

Highways Committee

DateMonday 13 March 2023Time9.30 amVenueCouncil Chamber, County Hall, Durham

Business

Part A

- 1. Apologies for Absence
- 2. Substitute Members
- 3. Minutes of the Meeting held on 13 January 2023 (Pages 3 8)
- 4. Declarations of Interest, if any
- Definitive Map Modification Application to upgrade Public Footpaths 14 and 15 South Bedburn Parish to Public Bridleway -Joint report of Corporate Director of Neighbourhoods and Climate Change and Corporate Director of Resources (Pages 9 - 60)
- 6. Such other business, as in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration

Helen Lynch Head of Legal and Democratic Services

County Hall Durham 3 March 2023

To: The Members of the Highways Committee

Councillor R Ormerod (Chair) Councillor G Hutchinson (Vice-Chair)

Councillors D Boyes, A Bell, T Duffy, C Kay, K Earley, J Higgins, J Howey, R Manchester, E Mavin, B Moist, D Oliver, E Peeke, I Roberts, K Robson, A Simpson, A Sterling, F Tinsley, M Wilson and D Wood

Contact: Joanne McCall Tel: 03000 269701

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Council Chamber, County Hall, Durham on **Friday 13 January 2023 at 9.30 am**

Present:

Councillor R Ormerod (Chair)

Members of the Committee:

Councillors A Bell, T Duffy, K Earley, J Higgins, J Howey, G Hutchinson (Vice-Chair), E Mavin, E Peeke, K Robson, A Simpson, A Sterling, F Tinsley, M Wilson and D Wood

1 Apologies for Absence

Apologies for absence were received from Councillors C Kay, D Oliver and I Roberts.

2 Substitute Members

There were no substitute members.

3 Minutes

The minutes of the meeting held on 12 December 2022 were confirmed as a correct record and signed by the Chair.

4 Declarations of Interest

Councillor Simpson confirmed that he was the Local Member for the Esh and Witton Gilbert division.

Councillor Sterling advised that whilst she had a firm view on Agenda Item 5 due to her children attending the local schools, she was willing to listen to the debate. C Cuskin, the Senior Lawyer, Regulatory Enforcement Officer confirmed that this was acceptable.

5 Lanchester and Langley Park, Parking and Waiting Restrictions Amendment Order 2023 - Report of the Corporate Director of Regeneration, Economy & Growth

The Committee considered a report of the Corporate Director of Regeneration, Economy and Growth which advised Members of objections received to the consultation concerning changes to the Traffic Regulation Order (TRO) in Lanchester and Langley Park and requested that they considered the objections made during the informal and formal consultation period (for copy see file of minutes).

D Lewin, the Strategic Traffic Manager gave a detailed presentation which included site location plans, aerial photos and photographs of the sites and details for the following restrictions;

- To introduce 'no waiting at any time' and 'restricted waiting (Monday Friday, 8am-4pm)' restrictions to prevent obstructive parking in areas of significant road safety concern. Two objections were received in the formal consultation period.
- To introduce 'no waiting at any time' restrictions on the A691 Durham Road, the A6076 Howden Bank and Bishops Meadow to prevent obstructive parking, particularly at school pick-up and drop-off times, in the area which has caused issues with visibility, access and road safety. Six objections were received in the formal consultation period.

In relation to location two, the Strategic Traffic Manager clarified that seven letters of objection were received in total but two letters were from the same objector.

The Chair advised that although the Local Members were not present at the meeting, they were in full support of the proposals for both locations.

Mr A Hampton addressed the Committee. He confirmed that he was not in objection to the changes to the TRO explaining that his concern was the number of displaced vehicles that would park in St Bede's Court because of the change to the TRO. Although specifically targeting location two, he explained that his comments were equally applicable to location one. He advised that he had lived at St Bede's Court for many years and had witnessed an increased number of vehicles in the last five years waiting on the A691 and the A1076 restricting the traffic flow. He added that school drop-off and pick-up times added to the traffic chaos and whilst he accepted that parking at schools was a County wide issue, he believed that the issues within this area were likely to escalate. He explained that vehicles parking in St Bede's Court stopped the two-way flow of traffic and forced vehicles to drive onto private driveways and gardens to pass and explained that pedestrian access was already limited. The residents of St Bede's Court appreciated that there was not an easy solution to address the issues in the village but as it was highly likely that the proposed changes to the TRO would increase the number of vehicles waiting in St Bede's Court, Mr Hampton requested that the current proposals were extended to include St Bede's Court. He suggested restrictive parking notices were displayed at vehicle eye level which restricted parking Monday to Friday between the hours of

8.30am and 9.30am and 2.30pm and 3.30pm. He stated that relying on Durham Constabulary to enforce illegal parking was not appropriate and noted that it would be beneficial for the Education Authorities, St Bede's Catholic School and Sixth Form and Durham County Council to form a working group to consider sustainable solutions for parking within the village of Lanchester. Mr Hampton thanked the Committee for the opportunity to speak and asked that they gave due consideration to his comments and support an amendment to the TRO to include St Bede's Court.

The Strategic Traffic Manager highlighted that introducing parking restrictions without the use of yellow lines were not legally enforceable. He noted that parking restrictions were introduced to address concerns with road safety and congestion and explained that the issues faced by residents unfortunately did not meet the required justification.

Councillor Sterling explained that the photographs included in the presentation for locations one and two did not reflect the severity of the parking problems within Lanchester. In terms of location one, a high number of parked vehicles restricts the flow of traffic and often stops larger vehicles from passing through. As a result, drivers become irate and at times mount the pavement to pass, endangering pedestrians including many young children. She advised that two large car parks existed within the vicinity, one being the social club car park which parents had been given permission to use. In terms of location two, Councillor Sterling explained that vehicles at school drop-off and pick-up times mount the grass verge and although St Bede's Catholic School and Sixth Form had an excellent traffic management system in place, some parents chose not to use it due to the slight delay of the lane system. Councillor Sterling sympathised with the residents of St Bede's Court and agreed with Mr Hampton that restrictive parking notices, despite not being legally enforceable, would be beneficial. Councillor Sterling stated that the proposed changes to the TRO would make the village safer and reiterated that there were alternative car parks that could be utilised.

Councillor Earley confirmed that he was in support of the proposals. He commended Mr Hampton on his excellent presentation and hoped that Local Members would be able to discuss his concerns further and provide a wider solution.

Councillor Bell confirmed that he supported the proposals but would like further options to be explored to address the concerns expressed by Mr Hampton. He suggested that schools should be encouraged to send letters to parents detailing the car parks available to them, and in the case of St Bede's Catholic School and Sixth Form, to encourage the parking lane system.

Councillor Tinsley highlighted that displacement of vehicles was the key issue and requested officers' views on this issue, particularly with location one as the displaced vehicles would significantly impact upon residential areas. In terms of

location two, Councillor Tinsley confirmed that he was in full support of the proposals but that there was a potential for displaced vehicles to park along the A691 and questioned if this would pose a further danger.

Councillor Ormerod, the Chair, agreed that displaced vehicles were an issue and asked the Strategic Traffic Manager to clarify the options available for St Bede's Court.

The Strategic Traffic Manager clarified that a Traffic Regulation Order is designed to improve traffic flow and/or road safety. The proposals to change the TRO in Lanchester and Langley Park are to address concerns with road safety. In terms of location one, he sympathised with the residents of St Bede's Court but advised that there were no valid reasons to introduce parking restrictions. He advised that white lines could be introduced across driveways but explained that the Police would be responsible for the enforcement of these measures. He accepted that there would be displacement of vehicles into residential areas but explained that if vehicles dispersed, it would dilute the current problem and significantly reduce the number of vehicles parked in a main area for pedestrians. With regards to location two, whilst there was a potential for displaced vehicles, he confirmed that no issues had been raised with Highways. He noted that moving traffic further towards Consett was not preferrable and that this may need to be addressed later but stressed that from a road safety perspective, visibility for children leaving St Bede's Catholic School and Sixth Form and walking towards Lanchester will increase. The Strategic Traffic Manger emphasised that the key issue to be considered by the Committee was road safety.

With regards to location two and the potential of vehicles parking closer towards Consett, Councillor Sterling noted that the A691 was a fast road and some parents parked on the grass verge as it was too dangerous to park on the road, she did not believe the proposals would create any future problems on this road. In terms of location one, she advised that it could be positive if vehicles dispersed as it would naturally enforce vehicles further towards the cricket club where there was a car park available for parents to use.

In terms of the consultation, Councillor Tinsley asked whether officers had consulted with schools regarding the proposed changes to the TRO and asked if data indicating how children travel to and from school was known and whether this had changed over the years.

D Morgan, the Senior Technician clarified that for location one, the schools had been formally consulted and supported the proposals. With regards to location two, he confirmed that the schools had not been part of the consultation.

Mr Hampton highlighted that the concerns expressed by residents at St Bede's Court were not solely in relation to the obstruction of driveways and although this was a nuisance, most people if asked, would agree to move their vehicle. He stressed that safety was a key issue and explained that when two vehicles parked opposite each other in St Bede's Court, it restricted any other vehicle from passing.

Councillor Sterling **moved** the proposals to be endorsed. This was **seconded** by Councillor Howey.

Before proceeding to a vote, the Chair appreciated that Mr Hampton did not have a resolution to his concerns and asked the Strategic Traffic Manager to provide further advice. The Strategic Traffic Manager confirmed that he would request that officers contact the Local Members to address residents' concerns at St Bede's Court.

Councillor Wood was pleased that further discussion was planned with Mr Hampton outside of the meeting and welcomed any measures that could be put in place at St Bede's Court. Councillor Wood believed that local schools should also be involved in the discussion alongside Local Members and the Council as schools have a role in communicating messages to parents. He also noted that if schools could communicate the key issues with their students, this could help strengthen the message to parents.

The Strategic Traffic Manager advised that the Road Safety Team had excellent relationships with the schools and advised that there were campaigns each month regarding road safety. The Strategic Traffic Manager agreed to request additional engagement by the Road Safety Team with the schools in question.

The Chair confirmed that Councillor Sterling had moved the proposals to be endorsed and that this had been seconded by Councillor Howey and confirmed that the concerns expressed by Mr Hampton would be discussed further outside of the meeting.

Resolved

That the proposal, in principle, to amend the Lanchester and Langley Park Parking and Waiting Restrictions Order 2023, with the final decision to be made by the Corporate Director under delegated powers be endorsed.

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Highways Committee

[13th March 2023]

Definitive Map Modification Application to upgrade Public Footpaths 14 and 15 South Bedburn Parish to Public Bridleway



Alan Patrickson, Corporate Director of Neighbourhoods and Climate Change Paul Darby, Corporate Director of Resources

Electoral division(s) affected:

Evenwood.

Purpose of the Report

1 In this report the Highways Committee is asked to consider all the relevant evidence gathered in support of an application to modify the Definitive Map and Statement of Public Rights of Way to change the status of part of Public Footpaths 14 and 15 South Bedburn to Public Bridleway. The route starts at Crake Scar Road on Footpath 14 and runs North - Northeast where it meets Footpath 15. The route continues along the line of Footpath 15 passing Eden Lodge and emerging onto Podgehole Lane (UNC 41/3). (**Document A**).

Executive summary

2 An application was received in 2019 from Ms Barbara Herd on behalf of the British Horse Society to modify the Definitive Map. The application is based on historical documentary evidence, primarily an Inclosure Act of 1758 and subsequent Award of 1760 which describes an historic route that runs east- north-east across Land between Crake Scar Road, and unclassified road (UNC 41/3) Podgehole Lane South Bedburn. The applicant's contention is that this historically documented Public Right of Way has higher public rights than the current recorded status of footpath, those rights being commensurate with Bridleway status and the Definitive Map should be modified to reflect this. The contention is that those rights were established through an Act of Parliament (albeit over 250 years ago), and that these historic rights still exist. 3 A consultation was carried out on the proposed application route in 2019, and 2021; the consultation included landowners, user groups, and the Parish Council. Objections were received from a landowner and a Barrister acting on behalf of the Parish Council, as well as several letters of support from user groups (**Appendix 2**).

Recommendation(s)

Based on the evidence submitted It is recommended that the Committee agrees to make a Definitive Map Modification Order for the upgrade of the route, currently designated Footpath 14 (part of) and Footpath 15, to Public Bridleway, under the provisions of section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, and that the Corporate Director of Resources be informed accordingly. The Order shall subsequently be confirmed or referred to the Secretary of State for determination in the event of objections

Background

- 5 An application was submitted by Ms B. Herd in 2019 which was based on historical documentary evidence, primarily the Parliamentary Inclosure Act (1758) and Award 1760, which seeks to re-establish Bridleway Rights over the application route that runs between Crake Scarr Road, over part of Footpath 14 and thence along Footpath 15 where it emerges onto an unclassified road (UNC 43.1) Podgehole Mill Lane. At present (as noted previously) the route has recorded public rights but only commensurate with footpath status
- 6 The proposed new section of bridleway (upgrade of footpaths) shown circled, (**Document A**).
- 7 Summary of Objections (Full transcription of responses to the consultation contained in Appendix 2).

Documentary Evidence in support of the application

- 8 The 1760 Inclosure Plan and Award Bedburn (Copy Plan produced 1884, Ref. DHC/III /8, Document I) The original plan (1760) is rarely available for consultation due to dilapidated condition
- 9 The earliest known documentary evidence which describes the application route is the 1760 Inclosure Award. The Parliamentary Inclosure Act, Award and Plan is a statutory allotment of land which typically creates or records highways (**Documents G and H**).

- 10 The route is described within the Award text but not shown on the Copy of the Award Plan (1884). However, the applicant was able to view and photograph a relevant section of the original plan which does show a depiction of the route via a dash line that traverses the edges of allotments described in the award text, starting from Crake Scar Road (**Document J**).
- In the Award Text the route is described as starting from lands in the Woodlands Township and running east northeast towards Podgehole Mill Road. The first section of this route lies on the west side of Crake Scar Road, and this is currently recorded as Bridleway number 42 Lynesack and Softley Parish on the Definitive Map. The application route is a continuation of this Bridleway running between Crake Scar Road and Podgehole Mill in the northeast. The Definitive Map Survey book records that the Parish of Lynesack and Softley made reference to the designation of the route as mentioned in the Inclosure Award when determining the section of route through their Parish, which was recorded as Bridleway. However, when the South Bedburn survey was undertaken the Parish made no reference to the Inclosure Award with regard to any routes located there.
- 12 An image of the copy plan has been included (**Document I**) as it shows the points relevant to the routes start, and its destination through the various landowner allotments. The transcription describes the full extent of the original route from what is now UNC 33.5 Windy Bank Road, formerly Woodland Back Pit Lane as recorded in 1950's survey. The Award Text clearly states the use of the route "on foot or on horseback", as well as the width 12ft.
- 13 In the Award Text the application route is described and set out, text is transcribed below:

"Transcription of Award Text, (inserted bold letters identify points on the Inclosure map that show line of route, Document H)

And we do hereby sett out and appoint a way or passage of the breadth of 12 feet as the same is now sett out leading from the Township of Woodland to or towards the said Podshole Mill Road beginning at (**A**) the Northwest comer of the Lands and Grounds hereinbefore allotted to the said Joseph Coates Lessee of the said Trustees of Rivington School and leading thro' over and along the North End thereof and from thence into and along (**B**,) Lands allotted to the said Christopher Parkin lessee of the said Trustees of Rivington School for or in respect of their Copyhold lands in his possession and so thro over and along the first Plot or Parcells of Ground hereinbefore Allotted to the said Henry Coats and ofterwards into and along (C) the third plot of ground hereinbefore allotted to the said Lord Viscount Vane so far as to (**D**) the South West Corner of the Lands first allotted to the said James Best and from thence into and along the said last mentioned allotment of the said James Best then into (E) the said Crake Scar Road and Crossing the said Road into and along the second Plot of ground allotted to the said James Best and by and along (F) the South Corner of the Inclosed Lands belonging to the said William Henderson and from thence into and along (G) the North Side of the lands and Grounds hereinbefore allotted to the said Christopher Parkin and John Stobbs and then into (H) Lands and grounds hereinbefore allotted to the said Michael Garthome for or in respect of his Freehold lands within the Township of Hamsterley and from thence into along (I) the Grounds hereinbefore allotted to the said Thomas Blenkinsop and then to (J) the said Podshole Mill Road for the use of all and all manner of persons whomsoever to pass and repass at all times of the year in thro' and along the said Way on Foot or on Horseback and also to lead and drive all and all manner of Cattle loaden or unloaden in thro over and along the said way as occasion shall require and we do also order and direct that for the convenience of persons passing and repassing along the said way as aforesaid the several owners or occupiers of the said allotments shall from the day of the Date hereof severally and respectively make and erect and forever after uphold and maintain good and sufficient gates in the fences of the said several and respective allotments in such parts of the said way doth lead thro and are now marked and sett out for that purpose

14 First Edition Ordnance Survey Maps (DUL, Sheet XXVI.4)1857 1st Edition OS 1:25: Document K

15 The application route has been annotated with a red line on this first edition map as the majority of the route is not depicted, other paths are also absent on this edition. However, the Ordnance Survey Book of Reference records the presence of the northern section of the route through field plots,734, 733, 739 as an occupation road, road, and pasture and cart road. The line the route takes as highlighted on this edition map mirrors the field boundaries on the Inclosure Plan.

16 Ordnance Survey Book of Reference information Document L.

Ordnance Survey Book of Reference (or Area Books) record acreages of each land parcel as well as land use, on the Ordnance Survey 25" inch to a mile edition maps, produced pursuant to an Act of Parliament as an official survey of England and Wales. The survey's recorded topographical features, basically what surveyor's saw at the time and are not a record of Public Rights. The Ordnance Maps were originally produced under the Board of Ordnance to aid with military movements around the country in case of rebellion or war in the late 1700s. By the early 19th century, the expense of conducting the surveys and subsequent production of revised up to date editions resulted in production of maps that could be sold to the general public. The revenue generated would help fund future revisions/ editions. It is suggested that historic documents, estate maps and plans as well as interviews with locals were used to identify, clarify, and depict, through use of shading, different classifications of highways. However, there are no references that conclusively clarify this.

17 Second Edition Ordnance Survey: 1897 1:25" inch Document M

Unlike the First Edition Map the route (as well as others) is clearly depicted by a dash line which follows the field boundaries in a northeasterly direction, this part of the route is annotated BR (Bridle Road). The route follows the line of current footpaths 14 and 15, two other paths are shown, one running north-south from Kay Lea Farm, and one further east runs south from a junction with footpath 14. The application route passes through West Plantation, there it is clearly depicted as a double dash line, another path detaches from it heading east, this is just to the south of the feature marked Clay (site of a dwelling and probably old clay pit). The north end of the route appears the same as on previous edition map with solid lines on either side and annotated BR.

18 Second Edition Ordnance Survey 1898 1:6" inch Document N

This 6-inch map is a little clearer and detailed than the 25inch depiction of the route (a small section of the map at the southwest was missing). Starting from Crake Scar Road the colliery is clearly shown to the west with the Bridleway (current BW 42) running to the north of it. On the east side the application route starts at the same point as another path heading to Kay Lea, and initially runs southeast for a short stretch, then turns northeast, annotated BR. The double dash line follows the field boundaries, and as previously is crossed by another path running north south and another further east heading south. The route continues to West Plantation passing a spring and 'Clay' feature. The dash line of the path then changes to solid black lines all the way to a Ford, immediately south of Podgehole Mill.

19 Third Edition Ordnance Survey Map, Extracts From 1:25inch Document O 1921 and Document P 1:6inch 1924

This edition map shows the route unchanged as on the previous editions, each end of the route is annotated BR for Bridle Road

20 Whilst the existence of a route depicted on an OS map cannot per se be used as evidence of a routes status it can be used as evidence for the physical existence of a route.

21 First Definitive Map 1952, Ordnance Survey 1:10,560 (Document M)

The first section of the original route as described in the Inclosure Award shown marked in green runs between Woodlands and Crake Scar Road (Bridleway 42). However, the application section between Crake Scarr Road and Podgehole Mill Road is shown in purple denoting footpath status. There is no evidence in the original survey documents as to why Footpaths14 and 15 were recorded as such. However, the section BW 42 is in the Lynesack and Softley Parish and the original survey from there clearly states that the Inclosure Award was consulted when it was given its status.

22 Ordnance Survey 1976 and Extract from Coal Authority Map (Document O)

This map shows part of the landscape around the route was subject to open cast mining; only the eastern section of the route is depicted on this edition. No evidence has been found regarding any temporary closure or stopping up. However, the fact that paths are recorded on today's Definitive Map shows they could not have been subject to stopping up order, as Footpath14 and15 were reinstated.

23 Aerial View of Route Showing Current Rights of Way (Documents S, T, U)

24 Photographs enroute from the entrance way to Eden Lodge through fields to Crake Scar Lane.

Assessment of the evidence

- 25 The County Council, as Surveying Authority, has to make a decision in accordance with the case law and relevant legislation, in particular the provisions of the 1981 Act and the Human Rights Act 1998.
- 26 The only considerations that the Council can take account of are those that relate to whether the alleged public right of way is reasonably alleged to subsist. It would be unlawful to consider issues such as the suitability or desirability of the routes subject of the application
- 32 The Parish Council, represented by Barrister Nicola Allan, have argued that the application should be dismissed on the basis that it does not meet the legal test, specifically section 53 (3)(c)(ii) of the 1981 Highways Act, that discovery by the authority of evidence(ii) i.e. that a highway shown on the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.

- 33 Their argument is that the at the time when the Parish survey was conducted, the Parish Council were already aware of the Inclosure Act and Award, therefore evidence submitted by the applicant is not new and therefore cannot now be considered. However, we strongly dispute this assertion as it is quite clear from the actual Survey book, from the initial 1949 survey (prior to production of the first Definitive Map1952) that the surveyors and Parish Council made no reference whatsoever to the historic Inclosure Award. If they had, it would surely have been referenced in the accompanying survey notes, as was the case in neighbouring Parish Lynesack and Softley. The notes however show that the only occasional reference they did make use of was the Ordnance Survey Map (See Appendix 3 for further response to objection).
- 34 The submitted evidence has been reviewed and the most significant evidence is the 1760 Inclosure Award (**Document D**) The document demonstrates that the intention was the route be designated for use on Foot or Horseback with Cattle loaden or un-loaden. Because of the described use of this way it is concluded that on the balance of probabilities a Public Right of Way with at Bridleway rights is reasonably alleged to subsist between the junction with Crake Scarr Road and footpath 14, following the current line of footpaths 14 and 15 to meet unclassified road 43.1 (Podgehole Mill Road). No evidence to counter that has been discovered.

Legal Framework

- 35 Under the provisions of Section 53 of the Wildlife and Countryside Act 1981, the County Council as Surveying Authority has a duty to keep the Definitive Map and Statement under review and is required to make a Modification Order under Section **53** (3)(c)(ii) on the discovery by the authority of evidence which when considered with all other relevant evidence available to them shows that a right of way which is not shown in the Map and Statement subsists, or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this part applies.
- 36 The evidence in this case is documentary evidence provided by the applicant Mrs B. Herd (who researches on behalf of the British Horse Society) and is based on advice contained in the book Rights of Way: restoring the Record by Sarah Bucks and Phil Wadey and the County Council's guidance document Applying for a Definitive Map Modification Order.
- 37 Section 32 of the Highways Act 1980 deals with the consideration of documentary evidence when determining whether a highway has been dedicated. It allows for any maps, plans or history of a locality or other

relevant document to be tendered in evidence and for appropriate weight to be placed on the document including the antiquity of the document, the status of the person by whom and the purpose for which it was created and the source from which it has been stored and produced.

- 38 Once a highway comes into existence, it can only cease to be a highway in certain circumstances, such as by way of a formal stopping up procedure. The fact that the highway may have fallen into disrepair and/or disuse has no impact upon its status as highway.
- 39 The Human Rights Act is of relevance. Whilst article 1 to the first protocol (peaceful enjoyment of property) and article 8 (right to respect for family, private life and home) are engaged, it is important to note that these rights are qualified, not absolute, which means that they can be interfered with in so far as such interference is in accordance with domestic law and is necessary in a democratic society for the protection of the rights and freedoms of others. It is considered that any interference occasioned by the making of a Modification Order is both in accordance with domestic law (the Wildlife and Countryside Act 1981) and is in the public interest as it is necessary in a democratic society for the protection of the rights and freedoms of others, namely the public who wish to use the way.
 - 40 Should Members resolve in principle that a Modification Order be made in accordance with the above legislation, this is merely the start of the legal process. Once a Modification Order is made, it must be publicised, and the owners will have an opportunity to formally object to it. Should objections be received, the Modification Order would have to be referred to the Secretary of State who would usually hold a Public Inquiry before deciding upon whether or not to confirm the Modification Order.

Conclusion

41 On the basis of all the available evidence presented, Footpaths 14 (in part) and 15 are a continuation of an historic route which was originally created with Bridleway rights, there is no evidence that these rights were never extinguished and therefore still exist. It is therefore concluded that on the basis of the evidence Footpaths 14 (in part) and 15 should be upgraded to Bridleway status and a Definitive Map Modification Order should be made to achieve this.

Background papers

None

Other useful documents

Appendix 2 Documentary Evidence

Appendix 3 Response to Consultation and Barrister Objections

Appendix 4 Copy of Historical South Bedburn Parish Minutes

Author

[Dagmar Richardson]

Tel: 07768107032

Appendix 1: Implications

Legal Implications

Text.

Finance

Text.

Consultation

Text.

Equality and Diversity / Public Sector Equality Duty

Text.

Climate Change

N/A

Human Rights

Text.

Crime and Disorder

Text.

Staffing

Text.

Accommodation

N/A

Risk

Text.

Procurement

N/A

Appendix 2 Evidence

Appendix 3: Response to Consultation

Document 2

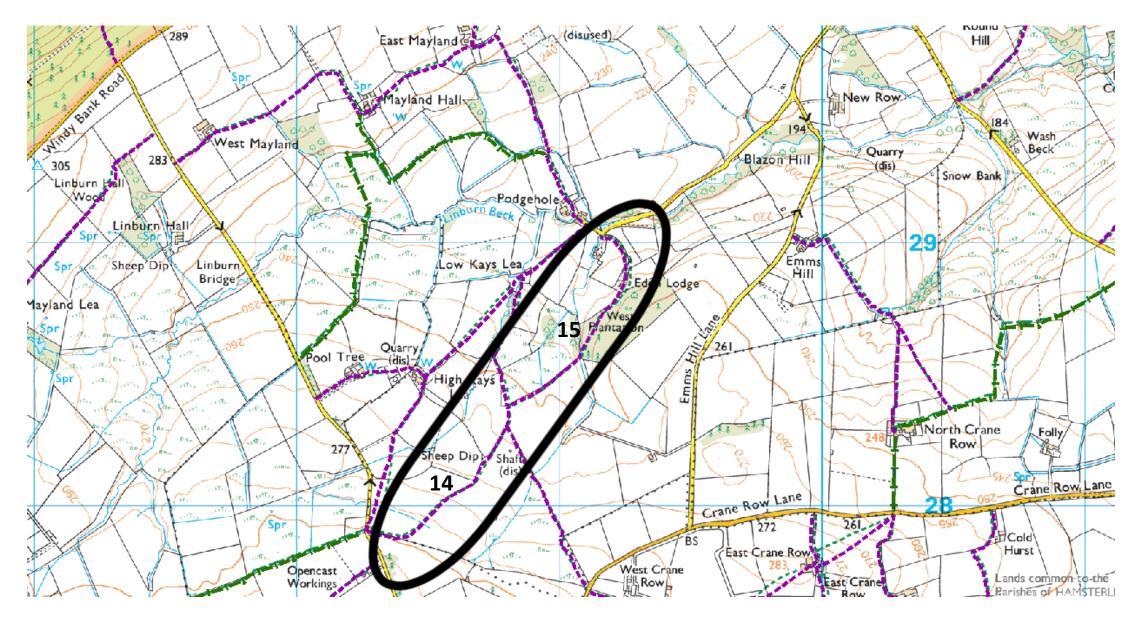
Definitive Map Application Evidence Eden Lodge South Bedburn



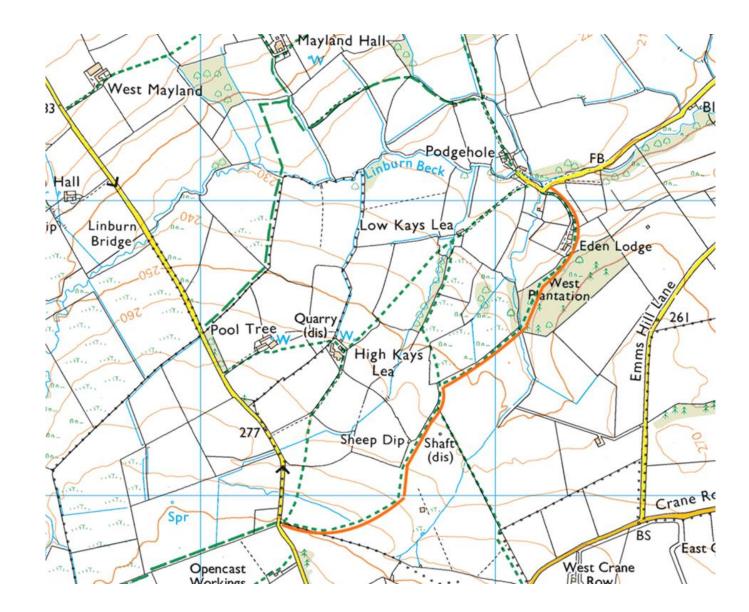
Page 21

Altogether better

Document A: Location of Route Footpaths 14, 15 (circled Black), and other Rights of Way

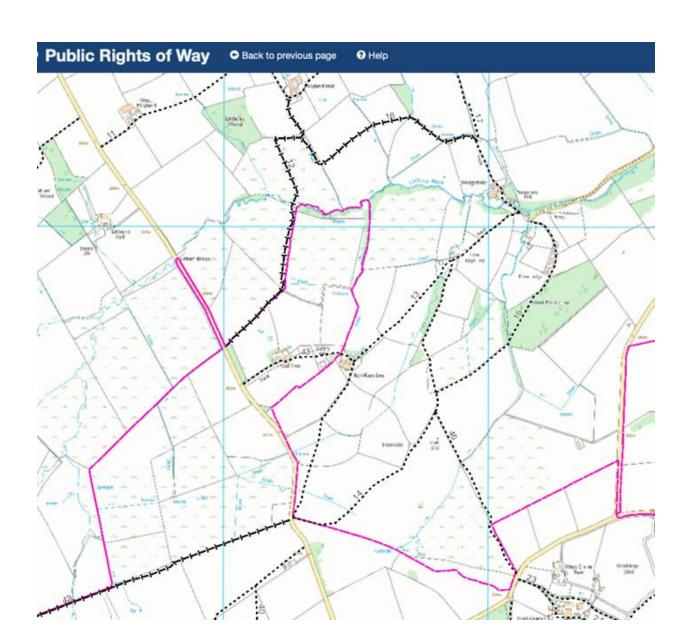


Document B: Route Shown in Orange



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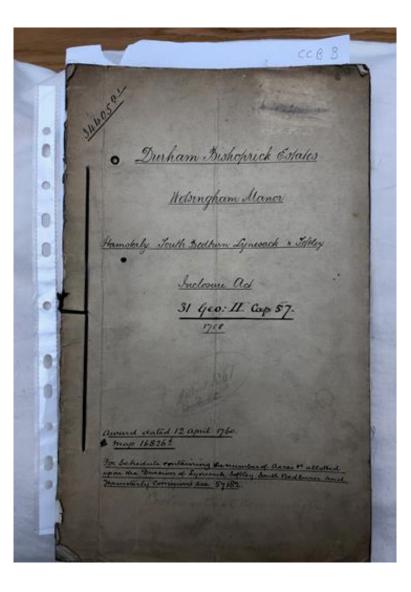
Document C: Extract from Definitive map Shows Right of Way





Document D: Application Route shown on Right, Bridleway 42 on the left

Document E: Evidence Applicant viewed Original Copy of Inclosure Act 1760



31° GEORGII II. by which the said antient Copyhold or Customary Premises are or have been passed, held, or surrendered, and subject to the same Bishop of ne Remedies Fees for the said new Surrenders, Admittances, and Copies of the tent charged same to which the said antient Copyhold Inclosures are subject; and that such Allotments shall be demised and demiseable in such o be allotted Manner, and be subject to such Suit of Court, Duties, Services, d Tenements and Customs as the same antient Copyhold or Customary Lands or Predecessors Tenements are now held or enjoyed and demised respectively; and e intitled to. shall be also subject to, and charged with, the said Rent of Fourharged upon pence an Acre to the said Lord Bishop and his Successors, and the Lands and said Remedies and Powers herein given and provided for securing in case the the same; and shall also be subject to the Payment to the Lord of the said Manor of a Fine of Fourpence per Acre for every Acre of such Allotments upon every Admission upon the Death or Alienation of each such Copyhold or Customary Tenant thereof, over and besides the Fines now usually paid in such Cases for the said several antient Copyhold Lands or Tenements. in the said

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And it is hereby further enacted, That when the said Commons shall be so set out and ascertained and allotted by the said Commissioners and their Successors, or any Three or more of them, by such Instrument or Writing as is herein-after mentioned, the several Persons to whom the said Lands and Grounds shall be allotted respectively shall, within Two Years next after the signing and sealing the Instrument in Writing herein-after mentioned, at their own Expence respectively, inclose, hedge, ditch, and fence their several Lots, Shares, and Proportions of the same in such Manner as the said Commissioners and their Successors, or any Three or more of them, shall direct and appoint:

Provided, nevertheless, that convenient Gaps or Openings shall be left in the said Fences and Inclosures for the Space of Twelve Calendar Months next ensuing the execution of the said Instrument or Writing for the Passage of all Cattle, Carts, and Carriages in, by, and through the same, unless the several Parties interested shall agree that the same shall be sooner fenced and inclosed.

7

And it is hereby further enacted, That the said Commissioners and their Successors, or any Three or more of them, shall and may ascertain, set out, and appoint public and private Ways, Roads, and Passages in and through the Lands and Grounds so to be inclosed as aforesaid, with the Assize and Breadth thereof, all which public Roads so to be made shall be and contain Forty Feet in Breadth at the least between the Ditches, and shall and may order and direct the same public and private Ways and Roads to be made, maintained, and kept in Repair by such Person or Persons,

Document F: Extract of Inclosure Award Act

And it is hereby further enacted, That the said Commissioners and their Successors, or any Three or more of them, shall and may ascertain, set out, and appoint public and private Ways, Roads, and Passages in and through the Lands and Grounds so to be inclosed as aforesaid, with the Assize and Breadth thereof, all which public Roads so to be made shall be and contain Forty Feet in Breadth at the least between the Ditches, and shall and may order and direct the same public and private Ways and Roads to be made, maintained, and kept in Repair by such Person or Persons, Owners

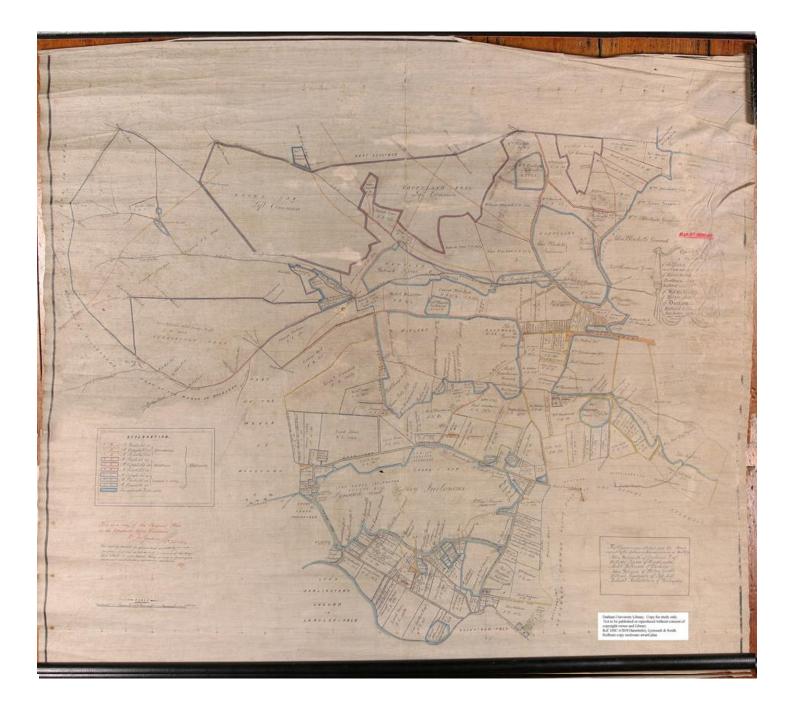
31° GEORGII II.

8

Owners or Occupiers of such Lands so to be divided and inclosed owners or Occupiers of in such Shares and Proportions, and by such Ways and Means, as to the said Commissioners and their Successors, or any Three or more the said commission of them, shall seem proper and expedient: And that it shall not b_e lawful for any Person thereafter to use any Roads or Ways, either public or private, over or along the said new Inclosures, either on Foot or with Horse, Carriage, or Cattle, other than such Roads as shall be so ascertained, set out, and appointed (except the Lord Bishop of Durham and his Successors, and his and their Lessees for the Time being, with respect to such Ways as are hereafter reserved to him and them for the Use of the Mines and Quarries within and under the said Moors or Commons) : And also that the said Commissioners and their Successors, or any Three or more of them, shall and may assign, set out, and appoint proper Drains and Sewers in and through all or any Part of the said Commons or Moors, or any of them, for the draining and improving the same, and order and direct such Drains and Sewers to be cast, made, and repaired by such Person or Persons, Owners or Occupiers of the Grounds so to be allotted and set out as aforesaid, and in such Manner and Form as to them shall seem meet:

Provided always, That the said several Proprietors of the new Inclosures intended to be made pursuant to this Act shall have full Liberty, for the Term of Ten Years from the Time of the Execution of the said Instrument or Writing, to erect or set up any Gate or Gates in or cross any Part of the said Roads, against his, her, or their own Land, for keeping out Sheep and Cattle, and to prevent their destroying any Banks, Woods, Plants, Quicksets, and Fences which shall be made or planted for inclosing or fencing any Part or Parcel of the said Commons or Moors intended by this Act to be inclosed.

Document G:Inclosure Plan Copy Plan made 1884, Original is in a Dilapidated Condition



Document H: Image of Original Award Text (Transcribed in Report par. 13).

of Willand to exteriories the said Porfeolo dial trow beginning at the Stor Riverst Como of the Laws at & Grounds low into fore allotted to heraid Joseph Cates Sofree of theraid Frustees of Divington tolicof and loading this' over and along the Desthe los there of and from house into and then of the Sands alloted to herand Chinistopher Bartin Sofier of the sais Frusteen of Privington School for or in raches of their Copy lack Sources in his popoloin in -This overand along this first Blok or parcels of Ground horsin bofors allot to the and storing-Coats and after wards into and along the Hird Blott of fromis horomboforo allehod to thegen Soid Beaut Vand porfan asto the South loost Cornor of the Lands foist allotes to the said James Bost and four thonco into and along the said last montioned allohmout of the Jaid James Bost these into thesaid Braho Jean 2400) and Proping Resaid Stonomer and along the socond Plat of iround allotted to thesaid James 13 bit ate by and along the -South Conior of the Inclosed Shinds bolonging to the said to illian How erson and thence into and along the Storthiside of the Saids and Ground's howing fore alloto to kiesaid william Aund or son and afterwards into the Lands and grounds boromboforo allo hoo to the said Christopher Partin and Iden Stoller and these into the Laws and gromas here into tore Allotooto thesais Herichael Garherne for or in respect of his Freehold Said, within the -Foundhile of Haustorly and four hours into and along the Laws and ground & horois bofor Allowed to Ruesoid Fluences Blonbuisdo and Rion to Riosaid Possilo Drid 2000 forthe live of all and all manner of porsons whomsower to pake and ropals at all times in the year in this and along this said long on Fast or on Tronsbadi and alo to load and Drive all and all manuer of lattle Loadon or unkerson in this over and along the saw bay as -Occasion shall require all was abo order and direct that for the Convolucions of persons palsing and ropalsing along thesaid long as aforesaid these overall owners or orempions of thesian allotimo uts shall from the day of the Date horsof soo crally and respectively make and brost and for over lifter ublioto and maintain good and Sufficient Gatis in the Forces of the said severall wie respective allotunouts in such parts thereof as the said way doll love this and are now marked and soft out for that purpose all werds Also wordy order and dever that so much of the said way loading from the Found hip of loodland to Sods hole with any this the Leuds allots to thesaid Jofe the bat this sopher Parfin Houry Coats and lord Viscount Vano as aforesaid shall from the Day of the Datolieseof be made and forever after repaired and chaintamed by and at the loop encoof the owners or or or up ions for the time being of these or all allotunents hereinbefore on us alogues and Joh out to hissovorall propriotors for or in respect of their Sands and ~ - Tous wou to within the said Township of Lynsach and Jof they patently and in proportion and according to the yearly Value of their said Several allotunents and that they of shall be severally and respectively Charged and charge able with such repairs and be Oblique and Competiable to 120 pair the Jame by Meason of the Formers of the dands and ~ Grounds horoinbefore respectively ullohed to them all wo do also order and procet ~ What so much more of the said way loading from hisraid Doodland Township to producio Drill which lyof how the dands her sin bofore allo hos to thesaid Jamos bost william

Insuiceson Unistofalor & artin and Solar Stokes and Thomas Oslonhinoop shall from the Day of the Date hours formad our for over after reprined and Maintaness by and at the -. Separico of the one on y securiors for the time beingof the overall allottiments how bofore by is ~ aloguet and sot out for origesport of their Sand sand Sons works within the Township of South -Exotion aborsais habeably in properties and according to the yearly Value of their social address and that they shall socially and fingertively be there and flargeable with such repairs and baobliges and Confectatio to repair theseans by heaven of how ourse of the daw s and Ground show bere respectively alotes to how 24 120 wo de also hearly fur the Order and divert that he drosique of thesaid losy low in ghow Woodland Incusting to Podshola chill aforesaid being Heat sort thereof which luch the The Sand Allohos to the said Drichard Gashons for in respect office troken. Saws whe Trenship of Franstelly shall from the day of the Date hereof bernade and for oronates whines and disintaines by and of the Section to of the burners and prempions for hohine beingof lessocial allotments howin before by us aligned and Soh out fororin respect of their -Lands and Touromouts within the Township of Hamstory a foresaid Rateably in proportion and according to the yearly Value of the sover all allotiments and that they shall sover ally and separticly bo charged and charge alle with such repairs and bo obliged and Compollable to speri hosans by sesone the found of the Saids and grounds line in boors respectively allihoo to Kuan, a Ind wo do also horoby set out apign and appoint alvay or palager of the Boroach of Twolve Foot as thesame is now markes and sot out in this out. and along those parts of thesaid choors and temmons horombofore alloted to the said - -. Thomas D'Houfrinsol and Brichart Garthans loadingtour thesaid Poasholo will front ~ Inthereas to orthwards thesaid 2000 3000 Brow Brow bogining at the said Poasholo will and form house into and thoug the Lands lever bofor alloters to this and Flouras Blouchinsop and them a into the Lands low intofers allotes to herein Dirichast Garkorns fororin resport of live Freshok lands in the Friending of Acustoly and from there into these con pict aparest of ground cover bolore tilloked to thesaid Derichast Gorthorne forerin respect of this Copylich Lands in the souship of South 2300 burn and hours into was Draw Drow aforevait for the 100 of all and all connor of porsons to pals and scopels at all times howeafter in this and along thesaid long on oot oronitors obach and teleo to load and Drive all and all manner of Cattle woodon or ~ low on in the over and lileng thesame and worde also on or and droct that for the convenience all por sono paloing rue ropaloing along thosaid loan usaforosaid thosaid Thomas - - a ha Day of the & ate longet make and repair and for over after chain tain such parts Loning Boad as do lye in and the " then soo rial allottenow to and make and frost and for + after uplot and maintain good and Sufficient Gates in the Louces of their said seconde I respective alletraouts in such paits there of as hissaid long doth load the and are now whowaw sold out for purposes HIZO were alsolwisely sold out along a and appoint away solage offes Broad the of Twelve Treet as thesame is new marked and soft out leading to a 2000 the said frame Broad Store from thesaid Prato Scan 220ad in thes over and along the Saids outly Alletter to thesaid farmes 130st and from themewin to and along the Sand showin before

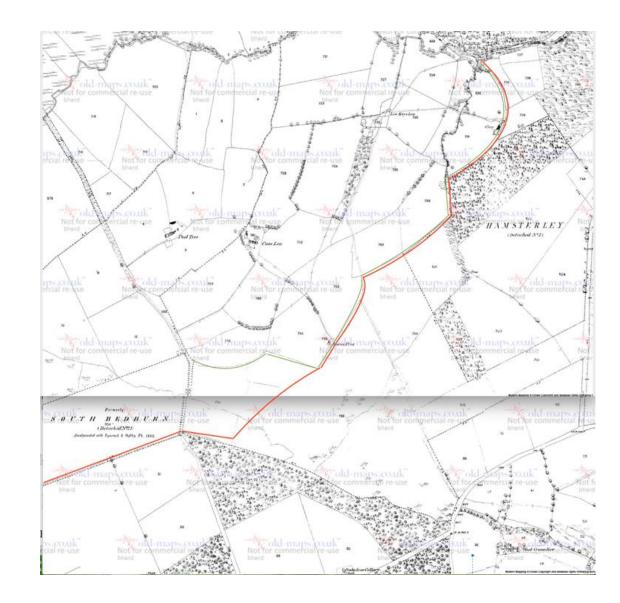
Document I: Extract of Inclosure Plan(1884 copy), Annotated by the Applicant to show the different Allotments named in Award text, through which the route passes from West to East. Application section is E- J





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Document K: Extract Ordnance Survey 1st Edition 1857 (Application route in green , original Historic Route highlighted with red line).



14

PARISH OF HAMSTERLEY.

PARISH OF HAMSTERLEY.

27

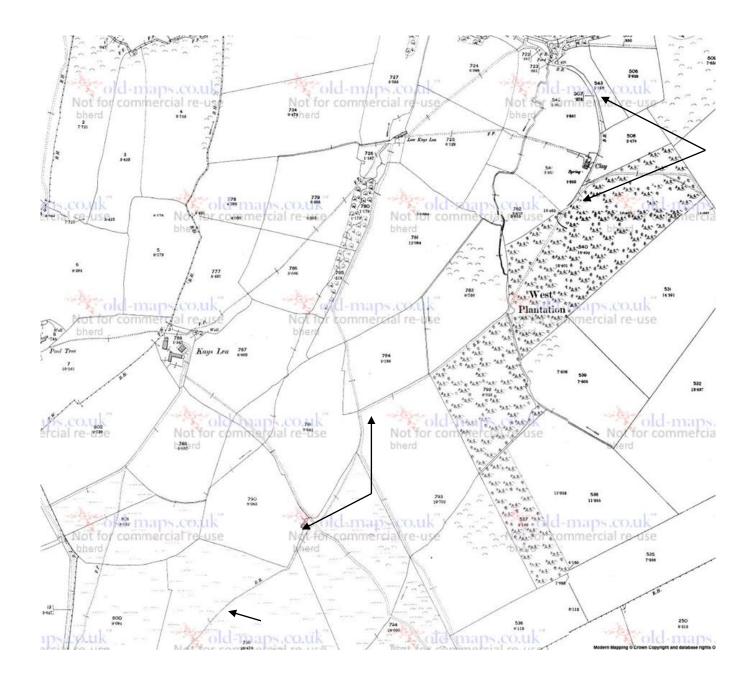
Document L: Extract from the Ordnance Survey Book of Reference

No. en Pfin,		Remarks.	No. 40 Pho.	Area in Acras	Ecourts,
	5137-902	Brought forward.	1	3521-174	Bernstein
QK1	2.762	Arable and trees,	718		Bronght forward.
694	7.746		110	9.858	a second s
691a	-464				Beek, and furze.
100.10		I seeme for embarrown		6-955) Pasture and eart rood
6215	-131	and stream.	720	14-415	Pasture, port of Lin-
		Plantation,			burn Beck, stream,
(X)nG	+369	New Row, houses,	200	11000000	and eart road.
		outhouses, yards,	2 721	11-196	Arable, underwood,
		garden, welk, and	1		island, and part of
	3 30330	enclusates,	£	167/01276	Linburn Deck.
697	1.533	Pasture, cart road,	722	9-473	Arable and stream,
	0.1995	and path,	723	9-590	Arable and streams.
693	+098	Plantation,	724	11-282	Pasture, streams, and
123%a	1-160	Arable and cart road,			
699	-242	Sandstone quarry, un-	725	1-887	petà,
		derwood, and path.	1	1.001	Wood, stream, and
760	3-146	Pasture and path.	726	1.100	path.
701	8-405	Pasture and cart road.		1.167	Low Kays Lea,
702	5-355	Pasture and cart road, Pasture, cart road,	1		bouses, yurds,
102	0.100		6		ruins, streams,
202	11.700	and stream,			cart roads, & path.
703	14-503	Pasture, path, trees,	727	4-971	Arable & underwood.
		furze, stream, and	7:28	5-984	Pasture, path, and
		Meps,			aniderwood,
704	5.076	Pasture and eart road.	720	6.129	Pasture and paths,
705	55-622	Moor, cart road,	730	12-1:0	Arable, underwood,
		rush beds, marsh,			and cart road.
		stream, and old	731	7.459	Parture, stream, and
1.000	10000000	gravel pit.	1		path.
706	192-862	Moor, wood, trees,	752	5.736	Pasture, path, stream,
		marsh, stream, and			and underwood.
nee-Di		rush locks.	733	-181	
707	18-116	Pastare.	100	101	Clay, houses, yard,
708	6-652	Mayland Hall Planta-		1 I I I	garden, road, plan-
100		tion,	S 1		tation, and enclo-
100	13-423	Pasture and cart road,	724		Fure.
710 1	-171			-297	Road (occupation).
		Lane (occupation) &	735	1-499	Pastare,
711	.012	eart road,	736	-853	Pasture, cart reads,
	-633	Mayland Lea, houses,			treez, furze, strip,
1		outhonses, yards,			and part of stream,
		and gardens.	737	1-119	Parture.
112	5-500	Plantation & streams.	728	2.675	Posture.
713	8-849	Pasture, stream, path,	739	2.478	Pasture and cars road.
		pond, cars road, well,	740	16-239	Kough pastore, furze,
		and gravel pit.			and trees.
14	15-549	Arable (Convent,]	741	9.176	Pasture, plantation,
		site of).			
15	9.179	Pasture and east read.			well, juin, trees,
16	3-072	Pasture, Linburn	742	7-244	and island,
		Beck, and furze.	743		Pastare.
17	2-651	Arable and cart road,		9-014	Arable,
	* 001	Arrow and cars road,	744	1.221	Arable and cart read.
100	321-174	Curried forward.	10	Cast man	
P		Currien persona.	14	291-702	Carried forward.

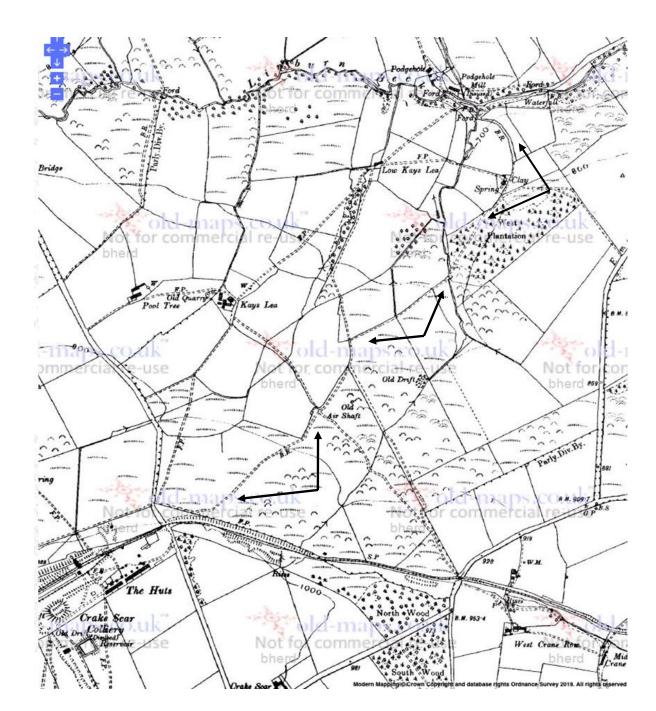
No. 60 Plan.	Area In Acres.	Remarks.	No. 98 Plan,	Area in Aeres,	Remarks.		
501	2309-841	Brought forward. Public road, eart road,	HAMSTERLEY TOWNSHIP (Detached, No. 1).				
001		sandstone quarry, furze, wasie, streams,					
.*	100000	and embankment.	518	8.947	Plantation.		
502	6-642	Public road.	519	7.513	Plantation & stream.		
509a	-290	Public road.	520	20.878	Arable, stream, and		
503	1.635	Public read and furze.	-	0.001	eart road.		
504	7.096	Public road, streams, waste, and furze.	521	8.025	Pasture, furze, stream, and trees.		
505	5.660	Diddridge Lane (pub-	522	4-160	Plantation.		
		lie), streams, furze,	523	11.955	Pasture.		
		wastes, underwood,	524	13-171	Pasture and stream.		
505	1-590	& Diddridge Bridge. Public rond, cart		74-649	Area of Hamsterley		
507	2.947	reads, and trees. Public road, stream,	1		Township (Detached, No. 1).		
308	3-373	and forze. Public read, waste,			0.000		
345		Gerard's Bridge,	5				
		and part of Witton	HAMSTERLEY TOWNSHIP				
		Bridge.	(Detached, No. 2).				
509	- 9-829	Public road and pond.					
510	6-115	Haggerleases Lane	525	5-741	Arable and trees.		
	1212016	(public), waste, and	526	6-021	Amble and east road.		
	1.000	foree.	527	-430	Houses, steps, yards,		
511	-140	Pond.	100	# 3.00	gardes, and space.		
512	-182	Pond.	528 529	5-148 6-830	Pasture. Arable and trees.		
513	10.010	River Wear (part	530	7.631	Arable and trees.		
		of), cart road, and and beds.	531	7+316	Arable and path.		
514	-305	Linburn Beck (pt. of).	532	6-684	Pasture, path, & pond.		
515	+076	Linburn Beck (pt. of).	533	7-652	Arable and shaft.		
416	-198	Mill pond.	534	6-313	Arable.		
417	5-877	Linburn Beck, fords,	535	3-513	Pasture.		
		bridge, weir, cart	536	2-454	Pastare.		
		road, and sand bed.	537	-253	Houses, outhouse,		
		- U.S 3			yard, garden, walk,		
	2389-374				and enclosures.		
		1	538	·022 ·709	Houses. East Butterknowl		
	L		539	.100	Collicry(Jase Pit),		
	RECAT	TTULATION.			coke ovens, house,		
	2302-484	1 Land.			pond, ruin, well, and refuse.		
	64-102	Public roads.	540	-610	Garden,		
6	22-788	Water.	541	-559	Waste,		
			642	.532	Plantation.		
	2389-374	Area of Hamsterley	543	-354	Waste.		
		Township, exclu-	544	+165	Sandstone quarry.		
		sive of the Detached					
	1	parts.		68.937	Carried forward.		

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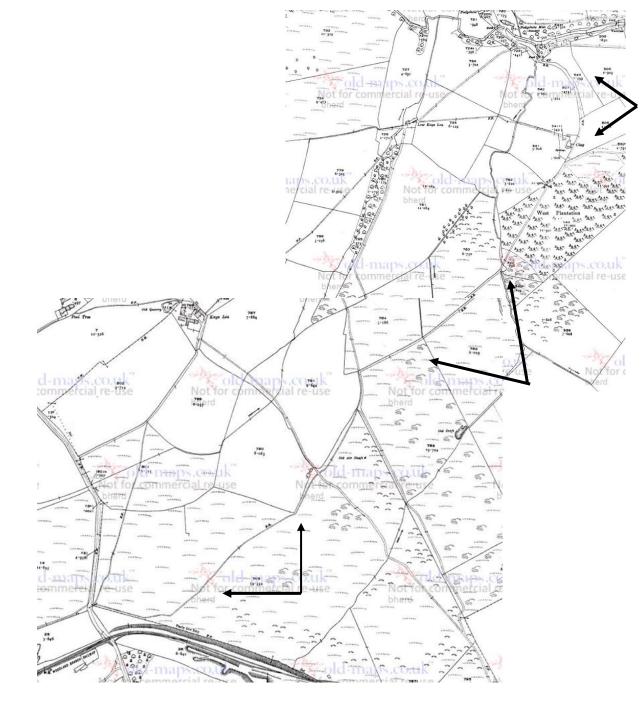
Bocument M: 1897 2nd 1:25inch Edition Ordnance Survey



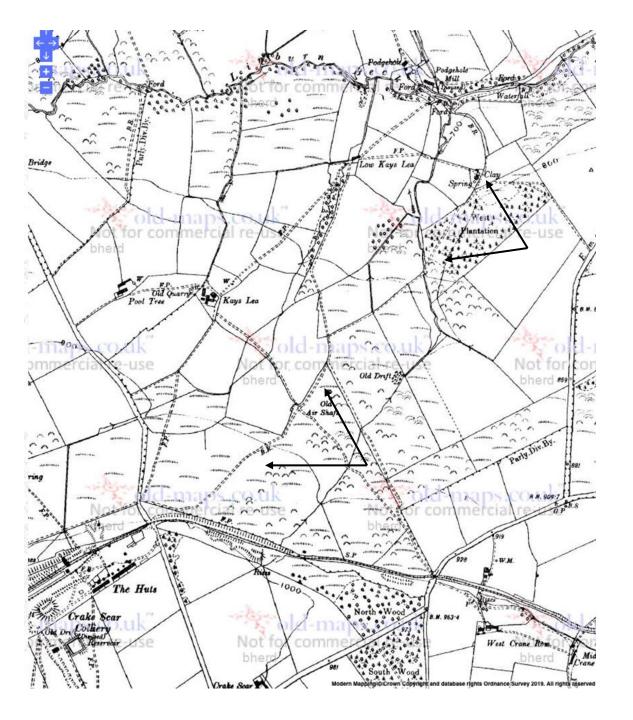
Document N: 1898 1:6 inch Edition Ordnance Survey



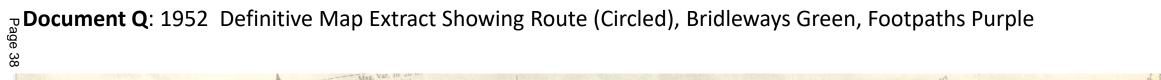
Document O:1921 Extracts From 1:25inch Edition Ordnance Survey Map

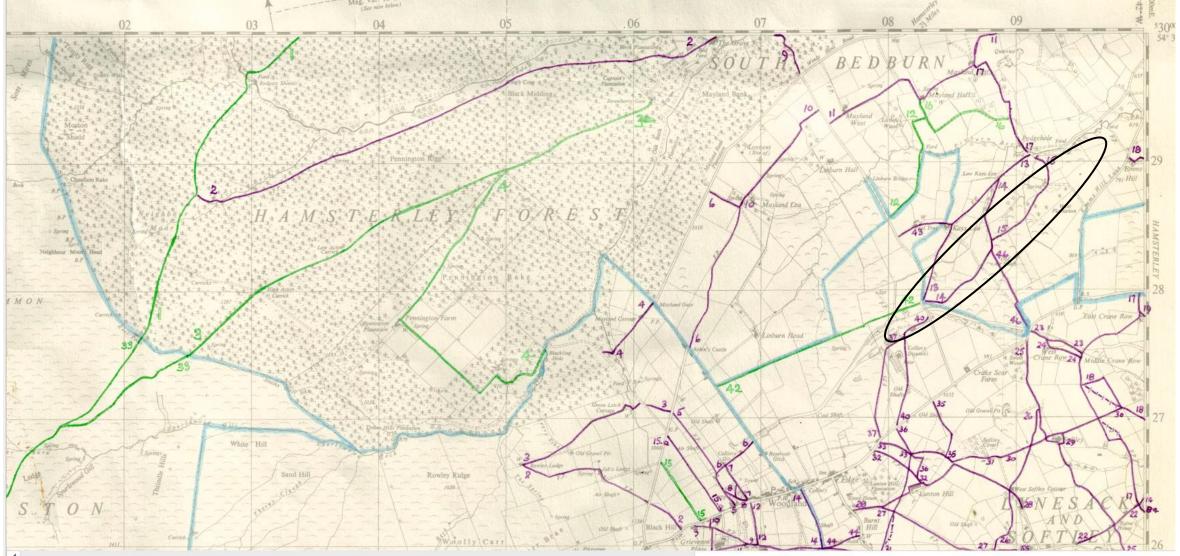


Document P: 1924 1:6inch Edition Ordnance Survey

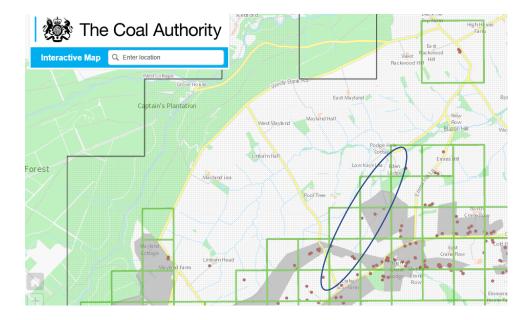


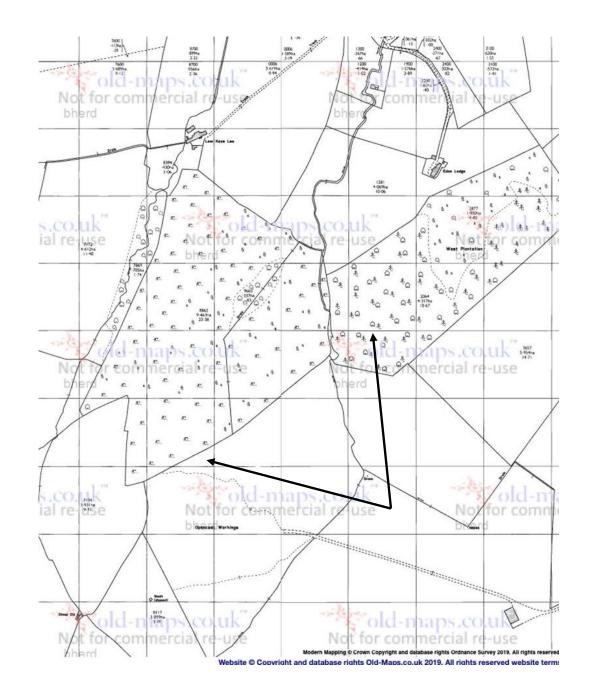
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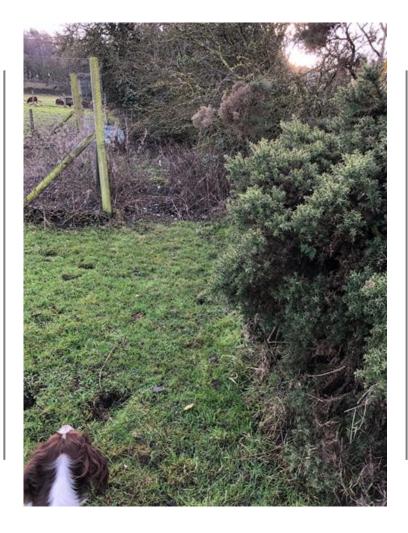


Document R:1976 1:25inch Edition Ordnance Survey Map and extract of Coal Authority Map, grey areas denote land previously affected by surface and opencast mining.











Document T: Route Past Plantation









Appendix 3

Compilation of Consultation Responses objections followed by letter of support

Contact:Josephine Upchurch/Dagmar RichardsonDirect Tel:03000 265 341 / 340Email:Josephine.upchurch@durham.gov.ukDagmar.richardson@durham.gov.ukOur ref:REAL/ST/AROW/JU/6/19/041

18 November 2019

Consultation Letter– Wildlife and Countryside Act 1981 - Proposed Amendment to the Definitive Map of Public Rights of Way Alleged At – Eden Lodge, South Bedburn – 6/19/041

I have received evidence in support of the council making a Modification Order to the Definitive Map and Statement under the provisions of Section 53 of the Wildlife and Countryside Act 1981. The evidence in support of the Right of Way comes from historical documentary research that shows the route as having had such rights since its conception.

Under the provisions of Section 53 of the Wildlife and Countryside Act 1981 the County Council has a duty to keep the Definitive Map and Statement under continuous review and make appropriate modifications by Order.

The Modification Order application is for the upgrade of c.830m of footpath 14 and c.860m of footpath 15 to a Bridleway. Please see the enclosed plan for location details.

I am currently seeking the views of local councillors, the Parish Council, relevant land owners and user organisations and will be pleased to include any comments you may wish to offer regarding the proposed modification to the Highways Committee. A draft report will be composed and will incorporate any views, objections and additional evidence submitted by those in receipt of this consultation. Parties responding to the consultation will receive a copy of the draft report to ensure their representations have been noted accurately.

It is likely that the Highways Committee will not review the claim mentioned above until 2020. However, it would be appreciated that you submit your views, objections or additional evidence within 30 days of receipt of this letter.

Please note that if you do make representations, then by virtue of the Local Government (Access to Information) Act 1985, the County Council may make them available for public inspection. Additionally, they may also be disclosable under the Freedom of Information Act 2000.

If you have any queries or wish to discuss the matter, please do not hesitate to contact me.

Your sincerely

Josephine Upchurch

Definitive Map Officer Public Rights of Way Regeneration & Local Services Durham County Council, County Hall, Durham DH1 5UQ

Main Telephone 03000 260000 www.durham.gov.uk/prow - prow@durham.gov.uk

28 January 2022



Durham County Council Public Rights of Way County Hall Durhham DH1 3HL

Dear Ms Richardson and Ms Upchurch

RE: APPLICATIONS FOR MAP MODIFICATION ORDERS - DURHAM COUNTY COUNCIL

As you are aware I am acting for various landowners and South Bedburn Parish Council in relation to DMMOs in their parish.

My clients understand that the Council has a duty to keep the Definitive Map ("the DM") under review¹ and respond to applications for DMMOs and take no issue with this process. The subject applications are made by the BHS under s.53 and appear to allege mistakes which rely on s.54(c) to modify the DM. In that context my clients wish to be assured that these applications will be dealt with fairly and lawfully and on a proper understanding of the evidence. It should be noted that the purpose of DMMOs is to ascertain what rights exist and not to determine the suitability or desirability of the ways and rights claimed.

It is crucial that the Council as OMA addresses whether the applications have been duly made in terms of Paragraph 1 of Schedule 14 to the 1981 Act and in particular that applications must comply with all of the requirements of this section. The Court of Appeal held in *Winchester*² that the test is whether the application has been "made in accordance" with (all three) of the requirements and not whether the Council is willing to waive the obligation to provide copies of the documentary evidence relied upon. *Winchester* also addresses the point whereby the applicant fails to provide documents because they are unable to obtain them. The Court held (albeit in relation to s.67) that *minor* departures from paragraph 1 will not invalidate an application, applying the *de minimis non curat lex* principle.

It is plain that many of these applications rely on the Inclosure Award and Plans, full legible copies of which do not always accompany the applications. In such circumstances I fail to see how the Council can conclude the applications meet the strict requirements of schedule 14. Further the BHS provides no adequate explanation as to why full legible copies of the documents have not been provided. It is no answer to this fault to assert as Miss Upchurch has done (in correspondence with me in 2019) that the relevant documents can be found in the local library.

Whilst the Palace Green Library provides digital copies of the Inclosure Act and Award this has been closed for much of the consultation period and the fact it has been open only recently does not cure the applicants' failure to provide evidence with the application. It is also the case that the Hamsterley Book of Reference is not available online. The main constraint is the closure of the County Records Office during Covid and its operating from 1 November 2021 for limited periods and by appointment only. The consultation letter for Eden Lodge was received on 15 December 2021 leaving only 3 days to access the facility before it was closed for the Christmas break. It has now been closed permanently without proper notice. This lack of access for those wishing to engage in the DMMO process will be brought to the attention of the Inspector appointed by The Secretary of State to determine the Orders.

The closure of the Records Office means landowners, the PC or other third parties cannot access other documents including Stopping Up Orders, Justice of the Peace Quarter Sessions and County Surveyor records. It is plain that without access to these documents the Council cannot properly assess any of the applications and any objectors will be severely prejudiced. I would therefore ask that the Council check these records as they are the only party with access to them.

It is also the case that the Council in applying s.53(3)(c) are content that new evidence has been discovered and the application is not merely a re-interpretation of evidence previously before the OMA. This approach is consistent with authorities including the Court of Appeal in *Simms and Burrow*³s and *Fowler*⁴. The PC has recently searched their own records (held by the Council) and can submit evidence that the South Bedburn PC was well aware of the Inclosure Awards throughout the 1920s to 1950s and this would have been communicated to the Council when it made the DM.

The PC has copy minutes of correspondence between the PC and the Council from 1950 to 1953 regarding meetings with the County Surveyor and completed maps and forms detailing claimed ways during the making of the DM. I will be making an FOI request to the Council to provide copies of this correspondence and records.

In relation to the Eden Lodge application [041] I would make the following observations. The application does not include a full copy of the Enclosure Act 1758, the Enclosure Plan is illegible, the Award extracts are illegible (albeit some parts are transcribed and these may suffice) and the Hamsterley Book of Reference and the OS maps relied upon are illegible. A barely legible copy was provided by the Council (not the applicant) on 26 January 2022 when the consultation period now closes on 31 January.

Secondly there is no evidence that even if this route was the subject of an award (which is not accepted on the evidence provided) it was accepted and made up as such. Absent this evidence there is no proof of a highway.

Thirdly the route does not appear on any of the County maps including Armstrong (1700), Carey (1809), Greenwood (1818) and Hobson (1840) which is completely ignored in the application. The lack of this route on any County Map casts doubt on the fact it was ever made up. Fourthly it is well established that OS maps only record physical features on the ground and do not distinguish between public and private ways. The surveyors were instructed not to concern themselves with rights of way and not to enquire into them.

Since 1889 the OS disclaimer has stated "The representation on this map of a Road, Track or Footpath is no evidence of the existence of a right of way.

On the 25" series the annotation BR only shows that the surveyor found a path *apparently* used as a bridleway; but the use of such letters does not necessarily mean such ways are public.

³ Simms and Burrows [1991] 2 QB 354 and Purchas LJ at 60, Glidewell LJ at 388 and Russell LJ at 392

⁴ Fowler v SSE & Devon County Council [1992] 64 P&CR 16 at 22

Finally this area was extensively mined in the 20th century and if any right of way did exist it may well have been extinguished to facilitate these operations. I would invite the Council to check its own records in this regard.

The PC would be happy to provide you with its evidence to date, but given the Eden Lodge application is not validly made I would invite the council to dismiss it at this stage and save unnecessary work and expense for all parties. Therefore I would appreciate your position on the preliminary issue of validity.

Should you have any queries or wish to discuss the above them please do not hesitate to contact me.

Yours sincerely



Miss Nicola Allan BA (Hons) Dip Law MRTPI

ENCLOSURES

South Bedburn Parish Minutes 1930s South Bedburn Parish Minutes 1950s

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Points of Objection Raised in the above letter from the Barrister Nicola Allan acting on behalf of South Bedburn Parish Council. The objection is summarised first (pre-fix O) followed by DMMO officer response (pre-fix A).

O1: The Barrister states that the applicant's evidence was not sufficient to meet the required test for an application, which is that full legible copies of the inclosure award were not provided with the applications, and therefore the applications do not comply with the requirements of schedule 14:

A1: Evidence documents which accompanied the application(s) were certainly legible, sufficiently sized and perfectly referenced. The Barrister states that "*It is plain that many of these applications rely on the Inclosure Award and Plans, full legible copies of which do not always accompany the applications*". It is not a necessary requirement to have full copy of an Inclosure Award and Plan with the application, an extract to the relevant section and full reference is all that is required. However, the applicant did indeed include a full copy, and the original documents kept at Palace Green University Library, were checked by me and a colleague when investigating the application.

The Barrister makes this assertion regarding legibility because the copies we sent to her were in PDF format and resolution of PDF is poorer than in Word Document Format, but file size is reduced. The law makes no mention of the quality of evidence copies. I would also expect that anyone objecting would visit repositories of the evidence and view the originals or search for counter evidence.

The Barrister goes on to state that the evidence was not sent (to them) until 26th January 2022, however consulting on this application began in November 2019, and copies of the evidence had previously been sent to the South Bedburn Parish Council for which the Barrister is acting.

O2: Access to documents is the second objection made, the Barrister states "The closure of the Records Office means landowners, the Parish Council or other third parties cannot access other documents including 'Stopping Up Orders, Justice of the Peace Quarter Sessions, and County Surveyor records. She further states "it is plain that without access to these documents the Council cannot properly assess any of the applications and any objectors will be severely prejudiced".

A2: It is important to reiterate that consultation regarding this application first begun in November 2019, when Record Offices and Libraries were open and fully accessible. On 20th January 2020 South Bedburn Parish Council requested a two-month extension to the consultation period. We obliged the Parish by granting an extension until March, but on the March 5th, 2020, they again requested a further extension, it was granted until the end of the month, but obviously Covid Lockdown occurred mid-March.

It is patently clear that neither the Parish nor subsequently the Barrister, made any attempt either to view the original evidence submitted, nor to look for counter evidence when they had several months to do so and whilst relevant offices were open and accessible prior to the Covid lockdown. We strongly feel that sufficient time had been given due to the extension of the consultation period, as the Parish stated they needed the extension to access to Archives and Libraries. Due to the points above the second consultation was intended to last for just over a month running from 15 December 2021 to 31 January 2022, it was unfortunate that the Archives closed on the 23rd of December (which we had not expected). However, it is important to stress remote searches were and are available on request, and that the crucial evidence pertaining to this application was available to view at Palace Green Library which had been fully open and accessible since July 2021.

O3: Third objection states that when the original survey for the first Definitive Map (1950) was undertaken, the Parish were already aware of the Inclosure Act and Award and this would have been communicated to the Council Surveyor', so therefore evidence submitted via the application is not 'new evidence', and on this basis the application should be refused.

"Section 53(3)(c)(i) of Highways Act, where the application seeks a Modification order to record additional rights over a way already shown on the definitive map: The evidence submitted in this case must be new evidence, not evidence that was previously considered when the Definitive Map was drafted. Before making an order, the surveying authority must have discovered evidence which (when considered with all other relevant evidence available to the authority) shows that the additional rights exist. Before confirming the order, the authority or the Secretary of State must be satisfied that the additional rights exist".

A3: The original Parish Survey, which we possess clearly shows that no reference was made to the Inclosure Award with regard to the public's 'rights' over the application route. In fact, no reference was made regarding any of the other routes added to the Definitive Map in that Parish. Therefore, the provisions for use recorded in the Award Book is new evidence. The Parish was invited to come and view the original survey documents and quarter session records to verify this but declined. Whilst the Parishes' own minutes (**Document 3**) do make mention of the Inclosure Award with regard to 'Beating the Bounds' they do not do so with regard to Surveying and recording routes for addition to the Definitive Map. If the Parish were fully aware of the Inclosure Award etc when compiling the Parish Survey of PROW, then they couldn't have failed to come to the conclusion that this route (and others in the Parish) were of bridleway status. The fact that they didn't suggests that they actually had no regard to the Inclosure Award when compiling the survey

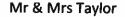
O4: The Barrister states "the route does not appear on any of the County maps including Armstrong (1700), Carey (1809), Greenwood (1818) and Hobson (1840) which is completely ignored in the application. The lack of this route on any County Map casts doubts on the fact it was ever made up. Fourthly it is well established that OS maps only record physical features on the ground and do not distinguish between public and private ways. The surveyors were instructed not to concern themselves with rights of way and not to enquire into them".

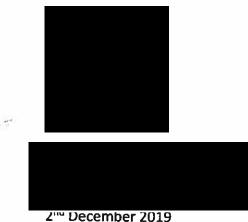
A4: Armstrong's 1700 map predates the Inclosure Act (1758). The fact that the route is not shown on Carey, Greenwood or Hobson mapping is likely because the routes destination at this period was Podgehole Mill, and it wasn't a road suitable for a carriage. The text of the Inclosure Award indicates the reasoning behind the creation/recognition of this route where it states, 'the way is for use of all manner of persons passing and re-passing on foot or on horseback and also to lead and drive all, all manner of cattle loaded and un-loaden". The

primary use of the route was access to and from Podgehole Mill and Podgehole Mill Road (UNC41/3), the routes that predominate the Maps of Greenwood, Cary and Hobson deal more broadly with Turnpikes and Crossroads, these were commercial maps dedicated to the Nobility, Gentry and Clergy, whose subscriptions provided the financing required to undertake a County Survey. In respect of Ordnance Survey Maps, it clearly states in the text of the application report that it is well understood by the applicant and the County Council that Ordnance Survey Maps are not a record of public rights.

Q5: The area was extensively mined during the 20th century and if any right of way did exist it may well have been extinguished to facilitate these operations.

A5: There was certainly open cast operations undertaken in several areas around the application route, however, the route (Footpaths 14, 15) was never extinguished from the Definitive Map, and there are no notes in the accompanying statements to Footpaths 14 and 15 which reference closure due to mining, nor are there any copies of correspondence within the Footpath Folders relating to said closure.





Dear Josephine

Reference Consultation Letter- Wildlife and Countryside Act 1981 – Proposed Amendment to Definitive Map of Public Rights of Way Alleged at – Eden Lodge, South Bedburn – 6/19/041

Further to our telephone conversation on the 2nd December to clarify the consultation process I am now formally making my representation to the consultation.

We have lived at the current address for approximately 30 years and during that period the public footpath that runs through the property, as defined on the map, has been used 6 times.

Whilst living at the farm we have experienced a considerable increase in rural crime with unwanted visitors entering the farm and stealing property. The support of the local police in tackling this issue has been non-existent. One example of theft was an £18,000 caravan stolen during the day. In an attempt to deter unwanted visitors, I have had to resort to locking the farm gates at the entrance and double locking all the farm buildings. Since adopting this strategy, we have had no unwanted visitors or thefts from the farm.

I have worked closely with Peter Crinnion your Public Rights of Way Office to ensure that there is a Public footpath through the farm, this has entailed building styles at my own expense, in order to give full access. Clearly these measures are fine for people on foot. However, if the footpath was to be upgraded to a bridleway it considerably changes the access to the farm, preventing us from locking the gates making the farm open to unwanted visitors, vehicular traffic and significantly increasing the risk of theft of farm equipment and machinery.

Despite my best efforts to make the public footpath accessible once it leaves Eden Lodge and passes into West Plantation the path becomes completely unpassable. The plantation is the

site of an old drift mine which is full of small sink holes and fallen trees and is completely over grown due to years of neglect. It is a health and safety risk and dangerous to use it as a pubic footpath, consequently of the 6 people that are we are aware of, who have attempted to use the footpath, have not entered the plantation but trespassed on my farm land to divert around the plantation. Being a horse rider at no point would I attempt to ride a horse on the proposed bridleway through the plantation, it would be reckless and clearly put the horse and rider in danger of being injured.

As far as I understand Barbara Herd on behalf of the British Horse Society has made the application to upgrade the Public Footpath to a bridleway obviously their research it would seem that it has been carried out as a desk top exercise. If they had walked the public footpath, they would realize by upgrading it to a Bridleway giving access to horse riders would be putting their members and other horse riders at considerable risk. On that basis I am very surprised and disappointed that the British Horse Society are making the application, from my knowledge base it is a totally irresponsible application.

I therefore strongly object to the application on the following grounds: -

- 1. It would significantly expose the farm to potential thefts and trespass.
- 2. The proposed route as a Public Footpath is currently impassable and upgraded to Bridleway would be dangerous and a significant Health and Safety Risk to users and animals.
- 3. The historical documentary research would not have to consider a duty of care. However, the County Council do have a duty of care and they would be failing in that duty of care if the upgrade was granted.

Mours faithfull	v
Paul A Taylor	$\langle \rangle$

If this application proceeds it calls into question the construction of stiles to create a permissive route. I am still prepared to construct the stiles to assist with access for the public footpath by using a permissive route. However, can you provide me with some reassurance that if I carry out the work it will not be in vain.

Can your department please keep me updated on any developments with regard to the application so I have the opportunity to register my objections at future meetings or in relation to correspondence.

Regards

Paul Taylor

Sent from Mail for Windows 10

-----Original Message-----From: Sent: 26 November 2019 18:15 To: Public Rights of Way <prow@durham.gov.uk> Subject: Ref: REAL/ST/AROW/JU/6/19/041

In response to my letter received, dated the 18/11/19 my objections/concerns still stand regarding the proposed alterations.

From speaking to one of your team members earlier in the year, when we received the first letter, I raised my concerns about the proposed route and had a few questions that couldn't really be answered.

The area in question was heavily mined many years ago and has subsequently caused numerous pit falls in the West Plantation, which I personally feel, as a ex horse rider, would be unsuitable for it to be changed to a bridle way.

A couple of questions that I had previously, and would still like a answer to are as follows:

•What evidence have DCC received towards this proposed amendment?

•Who is financing this? ie gates, stiles, paths, fitting and upkeep?

•What happens if a accident occurs on the proposed bridleway? Am I liable?

•Who's accountable for loss, or damage to livestock ie leaving a gate open?

• Does this amendment change anything regarding land registry or any matters regarding DEFRA?

I hope to hear a response from one of your team members soon regarding this matter, any answers to the above questions would be gratefully received.

Kindest regards,

Jackson Forrest

From:	Josephine Upchurch
Sent:	23 December 2019 11:45
То:	ian martin
Cc:	'Dagmar Richardson (dagmar.richardson@durham.gov.uk)'
Subject:	RE: Bridle Way Eden Lodge, South Bedburn

Hi lan

Thank you for your email. Concerns have been raised regarding the current condition of certain sections of the route, however, should the order be confirmed these would likely be assessed and dealt with to ensure the route is suitable and safe for use by those in relation to its legal status. Your objection is noted and will be put on file for future reference and will be incorportated in the draft and final report for the Highways Committee, of which you will receive a copy in due course.

Best wishes for Christmas and the New Year

Josephine Upchurch

Definitive Map Officer Public Rights of Way County Hall Durham DH1 5UQ 03000 265341

www.durham.gov.uk/prow

Original Message	
From: i	
Sent: 20 December 2019 17:00	
To:	>
Subject: Bridle Way Eden Lodge, South Bedburn	

Hello Josephine, In relation to a recent email that I sent on the 12th December regards a proposed Bridle Way in this area I have decided that I must object to the proposal on the grounds that it seems a very difficult area and most likely unsuitable for horses.

Regards, Ian Martin Footpath Officer Barnard Castle Ramblers. From: Sent: To: Cc: Subject:

01 December 2019 11:53 Josephine Upchurch Dagmar Richardson Re: Consultation Letter - Eden Lodge, South Bedburn - 6/19/041 (Our reference REAL/ST/AROW/JU/6/19/041)

The Open Spaces Society has no objection. Jo Bird

From: Josephine Upchurch Sent: Tuesday, November 19, 2019 4:17 PM To: Jo Bird Cc: Dagmar Richardson Subject: Consultation Letter - Eden Lodge, South Bedburn - 6/19/041 (Our reference REAL/ST/AROW/JU/6/19/041)

Dear Jo

Consultation Letter – Wildlife and Countryside Act 1981 - Proposed Amendment to the Definitive Map of Public Rights of Way Alleged At – Eden Lodge, South Bedburn – 6/19/041

I have received evidence in support of the council making a Modification Order to the Definitive Map and Statement under the provisions of Section 53 of the Wildlife and Countryside Act 1981. The evidence in support of the Right of Way comes from historical documentary research that the applicant believes shows the route as having had such rights since its conception.

Under the provisions of Section 53 of the Wildlife and Countryside Act 1981 the County Council has a duty to keep the Definitive Map and Statement under continuous review and make appropriate modifications by Order.

The Modification Order application is for the upgrade of c.830m of footpath 14 and c.860m of footpath 15 to a Bridleway. Please see the attached plan for location details.

I am currently seeking the views of local councillors, the Parish Council, relevant land owners and user organisations and will be pleased to include any comments you may wish to offer regarding the proposed modification to the Highways Committee. It would be appreciated if you could send any reply within 30 days of the date of this email or inform me if you require more time to consider the matter.

Please note that if you do make representations, then by virtue of the Local Government (Access to Information) Act 1985, the County Council may make them available for public inspection. Additionally, they may also be disclosable under the Freedom of Information Act 2000.

If you have any queries or wish to discuss the matter, please do not hesitate to contact me.

Kind regards

Josephine Upchurch Definitive Map Officer Public Rights of Way County Hall Durham

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Patron Her Majesty The Queen

The British Horse Society Abbey Park Stareton Kenilworth Warwickshire CV8 2XZ Email: access@bhs.org Tel: 02476 840515



Fulfilling your passion for horses

To: Josephine Upchurch Definitive Map Officer Public Rights of Way Durham County Council, County Hall, Durham DH1 5UQ

Ref. REAL/ST/AROW/JU/6/19/041

Consultation Letter – Wildlife and Countryside Act 1981 - Proposed Amendment to the Definitive Map of Public Rights of Way Alleged At – Eden Lodge, South Bedburn – 6/19/041

Dear Josie

Response from the British Horse Society

The British Horse Society supports this proposal to upgrade the alleged right of way, part of FP 14 and FP 15 at Eden Lodge to a Bridleway.

This proposal will bring greater safety for those who ride horses and cycles and future generations can also enjoy them.

Regards



Sylvia Briggs British Horse Society Access and Bridleway Officer Durham

On Behalf of 'The British Horse Society' (Durham)

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