

**Definitive Map Modification Order
Application for Acton Road South
Bedburn**



Report of Corporate Management Team

**Alan Patrickson, Corporate Director of Neighbourhoods and
Climate Change**

**Councillor John Shuttleworth Cabinet Portfolio Holder for
Highways**

Electoral division(s) affected:

Evenwood and Barony

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 by the addition of a Bridleway which runs from Cloudlam Rake, located at the northwest side of Hamsterley Forest leading south - southeast towards Pennington Rake and continuing south to the west side of Plantation. (**Document A**).

Executive summary

- 2 An application was received in 2019 from Ms Barbara Herd to modify the Definitive Map. The application is based on historical documentary evidence, primarily an Inclosure Award of 1760 which describes an historic highway that runs south - southeast across along the west side of Hamsterley Forest South Bedburn. The applicant's case is that this highway was created by an Act of Parliament, and it has never been stopped up and should therefore be recorded on the Definitive Map & Statement with the status of public bridleway. The contention is therefore that those rights were established through an Act of Parliament (albeit over a century ago), and that these historic public rights still exist.

- 3 A consultation was carried out on the proposed application route with the landowner, user groups, and the local Parish Council, and local County Councillors. Objections were received, as well as letters of support. Support for the application has been expressed by the British Horse Society, and Ms J. Bird from the Open Spaces Society and Mrs Joan Martin from the Ramblers Association.
- 4 The only objection is from the Forestry Commission (landowner) which claims the route would entail destruction of young conifers as they say there are no open trackways. Whilst not strictly relevant to the assessment of the application, should it be successful, the Council would be willing to work with the Forestry Commission to see how the route can best be accommodated on existing tracks or firebreak roads, following the historic trajectory of the route. Whilst applications based on historical documentary evidence constrain the applicant to apply for a modification based on the original route the actual text of the Inclosure Award, that describes the route as 'running southward' would give a degree of flexibility in terms of reinstating the first section of the route (to High Acton Currick) and the Council is prepared to work with the Forestry Commission to determine this with a view to mitigating the practical impact of the route on the ground should the application be successful.

Consultation letters and Responses are contained in (**Appendix 3**).

Documentary Evidence

- 5 The earliest known documentary evidence which describes the application route is the 1760 Inclosure Award. The Inclosure Act Award and accompanying Plan is a statutory allotment of land which typically also creates or records highways (**Document B**).

1760 Inclosure Plan and Award Bedburn (Copy Plan produced 1884 (DUL) Dean and Chapter: Ref. DHC/III /8).

- 6 The route is described and named within the Award text but not actually shown on the Award Plan, this may be because the current available plan was a copy plan made in 1884; the original plan was described as being in a dilapidated state. However important points on the route are such as Cloudlam Rake and High Acton Currick are depicted. The allotments through which the route passes and mentioned in the Award text, are also depicted (**Documents B and C**).

Award Text transcribed below (Document C)

- 7 *“And we do hereby sett out and appoint another Public Highway of the breadth of Forty Foot thro’ and over that part of the said wastes and commons to be divided, heading southwards from a place called Cloudlam Rake into over and along the west end of Pennington Rake to the road in Smithy Hirst Sike as the same hath also been sett out and staked, which Highway we shall hereafter refer to and call by the name of Acton Road”.*
- 8 Under a section of the Award called “**Names and Uses of the Public Highways**” the text states “*And we do also hereby order and appoint that all the said several common publick Highways abovementioned ascertained and set out and called by the several Names of the Windy Bank Road the North part of the said Crake Scarr Road as is herebefore mentioned and described New Row Road, Redford Road, Crow Nest Road, Shipley Road, Hartup Road, Shull Road, Hoppyland Road, Apeshield Road, Egglestone Road, Redgate Shield Road, Stanhope Road, Hart Sowlings Road, Acton Road and Podshole Mill Road and every of them shall and may from time to time and at all times hereinafter be used by all and all manner of person and persons passing and repassing either on foot or with Horses to asses Carts Carriages or cattle and for all other purposes whatsoever at their free will and pleasure and shall be made and forever remain of the breadth of forty feet at the least and within the ditches and exclusive thereof, and that the same shall within two years from the Date hereof be made and for ever hereafter be repaired and maintained by and at the expense of the owners or occupiers for the time being of the several allotments hereinafter by us assigned and set out for and in respect of their lands and tenement within the Township of South Bedburn aforesaid....” (Document C)*

Historic Maps. Documents

Ordnance Survey Boundary Remark Book 1853 (TNA OS 26/3381) (Document D and E).

- 9 Boundary remark books, also called Perambulation Books, were basically the notes and sketches taken as part of the surveying process for the production of the First Series Ordnance Survey Maps c.1857. These initial surveys often relied on information contained in Inclosure Award books and the accompanying Plan.
- 10 The Boundary Remark Book contains a sketch of the application route crossing Eggleston(e) Road and Redgate Shield Road; both Inclosure Roads (**Document D**). The sketches in the book correspond with the depiction on the Inclosure Plan, which show both Eggleston and

Redgate Shield Roads converging before the parish boundary. Although Acton Road is not shown on the Inclosure Plan, it is shown in the Boundary Remark Book crossing the latter two roads. The next two pages from the perambulation book names all three routes and gives an approximate sketch of the points where Eggleston and Redgate Shield are crossed by the application route (**Document E**). However, it must be noted that both Eggleston and Redgate Shield Road (Today) converge beyond the Unitary boundary, as depicted on later edition Ordnance Survey Maps, and indeed on the current Definitive Map of Rights of Way.

**First Edition Ordnance Survey Maps (DUL) Sheet XXVI.4: 1857
1stEdition OS 1:25: (Document F)**

- 12 A double dash line is shown running southeast from Cloudlam Rake on the map towards Acton Beck. From there it continues in south-easterly direction, passes the location of a 'Currick' and continues east to southeast and 'High Acton Currick' (A 'Currick' is a stone, or pile of stones often set on an elevated point in the landscape which could identify a place, a boundary or mark a route). The continuation of the route south from High Acton Currick, as described in the Inclosure Award, running along the western edge of Pennington Rake is not depicted. Interestingly on this edition map there is no clear representation of either Eggleston Road or Redgate Shield Road (also Inclosure Roads) which Acton Road crosses, however as stated previously they are both mentioned in the Boundary Remark Book and are clearly shown on the 1897 Second Edition Ordnance Map. They are both currently recorded as Public Bridleways.

**Second Edition Ordnance Survey: 2nd Edition OS (1897) 1:25" inch
(Document G).**

- 13 The application route's presumed trajectory is shown running towards High Acton Currick (double dash lines) on the same layout/alignment as on the previous edition map. Redgate Shield Road and Egglestone Road are now both clearly shown. The last section of the route (south end) that runs along the western edge of Pennington Rake Plantation, and as described in the Inclosure Award text is unclear and there is not a clearly corresponding route on this edition Ordnance Survey.

Third Edition Ordnance Survey 1923 1:25": (Document H)

- 14 This edition map shows the first section route as represented previously; it remains unchanged.

Fifth Edition Ordnance Survey 1953 1:10,560 (Document I)

- 15 The first section of the route is still extant on this edition map and follows the same trajectory; on this edition the southern section of the route is also shown, albeit plantation annotation of forestry obscures it a little.

1977 Ordnance Survey 1:10,000 (Document J)

- 16 The first section of the route is lost on this edition obscured by plantation and fire breaks, the section from High Acton Currick is depicted as well as other forest tracks.
- 17 Images towards High Acton Currick (**Document K**)

Legal Framework

- 18 Durham County Council as Surveying Authority has a duty to keep the Definitive Map and Statement under review. Under the provisions of Section 53 of the Wildlife and Countryside Act 1981, the County Council 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)
- 19 The evidence in this case is documentary evidence provided by the applicant Mrs B. Herd (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.
- 20 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.

- 21 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.
- 22 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.
- 23 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

Assessment of the Evidence

- 24 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 route subject of the application.
- 25 The submitted evidence has been reviewed and the key piece of evidence is the 1760 Inclosure Award (**Documents B, C, D**). This document was produced under an Act of Parliament, as a means of enclosing the 'commons' but also defining a means of traversing the said commons via the establishment of Highways and Paths; Acton Road is one of those Highways. The Award not only names the Road, it describes its minimum width (Forty Foot) and the landscape features

along the way like High Acton Currick, but most importantly for whom and by what manner of transport the road is designated.

The Award states “*herein after be used by all and all manner of person and persons, passing and re-passing either on foot, or with horses to asses to carts to carriages or cattle and for all other purposes whatsoever...*”.

- 26 As there is no evidence of this route having been legally extinguished (stopped up), it is therefore concluded that on the balance of probabilities a Public Right of Way with at least Bridleway status, is reasonably alleged to subsist between the place Cloudlam Rake and the southern extent of the area historically and currently known as Pennington Rake Plantation. It is also clear from the Award text that Acton Road joined another to the south of Pennington Rake Plantation named in the Award as ‘Siddy Sike Road, which is likely the route recorded today as Bridleway 4 (*pers comment*). This runs parallel to the line of the Smithy Hirst beck, formerly Siddy Hirst Sike in the Award text. Smithy Hirst Beck is a tributary of Spurlswood Beck which flows along the southern boundary of Hamsterley Forest.
- 27 Whilst the Award Plan does not show the route of Acton Road, it is a later replacement, the original having become worn out, which may explain why it has been missed off this plan. It is therefore considered that the description in the Award Text is sufficient to enable the route to be ascertained. Furthermore, the later Ordnance Survey maps which show what was on the ground in terms of this route at various dates are supporting evidence in that regard. In particular, these maps show that a route resembling Acton Road existed on the ground up until around 1977 when the route appears to have fallen into disuse and therefore disappears from the OS maps. As these maps were not produced for the purpose of defining public highways, they cannot be determinative of this issue in themselves but are useful corroboratory evidence.

Landowner objection

- 28 The only objection has been submitted by Forestry England, as landowner. They state that they object because the route would pass through an area of recently planted conifers and that clearing this plantation would have a significant effect on forestry operations. As this objection is about the desirability of the route on the ground, it is not relevant to the legal test to be applied, namely whether a bridleway is

reasonably alleged to subsist. In any event, the Council is prepared to work with the landowner to mitigate the impact of the route on the ground, as far as possible.

Main Implications

- 29 If this route is added to the Definitive Map & Statement as a Public Bridleway the County Council as Highway Authority will become responsible for the maintenance of the surface of the route to Bridleway standard. The County Council will also be responsible for the installation of Bridleway gates (where applicable); after six months maintenance of any Bridleway gates becomes the responsibility of the Landowner.

Conclusion

- 30 The submitted evidence has been reviewed and the most significant evidence is the 1760 Inclosure Award (**Document D**). The document demonstrates importantly that the route exists, and secondly for whom and by what it might be used, which the text states was for the use of all manner of persons and vehicles. No stopping up of the route has been discovered and therefore, it is concluded that on the balance of probabilities a Public Right of Way with rights commensurate with Bridleway status is reasonably alleged to subsist between Cloudlam Rake and Southern extent of Pennington Rake Plantation. In particular joining Bridleway 4 at Blackling Hole. Whilst the route is not actually depicted on the Award Plan, this is likely due to the fact that the original plan is no longer available and was replaced by a new copy plan in 1884. However, the description in the Award Text and the later OS map depictions are sufficient, taken together, for the route to be ascertained.

Recommendation

It is recommended that members resolve to:

- i) grant the application by making a Definitive Map Modification Order to add Acton Road as a bridleway to the Definitive Map & Statement of Public Rights of Way and;
- ii) in the event that no objections are received or sustained, to confirm the Definitive Map Modification Order as an unopposed order and;

- iii) in the event that objections are received and sustained, to refer the Definitive Map Modification Order to the Secretary of State for confirmation.

Background papers

- Application papers

Other useful documents

- None

Author(s)

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Appendix 1: Implications

Legal Implications

See para 21-26

Finance

the route, if recorded, will be maintainable at public expense

Consultation

See paras 3 & 4

Equality and Diversity / Public Sector Equality Duty

There are no specific PSED issues raised by this application

Climate Change

N/A.

Human Rights

see paras 22 & 23

Crime and Disorder

N/A.

Staffing

N/A.

Accommodation

Risk

N/At.

Procurement

N/A.