

NORTHUMBERLAND

Northumberland County Council

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Mr. F. Tulip
Chairman,
Broomhaugh & Riding Mill Parish Council
Via email

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1st October 2009

Dear Mr. Tulip

Potential Adoption of Millfield Road, Riding Mill

I refer to our recent discussions regarding the legal status of Millfield Road and the potential avenues for it to become a highway maintainable at the public expense (an adopted road). This letter represents my provisional views on the information which I have to hand. It is an attempt to be comprehensive and I write it in the anticipation that the Parish Council will make it publicly available. I can confirm that, subject to a mutually convenient time being arranged I would be happy to come to a meeting with affected frontagers and your council to express my reasons for the provisional conclusions and to give any interested person the opportunity to present any information which may cause an alteration in those conclusions.

Background - Highway Law

The law regarding highways in England is a little understood but highly important area of law. Unfortunately it is not codified into a single statute or series of statutes. It is an amalgam of common law principles, caselaw and statutory provisions.

In essence a public highway is a route over land which the public have a right of passage. There are a number of different categories which I summarise as

- A footpath - the public have a right on foot only.
- A bridleway - the public have a right on foot or on horseback.
- An all purpose highway - the public have a right to use vehicles, ride or walk.

[There are some further categories and refinements to the above but I do not believe these affect the position of Millfield Road].



The public sector in the guise of the Highway Authority is not responsible for maintaining each and every public highway. As a general rule if a public highway existed before the

passage of the Highways Act 1835 then it is an adopted highway. If a public footpath or bridleway existed before December 1949 then it is adopted and maintenance is the responsibility of the Highway Authority. I shall use the term "adopted" to denote a highway which is maintained by the local highway authority. The correct legal term is "a highway maintainable at the public expense" but "adopted" is the commonly used term. Just to be absolutely clear, a road can be a public highway without being adopted, and as I set out below, I believe that to be the position for Millfield Road so far as vehicles are concerned.

Highways which came into existence after the Highways Act 1835 have to be specifically adopted by the Highway Authority. There are a limited number of statutory methods for the Highway Authority to agree to take on the liability. In these days this is often by way of a specific legal agreement with developers.

It is a fact of life that it is impossible to prove a negative. We cannot be absolutely certain that such an agreement was not entered into for Millfield Road, however, the status of Millfield Road has been the subject of discussions over the years and no one has located or mentioned any such document. *I am therefore working on the premise that Millfield Road was constructed in its entirety after the passage of the 1835 Act and that it is not an adopted highway nor the maintenance responsibility of the Highway Authority.* That would seem to be commonly accepted by all who have researched or had dealings with the question of Millfield Road.

Millfield Road's current status

Again without a High Court Declaration or the potential addition of a Restricted Byway or a Byway Open to All Traffic to the definitive map and statement, there is no conclusive way of showing that a route is a public highway. I, however, regard Millfield Road as having public highway status from its location and the passage of vehicles and others over it for a number of years.

I am therefore working on the premise that the public have gained vehicular highway rights through passage of time over the entire length of Millfield Road. There is no indication that the public using those rights are doing so with the permission of the landowners over the years.

Maintenance Responsibility

There is Public Footpath No. 12 shown on the definitive map and statement broadly on the north and western side of Millfield Road for approximately three quarters of its length starting at the A695 and travelling in a south westerly direction. That footpath was on the definitive map from the time of its compilation in the 1950's. It is therefore reasonable to assume that it will have been in existence in December 1949 and as a result of the National Parks and Access to the Countryside Act 1949, the footpath is "adopted" and is the maintenance responsibility of the Highway Authority. That is only as a footpath and

the Highway Authority does not have any current responsibility for maintaining Millfield Road in a condition suitable for vehicles and riders.

Private Obligations

It seems to me from the evidence provided by the Parish Council that the houses on the northern side of the Riding Mill Burn were probably constructed as a building scheme. I have seen a copy of covenants in some of the titles which do indicate that those houses had to bear a fair contribution of the costs of maintaining the road. That would not be an unusual requirement for a scheme of that nature built as it was prior to the Town and Planning regime and the general issues regarding the adoption of roads taken since the 1950's onwards.

I do not have any information which would indicate that the properties abutting Millfield Road to the south of the Riding Mill Burn were subject to similar covenants nor does it appear that any formal agreements were made with the Council or others by the builders of those properties for contributions towards the upkeep of the road prior to any adoption by the Highway Authority. Those houses may or may not therefore have a similar private liability.

Statutory Enquiries

Under Section 297 of the Highways Act 1980 the Highway Authority has the power to serve on the occupiers and owners of properties a statutory questionnaire requiring details of land ownerships. Failure to complete such a questionnaire is a criminal offence.

In order to absolutely clarify the position as to who has a covenant in their deeds which apparently requires a contribution towards maintenance and who does not, I would propose to suggest to the Highways Division that those questionnaires are submitted to all the frontagers adjoining Millfield Road.

Methods of Adoption

There are a number of methods for the County Council for the Highway Authority to adopt Millfield Road and thereafter take on its maintenance liability. These are

- The use of the Private Street Works Code.
- The acquisition of the road.
- The making of an Agreement with the owner of the road.

I can deal with the first two relatively briefly. The Private Street Works Code have been in existence for some considerable time and is excessively bureaucratic. The County Council has a list of private streets within the County where adoption would be desirable in some eyes. In brief terms the Private Street Works Code allows the County Council to devise a scheme for the works needed to bring the road up to standard for adoption, the costs are then shared between the frontages based on the length of their frontage adjoining the roads. To my recollection the Council has used that procedure

approximately three times in the past 15 years. One of those was when the Council was left a legacy and there was a nil contribution from the frontagers. The use of the Private Street Works Code absorbs a lot of officer time and it is just not realistic to expect that it will be used at any time in the near future. Similarly the Council in its capacity as the Highway Authority could acquire the road and create it as a highway at its own cost. The potential costs will almost certainly rule this out and I only mention it for completeness.

The third method is the one which would seem to be the one with the most prospects of a successful adoption at Millfield Road. We know that the Parish Council own the land on which the road runs. There is in my mind therefore no difficulty in the Parish Council making an agreement with the County Council for the adoption of that road once it has been brought up to a suitable standard. This would be by way of an Agreement under Section 38 of the Highways Act 1980.

Costs

The critical point is the costs required to bring the road and in particular the bridge over the Riding Mill Burn up to an appropriate standard. From the evidence I have to date, the Parish Council owns the bridge and although there is Public Footpath No. 12 running over it that, in reality, places minimal maintenance obligations on the County Council as the Highway Authority. We merely have to ensure that it is suitable as a passage for pedestrians and not vehicles.

What are the options for the costs? It is unlikely that the County Council's resources can fund such a scheme. The Parish Council is seeking the funds to do so and it would seem reasonable to me that the works needed are set out in any Agreement made under Section 38. That would in essence commit the County Council as the Highway Authority to the works that were needed. I would envisage that that would be a time limited commitment rather than an open ended commitment to adopt at some stage in the future as clearly further works could be needed. What I should emphasise is that once a road is adopted it is rare for the adoption to be revoked and maintenance responsibility would rest in perpetuity with the Highway Authority. Standards of maintenance can vary as techniques and traffic change.

It is open to the Parish Council as the owner of the land in partnership with the County Council as the Highway Authority to seek a contribution from those houses which have a covenant and the legal obligation to maintain part of Millfield Road.

It may be a pragmatic solution but I would suggest that the Parish Council consider asking those frontagers for a flat rate contribution that would be dependant upon the Agreement being made with the Highway Authority and only payable as and when the road was in the process of being adopted. An appropriately set flat rate contribution would avoid the need for expensive disputes on whether or not a contribution was payable and if so for what amount. The effect of such a dispute may be to either stall or stop adoption or merely place funds in the hands of lawyers.

The attraction for the frontagers is that the payment of such a lump sum would have to be balanced by an Agreement by the Parish Council in return that any contributions with respect to the road that they had under the covenants would thereafter cease forever.

In the current climate house sales are clearly difficult and finance houses (banks, building societies etc) may well be less willing to lend funds for the purchase of dwellings where the road serving them is not adopted and/or there is the potential liability for an unknown sum to be levied for maintenance purposes.

The Bridge

Bridge maintenance is a slightly different area of law but follows the same concepts for the adoption of the liability of maintenance as for highways. In the case of bridges they have to be constructed prior to 1803 and clearly the Riding Mill Burn bridge on Millfield Road does not fall into this category. Those constructed after 1803 have to have become the responsibility of the Highway Authority by a specific acceptance of that responsibility by the Highway Authority. Again I have not seen any suggestion of such an acceptance. *My premise is that the bridge is not adopted.*

From what I understand, the major element of costs is likely to be any works needed to strengthen the bridge. There is no reason why Millfield Road has to be a through road in legal terms. It would be open to the Parish Council and the Highway Authority to agree that Millfield Road bridge should be closed to traffic and a Traffic Regulation Order could be made which has that effect. Bollards can then be erected to self-police any restriction. Suitable bollards would allow the passage of pedestrians and I would expect horse riders as well. A bridge which merely carried that degree of traffic is unlikely, in reality, to require much maintenance over the foreseeable future. If it is felt appropriate to keep the road as a through road then I would expect that the County Council will only do so if the bridge is brought up to a standard when it can be adopted and become the maintenance liability of the County Council. One further option might be to consider an experimental traffic regulation order, which would allow us all to see what practical problems (if any) emerge from restricting the traffic over the bridge.

Why make a decision now?

I think it would also be fair of me to express my own view that if these proposals are not taken forward as a method of adopting Millfield Road, then I would not expect the Council, as the highway authority, to return to the issue in the foreseeable future. In that case the road would remain an unadopted highway. For some there may be no immediate effect, but those seeking to sell properties may find that substantial price reductions are sought by prospective purchasers.

Provisional Conclusions

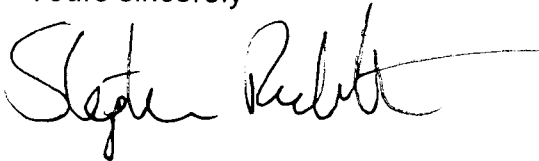
1: Millfield Road is a public highway with unlimited rights for the public to use it. It is not maintainable by the Highway Authority except to the limited extent that Public Footpath No. 12 passes on one side for approximately three quarters of its length.

2: If the Highway Authority is to adopt the route, then a formal agreement under Section 38 of the Highways Act would seem to be the most appropriate way forward providing that agreement can be reached on financial terms.

3: Some or all of the frontagers may have covenants requiring them to contribute towards maintenance. The existence of such covenants can be determined by use of the statutory questionnaire. It may be better to seek a flat rate contribution rather than to try and analyse the different covenants and different percentages which may or may not be due from each of the owners of the frontages. The advantage for the frontagers is that a potentially unknown liability which could deter future purchasers and/or their financiers would be removed.

I hope that the Parish Council will distribute this on our behalf and I look forward to the discussion on a date to be arranged.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stephen Rickitt', with a long horizontal flourish extending to the right.

Stephen Rickitt
Principal Solicitor

Please note that if you are responding to this correspondence, please address to Legal Services at the above address and quote our reference