

**Definitive Map Modification Application
to record Sleightholme Moor
Road/Track as a Restricted Byway**

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

Bowes

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 with the addition of Sleightholme Moor Road/Track as a Restricted Byway. (**Document A**).

Executive summary

- 2 An application was received in 2019 from Ms Sylvia Briggs to modify the Definitive Map and statement with the addition of Sleightholme Moor Road to be recorded as either a BOAT (Byway open to all traffic) or a Restricted Byway. The applicant was uncertain of the current status of the route so left determination of the appropriate designation to the DMMO Officer. The application is based on historical documentary evidence, and more recent Highways evidence, that shows the former 'road' is an old route that pre-dates later Acts of Inclosure of the surrounding moor. The applied for section of Sleightholme Moor Road starts from the end of UNC 116.27 (Unclassified Road, Gilmonby Road) just to the north of Sleightholme Farm, and runs to the County Boundary whence it continues into North Yorkshire as unclassified road U7000/9/5. That section is also subject to a separate Definitive Map Application submitted to North Yorkshire CC to record it on the Yorkshire Definitive Map as a BOAT (Byway open to all Traffic), which

is yet to be determined. The road forms part of the W2W route 70 of the national cycle network, and a section of the northern extent of the route is recorded as part of the Pennine Way National Trail (**Document A**). However, the whole route is currently unrecorded as a highway of any description on the Definitive Map and Statement. The full length of the road was formerly recorded by North Riding County Council (a predecessor HA to North Yorkshire CC) as part of the North Riding of Yorkshire Highways network as an Unclassified Country Road before boundary changes in 1974 placed the majority of the route in County Durham.

Recommendations

- 3 Based on the evidence submitted, pre 1835 mapping, and North Yorkshire Highways handover records, Officers are of the view that the route is a Restricted Byway and it is therefore recommended that the Committee agrees to make a Definitive Map Modification Order to record the road on the map and statement as a Restricted Byway, under the provisions of section 53(3)(c)(i) of the Wildlife and Countryside Act 1981.

Background

- 4 The application submitted in 2021 by Mrs Sylvia Briggs is based on historic evidence that includes early pre-1835 mapping and Local Authority Highway records. Whilst the route is extremely popular and well used by the public, it is not recorded on the Definitive Map nor is it on the Listed of Streets (adopted highway) under Section 36 of the Highways Act. Public interest and concern over the routes status was generated due to the installation of gates by the Bowes Estate /Trustees of the Moor since c.2021. Whilst the gates stopped public vehicular traffic, public access was still available for walkers, cyclists, and horse riders. Objections to the application based on the applied for status has been submitted which claims that the road should be recorded as a BOAT (Byway Open to ALL Traffic). Some members of the public submitted corroboratory user evidence noting their use of the route by motor vehicle (Table 1, below).
- 5 However, following an investigation by PROW officers, the Highways Team, as well as legal advice, it was concluded that as the road had not been included on the County Council's list of streets immediately prior to the commencement of the Natural Environment and Rural Communities Act 2006 (NERC), namely 2 May 2006, and no other saving provision having been evidenced, then , Section 67 of that Act

applied to extinguish any public motor vehicle rights that may have previously existed over the route (see **Appendix 2**).

- 6 Consultation has been undertaken with the Trustees of the Moor, Bowes Estate, none of whom responded. User groups, UK Cycling, Sustrans, Green Lane Association (GLASS), British Driving UK and local councillors, were also sent consultation notices, none of whom responded. Objections have been received from Bowes Parish Council, Andy Brown Rights of Way Officer North Yorkshire County Council, and Bethan Brown Yorkshire Definitive Map Officer; we have received responses in support of the application from the Open Spaces Society, and the BHS (applicant is their representative).

Summary of Objections

- 7 Bowes Parish Council objects to the status as a Restricted Byway and believes the route should be recorded as a BOAT (Byway Open to All Traffic) based on personal testimony of use with a motor vehicle by a Parish Councillor, full response **Appendix 2**.
- 8 Mr Brown, Senior Rights of Way Officer at North Yorkshire County Council also objects to recording the route as a Restricted Byway and believes it should be recorded as a BOAT. Mr Brown believes that Durham CC has made an error in omitting the road from the Council's List of Streets. He has stated that "Durham's highways team has not been able to explain why all the other green lanes that were being publicly maintained in 1974 still appear to be so (at least according to the DCC Website) and why Sleightholme Moor Road was considered differently" (than other Unclassified routes, email contact 12/05/2023). Mr Brown believes this proves the Highways Team agreed to maintenance as it was a recognised public highway. Mr Brown has submitted personal testimony regarding his own use of the road in a motor vehicle, via user evidence form (summarised evidence of use Table 1, see below). Objection letter and list of roads transferred are contained in **Appendix 2**.
- 9 Mrs Bethan Brown North Yorkshire Definitive Map Officer also submitted copies of Bowes Parish minutes from 1999, 2002, and 2010 which show contact with the DCC Highways Team with regard to nominal repairs, maintenance schedule, and nominal repairs to the road over Sleightholme Farm and public road to Tan Hill, and repair of a bridge (exact location unknown, see **Appendix 2**). Mrs Brown also argued that the Definitive Statements for Public Bridleways 42 & 36, which reference the 'unclassified road' are evidence that the road was on the List of Streets in 2010, as this is when these statements are dated. However, the 2010 date is in fact the date these documents were reprinted for DCC's online archive.

The Evidence

| Table 1: Frequency of Use extracted from User Evidence Forms | | | | |
|---|---------------|-------|----------------------------|--------------------|
| Names | Motor Vehicle | Cycle | Years Used | Frequency |
| Mr Hobbs | X | | 2005-2021 2009-2021 | 4-5 times a year |
| Mr Ranner | X | | 1976-2021 | 2 a year |
| Mr Degnan | X | | 2017-2019 | 2 a year |
| Mr Charlesworth | X | | 1990-1994 | 1-2 a year |
| Mr Richardson | X | | 1978-1985 2017-2021 | 1 a year |
| Mr Parker | X | | 1971-1978 | 1 a year |
| Mr Wheeler | X | | 1970's -85 2000-05 | 1 a year |
| Mr Rutter | X | | 1976-2020 | Every few months |
| Mr Johnson | | X | 2011-2019 | 6 times a year |
| Mr Brown | X | X | 1999-2000 - 2000-2020 - | Weekly 1 a year |
| Mr Allinson | X | X | 1989-2020 | Every few months |

- 10 The table summarises all user evidence forms received, and the use by motor vehicle appears to be on an occasional basis prior to and after 2006, when the NERC Act came into operation.

Documentary Evidence, Historic Maps.

Extract of Barnard Castle County Map by Charles Fowler 1834 (Document B)

Extract of Franks East and North Riding Map 1840 (Document C).

Extract of Walker's County Map North Riding of Yorkshire 1840 (Document D)

- 11 Early County mapping (that shows the route) starts from c.1830's which coincided with the peak of the Turnpike system in the UK, to summarise the Turnpike system was a way of funding the upkeep and maintenance of principal or main highways. As the road network around the country improved interest in travel became more popular, which is why many were dedicated to the Nobility, Gentry and Clergy, those who had the ability to purchase those maps and who might have the need, or inclination to travel. The effect of inclosure Acts, particularly between the late eighteenth and early nineteenth centuries, created new highways as well as recognizing those already in existence, many County Map series recorded some of these routes.
- 12 On Fowler's map the Sleightholme route is depicted as a crossroad, this is a general carriageway secondary only to a Main or Turnpike Road. The map is titled '*The Mail, turnpike and Crossroads*', the route has been annotated on the evidence image, A-B is the Durham leg, B-C the short section now in North Yorkshire.
- 13 Frank's and Walkers 1840 map extracts are much clearer, the route depicted as previous map in the manner of a crossroad (**Documents C and D**).

Tithe Plan for the Township of Bowes 1850 (Document E).

- 14 The map extract shows the application road running southwest from Sleightholme Farm (it is lightly shaded), it then heads southeast at the point where it is joined by another track from the southwest also depicted as a double pecked line but without shading. The application route is shown crossing a stream likely the Hound Beck, and the destination is clearly annotated '*To Tan Hill*' No more is shown as this is the extent of land subject to Tithes. The route is depicted in the same way as the public vehicular highway from Gilmonby with which it connects at its northern extent.

Bowes Inclosure Plan 1859, over First Edition Ordnance Map Extract from the National Archives MAF 1/192 (Document F).

- 15 The first Act regarding the part inclosure of Bowes Moor is dated to 1772 and concerned the area to the north of Sleightholme Farm. A second Act in 1845 established the boundary between Bowes Moor (and parish and manor of Bowes) and the parish of Arkengarthdale in furtherance and clarification of Bowes moor inclosure award (National Archives). The application route is not named in the 1859 Award as its existence pre-dates any later Acts of Inclosure.
- 16 However, the application route is shown as a light grey line on the 1859 Award Plan and is clearly named (above the letter R) *Sleightholme Moor Road*, running southwest – south, the road name appears again before the road crosses the rural district boundary whence it continues, before joining the Reeth to Tan hill road (the Long Causeway) a former Turnpike route.

Ordnance Survey Maps

First Edition Ordnance Survey Maps (DUL) Sheet XXVI.4: 1856 1st Edition OS 1:25: (Document G)

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

Third Edition Ordnance Survey 1918 1:1" inch (Document I)

Fourth Edition Ministry of Transport 1922-3 SABRE (Document J).

- 17 The application is shown running on all Ordnance maps between 1856- to the present. Historically there has been no change to the course of the route except for a section north of the 'Hound Beck' being recognised as part of the Pennine Way. The full length of the route is also recorded as National Cycle Route 70.

Highways 1930 Handover Information (Document K)

- 18 The Local Government Act 1929 handed responsibility for the maintenance of an area's 'main' highways (and other roads, which became County Roads) to the Councils under which they fell, in the case of Sleightholme Moor Road it was the North Riding of Yorkshire County Council. Roads were assigned a moniker either A, B, C, or U relating to their status, ('U' being unclassified road). The 1930 handover maps (which showed highways to be transferred to the new North Riding of Yorkshire CC) shows the route marked by dashed black lines, numbered U1255 for most of its length, then U983 for the short stretch that crosses the parish boundary, where it joins the U958. It seems the section U983 was numbered as such by mistake as this is ruled out in the accompanying list. The U958 is described as Reeth – Langthwaite-

Cocker-Tan Hill- Boundary, it seems likely that this included the stretch of Sleightholme Road wrongly numbered U983. The listing of these Highways implies that they were maintainable at public expense and were considered to have public vehicular rights.

Highways Handover Map from North Riding of Yorkshire CC, 1970's, OS 1960, Sheets 90 and 91, Highways Department Working Map (Document L).

- 19 This map was part of the record of Highways handed over to Durham County Council Highways Dept when the County Boundary between North Riding of Yorkshire and County Durham changed, placing former Yorkshire highways into County Durham. The route is shown highlighted in blue denoting a minor/country road, numbered 117/9, shown joining C road (Long Causeway), coloured dark red at the south end. The section from Sleightholme Farm to Gilmonby, shown recorded as UNC 116.27. All routes delineated in colour were likely considered roads that were publicly maintainable with public vehicular rights.

Legal Framework

- 20 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)

Section 67 of the The Natural Environment and Rural Communities Act 2006 operated to extinguish any unrecorded public motor vehicular rights as at commencement on 2 May 2006, subject to a number of saving/exception provisions. Those relevant are discussed elsewhere in this report.

- 21 The evidence in this case is documentary evidence provided by the applicant Mrs Sylvia Briggs (who researches on behalf of the British Horse Society) some corroboratory user evidence 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.
- 22 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.

- 23 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.
- 24 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.
- 25 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

- 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 route subject of the application.
- 27 The evidence clearly shows that Sleightholme Moor Road is a well-used public route, it is currently a recorded National Cycle Route, and a section is recorded as the Pennine Way. The documentary evidence demonstrates that the route was considered to be an unclassified

highway as far back as 1930 and its highway status likely pre-dates the 1859 Inclosure Award for the area. Furthermore, consistent with this, it was also shown as an unclassified highway on the 1974 handover maps from North Riding CC. There has also undoubtedly been some public motor vehicular use prior to and upon commencement of the NERC Act 2006, operation of the Act extinguished those motor vehicle rights unless one of the saving provisions applied. This is because at the commencement of the Act (1) the road was not recorded on the Definitive Map or Statement, (2) it was not recorded on the Councils List of Streets/List of Highways maintainable at public expense. There is also no evidence to suggest motor vehicular use was the main lawful public use of the route during the 5 years ending with commencement of the 2006 Act i.e. 2 May 2001- 2 May 2006) – S67(2)(a). The corroboratory user evidence testifies to occasional vehicular usage during this period only. Equally, there is no evidence that the saving provision in S67(2)(e) is engaged, namely that the route was created by use by motor vehicles during a period ending before 1 December 1930. Nor have there been any previous modification order applications for BOAT status prior to NERC or any determinations by the Council of such.

- 28 Despite evidence submitted from Mr Brown, and Mrs Bethan Brown, that reference potential repairs to the road, noted in the Parish Council minutes between 1999-2010, whether or not such repairs were undertaken on the route, this does not overcome the fact that it was not recorded in the List of Streets as at the commencement date for NERC.
- 29 It is therefore concluded that on the balance of probabilities that a Public Right of Way as a Restricted Byway (allows a right of way on foot, cycling, on horseback, on a horse drawn vehicle and for any other non-motorised vehicle) exists over Sleightholme Moor Road, and the route should be recorded on the Definitive Map and Statement as such.

Main Implications

- 30 If this route is added to the Definitive Map and Statement as a Restricted Byway the County Council as Highway Authority will become responsible for the maintenance of the surface of the route to Restricted Byway standard. The County Council will also be responsible for the installation of gates (if applicable); the Council is responsible for six months maintenance of any Council installed gates. After six months maintenance of such structures becomes the responsibility of the Landowner(s).

Conclusion

- 31 The submitted evidence has been reviewed and clearly from early map evidence c.1840, and later 20th century Highway mapping the Sleightholme Moor Road is an early Highway, recorded as an unclassified Country Road by the former rural authority, North Riding of Yorkshire until 1974 County Boundary changes. Whilst the road once had motor vehicles rights the introduction of the NERC Act 2006, means those rights have been extinguished as none of the saving provisions in NERC apply in order to preserve those public motor vehicular rights. It is therefore determined that the route should now be recorded on the Definitive Map and Statement as a Restricted Byway.

Background papers

- List any papers required by law / None

Other useful documents

- Previous Cabinet reports / None

Author(s)

Dagmar Richardson

Tel: 07768107032

Neil Carter

Appendix 1: Implications

Legal Implications

Paragraphs 20, 30

Finance

N/A.

Consultation Responses

Appendix 2

Equality and Diversity / Public Sector Equality Duty

N/A.

Climate Change

N/A.

Human Rights

Paragraph 24

Crime and Disorder

N/A.

Staffing

N/A.

Accommodation

N/A

Risk

N/A.

Procurement

N/A.