

Wildlife and Countryside Act 1981

Definitive Map Modification Order Proposal

**Joint report of Geoff Paul, Interim Corporate Director of
Regeneration and Local Services and Helen Lynch, Head of Legal
and Democratic Services**

Electoral division(s) affected:

Neville's Cross

Purpose of the Report

- 1 In this report the Highways Committee is asked to consider all the relevant evidence gathered in support of an application to modify the Definitive Map and Statement of Public Rights of Way to add a Public Bridleway for a route which runs from its junction of Tollhouse Road Durham to Public Bridleway No. 82 Brandon and Byshottles Parish.
- 2 As there have been no objections, the decision as to whether to make a modification order is a delegated one for the Head of Transport and Contract Services, however, the Committee are being asked to consider this matter in principle only, ahead of the delegated decision to be taken.

Executive summary

- 3 A small section of an old lane leading toward the River Browney and Baxter Wood Farm from its junction with Toll House Road is currently not shown on the Definitive Map & Statement. Signage at the top of this lane shows that it is considered and promoted as part of a Sustrans Cycle route (NCN14), whilst a small 12.3m section of the route at the south end is recorded on the Definitive Map as Public Footpath No. 9 Durham City. This continues part way over a bridge crossing the River Browney and the parish boundary where its classification changes to Public Bridleway No. 82 Brandon and Byshottles.

- 4 This application seeks to reconcile what appears to be an anomaly and homogenise all sections of this route, between Toll House Road and Bridleway 82, to Public Bridleway status throughout and reflect this on the Definitive Map. Accordingly, it is proposed to update the Definitive Map by adding a Bridleway between Points A & B on the plan (**Document A**) and by upgrading the footpath to a Bridleway between the point B & C on the plan.
- 5 A consultation on the proposed addition and upgrade was carried out and no objections were received.

Recommendation

6. It is recommended that the Committee agrees in principle to making a Definitive Map Modification order for the addition to the Definitive Map & Statement of a Bridleway between points A & B on the plan and the upgrading of a small section of Public Footpath No. 9 to Bridleway between points B & C on the plan, under the provisions of section 53(3)(c) of the Wildlife and Countryside Act 1981, with the final decision to be made by the Head of Transport & Contract Services.

Background

- 7 An application was submitted by Sylvia Briggs in April 2017 for the recording of bridleway rights over the route shown as A-B -C on the plan. This would involve adding a bridleway over the route from the junction of Toll House Road Durham to the existing bridleway (82), and upgrading a small section of footpath (9) to bridleway. This would then form a continuous route with no change of status.
- 8 The original application requested the addition of a restricted byway, however, after consultation with the applicant and landowners it was agreed to instead pursue an application for the recording of a bridleway .This was because if it had been claimed as a restricted Byway it would have become a cul-de-sac route, i.e. carriages would not have been allowed to continue through onto the Bridleway section of the route.
- 9 Point A-B on the plan shows the route over which bridleway status would be recorded where currently the Definitive Map & Statement records no public rights of way and B-C shows the route which is currently recorded as a footpath and would be instead recorded as a bridleway).
- 10 Consultees have included the Parish Council and Local County Councillors, landowners and occupiers, user groups and organisations. No objections were made by any of the consultees and support has been expressed by the British Horse Society to the registration of such unrecorded routes.
- 11 The route starts 321m west of the A 167/ Toll House Road junction, and from Toll House Road runs for approximately 124m in a south westerly direction to meet existing Footpath No. 9. Then 12m from Footpath No. 9 to the middle of a bridge across the River Browney where it meets Bridleway No. 82.
- 12 The first section of the route between Toll House Road and footpath (9) historically lead towards a Ford (now a bridge) over the river, Baxter House Farm, and several quarries. Later this route also accessed the Lanchester Valley Railway and Baxter Wood Junction No. 1. The railway closed in 1965, the farm is still extant. The route has also been included as part of the Sustrans Cycle Network (NCN14).
- 13 The route is flanked by mature trees, a hedgerow and a wooden fence to the east and a fenced embankment which is privately owned to the west. Bridleway (82) continues with a tarmac surface from the centre of the bridge heading in a South-Westerly direction through private pastureland which is separated from the route with

a wire fence on the western side. The width of the route on the ground is approximately 3 metres.**Legal Framework**

- 14 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 documentary evidence provided by the Applicant Sylvia Briggs based on advice contained in our guidance document Applying for a Definitive Map Modification Order.
- 15 Section 32 of the Highways Act 1980 deals with the consideration of documentary evidence when determining whether a highway has been dedicated. It allows for any maps, plans or history of a locality or other relevant document to be tendered in evidence and for appropriate weight to be placed on the document including the antiquity of the document, the status of the person by whom and the purpose for which it was created and the source from which it has been stored and produced.
- 16 Should Members resolve in principle that a Modification Order be made in accordance with the recommendation above, this is merely the start of the legal process. In particular, once a Modification Order is made, it must be publicised, and the owners will have an opportunity to formally object to it. Should objections be received, the Modification 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 Modification Order.

Documentary Evidence in support of the application

- 17 The earliest known documentary evidence which depicts the application section is the 1770 Crossgate Moor Inclosure Plan.
Document B.
- 18 An Inclosure Award is a statutory allotment of land which typically also create or record highways.
- 19 1770 Inclosure Plan and Award Crossgate Moor (*DUL) Dean and Chapter) Ref. DCD/B/BA/51*

The route is shown on the inclosure plan and named 'Public Bridle Way and Cart Road to Baxter Wood'. Several small buildings are shown at situated on the east side of the route, below which is the annotation '*Charles Blenkinsops House*'. A double dotted line shows the route carries on across the river. Land shown to the south side of the river is named 'Baxter Wood Estate'.

- 20 The application route is not described or set out in the Award despite it's existance on the plan, this is probably because it was already an ancient route that existed pre-inclosure.
- (i) **Document B** shows the route as depicted on the Award Plan.
 - (ii) **Document C** superimposes the award routes onto a modern Ordnance Survey (OS) map (existing registered public rights of way in the vicinity are also shown).

- 21 **Historic Maps. Document D Greenwood 1820** (*pictures in print website*).

This is a survey of the county undertaken by John Greenwood between 1817 and 1820 for the purpose of compiling a County Atlas.

The route is shown as an enclosed lane heading in a South-Westerly direction toward the river Browney. Two buildings are situated at the northeast end of the route, the river crossing is obscured by the letter 'd' in wood but the continuation of the route on the south side of the Browney is clear.

- 22 **1838 Tithe Plan and Apportionment. Document E.** (*Durham St Oswald PH, Crossgate TS, DDR/ EA/TTH/1 68*)

This was a survey and plan undertaken pursuant to an Act of Parliament for the purpose of recording land holdings liable to

taxation (tithes). The 1838 Tithe Plan for Crossgate Township shows the proposed route to be consistent across several documents from the 'From Ushaw' Road i.e. a **public road**. Plot 39 is the Pot and Glass Public House and can be seen in the apportionment. The blue shading is the Crossgate township boundary.

23 First Edition Ordnance Survey Maps (*DUL*) Sheet XXVI.4: 1857 1st Edition OS 1:6”

OS maps were produced pursuant to an Act of Parliament as an official survey of England and Wales.

The application route has the same layout as the First ed 6” OS map, although no plot numbers are shown. The Ford location is annotated but the footbridge is not shown.

24 Second Edition Ordnance Survey: Document G 1896 2nd Edition OS 1:25”

The application route has the maintained approximately the same layout as previous editions. A footbridge is shown, and the Ford location is no longer annotated

25 Inland Revenue Plan 1910: Document H

This plan was produced by the Valuation Officer under the Finance Act 1910 for the purposes of taxation of land.

The application route is shown as a white road meaning a public road which was not liable to tax. The yellow shading represents the parish boundary

26 Current Views of Application Route

Document 1 View from Toll House Road looking south

Document 2 View of first part of Route

Document 3 View North Back to Toll House Road

Assessment of the evidence

- 27 The County Council, as Surveying Authority, has to make a decision in accordance with the case law and relevant legislation, in particular the provisions of the 1981 Act and the Human Rights

Act 1998. The only considerations that the Council can take account of are those that relate to whether the alleged public right of way is reasonably alleged to subsist. It would be unlawful to consider issues such as the suitability or desirability of the routes subject of the application.

- 28 In this case it is considered that the most important evidence is the Inclosure Award of 1770 (Document B). That document demonstrates that the route was a highway for all vehicles at that date. Whilst the other map-based evidence is corroboratory as to physical existence of the route, less weight must be afforded to these in accordance with Section 32 of the Highways Act as they were not produced for the purposes of showing the status of the route but for other purposes, such as taxation.
- 29 The inclusion of the route on the Inclosure Award plan taken together with the subsequent map evidence is sufficient to demonstrate on the balance of probabilities that a Public Bridleway is reasonably alleged to subsist over the route in question. No contrary evidence has been discovered.

Main implications

- 30 If this route is added to the Definitive Map as a Public Bridleway, this does not create any new public rights, it is merely a formal recording of what already exists. However, the County Council as Highway Authority will become responsible for the maintenance of the surface to a standard suitable for bridleway use only, shared with those having private rights of access.

Conclusion

- 31 On the basis of all available evidence, a Public Bridleway is reasonably alleged to subsist between Toll House Road and Bridleway No. 82, and a Definitive Map Modification Order should therefore be made to record this route as a Public Bridleway.

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Appendix 1: Implications

Legal Implications

See paragraphs 27-29 of the report.

Finance

the Council will be responsible for maintenance to bridleway standard

Consultation

See paragraph 10 of the report.

Equality and Diversity / Public Sector Equality Duty

N/A.

Staffing

N/A

Accommodation

N/A.

Risk

N/A

Procurement

N/A