

Regulatory Committee

Meeting to be held on 18th November 2020

Part I

Electoral Division affected:
Rossendale East

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Upgrading of part of Footpath Bacup 657 (Heald Lane), Weir to Bridleway in connection with the application to record a public right of way from Heald Lane through Weir Lodges to Office Road, Bacup

File No. 804-603

(Annex 'A' refers and Appendix 'A' refers)

Contact for further information:

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Executive Summary

To give consideration to revoking a previous decision of the Regulatory Committee to make an order for the addition of a bridleway to the Definitive Map and Statement of Public Rights of Way from Footpath Bacup 657 (Heald Lane) through Weir Lodges to Office Road, in accordance with File Number 804-603, on the basis that although the Committee considered that there was sufficient evidence to satisfy the test to make the order, information has come to light since that means that the evidence is no longer considered sufficient to support bridleway status. However, the evidence does support the existence of footpath rights along the route.

Recommendation

- (i) That the Regulatory Committee revokes its decision of 13th March 2019 to make an order for the addition of a bridleway to the Definitive Map and Statement of Public Rights of Way.
- (ii) That the Regulatory Committee decides to make an order under Section 53(2)(b) in consequence of events specified in Section 53(3)(b) and/or Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to record a public footpath along the route A1-B and A2-B-C-D-E as shown on the Plan at Appendix A.
- (iii) That not yet being satisfied that the higher test for confirming the order can be met, the matter be returned to Regulatory Committee at a later date to decide what stance to take regarding confirmation of the order.

Background and Advice

The proposed revoking of earlier decision

An application under Schedule 14 of the Wildlife and Countryside Act 1981 was received for a footpath to be recorded on the Definitive Map and Statement from Heald Lane through Weir Lodges to Office Road, Bacup.

The application was considered by the Regulatory Committee at its meeting on 13th March 2019. Appendix A refers.

Committee was advised as follows:

- There were some inconsistencies in the user evidence over the line taken on the ground but, overall, the user evidence was supportive of 'as of right' use of the application route on foot by a large section of the public for the twenty year statutory period under consideration.
- The common law test for dedication of highway could also be satisfied.
- Whilst the evidence was supportive of a reasonable allegation that a public footpath subsists, the evidence also suggested regular use of the route as a bridleway.
- That use of the route on horse and bicycle appeared to be at such a level that it satisfied the lower test of raising a reasonable allegation that a bridleway subsists and therefore an order should be made recording the route as a public bridleway rather than the footpath for which the applicant had applied.
- That Committee's stance on confirmation of the order (based on whether the evidence supports the higher test that a bridleway does in fact subsist) be considered at a later date once officers had the opportunity to consider the user evidence in more detail.

Having considered officers' advice, Committee decided that an order recording the application route as a bridleway should be made but that, not being satisfied that the higher test for confirming the order could be met at this stage, the matter be returned to Committee at a later date to decide what stance to take regarding confirmation.

To date, that order has not been made. Due to issues in linking this bridleway to another existing bridleway, which was discovered by officers when drafting the order, officers sought to gather some more detailed information, specifically regarding the public's historical use of the application route as a bridleway.

Legal officers contacted the users who had previously indicated they had used the route on a horse. Of the eight responses returned to us, one user specifically stated that they had not ridden a horse along the application route. Seven stated that they had used the route on horseback for the following durations:

- Weekly for 8 years between 1972-80
- Daily until 2000
- Weekly for 15 years between 1995-2010

- Weekly from 2015
- A few times per month between 1998-2003
- Weekly between 1991-2019
- Weekly between 1998-2018

Most users claimed to have ridden along the route at weekly intervals with two of the weekly users having used it for the duration of the twenty year statutory period and one having stopped using it before the period commenced. Of the four users who rode along the route for shorter durations of the statutory period, one used it daily for two years, two weekly for three and fifteen years respectively and one a few times per month for five years.

The route is not located in a particularly remote geographical area. There are vehicular highways and residential dwellings in close proximity and it appears to have been a popular route given that 109 user evidence forms were originally submitted with the application. In the circumstances, officers would expect to see use of the route on horseback by a greater number of users and/or over longer periods.

Officers focussed on the evidence of the users who claimed to have used the route with a horse because cycle use cannot of itself establish a bridleway in law through long use, although it can support an inference that the bridleway had already come into existence before they were able to cycle along it.

In light of the clarity of evidence from the horse riders, officers consider that horse use of the application route is insufficient to support the finding that a bridleway can be reasonably alleged to have come into existence in law. The horse use may, on balance, only be trivial and sporadic. Accordingly, officers recommend that the original decision be revoked.

That an order be made to record the route as a footpath

The Committee is asked to consider again the information in the report at Appendix A. The Committee will note all relevant evidence. There are the large number of user evidence forms with their evidence of use on foot, little mention of permission and no challenge to their use prior to 2018. The user evidence does have its weaknesses and the present owner refers to having taken some actions to block the route prior to 2018, which is the point we have taken to be the calling into question of the route. Even if the owner's actions prior to 2018 were sufficient to call the route into question, it is suggested that it is reasonable to allege that there is still sufficient use prior to any such calling into question to raise the presumption of dedication under s31 Highways Act 1980.

The dedication may be reasonably alleged given the blocking of the route in 2018 (or an earlier calling into question some time between 2012-18) and sufficient 'as of right' use for twenty years before the calling into question such that the dedication

may be deemed in accordance with s31 Highways Act and/or reasonably inferred under common law from use of the route prior to 2012.

The evidence supports the conclusion that it is reasonable to allege that a public right of way subsists along the application route and that its status is one of public footpath. It is advised that the Committee may wish that an order be made to record the route as footpath.

The recommendation

The order recording the route as a bridleway has not yet been made. As discussed above and considering Appendix A, it is suggested that Committee should consider revoking its previous decision, in light of the more detailed evidence, and instead reach a decision to make an order recording the application route as a public footpath.

Whether an order is made recording the application route as a footpath or a bridleway, it is suggested that a decision on confirmation of any order should be deferred to a later date and once officers have had the opportunity to interview users and report back on whether the higher test for confirmation can be satisfied.

Alternative Options

To decide not to revoke the previous decision to make an order recording the application route as a public bridleway.

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-603		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A