

# ROBIN CARR ASSOCIATES

Public Rights of Way Management & Consultancy Services

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## Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Claimed Public Bridleway – Westholme Lane, Pilton

### Somerset County Council Case Reference: 705

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#### 1.0 Introduction

1.1 My name is Robin Carr. I am an independent consultant, specialising in Public Rights of Way and Highway matters. I am a Fellow of the Institute of Public Rights of Way & Access Management (IPROW) and a Registered Expert Witness.

1.2 My experience is based, most generally, on an expertise that has been developed over a twenty-five year period as a Public Rights of Way practitioner.

#### 2.0 Purpose of Report

2.1 The purpose of this report is to assist Somerset County Council in their determination of an application for a Definitive Map Modification Order to record public bridleway rights over the route shown A-B on Plan 1 (Appendix 1) in the Document Bundle which accompanies this report.

#### Description of the Route under Investigation

2.2 The Application Route is a predominantly hedged lane, known as Westholme Lane, and commences at the southern terminus of the existing bridleway (WS 7/54) which is also part of Westholme Lane, at Point A (Plan 1), and then runs in a generally easterly direction to its junction with the road at Lower Westholme (Point B on Plan 1).

#### Consultations

2.3 Consultations have been undertaken in accordance with the principles set out in national guidance and the usual practices of Somerset County Council. This includes consultation with

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land owners/occupiers, the Parish and District Council and local/national user interest groups. Any relevant evidence arising from this consultation exercise is included within the report. A list of consultees is included in the Document Bundle under Appendix 2.

- 2.4 Further consultations, involving the circulation of a full copy of a draft of this report to all known landowners/occupiers, the applicant, the parish council, local County Councillor and Chairman of the County Council’s Regulation Committee has also been undertaken prior to finalising the report. Representations made on behalf of two land owners have been received, copies of which are included in the document bundle at Appendices 25 and 26. A copy of the Consultant’s responses to the representations is also included in the corresponding appendices.

#### Documents Consulted and Site Visits

- 2.5 As part of my investigations I have visited the archives held at the Somerset Heritage Centre in Taunton to view a range of relevant historical documentation. A list of all documents consulted as part of the investigation is included in the Document Bundle at Appendix 3.
- 2.6 I have also visited the site to look at the Application Route, and met with any land owners/occupiers who requested a meeting to discuss the case.

### **3.0 Background**

- 3.1 A short section of Westholme Lane within North Wootton, running northwards from Point A on Plan 1 (Appendix 1) is currently recorded on the Definitive Map as a Public Bridleway under reference WS7/54. The remainder of Westholme Lane (the Application Route), which is within Pilton (and shown A-B on Plan 1) is not recorded on the Definitive Map. Whilst the Definitive Map provides conclusive evidence of the existence of the rights recorded upon it, its conclusive status is without prejudice to the possible existence of additional or higher rights. A copy of the Definitive Map and Statement for this footpath is included in the Document Bundle at Appendix 4.
- 3.2 On 25<sup>th</sup> March 2011 the Mendip Bridleways & Byways Association submitted an application for a Definitive Map Modification Order to Somerset County Council. The application sought to add the Application Route (A-B) to the Definitive Map as a Public Bridleway. The application
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was accompanied by copies of historical documentary evidence and user evidence which the applicant's claim supports their application. A copy of the application (less copies of the documentary evidence) is included in the Document Bundle at Appendix 5. Copies of the documentary evidence and user evidence are included in the Document Bundle under Appendices 8 – 23 and are discussed further below.

3.3 If an application for a Definitive Map Modification Order is not determined within 12 months of its submission the applicants have a right to request that the Secretary of State issues a direction to the County Council requiring them to make a decision whether or not to make a Definitive Map Modification Order within a defined timescale. On 18<sup>th</sup> February 2017 the Mendip Bridleways & Byways Association made such a request, and having considered all of the material factors the Secretary of State directed Somerset County Council to determine the application by 31<sup>st</sup> January 2018. A copy of the Secretary of State's direction is included within the Document Bundle at Appendix 6.

3.4 In order to meet this deadline Somerset County Council has appointed external specialist consultants (in this case Robin Carr Associates) to undertake the necessary work to investigate the claims made within the application, and provide an advisory report to assist them in deciding whether or not to make the requested modifications to the Definitive Map and Statement for the area.

#### **4.0 Legal Context**

##### *The Definitive Map and the Surveying Authority*

4.1 Somerset County Council are the Surveying Authority for the purposes of Section 53 of the Wildlife and Countryside Act 1981 and the continuous review of the Definitive Map and Statement of Public Rights of Way. By virtue of Section 56 of the Wildlife and Countryside Act 1981 the Definitive Map and Statement provide conclusive evidence of the rights recorded within them, but this is without prejudice to the existence of any other unrecorded rights.

4.2 Section 53(5) and Schedule 14 of the Wildlife and Countryside Act 1981 allow any person to submit an application to modify the Definitive Map and Statement by adding routes not previously recorded, deleting routes that have been shown in error and amending the status of routes already shown. Such modifications do not create any new rights, nor do they

extinguish any, they simply seek to ensure that the Definitive Map and Statement accurately records those that's that already exist.

- 4.3 53(3)(c)(i) of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to make a Definitive Map Modification Order upon the discovery of evidence that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist. The duty to make the Order is triggered if there is a reasonable allegation that the claimed rights subsist, however such an Order can only be confirmed if the rights are shown, on balance of probability, to subsist.
- 4.4 The decision whether to make a Definitive Map Modification Order is “quasi-judicial” in nature, and as such the decision must be made having had due regard to all of the available and relevant evidence (i.e. evidence relating to the existence or otherwise of the public rights in question). Matters such a desirability, suitability, need, security and even public safety, whilst all genuine concerns, are not matters that can lawfully be taken into account as part of the decision-making process.
- 4.5 When considering the available and relevant evidence the Authority should take into account the provisions of Section 32 of the Highways Act 1980, which states: “a Court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence and shall give weight thereto as the Court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled and the custody in which it has been kept and from which it is produced”.
- 4.6 The burden of proof rests initially with those making the claim to prove their case.

*Public Rights of Way - General*

- 4.7 Footpaths, bridleways, restricted byways and byways open to all traffic, often referred to as public rights of way, are public highways. A highway is a way over which the public have a

right to pass and re-pass. Not all highways are maintainable at public expense, nor is there any need for a way to have been “adopted” before it is either a highway or a highway maintainable at public expense.

4.8 Whilst topographical features may be attributed to, or provide evidence of, the existence of a public highway, the public right itself is not a physical entity, it is the right to pass and re-pass over (usually) private land.

4.9 Once a highway has come into being, no amount of non-user can result in the right ceasing to exist. The legal principle of “Once a Highway, Always a Highway”<sup>1</sup> applies. Such rights, except in very limited circumstances, can only be changed by way of certain legal proceedings either by way of local authority administrative order or a Court Order.

#### Types of Highway

4.10 As mentioned above, a highway is a way over which the public have a right to pass and re-pass. The nature and extent of the right (i.e. who may use it) is dependent upon the specific type of highway status possessed by a given route.

#### Common Law

4.11 Under the common law there were, and indeed still are, only three types of highway. These are:

- Footpaths,
- Bridleways; and,
- Carriageways

4.12 The right to pass and re-pass on a public footpath is restricted to pedestrians with usual accompaniments (e.g. a pushchair).

4.13 The right to pass and re-pass on a public bridleway is restricted to pedestrians, horse riders (including people leading horses) and possibly the right to drive cattle.

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<sup>1</sup> *Harvey v Truro Rural District Council* (1903) 2 Ch 638, 644 and *Dawes v Hawkins* (1860) 8 CB (NS) 848, 858; 141 ER 1399, 1403

- 4.14 The right to pass and re-pass on a public carriageway is open to all traffic, namely pedestrians, horse riders (including people leading horses), non-mechanically propelled and mechanically propelled vehicles.

Statute

- 4.15 Over time the legislature has brought into effect various statutes which restrict or extend the extent of use on certain types of highway. For instance, under the provisions of the Countryside Act 1968 cyclists are granted a right to use bridleways. Other legislation provides for public carriageways to be subdivided into various categories which include motorways, cycle tracks, restricted byways and byways open to all traffic.
- 4.16 When determining the status of a specific route one must first consider the common law situation, and then apply any necessary restrictions to status imposed by statute in respect of restricted byways and byways open to all traffic. Motorways and cycle tracks can only be created by statutory order and are therefore not under consideration in this case.

How Highways Come into Being – Basic Principles

Dedication and Acceptance

- 4.17 Subject to a small number of exceptions, before any highway over land can come into being there must be an act of dedication by the landowner followed by the acceptance of the strip of land as a highway by the public, usually (but not always) demonstrated by the public using the way.
- 4.18 The act of dedication may be express or implied depending upon the actions or inactions of the land owner. Acceptance is usually demonstrated by public user, however acceptance of a way as a highway by the Highway Authority may also suffice. The principles of how rights can come into being are further discussed in more detail below.

Statute

- 4.19 It is possible for highways to be created as a result of statutory processes such as enclosure awards, or in more modern times various types of statutory creation order.

4.20 The Highways Act 1980, Section 31 has also, to a certain extent, codified the common law (discussed below) by identifying a specific set of circumstance whereby a presumption of dedication may arise. Section 31 provides that:

*(1) Where a way over land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*

*(2) The period of twenty years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question whether by notice, such as is mentioned in subsection (3) below or otherwise.*

*(3) Where the owner of the land, which any such way as aforesaid passes-*

- (a) has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway, and*
- (b) has maintained the notice after the first January 1934, or any later date on which it was erected,*

*the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.*

4.21 Section 31(1) has two ‘limbs’: the first provides that proof of twenty-years continuous user “as of right” endorses a claim that a highway exists; the second (sometimes referred to as ‘the proviso’) provides that proof of a lack of intention to dedicate the way as a highway defeats the claim. It is for those claiming the existence of rights to first discharge their burden of proof, before an objector is obliged to provide any evidence of lack of intention to dedicate.

Common Law

- 4.22 The establishment of highway rights under the common law is not bound by the “20 year rule” referred to above, with the courts having ruled<sup>2</sup> that rights can be established in a very short period of time. It may therefore be helpful to look at this area in more detail.
- 4.23 The common law position was described by Farwell J, and Slessor and Scott LJ in *Jones v Bates* [1938] 2 All ER 237, both quoted with approval by Laws J in *Jaques v SSE* [1995] J.P.L. 1031, who described Scott LJ’s summary as “*a full and convenient description of the common law*”. Other leading cases that speak to dedication at common law are *Fairey v Southampton CC* [1956] 2 Q.B. 439, *Mann v Brodie* (1885) 10 App. Cas. 378 and *Poole v Huskinson* (1843) 11 M & W 827. *Jaques* is a particularly helpful exposition on the differences between dedication at common law and under statute. Dyson J’s judgment in *Nicholson v Secretary of State for the Environment* [1996] EWHC Admin 393 comments further on aspects of these differences.
- 4.24 Halsbury<sup>3</sup> states – “*Both dedication by the owner and user by the public must occur to create a highway otherwise than by statute. User by the public is a sufficient acceptance. And - An intention to dedicate land as a highway may only be inferred against a person who was at the material time in a position to make an effective dedication, that is, as a rule, a person who is absolute owner in fee simple; and At common law, the question of dedication is one of fact to be determined from the evidence. User by the public is no more than evidence, and is not conclusive evidence ... any presumption raised by that user may be rebutted. Where there is satisfactory evidence of user by the public, dedication may be inferred even though there is no evidence to show who was the owner at the time or that he had the capacity to dedicate. The onus of proving that there was no one who could have dedicated the way lies on the person who denies the alleged dedication*”.
- 4.25 The inference of dedication may arise in three ways:
- i) First, the inference may arise from the fact that the owner has done exactly what one would expect from any owner who intended to dedicate a new highway (e.g. express dedication). For example, in *North London Railway Co v Vestry of St Mary, Islington*<sup>4</sup>

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<sup>2</sup> *North London Railway Co v Vestry of St Mary, Islington* (1872) 27 L.T. 672 – Dedication was found to have occurred within an 18 month period

<sup>3</sup> Halsbury’s Laws of England (Volume 55 ‘Highways’)

<sup>4</sup> (1872) 27 L.T. 672

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the issue concerned a new bridge which the railway company had constructed alongside its newly opened Canonbury Station in Islington. The bridge was 50 feet wide and connected two existing streets on either side of the railway lines. Carriages used the bridge freely from the time it was completed, and a public cab rank had been established on part of the bridge. The Justices' conclusion that the way had been dedicated as a carriageway occasioned no surprise on the appeal to the Divisional Court, although the Justices had to decide the point when the bridge had been in use for only 18 months. In those circumstances, the fact that the company had put up barriers to prevent further use by carriages sometime after receiving notice of the proceedings before the Justices merely evoked the comment from Blackburn J. that *"As to the erection of the barriers by the appellants, that was done too late to do away with the dedication"*.

- ii) Second, the inference has been drawn mainly from evidence that the way was already recognised as being a highway by the start of the period covered by living memory, coupled with the absence of anything to show that the public recognition was misplaced. In this class of case the common law approach simply recognises that the facts all point one way, and that it is immaterial that the claimant cannot identify the early owners or show the actual date when dedication was likely to have occurred<sup>5</sup>.
- iii) Third, a dedication may be inferred from use and enjoyment by the public as of right, known by the owner and acquiesced in by him. The owner's recognition of the fact that the public is using the way as a highway may itself be a matter for inference, rather than clearly proven fact<sup>6</sup>.

4.26 A summary of the generic guidance on the legislation etc that is usually found within Somerset County Council Decision Reports may be found at Appendix 7 in the document bundle which accompanies this report.

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<sup>5</sup> See e.g. *Williams Ellis v Cobb* [1935] 1 KB 310 (CA), 318-9, 325, 327-8, 331

<sup>6</sup> See e.g. Parker J in *Webb v Baldwin and others* (1911) 75 JP 564 at p565

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## 5.0 Summary Description of Available Relevant Documentary Evidence

### *Inclosure Awards*

- 5.1 The Inclosure Awards for the surrounding areas do not include the land surrounding the Application Route.

### *Maps of Pilton 1809 & 1810 (Appendix 8 & 9)*

- 5.2 The “Plan of the Parishes of Pilton and North Wotton” (1809) (Appendix 8) shows the Application Route, naming it as South Mead Lane. The lane appears to be excluded from the adjoining land holdings, the boundaries of which are coloured and identified by reference to the parish within which they are situated.

- 5.3 The Map of Westholme Farm (1810) (Appendix 9) shows the Application Route coloured brown/sepia.

### *Map of Westholme (1826) (Appendix 10)*

- 5.4 The 1826 Map of Westholme shows the Application Route. It is uncoloured, as are other roads shown on the plan. Various parcels of land adjoin the lane are colour washed.

### *Commercial Maps (Appendix 11)*

- 5.5 Day & Masters Map (1782) shows the start of the Application Route in the vicinity of Paint B but not its full continuation westwards. Greenwood’s Map (1822) shows the Application Route depicted as a “Cross-Roads”. The Timeline Cassini Reprints of OS Maps (1811-17 & 1899) both show the Application Route.

### *Tithe Map (Appendix 12)*

- 5.6 The section of Westholme Lane which is already shown on the Definitive Map as a bridleway is shown on the North Wooton Tithe Map (1838) and named as Narrow Meade Lane. The Application Route is shown on the Pilton Tithe Map (1839) and coloured brown/sepia (as is much of the surrounding land). The lane is numbered although the numbering is unclear it is understood to relate to a reference in the Apportionment in the listings for “Roads, Rivers Wastes etc”

Ordnance Survey Maps (Appendix 13 & 14)

- 5.7 Various editions of the Ordnance Survey maps (Appendix 13) show the Application Route as a track or roadway, naming it as Westholme Lane. The Application Route is also shown on the 1811 Ordnance Survey Surveyors Drawings (Appendix 14).

Ordnance Survey Object Names Book (1902) (Appendix 15) & Boundary Remarks Book & Sketch Plan (circa 1885) (Appendix 16)

- 5.8 The Object Names Book (Appendix 15) lists Westholme Lane, naming authority for its spelling to a local landowner and noting that it is an “occupation lane”. This reference has later been amended to “public”. A further memorandum seeks confirmation of Westholme Lane from the District Surveyor (of Highways).
- 5.9 The Boundary Remarks Book & Sketch Plan (Appendix 16) show parts of the Application Route but make no reference to its status.

1910 Finance Act Records (Appendix 17)

- 5.10 The 1910 Finance Act Index maps show that the Application Route were excluded from valuation.

Definitive Map Records (Appendix 18)

- 5.11 These records show that the Application Route was not originally claimed by the respective Parish/Town Councils at the initiation of the Definitive Map preparation process. The currently recorded bridleway (WS 7/54) running northwards from Point A (Plan 1) along Westholme Lane is shown on the Draft Modification Map for Wells. The Application Route (which would have fallen within Shepton Mallet is not shown on the Draft Modification Map for that area. This situation remained unchanged through to the publication of the Definitive Map.

Highway Authority Records (Appendix 19)

- 5.12 These documents use an Ordnance Survey map as their base and therefore show the Application Route. The route is not coloured on the 1929 Handover maps or the 1950 Highways Record. It is however marked by a broken purple line on the 1930 Highways map with a reference to it being “BR on the review map”. Bridleway WS 7/46 (Mead Lane) is
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shown in a similar fashion. A legend marked in the border of this map identifies the annotations to mean that the route is a “Certified Non-County Road”

County Council Rights of Way Files (Appendix 20)

- 5.13 The County Council’s Rights of Way Files contain a range of correspondence relating to the Application Route from 1954 - 2005. This correspondence suggests that there was, at different times, varying opinions over the status of the Application Route ranging from it being an ancient public carriageway, to a bridleway ton not being a highway maintainable at public expense.

Aerial Photographs (Appendix 21)

- 5.14 The Application Route is visible on the 1946 Aerial photographs

User Evidence Forms (Appendix 22)

- 5.15 A selection of user evidence forms have also been submitted in respect of use of the Application Route. It would appear that 25 forms were submitted to the County Council in 1980 and provide evidence of use (by 33 people) between 1925 and 1980, of which 19 appear to give evidence of use that may be considered to be “as of right” The remainder give evidence which may be attributed to the exercise of private rights (e.g. access to land etc). A further three forms were submitted in 2011 providing evidence of use between 1992 and 2011 and which may be considered evidence of use that is “as of right”
- 5.16 Of those witnesses whose use may be considered to be “as of right”:
- 6 forms provide evidence of occasional use
  - 9 forms provide evidence of usage on a monthly basis
  - 3 forms provide evidence of usage on a weekly basis
  - 1 form provides evidence of usage on a daily basis
  - 1 form provides evidence of no clear indication of frequency of use
- 5.17 With regard to the nature/type of use, twenty-four users provide evidence of use on foot, eight give evidence of use on horseback (including all three who submitted forms in 2011)
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and fifteen gave evidence of use with vehicles (all of which were attributable to private use). Of those users claiming bridleway use, three refer to use entirely outside of the relevant 20-year period, one user claims use throughout the twenty-year period and the remainder give evidence of use spanning only a few years.

## **6.0 Submissions made by (or on behalf of) the Landowners/Occupiers**

6.1 Only limited submission were made by the owners of the land adjacent to the Application Route prior to circulation of the draft report and evidence bundle. These earlier submissions were predominantly verbal during meetings with the Consultant. The main concerns expressed related to security of adjoining premises and the availability of their own continued access with vehicles to adjoining land. Copies of landowner evidence forms that were completed in 2011 are included in the document bundle at Appendix 23.

6.2 The landowners also expressed the view that the Application Route had not been subject to public use (if at all) for some considerable time, and that this was evidenced by the overgrown state of sections of the lane.

6.3 Two sets of representations were received from firms of solicitors representing landowners following circulation of the draft report and document bundle. Copies of these representations and the Consultant's responses are included in the document bundle under Appendices 25 and 26. No information or evidence was forthcoming that resulted in any change to the conclusions previously reached.

## **7.0 General Interpretation of Evidence**

7.1 A summary of the generic guidance on the interpretation of evidence etc that is usually found within Somerset County Council Decision Reports may be found at Appendix 7 in the document bundle which accompanies this report.

7.2 Further general guidance on the interpretation of evidence etc may be found within the Planning Inspectorate's Definitive Map Consistency Guidelines, relevant extracts from which may be found at Appendix 24 of the document bundle.

## 8.0 Discussion

8.1 It must be stressed that the decision to be made, over what public rights exist, is quasi-judicial in nature, and as such the decision makers must base their decision upon all of the available and relevant evidence. Issues such as desirability, security, need, future maintenance liabilities, and even public safety, whilst undoubtedly genuine concerns, are not matters that can lawfully be taken into consideration as part of the decision-making process.

8.2 It must also be understood that a decision to make a Definitive Map Modification Order to add a Public Bridleway to the Definitive Map will not result in the creation of any new rights. It will simply seek to record those rights that, albeit currently unrecorded, already exist.

8.3 In this case the duty to make an Order is triggered if there is a reasonable allegation over the existence of public bridleway rights. This is a lower test than the balance of probability test, which would have to be met, at confirmation stage.

8.4 Before the duty to make an Order is triggered there must also be the discovery of evidence which warrants the making of an Order. Such evidence must not have been taken into consideration as part of any previous legal proceedings to clarify the status of the route, and also positively support the existence of the alleged bridleway rights.

8.5 In many instances documents relating the 1910 Finance Act (Appendix 17) can be considered new evidence because they were not publicly available at the time of the production of the Definitive Map in the 1950's. The Application Route was excluded from the valuation survey and this is often considered to be strongly supportive of the proposition that a route was a public highway of some description. Taking this into account they may be relied upon to constitute the required "discovery".

*Maps of Pilton 1809 & 1810 (Appendix 8 & 9), the 1811 Ordnance Survey Surveyors Drawings (Appendix 14) and the Map of Westholme (1826) (Appendix 10)*

8.6 These maps provide the earliest evidence of the physical existence of the Application Route. Whilst they are silent on the matter of status, they may still be considered to be supportive of the existence of public rights when considered in the context of the other documentary evidence.

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8.7 The fact that the Application Route is named (South Mead Lane) on the 1809 map (Appendix 8) may also be considered supportive of the existence of public highway rights due to the requirements of late eighteenth-century highway legislation requiring that public highways be named for the purposes of indictment. (i.e. given the lack of accurate mapping at that time, routes could be identified and recorded by name instead)

Commercial Maps (Appendix 11)

8.8 Day & Masters Map (1782) only shows the start of the Application Route and therefore is of little assistance in this case. Whilst Greenwood's Map (1822) shows the Application Route depicted as a "Cross-Roads" this must be treated with caution because he is known to have included both public and private ways on his maps and shown both as "Cross-Roads".

8.9 The Timeline Cassini maps are reprints from the Ordnance Survey and therefore should be afforded no more weight than their original source information.

Tithe Map (Appendix 12)

8.10 The tithe maps indicate that the Application Route physically existed at the time of survey. They do not, however, provide any commentary on the status of the route, and any brown colouring is not indicative of highway status, it simply indicates that it was not subject to tithe (i.e. it was non-productive land). The entry in the Apportionment under "Roads, Rivers and Wastes etc" does not clarify whether the roads referred to are public and must therefore be treated with caution.

8.11 Notwithstanding the above, these documents may be considered supportive of the existence of highway rights when considered alongside other evidence.

Ordnance Survey Maps (Appendix 13)

8.12 Ordnance Survey maps provide excellent and accurate evidence of the existence of the physical features that existed at the time of their survey. They are, however, generally silent on the issue of the status of any path, track or way, and carry a disclaimer to that effect.

8.13 In this particular case the Application Route is shown on all of the Ordnance Survey maps that have been consulted. They are entirely consistent with other documents that refer to and/or show the Application Route (e.g. the Tithe Map, other early maps and plans and aerial photos etc).

*Ordnance Survey Object Names Book (1903) (Appendix 15) & Boundary Remarks Book & Sketch Plan (Appendix 16)*

8.14 The Ordnance Survey Object Names Book (Appendix 15) provides the provenance for the inclusion of the naming of Westholme Lane on the Ordnance Survey maps and initially suggests that it may have been considered to be private. The entries do however appear to have been amended following consultation with the District Surveyor (Highway Authority) with amendments being made which suggest public status.

8.15 The Boundary Remarks Book & Sketch Plan (Appendix 16) are of little assistance because whilst they show parts of the Application Route, they make no reference to its status.

*1910 Finance Act Records (Appendix 17)*

8.16 Documents produced as part of the 1910 Finance Act valuation process can provide very good evidence in support of the existence of public rights of way. It is generally accepted that the exclusion of a route from valuation can provide strong evidence in support of the proposition that it is a public highway of some description. However, as indicated in the Planning Inspectorate's consistency guidelines on the subject (Appendix 24) there are alternative interpretations. For instance, where a route is used by multiple land owners/occupiers for access to land and property (as in this case), and it is set out in the Inclosure Award as a private road, such exclusion has been interpreted, albeit not consistently, as not being supportive of the existence of public highway rights. The documents must be considered in the context of the other evidence.

*Definitive Map Records (Appendix 18)*

8.17 This document set initially suggests that at the time of the compilation of the Definitive Map the Application Route may have been considered by some to enjoy rights higher than those to be recorded on the Definitive Map (i.e. public carriageway). Contemporaneous



correspondence in the Council's files (Appendix 20) certainly suggest that the Rambler's Association were of this view.

- 8.18 The fact that only part of Westholme Lane was added into the process following the publication of the Draft Map may be because the lane crossed between two Rural District Council areas. An objection to the omission of the route in Wells RDC certainly appears to have been made by virtue of its subsequent inclusion in the Draft Modification Map and being subsequently shown on the Definitive Map. It is possible that original objection was intended to relate to the whole lane and not just the section within Wells RDC. Again, correspondence in the Council's files (Appendix 20) would appear to be supportive of such a proposition, with the Authority stating the view that the whole of Westholme Lane is, or should have been, recorded as a bridleway.

Highway Authority Records (Appendix 19)

- 8.19 The 1929 Handover Maps and the 1950's Highway Records provide no evidence in support of the application. The 1930's maps do however, by reference to the hand-written note, indicate the bridleway status of the Application Route. The reference to the Application Route being "Certified" as a "Non-County Road" may be indicative that some form of investigation into the route's status may have been undertaken, and that it had been concluded that the lane was not considered either to be a) a public carriageway or b), if such rights did exist, it was not a highway maintainable at public expense. In the absence of further evidence on this matter it may not be possible to conclude which of these propositions is most likely, however it should be noted that the records in question relate primarily to maintenance responsibility rather than status.

County Council Rights of Way Files (Appendix 20)

- 8.20 The correspondence on these files is somewhat contradictory at times, but taken in the whole it does appear to be supportive of the Application Route having the reputation of being a public highway of some sort, and probably being at least a bridleway.

*Aerial Photographs (Appendix 21)*

8.21 Aerial photographs, like the Ordnance Survey maps, provide excellent evidence of the existence of physical features on the ground on the day they were taken. They are, however, completely silent on the matter of status.

*User Evidence Forms (Appendix 22)*

8.22 The correspondence on the Council's files and the user evidence forms do refer to the locking of a gate across the Application Route circa 1980. This would explain why the forms were completed and submitted at that time. Given the time periods covered by the alleged use, it may be possible to consider a user based case pursuant to Section 31 of the Highways Act 1980 during the period 1960 – 1980.

8.23 The three user evidence forms submitted in 2011 appear to correspond with the submission of the application for the definitive map modification order. Whilst the submission of the application in 2011 would allow for consideration of a twenty-year period spanning 1991-2011, there is insufficient user evidence relating to this time period.

8.24 The user evidence forms submitted in 1980 provide evidence of use which is of a nature that may be considered to be "by the public", "as of right" and "without interruption" thus satisfying the initial tests set out within Section 31 of the 1980 Act, in respect of footpath status, however there is insufficient evidence of use to qualify bridleway status. There is no evidence of any lack of intention to dedicate public rights over the route during the 20-year period. This would suggest that there is potentially a presumption of dedication of footpath rights arising from public use between 1960 and 1980.

8.25 In the alternative, when considered alongside the historical documentary evidence, the user evidence may be considered to be further supportive of the historic reputation of the route as a public right of way.

8.26 Notwithstanding the above, the user evidence forms are brief and contain little detail. Whilst the above assumptions have been made based upon an analysis of the user evidence forms they must be treated with a degree of caution.

### Landowner Submissions

- 8.27 The principal issues raised by the land owners during site meetings, whilst undoubtedly genuine concerns, are not matters that can lawfully be taken into account as part of the decision-making process. Notwithstanding this, if the alleged bridleway rights are determined to subsist the Authority may wish to engage with the land-owners to see if their concerns can be address. Such consideration may assist in the withdrawal or avoidance of objections to any Order that may be made.
- 8.28 With regard to their access to adjoining land (via the Application Route), any private rights that they currently use and enjoy, will not be affected by the addition of the route to the Definitive Map as a bridleway.
- 8.29 The land owners’ assertions that the Application Route has not been subject to public use in recent times is accepted and acknowledged. Some sections of the lane are significantly overgrown and impassable. The current state of the lane is not however an indicator of its condition in the past.

## **9.0 Conclusions**

- 9.1 In conclusion, there is a consistent body of evidence dating from 1809 onwards which confirms the physical existence of the Application Route since that time. Whilst none of this evidence is conclusive as to the status of the route, when documents such as the 1910 Finance Act records are thrown into the balance, along with the user evidence and correspondence on the Council’s files there is, in the Consultant’s view, certainly a reasonable allegation that the alleged bridleway rights subsist. This is sufficient to trigger the Authority’s duty to make an Order.
- 9.2 With regard to the user evidence, when considered against the tests set out within Section 31 of the Highways Act 1980, there would appear to be a reasonable allegation in favour of a presumption of dedication of public footpath rights during the period 1960-1980.

## **10.0 Decision Required**

- 10.1 If the County Council is satisfied that the claimed public bridleway rights are reasonably alleged to subsist over the Application Route they should resolve to:
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- a) Make a Definitive Map Modification Order to add the route shown A – B Plan 1 (Appendix 1) to the Definitive Map as a Public Bridleway;
- b) and if no objections are received, confirm the Order;
- c) If objections are received, which are not subsequently withdrawn, that the Order be referred to the Secretary of State for Confirmation.

10.2 If the County Council are not satisfied that the claimed public bridleway rights are reasonably alleged to subsist over the Application Route they should refuse the application and advise the applicants of their rights of appeal.

### 11.0 Recommendation

11.1 Whilst it is the Consultant’s opinion that there is a reasonable allegation in favour of the registration of Public Bridleway rights over the Application Route, it is for the County Council to make its own decision based upon all the available and relevant evidence.

*Robin Carr*

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Date: 20<sup>th</sup> November 2017