

## **DURHAM COUNTY COUNCIL**

At a Meeting of **Highways Committee** held in Council Chamber, County Hall, Durham on **Monday 17 July 2023 at 9.30 am**

**Present:**

**Councillor R Ormerod (Chair)**

**Members of the Committee:**

Councillors G Hutchinson (Vice-Chair), C Kay, J Higgins, J Howey, R Manchester, I Roberts, K Robson, A Simpson, G Smith, A Sterling, M Wilson and D Wood

### **1 Apologies for Absence**

Apologies for absence were received from Councillor F Tinsley.

### **2 Substitute Members**

There were no substitute members.

### **3 Minutes**

The minutes of the meeting held on 22 May 2023 were confirmed as a correct record and signed by the Chair.

### **4 Declarations of Interest**

There were no declarations of interest.

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

The Committee received a report of the Corporate Management Team and were asked to consider all 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 (for copy see file of Minutes).

D Richardson, Definitive Map Officer provided a detailed presentation which included a map showing the road location, historic maps of the area and extracts from the ordnance survey, inclosure plan and highway maps.

N Carter, Lawyer explained that he was satisfied that the road had once had public motor vehicular rights, however, the Natural Environment and Rural Communities Act 2006 (NERC) extinguished these rights as the road had not been included on the County Council's list of streets under section 36 of the Highways Act, which had likely been an error by Durham County Council. The Lawyer advised that whilst public motor vehicular user evidence had been submitted, it fell short of demonstrating that the main lawful use between 2001 and 2006 was public motor vehicular use, therefore the highest status that could now be recorded was Restricted Byway.

Councillor Howey confirmed that she knew the road well and advised that it was regularly used as a highway and understood the frustration felt by users.

Councillor Kay asked if there was anything in place to prevent people from using the road. The Definitive Map Officer explained that Bowes Estate had installed gates during the lockdown period to stop 4x4 vehicles from using the road but confirmed that public access remained available for walkers, cyclists, and horse riders.

Councillor Kay asked what the effect would be of implementing the definitive map modification application to record Sleightholme Moor Road as a Restricted Byway. The Lawyer advised that whilst there would be no physical restriction to the road, recording it as a Restricted Byway would put an end to any uncertainty and would clarify that public motor vehicular use would not be permitted.

Councillor Ormerod, the Chair asked for clarification on the options that were available to Members. The Lawyer advised that in Officers' view, the evidence was not sufficient to record the road as a BOAT and further advised Members that options were to defer the application and request further information, accept the officer's recommendation, or provide reasons to refuse the application.

In response to a question from Councillor Wood regarding the Parish Council, the Definitive Map Officer confirmed that parish councillors had not submitted a user evidence form. Councillor Wood felt that the forms submitted demonstrated that there was public motor vehicular use and went to ask how North Yorkshire Local Authority had listed the road. The Definitive Map Officer did not dispute that there had been public motor vehicular usage on the road. She advised that North Yorkshire Local Authority had listed the road as an unclassified country road, however the Highways Team for Durham County Council, had not applied any status to the road.

The Lawyer emphasised that the part of the road that continued into North Yorkshire had always been recorded as an unclassified highway. Due to the boundary change in 1974, the records were transferred to Durham County Council, but the road was not included on the list of streets under section 36 of the Highways Act and therefore the rights of public motor vehicular usage were

extinguished. The Lawyer advised that there was not sufficient evidence to demonstrate that public motor vehicular use was the *main* usage.

Councillor Wood highlighted that there was no evidence relating to pedestrian use or any other type of use to compare against public motor vehicular. The Lawyer explained that this was a judgement for Members. M Ogden, Access and Rights of Way Team Leader further explained that using the road for cycling, pedestrian and horse riding had not been challenged and evidence of this use was therefore unnecessary.

In response to a further question from Councillor Wood, the Access and Rights of Way Team Leader confirmed that the National Cycle Network was established in the 1990's and the Pennine Way was established in 1965. The Chair asked if there was any evidence relating to the number of people who walked the Pennine Way. The Access and Rights of Way Team Leader advised that around 10,000 people walk the Pennine Way each year and would use the road in question. The Lawyer highlighted that this clearly demonstrated that pedestrian usage was more dominant in comparison to public motor vehicular usage.

B Herd, British Horse Society asked if it was possible for Highways to add the road to the County Council list of streets given that it was a Local Authority error. The Lawyer confirmed that this was not an option as the NERC Act 2006 was very strict in terms of its application.

Councillor Sterling expressed her sympathy to those affected by applying the status of Restricted Byway to the road but confirmed that she accepted the officer's recommendation and **moved** it for approval. This was **seconded** by Councillor Wilson.

Councillor Manchester asked if there was any evidence from North Yorkshire Local Authority that identified the amount of people that used their side of the road. The Definitive Map Officer confirmed that Durham Local Authority co-ordinated the user evidence forms with North Yorkshire Local Authority, and it was the same people that had responded.

The Lawyer explained that the issue of public motor vehicular usage was key and clarified that evidence was not specifically sought from anyone who did not use the road for this purpose but clearly in light of the estimated pedestrian usage figures given by the Access and Rights of Way Team Leader, public motor vehicular use was miniscule by comparison. The Lawyer advised that should Members approve the application, this would not preclude a future application from another person to upgrade the status of the road to BOAT but stated any such application would need to be accompanied by more evidence.

In response to a question from Councillor Kay regarding the implications of making the road a Restricted Byway, the Lawyer confirmed that anyone who should use the road for public motor vehicular use would be committing a criminal offence.

The Lawyer further clarified that should Members approve the application, an order would be made which would be advertised and would include a period for objections to be made. If objections were received, then it would be referred to the Secretary of State to assess the evidence who may hold a hearing or Inquiry before determining whether to confirm the Order to modify the Definitive Map and Statement of Public Rights of Way with the addition of Sleightholme Moor Road/Track as a Restricted Byway. If the decision of the Secretary of State was to confirm the Order, then the end use would be Restricted Byway and public motor vehicular use would be unlawful.

Upon a vote being taken it was:

### **Resolved**

That 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 be agreed.