

**Definitive Map Modification Application
to record the former road Nanny Pops
Lonnen in Spennymoor as Public
Bridleway**

Report of Alan Patrickson, Corporate Director of Neighbourhoods and Climate Change and Paul Darby, Corporate Director of Resources

Electoral division(s) affected:

Spennymoor, Middlestone.

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 over a way called 'Nanny Pops Lonnen'. The route runs from a junction with South View Road Spennymoor, south to the A688, then continues on the south side of the A688, until it reaches the end of an unclassified road approximately opposite the entrance of Hall Heads Farm, Middlestone. (**Document A**).

Executive summary

- 2 The route starts on the North side of the A688 from a junction with South View Road, it runs south, until it meets the A688, it continues on the other side of the A688, southward towards Middlestone Village ending approximately adjacent to the access road of Hall Heads Farm; this point is also the end of an unclassified unnumbered road. It is between 3-4m in width approximately.
- 3 The earliest depiction of the application route is on a survey of lands owned by the Dean and Chapter Estate where it is named 'Spennymoor Lane' which ran between a road called Salters Lane (approximate with current South View Road) and Middlestone Village. The road is shown on successive maps from the Dean and Chapter Survey, County Series of Christopher Greenwood continuing through to the numerous Ordnance Survey editions. By the 1930's it was recorded on the Highways Handover Maps as a publicly maintainable country road. In 1975-6 a small section of the road was stopped up (north side of A688).

This basically restricted the width of the road at one point by the installation of Bollards, it appears this was to stop vehicular traffic crossing the soon to be built A688 Spennymoor Bypass, which dissects the route (**Document D and E**). The stopping up however did not close the road completely but restricted access for motor vehicles. Hence there is vehicular access to the allotment gardens on the section between South View Road and the A688, but not onto or from the A688. The south section of the application route is also not accessed by vehicles. The route is not currently on the Council maps of adopted highways nor is it recorded on the Definitive Map & Statement as a Public Right of Way.

- 4 This application seeks to rectify the current record and the routes status by adding it to the Definitive Map and Statement as a Bridleway.
- 5 A consultation on the proposed addition was carried out with letters of support from the local landowner, the Ramblers Association and the British Horse Society and Spennymoor Town Council (**Appendix 2**).

Recommendation(s)

- 6 It is recommended that the Committee agrees to making a Definitive Map Modification Order for the addition to the Definitive Map & Statement of a Bridleway between points A & B on the map, under the provisions of section **53(3)(c)(i) of the Wildlife and Countryside Act 1981**, and that the Corporate Director of Resources be informed accordingly.
- 7 The Order shall subsequently be confirmed as an unopposed Order or referred to the Secretary of State for determination in the event of objections.

Background

- 8 An application was submitted by Ms Sue Gamble of the British Horse Society in September 2018 for the recording of bridleway rights over a route named locally as Nanny Pops Lonnen.
- 9 The original application covered the route shown as **A-B-C** on **Document A**. The section **B- C** is an unclassified road and as such is recorded on the Highways Map, we do not usually seek to add unclassified roads to the Definitive Map as public rights already exist over such routes. The applicant agreed to drop this section from the original application.
- 10 There was some confusion as to the current status of the route and it was initially thought the whole of the route may have been stopped up,

however it was discovered that a stopping up order applied in 1975 affected a very small section of the route, probably to deter motor vehicles crossing the bypass in a north - south direction (**Documents C and D**). After confirming the stopping up order only applied to a small section, (probably 2m²) of the highway whilst still allowing pedestrian and cyclist access, it was therefore agreed to extend the application to cover this section, between South View Road and the A688.

- 11 It is acknowledged that there may be some concern raised about users crossing of the A688, however there is a precedent for this as to the east Bridleway 58 does the very same thing, as well as Footpaths 16,17,15, and 59 (**Document B**). Adding the small section of Nanny Pop Lonnen on the north side of the A688 would also allow users to access Bridleway 58 without using the verge of the Bypass, as noted by the BHS response.
- 12 Consultees have included the Town 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.

Documentary Evidence in support of the application

1773 Dean and Chapter Survey DUL (DCD/E/AA/19/1-2), (Documents E and F).

- 13 The Dean and Chapter is the formal title of the governing body of Durham Cathedral. The survey records the ecclesiastical estate. The application route is shown on a plan as a result of a survey undertaken in 1773, it covers Middlestone and surroundings, shows land allotments, highways and industrial structures like Kilns and Windmills etc. The application route is very clearly shown and named Spennymoor Lane meeting Salters Lane to the north (now South View).

Historic Maps. Greenwood 1820 (Pictures in Print Durham University <http://valentine.dur.ac.uk/pjp/index.html>) (**Document G**).

- 14 This is a survey of the county undertaken by Christopher Greenwood between 1817 and 1819 for the purpose of compiling a County Atlas that was to be sold on a commercial basis, potential buyers were envisaged as the nobility, clergy and gentry, or those that had the means or necessity of travel. On this edition map Middlestone village is clearly depicted as is the application route, located to the north of the village, the route is depicted with two solid lines which joins another highway (Salters Lane, now South View) that runs east west

1843 Tithe Plan and Apportionment. (Documents H and I).

- 15 This was a survey and plan undertaken pursuant to an Act of Parliament, the 1836 Tithe Commutation Act. Tithe commissioners conducted surveys detailing land, its ownership, occupation and use. which required tithes in kind to be converted to more convenient monetary payments called tithe rent charge. The 1838 Tithe Plan for Middlestone depicts the route on the same orientation as the Dean and Chapter Survey, it is numbered on the Tithe Plan as plot 37 – and described as ‘a Lane’ in the accompanying survey book.

First Edition Ordnance Survey Map (DUL) Sheet XXVI.4:

1857 1st Edition OS 1:25” (Document J)

- 16 OS maps were produced pursuant to an Act of Parliament as an official survey of England and Wales. The survey’s recorded topographical features and are not a record of Public Rights. Originally produced under the Board of Ordnance to aid with military movements around the country in case of rebellion or war in the late 1700s. By the early 19th century, the expense of conducting the surveys and subsequent production of revised update editions meant producing maps that could be sold to the general public. The revenue generated would help fund future revisions/ editions. It is suggested that historic documents, estate maps and plans as well as interviews with locals were used to identify, clarify and depict, through use of shading, different classifications of highways. However, there are no references that conclusively clarify this.
- 17 The application route is depicted with the same layout as shown on the Dean and Chapter Plan and Tithe Plan, the plot is numbered 201 which is listed as a ‘Public Road’ in the accompanying Ordnance Survey book of reference. The lines delineating the road are solid and shaded heavier on the east side, according to the Map Key this is an annotation device used to denote either 1st or 2nd class roads.

Second Edition Ordnance Survey: 1897 2nd Edition OS 1:25” (Document K)

- 18 The application route has maintained the same layout as previous edition’s surveys. The major change to the immediate vicinity is the Binchester Colliery Railway which crosses the route, midway (east - west), and a small row of houses called ‘Burn Cottages’ lying immediately south of the new railway. The cottages front directly onto the application route before it crosses the railway.

Inland Revenue Plan 1910: (Document L)

- 19 This plan was produced by the Valuation Officer under the Finance Act 1910 (abolished in 1920) for the purposes of land taxation. Landowners could claim tax relief in respect of land crossed by a highway. "The 1910 Act required all land to be valued, but routes shown on the base plans which correspond to known public highways, usually vehicular, are not normally shown as included in the hereditaments, i.e., they will be shown uncoloured and unnumbered. It is possible, but by no means certain, that this is related to s.35(1) of the Act: No duty under this part of the Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority. The practice would also be compatible with s.25(3) which states that the total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to... any public rights of way. So, if a route in dispute is external to any numbered hereditament, there is a strong possibility that it was considered a public highway, normally but not necessarily vehicular, since footpaths and bridleways were usually dealt with by deductions recorded in the forms and Field Books; however, there may be other reasons to explain its exclusion".
- 20 The application route is shown as a 'white road' (uncoloured/shaded) meaning it was considered a public road which was not liable to tax (The yellow shading on this image represents the parish boundary).

Ordnance Survey 1920 Edition (Document M)

- 21 This edition Ordnance survey map shows no change to the application route from previous survey.

Bartholomew Map 1920 (Document N)

- 22 Route clearly shown, no change from previous editions.

Highway Handover Map and Notes 1930 (Documents O and P)

- 23 This was produced as a record of Highways maintained by public expense when responsibility was shifted to the County Council from local Parishes. The route is clearly shown coloured blue with no change from previous maps, the accompanying notes call it 'Middlestone to Middlestone Moor', its width is noted 13ft and the surface recorded as 'Waterbound'.

Ordnance Survey 1939 (Document Q)

- 24 The application route has undergone no changes and remains as on previous edition.

1975 Ministry of Transport Extract of Stopping Up Schedule and Plan (Documents C and D)

- 25 This Map shows the sections of Road(s) and Rights of Way which were going to be 'stopped up' to facilitate the building of the Spennymoor Western Bypass, A688, also shown dissecting the route. The plan shows Nanny Pops Lonnen, located immediately to the east of the North symbol, the small area to be stopped up is numbered 4 on the plan, the location of a Bollard is also arrowed (north side of new road). The key to the plan shows roads to be stopped up are annotated with a 'Zebra' stripe'. It is clear from the plans that this was applied to one small area. The full text document sets out the details (**Appendix 4**).

Photo Images of Route (Documents R and S)

- 26 Looking at route on southern section, looking South from A688 (**Document R**).
- 27 Looking South towards Middlestone, Hall Heads Farm (**Document S**).
- 28 Looking South from South View Road towards stopped up section (**Document T**).
- 29 Looking towards A688, and back up towards South View Road (**Document U**).

Assessment of the evidence

- 30 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.
- 31 In this case it is considered that the most important piece of evidence is the Ministry of Transport 1975 stopping up plan and documents (**Documents C and D**). The document demonstrate that the route is still a public highway, which it has been since at least the eighteenth

century (possibly longer). Only a tiny section of the route was stopped up probably to restrict vehicular access across the A688. Section 67 of the Natural Environment and Rural Communities Act 2006 is to extinguish public motor vehicular rights over unrecorded ways (or those recorded only as footpaths, bridleways or restricted byways) unless an exception applies as of 2 May 2006. As the route was not shown on the List of Streets or adopted highways map prior to and up to 2006 motor vehicles (except for those with access rights) are no longer able to use it, however all other rights remain.

- 32 Whilst the other map-based evidence is corroboratory, 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.
- 33 That the route was never 'stopped up' taken together with the previous map evidence, is sufficient to demonstrate on the balance of probabilities that the route should now be recorded as a Public Right of Way with at least Bridleway status. No contrary evidence has been discovered

Legal Framework

- 34 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 under Section **53 (3)(c)(i)** 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 which is not shown in the Map and Statement subsists, or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this part applies.
- 35 The evidence in this case is documentary evidence provided by the applicant Mrs S. Gamble (who researches on behalf of the British Horse Society) and is based on advice contained in the book Rights of Way: Restoring the Record by Sarah Bucks and Phil Wadey and the County Council's guidance document Applying for a Definitive Map Modification Order.
- 36 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.

- 37 Once a highway comes into existence, it can only cease to be a highway in certain circumstances, such as by way of a formal stopping up procedure. The fact that the highway may have fallen into disrepair and/or disuse has no impact upon its status as highway.
- 38 The Human Rights Act is of relevance. 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 Modification Order is both in accordance with domestic law (the Wildlife and Countryside Act 1981) 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.
- 39 Should Members resolve in principle that a Modification Order be made in accordance with the above legislation, this is merely the start of the legal process. 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 deciding upon whether or not to confirm the Modification Order.

Conclusion

- 40 The evidence submitted shows the application route is a former Highway and whilst no longer a route used for motor vehicles the public still have rights of use at the least commensurate with those of Bridleway status. It is arguable that recording the route on the Definitive Map and Statement is merely a rectification the record. Therefore, it is recommended that a Definitive Map Modification Order is made to add the route to the Definitive Map and Statement as a Public Bridleway.

Other useful documents

Appendix 2 Documentary Evidence

Appendix 3 Response to Consultation

Appendix 4 1975 Copy of Stopping up Order

Author(s)

[Dagmar Richardson]

Tel: 03000 265340

Appendix 1: Implications

Legal Implications

Text.

Finance

Text.

Consultation

Text.

Equality and Diversity / Public Sector Equality Duty

Text.

Climate Change

N/A

Human Rights

Text.

Crime and Disorder

Text.

Staffing

Text.

Accommodation

N/A

Risk

Text.

Procurement

N/A

Appendix 2: Document 2 Applicants Evidence
