

**THE DERBYSHIRE COUNTY COUNCIL (UPGRADING OF PUBLIC FOOTPATH
NO. 18 TO BRIDLEWAY - PARISH OF SHIRLAND AND HIGHAM)
MODIFICATION ORDER 2012**

**THE DERBYSHIRE COUNTY COUNCIL (BRIDLEWAY FROM PUBLIC
FOOTPATH NO. 46 (FORMERLY PART OF PUBLIC FOOTPATH NO. 18) TO
STONEBROOM INDUSTRIAL ESTATE - PARISH OF SHIRLAND AND HIGHAM)
MODIFICATION ORDER 2012**

**THE DERBYSHIRE COUNTY COUNCIL (UPGRADING TO BRIDLEWAY OF
PUBLIC FOOTPATH NO. 3 - PARISH OF MORTON AND PUBLIC FOOTPATH
NO. 46 (FORMERLY PART OF PUBLIC FOOTPATH NO. 18) - PARISH OF
SHIRLAND AND HIGHAM) MODIFICATION ORDER 2012**

**STATEMENT ON BEHALF OF DERBYSHIRE COUNTY COUNCIL IN SUPPORT
OF CONFIRMATION OF ORDERS INCLUDING COMMENTS IN RESPONSE TO
OBJECTIONS**

Introduction

Derbyshire County Council ("the Council") received a Definitive Map Modification Order application dated 23 November 2009 (**Document 3**) from Five Pits Horsecatch and Countryside Access Group ("the Applicant"), the effect of which, if confirmed, would be to modify the Definitive Map and Statement by the addition of a bridleway and the upgrading of footpaths to bridleways in the parishes of Morton and of Shirland and Higham.

Supporting the application were thirty-five public way evidence forms showing the routes claimed (**Document 4**), together with a photograph of a section of the claimed route taken in 1983, a copy of the relevant excerpts from the 1950 Parish Survey and nine letters (**Document 3**).

Background to the Claim

In February 2005 an 'A' frame barrier was installed at the southern end of Morton FP 3 by the Council after complaints were received about motorcyclists and quad bikers using the footpath. Following installation of the barrier, complaints were received from a local resident, Mr A Southey, on behalf of horse riders who could no longer use the route. Correspondence was received from Mr Southey between 2006 and 2009, including 32 completed public way evidence forms, but a formal application was not made until 22nd August 2008.

The 2008 application was made by the British Horse Society, and the path claimed was described as "FP 3 Morton known as 'Pit Lane' from Main Street, Morton to High Street, Stonebroom (through Stonebroom Industrial Estate)". This route was shown on an accompanying plan.

A site visit was undertaken on 15 September 2009 and was attended by two officers of the Council, local residents and witnesses. In the course of the visit it became clear that FP 18 and the unrecorded route from FP 3 to Stonebroom Industrial Estate, points 'C to D' and 'B to E' respectively on the consultation

plan (**Document 5**), had also been used by the riders, and it was agreed that a new application ought to be submitted which included these routes. The witnesses who had previously completed public way evidence forms were asked to depict their full use on new plans which showed all of the routes claimed.

The new application was made by the Five Pits Horsecatch and Countryside Access Group ('the Applicant'), on 23 November 2009 (**Document 3**) and was supported by the public way evidence forms. Three public way evidence forms were submitted at a later date making a total of 35 public way evidence forms. It is this application which has been determined by the Council.

The application was reported for determination to the Council's Regulatory Licensing and Appeals Committee on 18 July 2011 (**Document 6**). At that meeting it was resolved to make three Orders under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 showing the routes on the Definitive Map and Statement as bridleways:

- Order 1 - The Derbyshire County Council (Upgrading Of Public Footpath No. 18 To Bridleway - Parish Of Shirland And Higham) Modification Order 2012
- Order 2 - The Derbyshire County Council (Bridleway From Public Footpath No. 46 (Formerly Part Of Public Footpath No. 18) To Stonebroom Industrial Estate - Parish Of Shirland And Higham) Modification Order 2012
- Order 3 - The Derbyshire County Council (Upgrading To Bridleway Of Public Footpath No. 3 - Parish Of Morton And Public Footpath No. 46 (Formerly Part Of Public Footpath No. 18) - Parish Of Shirland And Higham) Modification Order 2012

The three Orders were made on 22 March 2012 (**Document 1**). Notices advertising the Orders were published in the local press and posted on site (**Document 8**) and sent to relevant interested parties on 27 March 2012 (**Document 7**). Twenty objections were received during the forty-two day period for the receipt of objections and representations (**Document 7**).

Representations and objections received following the making and advertising of the Order

1. Letters were received from Western Power (**Document 7.1**) and The Environment Agency (**Document 7.2**) confirming they had no objection to the Orders and a letter from Dennis Skinner MP dated 19th April 2012 requesting comment to which a response was sent to Dennis Skinner but nothing further received from his office (**Document 7.3**).
2. One letter of support dated 7th May 2012 was received from Mrs Sterland following the making of the Orders and she also subsequently made a telephone call to the Council on 28th May 2012 (**Document 7.4**). Mrs Sterland (aged 72) stated that she had ridden the routes on horseback in the past, as had her daughters and granddaughters. She believed that the routes had long been used by horses, walkers, cyclists and cattle for over 60 years, and recalled that pit ponies used the route until Morton Colliery closed in 1965. She also thought the route safer than the busy road alternative.

3. Several of the objections (**Document 7**) raise concerns about the consequences of the establishment of bridleway rights over the Order routes although they provide no evidence to show that a bridleway has not already been established by use. None of the following points which have been raised in objection are relevant to the case for or against confirmation of the order:

- a rise in anti-social behaviour that objectors perceive might result if the barriers on the route were removed;
- the safety of members of the public: riders travelling on horseback through the industrial estate and exiting onto a main road and the safety of walkers encountering horses on the route;
- the prospect of conflict between walkers and horse riders;
- concerns that the surfaces of the routes could become rutted by horses;
- the prospect of horse fouling;
- that the routes are too narrow for horses to use and for pedestrians to pass; especially those with prams or pushchairs;
- noise from adjacent factories could startle horses with serious consequences;
- the cost of removing the barriers;
- the nuisance posed by the potential use by motorcycles and quad bikes especially as the 'A' frame barriers would be removed;
- other existing bridleways in the area;

Some of these objectors mention only one or two of the footpaths, but it is clear from reading their letters that they are referring to the route between Morton and Stonebroom along FPs 3, 18 and 46 – i.e. that their concerns are with Orders 1 and 3 which are to upgrade the existing footpaths rather than with Order 2.

A petition was submitted by Morton Parish Council (**Document 7.5**) which 'strongly objects to the paths being used by horses' and is 'also opposed to the footpaths being given a change of use to brid...' (Part missing on scan/photocopy sent to the Council but presumably means bridleway). The petition is signed by 88 signatories but due to the scanning / photocopying not all of the signatures can be seen in full. In any event, the petition does not state any grounds for objection.

Mrs. Cart explained in a telephone call to the Council on 23rd April 2012 (**Document 7.6**) that the barriers at point D (**Document 5 (Order 1)**), which were installed in 2006, replaced earlier, staggered barriers, which, in her opinion, a horse could have only got through with great difficulty. She also mentioned that in thirty years of living in the area she has never seen a horse using FP 18 though she thinks she has seen horses on FP 3.

Eddie Greenwood stated in a letter dated 30th April 2012 (**Document 7.7**) that he believed horses have not been able to use FP 18 for the last 6 years because of the barrier at the High Street end (point D on Order 1), and that he is "sure that...prior to the anti-motorcycle barrier being erected there were simple barriers of the type erected to prevent pedestrians rushing straight out on the highway and that these would have been an effective barrier to the passage of horses".

In a letter received by the Council on 5th April 2012 (**Document 7.8**) Mr. K Aspinall referred to barriers at point D (Order 1) which he claims would have

made it impossible for horse riders to have used the footpath. However, he also states that the barriers were installed because the route was being used by motorcyclists and quad bikes which would suggest he is referring to the barriers which prompted the claim. He also claims that in 44 years of living in Stonebroom opposite FP 18, he has never seen it used as a bridleway.

Mr R. Patrick states in a letter dated 19 April 2012 (**Document 7.9**) that he has 'lived in Stonebroom for 70 years and...it has never been used in the last 35 years as a path for horses.

E.A. Barratt states in a letter dated 20 April 2014 (**Document 7.10**) to have lived in Morton for 20 years and Stonebroom for 40 years and has walked the paths daily but has never seen FPs 46 or 3 used as a bridleway.

Just one objection dated 15 April 2012 (**Document 7.11**), from Mr & Mrs Potts, relates to the addition of a bridleway from FP 46 to Stonebroom Industrial Estate (Order 2). They refer to a 'recent project... to improve the area around the brook and make it into a conservation area.' All their other points have already been covered above.

Comments on objections and representations

The Council considers that each of the order routes subsist as bridleway for the reasons set out in the Committee report (**Document 6**).

The public's right to use the order routes was called into question in 2005, when an 'A' frame barrier was installed at point B (**Document 5**), making it impossible for horse riders to use the route. The barriers were installed following complaints of use of the routes by motorcyclists. There are currently barriers between points A and B, at point B, and at point D. The Council has no record of barriers on the routes prior to 2005.

Two of the three local residents who referred in their objections to a stile at the south end of the Order 1 route at point D mentioned that it had been installed after motorcyclists and quad bikers started using the route. It is likely that they are referring to the 'A' frame barriers rather than a stile. The other resident, Mrs. Cart, recalled an earlier, staggered barrier which she said was replaced by the current barrier and which she believed would have been a hindrance to horse riders; however she could not remember any exact dates. The fact that many of the objections referred to use by motorcycles and quad bikes makes it highly unlikely that any barriers that may have been in place prior to 2005 would have prevented access on horseback.

Seven of the other objectors mentioned barriers which were installed in response to an increased use of the route by motorcyclists and quad bikers. None of these gave dates, although four indicated that they had been erected relatively recently. The correspondence received by the Council from 2006 in response to the installation of the barrier on FP 3 would indicate that there were no barriers prior to that date.

It was the installation of the barriers which prompted the claims and the swift response to the installation indicates that any earlier barrier which impeded equestrian access would also have resulted in complaints. The fact that the

route became impassable to horses in 2005/6 does not mean that bridleway rights could not have been acquired before that time.

None of the witnesses made any mention of stiles, barriers or obstructions in their public way evidence forms. The 1950 parish claim forms for FP 3 and FP 18 make no mention of stiles or other limitations and no limitations are recorded on the Definitive Statement. FP 18 at the time of the claim joined FP 3 at the parish boundary; it was only after the path was severed when the industrial estate was built that the north section of FP 18 was re-numbered FP 46.

The documentary evidence relating to this claim adds weight to the existence of the Order routes, indicating that the routes have been physical features on the ground for a considerable period of time; however it does not assist in determining their status – with the exception of the route described in Order 2 they are already recorded as public rights of way. The public way evidence forms show considerable use of all the claimed bridleways over a period substantially in excess of 20 years and are persuasive that the routes should be recorded as having public bridleway status.

Three of the objectors stated that they believed the order route had not been used by horses for 35 years, 44 years and 60 years respectively. This conflicts with the evidence of the 35 witnesses who completed public way evidence forms detailing their use of the route on horseback. Taking into account all the available evidence, the Council considers that it is reasonable to conclude that the order routes were well used by horse riders prior to the installation of the barriers, which appears to have been around 2005 and that there is sufficient evidence of long use on horseback to justify making the order.

Other matters

“The Derbyshire County Council (Upgrading to Bridleway of Public Footpath No. 3 – Parish of Morton and Public Footpath No. 46 (formerly part of Public Footpath No. 18) – Parish of Shirland and Higham) Modification Order 2012” (Order 3) requires a minor correction, if confirmed, due to an administrative error in ‘Part II’ of the order. The width column on page 4 has incorrectly been titled as ‘Approx. Length’ and if the Order is confirmed would need amending to read ‘Width’.

Conclusion

In conclusion, the evidence submitted illustrates that the routes have been used by the public as bridleways without interruption for a period of 20 years or more raising a presumption of dedication and there is insufficient evidence of a lack of intention to dedicate. Considering the evidence required by Section 53 (3) (c) (i) and (ii) of the Wildlife and Countryside Act 1981, it does appear that rights of way recorded on the Definitive Map and Statement as a highway of one status should in fact be recorded with a different status and that a right of way should be added to the Definitive Map and Statement as a bridleway. The County Council respectfully requests that the three Orders be confirmed as made subject to the minor amendment requested to Order 3.

