



## Order Decision

Site visit on 16 April 2019

**by Sue Arnott FIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 14 May 2019**

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### **Order Ref: ROW/3208953**

- This Order is made under Section 26 of the Highways Act 1980. It is known as the City of Sheffield Blackburn Valley (Butterthwaite Lane to Loicher Lane) Public Bridleway Creation Order 2012 and is dated 20 September 2012.
- The Order proposes to create a public bridleway linking Butterthwaite Lane with Loicher Lane, via a disused railway line, as detailed in the Order map and schedule.
- There were two objections outstanding together with three representations in support when Sheffield City Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

**Summary of Decision: The Order is confirmed with minor modifications as set out in the Formal Decision below.**

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### **The Main Issues**

1. The main issue is whether, having regard to Section 26 of the Highways Act 1980 (the 1980 Act), it is expedient to confirm the Order.
2. Before confirming the Order I must first be satisfied that:
  - (a) there is a need for a bridleway along the line indicated on the plan attached to the Order (shown as A-B-C and B-D); and
  - (b) it is expedient to create a bridleway having regard to:
    - (i) the extent to which the right of way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
    - (ii) the effect which the creation of the right of way would have on the rights of persons with an interest in the land, account being taken of the provision for compensation.
3. The main concerns raised by the objectors are twofold: firstly, whether the proposed bridleway should be created with a width of 5.5 metres, and secondly, whether the schedule to the Order should make reference to existing private vehicular rights as a 'limitation or condition'.

### **Reasons**

#### ***Whether there is a need for a public bridleway along the proposed line A-B-C & B-D***

4. The order-making authority, Sheffield City Council (SCC), submits there is little doubt that the proposed bridleway is needed, a claim that is supported by the three representations from the local CTC Right to Ride group, the Ramblers' Association (Sheffield Group) and local cyclist Mr Wild. The proposed new
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route has also received support from the Sheffield Ramblers', the Peak and Northern Footpaths Society, the British Horse Society (BHS), Sustrans and the Friends of the Trans Pennine Trail.

5. All recognise the Order route as a significant link in the Trans Pennine Trail (TPT), a national long-distance multi-user trail that extends from the east to the west coast of England.
6. The disused railway line between Meadowhall (to the south of the site) and Chapeltown (to the north) has been allocated as a strategic cycle/footpath since publication of the Sheffield Unitary Development Plan in the 1990s.
7. This was to ensure there is a safe off-road route for pedestrians, cyclists and horse riders as an alternative to the busy A and B class roads<sup>1</sup> which link these two localities. The designation also recognises the multi-functional nature of the route, encompassing both leisure and utility journeys and as a vital link in the network of tracks connecting the city centre with its surrounding communities and other connecting trails.
8. SCC emphasises the value of this route in creating a sustainable transport link between Chapeltown, Meadowhall and Sheffield, giving access to employment and leisure opportunities for the communities along this corridor.
9. The landowner, MCL, does not dispute this Order in principle, having been willing to consent (by agreement with SCC) to the creation of a footpath. However the company challenges the need for a right of way that extends to 5.5m in width (including a 0.5m grass verge) and on this particular alignment. Further, MCL criticises the lack of any evidence or analysis to demonstrate a need for more than a "standard rural footpath crossing private land" and presents photographs to illustrate the limited use made of adjoining sections.
10. Having examined the material submitted in support of this route, it is clear to me that there is an indisputable need for a public route here which connects adjoining sections of the TPT so as to facilitate the free-movement of all types of non-motorised traffic, both for leisure and for work purposes. In addition, I am satisfied that, strategically, there is a need to include a link to the main trail from Loicher Lane, providing access to and from the Ecclesfield area, although I recognise that the safety of the exit onto the road at point D is of some concern.

***The extent to which it would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of local residents***

11. In its objection, MCL explains that it holds a lawful development certificate for use of the land through which the Order route passes as a scrap yard. It also has a lawful use certificate for the storage, breaking, dismantling and disposal of steel and scrap metals, plant and machinery for industrial clearance and for the recycling of materials on the property.
12. MCL submits that it is highly unlikely that equestrians would want to utilise a bridleway through a scrapyards. It argues that this is a partially industrial area where equestrian use is minimal and there are no relevant links to the east or

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<sup>1</sup> I have noted the road accident statistics submitted by SCC together with MCL's criticism thereof. Although the figures are not specific to cyclists, and I therefore place little weight on the detail, I accept the general point made by SCC in relation to the dangers of cycling on busy vehicular roads.

- south. It submits that the majority of users would be on foot or riding a bicycle and therefore a 5.5m width is unnecessary.
13. Yet it is evident on the ground that many people use the route already. I regard the extent of present use of this former railway line by pedestrians, horse riders and cyclists to be a good indicator of its value in the local network, even without the works which are proposed to provide a suitable surface.
  14. The submission from Mr Wild (a cyclist in the locality) highlights the present difficulties facing cyclists seeking safe and convenient routes to work and for leisure. Whilst the route southwards from Butterthwaite Lane to Meadowhall Interchange has already been built to a good standard, he considers the continuation of the route northwards towards Chapelton would be a major benefit to people in the north of the city. It would make it possible for people from the Wincobank and Brightside areas of Sheffield to access jobs at Smithy Wood, Thorncliffe and the Junction 35A business parks. In fact monitoring by SCC has shown a steady increase in the numbers of people cycling along sections of the trail further north.
  15. A petition was started by the BHS which gathered 16 signatories (most identifying themselves as horse riders) all supporting the Order. Whilst it is the case that the land enjoys the benefit of lawful development certificates for use as a scrap yard and for the industrial recycling of materials on the basis of past usage, at present none of those activities are taking place on the site. Whether there would be support from riders to the same extent if the land was not in its current state is debateable, but there is no doubt that a bridleway here would add to the *convenience* of local riders in terms of the network of routes for horses, even if *enjoyment* was to be limited in future by industrial activity at either side.
  16. That conclusion would apply equally to all other types of non-motorised user: cyclists, pedestrians, wheel-chair and mobility scooter users. So too would the enjoyment to be derived from following a route offering such splendid long-distance views southwards towards the Peak District.
  17. I have no hesitation in finding that this route would add to the convenience and (potentially to a lesser extent) enjoyment of both local users and long-distance travellers following the TPT and other recognised trails.
  18. Given that conclusion, it is essential that the route is created with the appropriate status to accommodate the expected type of users and at a width capable of sustaining convenient and safe use for all.
  19. Only bridleway status would enable pedestrians, horse-riders, (non-motorised) cyclists and wheel-chair and mobility scooter users to lawfully use the route. The proposed width of 5.5 metres is intended to accommodate a 2m wide soft-surface path for horses together with a 3m wide hard surfaced track for all other users leaving a 0.5m wide verge for maintenance purposes.
  20. SCC submits that these widths are not excessive and correspond with the widths of the two sections to the north and south. SCC agrees that the photographs supplied by MCL do not reflect this but 5.5m is the legal width available and conforms to the minimum standard recommended by the BHS for new bridleways<sup>2</sup>.

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<sup>2</sup> I note that it is actually 1m less than the standard for shared multi-used paths recommended by Sustrans.

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21. I have little doubt that the width proposed would be necessary to meet the needs of all those people who would be expected to make use of this route in terms of their convenience, comfort, enjoyment and safety.

***The effect the creation of the bridleway would have on the rights of persons with an interest in the land, taking account of the provision for compensation***

22. MCL submits that SCC has not undertaken any analysis or assessment of the effect the proposed right of way would have on its business and it has completely ignored the interests and needs of MCL.

23. Firstly, MCL highlights the loss of amenity it would suffer if a 5.5m wide route were created. Other stretches of the Trans Pennine Trail may have been created at this width or greater but that does not justify this same width here; MCL submits the effects on its rights have clearly not been taken into account.

24. It is the intention of MCL to expand the use of the site and re-build the buildings previously sited there. This expansion is part of the company's planned business growth and is likely to lead to new increased employment opportunities for the local community. The proposed right of way would effectively split the site into two<sup>3</sup> and deprive MCL of significant development and business growth opportunities.

25. The second issue raised by MCL is security. Due to the nature of its work, at any time the site can contain expensive and/or dangerous materials and security of the site is of paramount importance.

26. In response, SCC highlights MCL's agreement (in principle) to a public footpath, arguing that establishing a bridleway instead is little different. The site would be no less secure and no more limited in terms of expansion if a bridleway was to be created rather than a footpath.

27. SCC draws attention to a covenant referred to in the conveyance when the company bought the land from the former British Rail Board in 1995; this refers to a right for the Board or its successors "to construct a public footpath/cycle track" (along the line A-B-C and B-D) at any time within 80 years of the conveyance date. MCL should therefore have expected that a public right of way might be constructed over the land at some stage in future. The present proposal would be no more detrimental than the public footpath/cycle track anticipated in the covenant.

28. When it bought the land, MCL considered the risk of the former owner or its successors seeking to enforce the right to construct a footpath/cycle track was minimal. The company submits that SCC cannot rely on the right of the former owner in order to sustain its argument that a bridleway will not be any more detrimental to its private interests than the exercise of this pre-existing right.

29. I agree with MCL that the right referred to in the covenant cannot be exercised by SCC, but there is no doubt that the provision of a public right of way was anticipated when the land was sold in 1995. The point is that with this potential for a public path being identified when the property was purchased, it would be reasonable to imagine that all future plans for development of the site would have taken this into account.

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<sup>3</sup> I am aware that MCL suggested an alternative route along the western side of the site which would avoid this effect, but this was rejected by SCC and it is not the route before me for determination.

30. I am aware, from copies of correspondence documenting the protracted negotiations for a creation agreement over many years, that discussion has centred on MCL's concern that the 0.5 acres of its property which lies to the south west of the disused railway should not be separated from the remainder by the public right of way, effectively leaving it land-locked and prohibiting its use as part of the site. I have not seen any detailed layout plans for future workings on the land, but a managed crossing point of some sort might have been anticipated in light of the 1995 covenant if the two land parcels were intended to be operated together.
31. I accept SCC's submission that the covenant should have alerted MCL to the likelihood of a public footpath and/or a cycle track being established over the land it purchased (albeit not one instigated by the highway authority), but the deed made no mention of horse use or the projected width of the way that might one day be created. To that extent, MCL is right to contend that the Order route goes beyond anything it may have planned for.
32. Yet in terms of security, there is no evidence before me to suggest the risks associated with a bridleway are any greater than if a cycleway or footpath were to be created, or that legitimate safety and security concerns could not be addressed by suitable fencing. Quite obviously a greater quantity of land would be directly affected by a 5.5m wide bridleway than, say, a 3m wide footpath/cycleway, but I have seen no evidence to show that MCL's concerns over linking the two land parcels would be any different if the Order route were to carry a lesser status or require a narrower strip.
33. It appears that private vehicular access to the site from point D has been the subject of much discussion between the parties, and it is not for me to rule on whether this is acceptable in highway terms for any future development that may be proposed on the site, or of the implications of the restricted height of the bridge over Loicher Lane.
34. As far as the proposed public bridleway is concerned, I have no evidence before me to identify the extent of the private traffic likely to use the access B-D in future so it is difficult to quantify the degree to which this may be compromised (if at all) by the public usage proposed. MCL points out that this access is only 6m wide; whilst it has not been abandoned, vehicular use is not possible at present because of two large concrete boulders at the entrance to deter unauthorised trespassers and squatters. At the least MCL wants to ensure it has the right to continue to use this access and to pass (with private vehicles) over and across the public right of way.
35. To this end, the company is anxious that the clause in the Order schedule which acknowledges that the proposed bridleway would be "*subject to existing private vehicular rights, such that all parties having a legal interest in the land adjoining, including their successors in title, will be permitted to cross the bridleway by vehicle to retain access to the said land*" should remain. MCL argues that considerable time was spent in negotiations with SCC in addressing the need to ensure future development of the MCL land is not compromised by the public right of way.
36. Objector Mr Kind questions the inclusion of the proposed limitation or condition. He argues that this is not a valid limitation (or condition) insofar as any private vehicular rights which may exist may still be exercised. Any public rights would be subject to that exercise and it is no fetter on the public right.

37. SCC also considers it unnecessary to record this as a limitation on public use and regards the inclusion of this limitation as an error in drafting, requesting that it be removed from the Order in its entirety by modification.
38. SCC submits that when dedicating a right of way for public use, it is an accepted principle that this does not remove from the landowner the ability to continue the reasonable use of the land; all other rights of ownership may still be exercised so long as they are not inconsistent with the dedication<sup>4</sup>. This same principle applies in this case.
39. On this point I agree that this limitation is superfluous and that it is effectively a statement simply reflecting the law as it applies to the interaction between public rights of way and private interests. Since that is a situation which may apply in the case of every public path, there is no value in recording it in the definitive statement as a limitation or condition in the case of the Order route. Consequently, I propose to modify the Order as requested and delete this paragraph from the Order schedule.
40. My conclusion is that the creation of a public bridleway would undoubtedly have *an* effect on future uses of the land. Potentially this may constrain (although not necessarily prevent) development which utilises areas on both sides of the proposed public right of way. Since the possibility of a public path being created along the disused railway has existed since the land was purchased in 1995, it would be reasonable to assume that any detailed plans would have sought to accommodate such a route (whether a footpath/cycle track or a bridleway), perhaps with a suitably managed intersection. No plans have been submitted in this case; yet without specific proposals for development it is difficult to predict the extent to which the existence of a bridleway may constrict future usage. However no incontrovertible evidence has been put forward to show that a public right of way could not be managed alongside the business uses for which lawful development certificates have been produced.

***Whether it is expedient to create the bridleway taking into account the above***

41. In conclusion I find there is a need for this proposed bridleway, both in strategic terms, fulfilling the aim of filling a missing link in the TPT, and in contributing to the network of non-motorised routes available in the locality for work and leisure purposes.
42. In judging the expediency of confirming this Order, I am satisfied that the route along the old railway line, together with its link to Loicher Lane, would add to the convenience of local people using non-motorised transport to access employment to the north and south of the site and for general recreation. It would also provide the most convenient connection for members of the public following the TPT to the north and south and/or other long-distance recreational routes. Further, insofar as can be predicted given the lack of detailed information available about future development of the land, it would most probably be an enjoyable route too.
43. Balanced against this are the effects of the bridleway on the private interests of the landowner. A public right of way along the disused railway line may constrain future plans for the site but no specific proposals have been produced which might demonstrate that a public bridleway along the Order route could not operate alongside the operation of industrial activities such as those

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<sup>4</sup> A point established in the case of *St Mary, Newington, Vestry v Jacobs* [1871]

identified in the lawful development certificates for the land affected. Judging the land in its present state, I find no adverse effects that might weigh against confirmation of this Order that could not be address through compensation.

44. In summary, I am satisfied that it would be expedient to create the proposed multi-user route to form part of the TPT between Loicher Lane and Buttershaw Lane and at the width set out in the Order.
45. Having considered all the submissions in this case, I conclude it would be expedient for me to confirm this Order so as to create a public bridleway over the sections shown on the Order map as A-B-C and B-D.

### **Other matters**

46. In determining this Order I have taken into consideration the requirements of the Equality Act 2010. Whilst also required to have regard to any material provisions in any rights of way improvement plan for the area, I am advised that there are no relevant issues to be considered in this case.
47. I have noted that, at the northern end of the Order route, the old stone railway bridge over Loicher Lane has been replaced with a standard TPT bridge which is said to be suitable for all types of (non-motorised) user. However, the description in the Order Schedule refers to this as "the disused railway bridge over Loicher Lane". For the avoidance of any doubt, I propose to modify the Order to remove the words "disused railway" so that this is referred to simply as "the bridge over Loicher Lane".

### **Conclusion**

48. Having regard to the above and all other matters raised in the written representations, I conclude the Order should be confirmed with the modifications described in the paragraphs 39 and 47 above.

### **Formal Decision**

49. I confirm the Order subject to the following modifications, neither of which require further advertisement:

In the schedule to the Order

- In Part 1 delete from lines 3 and 4 the words "disused railway";
- In Part 2, delete the 'Limitations and Conditions' there listed.

*Sue Arnott*

**Inspector**

# City of Sheffield Blackburn Valley (Butterthwaite Lane to Loicher Lane) Public Bridleway Creation Order 2012 Highways Act 1980 Section 26.

## NOTES / REVISIONS:

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Common Seal was hereunto  
affixed in the presence of:-

Duly Authorised Signatory

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12/89/33.

SHEFFIELD CITY COUNCIL  
DEVELOPMENT SERVICES

Director  
L STURCH, MRTPI

Blackburn Valley  
Bridleway Creation Order

Butterthwaite Lane  
To Loicher Lane

COMMITTEE

Refer to scale bar

SCALE	1:500	1:1000	1:2000	1:4000
1:500	1:500	1:1000	1:2000	1:4000

Drawing No:

EP611/3/A

COG FILE NAME



Butterthwaite Lane Bridge  
SK3680 9400

Loicher Lane Bridge  
SK3654 9435

**KEY**

- Central line of proposed bridleway
- Limit of bridleway embankment or verge
- Continuation of bridleway towards Meadowhall / Chapeltown

**SCALE BAR:** 0 5 10 15 20 25 30 35 40 45 50