

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Crook Council Offices, Crook, Co Durham, DL15 9ES on **Wednesday 12 April 2017 at 10.00 am.**

Present:

Councillor C Kay in the Chair.

Members of the Committee:

Councillors

Apologies:

Apologies for absence were received from Councillors G Bleasdale, D Hicks, K Hopper, S Morrison, R Ormerod, J Robinson, J Rowlandson, P Stradling and R Young

Also Present:

Councillor

1 Apologies for Absence

Apologies for absence were received from Councillors G Bleasdale, D Hicks, K Hopper, S Morrison, R Ormerod, J Robinson, J Rowlandson, P Stradling and R Young.

2 Substitute Members

There were no substitute Members present.

3 Minutes of the Meeting held on 8 March 2017

The minutes of the meeting held on 8 March 2017 were agreed as a correct record and signed by the Chair.

4 Declarations of Interest, if any

There were no declarations of interest in relation to any items of business on the agenda.

5 Status of track at Victoria, Howden le Wear to Wear Valley Junction - Wildlife and Countryside Act 1981 - Definitive Map Modification Order Proposal

The Committee considered a report of the Corporate Director of Regeneration and Local Services sought consideration of evidence discovered regarding the status of the track through Victoria and so determine whether a Modification Order should be made to add a public right of way to the Definitive Map and Statement (for copy see file of Minutes).

The Legal Adviser then outlined the legal framework to the Committee. The Committee were informed that one of the first key statutory legal considerations in dealing with the issue was contained in Section 31 of the Highways Act 1980. This described the criteria that had to be met for deemed dedication of a highway that in order for a public right of way to be in existence, the route must be enjoyed by the public as of right and without interruption for a full period of 20 years. The qualifying period had to be calculated retrospectively from the date when the right of public use was brought into question. In this case the challenging of the public, first recorded by the Council in late 2014 was considered to be an action to bring the right of public use into question. This was the period when users reported various signage being placed along the route and erection of gates. The 20 year period had to be calculated retrospectively from this date.

The report made reference that some objections referred to 'permissions being granted to use the road' and that regular closures of the road meant use had been interrupted and/or obstructed use.

The Legal Adviser concluded that there were some issues that officers and the Committee could not find an explanation for or get to the bottom of at this stage. The only way to probe these points further would be through a public inquiry where evidence would be cross-examined by a government inspector.

The Senior Rights of Way Officer guided the Committee through the evidence of usage detailed in paragraph 4 of the report and the summary of user evidence in Document B which detailed the standard questionnaire. The owner evidence detailed in Document C of the report was also summarised. A presentation also accompanied the summary of usage.

The Committee were informed that in terms of assessing the evidence the first judgement that needed to be made was to the credibility of the user evidence and whether it was of sufficient amount and quality to trigger the statutory presumption contained in Section 31 of the Highways Act 1980, detailed in paragraph 3.3.

The amount of pedestrian use demonstrated was deemed to be substantial and had occurred over a long period of time. Equestrian and cycle use was lesser but was still of sufficient quantity to suggest that public rights for users were reasonably alleged to subsist. It was considered that the evidence submitted by witnesses was credible.

Information relating to notices, permissions and challenges to use and the history relating to the maintenance of the road were all outlined to the Committee and detailed in full in the report.

Prior to hearing from those wishing to make representations on the issue, the Legal Adviser informed the Committee that any objections had to be considered in the context of the Human Rights Act 1998. Although articles 1 and 8 are engaged they are qualified rights, not absolute, meaning that interference by the making of a Modification Order is both in accordance with domestic law and in the public interest.

The Committee then heard from the first objector. The objector explained that the whole issue had been an intrusion on her privacy and had caused a large amount of upset. She had lived in the property, not long after it had been built. In 1931 a petition was submitted from 60 dwellings in Victoria was lodged requesting that the Council make a satisfactory

road to their houses. No action was taken. The issue was raised again with Crook and Willington Urban District Council's in 1957. All indications from 1931 and 1957 to date, by all local authorities, was that Victoria was classed as a private street. There had been no mention of the proposed multi user footpath and dedicated public rights of way.

Signage had been in place prior to 2014 and the objector was of the view that some people may simply not have seen it. The signage had been put in place to deter abusive people walking through the area. Some people had recalled some form of toll road and gates in the evidence. Despite what had been said, there had been no attempts made to block the road and she was perfectly happy for people to use the road and use Victoria.

The objector felt that there was not sufficient information available to members of the local authority to make a determination on the issue.

The Legal Adviser informed the Committee that the issues referred to road maintenance in the 1930's and 1950's was not a public right of way matter and felt that the representations made at these times were a mechanism to put a measure in place to allow the Highways Authority to have the road maintained.

There was no definite conclusion as to whether the signs at no 10 were erected in 2014 or prior to then.. The issue was that the Council did not have sufficient evidence regarding the exact date of when any such signage was placed in the area. It was a possibility that this date may change through cross examination of evidence at a public inquiry.

The Committee then heard from another objector who explained that they were relatively new to the area. They had bought their house in 2004. There was no information contained in any of the searches to indicate that there was a public right of way. The resident was informed that the road was an 'access road' that could not be blocked off.

Since that time some gates had been installed following the recommendation of the local neighbourhood policing team. This action was to safeguard property and family. The objector's property had been broken into three times and there had been numerous confrontations with members of the public, with over 40 recorded incidents lodged with the local police. The gates were closed on an evening to prevent the area being used as a rat-run from the lower end of Howden-le-Wear.

In terms of signage, when the objector moved into the area there was a sign on the boundary fence 'keep out – private property'. This had been placed on the fence by the previous owner and had been in place all of his lifetime. No-one had recalled noticing the sign in question and it had been removed before Google Street View photos had emerged.

The resident had CCTV installed at their property which had recorded footage of people letting their dogs loose in the area. They also had video footage of their hens being killed. A rabbit had also been beheaded.

Challenges were made by residents due to dogs barking in 2004 which lead to an incident where the objector's partner had been threatened by way of a rifle being pointed at his face.

When large tractors use the road, any pedestrian, cyclists or horse riders move to stand in the resident's garden to stand aside. All of these types of incidents severely affected their family life.

The Legal Adviser offered his sympathies to the objector about the instances of anti-social behaviour and criminal activities but stressed that the desirability of the route was not a matter for determination by the Committee. It was explained that the Committee could afford weight to Human Rights Act of 1998, for example, peaceful enjoyment of property and article 8, the right to respect for family, private life and home. Whilst these issues were engaged, it was important to note that these rights were qualified, not absolute, which meant that they could be interfered with, in so far, as such interference was in accordance with domestic law and was necessary in a democratic society for the protection of the rights and freedoms of others. It was considered that any interference occasioned by the making of a Modification Order was both in accordance with domestic law (the Wildlife and Countryside Act 1981) and was in the public interest as it was necessary in a democratic society for the protection of the rights and freedoms of others, namely the public who wish to use the way.

The Committee then heard from supporter who raised a number of points. The gate referred to was installed at the end of July/August 2015. He explained that the previous objector had verbally abused him. Page 131 of the report referred to a 'road closed' sign, however, there was no evidence to show where the sign was located. The objector had held a number of meetings with the County Council's public rights of way team and had passed all necessary evidence onto them.

The Senior Rights of Way Officer provided some clarity for the Committee with regard to gates being closed on Christmas Day. It was explained that there were no gates involved and that it was simply the 'road closed' sign in place. Issues that had been mentioned in relation to a footpath at the front of the houses was irrelevant.

The Committee then heard from a user of the route. He had used the route for the previous 20 years for leisure and exercise. He recalled that in all that time, until recent years, that there had been no restriction or permission. In terms of signage, he explained that there was a sign on the property of one resident stating 'small children playing'. The track had been used both ways by local tradespeople and home delivery vehicles. The track was used to walk to the school and local church. At no time was anyone ever challenged for permission. People used to fix pot holes in the route themselves. There was also a memorial tree garden accessed by the local school who used the route. The Council installed a multi user path because it was safer route to Low Barnes Nature Reserve. The alternative route was considered to be dangerous. The track was popular with horse riders, schools, scouts, cyclists and running clubs.

In terms of the intervention by local police, the supporter explained that he had queried the installation of the gates at a Police and Communities Together (PACT) meeting and this was categorically denied by the Police. Incidents regarding dogs were on police records. If larger vehicles such as bin lorries and tractors were using the track it was not unusual to see any cyclists or pedestrians simply standing on the grass verge to allow them to pass. The route provided a free and safe leisure route and it was important to retain safe footpaths and bridleways. The user felt that people should be allowed to use the route in the same way.

Councillor Tinsley referred to the issue in the 1930 regarding Crook and Willington Urban District Council and maintenance works and queried if anything had been done to determine whether the road was actually a private road – would this have had an impact on the 20 year period and was the desirability of the route a material consideration.

In response, the Legal Adviser informed the Committee that evidence in the 1930's was minimal and it was simply a case that officers could not come to a conclusion of what was in the mind of the Highways Authority at that time. It was presumed that it related solely to maintenance of the track. If the work had been done it would have become a public right of way and maintainable by the Council. It was simply not clear from history.

The Senior Rights of Way further added that the desirability of the route was not a material consideration and that the key consideration was usage.

Councillor Tinsley felt that there was evidence of significant usage and that issues regarding notices, challenges and closures were not proven. He was content with the answers to the queries that had been raised by all parties and was content that the Committee couldn't consider the desirability of the route. The test on the balance of probabilities was that it was reasonably alleged that the route existed and formally moved the recommendation in the report.

Councillor B Armstrong seconded the proposal.

An objection was made by a member of the public who had made it clear that they wished to speak, prior to the meeting, however, she had not been afforded the opportunity. Following confirmation that this was correct, the Chairman allowed the member of the public to make their point known.

The member of the public explained that they lived at Engineman's Terrace and no one had been challenged there, and that their main concern was the traffic that accessed the through road. They referred to an incident when the lower lane had flooded. This had directed people towards Engineman's Terrace. The member of the public did not want more traffic in the area.

Councillor O Gunn sought clarification regarding the proposal put forward and queried if the recommendation was carried, would the road remain private, even though it would be classed as a public right of way. Councillor Gunn queried where the responsibility would be in terms of maintenance of the track and any public liability involving public use.

The Legal Adviser informed the Committee that it was difficult to provide an answer to the issue of maintenance. If the modification order was made it would not make the County Council responsible for maintenance, so whoever maintained the route at present would maintain it in the future. In terms of liability the Legal Adviser felt that this was not an issue that the Committee could consider at this time.

Resolved

That a Modification Order be made under the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement a public bridleway along the full 1125 metre long route

from Railway St Howden le Wear to the adopted highway, unclassified county road 41.27, at the Weardale Railway level crossing.