

TITLE OF REPORT: **Application for a Definitive Map Modification Order to claim a
bridleway from Barlow Lane, Greenside to Barlow Lane, Barlow.**

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

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 claim a public right of way on the definitive map and statement.

1. Purpose of the report

To investigate an application and evidence for a definitive map modification order as to whether bridleway rights exist over a track that runs from Barlow Lane, Greenside to Barlow Road, Barlow.

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 for a claimed bridleway to be recorded on the Definitive Map and Statement on the basis of historical documentary evidence, is Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981. This requires the Council, as Surveying Authority, to modify the Definitive Map and Statement following:

Section 53(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being [a right of way such that the land over which the right subsists is a public path [, a restricted byway] or, subject to section 54A, a byway open to all traffic.

2.3 The main issue is whether the evidence is sufficient to show, on the balance of probabilities, that the alleged route 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 20th February 2020 which was dated 20th February 2020 to claim 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 claimed 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 council put notices at the start and end of the claimed route as well as at the junctions with Footpaths RY/14/1 and RY/44/1 as this land is unregistered. The adjoining landowners of the claimed route were sent landowner evidence forms to determine whether they recognised the track as a bridleway or whether they had done anything to rebut any presumption of dedication of the claimed right of way as a bridleway. An objection was received from Cadent Gas which has been withdrawn following further consultation.

3 Site Investigation

The route which is subject to the claim 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, at the end of adopted highway and RY/110/1. A tarmac track continues in a southerly direction. The track continues past a fingerpost for Public Footpath RY/14/1 and the access into the old SUEZ landfill site which is recorded as a permissive bridleway, RY/PE/29/1. The access point has a K barrier, horse stile and a vehicle access gate. The surface changes to a stone track at this point and cross over a small stream. The stone track then continues in a southerly direction passing a finger post for RY/44/1 and ending at Barlow 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, Barlow Lane, Greenside to Barlow Road, Barlow. 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 Map**

The route, the continuation of Barlow Lane to Barlow Road, is shown with the orange line added by applicant. OS maps show physical features on the ground at the time of the survey.

2) **Definitive map**

The route is not visible. Footpaths RY/110/1, RY 14/1 and BL/44/1 are shown.

3) **Gateshead Adopted Highways map**

The route highlighted in blue is a small section of adopted highway.

4) **Find my street**

Section highlighted in red shows the adopted section of Barlow Lane.

5) **Local map-Gateshead cycle map**

Highlighted in green.

Map Key -Traffic-free path.

6) **Satellite view**

The applicant has highlighted this route with a red line. The claimed route follows the tree line.

7) **Ryton Woodside Tithe 1943**

The claimed route is shown as a solid lined track which is 'labelled' to Barlow, Winlaton &c. The claimed route is also included in Plot 7 which is Burn Hills Farm. Also shown as solid lined tracks are RY/14/1 and RY/110/1

Tithe maps are solely concerned with identifying titheable land. They were not 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.

8) **Winlaton Tithe 1839**

The claimed route is shown as a solid lined track from Greenside numbered 417a. This is recorded as a lane running through this farm.

9) **Greenwood 1820**

The claimed route is shown as a solid outlined track. Track to Reilly Mires Farm shown as a dotted line.

10) Bell 1850

The claimed route is shown as a solid lined track.

3) a) OS V.4 1856-58

Shows the claimed route as a solid lined track numbered plot 1472.
Route connected by plot 732 and plot 733.

b) Book of reference

Plot 1472 recorded as a road.
Plots 732 and 733 recorded as Waggonway.

11) OS 6 inch Durham V 1862

Shows the claimed route as a continuous solid lined track.

12) OS 6 inch Durham V.NE 1898

Shows the claimed route as a continuous solid lined track.

13) OS 25 inch Durham V.4 1895

Shows the claimed route as a continuous solid lined track.

14) Bartholomew 1902 sheet 2

Shows the claimed route as a continuous solid lined track. Key provided states that uncoloured roads are inferior and not to be recommended to cyclists.

15) 1910 Finance Act Plan Durham sheet V.4

Shows the route as a solid lined route. The route is not included in any parcels. 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.

16) OS 1 inch 1961 sheet 78

The claimed route is shown by a solid lined route.

17) OS 25 inch V.4 1947

The claimed route is shown by a solid line.

18) Photographic evidence

These photos show the claimed route from Barlow Lane to Barlow Road.

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) Definitive map-1965

Claimed route is shown in white and red dashes.

Map key- Secondary road or narrow road with passing places.
RY/14, RY/110 and RY/PE/29 are not recorded as public rights of way.

b) Definitive map 1999-working copy

Claimed route is show as a solid lined route.

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 the possibly that it 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 public rights. Those rights could exist even though the landowners have not witnessed any bicycle or equestrian use by the public.

Although the fact that the claimed route is shown on preordinance 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 route as a bridleway on the balance of probabilities and therefore to make a definitive map modification order to record a bridleway between points A and B.

4.5 Natural Environment and Rural Communities Act 2006

Although the application is to record a bridleway, if when assessing the evidence officers consider that highway rights may be present, then these would need to be recorded. It is therefore necessary to consider the Natural Environment and Rural Communities Act 2006 ('NERC Act 2006'). The NERC Act 2006 significantly curtailed the scope of recording further public rights of way for mechanically propelled vehicles (Byways Open to All Traffic 'BOATs') on the definitive map and statement. Section 67 of the NERC Act 2006 extinguished public motor vehicular rights over every highway that is not already shown on the definitive map and statement or is shown as a footpath, bridleway or restricted byway. There are, however, 5 exceptions:

- The way had been lawfully used more by motor vehicles than other users during the five years preceding commencement
- The way was recorded on the 'list of streets' (kept under S.36 (6) of the Highways Act 1980) as being maintainable at the public expense but is not recorded on the DMS
- The way was expressly created or constructed for motor vehicles
- The way was created by the construction of a road intended to be used by mechanically propelled vehicles

- The way had been in long use by mechanically propelled vehicles before 1930 (when it first became an offence to drive off road).

No evidence has been produced to show there is an exception that applies.

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 from Barlow Lane, Greenside to Barlow Road, Barlow 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 add the claimed bridleway at Barlow Lane, Greenside to Barlow Road, Barlow 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.