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| **Order Decision** |
| Site visit made on 26 September 2022 |
| **by I Radcliffe BSc(Hons) MRTPI MCIEH DMS** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 24 January 2023** |

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| **Order Ref: ROW/3277881** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Public Bridleways Nos 10.56/054 Great & Little Broughton & 10.177/703 Bilsdale Midcable Modification Order 2020. |
| * The Order is dated 31 July 2020 and proposes to modify the Definitive Map and Statement for the area by upgrading the existing footpaths to bridleway (one in part only) and to add a length of bridleway as shown in the Order plan and described in the Order Schedule. |
| * There was 1 objection outstanding when North Yorkshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed, subject to the modifications set out in the formal decision below.** |
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Procedural matters

1. My site visit was unaccompanied and I was able to walk and view the entire length of the Order route.
2. The Forestry Commission also submitted an objection to the Order but did not provide any reasons explaining why it objected. As a result, this objection has not been duly made and I have not considered it any further in this decision.

*The Order*

1. North Yorkshire County Council made the Order under section 53(2)(b) of the 1981 Act. The Council states that it was made on the basis of an event specified in section 53(3)(c)(i). This section provides that an order to modify the definitive map and statement should be made following the discovery of evidence which (when considered with all other relevant evidence available) shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist (points C to D on the Order plan). However, as the Order relates tothe upgrading of two public footpaths to two bridleways (A-C and D-G), as well as the addition of a length of bridleway, to form a continuous route, the statutory basis for the making of the Order is contained within sections 53(3)(c)(i) and 53(3)(c)(ii). Section 53(3)(c)(ii) provides that an order to modify the definitive map and statement should be made following the discovery of evidence which (when considered with all other relevant evidence available) shows that a highway of one description ought to be shown as a highway of a different description as stated in the Order but referred to as section 53(c)(i).
2. It is clear that the objector understands what is being proposed and I am satisfied that this minor typographical error has not prejudiced the interests of any person who otherwise would have made an objection. I am also satisfied that the error has not rendered the Order misleading in its purpose. Consequently, if my decision is that the Order should be confirmed I shall modify it to address this matter.
3. According to the Order Schedule Part I, section C to E of the Order route is already classified as a bridleway. However, based upon the definitive map and statement it is a footpath.
4. Point G is not labelled on the map attached to the Order. However, I am satisfied that the unlabelled line at the southern end of the Order route correctly identifies this point. There are also a number of errors in Part I of the Schedule to the Order which for reasons of accuracy need to be rectified. I am satisfied that no one would have been prejudiced by these errors and that the errors have not rendered the Order misleading in its purpose. As a result, should I decide to confirm the Order I shall modify the Order and map accordingly.

**Main Issue**

1. The application to upgrade the Order route was made in 2017 on behalf of the British Horse Society (BHS). In support of the application, BHS submitted documentary evidence. In relation to documentary evidence, section 32 of the Highways Act 1980 (‘the 1980 Act’) requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as is appropriate, before determining whether a way has been dedicated a highway.
2. As a result, the main issue in relation to the Order is whether the discovery by the Council of evidence, when considered with all other evidence available, is sufficient to demonstrate that on the balance of probabilities the bridleways exist as set out at paragraph 3 above. If it is shown that this is the case, then the Order should be confirmed and the definitive map and statement modified accordingly.

**Reasons**

*Background*

1. From point A on the Order map the wide Order route enclosed by earth banks and vegetation heads in a south westerly direction. A Public Path Order made in 2007 diverted the route followed by the footpath between points C and D on the Order Plan. However, as the historical evidence of the bridleway is that it followed the route of the footpath before it was diverted the Order route includes the original alignment rather than the current alignment between points C and D. The Order route joins the middle section of the route which mainly has a surface of compacted aggregate. At point E the route then heads south eastwards along a green and unmade path towards the Order route end.

*Documentary Evidence*

1. The route is first shown on Greenwoods Map of the County of York (1817). As a commercial map sold for use by the public this map is indicative that the route was of a substantial nature and that it may be a route that the public made use of as a public highway.
2. The 1819 Enclosure Award made under the Great Broughton Enclosure Act 1811 identifies the Order route on a plan and describes it as a *‘private carriage and public bridle road …twenty one feet in width*’. This is very strong evidence in favour of confirming the Order route as a public bridleway.
3. The 1842 Kirby in Cleveland Tithe Award shows the Order route without an apportionment number. This indicates that no tithe was charged and that the route was distinct from adjoining agricultural and forestry land. Whilst not providing further detail this evidence is consistent with Greenwoods Map and the Enclosure Award.
4. The route is shown on the Ordnance Survey First Edition 6” Map of 1857 and features on subsequent editions up to and including 1914.
5. The objector states that the route was closed as a bridleway by the Forestry Commission in the nineteen fifties. No documentary evidence in support of this claim though has been submitted and the Council states that it has no records of a legal order stopping up any part of the route.
6. On the basis of my examination of all the historical mapping and documents that have been submitted, I therefore conclude that, on the balance of probabilities, the evidence is sufficient to show that the Order route is a public bridleway for the entirety of its length and that the definitive map and statement should be modified accordingly.

*Physical evidence*

1. On my visit it was not possible to walk the section of the route between points C and D, around which the footpath had been diverted, due to the density of overgrowth. This does not mean though that this was always the case and as it has not been stopped up it remains a highway.

**Other matters**

1. There is one objector to the Order route who has raised a number of concerns should the footpath be recorded as a bridleway. These include lack of demand for use of the route as a bridleway by local horse riders, the presence of other more suitable bridleways in the area, the need to upgrade the route to make it fit for use by, for example, clearing vegetation and improving drainage which would harm wildlife. He is also concerned that motorbikes will illegally use the route if it is upgraded to a bridleway. However, as the matters raised are outside the criteria set out in the relevant legislation, I have been unable to take them into account in reaching my decision.

**Overall conclusion**

1. For the reasons given above, and having regard to all other matters raised in the written representations, I conclude that the Order should be confirmed subject to the modifications referred to under procedural matters in relation to the Order.

**Formal decision**

1. The Order is confirmed subject to the following modifications:

In the Order:

At the start of line four of the first paragraph amend 53(3)(c) (i) to read 53(3)(c)(ii)

In the Order schedule

In Part I: Modification of Definitive Map – Description of path or way to be upgraded

* Amend the title of the table to read: ‘Modification of Definitive Map – Description of path or way to be upgraded or added’
* In Column 1, first row amend the text to read: ‘Section of Public footpath to be upgraded to Public Bridleway, or section of route to be added as Public Bridleway, as shown on the attached map’
* In Column 1, second row amend the text to read: ‘Indicated on the Order map and marked as Points A-B-C. At present shown on the Definitive Map as a public footpath, to be upgraded to a public bridleway width 6.4 metres (21 feet)’
* In Column 1, third row amend the first sentence to read: ‘Indicated on the Order map and marked as points C-D’
* In Column 1, fourth row amend the text to read: ‘Indicated on the Order map and marked as Points D-E-F. At present shown on the Definitive Map as a public footpath, to be upgraded to a public bridleway width 6.4 metres (21 feet)’
* In Column 1, fifth row amend the first sentence to read: ‘Indicated on the Order map and marked as points F-G’

On the Order map

* Insert the letter G to identify Point G

Ian Radcliffe

Inspector

MODIFIED ORDER MAP – COPY – NOT TO ORIGINAL SCALE

