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**RESTRICTED**

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**My Ref:** 017019DW    **Your Ref:**

**Date:** 16 May 2023

Dear Julie,

**Re: S53 Application for Upgrading to Restricted Byway part PF12  
Grindon Parish between Fleets Lane and BW9 Grindon**

Thank you for your correspondence in response to the draft report prepared in relation to the above application and the further evidence submitted.

In relation to your comments regarding the landowner evidence, officers are required to consult with landowners on submission of a section 53 application that affects their land or property to ascertain whether they have any evidence or comments regarding the application. In the interests of fairness, it is important that the applicant, landowners and also any other statutory consultees have an equal opportunity to put forward evidence or comments relating to a section 53 application, hence why landowner comments are included in the report. Officers do make clear at determination stage what legal tests should be applied when determining an application and whether a public right of way exists or not. However, a paragraph has been added into the report reiterating what issues under law cannot be taken into consideration when determining whether a public right of way exists or not.

In relation to paragraphs 24 and 30, the word "conclusive" has been amended to reflect the fact that the evidence does not need to be conclusive, merely to show on the balance of probabilities whether a route exists or not.

We note that you refer to an Appendix 2 in your correspondence, however an Appendix 2 was not received with the documentation.





The Ordnance Survey Maps all depict the route in a similar way, as two parallel lines, with the western end of the route as an unbroken line and the eastern line of the route being an unbroken line to the north but from the middle section of the route becoming a broken line. When reviewing this alongside the map keys this is supportive of the route being a minor road that is unfenced where the line is broken.

Therefore, the OS maps support the physical existence of the route which is not in dispute as the route is an existing public right of way and they are supportive of higher rights than a footpath. On their own, Ordnance Survey maps are considered to be relatively evidentially weak and therefore would need further strong evidence to support the contention of higher rights than a footpath.

It is noted that Appendix 4 is a table listing the mileage of public highways regarding rural district roads (not main roads) within different parishes. The document makes no reference to individual routes, including the alleged route and therefore does not provide any evidence as to the nature of the rights over the alleged route. It is not clear from the document that the alleged route falls under the category Rural District Roads for the parish of Grindon.

In relation to the Handover evidence, this type of evidence is only concerned with liability for maintenance, not with the type of public user. The evidence is good evidence of the route being public, which is not in dispute as the route is already an existing public right of way but this does not prove the route has public vehicular rights. There is no clear evidence as to why PF12 Grindon is the only route currently on the map as a footpath but it is officers opinion that this documentation does not show that PF12 is a public vehicular highway.

The report provided at Appendix 7 does not relate to this application and each application needs to be dealt with on a case-by-case basis.

Officers have obtained a copy of the parish survey card for Public Footpath 12 Grindon. The parish survey card states: "Path no: 12. Path symbol: CRF- Footpath (FP). Path starts: Grindon Post Office. Path finishes at: Boundary of Waterfall Parish, south of Saucefield Farm. Grounds for believing path to be public: used by public without dispute for 40 years and over. CRF starts at Post Office & finishes at field about 200 yards from Post Office & carries on as a footpath without obstruction to the parish of Waterfall". Therefore, the parish survey card is supportive of the route being a public footpath, there is no mention or suggestion of higher rights over the route.

Officers have georeferenced the Waterfall Tithe map onto the current mapping and it has shown as you say that the route depicted on the map is the current D1129 Back o' th' Brook Road, with the route stopping at the

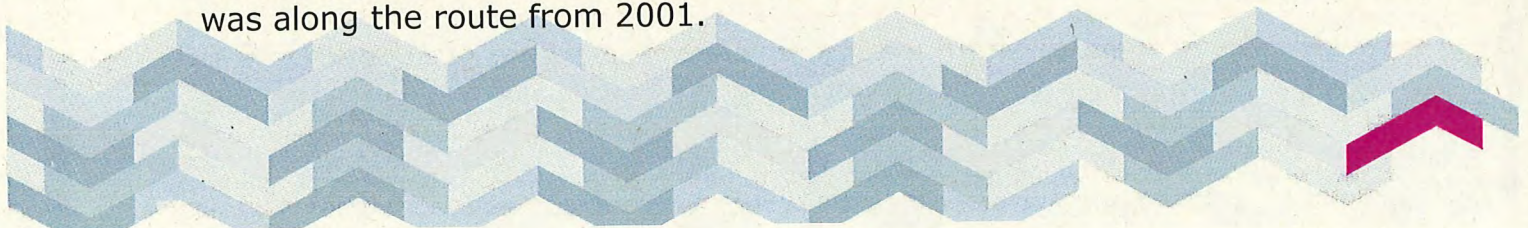


Parish boundary. This Tithe Map does not show the alleged route. The map shows that the route depicted on the Tithe Map would connect to Public Bridleway 9 Grindon to the north. Public Footpath 12 Grindon connects to Public Bridleway 9 Grindon but it is not a continuation of Public Bridleway 9. Officers have viewed Grindon Tithe Map dated 1839, which shows a route running along the same line as existing Public Bridleway 9 Grindon but this route is not depicted in the same manner as the route on the Waterfall Tithe Map. The route is shown as two single broken lines running parallel to each other. The section of Public Footpath 12 Grindon that has been applied for is also depicted as two broken lines running parallel to each other. There is no suggestion from the Grindon Tithe Map that Public Bridleway 9 or Public Footpath 12 Grindon is a public road. Therefore, it is officers' opinion that the tithe award documentation does not provide evidence of the route subject to this application being a public road and therefore having rights over it higher than a footpath and therefore the evidence is not strong enough to support the contention of the route being a Restricted Byway.

Officers conclude that the user evidence is not sufficient to meet the necessary tests. In order to establish a right of way under section 31 of the Highways Act 1980 there needs to be evidence of use "as of right" without interruption for a period of 20 years prior to the status of the route being brought into question, or that it can be inferred by the landowner's conduct that they had actually dedicated the route as a public right of way, and the right of way had been accepted by the public. This means that the use will need to have been without force, without secrecy and without permission.

In order for the right of the public to have been brought into question, the right must be challenged by some means sufficient to bring it home to the public that their right to use the way is being challenged. In this case there is an identifiable challenge to use of the route with users referring to a locked gate along the route from 2001. Accordingly, the requisite 20 year period of use is from 1981- 2001. Only one of the users has used the alleged route for the requisite 20 year period on horseback. Neither the legislation nor the applicable case law sets out a minimum level of user that is expected or required to support a claim that a route exists. The case law does suggest that the amount of usage should be such that it is enough to bring home to a reasonable landowner that the public are using a way and that use is as if it was a public highway. As only two members of the public have provided evidence of use of the route, this is not enough to bring to the attention of the landowner that a right was being asserted across their land.

There is also evidence that the landowner has taken action to rebut the statutory presumption of dedication, as both users state that a locked gate was along the route from 2001.





In considering whether a public highway of whatever description exists the evidence also needs to be considered not only under statute but the common law. Under the common law test the applicant must prove that there has been an intention to dedicate by a landowner. No minimum period of use is required to raise such an inference, but there must be evidence which is sufficient to infer that there was an intention to dedicate a public right of way. Whilst the terms of use do not have to span that set out in statute it must still be sufficient to raise the awareness of an owner that the land is being used as a public path. In this case there does not appear to be any evidence that the landowner has acquiesced and dedicated the route to the public and the level of evidence of use is low to show to a landowner that a right was being asserted across their land.

We note that the Byways and Bridleways Trust have stated that they are aware that members of the public have used the alleged route in the 1970's and 1980's as if it was a road, but no specific evidence has been provided to clarify the level of use, the exact timespan of the use or how the route was specifically used.

It is officers' opinion that the evidence of use is insufficient to meet the relevant legal tests either under statute or the common law.

Whilst the further evidence is noted officers' opinion remains unchanged and therefore the recommendation that the evidence is insufficient to show on a balance of probabilities that a Restricted Byway exists along the line of the alleged route remains. Your comments and further evidence have been added into the report.

If there is anything further, then please do not hesitate to get in touch.

Yours sincerely



Hannah Titchener  
on behalf of Kate Loader, County Solicitor.

HT2 / 017019DW

