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| **Order Decision** |
| Site visit made on 30 April 2025 |
| **by J Ingram LLB (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 10 June 2025** |

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| **Order Ref: ROW/3329123** |
| * This Order is made under Section 53(2) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Borough of Rochdale (Upgrading footpath ROCEFP13A to bridleway) Definitive Map and Statement Order 2022. |
| * The Order is dated 19 May 2022 and proposes to modify the Definitive Map and Statement for the area by upgrading a footpath to a bridleway as shown on the Order plan and described in the Order Schedule. |
| * There were three objections outstanding when Rochdale Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed.** |
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Preliminary Matters

1. I carried out an unaccompanied site visit on 30 April 2025.
2. In writing this decision I have found it convenient to refer to points marked on the Order Plan. I therefore attach a copy of this plan.
3. This case concerns the proposed upgrade of footpath no.13A to a bridleway on the Definitive Map and Statement (DMS). The route commences from its junction with Northdene Drive and follows a generally south westerly then south easterly direction to join Bury Road. The route is enclosed, between fences for most of its length, with one small section being enclosed between a fence and a hedge. The route has a tarmac surface. Rochdale Borough Council are the Order making authority (OMA) and are supporting the Order.
4. The objections submitted do raise matters that I cannot consider in reaching my decision, I refer to them below.

The Main Issues

1. The OMA made the Order under Section 53(2)(b) of the 1981 Act on the basis of an event specified in sub-section 53(3)(c)(ii). As a result, the main issue is whether the evidence discovered, when considered with all other relevant evidence available, is sufficient to show that footpath no.13A should be upgraded to a bridleway, and that the DMS require modification.
2. The evidence is composed of claimed use by the public as a bridleway. Accordingly, I need to determine whether presumed dedication has arisen under the tests set out in section 31 of the Highways Act 1980 (The 1980 Act). This sets out that where a way has been enjoyed by the public as of right and without interruption for a full period of twenty years, the way is to be deemed to have been dedicated as a highway, unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of twenty years referred to is to be calculated retrospectively from the date when the right of the public to use the way was brought into question. My conclusion on the evidence as regards the existence or otherwise of the higher rights claimed is reached on the balance of probability.

Reasons

*Date of bringing into question*

1. A bringing into question arises when at least some of the users are made aware that their right to use a way is being questioned.
2. It would appear that the route on its current alignment has been in existence since the housing estate was built in the mid 1960’s. It was not until January 1994 the OMA adopted the route as maintainable at public expense in an agreement made under section 38 of the 1980 Act. Although the route is referred to as a footpath, the agreement concerns the maintenance of the route and does not determine the public status. As there is no requirement to advertise an agreement made under section 38, it is therefore likely that the public and users of the route were unaware it had become adopted.
3. The user evidence indicates that it was in 2011 that public footpath signs were first erected at each end of the route. I consider that a bringing into question would have occurred on footpath no.13A at this time. Although the route was not physically blocked to horse riders, I consider at least some of the users of the route would have been made aware of its status from the signage and questioned their use on horseback. The relevant period for the consideration of the user evidence is therefore 1991-2011.

*Whether use was as of right and without interruption*

1. Evidence is provided in 25 user evidence forms claiming use over a period from 1960 to 2017. All of the individuals claim use on horseback, some also used it on foot, one person also stated use on a bicycle. Thirteen users claim use on horseback for the full 20-year relevant period. An additional 10 users have used it for less than 20 years within that period.
2. None of the individuals indicated they were challenged or interrupted in their use of the Order route, nor were they given permission to use it. Seven individuals refer to the public footpath signposts that were erected in 2011.
3. Frequency of use on horseback varied from twice a week, to between 15 and 40 times a year. A few individuals state less frequent use of between 4 and 7 times a year. One objector has referred to the use of the footpath on horseback and by cyclists prior to the installation of barriers in 2022, commenting that it is regularly ridden by members of the local bridleway group.
4. In my view the Order route is a way the character and use of which can give rise to a presumption of dedication. I conclude that the evidence of use on horseback is sufficient to raise a presumption of dedication as a bridleway. However, this presumption can be rebutted if there is sufficient evidence on behalf of the landowner to demonstrate they had no intention to dedicate the way as a bridleway.

*Whether there is sufficient evidence of a lack of intention to dedicate by the landowners*

1. The land over which the Order route runs is owned by the OMA. Although the route has been shown on the DMS as a public footpath it was not signposted as such until 2011. There have been no physical restrictions to its use as a bridleway until 2022 when barriers were erected at the Bury Road end of the route. This is outside of the relevant 20-year period.
2. One objector has stated that they made verbal challenges to horse riders on the route. Although it is not entirely clear when these challenges were made, in one letter the objector states that horse riders were challenged by informing them that the route is a public footpath as signed. Therefore, this would indicate that these challenges took place after 2011.
3. In addition, the objector states that informal notices, indicating that the route is a footpath only, have been attached to lampposts. Once again there is no clear indication of when these notices were erected or for how long they were there. The user evidence conflicts with this, it does not reference any verbal challenges, and the only signs mentioned are the public footpath signs erected in 2011. The objector is not the landowner and is not working on behalf of the landowner, therefore, I consider they would not have the capacity to challenge users. If the challenges they made were within the relevant period, I consider they would not be sufficient evidence of a lack of intention to dedicate as they were not made on the instruction of the landowner.
4. In my view the claimed use meets the tests set out in the 1980 Act. The evidence shows that the use of the route on horseback has not been challenged by the landowners. The evidence submitted does not demonstrate that the landowners made any clear overt actions to deter or prevent the public from using the Order route on horseback during the relevant period.

**Other Matters**

1. The objectors raise a number of concerns regarding the upgrading of the route. One issue is they regard the width of the route as too narrow and state there are blind bends on the route which make it unsuitable as a bridleway.
2. The available width of the route is less than the accepted minimum where a new bridleway is being created. However, in this case it is not a new bridleway that is being created, the public have established a right to ride over the width that has been available to them over the relevant 20-year period. The extent of the width to be recorded is the actual width that has been used. I consider that to be the full width of the route between the fences which is recorded in the Order.
3. Other issues raised include safety and unsuitability of the route as a bridleway, horse muck and the desirability of the route remaining as a footpath only. Alternative routes are referred to which it is claimed are more suitable and safer for riders. Although I appreciate these are genuine concerns they are not based on the evidence and are therefore not relevant matters for my consideration under the 1981 Act.

Overall Conclusion

1. Having regard to the above and all other matters raised I conclude, on the balance of probabilities, that there is sufficient evidence for footpath no.13A, between Northdene Drive and Bury Road, to be upgraded to a bridleway. Therefore, the Order should be confirmed.

Formal Decision

1. The Order is confirmed.

J Ingram

INSPECTOR

