

Regulatory Committee

Meeting to be held on 26 July 2017

Electoral Division affected:
Chorley North

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Upgrading to Bridleway of Footpaths 1 (part) and 8 (part) Chorley, known as Common Bank Lane

File No. 804-575

(Annex 'A' refers)

Appendix A refers

Contact for further information:

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Executive Summary

Application for the upgrading to Bridleway of parts of Footpaths 1 and 8 Chorley, known as Common Bank Lane, in accordance with File No. 804-575.

Recommendation

That the application to upgrade to Bridleway parts of Footpaths 1 and 8 Chorley, in accordance with File No. 804-575, be not accepted.

Background

Regulatory Committee considered an application to upgrade part of the route under investigation on 28 September 2016. A copy of the 2016 report is included as Appendix A of this report together with reports considered in 2002 and in 2003 to upgrade a greater length of public footpath but including the application route now under investigation.

In 2016 Committee considered all relevant map and documentary evidence as well as the user evidence available and also considered the intention of the landowner, who, in this particular case included part of the route being owned by Chorley Borough Council.

Having examined all of the information provided, the Committee agreed that the decision on the application should be deferred as the previous reports from 2002 and 2003 referred to user evidence which had not been considered as part of this application and also because Chorley Borough Council, who had supported the 2002/2003 application - and owned much of the route - had not responded to consultations on the 2016 application.

The Committee therefore asked that officers contact Chorley Borough Council again and to evaluate the user evidence in the 2002 application.

Further Consultations with Chorley Borough Council

At the request of the Regulatory Committee, further consultations were carried out with the Borough Council who responded further with the following information:

Councillor Aaron Beaver commented that he had no real opinion on the matter and would be happy for the County Council to make the improvements if they are needed, this on the basis that the Borough Council would not be expected to contribute to the same.

Chorley Borough property services team expressed the view that the Borough Council's comments made in 2002 were no longer relevant as the Gillibrand development (which affected part of the 2002/03 route) has since been completed.

Furthermore, the Borough Council responded by stating that they were not aware of the route having been used by horse riders and cyclists, in particular during the period from 1990 to 2014 and that specific permission for use of the route by horse riders or cyclists has never been granted nor has any action been taken to stop/restrict the use of the route.

The Borough Council concluded by stating that they had no objections to the application.

In addition to the further responses from Chorley, officers have looked again at their ownership title which shows that the Borough Council sold land in 2000 subject to granting a "right to use the roads and footpaths on the land still owned by the Borough in so far as they are not adopted highways excepting always Common Bank Lane".

The user evidence from the 2002 application

The 2002/3 application included the whole of the 2016 application route and also of the full length of the route of Public Footpath 1 Chorley from point B on the 2016 application route extending in a general easterly direction as far as Ennerdale Road (GR SD 5745 1650). At the time that the 2002/03 application was under consideration work was underway to construct a new ring road which now intersects the route.

Unfortunately despite much effort, the physical file re the 2002 application cannot be located in archives at the present time. Officers are unable to re-evaluate the actual user forms themselves.

The reports in 2002 and 2003 set out details of the user evidence submitted. Appendix A refers.

Committee will note that the plan considered in 2002 and 2003 was denoted as lengths A-R and H-S. Length H-S is the length denoted A-B on this report plan and A-H is B-F.

The Committee will see that despite repeated requests for better user evidence there were still too many inconsistencies and officers advised in 2003 that the use was insufficient to support the claim for an upgrading to bridleway.

With the file mislaid officers are unable to be sure which piece of user evidence related to this 2016 application route and what years of use that might indicate and cannot add to their colleagues' evaluation in 2003.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

Present line available since 1890s
Some user evidence on pedal cycle and as submitted in 2002
Probably available route for several decades
Owner of part not objecting

Against Making an Order(s)

Difficulties with user evidence including a misfiled/lost file
modern line not existing until after 1845
noted in contemporaneous document as "footpath" in 1886
shown within taxable hereditament plots in 1910
difficulties in proving dedication of bridleway on balance

Conclusion

Dedication of a route by an owner is either expressed implied or deemed. Evidence of a dedication can come from documents, or evidence of use.

There is not, it seems sufficient evidence from which to infer a dedication of bridleway from historic documents as discussed in the report of 2016.

The evaluation of the 2002 user evidence is difficult without the physical user forms and the evidence submitted more recently is, as is suggested in the 2016 report, not sufficient from which to deem (under S31 Highways act 1980) or infer (under common law) dedication from user evidence.

It is therefore advised that committee must look to see if there is inferred dedication from what the owners say and whether there is sufficient evidence of an intention to dedicate a bridleway at a time when the Borough Council owned all but a small section of the route. Any such evidence coupled with a small amount of bridleway use would achieve dedication of a bridleway.

The statement recently made by the Borough Council that it does not object to the application comes close to being evidence of their intention to dedicate but indicates present intention looking forward and they presently own only part of the route. The owners of another part of the route clearly do not wish to dedicate the route as a bridleway.

The statement made by Chorley BC in 2002 again indicating their non objection to this part of the route was similarly made after they had sold part of the route.

From the detail of their sale in 2000 it would seem that the Borough Council did not regard Common Bank Lane as a highway and wished to control access along it. It was already recorded as a footpath so this excepting of Common Bank Lane would seem to indicate that the Borough did not intend it having any higher status.

Despite trying to clarify the Borough's intention it would seem that there is not sufficient to infer their dedication of this route as higher status than footpath when they owned much longer length of it.

Taking all the information into account from all three previous reports together with this one it may be that the Committee have reasonable concerns about the evidence and it is suggested that there is insufficient evidence from which to find, on balance, a dedication of this route as bridleway either under S31 Highways Act 1980 or under common law.

Alternative options to be considered

To decide that the evidence shows on balance that bridleway rights subsist, that the application be accepted and that an Order be made and promoted to confirmation.

To decide that the evidence does not show that bridleway rights subsist, that the application be rejected and no Order be made (as Officer recommendation).

Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-575		Jane Turner, 01772 532813, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A