

Regulatory Committee

Meeting to be held on 27 June 2007

Part I - Item No. 7Electoral Division affected:
West Lancashire East**Wildlife and Countryside Act 1981****Claimed Public Bridleway from Old Lane, Mawdesley, Chorley Borough, to Old Lane, Bispham, West Lancashire District****Claim No. 804/445**

(Annex 'A' refers)

Contact for further information:

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Executive Summary

The claim for a Public Bridleway from the point where recorded unclassified road U1318 known as Old Lane, Mawdesley, Chorley Borough, reaches the boundary between Chorley Borough and West Lancashire District, to recorded section of unclassified road U458 known as Old Lane, Bispham, West Lancashire District, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/445.

Recommendation

- i. That the Claim for a Public Bridleway from Old Lane, Mawdesley, Chorley Borough, to Old Lane, Bispham, West Lancashire District, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/445, be accepted; and
- ii. That an Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a bridleway from Old Lane Mawdesley Chorley Borough, (GR.4954 1374) for a distance of approximately 195 metres to meet Old Lane, Bispham, West Lancashire District, (GR 4950 1355) and shown between points A-B on the attached plan.

Background

A claim has been received for a Public Bridleway extending from the point where recorded unclassified road U1318 known as Old Lane, Mawdesley, Chorley Borough, reaches the boundary between Chorley Borough and West Lancashire District, Grid Ref 4954 1374, and running in a general southerly direction for a

distance of 195 metres to meet the recorded section of unclassified road U458 known as Old Lane, Bispham, West Lancashire District, at Grid Ref 4950 1355 and shown between points A - B on the attached plan, to the Definitive Map and Statement of Public Rights of Way.

The claim has been made to record the status of this section of route as it is not recorded on any records held by the County Council. The section to the north is recorded as unclassified road U1318 and is considered to be at least bridleway. The section to the south is recorded as unclassified road U458 and this too is considered to be at least bridleway.

Consultations

District Council

As the whole of the claimed route falls within West Lancashire District Council, they have been consulted but no reply has been received to date

Parish Council

Bispham Parish Meeting has been consulted and they have written expressing their support for the application. They quote from the Bispham Parish Millennium Book 2000 A.D., which describes "Nelsons Walk" along Old Lane, which until World War II was tree-lined. The Chairman of the Parish Council has lived locally for 33 years and although specific names and addresses are not given, the Parish Council has spoken to many local people who recall walking, cycling, and in one case riding in a motor vehicle along the claimed route. Since the Baillie family moved into the area in mid 1960s Old Lane has deteriorated due to heavy use by tractors and trailers to the point where it proved impassable in winter. Several years ago the pipes culverting Bentley Brook under Old Lane became blocked and Mr Baillie dug them up, leaving the brook to wash over Old Lane, effectively closing it.

Claimant/Landowners/Supporters/Objectors

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

Advice

Executive Director of Environment's Observations

Site Inspection

The claimed route forms part of a longer route known to both the north and south as Old Lane linking Back Lane, Mawdesley to the north, with Lee Lane, Bispham to the south.

To the north of the claimed route Old Lane (Mawdesley) is approximately 3 metres wide with a compacted earth surface. The lane is open and accessible to the public.

The claimed route commences on the District and Parish boundary between Mawdesley (Chorley Borough) and Bispham (West Lancashire District) at point A on the plan (GR 4954 1374).

The District and Parish boundary follows Bentley Brook and has been culverted where it is crossed by the claimed route. The culvert is not immediately apparent due to overgrowth but the surface of the route incorporates three large slabs of stone which have been set in the compact earth surface. The surface of the claimed route does not differ from Old Lane (Mawdesley) and other than the culvert there are no physical features marking the end of the lane and the start of the claimed route.

From point A the claimed route extends in a south south-westerly direction bounded to the west by a mature hawthorn hedge with gated access into the adjoining field. Along the eastern side of the claimed route the track is fenced from the adjacent field by a simple wooden post and wire fence with a field gate providing access into the field close to point B.

Between point A and point B the claimed route is a total of approximately 195 metres long and 3 metres wide. It has a hard compacted earth surface. There are no gates or obstructions preventing access and no signs indicating whether or not the route is public.

The claimed route ends at point B (GR 4950 1355) where it meets Old Lane (Bispham). To the east of point B a pond is marked on the Ordnance Survey Map which has been largely filled in but is still evident on the ground.

Point B is not marked by any physical features and the continuation of the route southwards to Sill's Farm is identical in both width and surface type.

The section of claimed route appears no different in character to the two sections of Old Lane that it connects to.

Maps and Documents

A variety of maps, plans and other documents were examined to find out when the claimed route came into being, and to try to determine what its status might be.

The first map examined was Yates' map of 1786. This does not show Old Lane or Lee Lane.

Greenwood's map of 1818 shows the claimed route, and Old Lane (Bispham). The claimed route crosses the brook at point A but does not extend northwards.

Stockdale's map of 1818 is roughly drawn, but it does not appear to show the claimed route nor either part of Old Lane.

Hennet's map of 1830 shows the area in much the same way as Greenwood - the claimed route is shown, but it does not extend northwards beyond the brook into Mawdesley.

The tithe map of Bispham, produced in 1845, shows the claimed route as the northern end of a wide lane between fields, named as Lee Lane. The lane including the claimed route is coloured but there is no key to the map to explain what the colouring means. At the northern end of the claimed route Bentley Brook is shown flowing across the lane with a narrow bridge or crossing provided in the centre (presumably to allow pedestrians to cross the stream without getting their feet wet). The lane is numbered, and in the written schedule that accompanies the map this number is described as a “public road”. The public roads listed in the tithe schedule do not have details of either an owner or occupier.

In the first part of the schedule are all the parcels of land in private ownership. Several ‘roads’ are listed here too, but are recorded with both an owner and occupier. These roads are shown ending at farms or fields, and are described as ‘accommodation road’, or ‘road and waste’. There is a clear distinction between the first part of the schedule (land in private ownership) and the second part. As the claimed route is in the second, it would reinforce the view that the claimed route was recorded as a highway for public use whilst those in the first section were private accommodation roads to land or property.

The tithe map for Mawdesley produced eight years earlier in 1837 shows the continuation of the claimed route northwards as an open, unobstructed lane. The brook is shown on this map too, and shows the water flowing across the lane with a central narrow bridge or crossing. The lane is shown coloured and numbered, but there is no key on the map to show what the colouring means. The number on the lane is shown at the end of the written schedule, after land listed earlier in private ownership. It is simply shown under ‘Roads’ and there is only one number used in this category which is used for all the coloured lanes and roads on the parish map. Other features listed without an owner or occupier are commons and a pinfold (a pound for stray animals). As in the Bispham schedule, there are a number of roads listed in the first part of the Mawdesley schedule with a named owner and occupier, called ‘occupation roads’. Nine are listed, with a number, but not coloured on the tithe map. As in the Bispham tithe schedule, there seems to be a clear distinction between public and private property, including what were regarded as public roads, as opposed to private occupation ones.

The claimed route therefore links to a “road” to the north which appears to be in the category of highways for the public.

The claimed route, and its extension to the north and south, is shown on all Ordnance Survey maps examined. The first edition of the 6-inch map published in 1848 shows the claimed route as part of a longer lane, open and unobstructed, and shown in the same way as other lanes and roads in the area. The claimed route is named as part of Old Lane. Bentley Brook is shown flowing across the lane at the parish boundary (as on the tithe maps) and the little central bridge or crossing is shown too.

The first edition of the 25-inch map published in 1894 shows the claimed route as part of a longer lane, as on the earlier 6-inch map. The lane is not coloured, or shaded to one side (which would have indicated that it was thought by the surveyor to be a metalled public road for wheeled traffic kept in good repair by the highway

authority). Other lanes in the area are shown coloured and shaded. There are no gates or other barriers across the lane. It narrows as it crosses the brook.

The lane continued to be shown in the same way on the 25-inch maps of 1908 and 1928.

The Ordnance Survey kept detailed records of changes they made to various editions of their maps, including the names of buildings and roads. An extract from the Ordnance Survey 'Names Book' dated 1907 has been obtained from The National Archives. Old Lane and Lee Lane are listed on the relevant sheet with no change required. In a column headed 'Descriptive Remarks, or other General Observations which may be considered of Interest' an entry is made relating to Old Lane thus 'Applies to a District Road extending from a point 5 chains S of Sill's Farm to Back Lane at Beech House'. The point 5 chains (about 100 metres) south of Sill's Farm would correspond with the property Blackleage Cottage, and Beech House is located at the northern end of Old Lane in Mawdesley where it joins Back Lane. This "District Road" therefore includes the claimed route.

The comment about Lee Lane states that it too is a "District Road which extends from Maltkiln Lane to a point 5 chains south of Sill's Farm at the south end of Old Lane". Evidence from the Ordnance Survey Names Book therefore points to the view that the claimed route, and the lengths of lane on either side, were all considered to be sections of District Road and this indicates that their status was considered to be public.

Maps produced under the requirements of the 1910 Finance Act were examined. The act required all land in private ownership to be recorded so that it may 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). The Instruction No. 560 to the surveyors said that the parcels "should continue to be exclusive of the site of the external roadways". It is advised that roadways were said to be routes "subject to the rights of the public" and therefore exclusion of a route indicates that public use was known but not necessarily vehicular status.

In this instance the claimed route is shown outside privately owned land, as is the whole of Old Lane, Lee Lane, and other roads in the highway network of the parish including Back Lane and Maltkiln Lane. This excluding of these routes indicates that the claimed route's status and that of Lee Lane, Back Lane and Maltkiln Lane were recorded as public

A street atlas published by Geographia around 1934 shows the claimed route as part of a longer lane called Lee Lane in the south, and this route was called Old Lane from just south of Sill's Farm. There are no obstructions on the route (such as gates or other barriers). Bentley Brook is shown flowing under the lane at point A. The lane is shown at the same width as other lanes in the area (such as Maltkiln Lane and Back Lane). Other tracks and paths, some of which are now shown as public footpaths on the Definitive Map, are shown as narrower lanes or tracks, or two rows of pecked lines. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who

helped incorporate all new streets and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.

On the 1953 1:25 000 map the route is shown coloured in a way to denote a 'good metalled road', in a category of road below 'trunk and main road' and 'secondary road'. The colouring encompasses the whole of Old Lane (in both parishes) and Lee Lane.

The 1955 6-inch map shows and names the claimed route as Old Lane. The whole route is shown open and unobstructed, other than the brook flowing across the lane on the parish boundary.

The 25-inch map published in 1960 shows the claimed route in the same way as earlier maps. The whole route from Back Lane to Maltkiln Lane is open and unobstructed, and named as Old Lane. At point A on the parish boundary the brook flows across the lane with a central bridging point or culvert.

The 1:25 000 OS Pathfinder map published in 1989 shows the claimed bridleway as part of an uncoloured through-route called Old Lane.

The claimed route is not shown on the Definitive Map, and has never been shown on any map produced in preparation of the current Definitive Map. Two public footpaths are shown joining Lee Lane (south of Old Lane) in Bispham, and two joining Old Lane in Mawdesley. The statements (and parish descriptions) of these paths refer to them starting or finishing on one or other of the lanes. As the lane was not shown as a public right of way on the parish maps for Bispham and Mawdesley, the parish councils must have believed that the lane was a public highway of a higher status than footpath or bridleway, and as such should not be shown on the survey map. There were no objections to the omission of the lane from the record of public rights of way at any stage of preparation of the current Definitive Map.

A parish history of Mawdesley and Bispham, written in 1981, describes the lane as 'a favourite walk for generations' in the section of the book describing footpaths in the area. The author says that the road across Bentley Brook collapsed during the war (it was not specified whether he was referring to the first or second world war) and that the bridge there was subsequently replaced by a large pipe.

Lancashire County Council highway maintenance records show that Old Lane in Mawdesley is recorded as a highway maintainable at public expense to the parish boundary at point A, whilst Old Lane is similarly recorded from point B southwards. The whole of Lee Lane is also so maintained. The claimed route is not included on these records, and so in effect Old Lane (Mawdesley) and Old Lane (Bispham) are not a through route as far as the public liability for maintenance is concerned. There is no explanation on the record as to why the claimed route is excluded. It is considered that although the maintenance records do not state the type of highway it is advised and Committee may consider that both highways north and south of the claimed route are highways of at least bridleway status.

Records were searched for any recorded extinguishment of highway rights on the claimed route but no such extinguishment has been found.

Summary

The claimed route has been shown on maps since 1818, although not as a through route until the mid 1800s. The tithe map for Bispham refers to the claimed route as a public road, and the tithe map for Mawdesley also gives that indication. Ordnance Survey maps have consistently shown the claimed route as part of a longer lane from 1848 to the present day, with no obstructions other than Bentley Brook flowing over part of the width of the track. In 1907 the Ordnance Survey recorded that the claimed route, and the lanes at either end, were District Roads (although it is not known exactly what is meant by this term, it could be reasonable to infer that they were maintained by the district council). The 1910 Finance Act map shows the route as a public highway, and the parish council in 1951 omitted the lane from its survey map of public rights of way. In conclusion therefore, map and documentary evidence clearly points to the claimed route being of public highway status. No evidence has been found to show what classes of traffic have used the claimed route, and a local historian has recorded that a bridge over Bentley Brook collapsed and was replaced by a pipe.

It is advised that the evidence does indeed support the application that the claimed route has been recorded as a highway being part of the public highway network over many decades. It is suggested that the evidence indicates that the status of the claimed route is likely to be higher than a footpath and therefore at least bridleway.

County Secretary & Solicitor's Observations

Information from the Applicant

The applicant has not submitted any user evidence in support of the claim but did submit some of the documentary evidence considered by the Environment Director.

Information from Others

The claimed route links two lengths of adopted highway and is known as Old Lane. Ownership of the length of Old Lane which is the subject of the claim is not registered. Mr & Mrs Baillie of Sills Farm are the registered owners of land on both sides of Old Lane which passes through their farmyard to the south of the length being claimed.

Mr Baillie does not believe the route to be a bridleway and although the family has always allowed riders to use the route the riders have almost always asked permission. Mr & Mrs Baillie have never had any intention that the route should become a public bridleway. In support of this they submit 7 letters from members of the public who confirm that they have used the claimed route on horseback for periods of between 14 and thirty five years, but only after asking permission from the Baillie family. One of these users is a farrier and another who has run livery stables nearby for the past 24 years states that their customers have used the route, yet they have never considered it to be a public bridleway, but have used it with

permission from the Baillie family. Four of these letters specifically state that they have never considered the claimed route to be a public bridleway.

A letter from The Holcombe Hunt confirms that they have hunted on Old Lane past Sills Farm and through to Mawdesley with permission from the Baillie family. The route was obstructed by shrubbery prior to 1976, when Mr Peter Baillie bought the neighbouring Cedar House Farm and cleared the undergrowth.

This clearance of the briars and gorse obstructing the track when his father (Mr Peter Baillie) bought Cedar House Farm in 1976 is confirmed by Mr George Baillie and also by Mr Geoff Monk, who has lived on and farmed the land adjoining Sills Farm for the past 75 years. Mr Monk's family farmed at Sills farm in the 1800s, being followed as tenants by the Dickinson family in the early 1900s, and then the Baillie family in the mid-1900s. To his knowledge it has only ever been a private road belonging to the farm and has never been a bridleway. He points out that the running of a dairy farm necessitates gates across the track in order to control the daily movement of large numbers of cattle.

Mr Baillie draws attention to a "cul-de-sac" sign erected by the County Council in 2003 at the end of Old Lane, the earlier signs having disappeared during a local beer festival, and has provided a photograph of this sign.

For the past forty years Mr Baillie states that the route through the farmyard has been closed for three hours in the morning and evening while cows are being milked. Sills Farm is a busy farm with five hundred and sixty cattle, of which photographs are provided, and heavy farm machinery moving around. Mr Baillie is concerned about both riders' safety if the route were to be used more often, and the possibility of cattle escaping onto the highway if gates were to be left open. (However this farmyard is not on the claimed route but on a part of Old Lane further to the south.)

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

Strong historical documentary evidence

Against Accepting the Claim

If the historical evidence is considered insufficient, lack of user evidence and the more recent history of the route would make accepting the claim more difficult

Conclusion

The claim is that this section of Old Lane is already a bridleway and should be recorded on the Definitive Map as such.

As there is no written dedication and no user evidence it is advised that Committee is unable to find express dedication or deemed dedication under S31 Highways Act 1980. Instead it is for Committee to consider whether the evidence of how the route has historically been recorded is sufficient from which to infer that the route was dedicated to public use many decades ago. It is advised that if dedication can be inferred historically, any evidence that the route became less easy to use or permissions have been given more recently would not affect the dedication. The highway status would remain as the highway has not been extinguished by due legal process.

It is suggested that the Executive Director of Environment's view is that there is strong evidence from which to infer public status. The records appear to present a consistent view of the claimed route being a section of a through highway route. It is therefore advised that the Committee may consider on balance that the claimed route has some sort of highway status.

The claim is that it be recorded as a bridleway. It is advised that it is open to the committee to consider whether there is on balance evidence from which to infer that the type of highway is other than bridleway.

It is advised however that there is no significant evidence in this matter of what types of public traffic have used the route and when. Looking therefore at how the route has been recorded it is the case that the lane is of vehicular width and has been recorded as part of a "public road" in the Tithe records, a "District Road" in the 1907 Names Book, and a "roadway" in the Finance Act records.

This wide route and the way it has been recorded would, it is suggested make it likely that the claimed route is of higher status than a footpath. It is however advised that the term "public road" may not in itself mean that a route was in the mid nineteenth century a route used by the public in carts and carriages nor that excluding a route from hereditaments in the Finance Act records meant that it was vehicular. Likewise the term unclassified county road today does not of itself mean that a route carries public rights for mechanically propelled vehicles.

It is also advised that even if, on balance the Committee consider that the route may have become a public vehicular highway for mechanically propelled vehicles those mechanically propelled rights may have been extinguished under the recent provisions of the Natural Environment and Rural Communities Act 2005. Only if certain exceptions applied would mechanical vehicular rights be saved and it is advised that there is no evidence presented as to whether it was in use by mechanically propelled vehicles before 1930 and other exceptions are unlikely to apply.

It is therefore advised that without sufficient evidence of either early vehicular use by carts or carriages or more modern mechanically propelled vehicular use in the last century the Committee may consider that there is not sufficient evidence to indicate that the claimed route has been dedicated to the public for use by vehicles. It is suggested that on balance the route is a highway of higher than footpath status and if satisfied that this is the case the Committee, taking all the evidence into account,

may consider that the route on balance can be inferred dedicated to the public as a bridleway as claimed, and that the claim be 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 File Ref: 5.27936(804/445)		J Blackledge, County Secretary & Solicitor's Group, 01772 533427

Reason for inclusion in Part II, if appropriate

N/A