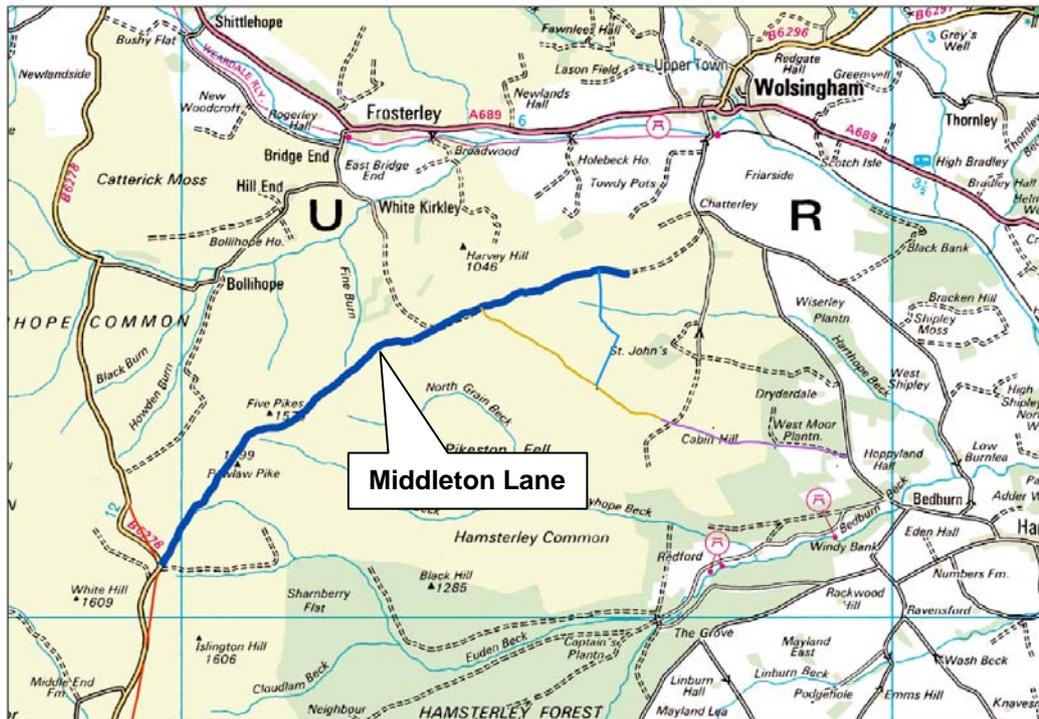


1 Middleton Lane Route 1

- 2 Middleton Lane commences on the unclassified road (32.2) to the south of Wolsingham and follows in a generally south westerly direction to join the B6278 to the south of Bollihope Common (between Stanhope and Eggleston). It is approximately 8400m in length, following both tracks which overlie sandstone substrata and also across undefined peaty heather moor. A more detailed plan is shown in Document 1A



- 3 About 6500m at the eastern end is recorded on the Wolsingham Award and plan. Of this section and referring to document 1A, approximately 4600m appears to follow along the south side of a boundary wall (points **A** to **B**), with the rest of the section within the Wolsingham Award (1900m) being across open moorland (points **B** to **C**). The next 290m section across open heather moor does not cross land contained in any inclosure award (points **C** to **D**). The final 1600m, again open moor, is within land shown on the Eggleston Award Plan but is not awarded (points **D** to **E**). A route is recorded on the 1st edition Ordnance Survey (OS) map for the entire length.
- 4 The land at the east end up to the parish boundary (**A** to **D**)(Eggleston/Frosterley/Stanhope) is owned by Arago Ltd (commonly known as the Bollihope Estate) and the remaining (**D** to **E**) by Weardale Estates Ltd. Both owners are represented by Oglethorpe, Sturton and Gillibrand Solicitors while Bollihope Estates is also represented by Savills (Chartered Surveyors).

Documentary Evidence

- 5 The earliest known documentary evidence of Middleton Lane is the 1767 Wolsingham Inclosure Award. The route is also depicted on various 19th century maps and also other plans prepared by lead mining companies.

Wolsingham South, North and Park Moor Inclosure Act of 1765 and Award of 1767.

- 6 The extent of the Award and a typed transcript of the sections relevant Middleton Lane are shown at Documents **0H** and **1B** respectively. Middleton Lane lies within that part of the Award plan called South Moor and designated as “less improvable”. The Award states that ‘we do hereby set out and appoint another public highway sixty foot in breadth ... we shall hereafter refer to and call by the name of Middleton Lane.’ A printed copy of a section of the Award Plan (South Moor) is shown in Document **0A** and a plan overlaying the Award route onto the Definitive Map of Public Rights of Way is shown at Document **1C**.

First Edition Ordnance Survey Maps

- 7 The first Ordnance Survey maps (25” to a mile) for the area crossed by Middleton Lane are dated 1860 and 1864 – due to its length the route crosses a number of OS sheets. These maps identify a route from the unclassified road 32.2 (to the south of Wolsingham) to its junction with the B6278 (Bollihope). This extent is well beyond the boundaries which were the parameters of the Wolsingham Award. It is shown by double pecked lines.
- 8 There is also an additional section at the eastern end of Middleton Lane, not subject to this application but already shown on the List of Streets (register of publicly maintainable highways) and this is numbered 560 on the first edition OS map. This edition of the OS map had a corresponding Book of Reference which records 560 as “Public road, wastes, furze and pond”. These documents are shown in **1D** (points **A** to **B** to **C** to **D** - 2 pages) and Document **1E** respectively.
- 9 It should be noted that the depiction of a route on an OS map cannot per se be used as evidence of the status of a route but is evidence of the physical existence of a route.

Other Maps

- 10 Prior to the mid nineteenth century there was little recognition of Middleton Lane on what would have been widely available maps except for Greenwood’s Map of 1820 (refer to Document **0C** - page 1) which depicted approximately 4800 metres of its eastern end. However, in addition to the OS maps described above the same eastern end of the route, as depicted on Greenwoods, is shown on maps by Weller 1885, Hughes 1886 (which is a reprint of an earlier 1868 map) and by Bartholomew 1892.

- 11 In addition, the lead mining companies operating in the area kept maps and records and a number of maps, believed to have been produced between 1820 and 1850 depict in particular the western section of Middleton Lane.
- 12 The route has become less evident on more modern OS maps and the current 1:10,000 map shows only the existing track at the eastern end for as far as it follows the moor wall (4600m).

Evidence on the ground

- 13 The route crosses heather moorland with underlying sandstone substrata, which is exposed where the tracks exist. The eastern section of the track on the ground generally corresponds to the track indicated on the 1st edition OS map. For approximately 2125 metres, the 1st edition route projected onto the ground lies within these tracks (with another 1075 metres within 2 metres of it). This section mainly follows alongside or close to a drystone wall. This also closely aligns itself, but less so than the OS map, with the Wolsingham Inclosure Award route. At the western end of the route (mainly encompassing the section not subject to enclosure), there is less evidence of a route as it runs directly across the heather moorland. For some of this section it is possible to discern a pathway matching the 1st edition OS, however equally there are parts that are not identifiable on the ground. It should be noted that the route crosses an area that is actively managed as a grouse moor so paths can easily become obscured while different paths may exist at different times as well as new tracks being constructed. It is also considered that the OS mapping accuracy appears to be reduced across the open moor.

Aerial Photography

- 14 Aerial photography from 1940, 2001 and Google Maps(up to date) concur with the 'evidence on the ground' included at 13.

Existing Public Rights of Way

- 15 The route of Middleton Lane also coincides (following an east to west direction) very approximately with the following public rights of way as recorded on the Definitive Map: -

Wolsingham	Public Bridleway no 107	2948 metres of
Wolsingham	Public Footpath no 107	358 metres
Frosterley	Public Footpath no 50	3201 metres
Stanhope	Public Footpath no 59	289 metres
Egglestone	Public Footpath no 47	1577 metres
	Total	8373 metres

It is known that the OS base sheet (1:10,000) onto which these paths were drawn was of a poor quality and depicted little detail of features in an already open landscape. The Definitive Map was drawn freehand onto this OS map which will have inevitably resulted in inaccuracies.

An overlay of the Award routes plotted on an extract of the Rights of Way Definitive Map is shown in Document **1C**.

Objections/comments

- 16 Objections and/or concerns have been lodged by the landowners, Natural England, the Barnard Castle and the Crook groups of the Ramblers' Association and the Allen Valleys Action Group. The proposals are supported by the Trail Riders Fellowship and the Open Spaces Society. Responses received are shown in Document **OL**.

The main thrust of the objections and concerns relate to:

- a) Environmental issues including impact on habitats - Middleton Lane crosses land designated as a Site of Special Scientific Interest (SSSI) which itself is situated within European designated nature conservation sites - the North Pennines Special Protection Area (SPA) and Special Area of Conservation (SAC). Additionally it is stated that to research this modification application constitutes a 'Plan or Project' in relation to the Habitats Directive and would require the consent of Natural England. Also cited is damage to the surface and conflict caused by vehicles.
- b) that the application was not properly 'made' (due to the evidence submitted with the application) under the provisions of paragraph 1 of the Wildlife and Countryside Act 1981 such that any rights for mechanically propelled vehicles would be extinguished.
- c) Disproportionate costs incurred by those involved.

Response

- a) *The determination of a Modification Order application is constrained by the criteria which have been set out in the introduction to this report. Taking into account other considerations would therefore be outside the remit of the Committee. Furthermore, the assertion that the 'Plan or Project' would need the consent of Natural England is not accepted as the Council has consulted with Natural England (response found at Document OL) which has made no such assertion. However, the Council has a policy that the use of byways should be subjected to an environmental impact assessment and measures taken to ensure that use is environmentally sustainable. At present an impact assessment is being carried out with a view to consultation on appropriate management options.*
- b) *As described at paragraph 13-15 of the introduction to this report the advice of Counsel was sought as to whether this and the other applications were properly 'made' in view of the Court of Appeal case described. The advice concluded that the applications did contain adequate material to be considered as 'qualifying' applications.*
- c) *The Council has a statutory duty to consider modification order applications and therefore the costs must be borne by the 'public purse'. There are no provisions available for interested parties to reclaim their costs other than at a public inquiry if a party against*

whom costs are sought is shown to have behaved unreasonably.

Recommendations and Reasons

- 17 For the reasons set out by Counsel in Document **0M** and in particular the conclusions outlined in paragraphs 41 to 47 of that document, it is accepted that the application for this route was properly made in that it contained sufficient material to satisfy the statutory requirements of paragraph 1 of Schedule 14 to the 1981 Act. Therefore any byway status demonstrated by the evidence outlined above is not extinguished by the provisions of Section 67 (1) of the NERC Act.
- 18 The Wolsingham Inclosure Award is considered to be undisputable evidence of the creation of the public highways specified within it. The Wolsingham Inclosure Act of 1765 went through a legal and constitutional process which has the same authority as national legislation. It is notable that the name 'Middleton Lane' would suggest that the Inclosure Commissioners must have envisaged the road continuing to Middleton in Teesdale, though their jurisdiction was contained by the geographic limit of the Award at the Wolsingham Parish Boundary.
- 19 The most significant of the historic map evidence is the OS plans of the 1860's followed by Greenwood's Map of 1820. The OS plans were based on their own surveys and Greenwood's mostly from original survey. The OS maps depict a continuous route, both within the Wolsingham Award and in the area outside it. Due to the depiction of the route where it crosses land in the Wolsingham Award and on the 1st edition OS it is reasonable to conclude that the route of Middleton Lane must have extended beyond the parameters of the Wolsingham Award to the south west to meet the Eggleston to Stanhope Road.
- 20 There is a track on the ground at the eastern end of Middleton Lane and this generally follows both the Inclosure Award and the route shown on the 1st edition OS map. In places it is very wide and appears to have altered through time, probably due to deteriorating ground conditions. It is generally supportive of the evidence provided by the Inclosure Award and later the 1st edition OS maps to indicate a track in this area.
- 21 The depiction of the existing public footpaths and bridleway on the Definitive Map is considered to be of little assistance in determining the exact route of Middleton Lane. The method by which the existing map was produced is described in 15 and is not of sufficient accuracy to be of use in the context of this application.
- 22 To deal with the alignment of Middleton Lane a GIS based mapping exercise has been carried out to overlay the 1st edition OS, Inclosure Award plans and existing public rights of way onto a modern OS map in order to assess whether the routes are one and the same. This is shown at Document **1F** (2 pages). It is accepted that a comparison of maps, particularly the Award and the OS based maps, is a 'best fit' seeing that they have different origins and cannot strictly be a comparison between like and like. However, it should also be understood that the inclosure plans

were created at a time when surveying and drafting methods were well advanced in order for accurate plans to have been made and related to features on the ground. They should be considered as being accurate, as well as the OS plans.

- 23 Using the data from the mapping exercise, there is a slight discrepancy at the western end of the Wolsingham Award route where it joins the 1st edition OS route west of this point. However it is considered that in this case, taking into account the differences in surveying and draughting methods of the OS and award mapping and the open nature of the location, that this route forms a continuous way.
- 24 For the western section of Middleton Lane, where the route is not recorded on an Award, it is considered that the 'best fit' for the continuation of the Middleton Lane is one that follows the 1st edition OS data. As previously mentioned, the OS maps depict a continuous route, both within the geographical area of the Wolsingham Award and beyond. The western end of the Awarded section of Middleton Lane does not join the 1st edition OS line and a minor adjustment of the OS line is necessary to ensure the continuity of the route. .
- 25 In conclusion, on the balance of probabilities, there is sufficient evidence of the dedication of a public byway under Section 32 of the Highways Act 1980 and the requirements of the Wildlife and Countryside Act 1981 Section 53(c)(i) and (ii) have been fulfilled in accordance with the Inclosure and other evidence mentioned above.
- 26 It is recommended that a Modification Order is made to record Middleton Lane as a public byway as per the Wolsingham Inclosure Award at a width of 60 ft (18.29m) (to include the reclassification of those parts of Wolsingham public bridleway and footpath no 107 and Frosterley public footpath no 50 where the Inclosure route and public right of way intersect within the Inclosure width of 60ft (18.29m)), and beyond the western end of the Wolsingham Award to record a public byway of 5 metres width (a width considered appropriate for a Byway) along the route depicted on the 1st edition OS map, subject to a minor adjustment as described at 24, to where the route meets the B6278 and including a reclassification to public byway of Eggleston footpath no 47 where it intersects with this route. This route is as depicted in Document **1F**.