

**TITLE OF REPORT:** Application for a Definitive Map Modification Order to upgrade the status of public footpath RY/27 and RY/21 to bridleway

**REPORT OF:** Strategic Director, Legal and Corporate Services

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## Summary

This report to Committee sets out, summarises, and evaluates the evidence gathered and submitted to the Council to determine whether there is sufficient evidence to make a definitive map modification order to upgrade a public right of way on the definitive map and statement.

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### **1. Purpose of the report**

To investigate an application and evidence for a definitive map modification order as to whether bridleway rights exist over two existing public footpaths at Cushy Cow Lane, Ryton, Gateshead as shown by a broken black line on the plan at Appendix 2 to the report.

### **2. Background**

- 2.1 By virtue of Section 53(2)(b) of the Wildlife and Countryside Act 1981, the Council is required to keep the Definitive Map and Statement under continuous review and make modification orders upon the discovery of evidence which shows that the map and statement need to be modified in consequence of events described in Section 53(3).
- 2.2 The relevant statutory provision which applies where an existing public footpath on the Definitive Map and Statement is being upgraded to public bridleway status, on the basis of historical documentary evidence, is Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981. This requires the Council, as Surveying Authority, to modify the Definitive Map and Statement following:
- ‘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’.
- 2.3 The main issue is whether the evidence is sufficient to show, on the balance of probabilities, that the existing public footpaths should be recorded as a public bridleway. The definition of a bridleway under Section 66(1) is

‘a highway over which the public have the following, but no other, rights of way, that is to say, 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’.

- 2.4 All the relevant statutory provisions and competing rights and interests have been considered in making this report. The recommendation is in accordance with the law and proportionate having regard to individuals’ rights and the public interest.

### **The Application**

- 2.5 The Council received an application (set out at appendix 1) on the 20<sup>th</sup> February 2020 which was dated 20<sup>th</sup> February 2020 to upgrade a footpath to a bridleway onto the definitive map and statement of public rights of way. The applicant submitted historical map evidence and no user evidence forms to support the claim. The historical map evidence is set out at Appendix 3 to the report.

- 2.6 Following receipt of the application, the Council displayed notices along the current public footpath route requesting any persons who use it on horseback/as a bridleway to complete a user evidence form. The local user groups were also contacted to determine if any of their members used the claimed right of way and wanted to submit evidence. Following this, no user evidence forms were received.

- 2.7 On investigating the claim, the Council in its capacity as Surveying Authority, inspected documentary evidence and this is set out at paragraph 4 below.

- 2.8 In addition to the above investigations, the landowners of the claimed upgrade route on the north side of the A695, RY/27/4, were sent landowner evidence forms to determine whether they recognised the footpath as a bridleway or whether they had done anything to rebut any presumption of dedication of the claimed right of way as a bridleway. The council put notices on the south side of the A695, RY/27/3, RY/27/2, RY/21/1 and RY/21/2 as this land is unregistered. The Council did not receive any landowner evidence in response.

### **3 Site Investigation**

The route which is subject to the claimed upgrade is indicated on the plan at Appendix 2 from point A to point B. It is approximately 660 metres in length and commences at Point A, where there is a fingerpost on Cushy Cow Lane, Ryton. A well worn muddy track continues along the field edge in a southerly direction. On approaching the south side of the A695 the path turns easterly and stops on reaching the tarmacked highway. The only potential safe way of crossing this major road is an underpass to the west which is currently unusable. Once across the A695 onto the north side the claimed upgrade route continues from the fingerpost in a south easterly direction initially climbing steps to a wooden stile. The stoned path continues in a south easterly direction towards Stephens

Hall North Farm where it crosses over footpaths Ryton 23 and 25. The claimed upgrade route continues for approximately 320 metres in a south easterly direction to Lead Road, point B on the plan.

#### **4 Consideration of the Claim**

4.1 In determining the application, the committee must decide the following:

- (a) if there is evidence to demonstrate, on the balance of probability, the existence of a public bridleway from point A to point B over footpath RY27 and RY21 which is currently recorded as a public footpath. The burden of proving this falls to the applicant and matters such as suitability of a way and possible nuisance or need are irrelevant and cannot be taken into account when reaching a decision.

#### **4.2 Documentary Evidence**

The application was submitted with the following documentary evidence:

**1) OS 1:25,000**

The route, the continuation of Cushy Cow Lane to Stephen's Hall, is shown with the purple line added by applicant. Note currently there is a gap between the footpaths north and south of the A 695.

**2) Definitive map**

The route follows footpaths RY/27/4, RY 27/3, RY/27/2, RY /21/2 and RY/21/1, all in Ryton Parish, Gateshead, indicated with purple arrow added by applicant.

**3) Gateshead Adopted roads map**

The route is indicated approximately with the purple line added by the applicant. Cushy Cow Lane in the north and Lead Lane to the south are both adopted, as are the tracks either side of the bypass leading to the underpass.

**4) Satellite view**

Purple arrows alongside route added by applicant.

**5) Ryton Tithe map 1841**

The purple oval added by applicant indicates the area of interest shown in the detail. Cushy Cow Lane is shown continuing through a gate southwards, this route is labelled "from Greenside" as it comes from south of the wagonway. This route is not included within any parcels of land but is shown by a dotted track. Tithe maps are solely concerned with identifying titheable land. They were not intended to establish or record rights of way. They are generally good evidence of the topography of the roads they portray, especially those which form boundaries of titheable land.

**6) Ryton Woodside Tithe 1840 Thomas Bell**

This shows dotted track with parcel 2.the southern part.

**7a) Boundary Remark Book Ryton 1854 Durham 1627**

The claimed route is shown as a dotted track. RH shown on the map stands for 'root of hedge'.

**7b) OS Durham I 6 inch 1858**

Shows the claimed route as a solid lined track.

**8) OS 1st 25 inch Durham I.16 1856-95**

The claimed route starts at the end of plot 363- Cushy Cow Lane then continues through plot 224 which is recorded as arable. The claimed route continues through plot 250 which is recorded as pasture then becoming plot 718 which is recorded as a road.

**9) Ryton Book of Reference**

Shows recorded plots 363,224,250 and 718 as previously mentioned.

**10) Bell Map 1861 Plan of Western Coal District of Durham and Northumberland**

Shows the claimed route as a dotted and solid lined track.

**11) 1 inch 1st topographical 105 SW 1864**

Shows the claimed route as a continuous solid lined track.

**12) OS 25 inch I.16 1895 NLS**

Shows the claimed route as a continuous solid lined track.

**13) OS 1 inch sheet 20 1898 outline NLS**

Shows the claimed route as a dotted and solid lined track.

**14) Bartholomew 1902 Sheet 2, Northumberland south NLS**

Shows the claimed route as a solid lined track. The explanatory note shows that the claimed route was not recorded as a footpath or bridleway.

**15) OS 6 inch Durham 1 1914 NLS**

Shows the claimed route as a dotted and solid lined track.

**16) OS 1 inch 1961 NLS**

Shows the route as a staggered and solid lined route.

**17) 1910 Finance Act Plan Durham I.16**

The claimed route is shown by a solid lined route that passes through plot 933 which shows no deductions. Under the 1910 Act, all land was required to be valued unless exempted. Routes shown on the base plans which correspond with known public highways, usually vehicular are not normally shown as included in the hereditaments. Instead they are uncoloured and unnumbered. Landowners were not obliged to claim reductions and many did not, lack of a deduction does not mean no rights of way existed.

**18) Photographic evidence**

These photos show the path from Cushy Cow Lane to Lead Road. Photos of underpass and track on the north side of the A695 are not included in the claim.

4.3 In addition to the documentary evidence submitted in support by the Applicant, the Council also carried out its own research and inspected the following documentary evidence:

a) **NZ17SE – A Published 1950**

Clearly shown as a continuous route.

b) **Definitive statements 1967**

**Description of route: -**

**RY/21-** Leave main road E. of Folly, passing Stephen Hall, where lane joins paths 23,25,27. Query-is this lane public for vehicles or is it footpath rights only.

**RY/27-** Lead N. from Stephens Hall be cart road to wood stile and along W. side of hedge to field gate to field gate. Cross railway, through field gate, following hedge to field gate leading into Cushy Cow Lane.

c) **Definitive statements 2018**

**Description of route:-**

**RY/21-** South of Stephen's Hall, from road (going to Greenside), proceeds north along farm accommodation track west side of Stephen's Hall to junction, south east of Stephen's Hall Farm.

**RY/27:-** From south east of Stephen's Hall North Farm proceeds northerly at edge of fields, across Ryton FP 95 and Ryton/Crawcrook Bypass to Cushy Cow Lane ending at junction Ryton FP 26 and Croft Close.

d) **Ryton Crawcook By-pass Side Roads Order 1987**

An internal search of the Council's records was undertaken and the Ryton-Crawcrook By-Pass Side Roads Order 1987 was found. This showed highways and private accesses that were to be stopped up and new highways to be created. Upon closer examination, Schedule 3 sets out at number 4, part of Footpath 27 to be stopped up, where it crosses the line of the new bypass. This is also included in number 10 which is to stop up a private means of access to agriculture which runs along the same stretch as Footpath 27. In brackets it classifies the reference of the new highway as a bridleway. The new highway provided is the underpass. We are not able to draw any helpful conclusions from this and are therefore not attaching any weight to this document. An extract is appended at Appendix 3.

### **Conclusion of Documentary Evidence**

4.4 After assessing the documentary evidence above, the cumulative evidence suggests that historically a track existed over the claimed route. There is no documentary evidence to indicate it was an occupation road. It can be concluded that the claimed route is clearly shown as an established route with possibly higher rights than a footpath that is part of a local highway network. The weight attaching to the evidence as a whole must be assessed. Historical evidence does not need to be supported by public user evidence in order to demonstrate higher public rights. Those rights could exist even though the landowners have not witnessed any bicycle or equestrian use by the public.

Such use would not be allowed whilst they are recorded as public footpaths. Although the fact that the claimed route is shown on pre-ordinance survey maps is not evidence that it is or has been used by the public, it is more than likely that it has been used for that time and recognised as a highway for it to be shown on those maps. In light of the map evidence, officers would recommend that there is sufficient evidence of the claimed upgrade route as a bridleway on the balance of probabilities and therefore to make a definitive map modification order to upgrade the footpath to a bridleway between points A and B.

## **Recommendation**

Officers recommend that approval is sought from The Public Rights of Way Committee for the following:

1. The making of a definitive map modification order to add the claimed bridleway at Cushy Cow Lane, Ryton, Gateshead on the current alignment of the footpath as shown with a line from point A to point B on the plan at Appendix 2 onto the Definitive Map and Statement of Public Rights of Way.
2. Grant delegated authority to the Strategic Director of Corporate Services and Governance to undertake to consult statutory consultees and make a definitive map and modification order to upgrade the current footpaths to a bridleway at Cushy Cow Lane as shown from point A to point B on the plan at Appendix 2; and If no objections are received to confirm the order or if objections are received and not subsequently withdrawn, to send the order to the Secretary of State for confirmation as an opposed order.