

Public Rights of Way, CEC,  
Municipal Buildings,  
Crewe,  
CW1 2BJ

78, Roewood Lane,  
Macclesfield,  
Cheshire,  
SK10 2PQ.  
7<sup>th</sup> August 2012

Your Ref: PROW/JLT/5/223

Dear Sirs,

Higher Hurdsfield No. 9 – Application for Modification Order

I acknowledge receipt of your letter dated 3<sup>rd</sup> August 2012 and I must admit to being more than a little mystified by its content. Quite some years ago I made an application for a Modification Order in relation to Higher Hurdsfield No. 9 specifically for the entirety of the route as defined on the Definitive Map; I did this in the full knowledge of the existence of Permissive Diversions around Close House Farm. Since I submitted my application I have had no substantive contact and no consultation on either the background to my application or on any results that may have come to light during any investigations carried out. Your letter refers to 'evidence has been discovered' but I have not even had the courtesy of being told what it is and yet you expect me to comment on the proposed revision to my application. This seems to me to be wholly unreasonable behaviour!

I have commented in more detail, in so far as I can, in the enclosed notes but you can take this letter as my formal notification that if an order is made in the proposed form 'I object'. My objection is to the proposed creation of a Bridleway section in place of a Permissive Diversion i.e. C,G to D on your map. If there is enough evidence for upgrade to Bridleway from F to D and from C to B then clearly Higher Hurdsfield No. 9 is a Bridleway in its entirety. The section D,I,H to C has not been able to be used for many years because it has been obstructed at various times by various means. Since the basis of my application was on user evidence alone I can only surmise that since some of the user evidence was from people that had been forced to use the Permissive Diversion because of the obstructions or closures that this is being used as the basis for creating a Bridleway section from the Permissive Diversion. However, I do know that some of them did ride the Definitive Route before the obstructions were put in place so both of these circumstances can only reinforce the case for an upgrade to Bridleway for the Definitive Route of No. 9 in its entirety.

Given the history of applications for Diversion Orders, Public Inquiries and obstructions to the part of No. 9 around Close House Farm, I am sure this will have formed part of your investigation and that you will be fully acquainted with the findings of the Public Inquiry reports from the Planning Inspectorate. Just in case you are not, I have mentioned some pertinent detail from those reports in my enclosed notes but I would recommend that the two Public Inquiry reports are taken fully into account before making any Order.

For the avoidance of doubt, I object to the proposed order and I confirm that I will sustain that objection to another Public Inquiry, if needed. My one exception to that is that I am happy to confirm that I have no objection to the removal of rights over A to B. Finally, I have previously informed Cheshire East Council that the delays to, and the process adopted for considering, my application could form the basis for a separate application for 'maladministration' against the Council. I confirm that I continue to reserve that right and given the current position that looks ever more likely.

Yours faithfully,

*Approved electronically*

Roy Spoors  
[enclos.]

Higher Hurdsfield No.9 – Application for Modification Order  
Notes to Application

- 1.0 Higher Hurdsfield No. 9 was incorrectly designated as a footpath on the Definitive Map when it was created.
- 2.0 The footpath rights over the section C,H,I to D have been subjected to, at least, two applications for Diversion Orders ( Highways Act) onto the Permissive Diversion D,G to C. If they had succeeded then the rights over D,I,H to C would have been extinguished.
- 3.0 The last two applications for a Diversion Order for the section D,I,H to C have gone to Public Inquiry. On both occasions the Planning Inspectorate refused to confirm the orders on the grounds of 'enjoyment of the path as a whole'. The clear agreement, following extensive argument, was that No. 9 has a value in its entirety and that those people who have rights over No. 9 should be free to exercise those rights; at the time of the Public Enquiry, and still today, those rights are as a Footpath.
- 4.0 These two decisions by the Planning Inspectorate clearly established that the existing definitive line D,I,H to C had significant value in its entirety. It was accepted that this route had an important link to local history via agricultural, mining and canal useage but that more importantly it gives extensive views over Macclesfield to the west that the Permissive Diversion D,G to C cannot offer.
- 5.0 Some years ago one edition of the OS map for the area incorrectly showed the Permissive Diversion as the line of Footpath No. 9. It was never established how this incorrect information was provided but there have been attempts to use this incorrect version as evidence. The Planning Inspectorate took the approach of accepting that the Definitive Map was exactly that.
- 6.0 Just before each of the Public Inquiries Cheshire County Council decided that maintenance of No. 9 would be advisable. They found unuseable stiles across the line of the path, cleared dense vegetation and installed waymarkers that showed both the definitive line of No. 9 and also identified the Permissive Diversion. Immediately after the last Public Inquiry the Definitive Footpath waymarkers were removed and the Permissive Diversion ones left in place.
- 7.0 The statutory obligation to keep No. 9 clear over its entirety, so that walkers could exercise their rights over it, was ignored by Cheshire County Council and Cheshire East Council has simply continued with this policy of non maintenance. The continual claim therefore that people prefer to use the Permissive Diversion was dismissed by the Planning Inspectorate.
- 8.0 It is a matter of record that Higher Hurdsfield No. 9 in its entirety (certainly as defined from F,D,I,H to B) was the definitive line and therefore the route over which rights existed. It therefore follows that if No.9 was incorrectly designated as a Footpath rather than a Bridleway then the same assessment of rights must apply to horseriders as they do to walkers. Unless it is claimed that horseriders are different, or are less important with less stringent rights.
- 9.0 Simple logic would therefore seem to indicate that if a Modification Order is to be made to upgrade No. 9 to a Bridleway then it must be for the existing definitive line, as defined on the Definitive Map, or not made at all.
- 10.0 If the order as currently set out is confirmed then it would leave open the option for the footpath rights over the current definitive line through Close House Farm to be removed on the grounds that 'there is a suitable and equally convenient alternative'. This might be the Council's intended consequence but if it is not then it would be an unfortunate 'unintended consequence' that would run counter to the decisions already taken at two Public Inquiries by the Planning Inspectorate.
- 11.0 The simplest and most secure decision for the future that the Council can take is to either make, or not make, depending upon the user evidence submitted the Modification Order that I made in my application. The Permissive Diversion has existed in various forms over many years and no doubt will continue to exist regardless; it would be a serious dereliction to give it any formal status.

Roy Spoors  
7<sup>th</sup> August 2012.