along Brooks Drive.
7. Furthermore, the change to the wording of the sign suggests the Association considered it was not sufficiently worded to indicate to the public that they could not use the Order route on foot, bicycle, or horseback. Therefore, I do not consider the signs before 2019 were sufficiently worded to indicate to the public that their use on foot, bicycle, or horseback was being brought into question.
8. The Association considered the gates at points C and D also challenged use of the Order route regardless of whether they were locked or not. They cited *R v Secretary of State for Environment ex parte Blake* [1983] JPL100 which found barriers that could be bypassed and remained undisturbed showed an intention not to dedicate. However, the user evidence, the 2001 Order, and the photographs show there was sufficient space for walkers, cyclists, and horse riders to easily pass the gates within Brooks Drive and they were not bypassed by leaving the Order route. None of the parties referred to any attempts to close these gaps.
9. Furthermore, the owners of fields off Brooks Drive used for grazing since 1981 stated, *‘there was a gate put up to stop cars going down and illegally parking as the person from Davenport was parking cars for the airport. There was always a right of way for horses’*. One indicated this gate was erected in the 1970’s at point D. One of the 2001 objection letters stated the gate at point C was erected to maintain control, but it is not clear what this means. The *‘PRIVATE ROAD NO VEHICLES’* notice on the gate in November 2000 suggests its purpose was to prevent vehicular access but not public access on foot, bicycle, or horseback. Therefore, I do not consider these gates challenged public use, other than with a motor vehicle.
10. The objectors to the 2001 Order claim use of the Order route was with permission and referred to it as a private road. However, they do not indicate how the public were made aware of this permission and there is no reference to any challenges or other actions taken to indicate to the public that their use was being called into question. The path users were not aware of these letters. Therefore, I do not consider they brought into question public use of the Order route.
11. In the absence of evidence of overt acts bringing the right of the public to use the route into question, section 31(7a) and (7b) of the 1980 Act provides that a Modification Order Application made to the surveying authority, can serve as a challenge to use for the purposes of section 31(2) of the 1980 Act. The 1998 Application was made to the Council on 15 May 1998. There does not appear to have been any challenges to public use that lead to the 1998 application. Therefore, this application would serve as a challenge to use. However, this is more than twenty years before the paling fence was erected at point C.
12. I consider the paling fence erected on 7 June 2019 brought into question use of the Order route. I do not consider there is sufficient evidence of actions that brought into question use of the Order route on foot, bicycle, or horseback in the twenty years before this. Therefore, I consider the relevant twenty year period to be 7 June 1999 to 7 June 2019.
13. The 1998 Application would also serve as a challenge to use. I do not consider there is sufficient evidence of actions that brought into question use of the Order route on foot, bicycle, or horseback in the twenty years before this. Therefore, an earlier twenty year period between 15 May 1978 and 15 May 1998 should also be considered.

*Analysis of use*

1. To satisfy the requirements of section 31, use must be by those who can be regarded as the public. For use to be as of right it must be without force, secrecy, or permission. Use should be without interruption, and to be effective, any interruption must be by the landowner, or someone acting on their behalf. The interruption should be with the intention of preventing use of the way by the public and not for other purposes such as car parking or building works. I must also be satisfied that there was sufficient use by the public to raise a presumption of dedication.

***1999 to 2019***

1. The user evidence indicates use of the Order route by 35 people between 1999 and 2019 including 16 who used it for the full twenty year period. Nine people used it weekly, nine monthly, and 14 every few months with the rest using it occasionally. Twenty five people used it on foot, 20 on a bicycle, and three on horseback. Some people referred to using the Order route with friends, family, and walking or cycling groups. Use was largely for recreational purposes with some people using it to access shops, Hale Barns, Bollin Valley, Manchester Airport, work, and to visit friends and family. Path users referred to the Order route signed as an alternative to the motorway bridge in 2014 when the TTRO was in place.
2. None of the path users recall being challenged when using the Order route. Some of those objecting to the 2001 Order claimed use was with permission, but did not state how this permission was made known and none of those using the Order route recalled having or needing permission to use it.
3. As discussed in paragraph 53 to 56 above, path users who saw the signs at point A and on the gate did not believe they prevented access on foot, bicycle, and horseback until the new, more specifically worded sign was erected at point A in 2019. Some path users also referred to seeing a sign stating *‘private land’* at the north end, but this was in the field to the side and not on the Order route.
4. Many of the path users referred to the gates at points C and D but were clear that they only prevented access to motor vehicles with sufficient space to the sides within the Order route to pass on foot, bicycle, or horseback. Vegetation sometimes reduced the width but there was still space to pass and none of the parties referred to any action to close these gaps. Prior to the paling fence in 2019, the only obstruction mentioned was a fallen tree in June 2014 which was reported to the Council and cleared shortly after. Some people also referred to the northern end of the Order route being used for airport parking which made the route muddy and more difficult to use, but access was still possible.
5. The Association considered use of the Order route was not sufficient for the landowners to notice a public right of way was being asserted against them and stated those using it were *‘sporadic trespassers’*. Some claimed they never or rarely saw non-residents using the Order route, others stated they saw them a couple of times a month and all stated they never saw groups of people. Some landowners also stated they challenged people, as discussed in paragraph 52 above. All parties accepted the properties were set back from the road with boundaries that limited views of the Order route.
6. I consider the user evidence indicates use was sufficient for the landowners to notice it was being used as a right of way. I do not consider this use was occasional by a few people as claimed by the Association. It is clear that residents and landowners were aware of some public use of the Order route. Furthermore, two of those who objected to the 2001 Order also stated the route was used by pedestrians, cyclists, and horse riders. One of the current residents also objected to the 2001 Order and was aware that members of the public were asserting public rights over it in 2001. Three people who lived in a property on the Order route from the 1970s until 2003 or 2006 also stated they saw people using the Order route and considered it to be a public right of way.
7. Furthermore, the evidence statement from one of the Trustees of Hale Barn Cricket Club in response to the question *‘During the time that you have know the land, what has it been used for?’* stated, *‘Access from Hale Road to all residential homes on Brooks Drive and used as a footpath/ cycle path linking to Roaring Gate Lane’*.In response to the question *‘if you have been given or received permission to use the application route, when was this?’* states, *‘for many years, route has been used as a right of way until 3 years ago when route was blocked by metal fence’*. The owners of the fields off Brooks Drive used for grazing since 1981 both stated *‘there was always a right of way for horses’*. Strava data also suggests additional use by a large number of people.
8. Concerns were raised that not all of those completing user evidence forms appeared at the Inquiry and there were some inconsistencies in the evidence given. Eight people gave evidence at the Inquiry of their use of the Order route during this period. Their evidence provided clear details of the Order route and their use of it. The former residents who gave evidence were also clear that the Order route was used by the public. I consider any inconsistencies were minor and understandable given the passing of time. The evidence in the user evidence forms from other path users provided a similar description and pattern of use. However, as this use was not tested at the Inquiry, I have given less weight to it.
9. I consider there is sufficient evidence of use without interruption, permission, force, or secrecy during the twenty year period between 7 June 1999 and 7 June 2019 to demonstrate a presumption of dedication over the Order route.

***1978 to 1998***

1. Many of those who used the Order route between 1999 and 2019 also used the Order route between 1978 and 1998. The 1998 Application included two sections of Brooks Drive and not everyone used the Order route, but it is clear from most of the forms who did and who did not. I have only taken into account use by those who clearly used the Order route during this period.
2. Around 50 people used the Order route between 1978 and 1998 including 25 who used it for the full twenty years. Many used it before 1978 with use dating back to 1930. Three people used it daily, 14 at least once a week, and 16 at least once a month. Forty people used it on foot, 25 on a bicycle and eight on horseback. Use was predominantly for recreational purposes, but also to visit friends and family, shops, Hale Barns, Bollin Valley, Manchester Airport, and for work.
3. As with use between 1999 and 2019, none of those using the Order route were challenged or had permission to use it with several stating that permission was not necessary. Those who saw signs considered they only indicated that motor vehicles could not use the Order route, and some people referred to signs stating *‘no vehicles’*. Gates were also seen but they did not prevent access on foot, bicycle, or horseback.
4. As outlined in paragraph 69 and 70 above, field owners and those living in properties on Brooks Drive saw the public using the Order route during this period and considered it to be a public right of way.
5. The concerns referred to in paragraph 71 were also raised with regards to the evidence of use between 1978 and 1998. Seven people gave oral evidence at the Inquiry of their use during this period and provided clear details of the Order route and their use of it. I consider any inconsistencies were minor and understandable given the passing of time. The evidence in the user evidence forms from other path users provided a similar description and pattern of use, However, as this use was not tested at the Inquiry, I have given less weight to it.
6. I consider there is sufficient evidence of use of the Order route between 15 May 1978 and 15 May 1998, without interruption, permission, force, or secrecy, to demonstrate a presumption of dedication over the Order route.

*Lack of intention to dedicate*

1. To demonstrate a lack of intention to dedicate, a landowner must take action to make the public aware that they have no intention of dedicating a public right of way. There are various ways of demonstrating this, but the most common ways are erecting notices denying public rights or granting permission, physical obstructions, or verbal challenges.
2. For the same reasons given in paragraphs 53 to 56 above, I do not consider the signs present before 2019 were sufficiently worded to demonstrate to the public that the landowners had no intention of dedicating public rights of way to non-motorised users during either of the relevant twenty year periods. One of the signs also stated *‘No Vehicles’* suggesting it could be used without motor vehicles.
3. The notice referred to in the 1958 letter suggested equestrian use was being challenged at that time. However, there is no information about how long this notice lasted and none of the parties recalled seeing it. Furthermore, it predates the earlier twenty year period of use by twenty years.
4. The gates across the route, even when locked, did not prevent access on foot, bicycle, or horseback, and there was sufficient space for path users to pass them within the Order route. There is also evidence to indicate they were erected to prevent use by motor vehicles, not other users. Therefore, I do not consider the gates indicated the landowners had no intention of dedicating public rights to non-motorised users during either of the relevant twenty year periods.
5. Although some of those objecting to the 2001 Order stated use of the Order route was with permission, there is nothing to indicate how the public were made aware of it. Therefore, I do not consider there was anything to indicate to the public that use was with permission during either of the relevant twenty year periods.
6. Residents of seven properties along the Order route objected to the 2001 Order to record a bridleway. Several stated it was a private road, and some stated it was not a right of way. However, I do not consider the letters contained any information to indicate a lack of intention to dedicate public rights along the Order route was made known to the public. The 2001 objection letters were submitted to the Council, and the applicant may have been made aware of them. However, there is no evidence that these objections were made known to the wider public.
7. No action was taken to get the 2001 Order confirmed. It was suggested this indicated that the public were aware of the 2001 objections and the Council considered the evidence was not considered sufficient for the 2001 Order to be confirmed. However, there is no evidence to indicate why the 2001 Order was not submitted to the Secretary of State for determination. The 2001 Order is fatally flawed and not capable of confirmation which could also be why it was not pursued.
8. Therefore, I do not consider the 2001 objections are sufficient to demonstrate a lack of intention to dedicate a public right of way over the Order route between 7 June 1999 and 7 June 2019 by the landowners. Furthermore, these objection letters do not indicate a lack of intention to dedicate public rights over the Order route between 15 May 1978 and 15 May 1998.

*Structures, Widths, Surfaces, and Grid References*

1. The OS maps have a line across the northern end of the Order route which is likely to indicate the presence of a gate. One of the field owners recalled a gate being erected at point D in the 1970s and path users and former residents recall a gate here in the 1970s or earlier. Many of those using the Order route stated there was always a gate at point C with one person indicating it was there when he first used it in 1966. The gates were also referred to in the 2001 Order. As gates were present at points C and D throughout both relevant twenty year periods, these are limitations that should be included in the 2023 Order.
2. The gate at point D is referred to in the 2023 Order with a 2 meter wide gap to one side and a 1.4 metre gap on the other. The PNFS requested the addition of a grid reference for point D to clarify the location of this gate. I consider a grid reference would do this, and I will add one if I confirm the 2023 Order.
3. Point C is referred to in the 2023 Order as a ‘*local narrowing’* with a width of 2 metres. I consider the gate here should also be included in the 2023 Order as it has always been present. A grid reference is already recorded.
4. I also note that grid references are not included in *‘PART II MODIFICATION OF DEFINITIVE STATEMENT’* for the *‘Nature of the surface’*. I consider grid references for these points would clarify the start and end points of the different surfaces in the DS, so should be included in the Order.
5. Concerns were raised about the inclusion of the verges in the 2023 Order between point A and C and the potential for the removal of planting, rockeries, and other items within them. Most of those using the Order route used the central tarmacked carriageway, but one person stated the verge was used to move out of the way of motor vehicles when required. Furthermore, evidence was also given that the surfaced carriageway was wider in the past prior to it being tarmacked. The Finance Act map and Sales Catalogue also indicate the full width of the Order route was between the boundaries on either side. Therefore, I do not consider the width should be modified to remove the verges.

*Conclusions on section 31*

1. I have found there is sufficient evidence of use of the Order route as of right and without interruption between 1978 and 1998. I have also found there is sufficient evidence of use of the Order route as of right and without interruption between 1999 and 2019. There is clear evidence of the existence of gates at points C and D throughout both relevant periods with gaps to the sides. There is also some evidence that the surfaced carriageway was previously wider and that there was some use of the verges.
2. The user evidence is supported by some of the documentary evidence which indicates it was used by the public and had a reputation as a public right of way. The Finance Act map and sale catalogue are also suggestive of public rights between the boundaries on either side of the Order route.
3. I do not consider there is sufficient evidence of challenges, permission, or other actions by the landowners to demonstrate they had no intention of dedicating a public restricted byway over any section of the Order route during either of the relevant twenty year periods.
4. I am satisfied the evidence before me is sufficient to show, on the balance of probabilities, that a restricted byway subsists over the whole of the Order route.

Conclusions

1. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude the Order should be confirmed with modifications. None of the modifications affect land not previously affected, therefore, they do not need to be advertised.

Formal Decision

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

In PART I MODIFICATION OF THE DEFINITIVE MAP

* After the first ‘local narrowing’ add ‘alongside a field gate’
* After the first ‘point ‘D’’ add ‘grid reference SJ 8043 8643’

In PART II MODIFICATION OF THE DEFINITIVE STATEMENT

* After the first ‘local narrowing’ add ‘alongside a field gate’
* After the first ‘point ‘D’’ add ‘grid reference SJ 8043 8643’
* In the Nature of the surface paragraph after ‘point ‘A’’ add ‘grid reference SJ 7987 8549’ after both ‘point ‘C’’ add ‘grid reference SJ 8028 8622’, and after both ‘point ‘D’’ add ‘grid reference SJ 8043 8643’, and after ‘point ‘E’’ add ‘grid reference SJ 8043 8644’

Claire Tregembo

INSPECTOR

**APPEARANCES**

**In Support of the Order:**

Shemuel Sheikh Counsel for the Peak and Northern Footpaths Society

**Who Called:**

Sarah O’Dwyer Path User

Peter Julian Path User

Gregory Mape Path User

Wendy Makin Path User

Neil Runciman Path User

Laurence Armstrong Path User

Helen Wright Path User

Humphrey Wright Path User

John Jocys Path User

Martin Hampar Applicant

**Others in Support of the Order**

Cllr. Julian Newgrosh Former Resident of Brooks Drive and Path User

Barry Newgrosh Former Resident of Brooks Drive and Path User

Vivian Newgrosh Former Resident of Brooks Drive and Path User

Wendy Taylor Path User

**In Objection to the Order:**

Nicola Allan Counsel for the Brooks Drive Residents Association

**Who Called**

Mashukul Hoque Landowner

Siobhan Maskell Landowner

Mark Pickston Landowner

Sharron Dobrev Landowner

Terence Tierney Landowner

Terence Shanahan Landowner

Sanjiv Jari Landowner

Nicola Wertheim Landowner

**Others in Objection to the Order:**

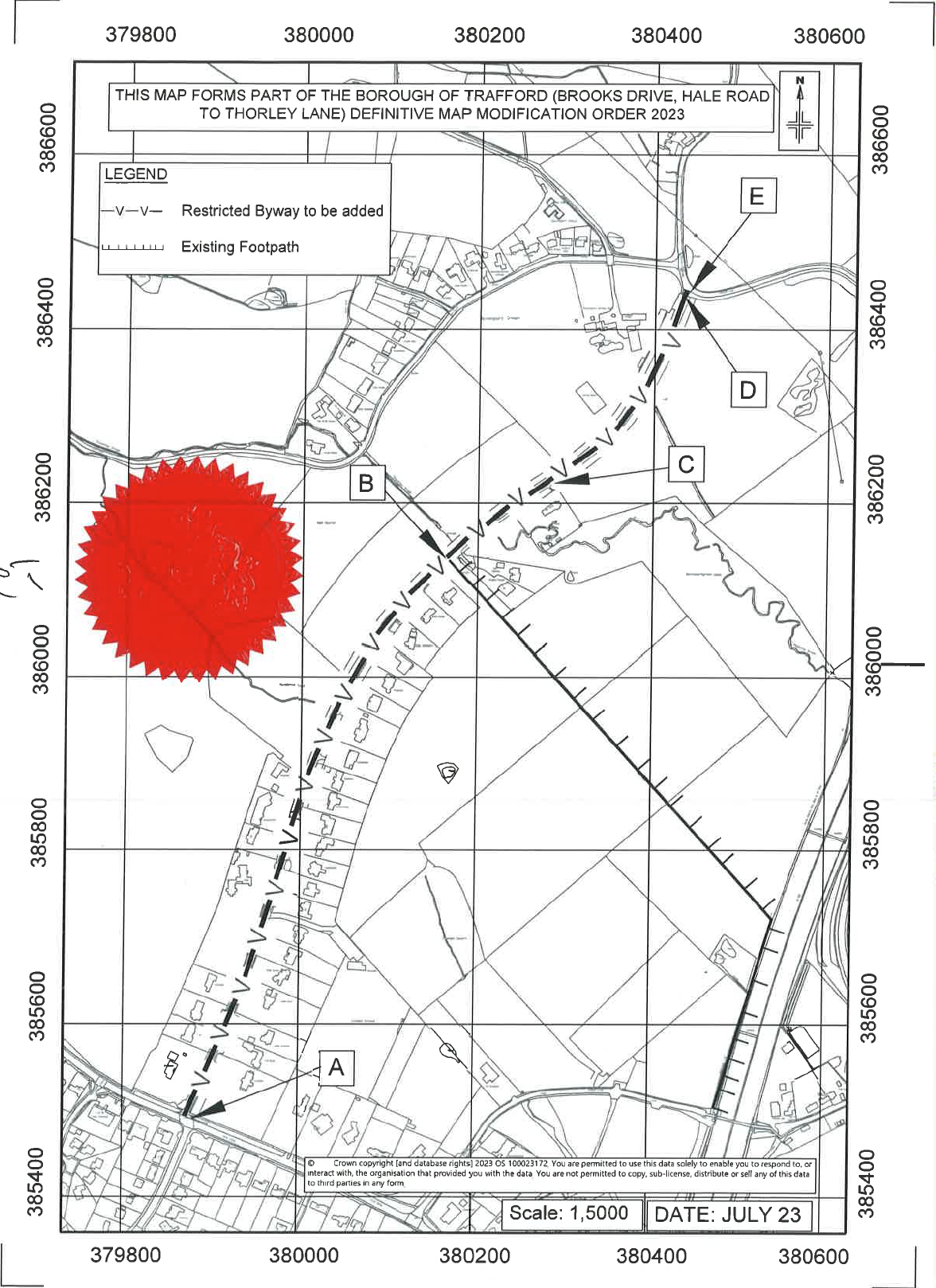
Cllr. Nathan Evans

Cllr. Dylan Butt

**DOCUMENTS PRODUCED AT THE INQUIRY**

1. 1958 Cheshire County Council Letters and Memos
2. List of Objectors and their Evidence
3. Opening Statement for the Peak and Northern Footpaths Society
4. Statement of Cllr. Nathan Evans
5. Closing Statement for the Brooks Drive Residents Association
6. Closing Statement for the Peak and Northern Footpaths Society

**Order Map**

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