

REGULATORY COMMITTEE
12th JULY 2006

**MARSTON: BRIDLEWAY 10 - OBJECTIONS TO
A DEFINITIVE MAP MODIFICATION ORDER**

Purpose of Report

1. To consider and comment on objections received to the making of an Order under Section 53 of the Wildlife and Countryside Act 1981 providing for the downgrading of Marston Bridleway 10 to a footpath as shown on the plan attached at **Appendix 1**. A location plan is attached at **Appendix 2**.

Background

2. On 14th April 1993 Marston Parish Council applied to the County Council seeking the making of an Order under Section 53 of the Wildlife and Countryside Act 1981 providing for the downgrading of Marston Bridleway 10.
3. The application was supported by 11 letters from local residents who had known the path for varying lengths of time believing it to be a footpath. Officers noted that the applicant was involved in the claim process at the preparation of the Definitive Map and the way was claimed as a bridleway.
4. The application was refused as there was insufficient evidence to show that an error had been made in the preparation of the Definitive Map.
5. On 10th December 2002 the Parish Council submitted a fresh application supported by new evidence in the form of 14 user evidence forms providing information on the path dating back to 1915, together with a statement outlining the reasons why the Parish Council believed an error was made in 1950 when recording the path as a bridleway. The statement refers to a list of maps and documents (attached at **Appendix 3**), extracts from a parish meeting, Parish Council minutes and old photographs.
6. After considering the evidence and conducting a consultation exercise officers refused the application for the following reasons:
 - (i) Public rights cannot be lost through lack of use.
 - (ii) The draft Definitive Map and Statement was on deposit for public inspection for three months. No objections were made at this initial stage or subsequent reviews.
 - (iii) When the Definitive Map was finalised any gates over the path could not remove the equestrian rights made conclusive by Section 32(4)(b) of the National Parks and Access to the Countryside Act 1949.
 - (iv) Parish Council records indicate the public were using the path with horses and ponies before it was unlawfully obstructed.

- (v) The evidence presented by the applicant is not sufficient to demonstrate that equestrian rights do not exist over the route.
 - (vi) There is reputable mapping evidence such as John Cary's map of Wiltshire dated 1832 and the two inches to the mile Ordnance Survey manuscript drawing of 1808 which show Marston Bridleway 10 as the only direct route between Marston and Worton. These maps are at too small a scale to show footpaths or bridleways and are more indicative of higher rights.
7. The Parish Council appealed to the Secretary of State against the County Council's decision. The Inspector who dealt with the appeal on behalf of the Secretary of State stated:

"Section 53(3)(c)(ii) of the 1981 Act states that an order should be made on the discovery by the authority 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."

Paragraph 4 of Circular 18/90 states that:

"When an application is made for a deletion or downgrading of a right of way from the Definitive Map, it will be for those who contend that there is no right of way or that the right of way is of a lower status than that shown, to prove that the map is in error by the discovery of evidence, which when considered with all other relevant evidence clearly shows that a mistake was made when the right of way was first recorded. In all cases, the test to be satisfied is the balance of probability."

The Circular also states:

"It is not for the Authority to demonstrate that the map is correct but for the applicant to show that an error was made."

8. The Inspector did not find the map evidence submitted by the Parish Council supported the application. The Inspector did accept the Council's view that rights cannot disappear through lack of use. He also found a significant volume of evidence relating to obstructions on the bridleway leading up to the making of the Definitive Map. The Parish Council failed at the preparation stage of the Definitive Map to inform the County Council of the fact that Bridleway 10 was incapable of passage by horses. The Inspector recommended the County Council be directed to make an Order to downgrade Bridleway 10 to a footpath.
9. The County Council made the Order on 30th June 2005 and objections were made by Wiltshire Bridleways Association (WBA) and Mr. B. Riley.

WBA stated:

"Marston 10 is a Bridleway and as such should remain so."

Mr. B. Riley stated:

"The Order does not accord with historical evidence, nor has cogent evidence been produced to show that Marston 10 was never a bridleway."

Main Considerations for the Council

10. The Inspector set out the legal tests to be applied in determining the application (as indicated in paragraph 7 above). When all of the evidence is examined, and in particular the earlier mapping evidence described in paragraph 6 (vi) above, this is not sufficient to indicate a mistake in recording the way as a bridleway. Evidence has been produced of swing gates on the path which may have obstructed the way for riders in 1946 but this does not mean that riders had not used the way in the past. The Councillors compiling the parish claim at the time when the Definitive Map was being prepared could easily have recalled events of the 19th century.
11. There was sufficient evidence to justify the inclusion of a bridleway on the Definitive Map in 1950 and its status was not challenged until 1993, despite there being opportunities to do so when the Definitive Map was reviewed.
12. The applicant appealed to the Secretary of State against the Council's decision not to make the Order. The Secretary of State accepted the applicant's case on appeal and directed the Council to make the Order. Statutory procedure requires that where objections to an Order are received, as in this case, the Order must be referred to the Secretary of State (via the Planning Inspectorate) for determination.
13. The County Council must now advise the Planning Inspectorate whether it considers that the Order should be either confirmed or not confirmed, or that it has adopted a neutral stance towards confirmation.
14. In deciding on the advice it should give to the Planning Inspectorate the Committee should take account of the advice provided in Circular 18/90 that the Council is not required to demonstrate that the map is correct, but that the onus is on the applicant to show that an error was made.

Environmental Impact of the Recommendation

15. There will be no environmental impact resulting from the recommendation.

Risk Assessment

16. There are no risks arising from the recommendation.

Financial Implications

17. The Order is likely to be determined by way of a Public Inquiry and the County Council will incur the costs.

Options Considered

18. Statutory procedure requires that the Order must be referred to the Planning Inspectorate for determination because objections have been received which have not been resolved. The Council must advise the Planning Inspectorate:
 - (i) whether it considers that the Order should be:
 - confirmed or
 - not confirmed; or
 - (ii) that it has adopted a neutral stance towards confirmation.

Reasons for Recommendation

19. To comply with the County Council's legal duty.
20. The County Council was directed to make the Order. Although it does not support confirmation of the Order, Circular 18/90 makes it clear that the Council is not required to present an argument that the map is correct and so does not need to actively oppose the Order's confirmation. Instead the onus is upon the applicant to provide the evidence and make the case for confirmation. It is, therefore, appropriate that the Council should adopt a neutral stance.

Recommendation

21. That the Order and the objections made be forwarded to the Planning Inspectorate with the advisory note that the County Council has adopted a neutral stance towards confirmation of the Order.

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The following unpublished documents have been relied on in the preparation of this Report:

Correspondence with Parish and District Councils and other interested parties