
Order Decision

Hearing held on 9 September 2014

by Sue Arnott FIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 14 November 2014

Order Ref: FPS/R0660/7/7

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Cheshire East Borough Council Definitive Map and Statement (Upgrading of Public Footpath No 9 (part) to Bridleway and addition of Public Bridleway No 12, Parish of Higher Hurdsfield and addition of Public Bridleway No 98, Parish of Macclesfield) Modification Order 2013.
- The Order is dated 17 January 2013. It proposes to modify the definitive map and statement for the area by recording a public bridleway between Springhill and Ecton Avenue in the Parishes of Higher Hurdsfield and Macclesfield, as shown on the Order map and described in the Order schedule.
- There were four objections and one representation outstanding when Cheshire East Borough Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I held a public local hearing into the Order in Macclesfield Town Hall on 9 September 2014. During the previous afternoon I walked (unaccompanied) the Order route together with that part of Footpath 9 which passes Close House Farm. This section, shown on the Order map as the direct route between points C and D, is not included in the Order. However in the submission of the applicant, Mr Spoors, this public footpath is the historical line of the bridleway between Roewood Lane and Ecton Avenue and it is the line he applied to have upgraded on the definitive map and statement in 2003. I therefore considered it important that I familiarise myself with this section as well.
2. Before closing the hearing, I adjourned the proceedings to the site so that the main parties were able to continue the discussion whilst we walked the northern part of the Order route. For this I was accompanied by Ms Tench of Cheshire East Council (CEC), Mr Spoors (applicant and objector) and Mr Broadbent (representing the owner of Close House Farm).
3. In principle, neither Mr Spoors nor the two other statutory objectors he had been appointed to represent object to the upgrading of Footpath 9 to bridleway status; indeed that was the aim of his application. It was the omission of the section past Close House Farm to which they object.
4. The fourth statutory objector, Mr Kind, likewise did not oppose the recording of a bridleway along the Order route. The focus of his objection was solely the way in which the Order schedule records the width of the bridleway, in particular at a point where a large oak tree narrows passage for the public.

5. Whilst I have listed Mr Broadbent under the heading of 'Objectors' at the end of this decision, I understand he does not actively oppose the Order as it has been made (although he does not actively support it) but would object to any modification of the route to reflect the line sought by Mr Spoors.

The Main Issues

6. The main issue here is whether the evidence shows that in the past the Order route has been used in such a way that a public bridleway can be presumed to have been established.
7. The Order was made by CEC under Section 53(2)(b) of the 1981 Act on the basis of events specified in sub-sections 53(3)(c)(i) and 53(c)(ii).
8. Section 53(3)(c)(i) requires the discovery of evidence which shows, on a balance of probability, that a right of way subsists, or is reasonably alleged to subsist, over the way in question. However, at this stage, if I am to confirm the Order I must be satisfied, on a balance of probability, that the public rights intended to be recorded over the sections shown on the Order map as C-G-D and E-F do subsist.
9. Section 53(3)(c)(ii) requires the discovery of evidence which shows, similarly on the balance of probability, 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 that parts of Footpath 9 (shown as B-C and D-E) should instead be shown as a bridleway.
10. CEC's case in support of the Order is based primarily on the presumed dedication of a public bridleway under statute, the requirements of which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). In brief, this approach requires use of the claimed route by the public with horses, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated as a public bridleway. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by horses; if not, a public bridleway will be deemed to subsist.
11. Although the case was not argued on the basis of common law, I explained at the hearing that if I find that the requirements for dedication under statute have not been satisfied, I may consider such an approach in the alternative. For this I would need to consider whether, during any relevant period, the owner(s) of the land in question had the capacity to dedicate a public right of way; whether there was express or implied dedication by the owner(s), and whether there is evidence of acceptance of the claimed right by the public.

Reasons

12. When Mr Spoors made his application to Cheshire County Council (CCC) in 2003, he did so on the basis of both historical documentary evidence and more recent evidence of use by horse riders. Following investigation some years later by the former County Council's successor authority, CEC, a report was presented to its Rights of Way Committee in September 2012. The Committee decided that the evidence submitted by Mr Spoors, when considered along with the additional evidence gathered by its own officers, was sufficient to justify making an Order to record the claimed bridleway but not over the entire length

of the application route. That part of the application that related to section C-D was rejected and the Order that is now before me for determination was made.

13. In short, the rationale behind the Council's decision was that it concluded the available evidence was simply not strong enough to support the applicant's route being an historical highway carrying more than the public right on foot that is already recorded on the definitive map. However it was persuaded that the evidence of use in the late twentieth century demonstrated a much more recent dedication but the route followed by these users contributed to the establishment of the Order route, in particular via C-G-D not C-D.
14. Three of the objectors now argue that the evidence either supports the whole of Footpath 9 being a bridleway or none of it. Whilst I would agree that is a logical approach to the historical evidence which pre-dates the provision of the alternative path C-G-D, it is not necessarily true when it comes to analysis of the more recent use by riders.
15. At the hearing, I proposed that the parties present examine with me first the historical evidence, working forward in time from the oldest to the most recent, so that then it would give some context to the user evidence which dates from the 1950s onwards. This proved to be a helpful approach.
16. Therefore despite the Order being made by CEC on the basis of the user evidence leading to the presumed dedication of a bridleway, I shall start by addressing the historical evidence that formed the basis of the applicant's case before I turn back to the Council's proposition.

Historical evidence in support of bridleway status (via C-D)

17. In essence it is Mr Spoor's submission that dedication of the route B-C-D-E-F as a bridleway (at least) by the owner(s) long ago can be inferred from the documentary evidence available. He contends that historical documents show this route to be a public highway of some antiquity, its origins dating back as far as the early nineteenth century and possibly earlier than that.
18. Section 32 of the Highways Act 1980 provides for "*any map, plan or history of the locality or other relevant document*" to be taken into consideration when deciding whether or not a way has been dedicated as a highway. Thus, evidence of the status attributed to a route at some time in the past may be taken into account in determining its present status. Following the legal maxim '*once a highway, always a highway*', if the evidence shows that at some stage in the past the way has been accepted as a public right of way, in the absence of any evidence of formal closure, such rights will have continued to exist until recent times.
19. Mr Spoors criticised CEC's analysis and general approach to the weighting of the historical evidence it discovered during its research in addition to that he provided himself. He says they considered and evaluated each individual item but did not look at the totality of the evidence. Both Mr Taylor and Ms Tench challenged his assertion, stating that CEC had taken a balanced view of all the evidence. Mr Broadbent highlighted the published guidance which emphasises the requirement for evidence to be considered as a whole and on a balance of probability. I was able to reassure Mr Spoors that in approaching all the evidence in this case and the submissions as to the interpretation of each and all the individual documents, I intend to follow that guidance.

20. I have analysed in date order both the documents submitted by Mr Spoors with his application together with all the additional material uncovered by CEC during its investigations into the case. Although Mr Spoors relied primarily on tithe records, Ordnance Survey (OS) maps, local mining maps and the records prepared under the Finance Act of 1909/1910, I must consider all the evidence available in reaching my conclusions.
21. To avoid any confusion, I will refer to Mr Spoor's route B-C-D-E-F (via the Close House Farm track) as 'the claimed route' to distinguish it from the Order route B-C-G-D-E-F.

Nineteenth century records

22. The earliest document discovered was one of several commercial maps of the County: one by Burdett in 1777. Neither this map, nor others produced by Cary (in 1787 and 1823) or Smith (in 1801) showed any trace of the claimed route, whilst those by Greenwood (in 1819), Swire and Hutching (in 1830) and Bryant (in 1831) show only short sections at one or both ends¹. For the southern end, the inclosure map and award for Macclesfield in 1804 set out the section in that parish (E-F) as a private occupation road (although no details were available to indicate which parties enjoyed rights over it). Whilst this does not rule out the possibility that a public right of way might also have existed, this record provides no evidence of it. No inclosure documents exist for Higher Hurdsfield parish.
23. However that is not to say that the route did not exist in its entirety around that time. Indeed the earliest OS map (the 1": 1 mile of 1830-1840) shows it clearly did, yet its physical existence is no proof of its status as a highway. There must have been reasons why it had not been included as a through-route by the main map-makers of that period, even by those (such as Bryant) showing bridleways on their maps.
24. Tithe maps and apportionments are available for both parishes. In Macclesfield the 1840 record shows section E-F coloured in the same manner as other roads although that is not necessarily indicative of it being a highway.
25. The map for Higher Hurdsfield dated 1849 curiously shows parts of the route at and near Commonside Farm but a significant area, including Close House Farm, was not included in the titheable lands.
26. It is known that there were certain categories of land that were customarily exempt from tithe payments but the reason for the exclusion of this area remains speculation. I agree with Mr Spoors that the omission of those parts of the claimed route which do not appear on this map (because they run through the excluded land) cannot mean it did not exist; earlier evidence I have already noted shows otherwise. However, I must give weight to the fact that the claimed route is not displayed through this excluded land yet other known highways are shown. The obvious inference is that this was not a public road although it is not necessarily certain that a bridleway would be depicted through non-titheable land in the same way.
27. Mr Spoors highlights the numbering of the claimed route on the tithe map as parcel 105a, described in the apportionment simply as "Lane" with its land use

¹ Although none of these maps were produced to the hearing, the information they displayed was not disputed.

- listed as "Thoroughfare". He submits that the non-payment of a tithe is evidence this lane was a highway.
28. CEC points to the listing of a named owner and occupiers for this lane which it submits is more likely to indicate a private occupation road for which no tithe would be payable, it being unproductive land. Mr Broadbent argued that highways do not normally have named occupiers. The term 'thoroughfare' is not used elsewhere in the apportionment so there is no scope for making comparisons within the document to aid interpretation. One further point of note is that the section of the claimed route that is shown is not shaded brown in the same way as known highways, for example Rainow Road.
29. Mr Broadbent drew my attention to the case of *Merstham Manor v Coulsdon and Purley Urban District Council* [1937] 2 KB 77 and in particular to the Court's finding that tithe maps make no distinction between a public and a private road; their object is to show what is titheable. It follows that roads are marked as non-titheable pieces of land whether they are public or private.
30. Nothing on this tithe map or in this apportionment excludes the possibility that the claimed route was at that time a highway as Mr Spoors submits, but in my view the listing of a named occupier, the lack of any noted public interest in the apportionment or of brown shading on the map, and absence of any continuation through the excluded area point away from it being a public thoroughfare at that time.
31. It is not disputed that OS Maps have consistently shown the full length of the claimed route as a lane bounded on both sides since the first was published between 1830 and 1840. In particular I have examined the first edition 25" to one mile of 1875, the second edition of 1899 and the third edition of 1910 together with the corresponding 6" maps.
32. Mr Spoors argues that the character of the way, having stone walls on both sides for most of its length, strongly suggests that it is more than a footpath. I agree with him that the width and construction of the way definitely point towards one capable of being used historically by vehicles as well as horses and pedestrians. Yet the features themselves say nothing of whether users in the nineteenth century were exercising public or private rights of way. Indeed CEC highlighted a disclaimer issued by the OS in 1889 to the effect that its maps offered no evidence of the existence of public rights but simply showed physical features noted by its surveyors.
33. Two maps raise questions over the implications of that statement here. The first is the coloured version of the 1875 First Edition 25" map on which the full length of the claimed route is shaded brown; the second is the 1" map dated between 1897 and 1904 on which it is identified as a third class metalled road.
34. Since the brown shading is also used for other known highways (again including the present Rainow Road (then Hurdsfield Road), and noting the 1875 map clearly pre-dates the disclaimer, the conclusion Mr Spoors draws is that this acknowledges the existence of full highway rights over the claimed route. CEC is more cautious and highlights expert cartographic opinion which suggests it may simply represent a metalled surface.
35. As Mr Spoors has highlighted the substantive nature of the lane's surface, I have no difficulty in accepting that the colouring could have indicated a metalled surface. The OS 1" map around the turn of the century endorses

- that. But what is less certain is that the colouring also represented the status of the lane, and that it showed a highway open to the public as opposed to a private occupation road.
36. Before reaching a conclusion on the inference to be drawn from the 1875 coloured OS map I regard it as important to look at what came before and after the document. In particular I need to consider the 1865 Prestbury Highways Plan that was produced at the hearing by CEC. This showed all district roads (in colour), turnpike roads and railways; the reference key states: "all other roads are uncoloured". On this plan, around half of the claimed route is shown (uncoloured), from F via E and D, ending (but shown continuing northwards) approximately one field north of D (at a point I shall call X). This is also the point at which the route shown on the tithe map ends.
37. Going back a little further still, the Council's research noted Bagshaw's Directory for 1850 mentioned 'Roe Wood Colliery' as producing a moderate quantity of good coal. The 1875 OS maps show several coal pits in the vicinity of Commonsides in the south as well as Roe Wood to the north of the claimed route. It is entirely possible – even probable – that the metalled lane was used for transporting coal from these pits. However, that does not necessarily mean that this relied on a public right of way; it may have been by private right and/or licence.
38. On balance, I am inclined to think that it may have been partly both. The weight of the tithe map, the coloured OS map and especially the highways plan together lead me to conclude that in the second half of the nineteenth century the whole length was metalled but that any public interest would have extended from F only as far as X although there is no obvious explanation for a cul-de-sac highway here.
39. I have considered Mr Spoors suggestion that the Dye Works at Higherfence may have utilised the claimed route but I find that less likely, given its position in relation to the lane.
40. Plans deposited in 1891 for the proposed Lancashire, Derbyshire and East Coast Railway noted the whole route as an occupation road in the ownership of "P. Brocklehurst". Ecton Road was similarly identified as occupation road. Neither precludes the existence of a public bridleway (or footpath) but the absence of any reference at all to the Prestbury Highways Board (who had recorded F-X in its ambiguous 'all other roads' category) tends to tip the balance away from any part of the claimed route being clearly acknowledged as a highway during that period despite physically being a metalled track and probably capable of such use.

Twentieth century records

41. Moving into the early 1900s, most of the records prepared under the Finance Act of 1909-1910 are still available although some of the plans have additional markings which are presumed to have come from the former Macclesfield Rural District Council with whom the records were stored for a period before being transferred to the County Archive. Nevertheless, the main aspect of this evidence relied on by Mr Spoors is evident and accepted by the other parties. This is the exclusion of parts of the claimed route from adjacent hereditaments which is usually regarded as being a good indication of a highway of a status higher than a footpath.

42. At the northern end around Roewood House (including section B-C) and in the south from point F to my point X, the lane is not included within any land parcel for valuation purposes. Section C-X lies within the Close House Farm hereditament (No 132); no deduction is made for public rights of way across the property although there is an unspecified reference to a "footpath".
43. It is not unusual to find inconsistency along a clearly defined lane such as this where land ownership varies but that makes it no easier to explain. Owners were at liberty to declare and claim a deduction for public rights of way across their land but it was not compulsory. A valuer would most probably have queried obvious anomalies, for example if public rights of way were claimed where there was no apparent use taking place, or where a well-used highway followed a defined track through the property was not declared at all.
44. In broad terms, I recognise there is a degree of consistency here insofar as there is evidence suggesting the circumstances affecting the treatment of section F-X were different to those applying to the section across Close House Farm land. That follows the same pattern as the tithe map and the highways record from the middle of the previous century, both of these recognising a lane of indeterminate (but possibly highway) status but only as far north as X. Yet OS mapping confirms that the route in its entirety was then in existence.
45. The highway records 'handed over' from the District to the County Council in 1929 took the form of a list which did not include the claimed route. Although this was over 50 years since the Prestbury Highways map was produced, it tends to suggest that the inclusion of section F-X in the category 'all other roads' was not recognition of a publicly maintainable highway in 1865 so the reason for it being shown remains debateable. A map of reservoirs and pipelines dated 1942 shows the whole route coloured and named "Needham's Lane" but the full significance of this is not explained.
46. Mr Broadbent highlighted the fact that when the Close House Farm property was offered for auction in 1933 as part of the Hurdsfield Estate, it was described as 'formerly copyhold'. He further explained that until 1922 it had been held under the copyhold title of the Manor and Forest of Macclesfield. But whether or not different land tenure was the reason for the consistent differences in the way the two parts of the claimed route were represented in the key records up to and including the 1910 Act documents is unproven but seems to me the most likely explanation.
47. Yet the first recording of a public right of way over the claimed route following the National Parks and Access to the Countryside Act 1949 is the most puzzling. Records show it² was surveyed in September 1951 by two local men who identified it as "CRF" (a *Public Carriageway or Cart Road or Green Lane mainly used as a footpath*) and "FP" (a *footpath*), although CRF was subsequently crossed out, by whom is not known. The survey sheet recorded two limitations: a kissing gate (at X) and a stile (at D), both of which are clearly consistent with a footpath but not with any greater rights (public or private). Mr Taylor suggested there may also have been field gates next to the stile and kissing gate but neither the survey sheet nor the parish map show any such gates although the map does include field gates (FG) in other locations north and south of Close House Farm.

² That section in Higher Hurdsfield Parish only.

48. However the minutes of a meeting in 1956 note that objection was made to a notice at Close House Farm stating 'Private Road'. The record makes clear the Parish Council's stance: "*This road had always been a bridle road.*" A year later this was followed up with a request through Macclesfield RDC that the road be recorded as a public bridleway. It is not clear whether by 1957 preparation of the definitive map and statement had reached its final stage but it appears that no further action was taken to seek recognition of the bridleway asserted by the Parish Council until an application was made in 1972 by a Mr Maddock.
49. The kissing gate and stile described by the surveyors were in place in, and presumably before, 1951. Whenever they were installed they would have challenged use by horse riders. Perhaps it was a need to establish use back twenty years to the time before Close House Farm was sold in 1933 that proved problematic. That must remain speculation since no evidence is available from this period to shed light on this. What is clear is that in the 1950s there was a belief that the claimed route via Close House Farm was a public bridleway but it was unproven.

Overall conclusion on historical evidence

50. Mr Spoors submits that a consistent picture emerges from the various maps submitted in evidence, this showing the claimed route to be a public highway of considerable importance. He points to its substantial nature and width over its entire length and speculates that in the past this would have been used by local people engaged in agriculture and early industrial use: coal mining, the dye works and canal traffic in particular. Further he highlights the road names - Roewood Lane in the south and Bibby's Lane in the north (Mr Bibby farming at Close House Farm in 1892 and 1914) - these confirming its local reputation as a thoroughfare.
51. CEC accepts the lane may be ancient in origin but says the evidence to show it was a public way may be consistent for the southern part but not for the whole route; if it had been, the Council may have been swayed by evidence.
52. In fact I find a surprising degree of consistency in the documentary evidence until the preparation of the definitive map in the mid-twentieth century and the ambiguous Parish Council references to the route. Unlike Mr Spoors, the picture I find is of two halves of the route being shown consistently differently other than the coloured OS map in 1875 which, on balance, I interpret here as representing the substantial construction of the whole lane which, broadly speaking, still exists today. Whilst I find the southern half consistently shown in a manner which **could** be interpreted as acknowledging a public interest or at least not precluding that conclusion, at best the northern part is consistently neutral but with a tendency to weigh against the route being a highway.
53. I suspect Mr Spoors may be correct in his assertion that for over a century and more local people have used the claimed route on foot, on horseback, perhaps even with carts, and that the reputation expressed by the Parish Council in the 1950s was based on recollections of that use having taken place. However there is no evidence before me that such use was in exercise of a public right of way. The historical documents before me do not support the claimed route ever being acknowledged as a highway (beyond the footpath now recorded on the definitive map) and having considered the implications of all the available evidence, on a balance of probability, I cannot agree that it is sufficient to demonstrate the public bridleway that Mr Spoors believes subsists.

Presumed dedication under statute

54. Turning next to the user evidence, I note firstly that long-standing use by pedestrians of the sections of path C-G-D and E-F is not disputed. Despite C-G-D being referred to as a "permissive diversion" since it was established in or soon after 1953, I have seen no evidence at all to suggest that at any time notices were placed along the way by or on behalf of the land owners advising users of the way that their use was anything other than 'as of right', or that people on foot were challenged by any other means. Although in 1995 the owner, Mrs Broadbent, deposited with the relevant authority (Cheshire County Council) a statement under Section 31(6) of the 1980 Act denying the existence of any public rights (other than Footpath 9), there is nothing to indicate that users of the way were informed they should no longer use it.
55. In fact it now seems to have been accepted that the public has acquired a right of way on foot over this part of the Order route and I have seen no evidence which causes me to reach any other conclusion as far as pedestrian rights are concerned. It is the rights of horse riders that are at issue here and this therefore forms the focus of my further analysis.

Bringing into question

56. Before a presumption of dedication can be inferred under statute, Section 31(2) of the 1980 Act requires the relevant period of use *"to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by notice ... or otherwise"*. Use during that period must be shown to have been actually enjoyed as of right, without interruption, and to have continued for a full period of twenty years.
57. Thus the first matter to be established is when the public's rights were brought into question. Whilst I have considered other possibilities, three dates were canvassed by CEC so I shall address these first.
58. The first is the date of the application made by Mr Spoors in July 2003. Section 69 of the Natural Environment and Rural Communities Act 2006 allows the date of a *qualifying* application to be treated as 'bringing into question' the rights of the public. CEC submits that this date should apply in relation to the southernmost section of the Order route E-F³ since there has been no other challenge to the public's rights here.
59. In short, I do not intend to consider this date further. I regard challenges to any part of the way as applicable to the whole unless evidence (of which there is none here) suggests otherwise. Even if I were to follow CEC's approach and take E-F in isolation, I would have to reject Mr Spoor's application as a possible challenge since his form sought the upgrading of Footpath 9 in Higher Hurdsfield Parish and thus did not include the section E-F (even though he may have intended that it form part of his claim).
60. Mr Spoor's application undoubtedly did raise questions over the status of the public's rights on Footpath 9, on section E-F and the Order route C-G-D. However, any presumption arising from use by the public of the whole route during the preceding twenty year period, 1983-2003, would be rebutted by the

³ I have noted earlier that Footpath 9 Higher Hurdsfield ends at Point E on the parish boundary. It is not recorded on the definitive map and statement as continuing into the adjacent Macclesfield parish.

statutory declaration lodged by Mrs Broadbent (in relation to her own land) in 1995 under the provisions of Section 31(6) of the 1980 Act.

61. Indeed this is the second action considered by CEC to have brought into question the public's rights over and above those of pedestrians on the definitive line of Footpath 9. Although the Council considers this applied only to the routes over the Broadbent's land, in my view it raised doubts over the rights of horse riders to use the whole route from Ecton Road to Springhill.
62. Under Section 31(6) a landowner can deposit with the appropriate Council a map of their land with a statement indicating the ways (if any) over the land they admit to have been dedicated as highways. In the absence of proof to the contrary, a properly made statutory declaration of this type is sufficient evidence to rebut the intention of the owner to dedicate any additional highways during the associated relevant period. In most cases it will also bring into question the status of any ways in use by the public but not acknowledged to be highways.
63. Although a public register must now be kept of such deposits, this was not general practice in 1995. Thus it is not entirely certain that Mrs Broadbent's declaration came to the attention of any members of the public who might have been inclined to challenge their rights over and above those covered by Footpath 9.
64. However, I regard the timing of the declaration as significant insofar as it occurred during the protracted determination of a diversion order which proposed to close the footpath between C and D and re-direct walkers along C-G-D. A diversion order⁴ was made in 1991 under Section 119 of the 1980 Act and, as a result of objections to the proposal, an inquiry was held in 1994. The decision issued on 25 Jan 1995 was subsequently quashed by the High Court in March 1996, prompting a second inquiry to be held in February 1997 after which the final decision to reject the diversion was issued in April 1997.
65. I find it hard to imagine that Mrs Broadbent's statutory declaration was not somehow related to these events, or that it did not come to the attention of interested parties during this lengthy process. There is no direct evidence to support that conclusion but it seems likely.
66. Consequently I accept the date the declaration was lodged in 1995 as one point at which the public's rights came into question thereby requiring examination of use during the period **1975-1995**.
67. CEC's third event dates broadly from the same period; it concerns a physical challenge to the route of Footpath 9 south of Close House Farm approximately at my point X in or around 1987 or 1988. It was shortly after this that the separate horse track was installed alongside the C-G-D 'diversion' since it appears horse riders were using the Order route causing difficulties for walkers and prompting complaints about the path surface.
68. There are references to a blockage in letters to CCC from a Mr Burch (in 1987), Mr Spoors (in 1988) and Mr Shercliff (in 1989) along with notes of Council Officers' meetings noting that Footpath 9 was barred to horse riders but not

⁴ The Cheshire County Council (Footpath No. 9 (Part) Higher Hurdsfield, Macclesfield Borough) Public Path Diversion Order 1991

- pedestrians. Although the notes were not explicit as to the exact nature of the obstruction that prevented use by horse riders, other evidence points to this being a pole or wooden rail at a point north of D.
69. Mr Broadbent recalled this pole being put in place much earlier than this; he thought it was soon after the family moved to Close House Farm in 1967. However there is no evidence before me to corroborate this until the 1980s. Whilst Mr Spoors thought the pole was in place when he moved to his present house in 1982, in his statement Mr Armstrong of Commonsides Farm recalled the pole being put across the lane around the time the alternative horse way was put in. Another rider, Mrs Morton, wrote that she remembered the pole being quite low so that her horse could step over it.
 70. It is difficult to accurately pinpoint when the pole was first put across Footpath 9. Indeed the evidence seems to suggest it may have been in place intermittently, but it was not until 1987 that records show CCC began to receive complaints. However these complaints do not appear to have come from horse riders, at least some of whom chose to ignore the pole and ride past Close House Farm, but from pedestrians complaining of horses using the alternative path C-G-D.
 71. On balance I am minded not to accept that the pole brought into question the status of any part of the Order route. Nevertheless, one way or another, these complaints seem to have resulted in an application being made in 1989 to divert Footpath 9 away from Close House Farm and onto C-G-D, and alongside that, the provision of a separate horse track (though not part of the proposal).
 72. A letter from CCC on 27 October 1989 reported the comments of the Ramblers' Association and the Peak and Northern Footpath Society to the requested public path diversion order. The response of the latter was to state that the proposed new route was "*quite obviously dedicated to the public*" and that "*in the ordinary course of events we should have been applying for it to be added to the Definitive Map at the next opportunity*". The Ramblers' Association was more explicit, highlighting the use of the horse track (adjacent to C-G-D) but pointing out that "*the whole path is not a bridleway*" and that it would oppose the diversion unless horse riders were excluded.
 73. It seems to me that the rights of horse riders as well as walkers were brought to the fore by the application to divert Footpath 9 in 1989. Yet there is no certainty that horse riders would have been aware of the proposed re-routing of Footpath 9 and formal designation of C-G-D as a footpath until the public path order was made and publicised. (Organisations representing the interests of local horse-riders may not necessarily have been consulted over a proposal which concerned only a definitive footpath.)
 74. I therefore regard the publication of the 1991 diversion order as bringing into question the extent of the public's rights and intend also to consider a relevant 20 year period **1971-1991**.
 75. It seems there was another event around the same period: a stile was installed to the north of point D around the time works were being carried out by the water company in 1991 or 1992. This was a very clear obstruction for horse riders (as is the Council's kissing gate which replaced it in 2007) but will have challenged their use of Footpath 9 via C-D, not necessarily the Order route C-G-D. (I will consider the implications of this separately below.)

76. In addition to these three main 'events', an application to upgrade the route to bridleway was made in 1972 under previous legislation by a Mr Maddock (who had been Bridlepaths Officer for East Cheshire Combined Training Group since 1967/8). This may or may not have been prompted by the construction of flats across the original line of Footpath 9 at its northern end⁵ by Macclesfield Rural District Council in 1973. However, Mr Maddock's application was not reviewed until 1986 and, when he failed to re-submit his application, it did not proceed further. Unfortunately his evidence has not been located if indeed it still exists. Although this application had the potential to bring into question the extent of the public's rights, as indeed did the obliteration of the way north of point B by housing development, there seems to be no contemporary evidence available to show that either in fact did so.
77. There is also reference to diversion of Footpath 9 proposed in 1976 which likewise might have caused questions to be asked over the rights of horse riders along the way but no evidence is available to support this.
78. Going back still further, in his statement dated 1997 Mr Parker (owner of Close House Farm from 1953 to 1967) explained how he established the 'diversion' route (C-G-D) to take walkers away from his herd of milking cows because of fears of Foot and Mouth Disease. Soon after moving to the property he set out the new path and, after consulting Macclesfield Council and the Ramblers' Association, believed it thereafter to be the official route of Footpath 9.
79. Although Mr Parker himself does not mention this, the minutes of the Hurdsfield Parish Council in 1956 record protests at the display of a 'Private Road' sign along Roewood Lane. In March 1957 the Parish Council concluded that the road in question should be recorded as a bridleway not a public footpath and in June 1959 there was concern that Mr Parker had erected a notice advising pedestrians to use the alternative path.
80. Although the precise sequence of events is not clear from the limited information available, I regard these notices as actions which challenged the rights of the public. At that time compilation of the definitive map and statement was not finalised⁶ so that there would have been no conclusive evidence of a public right of way over Footpath 9.
81. Whilst I conclude the 1956 notice brought into question the status of the route, during the previous twenty years there is direct evidence from only one rider (Mrs Johnson) whose use possibly predated the notice. Her statement indicates she began riding the way in 1956. However, I would need to discount parts of her evidence since, as Mr Parker's daughter, she lived at Close House Farm and her use of some, if not all, of the route would not have qualified as being 'as of right'; she would have been riding on her family's own land.
82. Although it is clear from the minutes of meetings in 1956 and 1957 that the Parish Council considered the route surveyed in 1951 "*had always been a bridle road*", with no other evidence from riders who used it between 1936 and 1956, I cannot take further the possibility of statutory dedication under Section 31 of the 1980 Act during this particular period.

⁵ The part of Footpath 9 (Higher Hurdsfield) north of point B has since been extinguished by Order made by CEC and confirmed on 14 March 2013.

⁶ As I have noted above, the initial survey of public rights of way in Higher Hurdsfield Parish was carried out in September 1951. The relevant date of the first definitive map and statement for Macclesfield was 1 November 1954.

83. In summary, I intend to focus on two twenty year periods: 1975-1995 and 1971-1991. The first of these was brought to an end by Mrs Broadbent's statutory declaration; in the second case it was publication of the order proposing diversion of Footpath 9 (C-D to C-G-D) that marked the end of a relevant twenty year period for the purposes of Section 31(1) of the 1980 Act.

Evidence of use by the public

84. If a presumption of dedication is to be raised, qualifying use by the public during the relevant period must be shown to have been actually enjoyed as of right, without interruption, and to have continued throughout the full twenty years. Enjoyment of the way 'as of right' is usually interpreted as use by the public that is not by force, does not take place in secret and is not on the basis of 'permission' to use the way.
85. The evidence of use provided by the applicant and on which CEC relied consists of the written evidence of 12 riders. This is in the form of standard user evidence sheets, in some cases supplemented by statements following interview with Ms Tench of CEC to clarify their original forms.
86. Of these people, one (Mrs Johnson) is the daughter of the previous owner of Close House Farm, Mr Parker. Although I agree that whilst he owned the property, her use of routes on his land would not have been 'as of right', I do not discount the use she describes between 1984 and 1992 once it had been sold to the Broadbents.
87. I exercise a degree of caution over the evidence of Mr Armstrong since he claims that a right of way for all purposes along the full length of Footpath 9 is attached to his property (Commonside Farm). Although I have not seen any documentation which proves such a right exists, it is entirely possible that he does indeed enjoy a right of way over Close House Farm land in which case his use on horseback would be in the exercise of that private right, not 'as of right'. Although not proven one way or the other, I will not rely on his individual use of Footpath 9 in my analysis but there is no reason why his evidence should not be considered in respect of section C-G-D (or the horse way) where no private right of way is claimed.
88. Mrs Armstrong's evidence also requires closer examination in relation to the same point. Her statement seems clear that she regularly rode along Footpath 9 past Close House Farm (apparently on the instruction of Mrs Broadbent) from 1975 until around 1987. Thereafter she switched to the 'alternative bridleway' and continued to use this route until 1996 or thereabouts but it is not clear whether she was referring to the footpath C-G-D or the horse way.
89. I have no difficulty in accepting that Mrs Armstrong's use of the alternative route between C and D was as of right and should be counted. However it is not clear to me whether the instruction given to her by Mrs Broadbent in 1975 was simply directing horses away from the footpath C-G-D following the complaints made by pedestrians, or the granting of express permission. Neither Mrs Broadbent nor Mrs Armstrong was available to answer questions at the hearing so I have been unable clarify the matter further.
90. With these and all the remaining claimants I consider it important to try to establish exactly which route they were riding and when. It is clear that the Order route has been open and available for pedestrians since it was created in

the 1950s by Mr Parker and, other than the width restriction, no physical barriers appear to have precluded horse use at any time.

91. In 1973 the Parish Council discussed *"the use of this footpath by horse riders and in particular the diversion around Close House Farm where this footpath was narrow and muddy and caused concern to people encountering horses on this stretch."* Thus horse riding on the Order route is corroborated at that time and was still continuing to raise concerns in a minute recorded in July 1976.
92. By September the Council was so concerned about horse riders using the "diverted footpath" around Close House Farm that it resolved *"that a sign be erected at each end of the diversion with a direction sign for horses through the farm and pedestrians around the diversion"*. However there is no evidence to support such a sign ever being erected.
93. Whether related to this resolution or not, the Parish Council minutes for October 1976 made reference to an invitation from CCC to comment on a proposed footpath diversion, presumably as requested by Dr Broadbent. At this meeting it appears Dr Broadbent (himself a Parish Councillor) had *"suggested that horses could continue to use the route by his house whilst pedestrians should use the alternative."* However the basis on which horse riders might do so was not made clear.
94. Mrs Broadbent was a keen horse rider herself and was known to some of the claimants. Yet it is not entirely certain whether this continued use of C-D via Close House Farm was by express permission (as Mr Broadbent submits), whether permission should be implied from any particular actions or whether use by horse riders was simply tolerated.
95. Many claimants say they rode along Footpath 9 via Close House Farm until told by Mrs Broadbent to use the alternative. In some cases that was via the Order route whilst others used the separate horse track once it was set out in 1989⁷.
96. For example, Mr Maddock, whose use began in 1964, said he rode the route past Close House Farm until the Broadbents moved to the property and asked him to use the alternative path. Mrs Morton (who had been riding there since 1957, sometimes with Mrs Johnson) did the same as Mr Maddock: when the Broadbents went to Close House Farm she knew they preferred horses to use the diversion so she did so though she was never actually told to do this by Mrs Broadbent. Mr Armstrong said that he first rode the route in 1986 when starting his livery business; initially he rode past Close House Farm (C-D) but later used the "diverted bridle path" as instructed by Mrs Broadbent. Mr Brough, who rode from 1986 to 2003 weekly, stated *"I have always used the diverted route when on horseback, the narrow one as marked on the map."* Mrs Eagles described her use between 1976 and 1980 using the Order route but later, between 1988 and 1993 she used both this and the horse track.

Use during the periods 1971-1991 and 1975-1995

97. Focussing on the specific period 1971-1991 I find nine of the 12 claimants had been using the Order route (including C-G-D) for various lengths of time although only Mrs Morton had done so throughout the whole period. It is not

⁷ The exact date this was made available is not certain but it is first mentioned in a letter to CCC from Mr Shercliff dated 9 June 1989.

necessary that each claimant has themselves used the way for all of the 20 years; it is their collective use during that period that is relevant. Whilst the combined use of the claimants is greater towards the second half of this period, I weigh in the balance the references in the Parish Council minutes from the mid-1970s to horse use of 'the diversion'.

98. For the later period, 1975-1995, all twelve claimants are able to contribute use during at least part of the relevant twenty years. Again this amounts to more during the latter half but I accord a degree of additional weight on account of the Parish Council references for similar reasons.
99. There is nothing to suggest that this use of the Order route by horse riders was ever interrupted, by physical obstruction or otherwise. None of the claimed use has been in secret or by force and whilst the route was referred to by some as the 'permissive diversion', there is no evidence to support the claimed usage being on the basis of either express or implied permission.
100. Yet a proportion of the claimed use after the horse track was provided in 1989 should be credited to this alternative, not to the Order route. Although it is tempting to consider these all part of the same way, being side by side for much of their length, they join Footpath 9 at significantly different points at and near point D over 50 metres apart.
101. This horse track was in place for only 6 years before Mrs Broadbent's statutory declaration rebutted any presumption that this too might have been dedicated as a bridleway. I find that insufficient to make the case here, either under the statutory approach or at common law.
102. Nevertheless I am satisfied that between 1971 and 1991 at least, whilst the horse track was still a relatively new feature, there was sufficient use of the Order route with horses, as of right and without interruption, to raise a presumption of dedication as a bridleway.

Intentions of the landowner(s)

103. I next turn to consider whether there is any evidence to show that during this period (1971-1991), the owner(s) of the land demonstrated a lack of intention to dedicate a public right of way for horses over the claimed route. During the whole of this time, the land at the northern end of the Order route was owned by the Broadbents; ownership of the land south of point D is unrecorded.
104. There is no evidence that horse riders were ever turned back or challenged whilst riding the order route C-G-D over the northern section. Some claimants (for example Mr Brough) mention a Mr Henson, formerly of Nursery Cottage near Commonsides Farm, who objected to horses using the route. He insisted it was a footpath and erected a notice near his cottage stating so (although no date is attributed to this action). However Mr Henson did not own the track and there is no evidence to link his actions with the intentions of the unknown owner of this section. In any event it seems this had no effect at all on horse use of the route.
105. For the northern section, minutes of meetings in the mid-1970s show that the Parish Council was concerned about horse riding on the Order route and proposed a notice be erected here but there is no evidence this was ever done. (Clearly the Parish Council was not the landowner). Although it was not

minuted, a letter in February 1977 from the Ramblers' Association to the County Council reported that at the same meeting Dr Broadbent had stated that horse riders could continue to use C-D past Close House Farm whilst pedestrians should use the alternative (C-G-D). That seems to be supported by the evidence of Mrs Armstrong who says she used C-D on the instruction of Mrs Broadbent; others, such as Mr Brough, stuck to the Order route, some saying that they knew she preferred them to use it and saw them doing so. The only notices reported which were much later, positioned at both ends of the horse-way stating "Horses" but there is no mention of any signs intended to deter horses from using C-G-D. There is no evidence of any other relevant notices being displayed elsewhere on the Order route.

106. I have also considered whether the Broadbents' application for diversion of Footpath 9 either in the mid-1970s or late 1980s demonstrated a lack of intention to dedicate the Order route since it dealt only with pedestrian rights. But whilst it did not show a positive intention to dedicate the way for horses, neither did it make clear that a public right to ride was not accepted. In fact the Broadbents' reaction to objections to their 1989 diversion proposal was to create the horse track. I interpret that as more in keeping with an acceptance of horse use rather than in rebuttal of it.
107. It was not disputed that the waymarking signs which are in place at present are relatively recent. No other evidence has been provided from which I might draw the conclusion that at any relevant time the owner/s (or their agents) made known to the public who were using the way with horses that they should not presume they had a right to ride there.
108. In conclusion I find insufficient evidence that during the period 1971 to 1991 (or 1975 to 1995) the relevant landowners made clear to the public a lack of intention to dedicate a right of way for horses along the Order route via C-G-D.

Section C-D

109. As I have already noted, the section of Footpath 9 past Close House Farm does not form part of this Order. However, since it was the subject of Mr Spoor's application and its omission is the main reason for his objection, I have addressed the evidence specifically in relation to the possibility of statutory dedication of this path as a bridleway.
110. My earlier finding that the status of the Order route was brought into question in 1991 and in 1995 applies also to that part of Footpath 9 between C and D. In addition I consider the stile erected on Footpath 9 north of D (and, importantly, north of the junction with the horse track) challenged the rights of horse riders to use C-D past Close House Farm. Thereafter it became impossible to ride this section, thus ruling out any possibility of dedication between 1975 and 1995.
111. Examining horse riding use between 1971/2 and 1991/2 reveals relatively little evidence that local riders were using this, having been encouraged first to use the Order route as an alternative and then from 1989 onwards to follow the horse track. There is some evidence from 1976 that Dr Broadbent may have relented by offering to allow horses to use the definitive footpath past his home but, other than Mrs Armstrong, there is little evidence from claimants to

suggest riders actually did so, with or without the express permission of Mrs Broadbent.

112. There may be some truth in Mr Spoor's assertion that passage along Footpath 9 at Close House Farm had deliberately been made difficult for walkers and almost impossible for horse riders since the 1960s. Finding the pole placed across the way from time to time may have deterred some riders although others, like Mrs Morton, had her horse step over it. However, objectively assessing the quantity of evidence of use of C-D over either twenty year period prior to the stile being installed I have to conclude it is insufficient to raise a presumption of dedication. In short, by 1972, most riders seem to have switched to the Order route including Mr Maddock who was Bridlepaths Officer at the time.

Width

113. In his objection, Mr Kind challenges the width of the intended Bridleway 12 between points C and G which the Order schedule states will vary between 1.4m and 3.2m except at one particular point where it is restricted to 1.1m by a large tree. He submits the initial presumption should be that the whole of the track has been dedicated except for reservation of the right to keep the tree: *"Where there is (within a track) a temporary feature such as a tree, or a boulder, which by its character 'limits' the user of the way, the whole of the way is prima facie dedicated, subject to the presence, for the time being, of that temporary feature."* Mr Kind refers to the case of *Ford v Harrow Urban District Council [1903] LT May 23 1903* in support of his submission that the correct way to record the circumstances here would be to note the full width of the track as highway subject to the limitation of the owner to retain and maintain a tree at this point.
114. Mr Kind further argues that the dedication of a way as narrow as 1.4m raises a fundamental question over its intended status. He asks: *"could an owner reasonably dedicate a bridleway so narrow at common law?"*
115. In response to the first point, CEC submits that the tree has been in place throughout the relevant 20 year period and therefore the public (including horse riders) have acquired the right of way subject to the restricted width beside the tree. In the case quoted by Mr Kind the circumstances are not comparable. On the second point it highlights the user evidence which confirms as a matter of fact that horse riders have used this route with the restriction and that the horse riding use was known to the landowner who did not challenge it.
116. It seems to me that this oak tree is of some considerable age. It was no doubt *in situ* in the 1950s when Mr Parker created the section C-G-D with a fence on one side and hedge on the other, intending to provide an alternative route for pedestrians. Horse use gradually migrated to this path after the Broadbents moved to Close House Farm in the late 1960s.
117. The tree has clearly been in position during the relevant twenty years and probably long before that. In her statement claimant Mrs Morton commented that the diversion (C-G-D) *"was a much narrower route – too narrow really"* but other than being a little boggy in places she used it nonetheless. Mr Brough (and other riders) noted the narrowness of the route but it is clear they all accepted and used it before some swapped to the horse track from 1989.

118. Whilst I acknowledge the validity of both Mr Kind's arguments, in this case I find the general presumption to be displaced by the fact that the claimed right of way was established around this very old tree and has always been its present width, narrowed even further at this one particular point to the stated 1.1 metres. I agree it is debateable whether it could reasonably be implied that a landowner could positively intend to dedicate a bridleway of that width. Of course dedication under the statutory approach does not require a positive intention, simply the lack of a negative one. I recognise that even this approach is qualified by sub-section 31(1) of the 1980 Act insofar as this requires that the subject highway should not be "*of such character that use of it by the public could not give rise at common law to any presumption of dedication*". However I do not agree that this caveat precludes the presumed dedication of a bridleway here. A bridleway which narrows to 1.4 metres in places with a pinch-point of 1.1metres will have made passage difficult for horse riders but it is a fact that the claimants have used the Order route on horseback with that restriction. Thus I see no reason at all why the use of this narrow path could not give rise to a bridleway in these circumstances. I therefore do not propose to amend the width stated in the Order schedule as suggested.

Overall conclusion on user evidence

119. Having examined all the available information, I conclude that the evidence is sufficient to show use of the way in question by the public on horseback throughout the 20 year period between 1971 and 1991 and therefore to raise an initial presumption that this had been dedicated as a public bridleway. I have also concluded the owner(s) of the way did not demonstrate to the public a clear lack of intention to dedicate the route as a public bridleway during that period so that the presumption of dedication was not rebutted. I therefore reach my final conclusion that the evidence before me is sufficient to show, on the balance of probability, that a public bridleway subsists over the Order route and should be recorded on the definitive map and statement.

Other matters

120. The recording of this route as a public right of way rests on use of the way in the past. It is clear that the narrowness of the section C-G-D has caused difficulties for horse riders and pedestrians alike and that, for a while, the situation was improved for all when the horse track was put in place. I made clear at the start of the hearing that neither the merits of the Order route nor any alternatives are at issue here. I have made no judgement on the relative amenity value of the definitive line or any others I have considered in the course of reaching my conclusions.

Conclusion

121. Having regard to the above and all other matters raised at the hearing and in the written representations, I conclude that the Order should be confirmed.

Formal Decision

122. I confirm the Order.

Sue Arnott

Inspector

APPEARANCES

In support of the Order

Ms J Tench	Definitive Map Officer; East Cheshire Council
Mr M Taylor	Rights of Way Manager; East Cheshire Council

Opposing the Order

Mr R Spoors	Applicant/statutory objector; also representing statutory objectors: Mrs C E Peat (British Horse Society) and Ms J Mossdrop
Mr C M Broadbent	Statutory representation

DOCUMENTS

1. Copies of statutory notices and certification
2. Copy of the 4 statutory objections & 1 representation
3. East Cheshire Council's Statement of Case together with bundle of accompanying documents
4. Letter from Mr Spoors to the Planning Inspectorate dated 18 July 2014
5. Letter from Mr Broadbent to the Planning Inspectorate dated 21 July 2014
6. Statement of case of Mr Kind
7. Letters confirming Mr Spoors as representing Mrs Peat and Ms Mossdrop
8. Extract from Prestbury Highways Board Map of 1865 including reference key