

Regulatory Committee
Meeting to be held on 7 September 2011

Electoral Division affected: West Craven

Wildlife and Countryside Act 1981
Claimed downgrading to public footpath of Public Bridleway No. 52 Earby, Pendle Borough
Claim No. 804/483
(Annex 'A' refers)

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Executive Summary

The claimed downgrading to public footpath of Public Bridleway No. 52 Earby and the associated variation to be made to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/483.

Recommendation

That the claim for the downgrading to public footpath of Public Bridleway No. 52 Earby and the associated variation to be made to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/483 be not accepted.

Background

Currently the Definitive Map and Statement for Earby in Pendle Borough shows Public Bridleway No. 52 Earby from the western end of Public Bridleway No. 18 Earby (also known as Heads Lane), Kelbrook, running in a south-easterly direction to Dotcliffe Road. The southern end of the bridleway passes Sycamore Cottage to the west and then continues over Kelbrook Beck.

An application has been made under Section 53(5) of the Wildlife and Countryside Act 1981 for an Order to amend the Definitive Map and Statement of Public Rights of Way in Lancashire by downgrading Public Bridleway No. 52 Earby to the status of a public footpath.

The attached plan shows the location of the route under investigation between points A and E. The claim is to downgrade Public Bridleway No. 52 Earby to a public footpath from point A on the attached plan at grid reference SD 9049 4463 to point E at SD 9045 4470.

The County Council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 sets out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

An order will only be made if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist”
- “The expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path”
- The status of a recorded right of way needs to be changed
- There is no right of way over land as recorded on the Definitive Map and Statement
- Details of the Definitive Map and Statement need to be changed.

When considering evidence, if it is shown that a highway existed, then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused; this is until a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate’s Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

The County Council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested on the balance of probabilities. It is possible that the Council’s decision may be different from the status given in the original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists.

Consultations

Pendle Borough Council is in support of the application. The Countryside Access Officer states that he has seen the evidence sent with the application, including the original photographs, and was present when Mr Tomlinson (the applicant) gave a verbal account of his recollection of the route. He witnessed Mr Tomlinson's signature of the statement sent with the application. He further states that the evidence which he has seen and heard supports the application and he is not aware of any other evidence which would be relevant.

Kelbrook and Sough Parish Council (the current parish council for the area) has been consulted and has no comments to make.

Advice

Executive Director for the Environment's Observations

Points annotated on the attached plan (Plan No. 483B).

	Grid Reference	Description
Point A	SD 9049 4463	Junction of Public Bridleway No. 52 Earby and Dotcliffe Road.
Point B	SD 9049 4463	On claimed route to be downgraded, at a point to the south of the garage building.
Point C	SD 9049 4464	On claimed route to be downgraded, at a point to the north of the garage building.
Point D	SD 9049 4465	On claimed route to be downgraded, adjacent to Sycamore Cottage garden wall.
Point E	SD 9045 4470	Junction of Public Bridleway Nos. 18 and 52 Earby and Heads Lane, approximately 20 metres to the north east of the junction of Harden Road and Heads Lane.

Description of Route

The site inspection was carried out on 2 September 2010.

	Approximate length	Available width on date of site visit (rounded up or down to the nearest 0.1 metre)
Point A – Point B	6 metres	11 metres on Dotcliffe Road narrowing to 6 metres in front of building.
Point B – Point C	8 metres	0.8 metres.
Point C – Point D	10 metres	4.5 metres at Point B reducing to 3.0 metres at point D
Point D – Point E	55 metres	3.0 metres.

The application route commences at point A, at a point to the north of Dotcliffe Road.

From point A, the route runs generally northwards across a wide access platform bridge, crossing Kelbrook Beck to point B. At point B, the route is partially obstructed by a garage building. There is a pedestrian gate located to the west of the garage which provides access to the passageway which is bounded by the garage to the east and a garden wall to the west.

At point C, the path is bounded by a stone wall to the east and on the west the route is bounded by what appears to be a kitchen extension to Sycamore Cottage.

From point C, the route continues in a north westerly direction on a partially bitmac surfaced track, partially bounded on either side by stone walls and fences to a point that is adjacent to the garden fence of Sycamore Cottage at point D. At this point the surface of the route has the appearance of a farm track, consisting of a compacted stone and grass surface. The route continues in a north westerly direction, passing the wide access to the farmyard of Royds Farm, located midway between points D and E. The route continues in a north westerly direction past the farmhouse of Royds Farm and continuing as a farm track to point E.

A signpost is located at the junction of Bridleway Nos. 18 and 52 Earby and Heads Lane, indicating the route claimed to be downgraded is a bridleway.

Map and documentary evidence relating to claimed downgrading

A variety of maps, plans and other documents were examined with reference to the Definitive route claimed for downgrading.

DOCUMENT TITLE	Date	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE
Thomas Jefferys' map of Yorkshire	1772	The earliest map examined was Thomas Jefferys' map of Yorkshire. Jefferys was a most prolific engraver and map publisher who was appointed Geographer to the Prince of Wales and George III. Between 1767 and 1770 he surveyed Yorkshire and completed his map only in the year of his death, and so it was published posthumously in 1772. It was published at a scale of 1" to 1 mile on 20 plates and bound in a large atlas. He refused to skimp costs or employ second-rate surveyors to the extent that this commitment to quality contributed to his bankruptcy.
Observations		The map names the village of 'Kellbroak' (sic) although no buildings are shown. A short dead-end road is shown which is probably Harden Road. No other paths or tracks are shown.
Investigating Officer's comments		No inference can be drawn.

Smith's map of Yorkshire Observations	1801	Nothing is known about this map-maker. The map names the village of 'Kellbroak' (sic) but no buildings are shown. Only the main road through the village is shown with no roads or tracks in the vicinity of the route claimed for downgrading.
Investigating Officer's comments		No inference can be drawn.
Teesdale and Stocking's map of Yorkshire Observations	1817	Nothing is known about these map-makers although Teesdale is believed to have been a publisher. Teesdale and Stocking's map of Yorkshire of 1817 is drawn to a larger scale than the earlier maps. The village of Kelbrook is shown with a road corresponding to Harden Road/Dotcliffe Road. The road has a number of buildings along it on both sides. Kelbrook Beck is not shown. The exact location of the route claimed for down-grading cannot be identified.
Investigating Officer's comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment Investigating Officer's comments		No relevant tithe map is held by the Lancashire Record Office or the Yorkshire Archives offices in Wakefield. No inference can be drawn.
Quarter Sessions records Investigating Officer's comments		No record of orders to divert and extinguish public rights of way in Earby was found in the Lancashire Record Office and Yorkshire Archives. No inference can be drawn.
Inclosure Act Award and Maps	1825	Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices. They also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status. The Inclosure award for Thornton-in-Craven covers the Kelbrook area.

Observations		<p>The inclosure map shows Heads Lane, Dotcliffe Road and the route claimed for down-grading. None of these roads is named. One small plot of land is shown to the east of the claimed route at its southern end immediately adjacent to Kelbrook Beck. It is numbered '37' and is described in the accompanying written award as being 'bounded by ancient inclosures on or towards the east and north by a road on to towards the west and by a brook on or towards the south'. The route claimed for downgrading is shown as a road or track from Public Bridleway No. 18 Earby (Heads Lane) at point E at an unobstructed junction and then runs in a south-easterly direction ending at Kelbrook Beck.</p> <p>At this point a building is shown on the western side of the route which opens out between the building and the beck. No bridge or crossing is shown over the beck. This fine quality map was produced to record common and waste land to be enclosed, and the names of the owners. New public and private roads with their names were shown on the map too. The owner of each plot of land is recorded in the written award, along with details such as the responsibility for fencing. Roads are described by status (such as 'high road' or 'bridle road') and who is responsible for their maintenance.</p>
Investigating Officer's comments		<p>The route claimed for downgrading, Heads Lane (Public Bridleway No. 18 Earby) and Dotcliffe Lane are not mentioned in the award in the list of public and private roads to be laid out. This means that they already existed in 1825. The written schedule just refers to the route as a 'road' with no further details of its status or ownership. The route as shown on the plan provided access to a building on the site of Sycamore Cottage and then opened out into a yard. No bridge or ford is shown across the beck. A bridge or ford, if it existed in 1825, may have been of little significance to the map-maker or may have been too small or too obvious to show on the map. The inclosure map and award does not provide any information about the status of the route. On balance, at this date the route is likely to have been an access track to a property but with no evidence of a bridge across the stream.</p>
Railway, Turnpike and Canal Plans		None relevant for this area

Investigating Officer's comments		No inference can be drawn.
Ordnance Survey maps		The Ordnance Survey has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in the West Riding of Yorkshire in the 1820s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and early maps carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.
6 inch OS map	1853	This map was viewed on a web site
Observations		The map shows the route claimed for downgrading from point E in the north to the north bank of Kelbrook Beck in the south as a lane or track with some buildings along it. The map is not clear enough to see if any feature such as a bridge is shown across the brook but none is named in the location. The map does however refer to "Stepping Stones" and the position of the word on the map would indicate that these stepping stones were in the approximate area where the track joins the beck
Investigating Officer's comments		The bridleway southwards from Heads Lane existed in 1853 as a track or lane to Kelbrook Beck. It is not clear if there was a bridge or ford across the beck in 1853 but there were stepping stones in the vicinity.
6-inch OS map	1896	This map was surveyed in 1892 and published in 1896.
Observations		The map shows the route claimed for down-grading from point E in the north to the northern bank of Kelbrook Beck in the south as a lane or track enclosed on both sides. Heads Lane is named. There is a line across the route at point E and at D. There is a building at the southern end of the route corresponding to Sycamore Cottage. No bridge or ford is shown across the beck to the south of point B. Bridges are shown across the water at other points, and elsewhere a footbridge is shown by the OS with a 'FB' notation.

Investigating Officer's comments		The bridleway existed in 1892 as a track with 2 gates across it. There was no bridge across the beck to the south of point B.
25-inch OS map	1909	This map was surveyed in 1892, revised between 1906 and 1907 and published in 1909.
Observations		The map shows the route in largely the same way as on the 1896 map (the survey dates are the same). There is a gate across the route at the northern end (point E). Again Heads Lane is named. A footbridge is shown across Kelbrook Beck at the southern end of the bridleway to the south of point B
Investigating Officer's comments		The route claimed for down-grading existed as a track in 1907, with a gate at its northern end. It is likely that it would have been used by vehicles as it provides access to buildings at its northern end and provides sole access to a building at the southern end where Sycamore Cottage is now. Access has been provided across the beck for people on foot. There is no indication that vehicles or animals could cross the water by means of a ford.
6-inch OS map	1947	This map was revised in 1938 and published in 1947.
Observations		The map shows the route in the same way as the 1909 map.
Investigating Officer's comments		No additional information provided.
6-inch OS map	1956	This map was revised before 1930 and published in 1956.
Observations		This map was used as the base map for the Definitive Map of Public Rights of Way. The route is shown in the same way as the 1947 map.
Investigating Officer's comments		No additional information provided.
25-inch OS map	1963	25-inch map published in 1963 (revised in 1961).
Observations		This map shows the route claimed for down-grading as a lane or track providing access to Sycamore Cottage (named for the first time). There is no longer a gate at the northern end. The footbridge is shown across Kelbrook Beck. A small building has been constructed within the width of the route next to Sycamore Cottage. Ordnance Survey symbols on the cottage and immediate area show that this part of the map has been revised.

Investigating Officer's comments		The nature of the claimed route appears to be unchanged, but a shed, garage or similar building has been constructed next to Sycamore Cottage. It is unlikely that this building would have prevented people on foot from using the route to access the footbridge to Dotcliffe Road, although the overall width at this point would have been considerably reduced. Horses may have been impeded by this small building but there is no indication of how any horses crossed the beck to the road.
25-inch OS map	1977	The map was revised in 1961 and 1975 and published in 1977.
Observations		There is a significant change on this map to the earlier edition published 24 years earlier. Sycamore Cottage has been enlarged on its western side. A new access to the building has been built across the beck from Dotcliffe Road. Where the earlier shed or garage had been, a much larger square building has been constructed with its own access from Dotcliffe Road across the stream, in excess of the total width of the new square building. A very small gap has been left between the cottage and new building, and the OS no longer show a footbridge across the beck. This map shows the rest of the application route in the same way as the one used on the plan attached to this report.
Investigating Officer's comments		A new building almost totally obstructs the bridleway between points B and C on the attached plan, which may no longer be accessible even on foot. The map indicates that there is no longer a footbridge across the stream for the public to use. If use of the route was possible, pedestrians would have the newly constructed wide access platform to the new building to cross the brook.
Aerial Photographs	1945 1968 1990 2000 2003	Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features. The earliest set available was taken just after the Second World War in about 1945. The clarity is very variable and in this case it is hard to make out any significant features of the route.

Observations	1945	The route claimed for downgrading is shown but the photograph is not very clear.
Investigating Officer's comments		No inference can be drawn.
Observations	1968	The route claimed for downgrading is shown. The photograph is not clear enough to show gates or other obstructions across the route, but a footbridge is visible across the stream.
Investigating Officer's comments		The photograph does not provide any new information.
Observations	1990	The route claimed for downgrading is shown, but trees obscure the beck.
Investigating Officer's comments		The photograph does not provide any new information.
Observations	2000	The route claimed for downgrading is shown. The square building with a wide access bridge across the stream, described on the 1977 OS map above and shown between points B and C on the attached plan is also shown. It is not possible to see if a separate footbridge still remains.
Investigating Officer's comments		The photograph does not provide any new information.
Observations	2003	The route claimed for downgrading is shown. The square building next to Sycamore Cottage is shown, but the stream is in shadow and it is not possible to see if a separate footbridge still remains.
Investigating Officer's comments		The photograph does not provide any new information.
Inland Revenue documents	1912	<p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act are examined. The act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and the accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found recorded in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the</p>

		<p>accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p> <p>No Finance Act material is available in the Lancashire Record Office or the Yorkshire Archive Office in Wakefield.</p>
Investigating officer's comments		No inference can be drawn.
Earby Urban District Council documents		A search was made in Earby Urban District Council records to find any planning applications for Sycamore Cottage which might show the route claimed for downgrading and refer to its status, and also to date the changes to the buildings there.
Observations		The buildings plans street index was examined. For the period 1948 to 1974 there were 6 applications for Sycamore Cottage – 3 for a garage, 1 for a porch, 1 for an extension and 1 for the replacement of a conservatory. Unfortunately there is a note in the Lancashire Record Office catalogue stating that buildings plans were 'weeded' before being forwarded to the LRO. None of the plans referred to above now remain. The Register of Town Planning Applications is in date order but with no index. The duty archivist on the day of the visit to the LRO said, when asked for assistance, that he didn't think any plans referred to in this catalogue had survived either.
Investigating officer's comments		No inference can be drawn.
'Kelbrook in Times Past' by Victor Laycock 1987		This local history book about Kelbrook contains several pictures of Dotcliffe Lane.
Observations		The book states that Dotcliffe Road was originally a narrow lane to a mill. Heavy wagons to the mill damaged the road and in 1873 the road had to be widened and strengthened by a wall. There are 3 photos of the area in the book, one dated c1908 and one 1920. The photograph that is undated shows a broad stream with grassy sloping banks on

		<p>both sides. Only a short section has a retaining wall with a central break in it. Half of the wall appears to lead down to the water. On the opposite side is a worn slope up to the lane. A man is also shown in the stream and appears to be standing on stepping stones. The photo taken in 1920 shows a substantial stone wall between the stream and the road and a footbridge.</p> <p>It is possible to identify some of the buildings in the photographs, in particular 13 Dotcliffe Road, 6 Harden Road and St Mary's Church. It is possible therefore to identify the location depicted in these photographs as being approximately 50 metres downstream of the route claimed to be downgraded.</p>
Investigating Officer's comments		<p>It would appear from the photographs that horses have got over the stream in the location of the photographs in c1870. This does not however provide an indication as to the profile and depth of the stream at the position of the route claimed to be downgraded. The stream ran from a mill and may have been different in profile to the sections illustrated on the photographs.</p>
Definitive Map records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map.</p>
Government Guidance in the 1950s		<p>When work began in the early 1950s to collect information about public rights of way, a memorandum was prepared by the Commons, Open Spaces and Footpaths Preservation Society which was issued by the Ministry of Town and Country Planning for the use of local authorities. The County Council were required to consult with the Councils of county districts and parishes. This memorandum stated that all recognised public rights of way should be marked on maps and the County District Councils and the Parish Councils prepared maps of their areas. Those routes about which there was any initial reasonable doubt had to have further investigation, even collecting evidence of use from "old inhabitants", and all the routes added to the maps had to go through various investigations. The sources of information to be used to discover public rights of way were listed in detail.</p>

Investigating Officer's comments		There is no evidence that Earby Urban District Council did not undertake its task seriously and properly, and in the absence of other evidence it is presumed it followed the advice of this memorandum
Draft Map		<p>The preliminary survey work was carried out in the West Riding of Yorkshire from the early 1950s. An accompanying statement was written describing each path. In this area it was undertaken by Earby Urban District Council who produced a map of routes they believed to be public drawn onto a 6-inch Ordnance Survey map. It was given a "relevant Date" and notice was published that the Draft Map had been prepared. The Draft Map was placed on deposit in September 1952 for 4 months for the public, including landowners, to inspect them and report any omissions or other mistakes. In Lancashire, hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented. It is presumed that the West Riding of Yorkshire County Council followed this model too.</p> <p>In this instance, there were no objections or other comments about a right of way in this area.</p> <p>The route claimed for downgrading is shown on the Draft Map as Bridleway No. 52. The Draft Statement reads: 'Bridleroad commencing at its junction with Dotcliffe Road and proceeding north westwards to Heads Lane. Unmetalled. 10' 0" wide. 1 stile. 1 footbridge. No direction signs'.</p>
Provisional Map		<p>Once all representations to the Draft Map were resolved, the amended Draft Map became the Provisional Map which was published in 1970, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p> <p>In this instance no objections to the depiction of the route were made.</p>
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1973. Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. Whilst most of the Definitive Map for Lancashire was reviewed, the

		area formally in the West Riding of Yorkshire was not.
Observations		Public Bridleway No. 52 Earby is shown on the Definitive Map in the same way as on the Draft and Provisional Maps. The Statements are the same too.
Investigating Officer's comments		There were no changes at any stage of the Definitive Map process, and no objections to the depiction of the route as a bridleway. The Statement says that the route starts on Dotcliffe Road, and that there was a footbridge on the route, map evidence showing that this bridge was over Kelbrook Beck. The Statement is silent however with regard to the crossing of the beck by horses.
Information from Private Deeds		Public rights do not have to be referred to in private Deeds but sometimes descriptions of routes or maps attached to Conveyances indicate the status of a route
Observations		The Royd House Deeds go back as far as a 1906 Deed when the present owner's grandfather acquired it. The purchase was of the house and garden and barn and stable and outbuildings and cottages and 6 closes of land, each named and acreages stated. No map was shown. One plot was the Grass Garth. In 1910 there was a sale off of the Bungalow with the private right of way across the Grass Gath "into and from the high road there". The reference to the high road is in lower case.
Investigating Officer's comments		It is not known which of the closes of land included the track (if any). The grass Garth clearly lay near to the Bungalow but it is not known if "the high road" referred to was the track or Heads Lane, although Heads Lane had been a named highway for many years by then. It is not clear whether the term "high road" indicated a public route.

The land crossed by the route claimed for downgrading from public bridleway to public footpath on the Definitive Map is not a biological heritage site or a site of special scientific interest.

Summary

In summary, map and documentary evidence show that the route claimed for downgrading has existed from at least 1825. It has been the access track to a building now called Sycamore Cottage since then, and presumably was used historically by people, horses and carts, and livestock. Map evidence shows that a footbridge across Kelbrook Beck was erected some time between 1892 and 1907

(the dates of survey of 2 OS maps) there is no map evidence to show that a ford existed alongside the footbridge erected between 1892 and 1907 but photographs in the book “Kelbrook in Times Past” and the 1853 OS indicate that before the retaining wall was built to support and strengthen the road on the south side of the stream, the shallow water could be crossed by pedestrians using stepping stones, some of which were in the vicinity of the claimed route. Crossing the brook on horseback would therefore be possible presuming that there was a way up the bank on both sides of the stream. At some point between 1961 and 1975 a large square building was built across the route with a wide access platform bridging the stream. Unfortunately no planning application has survived to shed light on the construction of this building and whether it was recognised that its construction would obstruct the Definitive bridleway. The route has always been shown on the Definitive Map and Statement as a bridleway with no objections raised by the family who had owned the land for several decades by then, when the Map was placed on deposit for public inspection. The Definitive Statement clearly describes the bridleway starting from Dotcliffe Road, with a footbridge in place. This implies that animals were able to cross the stream whilst people could use the bridge.

Historical width of the route

	Date	Document	Width
Point A – Point B Footbridge		OS maps before 1977	It is not possible to measure the exact width of a footbridge on small-scale maps
Point A – Point B Wide bridge	1977	OS map	11 metres on Dotcliffe Road narrowing to 6 metres in front of building
Point B – Point C	1909 1963 1977	OS map OS map OS map	4 metres 4 metres at Point B narrowing to less than 2 metres at Point C Less than 1 metre between Points B and C. Rest of route as 1963
Point C – Point D	1909 1963 1977	OS map OS map OS map	4 metres at C widening to 5 metres at D 4 metres at C widening to 5 metres at D As 1963
Point D – Point E	1909 1963 1977	OS map OS map OS map	Generally 6 metres narrowing to 4 metres at Point E 5 metres at Point D, after 4 metres narrowing to 4 metres for 7 metres, then widening to 6 metres before narrowing to 4 metres at Point E As 1963

At the relevant date of the Definitive Map (22 September 1952) map evidence indicates that if the route is correctly recorded as a bridleway, the width between points A and B is likely to have been 5 metres as map evidence shows this was the width of the route at point B. If however the route should be correctly recorded as a footpath, there are no records to show the width of the route used by the public. Before Dotcliffe Road was widened and strengthened in 1873 the width and depth of the brook is not known nor is the method used by pedestrians to cross it. At the relevant date a footbridge existed across the brook at this point. Between points B

and C the width of the route was 4 metres; between points C and D from 4 metres at point C widening to 5 metres at point D, and between points D and E 6 metres narrowing to 4 metres at point E.

County Secretary and Solicitor's Observations

Information from the Applicant

In support of the application, the applicant has produced a Statement from Mr Leslie Tomlinson, two black and white photographs which bear relevance to Mr Tomlinson's statement and aerial photographs from the 1960s and a recent photograph of Sycamore Cottage dated 03/03/08.

Mr Leslie Tomlinson explains in his statement that he lived at Sycamore Cottage from approximately 1937 until the early 1950s, and in 2008 he lived at Royds Farm near the northern end of the route. He cannot recollect the route being used as a bridleway. He explains in his statement that he has never witnessed anybody using the public bridleway on horse back and it would be impossible to get across the stream on horse back because the bridge was too narrow. The bridge is at the end of the route near to Sycamore Cottage. The route would thus not be accessible to horses because they would not be able to get from one end of the route to the other. Mr Tomlinson illustrates the narrowness of the bridge by explaining that when travelling to school on his bicycle he only just managed to get his cycle across because he kept the handlebars on the bicycle straight. He explains that there was a gap in the stone wall at the end of the bridge which was narrower than the bridge.

He states that if the route had been accessible for use as a bridleway across the stream, he would have taken his cows straight onto Dotcliffe Road but he has never been able to do this since he has lived there.

Mr Tomlinson explains that the wide bridge across the stream was built at the same time as the garage. It was built to provide access to the garage. He explains that the bridge was not built for use as a public bridleway.

There are two photographs attached to the statement; in one of the pictures Mr Tomlinson's mother is standing on the bridge holding a small child, the other is of a dog sitting next to a footbridge. Mr Tomlinson explains that the child is his daughter now in her 50s. The picture illustrates that the bridge has been present for at least fifty years.

The Executive Director for the Environment comments that the pictures show a wooden footbridge with hand rails on both sides. The bridge is only wide enough to accommodate the lady in the photograph and would not be useable on horseback.

A third photograph has been submitted by the applicant dated 3 April 2008. The Executive Director for the Environment comments that this picture shows that the cottage has been extended to the east. A large garage with wooden double-doors has been constructed next to the cottage with a wide access platform across the stream. A small wooden gate is shown at the side of the garage which allows access

to users of the bridleway on foot only. Also submitted with the application is a print of the 1960s aerial photograph described above.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

- Information from Mr Tomlinson of Royds Farm
- That horses cannot get across the Beck today
- The reference to footbridge and stepping stones

Against Accepting the Claim

- Cogent evidence required to outweigh the presumption not found
- Available wide route since 1820s
- How the Beck looked several decades ago
- No objection to it being recorded as bridleway by the long-term owners
- Reference to track being a road and possibly the high road

Conclusion

A-B-C-D-E has followed an available route since at least the 1820s and was the route recorded as a bridleway by those carrying out the survey and following the Government Guidance on the draft Definitive Map despite the fact that a footbridge existed across the Beck. It was also shown on the provisional and the final definitive map as a bridleway and no objection was made to it being so recorded. The family owning Royd farm at the time had owned it since 1906 and would be aware of what public use had existed on the route.

Case law (Trevelyan) confirms that cogent evidence is needed before the definitive map and statement are modified to delete or downgrade a right of way. Lord Phillips MR Court of Appeal stated that:-

“Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.”

Taking all the evidence into account it may be considered that it was marked on the map because there was sufficient evidence that it was indeed a bridleway. Just because today it is not able to be used as a through route on horseback does not mean that an error had been made in the 1950s. Similarly Mr Tomlinson's recollection of it not being used is insufficient cogent evidence to suggest that the route A-B-C-D-E was recorded in error. It is for evidence to be produced to outweigh the presumption that they made an error in the 1950s and it is suggested that such evidence has not been found. What evidence was considered in the 1950s is not known. The route was being recorded by local people and may have been known to have been used on horseback through the shallow Beck and along the track as a public bridleway for sufficient time before the bank of the Beck was altered. The Committee may on balance consider that the claim to downgrade A-B-C-D-E should not be accepted.

Risk Management

Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda Papers (item 5). Provided any decision is taken strictly in accordance with the above then there are no significant risks associated with the decision making process.

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 File Ref: 5.34497 (804/483)	Various	H Orsich, County Secretary and Solicitor's Group, 01772 533427

Reason for inclusion in Part II, if appropriate

N/A