

Highways Committee

15th April 2024

Definitive Map Modification Application to upgrade Footpath 21 West Rainton to Bridleway



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.

Sherburn

Purpose of the Report

- 1 In this report the Highways Committee is asked to consider an application to modify the Definitive Map and Statement of Public Rights of Way with the upgrade of Footpath 21 West Rainton to Bridleway (**Appendix 2: Document A**).

Executive summary

- 2 An application was received in 2018 from Ms Barbara Kilani to modify the Definitive Map and statement by the upgrading of Footpath 21 to a Bridleway. The Footpath starts at Marks Lane, north of West Rainton Village, and follows the line of a former section of the Rainton and Seaham Railway, that served several collieries in the Rainton area. Mrs Kilani also applied to Sunderland City Council to add a permissive route known as 'Meadows Lane' as a Bridleway, this connects with footpath 21 at the north end (**Document A**).
- 3 Footpath 21 has been used for many years by horse riders, cyclist and walkers, and a horse stile has been in situ at the Marks Lane end of the

route for approximately 18 plus years, verified by our RoW officer Kevin Telford who is the area officer (See paragraph 15 below, and **Document J and K**). The path joins Rainton Meadows permissive multi-user route (Sunderland). Upgrading Footpath 21 would formalise use of the route as it is currently and has been, by horse riders, cyclist, and walkers.

Recommendation

- 4 It is recommended that the Highways committee confirms to making the order to upgrade the Footpath to Bridleway on the Definitive Map and Statement, and its subsequent confirmation if no objections are received. This would accurately reflect current and historic use of the route.

Background

- 5 The application submitted in 2018 by Mrs Barbara Kilani seeks the upgrading of Footpath 21 West Rainton, to a Bridleway. The application was submitted with documentary evidence; however, historic maps; merely illustrate a timeline of the route's development from wagonway/railway to its status as Footpath and provides no evidence of public rights over the route. Previous officers should perhaps have advised gathering of recent user evidence to support the application. However, the path evolved from use of the former rail line post 1896, and although it was recorded as a Footpath on the first 1952 Definitive Map, it is arguable that the original survey, suggest higher rights should have been considered (**Document F**). Secondly, an attempt was made in 1989 to record the route as Bridleway based on twenty years use, officers at the time decided not to pursue the claim as not enough evidence forms showing full twenty years use were submitted.
- 6 The path joins a network of routes, some created following consolidation and landscaping of land east of the path following open cast mining, and the creation of Rainton Meadows Nature Reserve. However, despite being recorded as a Footpath, it is used by horse riders, cyclist and walkers exemplified by a horse step-over stile, in situ for at the least eighteen years at start of the route on Marks Lane (**Document B and K**).
- 7 Consultation has been undertaken with the landowners Mr and Mrs Green, the Durham Wildlife Trust, British Horse Society, Sunderland City Council, local Councillors, The Byways and Bridleways Trust, and the Open Spaces Society and Ramblers (**Appendix 3**).

Summary of Support and Objections

- 8 Support in favour of the upgrade has been received from the BHS, and the Open Spaces Society. No response has been received from any of the other consultees.

Documentary History.

- 9 **Extract of Dean and Chapter Plan and Reference Book 1840 (Document C: Reference DDR/EA/TTH/1/197)**

The plan shows the application route here numbered 119; the accompanying reference book notes this as wagonway. Starting at just to the south of application route on Marks Lane (which is not named on this plan) and running immediately south, is a former access road to a settlement called on this plan The Nut, the reference book names the settlement access as Meadows Road. However, it's clear that on the plan there is a connection between the road to the Nut and the wagonway, it is possible there was a path that ran alongside the wagonway.

West Rainton Tithe Map 1840 (Document D)

- 10 The Tithe plan is almost identical to the Dean and Chapter Plan, and they were produced the same year. The only difference is the numbering of the plots and features, the application route is numbered 104a Waggonway.

First Edition Ordnance Survey 1861 and 1947 (Document E)

- 11 The first edition map shows the route as a part of the Rainton and Seaham Railway, running northeast from the Adventure Pit over Marks Lane on the west and towards Meadows Lane, and Meadows Pit on the east. This line is shown without change on all consecutive Ordnance Survey Maps until the 1923 Map when the rail line is no longer illustrated, but the footprint of the route is still shown as it is clearly a landscape feature (the line was out of use and was eventually dismantled due to the closure of Meadows Pit for mining in 1896). It is arguable (as stated above) that an informal path may have run parallel to the rail line at this period as it joins the former Meadows Road/Lane at the north-east end (*author personal comment*).
- 12 The next map of 1947 shows a single dotted line annotated with FP running along the southern edge of the former line. Five years later the route was formally recorded as a Footpath on the first Definitive Map in 1952, at that time the path followed the course of the former rail line

from Marks Lane (northeasterly) and then turned north following the line of Meadows Lane (**Document G**). The accompanying survey description made prior to the production of the first map notes that “*it appears to be an accommodation road judging by wheel tracks*” (**Document F**). This simple observation, as well as noting that it was part known as Meadows Lane (to which it connected and followed north) suggest consideration should have given to higher rights than on foot alone.

Historic User Evidence

- 13 In 1989 user evidence forms were submitted in support of upgrading Footpath 21 (subject of this report) and Footpath 26 to Bridleway each form documented use on horseback and bicycle. At that time (1989) Footpath 21 extended beyond its current endpoint, continuing north along former Meadows Lane, and it appears there was a desire by users to create a legal network of connected paths with Bridleway status. However, the potential application was not pursued as it was deemed there was insufficient evidence as only 12 user evidence forms were returned. However, the discovery of the user forms within our RoW archive certainly corroborates the long use of the path by horse and cycle (**Document H**).

Rainton Meadows Management Plan (Document I)

- 14 The application route is shown in a management plan produced after the area formerly covered by the Meadows Pit was subject to open cast mining between 1993-1996 (Rye Hill Open Cast). Following open casting the site was restored, and several public paths were incorporated into the design, although Footpath 21 was already extant. The path connects to a route over the County Boundary that was designated in the plan as a Bridleway, it is now recorded as a multi-user permissive route, also subject to a Sunderland DMMO Application.
- 15 **Statement from Rights of Way officer Kevin Telford –**

Footpath no. 21 West Rainton Parish – equestrian use

I have been aware of regular equestrian use of public footpath no. 21 West Rainton Parish since 2006. This was facilitated by a wood horse stile on the path at the Marks Lane end which had clearly been in place for some time before 2006. To the best of my knowledge, I do not recall any attempts by the landowners to restrict or prevent equestrian access over the horse stile during the period 2006 – present.

There was an unsubstantiated assumption that equestrian use was permissive, although as far as I know this has not been actively demonstrated or proven.

The horse stile was relocated slightly in 2008 to facilitate the installation of a field gate and kissing gate.

K. Telford

- 16 To date there has been no attempt to restrict access to the path by horse riders and cyclist, despite use other than on foot being deemed technically illegal. The step over horse stile was not installed by the Council, and has been in-situ prior to 2006, no complaints regarding use on horse or cycle are recorded. There is no evidence that signs have ever been erected prohibiting horse and cycle use, this suggests a presumption of dedication as Bridleway by the landowner.

Assessment of the Evidence

- 17 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.
- 18 The conclusive evidence in this case is not actually the mapping evidence, this provides a timeline of the path evolution from a waggonway. In fact, the evidence is best described as cumulative or corroboratory, the abandoned attempt to upgrade the route to Bridleway in 1989 (along with Footpath 26) with user forms submitted attesting to horse riding and cycling use. The existence of the wooden Horse Stile, in situ 18 years, and testimony of Rights of Way area officer Kevin Telford. The original 1952 survey also adds some weight as it is clear surveyors referred to the route as an accommodation road and noted wheel tracks, showing use other than on foot.

Legal Framework

- 19 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)(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.

- 20 The evidence provided by the applicant Mrs Barbara Kilani was documentary, and whilst not particularly strong it provided the impetus to look at the status of the route. The evidence is corroborative, and looked at together the 1952 survey noting "*part known as Meadows Lane*", and "*it appears to be an accommodation road judging by the wheel ruts*", and use of the route stated in 1989 abandoned application, and presumed dedication indicated by construction of the 'Wooden Horse Stile' in-situ over eighteen years, and no attempt enforce use only as footpath by the landowner nor indeed the County Council.
- 21 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.
- 22 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.
- 23 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.
- 24 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 to confirm the Modification Order

Main Implications

- 25 If this route is added to the Definitive Map and Statement as a Bridleway the County Council as Highway Authority will become responsible for the maintenance of the surface of the route to Bridleway standard. The County Council will also be responsible for the maintenance of the step over wooden horse stile, and gates (if applicable); After six months maintenance of such structures becomes the responsibility of the Landowner(s).

Conclusion

- 26 The application satisfies the condition of Section 53(3)(c)(ii) 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. The combination of evidence, including the original path survey, user evidence from 1989, testimony of the Rights of way officer Kevin Telford, who attested uninterrupted use over eighteen years, plus the creation of the Horse Stile which implies presumed dedication make evident that the correct status of the path should be Bridleway.
- 27 I would therefore ask the Committee to approve an order to upgrade Footpath 21 to Bridleway, and to modify the Definitive Map and Statement accordingly if no objections are received.

Background papers

- List any papers required by law / None.

Other useful documents

- Previous Cabinet reports / None

Author(s)

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Appendix 1: Implications

Legal Implications

The legal duties imposed upon the Council are summarised from paragraph 19 of this report.

Finance

N/A.

Consultation

Appendix 3

Equality and Diversity / Public Sector Equality Duty

N/A.

Climate Change

N/A.

Human Rights

Paragraph 23

Crime and Disorder

N/A.

Staffing

N/A.

Accommodation

N/A

Risk

N/A.

Procurement

N/A.

Appendix 2: Power Point Presentation Documents

Appendix 3: Consultation Response
