

Public Rights of Way Sub Committee

23rd November 2023

**Wildlife & Countryside Act 1981 –Part III,
Section 53, Application No: MA/5/247:
Application for the part Addition of a
Bridleway and part Upgrading of public
Footpath no: 13, Bollington to a Public
Bridleway.**

Report of: Peter Skates, Director of Growth and Enterprise

Report Reference No: HTC/32/23-24

Ward(s) Affected: Bollington

Purpose of Report

- 1 This report outlines the investigation into the application made by Andrea Longden to amend the Definitive Map and Statement to add part of a Public Bridleway (A-B) and partly upgrade existing Public Footpath no:13 (A-B-C) to a Bridleway in the Parish of Bollington thus creating a through public bridleway from A-B-C-D from Oak Lane to Greenfield Road as shown on the plan No WCA/36 (**see Appendix 1**). This report includes a discussion of the consultations carried out in respect of the claim, historical documentary evidence, witness evidence and the legal tests for a Definitive Map Modification Order to be made. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to add a Public Bridleway to the Definitive Map and Statement.
- 2 The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

Executive Summary

- 3 The report considers the evidence submitted and researched in the application to add a Public Bridleway in the parish of Bollington. The evidence consists of use on foot, horseback and bicycle by individual witnesses over a period of over twenty years and historical documents that demonstrate the existence/status of a physical track feature for the whole claimed route for well in excess of 30 years. The report determines whether on the balance of probabilities the status of public bridleway or higher rights has been acquired. The reputation of the route as a thoroughfare linking two adopted roads is demonstrated through the Tithe Map and Ordnance Survey maps and others and provides good reputational evidence of a route with rights of bridleway status at least. The user evidence investigated and discussed provides evidence of use by those on foot, horseback and pedal cycle over a relevant 20-year period leading to the assertion that at least Public Bridleway rights have been acquired over time.

RECOMMENDATIONS

The Public Rights of Way Sub Committee is recommended to:

1. Decide that a Definitive Map Modification be Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 adding a Public Bridleway as shown on Plan No: WCA/36
2. Decide that public notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
3. Note that in the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

Background

4.1 The Application

4.1.1 The Application was made to Cheshire East Council on 10th April 2012 by Andrea Longden to add a Public Bridleway from near Dawson Farm off Oak Lane heading northwest to join Greenfield Road in the parish of Bollington. The application consisted of user evidence forms and a few letters. A total of 22 user evidence forms were submitted demonstrating use on foot, horseback and pedal cycle.

4.1.2 The claimed route commences at Point A on Plan No. WCA/36 (Grid Ref: SJ93534,76882) off Oak Lane just north of Dawson

Farm and proceeds in a westerly direction along an open gravel track across fields but enclosed on both sides via Point B (Grid Ref: SJ 93439,76850) before turning in a more north westerly direction continuing past various other public right of way intersections before approaching abutting dwellings. The route then heads closer to Bollington canal with numerous properties abutting its western side to its junction with Public Footpath no: 51 at Point C (Grid Ref: SJ 93061,77008). The claimed route then turns in a north easterly direction passing the southern edge of various other dwelling and past a stable block to the south before exiting onto Greenfield Road at Point D (Grid Ref: SJ 93201 77073).

- 4.1.3 The width of the route is approximately 3 metres wide and is a physical track construction of light-coloured fine stone locally referred to as the “white track”.
- 4.1.4 Photographs of the claimed route and include includes photographs of the existing signs up at both ends of the claimed route.
- 4.1.5 There are 3 landowners along the claimed route plus one unknown landowner according to recent land registry searches. Landowner 1 owns the majority of the route from Point A near Dawson Farm off Oak Lane running west to adjacent to Bobbin Cottage. Landowner 2 owns from Point C west to parallel with The Stables property and stable block. Landowner 3 owns from adjacent to The Stables to Point D where the claimed route joins Greenfield Road. The section from near Bobbin Cottage to Point C is registered as unknown. There are also numerous abutting landowners as there are several properties immediately abutting the route at the northern end.
- 4.1.6 Near Point A at the Dawson Farm end of the route it is noted that the legal line of existing public footpath no.13 actually runs through the yard and across a small paddock on the legal Definitive Map and modern Ordnance survey mapping. Interestingly from examining highways minutes and the London Gazette from the 1950's it appears an historical attempt was made to divert the public footpath out of Dawson farmyard in 1959 as it is recorded in minutes it was decided to make an order and an Order was made by Macclesfield Borough Council in 1959 as it was displayed in the London Gazette. However, no confirmed order has been found on council record files to prove it was ever legally confirmed.

4.2 Legal matters

4.2.1 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Council shall keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events:-

In regards to section C-D of the claimed route one such event, (section 53(3)(c)(i) is relevant where

“(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

- (i) that a right of way which is not shown on 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 such that the land over which the right subsists is a public path, a restricted byway or, subsection to section 54A, a byway open to all traffic.

The evidence can consist of documentary/historical evidence or user evidence or a mixture of both. All the evidence must be evaluated and weighed, and a conclusion reached whether, on the ‘balance of probabilities’ the rights subsist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

Where the evidence in support of the application is user evidence, section 31(1) of the Highways Act 1980 applies. This states; -

“Where a way.....has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”

This requires that the public must have used the way without interruption and as of right; that is without force, secrecy or permission. Section 31(2) states that “the 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question”.

In the case of, *R (on the application of Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs (2007)*, the House of Lords considered the proviso in section 31(1) of the Highways Act 1980:

“...unless there is sufficient evidence that there was no intention during that period to dedicate it”.

The proviso means that presumed dedication of a way can be rebutted if there is sufficient evidence that there was no intention to dedicate the way, during the relevant twenty-year period. What is regarded as ‘sufficient evidence’ will vary from case to case. The Lords addressed the issue of whether the “intention” in section 31(1) had to be communicated to those using the way, at the time of use, or whether an intention held by the landowner but not revealed to anybody could constitute “sufficient evidence”. The Lords also considered whether use of the phrase “during that period” in the proviso, meant during the whole of that period. The House of Lords held that a landowner had to communicate his intention to the public in some way to satisfy the requirement of the proviso. It was also held that the lack of intention to dedicate means “at some point during that period”, it does not have to be continuously demonstrated throughout the whole twenty-year period.

For public rights to have come into being through long use, as stated above, a twenty-year period must be identified during which time use can be established. Where no challenge to the use has occurred, this period can be taken as the twenty years immediately prior to the date of the application. In this case the date of challenge can be identified as the date on which the application was submitted being 10th April 2012.

The case of *Whitworth v Secretary of State for the Environment, Food and Rural Affairs (2010)* is often quoted where there is evidence of use on horseback and pedal cycle. Section 30 of the Countryside Act 1968 gave pedal cyclists the right to ride on a bridleway; consequently, any use from 1968 onwards is said to be “by right”. In *Whitworth* the route was found to have pre-existing bridleway status, i.e., it was decided the status was a bridleway prior to 1968. It was suggested that subsequent use by cyclists of an

accepted, but unrecorded, bridleway, where use of the bridleway would have been permitted by virtue of section 30 of the Countryside Act 1968, could not give rise to anything other than a bridleway.

In relation to the existing public footpath no: 13 (A-B-C) Section 53 c (ii) applies and states:

“(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

- (ii) 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.

In this case the question is whether for the existing footpath section of the claimed route there has been a discovery of evidence to prove higher rights of a bridleway.

Consultation and Engagement

- 5.1 Four objection letters were initially sent to the council regarding the claimed route in 2012 from locals in the area when the application was made. The objections primarily focused on surface and practical issues of the route which as per the legislation section of this report already stresses such maintenance / desirability matters that cannot be considered in relation to the decision making as to the legal status of the route but could be considered and managed in a suitable way at a later date if the case is successful.
- 5.2 More recently in 2023 consultation letters and plan of the claimed route were sent out to the Ward Member, Parish Council, User Groups/Organisations; statutory undertakers and landowners (including abutting landowners). Extensive responses were received especially from the users. Seven users responded to state that they had used the route extensively on horseback over many many years some going back 40 years and sated that they did not want to lose the route as it enabled them to keep off the busy roads.
- 5.3 The Peak and Northern Footpath Society responded to say they had no evidence to add to the case but generally positively supported the application. East Cheshire Ramblers and Rainow Parish Council responded to say they also had no information or

comments and United Utilities also said they had no objections to the application. Bollington Town Council have not responded.

- 5.4 Interviews were also carried out during September 2023 with as many landowners and users as possible and this is discussed in the user evidence section of this report.
- 5.5 Landowners 1& 2 also sent in objection and concern letters regarding the application, and this is discussed in more detail on page 11 of this report, paragraphs 6.2.20 & 6.2.21.

Reasons for Recommendations

- 6. An investigation of the available evidence has been undertaken. The documentary evidence that has been examined is referred to below and a list of all the evidence taken into consideration can be found in **Appendix 1**.

6.1 Historical Evidence

Ordnance Survey (O.S.) Records

- 6.1.1 Ordnance Survey (O.S) mapping was originally for military purposes to record all roads and tracks that could be used in times of war; this included both public and private routes. These maps are good evidence of the physical existence of routes, but not necessarily of status. Since 1889 the Ordnance Survey has included a disclaimer on all of its maps to the effect that the depiction of a road is not evidence of the existence of a right of way. It can be presumed that this caveat applied to earlier maps.
- 6.1.2 Ordnance Survey mapping has been examined and the earliest edition seen (6-inch), published in 1881, shows the route from Dawson Farm leading west to Beehive Mill by the canal, and a bridge to the west side of the canal at Tinkers Clough.
- 6.1.3 By 1909 the mill was disused, but the route continued to lead there at least until 1946 (6-inch). The housing estate along Greenfield Road had begun to spread southwards towards the mill, but no connection is shown to the claimed route. A 1-inch edition of 1964 shows Greenfield Road at roughly the current extent but still no connection, however it is a much smaller scale.
- 6.1.4 It seems likely that with the earliest user evidence in the application dating to 1969, public use of the route may have started very soon after the full length came into being as a connection between

Greenfield Road and Oak Lane. On interviewing the applicant, they believed the section of the claimed route connecting to Greenfield was constructed approximately 60 years ago.

- 6.1.5 Overall Ordnance survey mapping demonstrates that the track route has been in situ as a physical route for decades most likely as an entire route from the late 1960's. This also ties in with the long time span of user evidence outlined below.

Tithe Map 1846

- 6.1.6 Tithe Awards were prepared under the Tithe Commutation Act 1836, which commuted the payment of a tax (tithe) in kind, to a monetary payment. The purpose of the award was to record productive land on which a tax could be levied. The Tithe Map and Award were independently produced by parishes and the quality of the maps is variable. It was not the purpose of the awards to record public highways. Although depiction of both private occupation and public roads, which often formed boundaries, is incidental, they may provide good supporting evidence of the existence of a route, especially since they were implemented as part of a statutory process. Non-depiction of a route is not evidence that it did not exist; merely that it did not affect the tithe charge. Colouring of a track may or may not be significant in determining status. In the absence of a key, explanation or other corroborative evidence the colouring cannot be deemed to be conclusive of anything.

The Tithe Map of 1848 does not show a track or feature and the claimed area is exempt from tithe payments for an unknown reason.

- 6.1.7 The Definitive Map records only show the route of Public Footpath No13 from Dawson Farm to the Canal dated in the 1950's as the route was only historically claimed as a Public Footpath.

6.2 User evidence

- 6.2.1 There are 22 user evidence forms supporting the claim. They give a picture of a route unchanged over the last 50 years or so, known locally as the "white track", with widespread use by many local people as well as the witnesses. It appears that no landowner questioned their right to use the route until about 2010. Detailed user evidence charts showing year of use can be seen at **Appendix 3**.

- 6.2.2 Many of the witnesses mention 2 gates along the route that were always kept open, and some mentioning signs that were put up around 2010. Recollection of the wording varies from preventing vehicles from using the route to just horse-riders and cyclists.
- 6.2.3 All the witnesses are horse-riders, who mention that it is one of the few routes locally that is safe and allows them to get away from road traffic. Almost all the witnesses have seen other people using the route – by horse, bicycle, on foot and even by vehicle – many of whom they knew. Of course, walkers are already permitted to use the existing Footpath 13 which makes up at least 50% of the length of the claimed route.
- 6.2.4 All the bridleway use is claimed along “the white track”, which has not changed its’ position or nature throughout the period of claimed user (1968-2011).
- 6.2.5 From the information provided by the application and user evidence, the first challenge to public use appears to be around 2010 when some witnesses mention a previous owner at Bobbin Cottage (near the canal at the western part of the route) telling riders that they were not allowed to use the track and referring them to signs prohibiting public use. This prompted the gathering of user evidence and the application to be made in 2012. Therefore, there are two potential challenge dates of usage – the first being around 2010 when the previous owner of Bobbin Cottage verbally challenged horserides and closed but not locked a gate across the route, the second date of challenge being the application submission. The challenge by the previous owner of Bobbin Cottage however was mentioned by a number of those interviewed and seems to be the main challenge date.
- 6.2.6 The Google Streetview image from 2009 shows that a sign was already in place by Dawson Farm, attached to a telegraph pole. The wording of the notice as a “private road”, listing the properties served by the track, and ending with the phrase “no through access” could be interpreted as only seeking to deny public vehicular access, particularly since the north-western end of the route is at the housing estate of Greenfield Road. During interviewing it was said that a now deceased landowner erected the sign stating “private road” at the Greenfield road end around approx. late 1990’s.

- 6.2.7 Therefore the 20-year period for a presumption of dedication to have occurred under Section 31 of the Highways Act 1980 is taken to be 1989-2009 but could have occurred earlier as well.
- 6.2.8 Throughout the period 1989-2009, there was never less than 12 of the users claiming use in any given year, with all 22 of them in the period 2003-2006. This is clearly sufficient to meet the statutory requirements in terms of numbers of use. Even when user nos. 02 & 04 are excluded from the calculation (for reasons given below) there is still ample evidence of use.
- 6.2.9 Nearly all the users claim a frequency of use more than monthly – just one described his use as “occasionally”. Many were at least weekly. This is because they were almost all regularly exercising their horses on a route that kept them, at least in part, away from vehicular highways.
- 6.2.10 All the witnesses live in the local area, between Macclesfield and Bollington, and can be reasonably said to represent “the public at large”. The applicant, Mrs Andrea Longden, has included evidence from one family member, as has another witness and her family member. There is some overlap in this evidence since when their family members were young, they were using the route with their parents. However, the user evidence overall is likely to be representative of the general public.
- 6.2.11 None of the users have asked permission from any landowner or occupier to use the route, and until challenged in about 2009-10 nobody objected to their usage. However, one user was once the owner of Dawson Farm from 1973 to 1994 and ran a livery yard. The applicant Mrs Longden (user 02) also admits to knowing other previous landowners and helping with their riding school. Therefore, their use must be regarded, at least in large part, as being by right or permission rather than “as of right”. The overall picture, from the other users, remains one of use by the public “as of right”.
- 6.2.12 No interruption to public use of the route has been identified from the user evidence at any time between 1989 and 2009. Indeed, it seems to have been very regularly used.
- 6.2.13 Until the verbal challenges mentioned by witnesses in about 2010, and the abovementioned sign erected at the Dawson Farm

end, no positive acts by landowners to disabuse the public users have been identified.

6.2.14 Analysis is complicated by the fact that over 50% of the claimed bridleway follows an existing footpath on the Definitive Map and Statement. The user evidence statements don't define where footpath user might differ from bridleway. As a general analysis, footpath use just meets a minimum level of 6-10 users for every year between 1989 and 2009, but that if user nos. 02 & 04 are excluded for possible private usage, this drops to only 4 in 1989 and is only above 6 from 1993 to 2009. However, from recent interviewing it is clear that users have used this route both on foot and horseriding regularly for a considerable number of years in time.

6.2.15 All user evidence by bicycle coincides with equestrian use in time and individual, so does not add further evidence to the claim for a bridleway.

6.2.16 Use by vehicle is claimed by only 2 users – who both have apparent private use – only one of whom defined the time period she used the route by vehicle. This is obviously insufficient to count as vehicle user, and the provisions of the NERC Act 2006 need not be considered.

6.2.17 Interviews have taken place during September 2023 with the main landowner being interviewed along with the applicant and 5 of the users who originally submitted forms. Some of the users since the application was made had moved away from the area and were uncontactable or other reasons why we couldn't interview them. Non the less very detailed information was obtained from all parties and what was very clear is that horse use has historically been obvious and well-known on this route with some use continuing today.

6.2.18 All those interviewed remember a clear through route that has been used by people on foot, horse and pedal cycle for centuries and different generations of families in the area and a few still used the route today on horse. It was evident from talking to many who had been born and lived in the area a long time that this was a well-known route on horse as well as foot. Everyone mentioned that there were no issues with horses using the route until around 2009 the previous owner of Bobbin Cottage (now deceased) shut (but

didn't lock) a gate and caused a clear confrontation between landowner's and users.

6.2.19 All mentioned also that the current "private road" signage erected at either end of the route was inferring and meant for non-residents in cars and to try and deter public use of the route in vehicles. In addition, at least 2 people during interviews also mentioned they briefly remember a sign at the Dawson Farm end along the lines of "no horses, no cyclists" but this was in situ for a max of 6 months and in relatively recent history i.e., 2000's.

6.2.20 Landowner 1 during interviewing acknowledged there had been long standing bridleway use of the route for well over 20 years. They did express some concerns regarding surface and practicalities of the route becoming a permanent bridleway given dual use with private farm vehicles, walkers and the enclosed nature of the route. This would obviously be a matter that would need consideration if the application resulted in a confirmed order, but cannot be taken into account in the determination of the application. Since their interview they have also submitted an objection letter which expands on their concerns regarding health and safety of the route for horses and maintenance liability worries and expands on the details of some of their agricultural activities. They appear to be concerned, however believing the title of the land would remain in the same ownership should the application result in a confirmed order; instead it would be an upgrade of status of the existing public footpath over their land.

6.2.21 Landowner 2 who has lived at The Stables for 9 years between Point C & D has responded to questions via email and appears to be objecting to the route becoming a public bridleway. They mention the claimed route has been used by walkers, cyclists and horse riders during their time but this has been under understanding that the route remains private road and use is at their discretion. They are aware the Private road signs have been in place for 29 years or more. They state that people approach them to ask to go over route and whilst it's been taken advantage of locally, maintained that the message remains clear that the route is private. The landowner makes multiple other comments about safety of the route, activities that might take place in the future such as increasing livestock numbers, increased traffic from deliveries to her business, neighbouring land with on-going planning ambitions to develop houses that would increase private traffic on route as well as maintenance concerns about potholes increasing

with horse traffic. Such issues however cannot be taken into account with such cases.

6.2.22 Despite the signs and even with the shut gate by the previous owner of Bobbin Cottage there appears there has historically been extensive use of the full length of the claimed route uninterrupted by horse riders for well over 20 years going back to the late 1960's with no overt actions on the part of landowners to rebut the usage. The case therefore clearly meets the 20-year test of use uninterrupted and for the majority of users "as of right" and meets both the legal tests in section 53(c)(i) and 53(c)(ii) of the Wildlife and Countryside Act 1981.

7. Conclusion

7.1 The balance of user evidence combined with documentary evidence does support the case that a Public Bridleway subsists along the route between points A-B-C-D as shown on Plan No. WCA/36 at **Appendix 1**.

7.2 It is therefore considered that the requirements of Section 53(3)(c)(i) have been met and it is recommended that a Definitive Map Modification Order is made to record a Public Bridleway between Oak Lane to Greenfield Road and amend the Definitive Map and Statement.

7.3 The work of the Public Rights of Way team contributes to the Corporate Plan priority "A thriving and sustainable place", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

Other Options Considered

8. Not applicable – this is a non-executive matter.

Implications and Comments

Monitoring Officer/Legal

9. Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the Local Authority to confirm the Order itself and may lead to a hearing or Public Inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.

Section 151 Officer/Finance

10. If objections to an Order lead to a subsequent hearing/inquiry, the Council would be responsible for any costs involved in the preparation and conducting of such. The maintenance of the Public Right of Way, if added to the Definitive Map and Statement, would fall to the landowner and Council in line with legislation. The associated costs would be borne within existing Public Rights of Way revenue and capital budgets.

There are no financial implications.

Policy

11. The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

A thriving and sustainable place

- A great place for people to live, work and visit
- Welcoming, safe and clean neighbourhoods
- Reduce impact on the environment
- A transport network that is safe and promotes active travel.
- Thriving urban and rural economies with opportunities for all
- Be a carbon neutral council by 2025

Equality, Diversity and Inclusion

12. The legal tests under section 53 of the Wildlife & Countryside Act 1981 do not include an assessment of the effects under the Equality Act 2010.

Human Resources

13. There are no direct implications for Human Resources.

Risk Management

14. There are no direct implications for risk management.

Rural Communities

15. There are no direct implications for Rural Communities.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

16. There are no direct implications for Children and Young People

Public Health

17. The recommendations are anticipated to offer a positive overall impact on the health and wellbeing of Cheshire East residents.

Climate Change

18. The recommendations will help the Council to reduce its carbon footprint and achieve environmental sustainability by reducing energy consumption and promoting healthy lifestyles.

Access to Information	
Contact Officer:	John Lindsay John.Lindsay@cheshireeast.gov.uk
Appendices:	Appendix 1 –Plan No WCA/36 Appendix 2 – Archive List Appendix 3 – User Evidence Chart & Usage Type Chart
Background Papers:	File no: MA/5/247