

## Highways Committee

1 February 2019



### **Proposed creation of public bridleway using compulsory powers Highways Act 1980 Section 26 Red House near Oxen Law, Muggleswick**

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### **Joint Report of Ian Thompson, Corporate Director of Regeneration and Local Services and Helen Lynch, Head of Legal and Democratic Services**

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#### **Purpose of the Report**

- 1 To consider a proposal to create a public bridleway by public path order (Highways Act 1980 Section 26) at Red House near Oxen Law (Muggleswick Parish). The Council's Constitution requires the Committee to decide whether to make an Order, as the proposal has attracted objection from an owner.

#### **Background**

- 2 The highway status of a section of unclassified county road (UCR) 18.3 from near Oxen Law to Red House (A-B on **Document A**) has been vociferously challenged by the owner since at least 2014. The track/route links the minor highway network between Tow Law and Castleside with the Council owned Waskerley Way which forms part of the C2C (Coast to Coast) cycle route.
- 3 Colleagues in Strategic Highways and Legal Services have investigated the Council's historic highway records and concluded that its depiction between points A -B as an unclassified county road is likely to be a mapping error. Evidence of public use is extensive, but is considered insufficient at the present time to establish deemed dedication by use. Currently there is a Private Road No Entry sign at the Oxen Law end of the track and locked gates across the track at varying times. Interest from the public has however been significant, prompting this proposal to create a public bridleway, so safeguarding pedestrian, cycle and equestrian access for the public and providing future clarity as to its status.
- 4 In the period since the dispute with the land owners erupted there have been 73 people who have been in contact with the Council about the issue, 37 people complaining and 41 (mainly cyclists) who have provided information/evidence about their use of the route. Public

interest in the route is therefore high, particularly from cyclists. Pedestrians have also used the route, despite the existence of Muggleswick Fp 22/Lanchester Fp 56, with the same start and finish point. The latter being less straightforward with stiles to climb, a farmyard with gates across it, and livestock often present, while the track is easier to navigate.

- 5 The track, which has a stone surface, has primarily been used since the 1990s. The C2C was launched in 1994 while the route has been depicted on Ordnance Survey maps since the late 1990s as 'other route with public access'. The Waskerley Way is a key off road gateway to the eastern part of the North Pennines AONB and accessing it from/to the south and south east can mean cycling along the A68. The Red House entry/exit point reduces this likelihood as it is further south. The nearest easily accessible entry/exit is from Whitehall picnic area, 2½km to the north of Red House which to access directly by road includes 2km of A68 riding of which half this length has a solid white no overtake line along one or the other carriageway suggesting poor visibility..
- 6 In the vicinity there are a number of accommodation providers, in particular Bee Cottage B&B who report a decline in their business due to the difficulty for cyclists to gain access to/from the C2C in recent years.
- 7 Pre-order consultations have been carried out with the owners of the land that would be affected (private owner and DCC). The private owner has objected while the DCC land managers for the Waskerley Way length of the route are agreeable. Objection has also been made from a rights of way/highways campaigner who considers the Council cannot create a bridleway over land that is already recorded as a highway and Muggleswick Parish Council who are concerned about the health and safety implications of horses passing through a farm. However, the proposals are supported by cycling, walking and horse riding representatives, Lanchester Parish Council and Lanchester County Councillor Jude Considine. The responses are found in **Document B**.

### **Proposed creation**

- 8 Any highway should connect 2 places of public resort, normally another highway. As the Waskerley Way is not a highway/public right of way the proposed bridleway cannot terminate at a point on the railway path but would need to continue to another highway. The proposal therefore not only includes the section A-B, from the point where UCR 18.3 terminates at the Lanchester/Muggleswick parish boundary, along the farm track to Red House and the Waskerley Way but also B-C, along the line to UCR 17.2 at Waskerley Village. These points are

shown on the plan at **Document A**. The bridleway would be at a width of 3 metres.

## **Legal Framework**

- 9 The briefing note at **Document C** describes the statutory framework.
- 10 The relevant statutory provision for the creation of a public path is Section 26 of the Highways Act 1980. A Creation Order can be made by the Council where it appears that there is a need for a public path and they are satisfied that it is expedient to do so having regard to the extent to which it would add to the convenience or enjoyment of a substantial section of the public or the convenience of local residents, and having regard to the effect any creation would have on the rights of the landowner, also taking into account the landowner's right to compensation. In this case the creation of a Public Bridleway is being promoted due to the extent of the public interest, which has been brought to our attention due to the public use being challenged. Use of the track, which is significant, is considered to be evidence of its need. The main users of the route are cyclists who have travelled from locations in County Durham (Bishop Auckland, Chester le Street, Consett, Crook, Durham, Esh Winning, Langley Park, Newton Hall, Shotley Bridge) but also from throughout the north east eg Gateshead, Hexham and Whitley Bay. Riders of the C2C visiting accommodation providers in the Oxen Law area will have travelled from further afield. The Waskerley Way is a well used local route and the C2C is a 140 mile popular ride from the Cumbria coast via the North Pennines using the Waskerley Way before heading down to the coast at Tyne/Wearside. Although it is possible for the public to sometimes use the Red House route when the gates are open there is no certainty for users as to whether their way will be barred or challenged on any particular occasion and no legal protection to prevent closure of the route by the land owner.
- 11 It is accepted that the creation will have an adverse impact on the owner of Red House who would prefer for there to be no public access through the farm. The legislation recognises that likelihood of an effect on the rights of persons interested in the land and provides a compensation provision. This takes into account where the value of an interest of a person in land is depreciated or where they have suffered damage by being disturbed in their enjoyment of the land, due to the coming into operation of a creation order. In effect, once public need is established, the choice of making an order would require a weighing up of the competing interests of the public and the landowner in order to come to a decision on whether the impact on the landowner, having regard to the his right to compensation is outweighed or not by the public interest.
- 12 When confirming a creation order (DCC if unopposed or the Secretary of State if opposed) regard should be given to any material provisions

of the relevant Rights of Way Improvement Plan (ROWIP). The ROWIP for County Durham is a high level strategic document and although supporting the taking of opportunities to improve access to the countryside it does not provide specific detail.

- 13 The Council also has to have regard to the needs of agriculture and forestry and the desirability of preserving flora, fauna and geological and physio-geological features. It must also have regard to the Equality Act in terms of the structures provided on new routes. Any structures that might be required on the new routes will be in accordance with British Standard 5709:2018.

### **Comments on the objections**

- 13 There are two primary objectors to the proposals, the owner of Red House and a highways/rights of way campaigner.

- 14 The highways/rights of way campaigner objects, stating that a bridleway cannot be created on a route already shown on the List of Streets and that the Council should not consider as incorrect the depiction of the route as a highway on the List of Streets

*The objector has been contacted and reassured that the Council will be removing the route from the List of Streets before any Order is made, therefore avoiding the legal problem he highlights. The Council's highway record for the section of track has been provided to him which details how the records point to a mapping error from the 1970s. The route will be removed from the List of Streets before any order is made.*

- 15 The owner objects to the proposals and the reasons have been articulated over a period of time with him directly and more recently his Solicitor. His reasons include the disruption and the effect on the value of the property, conflict with agricultural vehicles and livestock, biosecurity reasons and that there are nearby alternative routes, without the need to use the route through Red House. Muggleswick PC echo the agricultural concerns and in particular horse riders passing through the farm.

#### *Impact on Farm*

*Communications have taken place with the owner (and Muggleswick PC). The Parish Council are most concerned about horse riders using a bridleway and it has been explained that the majority of the users are likely to be cyclists who do not present such a risk. It is accepted that a bridleway will have an impact on the owner's interest in the land. The farm already has a footpath passing through it, it which heads off perpendicular from the track subject to this report and through an enclosed yard with cattle pens. The risk of conflict between vehicles and animals or biosecurity issues along the proposed bridleway route is considered low. This route passes through a straight and wide section of track with good visibility and open aspect with the 'old' farm*

*to one side and a bungalow to the other. There is a pinchpoint with a gate across the track where Footpath 22 joins it but even here there is good visibility. Red House is a small upland farm and over a number of years of inspections by the rights of way officers there has usually been no activity happening or anyone around. Although it is accepted that the owner would prefer to prevent public access at Red House it is considered that the difficulties it will present are minimal and the compensation provisions can take this into account. In terms of compensation, Valuation Officers have advised that this is likely to be around £5,000. This negative impact upon the land owner will be weighed up against the benefits later in this report.*

#### Other alternative routes

*There is another unclassified county road 17.5 leading from Oxen Law to Waskerley Way (WW) and beyond. It is an unmade-up route which the Red House owner quotes as a viable alternative to going through Red House between the WW and Oxen Law. Although this is a possible route it is inferior to the Red House track. It is significantly less direct (when travelling from Waskerley to Oxen Law or vice versa - it is 3 x longer from the WW Red House crossing), requires more climbing due to changes in gradient, is unsurfaced and combined with being a popular route for recreational off road vehicles make it only suitable for very skilled mountain bikers whereas the Red House route is more suitable for a wider range of cyclists and abilities. C2C visitors to accommodation providers in the Oxen Law area who are likely not to be on mountain bikes and will be carrying luggage would be unlikely to use this UCR and their alternative options are to carry their bikes along Footpath 22 (with stiles) or to exit/enter the WW at Whitehall, 2km further north. This option requires a circuitous route via the A68 and rather than a few 100 metres from the Red house WW crossing it is over 8km to return to Oxen Law. A summary of journey times, distances and elevation is shown at **Document D**. It is noted that discussions have also taken place with the owner about other routes across his land to the south of the farm as an alternative access to the WW. These have been considered and are longer, less direct, hillier and require the construction of a new track and other works making them an inferior and more expensive option.*

## **Human Rights Act**

The objections must be considered in the context of the Human Rights Act 1998. Whilst article 1 to the first protocol (peaceful enjoyment of property) and article 8 (right to respect for family, private life and home) are engaged, it is important to note that these rights are qualified, not absolute, which means that they can be interfered with in so far as such interference is in accordance with domestic law and is necessary in a democratic society for the protection of the rights and freedoms of others. It is considered that any interference occasioned by the making of a Creation Order is both in accordance with domestic law (the Highways Act 1980) and is in the public interest as it is necessary in a

democratic society for the protection of the rights and freedoms of others, namely the public who wish to use the way.

### **Assessment of proposal**

- 16 The Committee must first decide if there is a need for the creation of the bridleway on the alignment and length shown on **Document A** at a width of 3 metres. It is submitted that the number of complaints generated from the public and the subsequent evidence of use provided to the Council demonstrates a need for the route. Although there is an unclassified road (18.3) from Oxen Law leading north to the Waskerley Way this is not considered a reasonable alternative being less direct, hillier and unsurfaced, as demonstrated by the public choosing to use the Red House route.
- 17 Next it must be decided whether it is expedient to make the order having regard to the extent to which the proposed bridleway, on the alignment and length shown on **Document A** at a width of 3 metres, would add to the convenience or enjoyment of a substantial section of the public and the effect upon the landowner, having regard to his right to financial compensation and upon the needs of agriculture. The extent of the locations from which the cyclists using the route have originated are extensive being both local, regional and further afield, due to the existence of the C2C being a nationally acclaimed ride. This would suggest a creation order would add to the convenience or enjoyment of a substantial section of the public. In terms of impact upon the landowner and agriculture, it is considered that although there would be some impact on the land owner and his agricultural activities this is minimal and he would be entitled to financial compensation. It is not considered that the proposed bridleway would have any effect on conservation of flora, fauna, geological and physio-graphical features

#### Conclusion on expediency

- 18 Weighing up all of the above factors, is it considered that the adverse impact which the proposed bridleway would have on the farming operations of the landowner is minimal and is outweighed by the significant convenience and enjoyment the bridleway would bring to a substantial section of the public. Accordingly, it is expedient to make the Order.

### **Recommendations and Reasons**

- 18 For the reasons set out above, it is recommended that the Committee agrees to:
- The making of a Public Bridleway Creation Order under the provisions of Section 26 of the Highways Act 1980 (combined with a Definitive Map Modification Order) for the length shown A-B-C on the plan shown at **Document A**.

- The Order subsequently being confirmed as an unopposed Order or referred to the Secretary of State for determination in the event of objections.

### **Process for a public path order (for information)**

Should Members resolve that a Creation Order be made in accordance with the recommendation above, this is merely the start of the legal process. In particular, once a Creation Order has been made, it must be publicised and the owner will have an opportunity to formally object to it. Should objections be received, the Creation Order would have to be referred to the Secretary of State who would usually hold a Public Inquiry before making a decision upon whether or not to confirm the Creation Order.

### **Attached Documents to report**

<b>Document A</b>	1 Overview Plan 2 Detailed Plan
<b>Document B</b>	Consultation responses
<b>Document C</b>	Briefing note re. public path creation orders
<b>Document D</b>	Journey profiles for Red House and other alternative options

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### **Background papers**

- A    Complaints from public and evidence of use
- B    Red House – comparison of alternative options ie other routes offered by owner

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### **Appendix 1: Implications**

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<b>Finance</b>	The Council will cover the costs associated with this proposal as described in the report including statutory compensation
<b>Staffing</b>	Part of routine officer responsibilities
<b>Risk</b>	Low
<b>Equality and Diversity / Public Sector Equality Duty</b>	Not applicable
<b>Accommodation</b>	None
<b>Crime and Disorder</b>	Not applicable

<b>Human Rights</b>	<b>These are considered in detail in the report and</b> all those affected by the proposal will have the opportunity to make representations at various stages including to the Highways Committee and by an Inspector appointed by the Secretary of State for the Environment in the event of objection at the formal order making stage.
<b>Consultation</b>	As detailed in the report at paragraph 7
<b>Procurement</b>	None
<b>Disability Issues</b>	The proposal is the most accessible of all the options discussed in the report as described
<b>Legal Implications</b>	The Order can be contested through a statutory process so a legal challenge is unlikely to be appropriate