
Definitive Map and Statement Modification Order

S53 – Wildlife and Countryside Act 1981, Claim to upgrade Public Footpath 156 Saddleworth at Quarry Lane, Delph, to Bridleway and Modification of Definitive Map and Statement

Portfolio Holder:

Councillor C Goodwin, Cabinet Member for Transport & Highways

Officer Contact: Nasir Dad, Director of Environment

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Ext. 4325

Highway Regulation Committee – 19th June 2025

Reason for Decision

To determine an application submitted under Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act), requesting that a Modification Order be made for the upgrade to Bridleway status of (part) Footpath 156 Saddleworth, at Quarry Lane, Delph, which is shown A-B on the attached plan, 764/A4/249/1.

Executive Summary

An application has been received to upgrade a section of existing Footpath 156 Saddleworth, to Bridleway status on the Definitive Map and Statement. The Application route is on land unregistered at the Land Registry. The application meets the required legal test of 20 years use of the whole of the Application Route 'as of right'. The report is requesting that the Highway Regulation Committee consider whether to approve the application to make a Definitive Map Modification Order in respect of the Application Route and if the application is approved, the Director of Environment be authorised to undertake the necessary procedures to make the Order and to confirm the Order in the event that no objections are made to it.

Recommendations

It is recommended that:

1. The application for a Modification Order in respect of the upgrade of the section of Footpath 156, Saddleworth at Quarry Lane, Delph, as detailed in Schedule 1 be approved and the Director of Environment be authorised to undertake the necessary procedures to make the Order and to confirm the Order in the event that no objections are made to it.
2. The Applicant and the owner/occupier of the land subject to the application be notified of the Council's decision as required by Schedule 14 of the 1981 Act.

Definitive Map and Statement Modification Order. S53 – Wildlife and Countryside Act 1981, Claim to upgrade (part) Footpath 156, Saddleworth to Bridleway Status.**1 Background**

1.1 The application for a Modification Order was submitted by Liane Robinson of the West Pennine Bridleways Association. The evidence in support of the application consists of 20 user evidence forms and maps claiming more than 20 years use on horseback of the Application Route. The user evidence must be considered against the statutory provisions in section 31 of the Highways Act 1980 ("the 1980 Act") concerning dedication of a highway through 20 years' usage as of right.

1.2 Under section 31 of the 1980 Act, a way is deemed to have been dedicated as a highway after 20 years use by the public as of right and without interruption unless there is sufficient evidence that there was no intention during that period to dedicate it. In order to establish a presumed dedication under this section, each element in the wording of section 31(1) and (2) needs to be proved on the balance of probabilities.

"(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise".

(3) Where the owner of the land over which any such way as aforesaid passes:-
(a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and
(b) has maintained the notice after the 1 January 1934, or any later date on which it was erected,
(c) the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway."

1.3 To make a Modification Order to upgrade the Application Route on the Definitive Map, the Council needs to decide whether an event under section 53 of the 1981 Act has occurred. If so, a Modification Order should be made. The "event" which is relevant to this application is in section 53(3)(c)(ii) of the 1981 Act - "The discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows 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."

2 Analysis of Claim

2.1 The evidence submitted in support of the Application consists of User Evidence Forms completed by various individuals. In total, 20 completed Right of Way Evidence Forms have been received in support of the Application. It can be seen from the summary of User Evidence at Table A below that:-

- A number of people claim to have used the route on horseback; most are local people.

- None of the persons who completed a User Evidence form have indicated that they ever sought or were granted permission to use the Application Route on horseback. No User Evidence forms indicate users having been stopped or turned back from using the Application Route.
- The periods of use range from 1 year to 53 years, with the earliest reported use being 1961. For those persons who have used the Application Route on horseback, the frequency of their use is moderate.

In addition to the User Evidence Forms, various OS Maps have been provided showing the application route as an enclosed road or track with no limitations such as gates from as early as 1896. A further map has been provided, that of the Inland Revenue Valuation Records 1908-1910, which shows the application route excluded from all other adjacent hereditaments which would potentially indicate that it is excluded as it is recognized as a 'public road'

The Council has to decide what it considers are the correct facts, and on the basis of those facts, whether an event under section 53(3)(c)(ii) has occurred.

2.2 Use of the way is not in itself enough – it is the nature of such use that has to be established. All the provisions of section 31 of the 1980 Act, together with the common law rules need to be carefully considered.

a) use “by the public”

Whilst the User Evidence submitted comes mainly from residents who live in the area, that does not mean that the use cannot be regarded as use “by the public”. In the case of *R v Inhabitants of Southampton 1887*, it was held that use by the public “must not be taken in its widest senses; it cannot mean that it is a use by all the subjects of the Queen, for it is common knowledge that in many cases, it is only the residents in the neighbourhood who ever use a particular road”

Use by those persons who completed User Evidence Forms can be regarded as use “by the public”

b) use “as of right”

None of those persons who completed User Evidence Forms have indicated being challenged themselves. The use of the Application Route by those who completed User Evidence forms appears to have been open and without force or permission, and can therefore, be considered to be use “as of right”.

c) “period of 20 years to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise”.

It is considered that the date when the public’s right to use the Application Route was first called into question was when the Application was made. The period of 20 years use as of right, of the Application Route, must therefore be at least 20 years before. Subsection (3) applies where the owner of the land has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a Highway and has maintained the notice after it was erected. No evidence has been provided to the Council that such notices have been erected on the way.

d) “without interruption”

An interruption has been defined as the actual and physical stopping of the use of a way by the landowner or their Agent. Moreover, such interruption must be with the intention to prevent public use. It is not sufficient if the interruption is for some other purpose.

There is no evidence that use of the Application Routes for a full period of 20 years has been interrupted.

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

There have been numerous legal rulings on what constitutes “sufficient evidence” that there was no intention to dedicate a highway. The leading case for this example took place in the town of Godmanchester, which was considered by the House of Lords in 2007. In that case, the House of Lords ruled that the words “unless there is sufficient evidence that there was no intention during that period to dedicate” in section 31(1) of the 1980 Act required landowners to have communicated to Users their lack of intention to dedicate and that must have been communicated at some point(s) during the 20 year period of use by the public.

3 Community Cohesion Implications, including crime and disorder implications under Section 17 of the Crime and Disorder Act 1998

None

4 Risk Assessments

There is potential risk of Legal Challenge if we do or do not make the Order however, if we are satisfied that the evidential test is met we have no choice other than to make the Order.

5 Co-operative Implications

N/A (J Mulvaney)

6 Procurement Implications

None.

7 Current Position

7.1 The application and User Evidence have been examined and the Officer is satisfied that the documentation provided meets the legal test of 20 years use of the whole of the Application Route ‘as of right’ by a different category of Users (i.e. equestrians). The decision on whether to approve the application lies with the Highway Regulation Committee.

8 Options/Alternatives

8.1

- i. Option 1: To approve the application and upgrade the Application Route on the Definitive Map and Statement as a Bridleway.
- ii. Option 2: Not to approve the application.

9 Preferred Option

- 9.1 The preferred Option is Option 1, as the claim meets the required legal test of 20 years use of the whole of the Application Route 'as of right' by a different category of Users than would be expected on a Definitive Footpath.

10 Consultation

- 10.1 The Ward Members have been consulted and Councillors Luke Lancaster and Pam Byrne support the Officer recommendation.
- 10.2 Adjacent landowners have been consulted and only one reply has been received. Mr Ken Bennett of Upperhouse, Oldham Rd, raised concerns relating to a previously constructed bund to be secured and developed to ensure continued surface water run off and requested the installation of horse stiles to prevent the upgrade becoming a dirt track. As there are no physical works required to implement a status upgrade these concerns are not a matter for consideration. The proposed upgrade to Bridleway status is merely a reflection of the User rights of those who claim to have used the route on horseback for the required period.

11 Financial Implications

- 11.1 An advertisement for the making of the order and a further advertisement for the confirmation of the order will cost circa. £0.7k and will be revenue expenditure. These will be funded from the Public Rights of Way Budget within the Highways Service.

(John Edisbury)

12 Legal Implications

- 12.1 A bridleway is defined in the Highways Act 1980 as a highway over which the public have a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway. Cyclists have the right to ride bicycles which are not mechanically propelled vehicles on bridleways but are required to give way to pedestrians and persons on horseback.

12.2 The burden of proof on establishing that the Application Route is a bridleway lies with the claimant. The basis on which the application needs to be determined together with an explanation of the relevant legal provisions is contained in the report. For use to be 'as of right' it must have been of such a character as should have brought home to the owner of the land the fact that the public were claiming the right to use the way. (A Evans)

13 Equality Impact, including implications for Children and Young People

- 13.1 No

14 Key Decision

- 14.1 No

15 Key Decision Reference

15.1 N/A

16 Background Papers

16.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act :

There are no background papers for this report.

17 Appendices

17.1 None

Table A

Summary of User Evidence

USER	USAGE FROM-TO	YEARS	FREQUENCY P/A	PURPOSE	PERMISSION	METHOD
1	2011-2024	13	Several	Recreation	No	Horse/Foot
2	1980-2023	40+	50+	Recreation	No	Horse/Foot
3	1968-1977	9	Twice Monthly	Recreation	No	Horse
4	1990-2006	16	Monthly	Recreation	No	Horse
5	1988-1990 2022- 2023	3	3	Recreation		Horse
6	2001-2023	22	360	Recreation	No	Horse/Foot
7	1961-2023	32	02-06	Recreation	No	Horse
8	1970-2023	53	Monthly	Recreation	No	Horse
9	2008-2023	15	03-04	Recreation	No	Horse
10	1990-2023	33	48	Recreation	No	Horse
11	1980-2019	39	5+	Recreation	No	Horse/Foot
12	2023	1	1	Recreation	No	Horse
13	2020-2023	3	3	Recreation	No	Horse
14	2021-2022	2	6+	Recreation	No	Horse
15	1977-1986 1995- 2020	25	Monthly	Recreation	No	Horse/Foot/Bike
16	1985-2023	38	10+	Recreation	No	Horse
17	1982-1992	10	04-Jun	Recreation	No	Horse
18	2007-2023	16	05-15	Recreation	No	Horse
19	1965-2023	58	10	Recreation	No	Foot
20	1970-2021	51	12+	Recreation	No	Horse

Schedule 1 – Existing Definitive Statement

District and path number	Page Number	Status	Length (m)	Description	Comments
Saddleworth 156	6	Footpath	2671	Footpath commencing at Oldham Road, Dobcoss A62 (the former Wakefield and Austerlands County Road) and proceeding in a north westerly direction along Quarry Lane to its junction with Thurston Clough Road and continuing northwards to its junction with Shiloh Lane at Shiloh Farm. Then continuing northwards to its junction with Path No.142 then westwards crossing High Lee Lane to its junction	1.2m wide 13 stiles

				with Footpath 94. With (1) a branch proceeding southward to High Lee Lane and (2) a branch proceeding southeasterly to high Lee Lane and then westerly (in a V shape) to the former Lancashire County Boundary.	
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Schedule 2 – Modification of Definitive Statement (Amendments in bold)

District and path number	Page Number	Status	Length (m)	Description	Comments
Saddleworth 156	6	Footpath & Bridleway	2671 (376 Bridleway)	Footpath commencing at GR SD97863 06256 Oldham Road, Dobcoss A62 (the former Wakefield and Austerlands County Road) and proceeding in a north westerly direction along Quarry Lane for a distance of approximately 376 metres to its junction with Thurston Clough Road	1.2m wide 13 stiles

				<p>at GR SD97513 06380 and continuing in a generally northerly direction for a distance of approximately 1120 metres to GR SD97101 07348 at its junction with Shiloh Lane at Shiloh Farm. Then continuing northwards for a distance of approximately 182 metres to GR SD97112 07529 at its junction with Path No.142 then westwards for a distance of approximately 121 metres to GR SD96996 07560 at its junction with Path No.157. Continuing West and Northwest for a distance of approximately 343 metres to GR SD96697 07715 crossing High Lee Lane and continuing Northwest to GR SD96623 07788 to its junction with Path No 94. With (1) a branch proceeding southward for a distance of</p>	
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				<p>approximately 168 metres to GR SD96625 07621 at High Lee Lane and (2) a branch proceeding southeasterly for a distance of approximately 113 metres to GR SD96667 07683 at High Lee Lane and then westerly (in a V shape) for a distance of approximately 113 metres to GR SD96554 07689 at the former Lancashire County Boundary.</p>	
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