

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Council Chamber, County Hall, Durham on **Friday 21 April 2023 at 9.30 am**

Present:

Councillor R Ormerod (Chair)

Members of the Committee:

Councillors K Earley, J Higgins, J Howey, G Hutchinson (Vice-Chair), R Manchester, E Mavin, D Oliver, E Peeke, I Roberts, K Robson, A Simpson, A Sterling, F Tinsley and M Wilson

1 Apologies

Apologies for absence were received from Councillor D Wood.

2 Substitute Members

There were no substitute members.

3 Minutes

The minutes of the meeting held on 13 January 2023 were confirmed as a correct record and signed by the Chair.

4 Declarations of Interest, if any

There were no declarations of interest.

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

The Committee received a report of the Corporate Director of Neighbourhoods and Climate Change and the Corporate Director of Resources 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) (for copy see file of minutes).

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, the route had recorded public rights but only commensurate with footpath status.

D Richardson, Definitive Map Officer gave a detailed presentation which included aerial photos of the location of route footpaths 14 and 15 and other rights of way, extract of Inclosure Award Act, Inclosure Plan, original award text, extracts from the ordnance survey and photographs of the area.

Ms V Chilcott, Parish Clerk, South Bedburn Parish Council addressed the Committee. She appreciated that it was a complex matter and stated that South Bedburn which was a small parish comprising 140 residents, had 17 Definitive Map Modification Order (DMMO) applications in total. She advised that these applications affected half of the residents of South Bedburn and had caused a great deal of distress and anxiety and had impacted landowners and householders.

The application had been drawn to the attention of South Bedburn Parish Council by residents who were upset and did not understand the process. One of the concerns raised was that the DMMO process did not allow consideration to be given to the costs to landowners, insurance costs, and the affect to resident's security, and the property blight. Although Ms Chilcott acknowledged that these implications could not be part of the decision, she stressed that members needed to be careful making decisions on these matters to ensure the correct decision was made.

With regards to the evidence that had been provided, Ms Chilcott noted that the Inclosure Act was old legislation, and it was urgent for this legislation to be updated to the present day to enable rights of way to be placed correctly where everyone could enjoy them.

Ms Chilcott informed the Committee that South Bedburn Parish Council had not been informed of the change in processing DMMO applications and were therefore not provided with a copy of the draft report to comment on as promised in 2019. She stated that this was the reason for the cancellation of the first meeting on 13 March 2023. Ms Chilcott confirmed that comments from the South Bedburn Parish Council and landowners were submitted to the Council following the cancellation of the original meeting but there had been confusion regarding how the comments should be shared with members of the Committee. It was subsequently agreed that the comments be published as an addendum.

Advice from a barrister acting on behalf of the landowners had stated that it was crucial the Council addressed whether applications had been made in strict

accordance with Section 14 of the 1981 Wildlife and Countryside Act and pointed out that full legible copies of the Inclosure Award and Plan did not accompany the application. Rights of Way Officers had previously advised that extracts of documents were sufficient, but Ms Chilcott stated that the Inclosure Award contained significant details, including time limits, which could have a bearing on the status of the road. Ms Chilcott advised that a handwritten copy of the Award was available online but stated that not all residents had access to the internet due to the remote area and it was unreasonable to expect residents to interpret the Award. To ensure interested parties were not disadvantaged, full modern-day transcripts of the document should have been available.

Ms Chilcott referred to the 1884 copy Award Plan (Document I) and stated that as the alleged route did not show, it may never have been made up and earlier maps did not show the route. With regards to the application route change, she asked members to look closely at the route now allegedly shown in Document J and compare it to the route originally applied for in Document I, noting that these routes were different. There was further confusion as to which route was being applied for. Considering this, Ms Chilcott questioned whether it was fair or reasonable to make a decision on the basis of the report. Ms Chilcott further highlighted an error in para 35 of the report.

Finally, Ms Chilcott advised that she was a keen horse rider and mountain bike rider and had helped fundraise mountain bike trails at Hamsterley Forest, and whilst she appreciated bridleways, South Bedburn Parish Council and herself believed that approval of this application would create great hostility between landowners and users of the bridleway. Given that the Council had received more than 300 DMMO applications for County Durham, she suggested that all parties worked together to discuss applications and prioritise routes which gave maximum pleasure to users, minimal disruption to landowners and the best use of budgets. Ms Chilcott believed that the DMMO application had not been thoroughly validated.

Local Member, J Cosslett was unable to attend the meeting and a statement was read out on his behalf.

Councillor Cosslett fully supported the comments from the South Bedburn Parish Council. He stated that modern day plain English transcripts of documents such as Inclosure Awards were needed to accompany applications in such a way that the average person in the street could understand when looking at the evidence.

Given the implication to the landowners affected by these applications, the committee needed to be as certain as possible that the right decision was made. In this application there was a confusion from the document as to whether the route had been changed from what was originally applied for and whether Footpaths 14 and 15 were the same as the one described in the text of the Inclosure Award, especially as this route was missing from earlier maps. Councillor Cosslett believed that the application should not be approved.

Mr P Taylor, landowner, addressed the Committee in objection to the application. He advised that he had resided at Eden lodge for 29 years and his property was part of route 15. He informed the Committee that he was a former Chief Superintendent at Durham Constabulary and during his service had worked with many officers from Durham County Council and had always found them to be ethically sound, however, he stated that himself and residents had felt bullied by the Council and ignored throughout the DMMO process. In his opinion, the Highways officer had been obstructive and acted in favour of the applicant.

Mr Taylor stated that the DMMO application included photographs that were misleading, and the photograph of the locked gate gave the distinct impression that he did not want the right of way to be used. Mr Taylor clarified that he fully supported public rights of way when the routes were safe and advised that the locked gate was to protect from theft.

Mr Taylor explained that since the application had been made, trees had been cut down in West Plantation and harvested. He further explained that West plantation had been an active drift mine and contained concealed mineshafts and stated that the route was extremely dangerous for horse riders and cyclists. He believed that if the British Horse Society and Rights of Way Officer had walked the correct route, the DMMO application would not have been made as the route was too dangerous. In his opinion, changing the footpath to a bridleway was a huge risk to the Council, who had a duty of care to users. He stressed that the application should be rejected.

Ms B Herd, the Applicant addressed the Committee. She noted that it was not in her gift to change the application process of the DMMO but agreed that more communication with landowners would be helpful. She advised that she was volunteering on behalf of the British Horse Society who were trying to safeguard historic rights. She noted that the Inclosure Award was made a long time ago, but the routes were incorporated into it to balance the public loss of amenity that the Award represented. She further stated that landowners had a responsibility to ensure access by the public.

With regards to whether the paths were made up, Ms Herd noted that it was highly probable as the route was in the Award. She stated that the route was recorded on maps as a bridleway up until 1953 and was marked with the letters 'BR'. Ms Herd accepted that the dotted lines on the map were confusing but stressed that there was a definite bridleway and a legally recorded bridleway in the Inclosure map. Ms Herd explained that when she walked the route, it was difficult to navigate where the path went and stated that the public would find it difficult to know which way to go and that clear signage was necessary.

N Carter, Lawyer (Planning and Highways) expressed his concern regarding the comments raised by Mr Taylor accusing the officer of bullying and bias. The Lawyer

stated that he had not seen any evidence to substantiate this accusation. He explained that officers were professional and had done their best to assess the application, and the evidence that had been submitted, to produce a balanced report.

Further to concerns raised by Ms Chilcott, the Lawyer (Planning and Highways) agreed that South Bedburn Parish Council had been informed in 2019 that they would receive a copy of the draft report and have an opportunity to comment, however he clarified that the process for DMMO applications had changed since 2019 and that providing draft reports was no longer part of the process. Whilst he accepted that there had been a delay in informing the Parish Council of this change, he advised that they were still given the opportunity to comment on the report and their comments had been published as an addendum on the Council's website.

The Lawyer (Planning and Highways) advised that the Committee meeting was the first stage in a long legal process and if members were to approve the DMMO application, that a detailed legal process would follow and would likely involve a public inquiry. The Lawyer (Planning and Highways) confirmed that the application before members was a valid application as stated in Appendix 3 and could be determined at the meeting.

The Lawyer (Planning and Highways) clarified that the applicant had provided the Inclosure Award in full, and the relevant text had been transcribed and was sufficient. The Lawyer (Planning and Highways) further clarified that the text in the Inclosure Award was relevant and readable. He accepted that there was a degree of interpretation with the plans due to the age of the documents but stated that the interpretation that the Officer had recommended was a reasonable one and noted this was something that could be explored in more detail as part of the inquiry.

The Lawyer (Planning and Highways) advised that Ms Chilcott had pointed out a mistake in para 35 of the report and he confirmed that there had been an error. He explained the relevant legal test to the Committee and stated that it was a relatively low threshold test. He also clarified information relating to the Human Rights Act in response to comments raised by Mr Taylor.

The Definitive Map Officer explained that it was never a statutory duty to provide a draft report and rejected the accusation of bullying explaining that she had been transparent throughout the process and had been helpful towards all. With regards to the maps, she confirmed that the application had been made appropriately and the correct documents had been included. She referred to para 35 of the report and clarified that the incorrect definition had been included in error and expressed her apologies for this. She stated it was not appropriate for the full Inclosure Award document to be transcribed but assured the Committee that herself and colleagues had visited the library and viewed the documents in their entirety and that all evidence submitted had been assessed thoroughly.

Considering the responses by the Lawyer (Planning and Highways) and Definitive Map Officer, the Chair asked Mr Taylor whether he wished to stand by the comments he had made regarding bullying and bias. Mr Taylor stated that throughout the process, he and residents had felt the whole Council looming down on them and were made to feel uncomfortable.

The Chair informed the Committee that the local members for the Evenwood division had a difference in opinion with regards to the application.

Councillor Sterling asked which map would have been used when someone had purchased the land or property and if this would have shown in land searches. In terms of the plantation being dangerous for horse riders and cyclists, Councillor Sterling questioned whether landowners were expected to modify the route to make it safe.

In response, the Definitive Map Officer advised that if purchasing a property, a search is undertaken with the Local Authority and a map indicating rights of way provided. Any rights of way would therefore be made clear to the purchaser and the title of deeds would reflect this. In terms of the maps included with the DMMO application, she stated that in 1976 some of the land had been subject to open cast mining, but that the footpaths were shown on later maps. The Definitive Map Officer clarified that an ordnance survey map was not a record of rights of way and was to be viewed as a guide. The Definitive Map Officer advised that if the surveyors who had assessed the land in 1949 had deemed the route to be dangerous, it would not have been included on the definitive map. The Definitive Map Officer advised that there was evidence of mining all over County Durham and that in some areas this had affected the landscape, but it was not necessarily unsafe. She stated that if the landowner believed there were dangers to the land due to mining, then this should be reported to the Coal Authority. In response to a further question from Councillor Sterling, the Definitive Map Officer explained that officers work together with landowners in terms of modifications to their property, and land, where rights of way existed.

With regards to searches and enquiries of the Local Authority, the Lawyer (Planning and Highways) further advised that public rights of way was an optional search when purchasing a property and was dependent on whether the conveyancer had requested it. If this was requested, he advised that the response would have been based on the definitive map and would have only revealed the footpaths, not the claimed bridleway. In terms of the suitability of the route, the Lawyer (Planning and Highways) cautioned members regarding affording weight to this as this was not part of the statutory test.

Councillor Tinsley asked what the current state of the footpath was in terms of accessibility and what was involved practically to change the footpath to a bridleway. He further asked if the route was marked as 'BR' on older maps. The

Definitive Map Officer confirmed that the route was marked as 'BR' on older ordnance survey maps. She advised that as it was a footpath, the public had a legal right of access, and noted that she had attempted to do a site visit but had not walked the whole route due to issues with accessibility. The Definitive Map Officer noted that plantation encompassed a small section of the route but advised that the work involved to upgrade to a bridleway was minimal.

Councillor Earley noted the excellent contributions made from South Bedburn Parish Council, the landowner and the applicant and appreciated that they all had a case. He understood that the Committee meeting was one step in the procedure and if approved, the next part of the process would involve a full inquiry.

Regarding future DMMO applications, Councillor Earley asked if there was a better route available that was suitable to be used as a bridleway, was it possible for the Parish Council to consider a diversion of the route.

M Ogden, Access and Rights of Way Team Leader confirmed that this was an option. Under current legislation, the same process for the DMMO application would have to be followed, but then discussions with landowners could take place to direct the route to one that was more suitable. He advised that this had been made clear and the legal route would not be enforced if there was an alternative route that was better. He advised that for future applications, it was hoped that the process for diversion and modification could be merged into one process, but that current legislation did not allow for this.

Councillor Earley **moved** the application to be approved in line with the Officers recommendation. This was **seconded** by Councillor Howey.

Resolved

That the Committee agreed 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.