

**Definitive Map Modification Application
to upgrade Public Footpaths 14 and 15
South Bedburn Parish to Public
Bridleway**

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

Electoral division(s) affected:

Evenwood.

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 change the status of part of Public Footpaths 14 and 15 South Bedburn to Public Bridleway. The route starts at Crake Scar Road on Footpath 14 and runs North - Northeast where it meets Footpath 15. The route continues along the line of Footpath 15 passing Eden Lodge and emerging onto Podgehole Lane (UNC 41/3). (**Document A**).

Executive summary

- 2 An application was received in 2019 from Ms Barbara Herd on behalf of the British Horse Society to modify the Definitive Map. The application is based on historical documentary evidence, primarily an Inclosure Act of 1758 and subsequent Award of 1760 which describes an historic route that runs east- north-east across Land between Crake Scar Road, and unclassified road (UNC 41/3) Podgehole Lane South Bedburn. The applicant's contention is that this historically documented Public Right of Way has higher public rights than the current recorded status of footpath, those rights being commensurate with Bridleway status and the Definitive Map should be modified to reflect this. The contention is that those rights were established through an Act of Parliament (albeit over 250 years ago), and that these historic rights still exist.

- 3 A consultation was carried out on the proposed application route in 2019, and 2021; the consultation included landowners, user groups, and the Parish Council. Objections were received from several landowners and a Barrister acting on behalf of the Parish Council, as well as several letters of support from user groups and a local councillor (**Appendix 2**).

Recommendation(s)

- 4 Based on the evidence submitted It is recommended that the Committee agrees to make a Definitive Map Modification Order for the upgrade of the route, currently designated Footpath 14 (part of) and Footpath 15, to Public Bridleway, under the provisions of section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981, and that the Corporate Director of Resources be informed accordingly. The Order shall subsequently be confirmed or referred to the Secretary of State for determination in the event of objections

Background

- 5 An application was submitted by Ms B. Herd in 2019 which was based on historical documentary evidence, primarily the Parliamentary Inclosure Act (1758) and Award 1760, which seeks to re-establish Bridleway Rights over the application route that runs between Crake Scarr Road, over part of Footpath 14 and thence along Footpath 15 where it emerges onto an unclassified road (UNC 43.1) Podgehole Mill Lane. At present (as noted previously) the route has recorded public rights but only commensurate with footpath status
- 6 The proposed new section of bridleway (upgrade of footpaths) shown circled, (**Document A**).
- 7 Summary of Objections (**Full transcription of responses to the consultation contained in Appendix 2**).

Documentary Evidence in support of the application

- 8 **The 1760 Inclosure Plan and Award Bedburn (Copy Plan produced 1884, Ref. DHC/III /8, Document I) The original plan (1760) is rarely available for consultation due to dilapidated condition**
- 9 The earliest known documentary evidence which describes the application route is the 1760 Inclosure Award. The Parliamentary

Inclosure Act, Award and Plan is a statutory allotment of land which typically creates or records highways (**Documents G and H**).

- 10 The route is described within the Award text but not shown on the Copy of the Award Plan (1884). However, the applicant was able to view and photograph a relevant section of the original plan which does show a depiction of the route via a dash line that traverses the edges of allotments described in the award text, starting from Crake Scar Road (**Document J**).
- 11 In the Award Text the route is described as starting from lands in the Woodlands Township and running east - northeast towards Podgehole Mill Road. The first section of this route lies on the west side of Crake Scar Road, and this is currently recorded as Bridleway number 42 Lynesack and Softley Parish on the Definitive Map. The application route is a continuation of this Bridleway running between Crake Scar Road and Podgehole Mill in the northeast. The Definitive Map Survey book records that the Parish of Lynesack and Softley made reference to the designation of the route as mentioned in the Inclosure Award when determining the section of route through their Parish, which was recorded as Bridleway. However, when the South Bedburn survey was undertaken the Parish made no reference to the Inclosure Award with regard to any routes located there.
- 12 An image of the copy plan has been included (**Document I**) as it shows the points relevant to the routes start, and its destination through the various landowner allotments. The transcription describes the full extent of the original route from what is now UNC 33.5 Windy Bank Road, formerly Woodland Back Pit Lane as recorded in 1950's survey. The Award Text clearly states the use of the route "on foot or on horseback", as well as the width 12ft.
- 13 In the Award Text the application route is described and set out, text is transcribed below:

"Transcription of Award Text, (inserted bold letters identify points on the Inclosure map that show line of route, Document I)

And we do hereby sett out and appoint a way or passage of the breadth of 12 feet as the same is now sett out leading from the Township of Woodland to or towards the said Podshole Mill Road beginning at (A) the Northwest comer of the Lands and Grounds hereinbefore allotted to the said Joseph Coates Lessee of the said Trustees of Rivington School and leading thro' over and along the North End thereof and from thence into and along (B,) Lands allotted to the said Christopher Parkin lessee of the said Trustees of Rivington School for or in respect of their

*Copyhold lands in his possession and so thro over and along the first Plot or Parcels of Ground hereinbefore Allotted to the said Henry Coats and offerwards into and along (C) the third plot of ground hereinbefore allotted to the said Lord Viscount Vane so far as to (D) the South West Corner of the Lands first allotted to the said James Best and from thence into and along the said last mentioned allotment of the said James Best then into (E) **the said Crake Scar Road and Crossing the said Road** into and along the second Plot of ground allotted to the said James Best and by and along (F) the South Corner of the Inclosed Lands belonging to the said William Henderson and from thence into and along (G) the North Side of the lands and Grounds hereinbefore allotted to the said Christopher Parkin and John Stobbs and then into (H) Lands and grounds hereinbefore allotted to the said Michael Garthome for or in respect of his Freehold lands within the Township of Hamsterley and from thence into along (I) the Grounds hereinbefore allotted to the said Thomas Blenkinsop and then to (J) the said Podshole Mill Road for the use of all and all manner of persons whomsoever to pass and repass at all times of the year in thro' and along the said Way on Foot or on Horseback and also to lead and drive all and all manner of Cattle loaden or unloaden in thro over and along the said way as occasion shall require and we do also order and direct that for the convenience of persons passing and repassing along the said way as aforesaid the several owners or occupiers of the said allotments shall from the day of the Date hereof severally and respectively make and erect and forever after uphold and maintain good and sufficient gates in the fences of the said several and respective allotments in such parts of the said way doth lead thro and are now marked and sett out for that purpose*

14 **First Edition Ordnance Survey Maps (DUL, Sheet XXVI.4)1857 1st Edition OS 1:25: Document K**

15 The application route has been annotated with a red line on this first edition map as the majority of the route is not depicted, other paths are also absent on this edition. However, the Ordnance Survey Book of Reference records the presence of the northern section of the route through field plots, 734, 733, 739 as an occupation road, road, and pasture and cart road. The line the route takes as highlighted on this edition map mirrors the field boundaries on the Inclosure Plan.

16 **Ordnance Survey Book of Reference information (Document L).**

Ordnance Survey Book of Reference (or Area Books) record acreages of each land parcel as well as land use, on the Ordnance Survey 25" inch to a mile edition maps, produced pursuant to an Act of Parliament as an official survey of England and Wales. The survey's recorded topographical features, basically what surveyor's saw at the time and

are not a record of Public Rights. The Ordnance Maps were 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 up to date editions resulted in production of 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 Second Edition Ordnance Survey: 1897 1:25" inch (Document M)

Unlike the First Edition Map the route (as well as others) is clearly depicted by a dash line which follows the field boundaries in a north-easterly direction, this part of the route is annotated BR (Bridle Road). The route follows the line of current footpaths 14 and 15, two other paths are shown, one running north-south from Kay Lea Farm, and one further east runs south from a junction with footpath 14. The application route passes through West Plantation, there it is clearly depicted as a double dash line, another path detaches from it heading east, this is just to the south of the feature marked Clay (site of a dwelling and probably old clay pit). The north end of the route appears the same as on previous edition map with solid lines on either side and annotated BR.

18 Second Edition Ordnance Survey 1898 1:6" inch Document N

This 6-inch map is a little clearer and detailed than the 25inch depiction of the route (a small section of the map at the southwest was missing). Starting from Crake Scar Road the colliery is clearly shown to the west with the Bridleway (current BW 42) running to the north of it. On the east side the application route starts at the same point as another path heading to Kay Lea, and initially runs southeast for a short stretch, then turns northeast, annotated BR. The double dash line follows the field boundaries, and as previously is crossed by another path running north south and another further east heading south. The route continues to West Plantation passing a spring and 'Clay' feature. The dash line of the path then changes to solid black lines all the way to a Ford, immediately south of Podgehole Mill.

19 Third Edition Ordnance Survey Map 1921, Extracts From 1:25inch Document O and 1:6inch 1924 Document P

This edition map shows the route unchanged as on the previous editions, each end of the route is annotated BR for Bridle Road

20 **Whilst the existence of a route depicted on an OS map cannot per se be used as evidence of a routes status it can be used as evidence for the physical existence of a route.**

21 **First Definitive Map 1952, Ordnance Survey 1:10,560 (Document Q)**

The first section of the original route as described in the Inclosure Award shown marked in green runs between Woodlands and Crake Scar Road (Bridleway 42). However, the application section between Crake Scarr Road and Podgehole Mill Road is shown in purple denoting footpath status. There is no evidence in the original survey documents as to why Footpaths 14 and 15 were recorded as such. However, the section BW 42 is in the Lynesack and Softley Parish and the original survey from there clearly states that the Inclosure Award was consulted when it was given its status.

22 **Ordnance Survey 1976 and Extract from Coal Authority Map (Document O)**

This map shows part of the landscape around the route was subject to open cast mining; only the eastern section of the route is depicted on this edition. No evidence has been found regarding any temporary closure or stopping up. However, the fact that paths are recorded on today's Definitive Map shows they could not have been subject to stopping up order, as Footpath 14 and 15 were reinstated.

23 **Aerial View of Route Showing Current Rights of Way (Documents S, T, U)**

24 Photographs enroute from the entrance way to Eden Lodge through fields to Crake Scar Lane.

Assessment of the evidence

25 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.

26 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

32 The Parish Council, represented by Barrister Nicola Allan, have argued that the application should be dismissed on the basis that it does not meet the legal test, specifically section 53 (3)(c)(ii) of the 1981 Highways Act, that discovery by the authority of evidence(ii) i.e. that a highway shown on the map and statement as a highway of a particular

description ought to be there shown as a highway of a different description.

- 33 Their argument is that at the time when the Parish survey was conducted, the Parish Council were already aware of the Inclosure Act and Award, therefore evidence submitted by the applicant is not new and therefore cannot now be considered. However, we strongly dispute this assertion as it is quite clear from the actual Survey book, from the initial 1949 survey (prior to production of the first Definitive Map 1952) that the surveyors and Parish Council made no reference whatsoever to the historic Inclosure Award. If they had, it would surely have been referenced in the accompanying survey notes, as was the case in neighbouring Parish Lynesack and Softley. The notes however show that the only occasional reference they did make use of was the Ordnance Survey Map (See Appendix 3 for further response to objection).
- 34 The submitted evidence has been reviewed and the most significant evidence is the 1760 Inclosure Award (**Document I**) The document demonstrates that the intention was the route be designated for use on Foot or Horseback with Cattle laden or un-laden. Because of the described use of this way it is concluded that on the balance of probabilities a Public Right of Way with at Bridleway rights is reasonably alleged to subsist between the junction with Crake Scarr Road and footpath 14, following the current line of footpaths 14 and 15 to meet unclassified road 43.1 (Podgehole Mill Road). No evidence to counter that has been discovered.

Legal Framework

- 35 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)(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 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.
- 36 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.

- 37 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.
- 38 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.
- 39 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.
- 40 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

- 41 On the basis of all the available evidence presented, Footpaths 14 (in part) and 15 are a continuation of an historic route which was originally created with Bridleway rights, there is no evidence that these rights were ever extinguished and therefore still exist. It is therefore concluded that on the basis of the evidence Footpaths 14 (in part) and 15 should be upgraded to Bridleway status and a Definitive Map Modification Order should be made to achieve this.

Background Papers

Appendix 2 Documentary Evidence

Appendix 3 Response to Consultation and Barrister Objections

Appendix 4 Copy of South Bedburn Parish Minutes, submitted by the Parish Council

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Appendix 1: Implications

Legal Implications

N/A

Finance

N/A.

Consultation

N/A.

Equality and Diversity / Public Sector Equality Duty

N/A

Climate Change

N/A

Human Rights

N/A.

Crime and Disorder

N/A.

Staffing

N/A

Accommodation

N/A

Risk

N/A

Procurement

N/A