

Regulatory Committee

Meeting to be held on 27 September 2006

Part I - Item No. 4

Electoral Division affected:
Ribble Valley South West

Wildlife and Countryside Act 1981

**Claimed Public Footpath from Public Footpath No. 40 to Longworth Road,
Billington, Ribble Valley Borough**

Claim No. 804/427

(Annex 'A' refers)

Contact for further information:

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Executive Summary

The claim for a public footpath from Public Footpath No. 40 Billington to Longworth Road, Billington, Ribble Valley Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/427.

Recommendation

- i) That the Claim for a public footpath from Public Footpath No. 40 to Longworth Road, Billington, Ribble Valley Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/427, 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 footpath from a point on Public Footpath No. 40, at the north-eastern termination of Dale View, Billington, to a point on Longworth Road, at its junction with Sunnyside Avenue, Billington, Ribble Valley Borough, a distance of approximately 65 metres, and shown between points A to C on the attached plan, (GR SD 7264 3594 to GR SD 7269 3598).

Background

A claim has been received for a footpath extending from a point on Public Footpath No. 40, at the north-eastern termination of Dale View, Billington, to a point on Longworth Road, at its junction with Sunnyside Avenue, Billington, Ribble Valley Borough, a distance of approximately 65 metres, and shown between points A to C

on the attached plan, (GR SD 7264 3594 to GR SD 7269 3598), to be added to the Definitive Map and Statement of Public Rights of Way.

Consultations

Ribble Valley Borough Council

The Borough Council confirm that they removed the kissing gate at point B on the attached plan and erected fencing across the claimed route last year. They have commented that the initial blocking up of the claimed route was carried out by the Borough Council due to the occupier of no. 1b Sunnyside Avenue claiming that it was on their land and that they (Borough Council) had no right to remove the original kissing gate. Subsequent research showed that the occupiers of no. 1b Sunnyside Avenue do not own the land or boundary where the kissing gate stood.

The Borough Council has, therefore, decided to re-open the gap where the kissing gate previously stood and make the claimed route available to the public. This has been done with verbal consent from Redrow Homes who own the land on the Dale View side of the fence.

It, therefore, appears to the Borough Council that the challenge to the public's right to use the path was not a legal one and, therefore, there is no cut-off date from which to count back the required 20 years use.

Billington Parish Council

The Parish Council would like to strongly support this application – as far as the Council are aware, this has been the actual route of the footpath for as long as anyone can remember and is the only accessible route for pushchairs, wheelchairs and the infirm, all of whom are regular users of the path.

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

Environment Director's Observations

Description of the route

The claimed route starts at point A at approximately the point at which Public Footpath No. 40 Billington leaves the turning circle at the north eastern end of Dale View (Dale View is at present a private road not yet dedicated as a highway and adopted by the County Council and recorded as X 5117). Public Footpath No. 40 Billington continues in an east north east direction to come out onto Sunnyside Avenue further south than the claimed route and is blocked by metal fencing, a large conifer tree and a number of shrubs as it passes down the south side of Sunnyside

Avenue. On leaving Public Footpath No. 40 Billington the claimed footpath passes over a short section of the tarmaced turning circle at the north eastern end of Dale View and after leaving the turning circle, the claimed route continues along a recently tarmaced path of 1 metre width for a distance of approximately 4 metres to pass between a metal fence and a substantial metal gatepost, the gap being 1 metre wide at point B. Immediately after passing between the post and fence, a further section of fence narrows the route presumably to restrict the use of the route by motorcyclists and bicycles. A Public Footpath finger post has been recently erected next to the metal gatepost. Where access is currently available, between the fence and the gatepost, is where there used to be a metal kissing gate.

The route then immediately joins Sunnyside Avenue, an un-adopted private road that leads to a known highway, Longworth Road. The claimed route passes along Sunnyside Avenue in a generally east north east direction for a distance of approximately 55 metres to the junction of Sunnyside Avenue and Longworth Road. Sunnyside Avenue has a metalled track that has in the past been tarmaced but the surface is in places breaking up and small potholes developing. The section of Sunnyside Avenue along which the claimed route runs is 5 metres wide although cars have always been parked along the route during site visits. The claimed footpath is on the metalled track and, for a distance of approximately 30 metres, runs parallel with Definitive Public Footpath No. 40 Billington which passes in a north east direction along the verge of Sunnyside Avenue. During the site inspection the claimed route was in regular use by local residents.

Documentary Evidence

A number of documents and maps have been checked for the purposes of this application.

A number of commercially produced maps that were produced prior to the first Ordnance Survey sheet of 1845, have also been checked none of which showed the claimed route.

The 6-inch to 1 mile Ordnance Survey sheet of 1845 shows the area of the claimed public footpath as being open fields. The housing around Sunnyside Avenue and Longworth Road have not been built, nor has the Judge Walmsley Mill or railway line. The line of the claimed route is crossed by two field boundaries, however no track or feature of any kind is depicted along the route of the claimed route or the route of Definitive Footpath No. 40 Billington.

The copy of the 25-inch to 1 mile Ordnance Survey sheet of 1893 held at the Lancashire Records Office has been damaged and the section of the map that shows the claimed route is missing. From the remaining portion of the map it can be seen that the houses on Sunnyside Avenue have not been built. The railway is shown by this map sheet. The route of Definitive Public Footpath No. 40 Billington is shown passing along a boundary past some small buildings which were presumably the chicken sheds as described in user statements.

The 25-inch to 1 mile Ordnance Survey sheet of 1912 shows the Definitive route of Public Footpath No. 40 Billington passing along the aforementioned boundary, past

what is presumed to be the chicken sheds and leading towards a street called Factory Row, now named Longworth Road. The houses along Sunnyside Avenue are not shown by this map sheet and what is now called Sunnyside Avenue only extends as far as the back alley to the houses on Factory Row. The claimed route is not depicted on this map until it runs co-incident with what is now a part of Sunnyside Avenue. The section from where the claimed route leaves Public Footpath No. 40 Billington to the alley that reaches the backs of Factory Row is not depicted on this map sheet.

The 25-inch to 1 mile Ordnance Survey sheet of 1932 shows the houses on Sunnyside Avenue. The route of Public Footpath No. 40 is visible on this map passing along a boundary fence as previously described. The claimed route is not shown as a track leading off the Definitive route of Public Footpath No.40 Billington as the route reaches Sunnyside Avenue. If the claimed route existed on the ground, this would need to cross the boundary fence on Sunnyside Avenue that is shown by this map, whether this boundary was a wall, fence or hedge and whether there was a gate is not apparent from the map. After crossing the boundary and passing onto Sunnyside Avenue the claimed route passes down what is shown as Sunnyside Avenue towards Longworth Road. Sunnyside Avenue is shown as being open to Longworth Road.

The 6-inch to 1 mile Ordnance Survey sheet of 1955 does not show the first section of the claimed route leading off the marked route of Definitive Public Footpath No. 40 Billington before it reaches Sunnyside Avenue. The section of the route can be seen as it passes down Sunnyside Avenue to Longworth Road and this is shown as being open with no gates or restrictions. The small scale of this map means that such a minor variation is unlikely to be shown.

The 1:2500 Ordnance Survey sheet of 1967 is similar to the 25-inch to the mile Ordnance Survey sheet of 1932. Sunnyside Avenue is shown as having a verge area on the south side where Public Footpath No. 40 Billington runs. The claimed route which is not depicted as leaving the Definitive route crosses a solid line indicating a wall or other boundary as it joins Sunnyside Avenue. The claimed route then passes down Sunnyside Avenue as depicted by this map sheet.

The aerial photograph of the area taken around 1940 shows the claimed route reaching Sunnyside Avenue. The Definitive route of Public Footpath No. 40 Billington can be seen on this photograph as approaching Sunnyside Avenue but the trodden path does not continue along the recorded Definitive path but turns towards Sunnyside Avenue along the line of the claimed route. Sunnyside Avenue can be clearly seen on this photograph.

The aerial photograph of 1989 shows the line of Public Footpath No. 40 Billington. The houses at Dale View have not yet been built. The aerial photograph does appear to show a route that sways away from the field boundary in front of 1b Sunnyside Avenue. The verge on Sunnyside Avenue along which Public Footpath No. 40 Billington runs appears as a grassed area. Sunnyside Avenue appears open to Longworth Road.

The aerial photograph of 2000 shows the area of Dale View as a building site and the houses have not been constructed. The photograph appears to show a route along the claimed route but this is not clear. Sunnyside Avenue appears open to Longworth Road.

The aerial photograph of 2003 shows the turning area of Dale View and a route can be seen leading from the turning area to Sunnyside Avenue.

Definitive Map history

The Billington Parish Survey map shows Public Footpath No. 40 Billington leading as far as Sunnyside Avenue along the route that is recorded on the Definitive Map of Public Rights of Way First Review. The section of Public Footpath No. 40 Billington that continues along the grass verge of Sunnyside Avenue is not represented by the Parish Survey Map. The claimed route leading down Sunnyside Avenue to Longworth Road is not shown by the Billington Parish Survey Map. The Parish Survey Card describes the route as reaching Sunnyside Avenue. The Survey Card describes the route passing through two gate stiles and the last description is the route passing over a stile adjoining a cart gate. It is not clear if this description applies to the exit onto Sunnyside Avenue.

The Draft, Provisional and Definitive Rights of Way maps show the same as the Parish Survey Map. The Definitive Statement describes Public Footpath No. 40 Billington as passing from Elker Lane near Chew Mill to Sunnyside Avenue. None of these maps show the claimed route marked independently of the Definitive footpath.

The Definitive Map First Review does show the Definitive route as a longer footpath extending partway down the verge of Sunnyside Avenue. There are no records on file that would suggest any objection had been received to explain this change in the northern extent of the Definitive route.

In summary the claimed route is open and available for use and passes from Public Footpath No. 40 Billington across a part of the turning circle of Dale View and passes down a tarmaced path of 1 metre width a short distance to a metal fence. The claimed route passes through a 1-metre gap in the fence to reach Sunnyside Avenue. The claimed route passes down Sunnyside Avenue to reach an adopted road called Longworth Road.

The claimed route leading from Public Footpath No.40 Billington to Longworth Road is not depicted on any of the maps that have been examined for the purpose of researching this claim.

The claimed route can be seen on the aerial photograph dated 1940 and was therefore clearly in existence at that time but is not depicted on the Ordnance Survey map sheets of 1932 and 1955 as a change in surface.

It is difficult to explain why the claimed route does not show on the parish survey. The claimed route is however such a minor deviation from the recorded route of Public Footpath No. 40 Billington (the distance between the route of Public Footpath No. 40 Billington and the claimed route is approximately 5 metres on the Order plan)

and it may have been difficult and impractical to have recorded both routes on the survey map had the Parish Surveyors found both the definitive route and the claimed route to exist at the time of the Parish Survey.

It is suggested that the claimed route has clearly been in existence since at least 1940 and it would appear that the claimed route may have been assumed by users in the area to be the route of the Definitive footpath. The route of the Definitive footpath along the boundary verge of Sunnyside Avenue is consistent with the Ordnance Survey map of 1912. By 1932 the houses at Sunnyside Avenue had been built and it would appear that a more convenient access next to the Definitive route was provided. It would appear from the site visit that the path shown by the Definitive Map of Public Rights of Way First Review has not been used for a considerable period of time and that the claimed route has for some time been available to the public and this is reinforced by the user evidence that accompanies the application.

Director of Legal Services Observations

Information from Applicant

In support of the Claim 33 evidence of use forms have been submitted indicating knowledge of the route for 88 years (1); 70-79 years (6); 60-69 years (4); 50-59 years (8); 40-49 years (3); 30-39 years (3); and 20-29 years (8).

The forms indicate use of the route for 70-79 years (6); 60-69 years (3); 50-59 years (9); 40-49 years (3); 30-39 years (4); 20-29 years (7); and less than 20 years (1).

The usage has been mainly for pleasure purposes, country walks, jogging and exercise, visiting friends, and access to shops, school, work, church, library, bus-stop, properties and the main road, and ranges from 4 times daily, to daily, to 2/3 times per week, to weekly, to monthly, to less frequently.

The witnesses were not working for any owner or occupier of land crossed by the claimed route at the time when they were using it; they have not been stopped or turned back when using the route, and have not heard of anyone else having been challenged; they have not been told by any owner or tenant that the way was not public; they have never known of any locked gates or other obstructions on the route, (other than a stile and a kissing gate); they have never seen any prohibitory notices on or near the route, (other than a 'Private Road' sign on Sunnyside Avenue, but not on the claimed route); and they have never asked or been given permission to use the route.

A number of the witnesses refer to a variation in the route when the houses on Dale View were built.

One witness, with 65 years knowledge and use of the route, states that the route has never followed the route along which it has now been diverted. It is submitted that the 'present diversion' takes you through what was always known as 'Wallbank's Hen Pens' and you would never have been allowed in there let alone through there. It is submitted that this land was separated from the path by a hedge and a ditch and

it would not have been possible to follow the course along which the path has been diverted.

One witness, who has lived in the village for almost 80 years, and was brought up on Sunnyside Avenue, states that the path has been there all of her life. She, and other children in the area, used the path to go for the bus to school in Langho. Her sister, sister-in-law, and others used it to go to work at Green Brothers Mill on the main road in the village. Other workers used it from the village to go to Longworths Mill by the river. It is submitted that the path is now used by lots of people for pleasure, lots of ramblers heading for Dinckley, and also children to Whalley School, access to the shops and post office. She submits that the gate referred to has never been closed.

Information from others

Land crossed by both ends of the claimed route is in the ownership of Redrow Homes (Lancashire) Limited, who have no objection to the proposal.

An objection to the proposed changes to the kissing gate/public footpath on Sunnyside Avenue has been received from a resident of Sunnyside Avenue. She states that the gate on the claimed route had been locked for at least one day every year for the previous three years to her personal knowledge, and she is contacting the previous owner of the property to see whether they know of the gate being locked previously. She considers that, if a gate has been locked for at least one day every year, a public right of way does not exist and the 'so called 20 year rule' would not apply.

She objects to the re-opening of the gateway as the quality of life for her and her neighbours is better now the gate has been closed – pedestrians are using the public footpath, as they always have done, and litter, dog-fouling, and anti-social behaviour in front of the house has reduced substantially.

She also objects to the proposal to move the public footpath from behind the hedge to run in front of the houses on Sunnyside Avenue. It is submitted that the gate opens straight onto a busy private road and, if the footpath is moved, the Council will have a responsibility to maintain the footpath.

It is further submitted that the public footpath, as it stands, has always been used by people on bikes and with push chairs without complaint. Opening the kissing gate meant that it was being used illegally by motor bikes.

Others have written in support in response to the application. One resident (who has already completed a user form) says that she has lived on Sunnyside Avenue for 43 years and in all that time the kissing gate onto Sunnyside Avenue was the right of way. An elderly neighbour who has also lived on Sunnyside Avenue for over 70 years has never known anything different. It is also stated that the owners on Sunnyside Avenue own the piece of the private road in front of their house.

Another resident who has lived in Billington all her life and is now living back on Sunnyside Avenue, states that the path (claimed) has been there all her life. She

used it to go to school and to work and knows of its use by many others. She says that the gate (at point B) was never locked as has been said.

The Committee will, of course, be aware that objections received on the grounds of safety, security, privacy and vandalism, etc, whilst of importance to those persons making them, have no bearing on whether or not the path exists in law.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

User evidence

Aerial photographs

Attitude by present owner of land at both ends of the claimed route

Against Accepting the Claim

No real evidence against acceptance but note reference to locked gate 2002 2003 and 2004 and to possible recent change of line of route A-B

Conclusion

The claim is that this short route has already become a footpath and should be recorded on the Definitive Map and Statement.

There is no express dedication and the Committee is therefore advised to consider whether there are circumstances from which a dedication can be inferred at Common Law or whether the criteria in Section 31 of the Highways Act 1980 are satisfied on balance by which a dedication can be deemed.

It would appear that the kissing gate at the boundary onto Sunnyside Avenue (point B) was removed and fencing erected not by the owner but by the Borough Council in 2005. This has caused concern and it is suggested that this did mean that users realised that their right of way was challenged. It is advised that actions calling routes into question do not necessarily have to be by an owner and that the action taken last year by the Borough Council can be considered as a calling into question under Section 31 of the Highways Act 1980.

Under Section 31 use of the claimed route has to be for twenty years preceding the calling into question, that is 1985-2005. Everyone who has given evidence of use state that they have used the route through the gate at Point B throughout this period and by many of them for many decades before. They do not recall any adverse actions taken against their use and do not refer to the gate being locked on any day. It is advised that if actions were taken to lock the gate, this may have called the route into question in 2002 but it is advised that there is clearly use of the route for the required period 1982-2002 if that is considered to be the case. It is suggested that user evidence is able to satisfy the criteria in S31 Highways Act 1980.

However, it may be that the construction of Dale View did alter the line of the route used by members of the public as they passed into land owned by Redrow at point B but it is clear that Redrow as owners are content that a public right of way on the claimed line be recorded and it is therefore advised that there would appear to be circumstances such as the statement made by Redrow from which a dedication of section A-B can be inferred on the claimed route.

Taking all the evidence into account the Committee may consider on balance that dedication of the claimed route can be deemed under Section 31 of the Highways Act or inferred under Common Law 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: 5.26127 (804/427)		J Blackledge, County Secretary & Solicitor's Group, Ext: 33427

Reason for inclusion in Part II, if appropriate

N/A