

Highways Committee

26 September 2023



Definitive Map Modification Application to record, West Lonning Private Carriage Road (PRoW 10) from Waldridge Lane to PRoW 11, Chester-le-Street as a Public Bridleway

Wildlife and Countryside Act 1981

Definitive Map Modification Order Proposal

Alan Patrickson, Corporate Director of Neighbourhoods and Climate Change

Councillor John Shuttleworth Cabinet Portfolio Holder for Highways

Electoral division(s) affected:

Chester-le-Street West Central

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 upgrading public footpath number 10 in Chester-le-Street.

Executive summary

- 2 This application seeks to upgrade PRoW 10, from Waldridge Lane (grid reference 4257101.550855) to Public Footpath 11 (grid reference 425121.550714) in Chester-le-Street (**Document A**), to public bridleway status and that it be reflected by amending the Definitive Map and Statement.
- 3 The route to be upgraded connects to the public highway at point A and at point B, see **Document A**, although, currently point B is a Public Footpath. However, another application being considered for upgrade to Public Bridleway, Waldridge Fell Waggon Way Public Bridleway if agreed, together, would create a Public Bridleway network which would connect to public highways of higher status, see **Document B**.

Recommendation(s)

- 4 It is recommended that the Committee resolves to make a Definitive Map Modification Order to amend the Definitive Map and Statement by way of upgrading PRoW 10 to a public bridleway shown A-B on Document A under section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.
- 5 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 an unopposed order should no such relevant objections be received.

Background

Application

- 6 A Definitive Map Modification Order (DMMO) application was submitted by Mrs B Herd, 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 1800 Chester Enclosure Award. The applicant wishes that the Definitive Map and Statement be modified to reflect what they believe should be a public bridleway.
- 7 The proposed route to be upgraded to Public Bridleway is referenced A-B and is shown in (**Document A**).
- 8 The application route, at point A in *Document A*, connects to a public highway, Waldrige Lane (grid reference 389554.536399) and to Public Footpath 11 at point B (currently a public footpath). If this upgrade were agreed point B would terminate on a Public Footpath, making it a cul-de-sac public bridleway. However, the other DMMO application, Waldrige Fell Waggon Way Public Bridleway, which, if agreed would result in a Public Bridleway network that connects to public highways of a higher legal status, **see Document B**.

Consultation and Objections

- 9 Consultations on the proposed upgrade were carried out with the Local Councillors, Parish/Town Councils (where there is one), landowners/occupiers, and user groups/organisations (**Document C, C.1 and C.2**).
- 10 No objections have been received regarding the proposed upgrade. One email of support was received from the British Horse Society, and, one email was received from The Ramblers Association for Derwentside who stipulated that they have no objections, **see Document D**.

The Route

- 11 The route to be added starts at grid reference 425711.550855 and proceeds in a general westerly direction. The surface is earth and it passes through a Local Nature Reserve (LNR) which is predominately woodland. Midway it crosses Cong Burn, continues in a general westerly direction and terminates at grid reference 425121.550714 on public footpath 11.
- 12 The majority of the route is located on land which belongs to Durham County Council. Where the route intersects with Waldrige Fell Wagonway (PRoW 11), the land is owned by The Church of England.

Documentary Evidence

- 13 **Document E – 1794 Chester Enclosure Act**
Durham University special Collections DH6/VI/A.24
- 14 Enclosure Acts were produced to allow for the consolidation of what was once open land into sperate parcels that could be individually owned.
- 15 **Document F – 1800 Enclosure Award**
Durham University Special Collections – DHC 1 M5
- 16 The earliest and most important legal documentary evidence which describes and depicts the application route is the 1800 Chester Enclosure Award and Plan.
- 17 Enclosure 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 enclosure awards consisted of enclosure boundaries, public and private highways, and their uses, rights of way, water courses and drainage etc, as well as details of the landowners. Most enclosure awards are accompanied by Enclosure plans/maps and provide a pictorial view of the details described in the enclosure award.
- 18 The award describes West Lonning Private Carriage Road and states:

“And we do hereby also assign set out and appoint one other Road twenty feet in breadth and which for Distinctions sake we shall call by the name of West Lonning Private Carriage Road beginning at and leading out of the said Chester West Lane Road at or near the west end of Chester West Lonning and proceeding westwards through an allotment hereinafter assigned and set out to Isaac Cookson Esquire passing through the Burn or Rivulet called Cock Burn otherwise Cong Burn at the Ford or place where the

*road formerly passed and still proceeding westwards through the said allotment until the said Road thus hereby assigned and set out intersects or meets the public Bridle Road hereinafter assigned and set out along Waldrige Fell Waggon way and thence westwards along the said Waggon way until the same enters an Allotment hereinafter assigned and set out to the Person or Persons intituled to the Estate of the said William Henry Lambton Deceased in right of Freehold Lands in the Township of Edmondsley aforesaid. And we do hereby further order direct and award that it shall and may be lawful to and for the Person or Persons intituled to the Estate of the said William Henry Lambton Deceased and all and every other Person and Persons owners or occupiers for the time being of the estates of Whitehall Broomholme and Fribley and all and every Allotments hereinafter assigned and set out to the person or Persons intituled to the Estate of the said William Henry Lambton And no other Person or Persons hereafter to pass and repass in through and along the same Road on foot and on Horseback and with Horses Carts and all manner of carriages at their Free Wills and Pleasures **And also that it shall and may be lawful to and for all other person or persons whatsoever at all times hereafter to pass and repass on foot and on horseback only in through and along the same.**"*

19 **Document G – 1800 Chester Enclosure Plan**

Durham University Special Collections – DHC 6/111/6

20 On the plan West Lonning Private Carriage Road is clearly shown heading in a general westerly direction away from the road now named Waldrige Lane, formally Chefter (Chester) Weft (West) Lane Road. It can be seen crossing Cong Burn and joining Waldrige Fell Waggon Way Public Bridle Road.

21 **Document H – 1857-1895 OS 1st Edition Sheet XII.16**

<https://www.oldmapsonline.org/en/England>

22 OS maps were produced pursuant to an Act of Parliament as an official survey of England and Wales. 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 utilised by the surveyors to determine the status of a highway.

23 As with the Enclosure Plan, West Lonning Private Carriage Road is depicted using double pecked lines, normally indicative of a historical Carriage (Private or Public) Road, Cart Road, Bridle Road. It crosses Cong Burn and joins Waldrige Fell Waggon Way Public Bridle Road, which is also shown.

24 **Document I – 1864 Chester le Street reference book**

Durham Records Office RD/CS282d

25 Although the route is shown on the OS map it is not accounted for in the book of reference. However, the lack of notation here does not undermine the strength of the evidence provided by the Enclosure documents and is, therefore, immaterial.

26 **Document J – 1896 OS 25 inch sheet XII.16**

<https://www.oldmapsonline.org/en/England>

27 As above – Document H

28 **Document K – 1921 OS 6 inch sheet XII**

National Library of Scotland

29 As Above – Document J and H

30 **Document L – Current OS 1;25,00**

31 The route under investigation is highlighted in red and is PRow 10. It follows the same route as that described throughout the report.

32 **Document M – Durham County Council Definitive Map**

<https://maps.durham.gov.uk>

33 The route under investigation is PRow 10. It follows the same route as that described throughout the report.

34 **Document N – Satellite View**

Apple Maps

35 The track is hard to discern through the woodland, the general direction and location follows the line in red. It is best seen to the west where it goes through cleared ground.

36 **Document O - Photographic evidence**

37 The photographic evidence provides a visual representation of the application route.

Legal Framework

38 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 highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.

39 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.

40 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.

41 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.

42 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.

- 43 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 upon whether or not to confirm the Modification Order.

Assessment of the evidence

- 44 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 Wildlife and Countryside Act 1981 and the Human Rights Act 1998. The only considerations that the Council can take into account are whether a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description. It would be unlawful to consider issues such as the suitability or desirability of the routes subject of the application.
- 45 In this case it is considered that the most important evidence is the 1800 Chester Enclosure Award and Plan. The Enclosure Award created a Private Carriage Road and also specifically created a Public Bridleway.
- 46 Whilst the other map-based evidence may show the physical existence of the route, less weight must be afforded to these in accordance with Section 32 of the Highways Act 1980 as they were not produced for the purposes of showing the status of the route but for other purposes, such as taxation.
- 47 It is recommended that the route be upgraded to Public Bridleway and that the Definitive Map and Statement be modified to reflect what is believed to be, based on the evidence provided, the routes true legal status.

Main implications

Maintenance

- 48 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

- 49 It is considered, after examining all of the available evidence, that on the balance of probability the application route under investigation, known as West Lonning Private Carriage Road in the Enclosure Award, meets the test of section 53(C)(ii) and a Definitive Map Modification Order should therefore be made to update the Definitive Map and Statement to record it as a Public Bridleway.

Background papers

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

Other useful documents

- Previous Cabinet reports / None

Author(s)

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Appendix 1: Implications

Legal Implications

See paragraphs 38, 39, 40, 41, 42 and 43.

Finance

Durham County Council will be responsible for the initial installation of furniture associated with legal status for the first six months and future maintenance of the surface to bridleway standards.

Consultation

See paragraphs 9 and 10

Equality and Diversity / Public Sector Equality Duty

See paragraph 42

Climate Change

N/A

Human Rights

See paragraph 41

Crime and Disorder

N/A

Staffing

N/A

Accommodation

N/A

Risk

N/A

Procurement

N/A

Appendix 2: West Lonning Summary Sheet & Application Form A

Definitive Map Modification Order Application Register

Chester-le-Street – west Lonning

| | |
|--|---|
| Description of the intended effect | Upgrading Footpath to Bridleway |
| Description of Geographical Location | Grid Reference: 425121.550714 to 425711.550855 |
| Parishes Nearest place Postcode | Chester-le-Street Waldrige DH2 3SJ, DH2 3PS, DH2 2ND, DH2 2NQ |
| Applicant's Details | See form A |
| Date Application Received | 18 March 2020 |
| 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 | 2/20/027 |
| Determination of the Application by DCC | |



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

Re West Lonning Cong Burn BR

| | |
|---|---|
| I, Barbara Herd: on behalf of the British Horse Society | Address: Access and Rights of Way Department The British Horse Society Abbey Park Stareton Kenilworth Warwickshire CV8 2XZ |
|---|---|

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:

| | |
|--------------------------|-------------------------|
| Upgrading | |
| To a: Bridleway | |
| Pathname/reference | FP 10 Chester le Street |
| Starting at: GR NZ257508 | Ending at: NZ 251507 |

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

I/we attach copies of the following documentary evidence in support of this application

**List of documents: OS 1:25,000; Durham County definitive map; Satellite view;
Chester Enclosure Act 1794, Plan 1800, Award 1800; OS 1st Edition XII.16 1857-
1895; Chester le Street reference book 1864; OS 25 inch XII.16 1896; OS 6 inch
XII 1921; Photographic evidence**

| | |
|-----------------------|--|
| Dated 18/03/20 | Signed  |
|-----------------------|--|

Appendix 3: West Lonning Application (as submitted by the applicant)

West Lonning Cong Burn DMMO Application

Wildlife and Countryside Act 1981

Application to modify the definitive map

West Lonning Cong Burn Enclosure Bridle Road

The Route

i The route is in Chester Le Street Parish and can be seen on OS Explorer 308 1:25,000, Durham and Sunderland. It follows the line of FP10 Chester le Street, leaving Waldrige Lane (a quiet back lane) at GR NZ 257508 and joins the old Waggon Way (current FP 11) at NZ 251507. This route is also subject to a DMMO application to be recognised as a Bridle Way.

ii The route is awarded in the Chester Enclosure of 1800. It is named as West Lonning Private Carriage Road in the Award, although on the Plan it is Mr Lambton's Private Carriage Road. The description makes it very clear they are one and the same. The route is awarded as a private carriage road for the allotment holders but "***also that it shall and may be lawful to and for all other person or persons whatsoever at all times hereafter to pass and repass on foot and on horseback only in through and along the same***" ie bridle way rights.

iii Although it is very clear that the route has bridle way rights for the public in the award, this is not reflected in the maps of the area. The track is clearly shown, but not identified in the first edition, and is labelled as FP in second edition onwards. There was initially a ford and subsequently a footbridge. I could however find no evidence of any stopping up, and the fact that it continued as a public right of way albeit only on foot makes a stopping up unlikely. Just as the OS declares that representation of a right of way is not evidence for it, neither is it evidence against higher rights. As the Enclosure is backed by Act of Parliament this Enclosure Awarded bridle way has an irrefutable legal identity.

iv It joins into the old Waggonway which also had bridle way status conferred by the Enclosure Award, and is currently subject to a DMMO application.

v The track is well made throughout, with evidence of a stony footing in places. Despite extreme wet conditions, although a little muddy the track is in good condition, and already supports cycle use and some horse riding (occasional hoof prints seen). There is an extensive network of tracks with no formal status in the park, but it is important for definite public rights of way to be recognised so that they have protection in law.

The evidence

| | |
|---|--|
| 1 OS 1:25,000 | |
| The route is shown with the red line following the current footpath | |
| 2 Durham County definitive map | www.durham.gov.uk |
| The route under investigation is FP 10 Chester le Street | |
| 3 Satellite view | apple maps |
| The track is hard to discern through the woodland, it runs very approximately along the line of the red line. It is best seen to the west where it goes through cleared ground | |
| 4a Chester Enclosure Act 1794 | DUL DHC 6/VI/A.24 |
| 4b Plan 1800 | DHC 6/111/6 |
| 4c Award 1800 | DHC 1 M5 |
| The Act clearly sets out the commissioners' authority to appoint public and private ways including Horse Ways. The maintenance etc is also clearly set out, but not as a condition of the right of access. | |
| The area of interest is circled on the full plan. In the detail, the route in question is indicated with the red arrows joining with the Waggon Way. It is labelled Mr Lambton's Private Carriage Road, however it is called West Lonning Private Carriage Road in the award, and it is very clear that this is the route. It is clear that William Lambton died during the making of the award (described as deceased) and there appears to have been some uncertainty about his heirs, which is the likely explanation for the change. The award is very clear that as well as being a private Carriage road for particular use of the allotment holders, it was a horseback way for the use of all persons whatsoever . | |
| It follows the route of the current footpath as exactly as can be determined. The plan is off set from normal north. A detail is also shown of West Lane, now Waldrige Lane. The relevant parts of the award are transcribed | |
| 5 OS 1st Edition XII.16 1857-1895 | old maps |
| 5b Chester le Street reference book 1864 | DRO RD/CS282d |
| The route of the track as per the current footpath is clearly shown. However, it is not recorded in the reference book, plots 392 and 391 are both just Rough pasture. | |
| 6 OS 25 inch XII.16 1896 | old maps |
| The track is still very clear, and there is a ford crossing the Cong Burn, but the track is labelled FP. It joins the Waggon Way as described in the award. | |
| 7 OS 6 inch XII 1921 | NLS |
| By now a footbridge has appeared | |
| 8 Photographic evidence | |
| The route was walked in February 2020 in the middle of the exceptionally heavy rainfall and widespread floods in the UK. Despite this, the route was in good condition throughout. | |
| The path leaves Waldrige Lane at the corner, there is a wider entrance suitable for horses and bikes just off the corner. A pleasant wide track leads down the hill, quite sunken, but although | |

muddy it has a firm base and good footing. There is evidence of recent cycle use. The track continues down towards the Cong Burn. The footbridge is well made, but not horse suitable. The river was unusually full, but there are a number of places where it would be fordable in normal conditions. The spot shown below is just upstream from the bridge and shows evidence of use. The well made track continues south west from the bridge, seen looking back. There is an excellent stony footing. A lovely sunken track continues, again see looking down towards the Cong Burn. There were occasional hoof prints, as well as numerous bike tracks. The track is shown as it leaves the Waggonway the old Waggonway track is shown heading north.

Summary

This very pleasant bridle road is currently only recorded as a footpath on the definitive map. As it was clearly awarded as a Horse Way in the Enclosure Award it should be recorded as a Bridle Way on the definitive map, please can it be further investigated to this end?