



## Order Decision

Inquiry opened on 15 November 2016

**by Mark Yates BA(Hons) MIPROW**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

**Decision date: 01 November 2017**

### **Order Ref: FPS/J0350/7/1M**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Slough Borough Council Bridleway 93 Modification Order 2015.
- The Order was made by Slough Borough Council ("the Council") on 15 September 2015 and proposed to add a bridleway to the definitive map and statement, as detailed in the Order Map and Schedule.
- The Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I have given notice of my proposal to confirm the Order with modifications.

**Summary of Decision: The Order is confirmed subject to the revised modifications set out below in the Formal Decision.**

### **Procedural Matters**

1. My interim decision ("ID"), dated 23 December 2016, was issued following a public inquiry held on 15-16 November 2016. I proposed to make modifications to the Order in relation to the width and status of the route known as Blandford Road North ("BRN"). This decision should be read in conjunction with my ID with the numbers in square brackets representing particular paragraphs in the ID.
2. Three objections were submitted in response to the ID. The Council objects to the proposed modifications to increase the recorded width of two sections of BRN and my intention to record the route as a byway open to all traffic ("BOAT") rather than a bridleway. Mrs Young and Mr Phillips submit that the whole of BRN should have a width of 30 feet (approximately 9.1 metres).
3. I have considered these objections following an exchange of written representations involving the parties. The parties were informed<sup>1</sup> that I would consider both the modified and unmodified parts of the Order. Therefore, the submission by Mr Buley, on behalf of the Council, that the other objections are outside of my jurisdiction is not correct. However, this process should not be seen as an opportunity to put forward the same evidence and arguments presented at the inquiry. There would need to be something new for me to propose to make additional modifications to the Order.

### **Main Issues**

4. I outlined the relevant matters in relation to the Order, as made, in the ID [4-8]. The issue now is whether there is any new evidence or argument which has a bearing on the status and width of BRN. In considering these matters it

<sup>1</sup> By way of a letter of 1 June 2017 from the Planning Inspectorate

may be necessary to revisit particular pieces of evidence presented to the inquiry.

## Reasons

5. I did not find the historical documentary evidence to be supportive of the past dedication of a highway [29]. In this respect, I had particular regard to the evidence in relation to the Langley Marsh Inclosure Award of 1813. I concurred with the Council that BRN was set out in the award as a private road.
6. I note the evidence of Mr Harvey and Mrs Watson regarding their recollections of the nature of the area, which Mrs Young considers to be indicative of BRN serving as the access to a public gravel pit that existed during part of the nineteenth century. Mrs Young also refers to particular court judgments in support of the route historically having public status. Nonetheless, it was clearly the case that BRN was awarded as a private road and the later documentary evidence is not supportive of it subsequently being dedicated as a highway.
7. It is apparent that Mr Phillips is trying to draw an inference between the relevant provisions in the inclosure award and events during the twentieth century, most notably the adoption of the connecting Blandford Road South in 1958. However, I can see no merit in the submissions he makes on this matter. Further, if the use of BRN was '*by right*' it could not constitute '*user as of right*'. Nonetheless, all of the parties accept that the user evidence is supportive of the dedication of a highway. In terms of the maintenance of BRN, this is a separate issue to the status of the route. The conveyancing documents provided by Mrs Young do not provide any assistance in determining the status or width of BRN. I addressed the issue of landownership generally in the ID [10].
8. The Council accepts that the evidence of use by pedestrians, horse riders and cyclists is sufficient to infer the common law dedication of a bridleway prior to 1959 [30]. It is apparent to me that the significant public use followed on from the housing development that occurred in the area after 1952. Therefore, the dedication could have been contemporaneous to this use rather than in relation to the earlier evidence of use, which is limited to Mr Harvey and Mr Jago. Nonetheless, if the dedication is taken to be coeval to the earliest evidence of use, Mrs Jago states that her late husband cycled along BRN in the 1930s. Mr Harvey's use of the route on foot commenced in 1940.
9. The legal position at the time was that a cycle constituted a vehicle and there was no right for cyclists to ride on a bridleway [38]. Therefore, the cycling use would count towards the dedication of a vehicular highway. This means that the landowner should not have interpreted the use by cyclists to be supportive of the acceptance of the dedication of lesser public rights. Further, the evidence of Mrs Watson was clear that when she moved house in 1956/57 she observed use of BRN by motor vehicles until a chain link fence was erected in the early 1960s [32 & 34]. It cannot be determined when the use by motor vehicles commenced but clearly there is the potential for such use to have coincided with the completion of the properties in the area.
10. It remains my view on balance that the evidence is supportive of the dedication of a vehicular highway rather than a public bridleway. As it is accepted that this highway was dedicated prior to 1959, it is not necessary for me to

comment on the more recent evidence of use. I address later the issue of whether the route should be recorded as a restricted byway or BOAT.

11. In terms of the original width of BRN between the physical boundaries, this was defined by the Langley Marsh Inclosure Award. The width of the route was set out by reference to a private road. In such circumstances, I concur with the Council that the hedge to hedge presumption will not apply. Therefore, the other land between the historical boundaries, which was separate to the roadway, would not necessarily have formed part of the highway. This means I may have been in error to place too much weight on the 1956 Ordnance Survey map [41]. The same would apply to other maps from around this period. I consider that the width of the highway should be determined primarily from the evidence of public use. Due to my conclusion that BRN was dedicated prior to 1959, much of the later evidence relied upon by Mrs Young will not be of assistance.
12. No new evidence has been provided to indicate that I was wrong to conclude that the western section of BRN through the trees should not be recorded on the definitive map in terms of the public vehicular rights. Clearly, the public's use of a linear right of way will often be of a recreational nature. It will broadly be to pass and repass. However, other activities such as playing and making camps will not constitute highway use. This conclusion is not inconsistent with the extract from the case of *Hue v Whitely (1929)* cited by Mrs Young. Further, any route used through the trees was separate to the roadway that existed and would not in my view have constituted a footway at the side of a carriageway.
13. Mr Harvey describes BRN as a dirt track about 12 feet wide which resembled a road as it was wide enough for farm vehicles to use. He distinguishes this track from the row of elm trees to the west. Mr Harvey says the trees formed a dense wood about 15 feet wide. The evidence of other witnesses points to the width of the western section being about 15 feet wide. Mr Gosnell used the route from 1956 and he says that the road was about 10 feet wide. Mrs Seager's use did not commence until 1962 but she states the track was 13 feet wide and there was a similar width attributed to the trees and grass verge. Mr Green's evidence of use dates back to 1964 and he states that the verge and trees extended along the whole length of BRN. In respect of the 1968 photograph [34], this was clearly taken sometime after the route had been dedicated and it is far from clear. Nonetheless, towards the southern end of BRN, a tree and vegetation are evident to the west.
14. I am not satisfied it can be determined that the public vehicular rights I have found to subsist extended beyond the track along the eastern side of BRN. Having regard to the evidence outlined above and the submissions of Mr Buley, I consider on balance that I was wrong to propose to increase the width included in the Order towards each end of the route. The historical user evidence does not generally point to any significant widening of the route at either end.
15. Finally, I need to address the Natural Environment and Rural Communities Act 2006 ("the 2006 Act"). Section 67(1) of the 2006 Act states that subject to subsections (2) to (8), "*An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—*

*(a) was not shown in a definitive map and statement, or*

*(b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway".*

16. BRN falls within Section 67(1)(a) in that it was a public right of way for mechanically propelled vehicles prior to the commencement of the 2006 Act and it was not recorded in the definitive map and statement. I addressed in the ID the exemption found in Section 67(2)(b) of the 2006 Act [44-45]. This exemption is applicable if "*immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980*" (commonly known as the list of streets).
17. The wording of Section 67(2)(b) is clear and unambiguous and protects public rights of way for mechanically propelled vehicles which are not shown in the definitive map and statement but are included in the list of streets. It is apparent that BRN was included in the list of streets prior to the date of commencement and the route continued to be recorded in this document. The issue in this case arises out of BRN being described in the list of streets as a "*Private Street*".
18. The list of streets only serves as a record of the highways maintained by the Council at public expense. It does not provide conclusive evidence of the public rights that exist over a particular way. Clearly the Council took the decision to include BRN in its list of maintained highways. If it is maintained for other purposes, such as in relation to a private right of way, it should not have been included in the list of streets. Nonetheless, it cannot be determined whether the recent resurfacing works highlighted by Mrs Young were undertaken by the Council in its capacity as highway authority.
19. I have concluded from the evidence that BRN is an unrecorded public right of way for mechanically propelled vehicles. This public right of way was included in the list of streets at the commencement of the 2006 Act albeit described as a *private street*. It is not argued that the route was included in the list in error. Having regard to the purpose of the list of streets outlined above, I conclude that the exemption in Section 67(2)(b) of the Act is applicable in this case. Therefore, it remains my view that BRN should be recorded in the definitive map and statement as a BOAT.

### **Other Matters**

20. It is not my role to make a determination in relation to an alleged breach of planning permission or encroachment on the highway. Nor is it appropriate for me to make provision in the Order for the future maintenance of BRN.

### **Conclusions**

21. Having regard to these and all other matters raised I conclude that BRN should be recorded in the definitive map and statement as a BOAT with the varying width included in the original Order rather than the modified width proposed in the ID.

### **Formal Decision**

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

- Delete all of the references in the Order to "*bridleway*" and insert "*byway open to all traffic*".

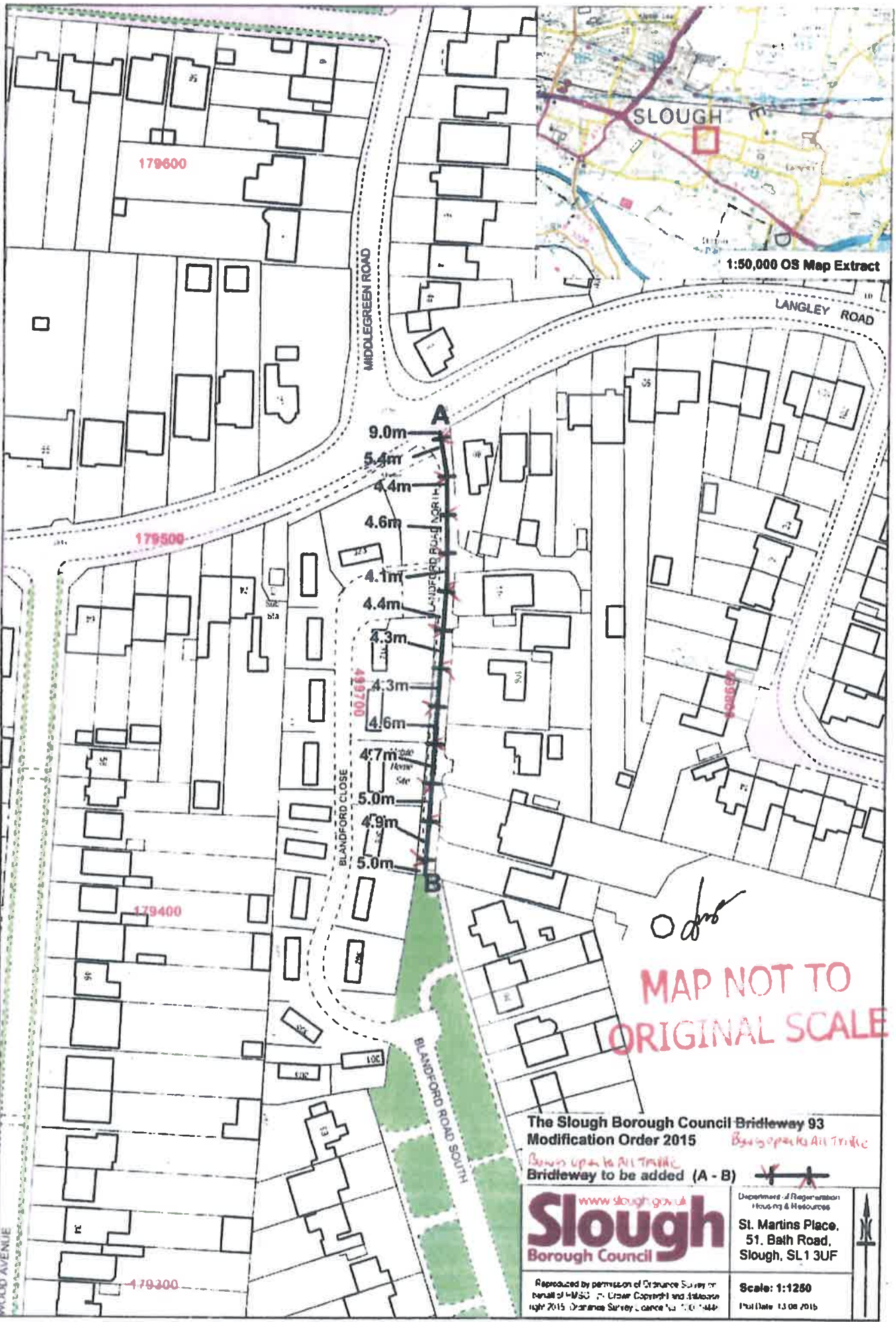
- Replace the notation on the Order Map for a bridleway with the notation for a BOAT and amend the map key accordingly.

*Mark Yates*

**Inspector**







SLOUGH

1:50,000 OS Map Extract

MIDDLEGREEN ROAD

LANGLEY ROAD

BLANDFORD ROAD NORTH

BLANDFORD CLOSE

BLANDFORD ROAD SOUTH

WOOD AVENUE

MAP NOT TO ORIGINAL SCALE

The Slough Borough Council Bridleway 93 Modification Order 2015

Bridleway to be added (A - B)

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Borough Council

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