

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE

5 AUGUST 2011

**APPLICATION TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND
STATEMENT AT ROSPER ROAD, PALEY'S PLANTATION TO KIRKBY MOOR
FARM, KIRKBY MALZEARD**

1.0	<u>PURPOSE OF THE REPORT</u>
1.1	To advise Members of an application for a Definitive Map Modification Order, the effect of which if confirmed would be to add a bridleway along the route known as Rosper Road, which runs from Paley's Plantation to Kirkby Moor Farm at Kirkby Malzeard. A location plan is attached to this report as Plan 1 . The claimed bridleway is shown as A – B – C on Plan 2 . For much of its route (A - B), the claimed bridleway follows the line of an existing public footpath (Footpath no. 15.70/10), which is shown as A – B – D on Plan 2 .
1.2	To request members to authorise the Assistant Chief Executive, Legal and Democratic services, to make a Definitive Map Modification Order.

2.0 THE COMMITTEE'S RESPONSIBILITIES

- 2.1 The Committee in considering the Modification Order application acts in a quasi-judicial capacity. It is fundamental that consideration and determination of an issue is based on the evidence before the Committee and the application of the law. The merits of a matter have no place in this process and so the fact that a decision might benefit or prejudice owners, occupiers or members of the general public, or the Authority, has no relevance to the issues which members have to deal with and address.
- 2.2 The Committee's decision whether to "make" an Order is the first stage of the process. If Members authorise an Order being "made", and there are no objections to the Order, the County Council can "confirm" the Order. However, if there is objection to an Order that is not subsequently withdrawn, only the Secretary of State would have the power to decide if it should be "confirmed". It would then be likely that a Public Inquiry would be held, and the decision whether or not to confirm the Order would rest with the Secretary of State.

3.0 LEGAL ISSUES

- 3.1 Under Section 53 of the Wildlife and Countryside Act 1981 the County Council has a duty to keep the Definitive Map and Statement under continuous review and to make a Modification Order to modify the Definitive Map and Statement

where the discovery of evidence which, when considered with all other relevant evidence available to them, shows that a highway shown in the Map and Statement as a highway of a particular description ought to be there shown as a highway of a different description. In relying on this provision an authority must be satisfied that “new” evidence has been discovered, to be considered in combination with all other evidence. It cannot simply re-examine the same evidence that was considered when the Map and Statement were created.

- 3.2 Additionally an Order may be made following the expiration of any period such that the enjoyment of the public of the way during that period raises a presumption that the way has been dedicated as a public path.
- 3.3 Under Section 31 of the Highways Act 1981 a statutory presumption arises that a way has been dedicated as a highway on proof that the way has actually been enjoyed by the public, as of right, and without interruption for a full period of 20 years, unless there is sufficient evidence that there was no intention during that period to dedicate it. That period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question.

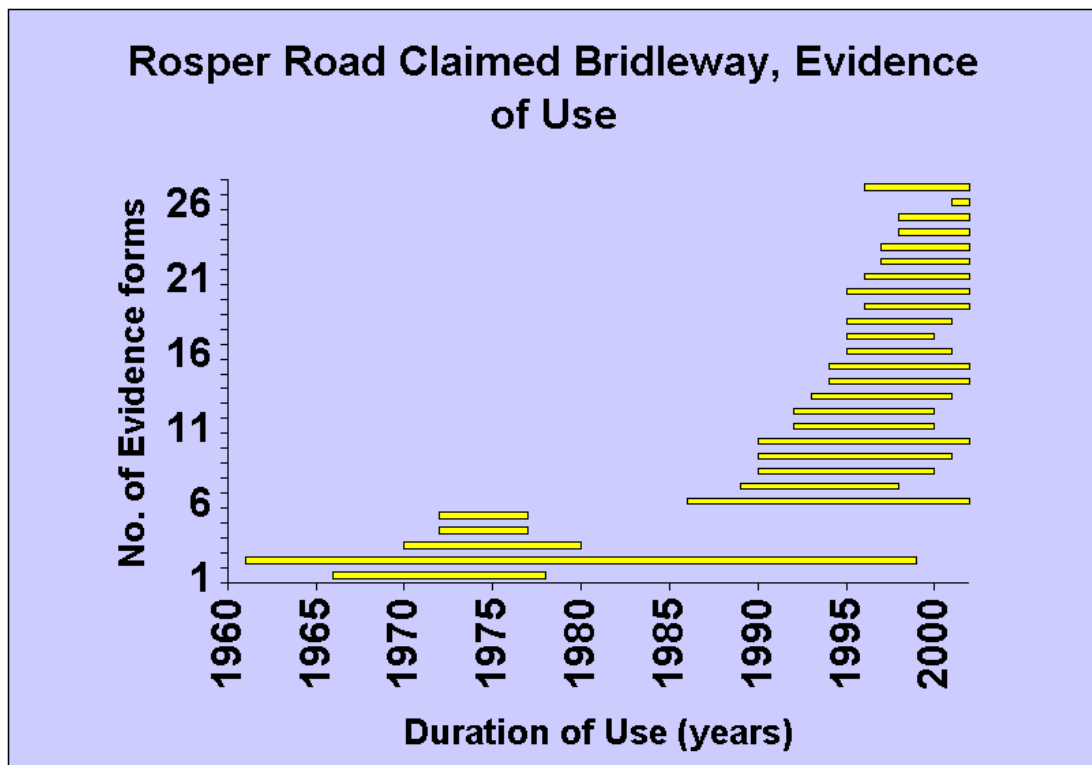
4.0 BACKGROUND

- 4.1 An application under Section 53 of the Wildlife and Countryside Act 1981 was submitted on 16 March 2004 to the County Council, to add the route shown as A – B – C on Plan 2 to the Definitive Map and Statement as a bridleway.
- 4.2 The application was supported by 14 evidence of use forms, together with old OS maps and a map labelled “early 19th century map” of Kirkby Malzeard, an extract from the 1789 Inclosure Award for Kirkby Malzeard, and photographs of the route. An additional 17 evidence of use forms were submitted in April 2006.
- 4.3 The applicant claims that the public had been using the route on horseback for many years, up until the winter of 2000-2001 when the route was closed due to Foot and Mouth Disease restrictions. While the restrictions were in place, Kirkby Moor Farm was sold. When the Foot and Mouth restrictions were lifted the following year, local riders attempted to use the route again, but after one rider was challenged by the new owner of Kirkby Moor Farm, the gate at the southern end of the route was locked, and the public were prevented from using the route. It was this action that triggered the DMMO application to be submitted.
- 4.4 When investigations into the application commenced in August 2005, landowners affected by the application (along with local Parish and District Councils, and user groups) were contacted and invited to submit any evidence that might be relevant to the application. Objections were received from the owners of Kirkby Moor Farm, the owner of Paley’s Plantation, and Kirkby Malzeard Parish Council.

- 4.5 Evidence submitted opposing the application included an OS map dating from 1856, eight letters from local residents stating that they have only ever known the route as a footpath and not a bridleway, and a statement from the Parish Council saying that its members have never known the route as a bridleway.
- 4.6 The information within the Inclosure Award is clear as to the intended status of Rosper Road, however without a clearly associated Inclosure Award plan, it was difficult to actually prove that the 'Rosper Road' in the Inclosure Award was the same route as the claimed bridleway.
- 4.7 In order to clarify this point, one of the witnesses supporting the application worked with an experienced Public Rights of Way consultant from the South Pennine Packhorse Trails Trust to undertake further extensive research into the Kirkby Malzeard Inclosure Award. The consultant prepared a report demonstrating that the "early 19th century map" appears to have been drawn up to accompany the Inclosure Award. The report was submitted to Officers in October 2010.
- 4.8 Officers wrote to the objectors setting out the new evidence submitted, but the owners of Kirkby Moor Farm and the Parish Council continued their objection to the application. The owner of Paley's Plantation stated that she had no evidence to oppose the application, but that she was concerned about the suitability of the route for horseriders.

5.0 USER EVIDENCE IN SUPPORT OF THE APPLICATION

- 5.1 A total of 31 evidence of use forms were submitted by local people, claiming the route referred to as A – B – C in Plan 2 as a public bridleway.
- 5.2 Three witnesses had used the route only on foot, although two of these stated that they believe the route to be a bridleway and had seen horseriders using it. A further 15 witnesses had used the route both on foot and on horseback, and another 13 witnesses had used it solely on horseback. One person had used the route with permission of "the tenant (Mr John Thomas Watson)". Discounting the person who used the route with permission and the three people who had only used the route on foot, this leaves 27 witnesses who appear to have used the route as a bridleway "as of right" (i.e. without force, without secrecy and without permission).
- 5.3 These 27 witnesses together claim use of the route as a bridleway for in excess of the required 20 year period prior to the status of the route being called into question in 2002. One of these 27 witnesses stated that they had used the route on horseback for 38 years, up until 1999, when they saw a public footpath sign on site and so stopped using the route. The other 26 riders had used the route for periods of between one and 16 years prior to the Foot & Mouth Disease restrictions.
- 5.4 The claimed use of the route as a bridleway by these 27 witnesses is shown in the bar chart below:



- 5.5 None of the witnesses state that they had been stopped or challenged when using the route until 2001-2002, when 14 users state they were stopped either by a locked gate or by the landowner in person.
- 5.6 15 of the 27 witnesses state that they had seen other horseriders using the route.
- 5.7 A letter was submitted by a local resident, whose family had lived in the area for many years. He had memories of the route being regularly used by people on horseback. He also states that the route “ran directly along the boundary hedgerow with proper field gates and stone built crossings in each gate way”, and that the gate into Paley’s Plantation had “two stone gateposts with the gate being as high as a normal farm gate but not cart width, however the clip fastening was in order that a rider on horseback did not need to dismount”.

6.0 HISTORICAL EVIDENCE IN SUPPORT OF THE APPLICATION

- 6.1 The applicant submitted copies of the following old maps to support the claim that the route is a bridleway:
 - 6.1.1 A map from the County Record Office, labelled “Early 19th century map”
 - 6.1.2 1892 OS map, showing the route marked as “B.R” (Bridle Road)
 - 6.1.3 1910 OS map, showing the route marked as “B.R”
 - 6.1.4 1914 OS map, showing the route marked as “B.R”

- 6.1.5 1929 OS map, showing the route marked as “B.R”
- 6.1.6 1930 OS map, showing the route marked as “B.R”
- 6.1.7 Map to accompany the Tithe Apportionment of 1841, showing an unlabelled track crossing fields, in the same location as the claimed bridleway.
- 6.2 An extract from the 1789 Kirkby Malzeard Inclosure Award was submitted with the application. This described the route as “*Rosper Bridle Road*”, a “*horse and foot road twenty feet in breadth*”. Although no Inclosure Map was found with the Award, the consultant’s research shows that the “early 19th century map” (referred to in paragraph 6.1.1 above) is likely to be a township map contemporaneous with the Inclosure Award, and drawn up to show the existing inclosed land as well as the new allotments to be inclosed by the 1789 Award. This map shows Rosper Bridle Road clearly labelled, in the same location as the route claimed in the application.
- 6.3 One of the witnesses supporting the application researched all the Quarter Sessions books (dating from 1781 to 1971) covering the area. A Certificate of Setting Out of Public Roads, dated 12 July 1791, confirmed that all public roads to be set out through the Kirkby Malzeard Inclosure Award had been completed, which indicates that the public highways described in the Inclosure Award, (and therefore including Rosper Road) were certified as having been physically made available for the public to use. The witness could find no subsequent Stopping Up or Diversion Order for Rosper Road, suggesting that any rights that were established by the Inclosure Award continue to exist today.
- 6.4 A number of photographs (taken in 2004) of the claimed route were submitted with the application. These show stone gate posts and a cobbled surface on part of the route. Photographs are not evidence of the route’s public status, but merely show that the route is substantial enough to have had bridleway use.

7.0 EVIDENCE AGAINST THE APPLICATION

- 7.1 The owners of Kirkby Moor Farm objected to the application, stating that when the land was purchased, searches only showed a footpath across it, not a bridleway. They also objected on the grounds that their land is naturally wet and would suffer seriously from regular use of the route by horses, and the risk of their livestock being let out. The following evidence was also submitted with their objection:
- 7.1.1 A copy of the 1856 OS map showing the route, but with no status marked alongside it, and with the northern section on a different alignment to that claimed.
- 7.1.2 A letter from the previous owner of Kirkby Moor Farm (1962-2000) stating that there was no bridleway on the claimed route.

- 7.1.3 A letter from a local resident (since 1990) who undertook a survey of Parish paths in 1991-2, and states the route is a footpath and he had never seen any horseriders using it.
- 7.1.4 A letter from a local resident (since 1969) stating that the route is not a bridleway.
- 7.1.5 A letter from a local horserider who had lived in the area for 40 years and had never used the route as a bridleway, or known the route to be used as a bridleway.
- 7.1.6 A letter from the resident of a neighbouring farm, stating that in the 40 years he had lived there he had never seen anybody riding a horse on the footpath past Kirkby Moor Farm.
- 7.1.7 A letter from a local resident who had lived in the area for 40 years (the past 12 of which were at the property next to Kirkby Moor Farm), stating that they believe the route is a footpath, not a bridleway.
- 7.1.8 A letter from a resident of a neighbouring farm (since 1999), stating that they had never seen horseriders using the claimed route.
- 7.1.9 A letter from a local resident who has lived in the area for 61 years, stating that they had never seen horseriders using the claimed route.
- 7.1.10 Photographs showing the claimed route.
- 7.1.11 A copy of the MAFF Agricultural Return for Kirkby Moor Farm, dated June 1941, stating "condition of farm roads - none"
- 7.2 The landowner of Paley's Plantation wrote stating that although she had no written proof against the claimed bridleway, for the past 60 years there had only been a stile and later a small gate (not large enough for horses) from the wood into the field belonging to Kirkby Moor Farm. She also had concerns over the suitability of the route for horses as the ground can be wet and boggy, and would become impassable for walkers if horses used it.
- 7.3 Kirkby Malzeard Parish Council objected to the application, on the following grounds:
 - 7.3.1 The claimed bridleway is not shown on the Definitive Map.
 - 7.3.2 Of the six active members of the Parish Council, four have knowledge of the area; two Councillors have lived in the area for over 60 years and have never known the route to be a bridleway. Another Councillor knows of other bridleways in the area, but not this one. The fourth Councillor has surveyed the local paths and only acknowledges the claimed route as a footpath, not a bridleway.
 - 7.3.3 The name Rosper Lane is not known to any Parish Councillors.

7.3.4 When Kirkby Moor Farm was sold, searches only showed a footpath, not a bridleway.

7.3.5 Usage of the route by horses would damage the land and disturb livestock.

8.0 COMMENTS ON THE EVIDENCE

- 8.1 The user evidence submitted with the application is not particularly strong. It does indicate 20 years use of the claimed route on horseback prior to the status of the route being called into question by the locking of gates and challenge to users by the owner of Kirkby Moor Farm in 2002, however, most of this use had been after 1986 (only 16 years prior to 2002). There are other witnesses who used the route since the 1960's, but during the relevant 20 year period (i.e. 1982 – 2002) there is only one user whose use of the route spans the period, to link the use in the 1960's to the use after 1986, to make up the 20 years (see bar chart in paragraph 5.4).
- 8.2 The historical evidence, especially the Inclosure Award and the “early 19th century map”, which appears to accompany the Inclosure Award, is strong evidence that the claimed route is a bridleway, and is the same “Rosper Bridle Road” as set out in law by the 1789 Inclosure Award.
- 8.3 The research undertaken by the consultant appears to show that the “early 19th century map” is in fact a Township Map for Kirkby Malzeard, and is contemporaneous with the Inclosure Award. The 1787 Inclosure Act required that a map be produced showing the existing inclosed land in the township as well as the new allotments on the moors to be inclosed by the Act, and it seems likely that the “early 19th century map” is this map.
- 8.4 The consultant's research involved relating the names of the landowners and tenants of each of the allotments listed in the Inclosure Award with the names of the tenants annotated on the “early 19th century map”, as well as relating the areas (in acres, roods and perches) of allotments listed in the Inclosure Award, and those annotated on the “early 19th century map”. By doing this it appears that the bridleway shown as Rosper Bridle Road on the map is the same Rosper Bridle Road as set out in the Award. Whilst there are some discrepancies between the names written on the allotments on the map, and the names of allottees in the Award, the consultant's research has shown that in these cases, the names written on the allotments on the map are the names of the occupier rather than the allottee. The names of the occupiers and allottees are set out in the main text of the Inclosure Award.
- 8.5 On balance, Officers are satisfied that the historical documentary evidence before them is “new” evidence, i.e. previously unseen by the Definitive Map-making Authority (see paragraph 3.1 above).
- 8.6 With regard to the old OS maps, although the route is not marked as “bridle road” or “B.R.” on the 1856 OS map submitted by the landowner, this may not mean that it did not exist as a bridleway. On early OS maps not all footpaths and bridleways were labelled as such. It was down to the OS surveyor, who

usually only marked their status if there was a chance they could be confused for roads.

- 8.7 It was not until 1883 that Ordnance Survey issued an order that in future all “*permanent footpaths, whether public or private, which are a physical feature on the ground must be shown on the 1:2,500 and 1:500 plans...F.P. will be written to all footpaths;.... the object of insertion of F.P. being that the public may not mistake them for roads traversable by horses or wheeled traffic.*” In 1884 Ordnance Survey ordered that bridle roads should be shown with the initials BR written along them, in the same way and for the same reasons as footpaths were to be marked. It should be remembered at this point that any depiction of a track or way on old OS maps is not proof of the existence of a public right of way, however it is indicative that a physical route existed on the ground.
- 8.8 It is difficult to draw conclusions from the conflicting evidence of users and those local residents who state they have never seen riders using the route. The user evidence submitted with the application claims a fair amount of use during the 1990's, with another period of regular use during the 1960's and 1970's. The letters from local residents stating they never saw horseriders using the route mostly cover the period from the 1960's onwards. The route is fairly remote from properties other than Kirkby Moor Farm, and it is possible that use of the route would not be noticed by local residents.
- 8.9 Those residents' statements that they have never known the claimed route to be a bridleway is backed up by both the Draft (1953) and Provisional (1971) maps issued as part of the process of the production of the Definitive Map, as they show only a footpath (now known as Footpath No. 15.70/10). When the Definitive Map was drawn up in 1972, only a footpath was shown at Kirkby Moor Farm. However, the fact that the claimed bridleway was not included when the Definitive Map was drawn up is not conclusive evidence that it did not exist.

9.0 CONCLUSIONS

- 9.1 Officers are satisfied on balance that in reference to the historical documentary evidence (Inclosure Award and old maps) available to them that the claimed route should be shown on the Definitive Map and Statement as a bridleway. Officers are doubtful that viewed in isolation, the user evidence submitted by the applicant would meet the statutory test for dedication of the route as a bridleway.
- 9.2 Whilst we can sympathise with the landowners' concerns over potential damage to their land and disturbance to livestock by horses using the route, these are not issues that can be considered when determining whether or not public rights to use the route exist.

10.0 RECOMMENDATION

10.1 The Committee Committee authorise the Corporate Director, Business and Environmental Services to make a Definitive Map Modification Order for the route shown as A – B – C on Plan 2 of this report to be shown on the Definitive Map as a public bridleway, and in the event that formal objections to that Order are made, and are not subsequently withdrawn, to refer the Order to the Secretary of State for determination and in doing so to exercise powers delegated to him under the County Council's Constitution in deciding whether or not the County Council can support confirmation of the Order.

DAVID BOWE

Corporate Director Business and Environmental Services

Background papers:

DMMO application dated 16 March 2004

Evidence submitted in support of, and against the application

The documents are held on a file marked:

County Council's Planning and Regulatory Functions Sub-Committee, 5 August 2011

Application to add a bridleway at Rosper Road, Paley's Plantation to Kirkby Moor Farm, Kirkby Malzeard, which will be available to Members at the meeting.

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