

**MEETING** : **RIGHTS OF WAY COMMITTEE**  
**DATE** : **20<sup>th</sup> April 2007**

**REPORT OF** : **COUNTY RURAL AND RECREATION OFFICER**  
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**HIGHWAYS ACT 1980: SECTION 25**  
**PROPOSED DEDICATION OF PUBLIC BRIDLEWAY NO 83, ALONG**  
**GRAVEYARD LANE, BETWEEN NEWTON HALL LANE AND MOSS LANE, IN**  
**THE PARISH OF MOBBERLEY, BOROUGH OF MACCLESFIELD**

**INTRODUCTION**

1 Agreements have been reached with a number of landowners and adjacent landowners to dedicate Graveyard Lane in Mobberley as a Public Bridleway. The route in question is shown with a dashed line on Drawing No MO/532 and runs between Newton Hall Lane and Moss Lane, between points A and B (OS Grid References SJ 8048 8029 to SJ 8110 8000).

**DESCRIPTION OF THE ROUTE**

2 Graveyard Lane is an enclosed stoned track, gated in 2 places, approximately 50 metres from point A and 160 metres from point B. It is signposted as a bridleway at both ends, where the lane meets the public highway and is also waymarked along its length as a bridleway. Documentary evidence suggests that the route may have been signposted and waymarked by the County Council in approximately 1992 or 1993. Three Public Footpaths in Mobberley join Graveyard Lane, namely Footpath Nos 42, 44 and 45. There is a homemade sign near "The Cottage" saying "Footpath and Bridlepath only".

3 It is understood that Graveyard Lane is well used by horseriders in particular and a horserider has been seen using the route on one of the visits by officers. Evidence of horse use has also been observed.

4 The route was visited recently and "No Through Road" and "No Turning" signs had been seen at point A, which were not in place when the route was first visited in 2003. These are believed to have been erected because of increased problems with Satellite Navigation systems having mistakenly recognized the lane as one that could be driven as a through route, with alleged problems having resulted from this.

**BACKGROUND**

Modification Order Application

5 An application (numbered 5/222) was submitted in May 2003 by the Alderley Edge, Wilmslow and District Footpaths Preservation Society ("the Society"), to modify the Definitive Map and Statement by the addition of a Bridleway along Graveyard

Lane. The application was coordinated by the Society's Secretary, Mrs Armstrong-Lee ("the applicant").

6 The applicant submitted 8 user evidence forms detailing use on foot and horseback, together with some documentary evidence. She pointed out that the width of the lane towards Moss Lane had been gradually reduced over the previous 30 years. She believes that the bridleway signs in position at either end of the route were erected in about 1993 and added that the gateway, wall and fence at Graveyard Cottage were erected in the summer of 2002. The applicant was concerned over the Leylandii saplings at The Cottage potentially reducing the useable width of the lane.

7 Graveyard Lane was originally subject to a claim to the Engineering Service for it to be added to the list of highways maintainable at public expense (known as the "List of Streets"), as an ancient highway (that is, public highway existing prior to the Highway Act 1835). However, counsel's opinion in the matter of another unrelated route was that the addition of a route to the List of Streets was not sufficient to determine its status and therefore all such claims should go through the evidential investigation of the Definitive Map Modification Order process. The Society was, therefore, advised to submit an application under Schedule 14 of the Wildlife and Countryside Act 1981.

8 The applicant has agreed to withdraw her Modification Order Application in the event that a Public Bridleway is successfully created by agreement and this is detailed below. The successful completion of the dedication agreements would negate the need to make a Modification Order.

#### Creation Agreements

9 Creation Agreements have been sought because the lane has been diverted on the ground at its eastern end to a point on Moss Lane almost 20 metres north of the original alignment. A legal agreement could avoid potentially complicated legal Orders and processes and amount to a cost saving to the County Council.

10 Because ownership of the whole of the lane has not been established, in order to make any owner / occupier aware that the County Council was investigating the status of this route, notices were posted on site in November / December 2003, for a period of at least 28 days. No-one came forward in response to these notices.

11 There are 8 ownership parcels involved and initial agreement has been reached with all of these owners for the dedication of their section or sections of the lane as a Public Bridleway. Creation Agreements will take into account the provisions of the '*Ad Medium Filum Via*' Doctrine (a presumption which is rebuttable), that is that owners of land adjacent to the lane own up to the centre line of the lane. The applicant has agreed to withdraw her Modification Order Application in the event that a Public Bridleway is successfully created by agreement.

12 Landowners have been made aware that pursuing Bridleway Dedication Agreements would not prevent the possibility of anyone claiming public vehicular rights over the route or former route in the future. The creation of a Public Bridleway would not affect any private right of way to property or land. As a Public Bridleway, it would be illegal for anyone to use it without lawful authority in a motorized vehicle and it is acknowledged that the landowners do not want the lane to become a through route to motor vehicles. It would be presumed that access to property or land would constitute lawful authority. Any illegal use by motorized vehicles would be a matter which should be reported to and dealt with by the Police.

13 Once the Agreements have been finalized, the Cheshire County Council will maintain the surface of the route to Public Bridleway standard. It is understood that a number of the landowners have an agreement between themselves for the maintenance of their respective private vehicular accesses and the Creation Agreements would not affect this. It will be the landowners / adjoining landowner's responsibility to prevent adjoining hedges from encroaching on the useable width of the route. It is understood that agreement over the containment of overgrowth from adjoining hedgerows can be reached, where appropriate and the County Council has incorporated a relevant clause in the agreement of the owner of the Leylandii saplings at The Cottage in this respect. Two gates will be recognized, one near Rose Cottage and one near The Cottage and these gates, if closed, will have to remain unlocked.

## **THE MAIN ISSUES AND CONSULTATIONS**

14 Creation Agreements are entered into under Section 25 of the Highways Act 1980. The authority must have regard to the needs of agriculture and forestry and it is concluded that there will be no adverse affects on these. Before making such an Agreement, the Highway Authority must consult any other local authority in the area, which in this case would be Macclesfield Borough Council and the Highway Authority may, but need not, consult Mobberley Parish Council or the public. The results of consultations are detailed below.

15 The authority is also obliged to give notice to the public in at least one local newspaper and this will be done once all of the final agreements have been completed.

16 Macclesfield Borough Council did not have any comments on the proposed creation. Mobberley Parish Council have considered this matter, but is unable to offer any evidence, although they support the Modification Order application, adding that the route was not sufficiently wide for a bridleway in places. County Councillor Wilkinson did not make any comments.

17 There have been no adverse comments from user groups or people with an interest in the lane. The majority of the adjoining landowners who have commented are in general agreement that the lane has been used freely as a bridleway in the past and believe the route already to be a bridleway. Mrs P Amies of the Border Bridleways Association says that several members of her group are riding it.

18 There appears to be other evidence that the route has been ridden and in public use for some time, including user evidence forms supplied. Mrs L Roberts of North Cheshire Riders referred to having suggested this route for inclusion in the Rights of Way Improvement Plan and referred to the lane as "an essential link for riders". She says that all of the riders in the North Cheshire Group use it frequently. One witnesses who lives on Moss Lane says that he sees up to 20 horseriders a day at weekends passing down Moss Lane, with a smaller number on weekdays, who must have come from or been heading to Graveyard Lane. One adjoining landowner says 10 to 15 horses a day use it on average and another landowner said they could find more users if necessary.

## **OTHER RELEVANT POINTS**

19 A search of the documentary evidence has been undertaken but not completed due to the landowners confirming their willingness to enter into Creation

Agreements, however, the evidence does provide some confirmation that there is a need for the route as a Public Bridleway.

### Documentary Evidence

20 The route was first shown on 1819 Greenwood's Map, although given that Graveyard Farm is believed to pre-date this and was probably only ever accessed from the lane, Graveyard Lane is possibly much older than this. The documentary evidence shows that there were gates near both ends of the route, as shown on the 1840 and 1842 Ordnance Survey Maps and the 1849 Mobberley Tithe Map (which also suggests it was in private ownership). The Ordnance Survey County Series 1:2500 Maps from c1872 to 1909 show the route gated at one or other end of the lane. The 1907-1936 Ordnance Survey Book of Reference suggests it was seen to be an Occupation Road (a term for a private road). The 1910 Finance Act Map shows the route as excluded from hereditaments. According to Planning Inspectorate Consistency Guidelines, this implies that there is a strong possibility that the route was considered a public highway of some description, although there may be other reasons to explain its exclusion. The lane is also referred to as "a traffic road" in the walking survey schedules for the footpaths joining the lane, compiled by the Parish Council in the early 1950s.

21 Therefore, at such a relatively early stage in the investigation of the Modification Order application, the only reasonable conclusion can be that there is conflicting evidence relating to public vehicular rights. The witness evidence has not been investigated.

22 More recent documentary evidence acknowledges bridleway use. A letter of 1975 from the Society reported that the lane had become in a bad condition owing mainly to horse riding, to the extent that it was unusable by walkers.

23 The likely existence of public bridleway rights has previously been acknowledged by the County Council in relation to a Public Path Diversion Order affecting the eastern end of the lane made on the 18<sup>th</sup> January 1980, detailed below. The route was referred to as Bridleway No 83, Mobberley. It is proposed to give this same number to the path once the agreements have been completed.

24 The Ordnance Survey has confirmed that Graveyard Lane was added to current Ordnance Survey maps as an ORPA (Other Route with Public Access) in September 1999, following a consultation with Cheshire County Council. A 1993 Publication on cycle rides in Cheshire describes the lane as a bridleway, well used by both cyclists and horse-riders.

25 A letter of 1998 from Barrie Quilliam of Moss Lane (later one of those who completed a user evidence form) refers to the route being a bridleway and can be used by about 60 horses a day at weekends.

### 1979 to 1981 Diversion proposal

26 There was a proposal to divert part of the lane as a Public Bridleway at its eastern end in 1979/80. It is believed that the application was made on the applicant's understanding that a public right of way existed over the lane, notwithstanding that the route was not shown to have any public status on the Definitive Map. A letter from Mobberley Parish Council of October 1979 confirms that it considered the lane to be a Public Footpath and Bridleway. A memorandum from the County Secretary and Solicitor confirms "it seems fairly certain on the evidence

available that a public right of way exists over the lane”, so the Order was made as if the route was a public right of way.

27 A Diversion Order was made (on the ground of securing “efficient use of land”) and advertised in 1981, but received a number of objections and was never progressed. The route was subsequently diverted on the ground, but on a different line to that proposed in the Order (there is evidence that the County Council negotiated terms with the landowner to improve the width and surface in doing this). There are references to previous changes to the lane on the ground, including before 1975, but from the evidence so far researched, it is not possible to build a full picture of what happened when.

28 A Mobberley Parish Council minute of the 5<sup>th</sup> November 1979 refers to a 200 signature petition for the retention of Graveyard Lane as a bridlepath having been forwarded to the County Roads Department. However, the petition has not been found. There is evidence that the County Council has subsequently trimmed the hedges along part of the lane in 1983.

## CONCLUSIONS

29 Section 25 of the Highways Act 1980 provides that a local authority may enter into a Public Path Creation Agreement with a landowner to create a bridleway over land in their area. Where such agreements are entered into, the local authority has a duty to take the necessary steps for securing the dedication of the route in accordance with the agreements.

30 It is in the interests of the public that Bridleway No 83 be dedicated, in that it provides a functional link between two highways which has been well used by walkers and horseriders, it resolves the anomaly of the three Public Footpaths which terminate on the lane and it avoids legal complications relating to the diverted route at the eastern end. It is believed that the route would also be accessible to wheelchair users. There are no works which will be needed to be carried out on the ground by the County Council. No issue of compensation arises as the Landowners consent to the Bridleway’s creation.

## RECOMMENDED:

**That approval be given to the making of the necessary public bridleway agreements in accordance with the provisions of Section 25 of the Highways Act 1980 for the dedication of Public Bridleway No 83, Mobberley as illustrated on Drawing No MO/532, subject to the path being in a condition satisfactory to the County Council prior to the agreements being concluded.**

This report has been prepared with regard to the Checklist for Members Reports and due consideration has been given to the relevant matters in its preparation.
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Local Member	<i>Councillor S Wilkinson</i>
Background Documents	File: Application No 5/222 and Correspondence Files
Available for Inspection at	PROW Unit, Phoenix House, Clough Road, Winsford

