

Regulatory Committee

Meeting to be held on the 25th September, 2002

Part I – Item

Electoral Division

Wildlife and Countryside Act 1981

Claimed Upgrading to Bridleway of Public Footpath Nos. 1 (part) and 8 (part), Chorley, Chorley Borough

(Appendix 'A' refers)

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Executive Summary

The claim for the upgrading to the status of bridleway on the Definitive Map and Statement of Public Rights of Way of Public Footpaths Nos. 1 (part) and 8 (part), Chorley, Chorley Borough, in accordance with Claim No. 804/347.

Recommendation

That the Claim for the upgrading to the status of bridleway of Public Footpath Nos. 1 (part) and 8 (part), Chorley, Chorley Borough, on the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/347, be not accepted.

Background

A claim has been received:-

- i) for the upgrading to the status of bridleway of Public Footpaths Nos. 1 (part) and 8 (part), Chorley, extending for a total distance of approximately 1790 metres from a point approximately 100 metres south-west of Ackhurst Road, following Public Footpaths Nos. 1 and 8 in a general south-westerly, then south-easterly direction to a point approximately 10 metres south of Ennerdale Road, and shown between points A-R on the attached plan, (GR. 5682 1764 to 5746 1649); and
- ii) with a spur of Public Footpath No. 1, Chorley, from a point on Public Footpath No. 1, Chorley, in a general south-westerly direction for a total distance of approximately 85 metres, to a point at the Parish boundary with Charnock Richard, and shown between points H-S on the attached plan, (GR. 5636 1733 to 5629 1729),

on the Definitive Map and Statement of Public Rights of Way.

Consultations

Chorley Borough Council

The Council has no objection to the claim for the upgrading of part of Public Footpath No. 8, Chorley, to Bridleway status.

As regards the element of the claim relating to Public Footpath No. 1, Chorley, in respect of the length of Public Footpath No. 1 running between the ford at Bark House Bridge on the River Yarrow and the footbridge over the River Chor, the Council has no objection.

However, in respect of the claim to upgrade that length of Public Footpath No. 1, running from the footbridge over the River Chor to south-eastwards to Ennerdale Road, the Council wishes to object to this element of the claim, on the grounds that granting of the claim could prejudice the Council's proposal's for the development of the Gillibrand area.

The Council are currently promoting the construction of a by-pass road – the Gillibrand Link Road – which is to run southwards from Ackhurst Road, through the eastern part of Walleys Wood and cross over the River Chor where the footbridge referred to above is located, before continuing onward to the south-east to join up with Coppull New Road (B.5251). The area lying to the east of the Gillibrand Link Road is to be developed for housing purposes (a figure of between 500-600 houses is proposed).

While it is proposed to retain Public Footpath No 1 within the overall development, the Council has applied to the Department of Environment, Transport and the Regions for the making of an Order under Section 247 of the Town and Country Planning Act 1990, to authorise, amongst other things, the diversion of that part of Public Footpath No. 1, which is to be crossed by the Gillibrand Link Road, the details of which are shown on Plan No. 5.

The Council is also at the moment pursuing a Compulsory Purchase Order to secure all the lands needed for the construction of the Link Road, and also for landscaping purposes (a public local inquiry was fixed to start on Tuesday, 20 April 1999).

In the light of the above, the Borough Solicitor wonders whether the claimants are aware of the development proposals, details of which were published in the press and posted on site in August 1998, and if not, whether on being acquainted with them, they would in the circumstances still be interested in pursuing the claim in respect of this length of Public Footpath No. 1.

Finally, with regard to the claim for the grant of Bridleway status on a route, "from Public Footpath No. 1, Chorley, to German Lane, Charnock Richard", the Borough Solicitor is uncertain as to what length of route is affected by this claim. On the proviso that this relates to German Lane or the ford at Bark House Bridge, then this Council would have no objection to the grant of this claim.

Charnock Richard Parish Council

The Parish Council have no objections to the proposed Modification Order.

Claimant/Landowners/Supporters/Objectors

The evidence submitted by the claimant/landowners/supporters/objectors and observations on those comments is included in **Advice – Head of Legal Services Observations**.

Advice

Environment Director's Observations

The claimed route starts at the south west end of Unclassified County Road X1109 (also designated as part of Public Footpath No. 8, Chorley, and known as Common Bank Lane) approximately 100 metres from its junction with Ackhurst Road (GR 5682 1764) (point A).

Unclassified County Road X1109 provides access to the Chorley Waste Water Treatment Works (owned by United Utilities), the main entrance of which immediately precedes the start of the claimed route on the north (right).

From point A the claimed route proceeds in a south westerly direction on a 4 metre wide tarmac road. There are no signs indicating the recorded status of the route and no other signs indicating public or private rights of use.

Within the first 80 metres from point A the route passes four properties on the north (right) that all gain access from the claimed route. On the south side (left) the route is bounded by a hedge which extends for approximately 240 metres.

Beyond the fourth residential property (Sunnyside), at point B, there is an entrance onto adjacent land that provides access to the rear of Sunnyside. There is a sign at the opening saying 'Private NO ENTRY – CONTRACTORS ENTERANCE 50 YARDS'.

Beyond point B the claimed route is bounded on both sides by a hedge and continues along a tarmaced road in a south westerly direction for a further 60 metres to point C. At point C there is another opening on the north of the route providing access into the sewage works. Across the opening are a series of wooden posts, two of which are substantial gateposts. Just beyond the opening at point C an old wooden painted sign can be seen in the fence saying 'MOT GARAGE' and an arrow on the sign points down the claimed route.

From point C the route continues in a south westerly direction on a 4 metre wide tarmac surface road. There are some potholes in the tarmac, the largest filled with 10mm stone. At point D the hedge on the south of the route comes to an end to be replaced by a metal security fence, behind which there is a row of mature conifer trees.

Beyond point D, to the north of the route, there is a 60 metre long lay by/passing place. Beyond the lay by the route drops gently downhill passing a pumping station on the south to point E where it turns to continue in a more westerly direction.

The claimed route continues along the tarmac road in a westerly direction bounded to the south by a security fence and hedge and to the north by a post and sheep netting fence topped with barbed wire. There is a gate into the field on the north and ten metres beyond the gate is an access way into the sewage works marked by an old wooden sign on which only the words 'North West Water' can be read, point F.

The claimed route continues past the access way along the tarmac road and passes to the west of the property known as 'Common Bank' where it meets Public Footpath No. 1, Chorley, point G (GR 5635 1737).

In summary, this section of the claimed route is approximately 540 metres long. It is tarmaced throughout its full length and is regularly used by vehicles gaining access to a garage, residential properties, the sewage works and pumping station. There are no signs stating the recorded status of the route (public footpath) or indicating any other public or private rights that may exist. There are no gates, stiles or obstructions across the route.

From the point at which Public Footpath No. 1, Chorley, passes to the south west of Clayton Brook garage (point H) (GR 5636 1733) a spur of Public Footpath No. 1 branches off the main route to run in a south westerly direction to a ford crossing and pedestrian bridge (Bark House Bridge) over the River Yarrow at point S.

At point H there is a small, fenced electricity compound. Next to the compound is a public footpath signpost pointing down the claimed route.

The claimed route runs to the south of the compound dropping down, in a south westerly direction, onto an unsurfaced and overgrown path. Hidden in the overgrowth, next to the electricity compound, is a wooden waymark post with a waymark disc attached indicating the direction of the claimed route with the wording 'Chorley Circular'.

Four bollards have been positioned in the centre of the claimed route approximately 10 metres south west of point H. The bollards prevent vehicular use of the claimed route and are difficult to see because of the overgrowth.

Continuing in a south westerly direction the path is fenced on either side with green metal railings to the south (left) and the remains of a metal fence just visible in the overgrowth to the north (right). The route is approximately 10 metres wide reducing to approximately 6 metres and then widening again to 10 metres on the approach to the ford.

The route gently slopes downhill for a distance of 85 metres to the ford across the River Yarrow at point S (GR 5629 1729). The claimed route is passable but very overgrown and boggy in places. The last 10 metres of the route, before reaching the ford, have been cobbled although some are now damaged and covered with mud. The ford itself is not gated or signed but is partially cobbled into the river. Immediately north of the ford is a narrow footbridge known as Bark House Bridge over which pedestrian access is available.

In summary, it now appears that the claimed route from point H to point S receives little use because it is overgrown and boggy. However, a well-worn track has formed on the land to the north running parallel to the claimed route down to the footbridge. It appears that horses have also been using this route but rejoin the claimed route just east of point S to gain access to the ford crossing.

From the junction of Public Footpath No. 1 and Public Footpath No. 8 Chorley to the west of Common Bank the route continues on a tarmac road in a southerly direction to Clayton Brook Garage. There is a large parking area to the west of the claimed route and the garage buildings are to the east.

South west of Clayton Brook Garage (point H, and the point at which the spur of Public Footpath No. 1, Chorley, branches off to the ford) the claimed route follows a stone surface path bounded to the north by the high wooden fence of Clayton Brook garage and to the south (left) by metal railings (overgrown). A large block of concrete has been left at the side of the route near point H but does not obstruct the route. The route is quite overgrown but there is a clear 1 metre wide strip down the centre.

The route continues on a slight decline for approximately 95 metres to point I where three metal bollards have been erected across the path and a metal rail attached horizontally across them at ground level. The barrier prevents vehicular access and restricts motorbikes but is low enough for horses to step over. There are hoof prints along the path indicating recent use.

From point I the path continues in a generally easterly direction bounded to the south by a metal railing fence behind which is the former site of the Chorley Bleach works and to the north by an area of woodland (Wallets Wood). The route is overgrown and in places it is necessary to push through the overgrowth. The surface is well compacted with soil, stone and brick.

At point J there is the remains of a yellow plastic sign attached to the metal railings. The black wording on the sign says 'Private Property Keep Out'.

At point K the path meets the River Yarrow and follows it in an easterly direction on a 3 metre wide track. The track has a hard surface covered with a thin film of mud. An old ditch runs alongside the route to the north. After 60 metres the claimed route turns south east still following the river. To the east there is a ditch in which there is a burnt out car. Behind the ditch the woodland rises steeply.

Approximately 80 metres after turning south east the river turns south west but the claimed route continues in a south east direction (point L) for approximately 90 metres along a well used 1 – 1.5 metre wide path to point M. There is evidence of recent use by motorbikes and bicycles.

From point M the claimed route continues in a south easterly direction for a further 150 metres to point N and then turns in an east south easterly direction to follow the north side of River Chor (a tributary of River Yarrow). To the north of the claimed route there are the remains of an old ditch running alongside the route and short sections of iron railings in poor condition. The route continues for 70 metres to point O where it crosses the River Chor by means of a substantial old bridge. (At the time of the original inspection, in September, 2000, the bridge had no parapets. Wooden parapets were subsequently fitted to the bridge in October of that year).

Approximately 10 metres beyond the bridge the claimed route has subsided due to water erosion and a section of retaining wall has collapsed. Access along the route is still available as only half of the 4 metre wide path had been affected by the erosion. (Following the original inspection, safety fencing was erected around the collapsed section in October, 2000).

Beyond the retaining wall the route continues on a 3 – 4 metre wide track in a south south westerly direction rising uphill through the woodland. There are the remains of compacted bricks, stone and tarmac in the surface of the path which has been eroded by running water. Approximately 40 metres from point O Public Footpath No. 9, Chorley, leaves the claimed route in a generally southerly direction. The claimed route continues in a south easterly direction on a well defined 3 metre wide path on the edge of the woodland for a further 20 metres to point Q.

At point Q the claimed route is obstructed by a security fence. A sign lying on the ground says 'Site works in progress – Caution Keep Out – AIG'. No notices indicating that the footpath had been temporarily closed or diverted were present and two sections of the security fence have been separated at point P so that it was possible to walk through.

Beyond point Q it is not possible to walk the remaining 765 metres of the claimed route as it has been obstructed by the development with the topsoil and all physical features having been removed by bulldozers. No evidence of the route's existence remains.

The claimed route ends to the end just south of Ennerdale Road, Chorley, (point R) (GR 5746 1649). Access to this point is not available due to its inclusion as part of the development site.

Chorley Borough Council have explained that between points Q and R the claimed route crosses an old landfill site, locally known as 'Lawnwood tip'. The Borough Council have promoted proposals for the construction of a road together with the development of extensive residential housing in the area. The housing proposals do not call for the development of housing on the site of the former Lawnwood tip, but contractors have been engaged by the Council to execute remedial works (gas venting and drainage). Accordingly the Council made an Order on 9 February, 2000, under Section 14 of the Road Traffic Regulation Act 1984 to close temporarily the length of the claimed route between points Q and R, in order to permit the carrying out of the above remedial works. Although the gas venting works were largely completed in December 2000, excessively wet weather conditions had precluded carrying out the drainage works and opening up the path.

In addition, part of the claimed route is due to be altered as a consequence of the projected Gillibrand Link Road. The former Department of the Environment, Transport and the Regions prepared an Order, entitled 'The Borough of Chorley (Gillibrand Link Road, Chorley) Road Scheme (Stopping Up) Order 1999 which was advertised by the Department in December, 1999. The attached plan no. 5 illustrates the effect of the proposal on the claimed route.

In summary, this section of the claimed route is approximately 1250 metres long. It is accessible between points G and Q on the plan. There are no signs stating the recorded status of the route (public footpath) or indicating any other public or private

rights that may exist. There are no gates, stiles or obstructions across the route although there is one barrier across the path at point I that prevents motorised vehicles but allows equestrian access. A temporary closure Order prohibits access along the claimed route between points Q and R and future proposals for the land will alter the nature of the land over which this section of the claimed route passes.

A variety of maps, plans and historical documents were examined to establish when the claimed route came into being and to obtain any information which would help determine its status.

The earliest map consulted was a private estate map drawn to show the lands owned by Thomas Gillibrand in 1769. The map is quite faded but it is probable that most of the claimed route is shown. However, there is no key on the plan and no information regarding the status or ownership of the tracks and roads shown.

Greenwood's Map of Lancashire, dated 1818, shows the part of the claimed route from Southport Road (the main road north of Ackhurst Road) in a south-westerly direction down to the ford, between points A and S, continuing across the River Yarrow into Charnock Richard. The rest of the claimed route is not shown on this map.

Teesdale-Hennet's Map of 1830 shows the claimed route in much the same way as Greenwood did, namely as a track along the line of Common Bank Lane, across the river and towards Charnock Richard (points A to S). The key for Teesdale's map describes the length shown as a 'cross road'.

The tithe map for Chorley dated 1839 is quite faded but it appears to show part of the claimed route. Part of the length of the route from points A to G is shown, but there appears to be no connection to the road northwards from point A. The ford at point S is shown. A dotted line is shown from the ford across the fields to run along the side of Walletts Wood to eventually join a road to the south of point R. The map is faded and indistinct in this area and it is not clear whether this line accurately represents the claimed route. There is no indication of the status of the routes as described. The adjoining tithe map for Charnock Richard (1842) shows the claimed route continuing into the parish over a ford along a track described in the schedule as 'Road and Waste' in private ownership.

The plan accompanying the proposals by Chorley Corporation for a sewerage scheme, dated 1886, shows the road to the north of point A as a footpath.

The claimed route has been consistently shown on Ordnance Survey maps, with some minor variations, since the first edition published in the mid 1800s.

The first edition of the 6" map, published in 1849, shows the claimed route with some slight differences. Common Bank Lane (points A – G) is now straighter than is apparent on this map, and there are some slight differences in the alignment of the track in the area of the bleach works, which had not been constructed when this map was drawn. A footbridge is shown crossing the river. Most of the route is shown edged with dotted lines across fields or alongside woodland, but Common Bank Lane seems to have been a more substantial track, bordered by fences, hedges or walls.

The first edition of the 25" map, published in 1894, shows the claimed route in greater detail. Common Bank Lane has been straightened on this map, presumably to aid the development of the sewage works, which is named on this map, although most of the construction has yet to take place. The map appears to show both a ford and a footbridge across the river (point S) but neither are named, other than as the location 'Bark House Bridge'. The rest of the claimed route is shown on this map, with the exception of the length H – K which crosses a field diagonally, rather than the route used today, and the final 150 metres approximately which are not shown. There are several gates across the route (at points H, L, Q and in two locations between point Q and the end of the route at point R). The footpath notation 'FP' is shown on the route near point R.

Part of the claimed route was diverted at the Magistrates Quarter Sessions in 1900. Both the length that was extinguished, and the new route – the length H-K – was described in the Order as a public footpath. The plan accompanying the Order shows part of Common Bank Lane (approximating to the length F-H) and describes it as an occupation road.

The next edition of the 25" map, published in 1910, shows that the sewage works and bleach works have been constructed. The alignment of claimed route between points H and K in the vicinity of the bleach works is now shown on this map in the same way as on modern OS maps. A ford is named at Bark House Bridge. The route is still gated at points H, L and Q, with a further 9 gates between point Q and the end of the route as claimed. The notation for a footpath is shown 3 times between points Q and R. There are no significant changes on the subsequent 1928 and 1938 editions, although by 1938 the number of gates across the route has been substantially reduced, with only one gate across it between points Q and R.

The 1960 edition of the 25" OS map shows few changes, apart from approximately 60 metres of the route which, on this map, passes through an area of Lawn Wood past a pond (between points Q and R). On the Definitive Map, the claimed route is shown outside the woodland skirting the other side of the pond. The ford and footbridge are still shown, but there are probably no longer any gates across the route.

The Map Directory of South Lancashire, published by Geographia around 1934, shows the claimed route. Points A to S and H to P are shown edged with solid lines, the first part being named as Common Bank Lane. The rest of the claimed route from point P onwards is shown as a dotted line. There is no key to the atlas but the introduction states that it was produced to meet a demand for a detailed street map of the area, and acknowledges the assistance of Municipal and District Surveyors in producing the book.

The claimed route was shown on the Draft Map for Chorley Municipal Borough as a footpath, and was shown in the same way on all the maps produced in preparation of the current Definitive Map.

In summary, the claimed route appears to have been in existence for at least 200 years, maybe longer. The first part of the claimed route, along Common Bank Lane and over the ford into the next parish, seems to have been the more important historically, and is shown on old maps as part of the district highway network. The rest of the claimed route seems to have been a less important track. It is shown on

Ordnance Survey maps as having a solid boundary (such as a fence, wall or hedge) on one side only, if at all, the rest of the route being open to the fields. The Ordnance Survey surveyor also seemed to regard this part of the route as a footpath, a view which was followed through to the Definitive Map itself.

Head of Legal Services Observations

In support of the claim 12 evidence of use forms have been submitted indicating knowledge of the route for 30+ years (6); 20-30 years (3); and less than 10 years (3).

The forms indicate use of the route for 30+ years (5); 20-30 years (3); less than 20 years (3); and one user does not specify.

However, owing to a lack of clarity as to the line of the route taken, the users were all supplied with a map by the County Council and asked to mark on it the exact line of the route taken; together with the period and frequency of use (on horseback).

As a result, four plans were returned, together with two further plans. Not all of the plans marked appeared to follow the same (claimed) route at the southern end, and there appeared to be a discrepancy regarding the route used in the vicinity of points H-I-J-K. In addition, only one of the respondents appeared to have used the 'spur' to German Lane (H-S), and one did not appear to be claiming to have used the northernmost section (A-B-C-D-E-F-G-H).

The applicant was informed of this and given the opportunity to submit further information. Four plans were returned, each being signed by the marker and declaring the previous map had been misread.

The usage has been mainly for pleasure purposes, horse riding, off-road riding, hacking, cycling, as part of a circular route. The usage ranges from 4/5 times per week, 2/3 times per week, weekly, 2/3 times per month, monthly, to less frequently.

All of the witnesses state that they have seen no obstructions or fencing across the route, no prohibitory notices, they have not been stopped from using the route, or asked permission to do so. Several of the witnesses mention the existence of a 'horse type stile' near the Bleach Works, just to the south of the junction of Public Footpaths Nos. 1 and 8.

The applicant submits that her husband who is 45 remembers the whole of the route being passable by vehicles. He also remembers passing points one in particular which is now overgrown.

Also, German Lane on the old map crosses the ford on the River Yarrow at Barkhouse Bridge. This part was also wide enough to get a vehicle down, one lady remembers seeing cars drive down German Lane through the ford to Chorley. This part of German Lane has been allowed to overgrow and the surface has gone, but in places you can see the cobbled road.

Also, recently wagons working at the quarry have been trying to go down this track thinking it was a route to Chorley as the map shows. A No-Through Road sign has had to be erected.

It has also narrowed alongside the old Bleach Works. The claimant remembers it being wide enough here for a car to drive through.

Her brother in law remembers all the route. He has driven down this in a tractor and says it was a very good road.

One person used this route and up Common Bank Lane to get to R.O.F. at Chorley to cut the grass on the fields. He also remembers seeing cars using it although in those times not many people had a car. He used to be picked up from work by tractor from the Bleach Works and brought up to Clover Road.

There were Bark houses near the ford hundreds of years ago, so it stands to reason that the whole of that part of the route was passable to horse and cart to ferry the oak bark to the tannery.

The southern part of the route, although it has been used for more than 30 years, is a narrower track through open fields.

No objections to the claim have been submitted, other than that submitted by the Borough Council.

The Law

See Appendix 'A'.

Assessment of the Evidence

In Support of the Claim

There is evidence of use of the route on horseback.

Witnesses state that the route was used by vehicles in the past.

Map evidence shows that the route has existed on approximately the same alignment for at least 200 years, with the length known as Common Bank Lane being the most important.

Against accepting the Claim

The evidence of use forms are unclear as to the exact route taken. Attempts to clarify this have failed to elicit responses from all twelve of the user form authors.

Various editions of the Ordnance Survey Maps have shown part of the route marked 'FP'.

Conclusion

The application is for the upgrading of parts of two public footpaths to the status of bridleways on the Definitive Map and Statement in the former Municipal Borough of Chorley. Where a footpath is shown on the Definitive Map it is conclusive evidence that there was, at the relevant date, a right of way for the public on foot, but this is without prejudice to the existence of other higher rights of way. To modify the

Definitive Map and Statement the Committee must be satisfied that the available evidence shows, on the balance of probability, that a bridleway not shown in the Map and Statement subsists or is reasonably alleged to subsist and that the highways shown in the Map and Statement as footpaths ought to be shown as bridleways.

The available evidence is both documentary and user evidence.

There is considerable documentary evidence to verify the physical existence of the route. The first part of the claim along Common Bank Lane is unchanged from the early years of the 20th century, when the old lane leading to the river was straightened, presumably to facilitate development. The rest of the route is probably of a similar age, with a few changes recorded on OS maps over the years. There is no irrefutable evidence to establish the particular status of the claimed route in the past, until the track was shown on the original Definitive Map as a public footpath. However, the showing of a way on the Definitive Map as a public footpath does not exclude the possibility that higher rights than footpath may exist.

The view that the claimed route has existed for a long period of time is corroborated by evidence submitted of the reputation of at least part of the route as an ancient track.

In addition to the documentary evidence, evidence of use of the route by 9 horse riders for 20 years or more was submitted with the application. However, it must be noted that the user evidence was vague and somewhat contradictory as to the line of the route taken. Of the original twelve users, only 6 responded to the request for more information. The route of all 6 respondents did not match the claimed route, but the non-matching maps were subsequently amended to reflect the claimed route.

Dedication of a path may be presumed from 20 years use by the public as of right and without interruption or can be inferred from shorter periods of use if all the evidence clearly and unequivocally points to an intention on the part of the landowner to dedicate.

The 20 year period is computed back from the date the status of the claimed right of way is called into question. In this case, this could be when the application was submitted in 1998.

The Committee may agree that the evidence of use of the route is insufficient to support the claim for the upgrading of the route to bridleway status, and may, therefore, agree that the claim should be not accepted.

Alternative Options to be Considered N/A

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

Paper	Date	Contact/Directorate/Ext
All documents on Claim		S.P.Southworth, Legal
File Ref: 804/347		Services, 3430