

Highways Committee

12 December 2022



Alleged public bridleway, North Grain Public Bridle Road, from grid reference 387576.537170 to C Road C27 (grid reference 387492.537198), St-John's-Chapel, Stanhope.

Wildlife and Countryside Act 1981

Definitive Map Modification Order Proposal

Report of Corporate Management Team: Alan Patrickson, Neighbourhoods and Climate Change and Helen Lynch, Head of Legal and Democratic Services.

Electoral division(s) affected:

Weardale

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 adding a public bridleway in the ward of St-John's-Chapel, Stanhope starting at grid reference 387576.537170 to public highway C road C27 (grid reference 387492.537198) following the route marked A-B in ***Document A***.

Executive summary

- 2 This application seeks to add a route with public bridleway status from grid reference 387576.537170 to C Road C27 (grid reference 387492.537198) in the ward of St-John's-Chapel, Stanhope to the Definitive Map and Statement.
- 3 The route to be added is not currently recorded as a Public Right of Way. As a standalone application, it connects to the public highway at point B on *Document A* but not at point A on *Document A*. However, there are two other applications also before Members today, Windyside Moor and Chapel Pasture Public Bridle Roads, which if agreed, would result in a continuous through route from C Road C28, St-John's-Chapel to C Road C27, St-John's-Chapel, point A to B on ***Document B***.

- 4 A pre-consultation objection was received from a Ms J Martin (affected landowner) shortly after receiving a Notification Form when the application was submitted (**Document C.1**)
- 5 A consultation on the proposed addition was carried out with local Councillors, the Parish Council, landowners, and, user groups and organisations (**Document C.2, C.3 and C.4**) which resulted in objections and support to the proposed amendment to modify the Definitive Map and Statement.
- 6 Objections were received from Mr D Hughes (one of the landowners affected) and Stanhope Parish Council (**Document D**), and support has been expressed by The British Horse Society and The Open Spaces Society (**Document E**) to the proposed addition.
- 7 The objections lodged by Ms J Martin, Mr D Hughes and Stanhope Parish Council are based on the suitability and/or desirability of the route.
- 8 The objections lodged by Ms J Martin, Mr D Hughes and Stanhope Parish Council cannot be afforded weight in the assessment of the application as the legislation does not allow for objections based on suitability and/or desirability.

Recommendation(s)

- 9 It is recommended that the Committee resolves to make a Definitive Map Modification Order to amend the Definitive Map and Statement by way of adding a public bridleway under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981.
- 10 Note that the Definitive Map Modification Order will be referred to the Secretary of State for determination in the event objections are made or confirmed as unopposed if no such objections are received.

Background

Application

- 11 A Definitive Map Modification Order (DMMO) application was submitted by Mrs S Briggs, on behalf of the British Horse Society, in July 2019. Historical documentary evidence was submitted to support the application, the most important evidence being the 1815 Weardale Inclosure Award and Plan. The applicant wishes that the Definitive Map and Statement be modified to reflect what they believe should be a public bridleway.
- 12 The section of bridleway to be recorded as a public bridleway is referenced A-B in (**Document A**).

- 13 The application route, at point A in *Document A*, does not currently connect to the public highway. However, at point B on *Document A* the route does terminate on a public highway, C Road C27. There are two other DMMO applications being considered today, which also rely on the 1815 Weardale Inclosure Award and Plan to demonstrate their historical legal status.
- 14 When considering the evidence that has been submitted in relation to this application, it is clear that a public bridleway was legally set out. When considering the evidence that has been submitted in support of this application in conjunction with the other two DMMO applications, it is clear that a continuous through route, with public bridleway rights, was legally created with both ends terminating on a public highway.

Consultation and Objections

- 15 A pre consultation objection was received from a Ms J Martin (affected landowner) in 2019 shortly after receiving a Notification Form B when the application was submitted (***Document C.1***).
- 16 Consultations on the proposed upgrade were carried out with the Local Councillors, landowners/occupiers, and user groups/organisations (***Document C.2, C.3 and C.4***).
- 17 The consultations resulted in objections from Mr D Hughes (one of the landowners affected) and Stanhope Parish Council (***Document D***) and support has been expressed by The British Horse Society and The Open Spaces Society (***Document E***) to the proposed addition.
- 18 The objections lodged by Ms J Martin, Mr D Hughes and Stanhope Parish Council do not refute the evidence submitted in support of the application and have been based on the potential suitability and/or desirability of the route.
- 19 The objections lodged by Ms J Martin, Mr D Hughes and Stanhope Parish Council cannot be afforded weight as the legislation does not allow for objections based on suitability and/or desirability to be taken into account.
- 20 ***The only considerations that the Council can take into account are those that relate to whether the alleged public right way ought to be shown as a bridleway. The key legal test in section 53(3)(C)(i) is that a right of way that is not shown in the map and statement subsists or is reasonably alleged to subsist over in land in the area to which the map relates, being a right of way to which this part applies. It would be unlawful to consider issues such as the suitability or desirability of the routes subject of the application.***

The Route

- 21 The route to be added continues from Chapel Pasture Public Bridle Road (grid reference 387576.537170) and proceeds in a general westerly direction, traverses two tributaries, Harthope Burn and Harthope West Grain and terminates on public highway C Road C27 (grid reference 387492.537198).
- 22 The route is situated on the fell side, from east to west it sits between 360 and 370 m.a.s.l (metres above sea level). The route was set out in the Inclosure Award as a Horse Road or Pack and Prime Way and was assigned public bridleway status with a stipulated width of 20ft (6.1m).
- 23 The surface of the route is predominantly a mixture of rough, rocky pasture, where it crosses Harthope Burn and Harthope West Grain syke.

Documentary Evidence

- 24 **Document F –1799 Weardale Inclosure Act**
Park and Forest of Weardale (Act 39 Geo III) – DRC D/CG 32/40 (previously DCG 13/492)
- 25 Inclosure Acts were produced to allow for the consolidation of what was once open land into sperate parcels that could be individually owned.
- 26 **Document G – 1815 Weardale Inclosure Award**
Park and Forest of Weardale Inclosure Award – PAL 1/3/2
- 27 The earliest and most important legal documentary evidence which describes and depicts the application route is the 1815 Weardale Inclosure Award and Plan.
- 28 Inclosure awards are legal documents, the purpose of which were to record the reorganisation and distribution of parcels of land in addition to providing legal proof and evidence of ownership. They also typically created highways. The details described in many Inclosure Awards consisted of Inclosure boundaries, public and private highways, and their uses, rights of way, water courses and drainage etc, as well as details of the landowners. Most Inclosure awards are accompanied by Inclosure plans/maps and provide a pictorial view of the details described in the Inclosure Award.
- 29 The award describes **North Grain Public Bridle Road** as a Horse Road or Pack and Prime Way and states “*And we do hereby assign set out and appoint another public Horse Road or pack and prime way twenty feet in breadth as the same is now staked and set out by stakes and land marks*”

*and which for distinctions sake we shall hereinafter refer to and call by the name of **North Grain Public Bridle Road** beginning at and leading from the said **Harthope Public Carriage Road** at the north end of the Bridge lately built across the North Grain and proceeding Eastwards to an ancient Gate in the Boundary wall between the said **Harthope Moor** and **Chapel Pasture** at the end of the said **Chapel Pasture Public Bridle Road**".*

30 Harthope Public Carriage Road, or just Harthope Road, as described in the Inclosure material has been named Road C27, mentioned previously in this report, on the Durham County Councils map of Adopted Highways.

31 **Document H – 1815 Weardale Inclosure Plan**

Park and Forest of Weardale Inclosure plans – PAL 1/3/2
<https://iif.durham.ac.uk/index.html?manifest=t2m47429954d&canvas=t2t2j62sd835> - Sheet 9.

32 On the plan North Grain Public Bridle Road is clearly shown heading in a north westerly direction leading on from Chapel Pasture Public Bridle Road and crosses Harthope Burn and Harthope West Grain Syke before joining Harthope Public Carriage Road (Harthope Road). These features are shown, on both the 1815 Inclosure Plan and on current day maps. Additionally, the surrounding Inclosure boundaries remain, for the most part, as there were some 200 years ago with only minor alterations (see Document H.a)

33 **Document H.a – 1815 Weardale Inclosure Plan and current day Definitive Map overlay).**

34 This overlay shows the alignment of the physical features, such as field boundaries, highways and water courses, that are depicted on the Inclosure Plan and current day maps and demonstrates the accuracy of the location of the routes being referred to.

35 **Document I – 1895 1st Edition OS (Ordnance Survey) 1:2,500**
(www.old-maps.co.uk) Sheet XXXIII.13 and Area Book Stanhope Parish Forest Quarter DRO D/CG13/322

36 OS maps were produced pursuant to an Act of Parliament as an official survey of England, Wales and Scotland. Originally produced under the Board of Ordnance to aid with military manoeuvres in preparation for rebellions or war in the late 1700s. By the mid to late 1800s OS maps had evolved considerably and, due to the expense of surveys and the production of revised editions, Ordnance Survey had to diversify. This meant producing maps that could be sold to the public as the revenue would help fund revisions. It is suggested that historic documents, maps, plans and 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 the methods applied by the surveyors to determine the status of a highway.

- 37 North Grain Public Bridle Road is shown on the above-mentioned historic OS map. However, its description has not been included in the accompanying area book. The details of the features associated with the plots of land are described as - Plot 2114 – Rough Pasture.
- 38 Other plots do not contain mention of any roads, tracks or bridleways in the area book, however, tracks other than the route being applied for have been mapped but not mentioned in the area book. As with the Windyside Moor application, plots that contained tracks and water courses for example have been attributed a description of 'Rough Pasture &c', &c being the equivalent to etc to denote that there are other features associated with the plots. It is unclear as to why the '&c' was omitted from the description of certain plots that have other features associated with them.
- 39 Ordnance Survey maps on their own are not conclusive evidence that a public right of way exists, but represent evidence of what was on the ground at the time and therefore their evidential value is corroboratory.
- 40 **Document J – Current Definitive Map**
<https://www.durham.gov.uk/definitivemap>
- 41 The route being applied for, which is documented and shown in the Inclosure Award and Plan, has been highlighted in red on an extract of Durham County Councils Definitive Map. However, the Definitive Map itself does not show the physical existence of the application route.
- 42 **Document K – Current OS Maps**
www.ordnancesurvey.co.uk
- 43 As above
- 44 **Document L – 2016 google street view**
- 45 The photographic evidence provides a visual representation of the application route. Some of the physical features that may have once been associated with the historic route may not be visible/no longer insitu.

Legal Framework

- 46 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.

- 47 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.
- 48 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, disuse and/or seems physically to not exist at all has no impact upon its status as highway.
- 49 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.
- 50 Section 149 of the Equality Act 2010 requires public authorities when exercising their functions to have due regard to the need to i) eliminate discrimination, harassment, victimisation and any other prohibited conduct, ii) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and iii) foster good relations between persons who share a relevant protected characteristic and persons who do not share that characteristic. In this instance, officers have assessed all relevant factors and do not consider that there are any equality impacts identified.
- 51 Should Members resolve 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 whether or not to confirm the Modification Order.

Assessment of the evidence

- 52 The County Council, as Surveying Authority, must 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 into account are those that relate to whether the alleged public right of way that 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. It would be unlawful to afford weight to issues such as the suitability or desirability of the routes subject of the application.
- 53 In this case it is considered that the most important evidence is the 1815 Weardale Inclosure Award and Plan (**Documents G & H**). The Inclosure Award created a Horse Road or Pack and Prime Way and also specifically assigned it public bridleway status.
- 54 Whilst the other map-based evidence, particularly the first edition OS from 1895, 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. For the same reasons, the absence of the route from later editions of the OS plans is not conclusive as to lack of highway status of the route.
- 55 The objectors have not submitted any evidence of their own which would contradict the above Inclosure Award and Plan evidence. Instead, the objections have focussed the suitability and desirability, which cannot be taken into consideration when determining historical documentary evidence based applications.
- 56 It is considered that none of the objections are sufficient to undermine the evidential force of the Inclosure Award which is sufficiently clear and precise to demonstrate that a public Bridleway was created along the route claimed. There is no evidence of any subsequent stopping up of the bridleway since its creation in 1815.
- 57 Therefore, it is recommended that the route being claimed be added to the Definitive Map and Statement as a public bridleway.

Main implications

Maintenance

- 58 If this route is added to the Definitive Map as a Public Bridleway, the County Council as Highway Authority will become responsible for the maintenance of the surface in line with its status.

Conclusion

59 It is considered, after examining all of the available evidence, that on the balance of probability the route under investigation known as North Grain Public Bridle Road meets the test of section 53(C)(i) and a Definitive Map Modification Order should therefore be made to update the Definitive Map and Statement to record it as a bridleway.

Background papers

- [..\DMMO Application & Evidence](#)

Other useful documents

- Previous Cabinet reports / None

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Appendix 1: Implications

Legal Implications

See paragraphs 46, 47, 48, 49, 50 and 51.

Finance

Durham County Council will be responsible for the initial installation of furniture associated with the upgraded legal status for the first six months, thereafter responsibility reverts to the landowner/occupier, and future maintenance of the surface to bridleway standards.

Consultation

See paragraphs 5 and 16

Equality and Diversity / Public Sector Equality Duty

See paragraph 50

Climate Change

N/A

Human Rights

See paragraph 49

Crime and Disorder

N/A

Staffing

N/A

Accommodation

N/A

Risk

N/A

Procurement

N/A

Appendix 2: North Grain Public Bridle Road Summary Sheet & Application Form A

Definitive Map Modification Order Application Register

St Johns Chapel – North Grain Public Bridle Road

Description of the intended effect	Adding Bridleway
Description of Geographical Location	Grid Reference: 387576.537170 to 387492.537198
Parish Postcode	St Johns Chapel DL13 1RL and DL13 1NN
Applicant's Details	See Form A
Date Application Received	10 July 2019
Durham County Council Contact	Senior Rights of Way Officer, Access & Rights of Way, Environment, Durham County Council, County Hall, Durham DH1 5UQ. Telephone Number 03000 265342 email pro@durham.gov.uk
Reference Number	3/19/096
Determination of the Application by DCC	



Application Form for a Definitive Map Modification Order

FORM A

To: Corporate Director of Regeneration and Local Services,
Durham County Council, County Hall, Durham DH1 5UQ



Wildlife and Countryside Act 1981

The Definitive Map and Statement of Public Rights of Way for the County of Durham

1 / 1: S Briggs	Address: C/O Access and Rights of Way Department The British Horse Society Abbey Park, Stareton, Kenilworth, Warwickshire, CV8 2XZ
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Hereby apply for an order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the Definitive Map and Statement for the County of Durham by:-

1 Deleting Adding Select the appropriate status

Footpath Bridleway Restricted Byway Byway Open to All Traffic

Starting at NY 874 372 Ending at NY 876 371

Path name / Reference:
(for deletions only) North Grain Public Bridle Road (Inclosure)

2 Upgrading Downgrading to a

Footpath Bridleway Restricted Byway Byway Open to All Traffic

Path name / Reference:

as shown on the plan attached (this must be of a scale of at least 1:25,000 and sufficient to determine the way on the ground).

1 / attach copies of the following documentary evidence (include user evidence forms) in support of this application:-

List of documents: 1799 Inclosure Act | 1815 Inclosure Act and Award | 1857 OS 1st Edition Map and Book of Reference | Highlighted current day map | Google Imagery | Modification Application |

Dated

10/7/19

Signed



Appendix 3: North Grain Public Bridle Road Application (as submitted by the applicant)

Wildlife and Countryside Act 1981 Application to modify the definitive map

North Grain Public Bridle Road, Harthope Moor.

The Route

- i. The route is in the Stanhope Parish, St John's Chapel Ward and is shown on OS OL 31 North Pennines, Teesdale and Weardale.
- ii. The alleged route starts on Harthope Road just north of the West Grain Bridge at a gate approximately Grid Ref, NY 874 372, and finishes at the boundary wall approximately Grid Ref. NY 876 371.
- iii. A grass and stone surface runs for most of the proposed route and incorporates two Fords over the North Grain Burn and East Grain Burn which merge a little further North and are called Harthope Burn. Shortly after crossing the second Burn there are the remains of the Boundary Wall and somewhere near there was an Ancient gate in that wall leading into the Chapel Pasture Public Bridle Road.
- iv. There is no real definition of the width of the track now although it was made as 20 feet wide as described in the Inclosure Award.

See photographic evidence

Documentary Evidence

1a. 1799 Weardale Inclosure ACT

Extracts from Durham Record Office (DRO) DCG 13/492

The Act lays out the powers and responsibilities of the Commissioners, specifically in respect of roads, public and private.

See extract 1a

1b. 1815 Weardale Inclosure 'North Grain Public Bridle Road' Plan and Award (DUL) PAL 1_3_2 VIII

From A to B is the section of public Bridle Road in the Harthope Moor, just over Harthope Burn the Bridle road moves into Chapel Pasture this suggests that the boundary would be very close to the burn and there would be an Ancient Gate on one side of the burn, most probably the east side as that is where the remains of the boundary wall are, as named in the award below.

This award mentions the Ancient Gate in the Boundary Wall, the same as the adjoining Chapel Pasture Public Bridle Road. *(Please see Chapel Pasture Public Bridle Road Application)*

North Grain Public Bridle Road Transcription

*'And we do hereby assign set out and appoint another public Horse Road or pack and prime way twenty feet in breadth as the same is now staked and set out by stakes and land marks and which for distinctions sake we shall hereinafter refer to and call by the name of North **Grain Public Bridle Road** beginning at and leading from the said Harthope Public Carriage Road at the north end of the Bridge lately built across the North Grain and proceeding Eastwards to an ancient Gate in the Boundary wall*

between the said Harthope Moor and Chapel Pasture at the end of the said Chapel pasture Public Bridle Road.'

Uses of the Public Bridle Roads Transcribed

*'And we do hereby direct and award that all the said several Horse roads or Pack and Prime ways hereinbefore by us set out and appointed shall for ever hereafter be and continue in the narrowest parts thereof respectively of the breadth of twenty feet statute measure and that it shall and may be lawful to and for all persons whomsoever at all times hereafter to pass and repass in upon through over and along the same respectively on foot and on horseback only at their free wills and pleasures. And we do hereby order direct and award that the present and all future owners or occupiers of the said several allotments or parcels of ground through over or along which any of the said several Horse Roads or Pack and Prime ways are set out as aforesaid shall respectively within twenty days now **** ensuring make and place and forever thereafter uphold maintain and keep or repair good and sufficient well going gates on the line of all such last mentioned Road in the fences of their several and respective allotments for the more commodious enjoyment of the same roads respectively.'*

See extract 1b

2. **1895 OS 1st Edition Revised Scale 1:2,500 Sheet XXIII.13** Extract from www.old-maps.co.uk
Area book Stanhope Parish Forest Quarter Durham Record Office (DRO) D/CG13/322

On this OS 1st Edition of the North Grain Public Bridleway the route is shown as a track in approximately the correct position from the Harthope to the boundary wall. I would suggest that the Ancient Gate mentioned before is in the boundary wall where the bridleway crosses it.

In Plot 2114 the description is **Rough Pasture**, however we can see the track clearly on the map so should have had at least &c after the rough pasture.

Conclusion

As an Enclosure Way this route has a clear legal identity. It is one of a number of Public Bridle Roads awarded. Another Indosure Bridle Road (Chapel Pasture Public Bridle Road) joins at the Ancient Gate in the boundary wall and would be a valuable addition to the off road network. It is part of the historically important Indosure system.

Although this is a short route it is part of a longer route and joining other Bridle Roads it would make a traffic free route not too far from villages in the 'dale' and is a potential good off road cycling, riding and walking route and would be an asset to the network of bridleways and paths in the area.

Please could this case be investigated, in the hope that the route could be recorded on the definitive map as a bridleway?