

Highways Committee
Definitive Map of Public Rights of Way
Applications to register a public footpath and bridleway at Burnhope

Joint Report of Ian Thompson, Corporate Director of Regeneration and Economic Development and Colette Longbottom, Corporate Director of Legal and Democratic Services

1.0 Purpose of the Report

- 1.1 To consider two applications to modify the Definitive Map and Statement of Public Rights of Way.

2.0 Background

- 2.1 In 1999 an application was made by the British Horse Society (BHS) to register, as a public bridleway, a route commencing at the War Memorial, Burnhope and following the disused wagonway (locally also known as 'The Line') in a northerly direction for a distance of approximately 750 metres as far as Bridleway 23. A further application for a public footpath along this same route but only extending as far as the junction with Footpath 26 (totalling 300 metres) was submitted in 2010 by Mrs T Reid. Both applications were submitted with completed user evidence questionnaires. The bridleway route is shown as A-C and footpath route as A-B on the plans at **Document A**.
- 2.2 In 2005, the County Council, which owns the section of the claimed routes from B-C, dedicated this part as Burnhope public footpath 38.
- 2.3 The land crossed by the applications was a railway until 1949 when Burnhope Colliery closed.
- 2.4 In 1985 the County Council received an enquiry from Lanchester and Langley Parish Councils about the recording of the route as a public footpath and provided some user evidence questionnaires from local people. Between that date and 1993 the area adjacent to the claimed routes was opencast (Chapmans Well). The entrance to the opencast site was situated along bridleway 23 at the northern end of the application route.
- 2.5 The land shown A-B is owned by J Burnside, the estate of AM Jobling and PJ and RW Wright. The land shown B-C is owned by Durham County Council.
- 2.6 Consultations have been carried out with the landowners, Local Members, Parish Council and path user groups. Representations in support of the applications have been made by Burnhope Parish Council and the BHS while the owners PJ and RW Wright have objected. All these submissions are shown in **Document B**.

- 2.7 Due to parish boundary changes some re-numbering of Burnhope's public paths took place in early 2010 when the County re-published its Definitive Map. It should be noted that Footpath 26 was formerly Footpath 14 and Bridleway 23 was Bridleway 11. These nearby paths are mentioned in witnesses' evidence.

3.0 Legal Framework

- 3.1 The briefing note attached at **Document C** sets out the legal framework and considerations for modifications to the Definitive Map. The County Council, as Surveying Authority, has to make a decision in accordance with the law and in particular the provisions of the Wildlife and Countryside Act 1981. Given these legal criteria, a decision to make an order would be lawful despite the rights of individuals.
- 3.2 Under the provisions of Section 53 of the Wildlife and Countryside Act 1981, the County Council as Surveying Authority has a duty to keep the Definitive Map and Statement under review and is required to make a Modification Order (Section 53 (3) (c) (i) and (ii)) on the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist and/or that a highway of a particular description ought to be shown as a highway of a different description. The evidence 'discovered' by the County Council in this case is evidence of usage by the public.
- 3.3 The Highways Act 1980, Section 31 states that, in the absence of contrary intention, a way may be 'deemed to have been dedicated as a highway' where 'it has been actually enjoyed by the public as of right and without interruption for a full period of twenty years', that period to be calculated retrospectively from the date when the right of public use was brought into question.
- 3.4 The evidence suggests the earliest date this route was brought into question was in 1985 when opencast operations began on the Chapman's Well site. 2 horseriders describe a fence at the route's junction with Footpath 26 (formerly 14) and either not being able to go that way or taking a detour. A further walker describes jumping over the fence. The rights of the public were also brought into question at a later date by the submission of the Modification Order applications in 1999 and 2010. However, due to the legislation working retrospectively, the earliest date is the relevant point from which the 20 years must be calculated backwards so the relevant period is 1965 -1985.

4.0 Evidence

- 4.1 The Burnhope line was a working colliery railway until 1949 when the Burnhope Colliery closed. The 'line' would have been removed after this date and as evidenced on later maps which annotate the route as

'path'. Maps from 1939 and 1966 and 1976, attached at **Document D** illustrate this change of use.

- 4.2 In total, evidence of use of the route has been provided by 29 people during a period from the 1930's to present. 7 provided evidence in 1985 (via Parish Council), 8 (BHS) plus 4 (independently) in 1999 and 11 in 2010 (Reid). One of the latter users had submitted evidence in 1985 also. Signed statements have been taken from 12 path users to clarify the information completed on the questionnaires. These statements and a table summarising the dates and type of all the 29 users is attached at **Document E**.
- 4.3 In total 26 people provided evidence of use of the route on foot and 14 on horseback. Of all these users it is necessary to identify those who have used the path between 1965 and 1985 in order to satisfy the criteria set out at 3.3 above. 9 path users (or combinations thereof) state they have used the route in excess of 20 years prior to 1985. Of these, 8 just went on foot and 1 on horseback.
- 4.4 There are a number of features along the path that are described by path users which vary according to the time period in which they used the route. 4 users (2 walkers and 2 horseriders) remember the opencast erecting fencing across the route at its junction with Footpath 26. The 2 horseriders could not cross it, while 1 of the walkers states he jumped over it and the other said the railings did not stop him. 2 walkers indicate that there was no fencing at this location. 1 walker remembers during opencast a kissing gate and stile at the northern end of the route with its junction with bridleway 23. Following the completion of the opencast, other features are noted by small numbers of users, including in 1995 a stile erected close to the War Memorial, in 1997 barriers across the line and in 2000 the building up of an embankment preventing horse riders and the erection of gates at the War Memorial (although no one has mentioned that they were locked).
- 4.5 Path users give a consistent description of a solid stony ash path.

5.0 Objections

- 5.1 The landowners have made written representations to consultations in 2001 (BHS application) and more recently in 2010. In 2001 they stated that 'the land in question has not been used freely as a public right of way for 20 years plus' and 'rights of way on foot and indeed equestrian access would have been difficult if not impossible when the land was owned by British Coal since it was subject to open casting. With all the attendant noise and works being carried out on the land horseriding in such a dangerous environment would not have been attempted'. In 2010 it was stated that since 2001 'any attempts to exercise rights of way over our clients land have been resisted'. Mention is made of the owners' intentions to fence off land to ensure no unauthorised access by motorcycles.

Response

Only the issues relating to the 20 years use prior to 1985 are relevant in a consideration of the evidence. It is accepted that the opencast did have an impact on horseriders and possibly walkers and it is for this reason that 1985 is considered the year in which the route was brought into dispute. It is not thought that the owners' statement that the land has not been used freely for 20 years could refer to the 20 years 1965 – 1985. They bought the land in 1994 and therefore it is not certain what evidence they could rely on with respect to the earlier relevant period. Certainly the opencasting (1985 - 93) and the creation of a mound in 2000 at the War Memorial were occasions which impeded or prevented horseriders gaining access to the route.

6.0 Recommendations and Reasons

- 6.1 There is sufficient evidence to suggest a public right of way on foot has been acquired by statutory deemed dedication under Section 31 of the Highways Act 1980. There is not considered to be sufficient evidence for a right of way on horseback to have been established.
- 6.2 The relevant 20 year period should be calculated back from 1985 when the opencast workings and the erection of a fence appear to have prevented pedestrian and equestrian access. This can be taken as an act which brought the public's use of the route into question. During this 20 year period there is evidence of 8 people (including combinations thereof) regularly using the route on foot without interruption. 1 person provides evidence on horseback. However, a total of 1 horserider is not considered of sufficient quantity to satisfy use by the public.
- 6.3 There is no evidence of a lack of intention to dedicate the path on the part of the landowner during the 20 year period 1965 - 1985. Indeed the history of the route would also suggest that the public have used the route on foot without interruption since the mineral railway line closed in 1949.
- 6.4 The erection of the opencast fence could be viewed as a lack of intention to dedicate despite the fact that its purpose would have been to fence in the opencast area. It would also indicate that the owners deemed that area of land as no longer open to the public. It is accepted that walkers continuing to use the route during the opencast period would suggest its ineffectiveness but this would not detract from the actions of British Coal as signalling their lack of intention to dedicate it. The later actions of mounding earth up across the route, which horseriders clearly identify as being to prevent their access, is considered an action by the landowners to indicate their lack of intention to dedicate the route. However, as it is outside the 20 year period it has no direct bearing on the case.
- 6.5 In conclusion, on the balance of probabilities, taking into account the above considerations, sufficient evidence exists for a presumption of dedication of a public footpath under the provisions of Section 31 of the

Highways Act 1980 between A and B on the plan at **Document A**. A reasonable person could reasonably allege a public footpath subsists. Accordingly the requirements of Section 53 (3)(c) (i) of the Wildlife and Countryside Act 1981 have been fulfilled.

- 6.6 There is insufficient evidence for the establishment of a public bridleway along the same route and continuing on to the junction with Bridleway 23 (A-C). This route can also be said to have been brought into question in 1985 and only one person can give evidence of riding the route in the relevant period 1965 – 1985.
- 6.7 It is **RECOMMENDED** that a Modification Order be made under the terms of the Wildlife and Countryside Act 1981 to record in the Definitive Map and Statement a public footpath along the 2010 application route (A - B on the plan at **Document A**)

Background papers: Files E/C/1/90/015

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Attached Documents

Document A	Location plans
Document B	Responses to consultation
Document C	Briefing note
Document D	OS maps 1939, 1966 and 1976
Document E	Summary of usage of the route and statements from users