



Highways Committee

Date **Wednesday 8 March 2017**
Time **9.30 am**
Venue **Committee Room 2, County Hall, Durham**

Business

Part A

1. Apologies for Absence
2. Substitute Members
3. Minutes of the Meeting held on 12 December 2016 (Pages 3 - 6)
4. Declarations of interest, if any
5. Durham City South East - High Yard/Church Lane - Parking & Waiting Restrictions Order - Report of Corporate Director of Regeneration and Local Services (Pages 7 - 10)
6. Status of Coal and Houselop Lanes, North Moor, Wolsingham - Joint Report of Corporate Director of Regeneration and Local Services and Head of Legal and Democratic Services (Pages 11 - 46)
7. Such other business, as in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration

Colette Longbottom

Head of Legal and Democratic Services

County Hall
Durham
28 February 2017

To: **The Members of the Highways Committee**

Councillor G Bleasdale (Chairman)
Councillor C Kay (Vice-Chairman)

Councillors J Allen, B Armstrong, D Bell, H Bennett, I Geldard,
O Gunn, D Hicks, K Hopper, B Kellett, O Milburn, S Morrison,
R Ormerod, J Robinson, J Rowlandson, P Stradling, F Tinsley,
J Turnbull, M Wilkes and R Young

Contact: Michael Turnbull

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DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Council Chamber, County Hall, Durham on **Monday 12 December 2016 at 9.30 a.m.**

Present:

Councillor G Bleasdale in the Chair

Members of the Committee

Councillors B Armstrong, D Bell, D Hicks, K Hopper, B Kellett, O Milburn, S Morrison, R Ormerod, J Rowlandson, J Turnbull and R Young

Also Present

Councillors J Blakey and M Plews.

1 Apologies for Absence

Apologies for absence were received from Councillors C Kay, J Allen, H Bennett, I Geldard, O Gunn, J Robinson, P Stradling, F Tinsley and M Wilkes.

2 Substitute Members

There were no substitute Members.

3 Declarations of interest

There were no declarations of interest in relation to any items of business on the agenda.

4 Minutes

The minutes of the meeting held on 10 June 2016 were agreed as a correct record and signed by the Chairman.

5 Coxhoe - Parking and Waiting Restrictions Order

The Committee considered a report of the Corporate Director, Regeneration and Economic Development regarding a package of proposals for Coxhoe, devised following a routine review of traffic regulation orders in the area (for copy see file of Minutes).

The Committee were informed that the restrictions were reviewed to ensure that they remained relevant and appropriate. Initial discussions had been held with Coxhoe Parish Council and a number of suggested proposals were drawn up. An initial consultation took place with statutory consultees and directly affected frontages in the area. The overall aim of the proposals was to improve accessibility to local shops and facilities in Coxhoe whilst

also improving access and egress from a number of junctions in the area, whilst rationalising some existing restrictions.

The Committee were then provided with a presentation detailing the location, proposals and photographs of parking issues at Cooperative Terrace (for copy see file of Minutes).

A number of objections were received during the initial consultation, which resulted in a revised set of proposals. The final proposed scheme would see the:

- introduction of 'no waiting at any time' restrictions at the Featherstones / Station Road junction and Rosslyn Mews junction;
- introduction of a disabled badge holders bay and 'no waiting at any time' restrictions outside of Coxhoe Medical Centre;
- introduction of 'no waiting at any time' restrictions on parts of Cooperative Terrace and Church Street;
- removal of limited waiting on parts of Co-Operative Terrace.
- replacement of limited waiting with 'no waiting at any time' on Sanderson Street;
- introduction of a 2 hour time limit on the B6291 Church Street as well as some short lengths of 'no waiting at any time'.

A formal consultation on the final proposed scheme took place. Ten objections were received to the scheme though the informal and formal stages. Following the consultation and given the amount of objections to the proposed limited waiting bays on B6291 Church Street it was decided that this proposal should be removed which reduced the number of objectors from seven to three.

The three unresolved objections were summarised to the Committee. All of the objections related to the Cooperative Terrace area. Two objectors felt that the proposal would result in congestion and residents not being able to park outside of their homes, however, the Strategic Traffic Manager explained that the current restrictions were being abused by motorists. This was resulting in disruption to traffic flow at nearby traffic signals and the proposals would offer more parking availability elsewhere, whilst maintaining traffic flow around the traffic lights.

One objector suggested a two-hour waiting limit be introduced, however, similar to the previous objections, the Strategic Traffic Manager explained that the current restrictions were being abused and the proposed amendment to the time limited restriction on Sanderson Street and the removal of the restriction on Cooperative Terrace would afford greater flexibility to residents and regulate traffic in the area.

Councillor Blakey, one of the local members for the area welcomed the proposals, particularly in relation to Cooperative Terrace. Councillor Blakey explained that many people were parking their vehicles in the area and then using the bus service to go to Newcastle or the MetroCentre. Local businesses were losing trade because customers were unable to park outside or near to the shops.

Councillor Ormerod informed the Committee that he passed through Coxhoe on occasions and felt that it was a fragile situation. Councillor Ormerod felt that the proposals would

work and welcomed them whilst also highlighting the importance of supporting local businesses.

Councillor Turnbull also gave his support for the scheme and felt that the proposals would go a long way to improving the area, whilst also helping local businesses.

Resolved

That the Committee, having considered the objections, recommend to the Corporate Director, Regeneration and Economic Development that the proposal be agreed, with the final decision being made in accordance with the Council's scheme of delegation.

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Highways Committee

8 March 2017



Durham City South East High Yard/Church lane Parking & Waiting Restrictions Order

Report of Ian Thompson Corporate Director Regeneration and Economic Development Councillor Neil Foster, Portfolio Holder for Regeneration and Economic Development

1. Purpose

- 1.1. In accordance with part 3A of the Council's Constitution, Members are asked to make a decision in principle only which will then guide the Corporate Director in the exercise of delegated decision making. The final decision is therefore one for the Corporate Director, under delegated powers.
- 1.2. To advise Members of objections received to the consultation concerning changes to the proposed traffic regulation order in Durham City South East.
- 1.3. To request that members consider the objections made during the consultation period.

2. Background

- 2.1 Following the successful implementation of Civil Parking Enforcement in County Durham which concluded in June 2013, enforcement of all waiting restrictions is now undertaken by the County Council.
- 2.2 The County Council are committed to regularly reviewing traffic regulation orders to ensure that the restrictions held within them are relevant and appropriate.
- 2.3 Initial discussions regarding the existing waiting restrictions within the town were held between the County Council and local councillors in June 2016. This led to an initial consultation exercise being undertaken with statutory consultees and directly affected frontagers. Several objections were received at this time.

- 2.4 The proposed amendments that were consulted on at this point were:
- (i) Introduction of 'no waiting at any time' restrictions on High Yard (the rear of Church Lane).
- 2.5 The overall aim of the proposals is to improve accessibility to the garages to the rear of Church Lane. In addition to this we will be preventing the footways from being obstructed by parked vehicles on both sides of High Yard.
- 2.6 The proposals were advertised formally on site and in the local press between the 15th of December 2016 and 5th of January 2017.
- 2.7 11 objections have been received to the proposed scheme. These objections were received during both the informal and formal consultation periods and have been summarised below.
- 2.8 Councillor David Freeman was consulted on these objections and it was decided to proceed with the introduction of the restrictions.

3 Objection 1/2

Both objectors have been residents for many years and use the lane daily. They do not believe there is any problem in this location.

- The County Council and Local Members continue to receive complaints from other residents and garage users regarding obstruction in this area. It is hoped that the proposed restrictions will provide control to the parking at this location

4 Objection 3

The objector uses Church Lane to park when visiting friends that live in the adjacent flats. They claim that making the lane a 'No Waiting at Any Time' zone would be an inconvenience for them.

- Response – Whilst it may be an inconvenience when visiting friends, it is in the interest of road safety and to prevent unnecessary obstructions that the NWAAT is introduced. Pay and display parking is available on Hallgarth Street as an alternative.

5 Objection 4/5/6/7

Returned the Consultation Response Card stating they are opposed to the scheme.

- Response – No specific reasons were given as to why these residents were opposed.

6 Objection 8/9

Objectors 7 and 8 believe that the current white keep clear markings are sufficient and are happy as it is.

- Response – Whilst the advisory white markings have been successful to a point, obstructive parking still occurs at this location and it has been the generator of several complaints to the Strategic Traffic team and Local Member.

9 Objection 10

‘This would just push people into parking in the resident parking area.’

- Response – Non-residents / visitors would be entitled, as they are at present, to park in any adjacent permit / pay and display zone.

11 Recommendation

It is recommended that the Committee resolve that they are minded to agree to endorse the proposals having considered the objections and proceed with the implementation of the Durham City South East Parking & Waiting Restrictions Order, with the final decision to be made by the Corporate Director under delegated powers.

12 Background Papers

Correspondence and documentation on Traffic Office File and in member’s library.

Contact: Ben Buckley Tel: 03000 262734

Appendix 1: Implications

Finance - LTP Capital

Staffing - Carried out by Strategic Traffic

Risk - Not Applicable

Equality and Diversity - It is considered that there are no Equality and Diversity issues to be addressed.

Accommodation - No impact on staffing

Crime and Disorder - This TRO will allow effective management of traffic to reduce congestion and improve road safety

Human Rights - No impact on human rights

Consultation - Is in accordance with SI:2489

Procurement - Operations, DCC.

Disability Issues - None

Legal Implications: All orders have been advertised by the County Council as highway authority and will be made in accordance with legislative requirements.

Highways Committee



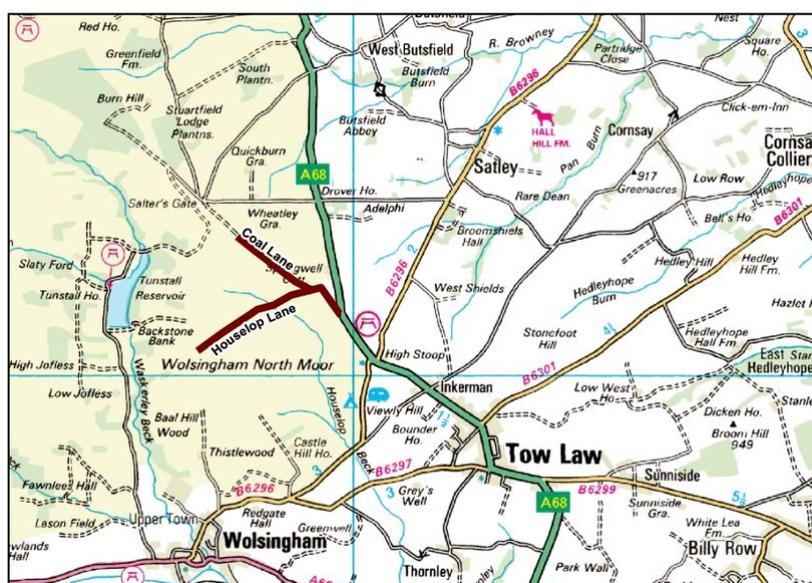
Status of Coal and Houselop Lanes Wolsingham North Moor

Wildlife and Countryside Act 1981 Definitive Map Modification Order application

Joint Report of Ian Thompson, Corporate Director of Regeneration and Local Services and Colette Longbottom, Head of Legal & Democratic Services

Purpose of the Report

- 1 To consider an application to record 2 public byways on the Definitive Map and Statement of Public Rights of Way.



General background

- 2 A number of applications were lodged by a member of the public with the County Council in the 1990s for the registration of public byways in the Weardale area. The 2 routes considered in this report were determined by the Highways Committee on 3 March 2011 when it was decided that the routes should be registered as public byways. In the intervening time several issues have arisen which necessitate a re-consideration of that decision i.e. case law affecting the validity of certain Definitive Map Modification Order applications and a High Court challenge made by the owners of the land affected by 3 of the other routes determined on 3 March 2011. Members may recall that 6 routes were considered in March 2011 but that 1 decision was withdrawn by the Committee on 22 Nov 2011.

However, of these 5 remaining routes previously considered by the Committee, 3 were subject of a successful Judicial Review challenge in June 2013 by the landowner who is not the landowner of the 2 routes subject of this report. Negotiations are ongoing with the landowner of the other 3 routes and consequently they are not under consideration in this report. Whilst the successful JR challenge was not in respect of the 2 routes subject of this report and the previous decisions in respect of them have not been formally quashed, the legal principles established as a result of that challenge are equally applicable to these 2 routes, hence the need to reconsider the previous decisions upon them.

- 3 The application to modify the Definitive Map and Statement is based on evidence of 18th century enclosure and depiction on nineteenth century maps. Submitted with the Application was a negative of the Award plan and copies of the old 'road' maps and Ordnance Survey maps referred to. No copy of the Inclosure Award was however attached. Further information on Inclosure Acts and Awards in County Durham is found in **Document A**.
- 4 Consultees have included the Local Members, Parish Councils, landowners, path user groups and the North Pennines AONB. The only comments lodged were objections by the owners while support has been expressed by the British Horse Society to the registration of such unrecorded routes. These are found at **Document B**.
- 5 It is considered that the Committee should appraise the documentary evidence afresh in order to make new determinations as to the status of each of the 2 routes in the context of a changed legal landscape since the Committee's previous decisions in 2011.

Legal Framework

- 5 Under the provisions of Section 53 of the Wildlife and Countryside Act 1981 (the 1981 Act), 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 on the discovery of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown on the Map and Statement is reasonably alleged to subsist, or that a public right of way already recorded ought to be shown as a highway of a different description (Section 53(c)(i) and (ii)).
- 6 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.
- 7 The application being considered is for public byway status of the 2 routes. Section 66 (1) of the 1981 Act states that a Byway Open to all Traffic 'means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the

purpose for which footpaths and bridleways are so used'. The Countryside and Rights of Way Act 2000 introduced the concept of, a restricted byway over which there is a public right of way as for byways open to all traffic but without the rights for mechanically propelled vehicles. This category of Restricted Byway is relevant in the context of the 2 routes under consideration in this report.

- 8 The Natural Environment and Rural Communities Act 2006, 'the 2006 Act', provides that where a route is not shown on the Definitive Map and Statement as of 2 May 2006 then rights for mechanically propelled vehicles are extinguished other than where a specified exception applies. One of the legislation's aims was to prevent rights for motor vehicles over routes, like those being considered here, being established where they had been created as highways at a time before motor vehicles existed. The application for the 2 routes being considered was made prior to 20 January 2005 and therefore on the face of it meet one of the specified exemptions set out in Section 67(3) of the 2006 Act, namely that an application had been made prior to 20 January 2005 and the Council had made a previous determination.
- 9 However subsequent case law on the exception provisions in the 2006 Act has focussed on whether applications made before the cut off date in 2005 can be considered to have been properly made. If an application was not properly made then it cannot fall within the exception and accordingly, mechanically propelled vehicular rights would be extinguished. In particular, the Court of Appeal in the case of *R (on the application of Winchester College and another) v Hampshire County Council [2008] EWCA Civ 431*. held that an application can only be properly made for the purposes of attracting the exemption in Section 67(3) of the 2006 Act if it complies with all the provisions of paragraph 1 of Schedule 14 to the 1981 Act (i.e. it is made in the prescribed form, accompanied by a map drawn to the prescribed scale and accompanied by the documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application).
- 10 Therefore it is important to decide whether or not the application for the 2 routes under consideration was properly 'made' and meet all the provisions of paragraph 1 of Schedule 14 to the 1981 Act. The effect of Section 67(1) of the 2006 Act means that if a right of way for mechanically propelled vehicles can be established on the documentary evidence presented but the application is not properly 'made', then the application for byway status would fail with the appropriate status being that of restricted byway.
- 11 When the Committee determined on 3 March 2011 to make its decisions to register these routes as byways it considered (with Counsel's advice) that the application was properly made so as to satisfy the Section 67(3) 2006 Act exemption to extinguishment of mechanically propelled vehicular rights. However, since that time, 3 of the other 3 March 2011 routes were the subject of a successful Judicial Review challenge in the High Court by the landowners where it has been accepted that that they were not compliant with all of the requirements of paragraph 1 of Schedule 14 to the 1981 Act.

- 12 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. 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 take into account issues such as the suitability or desirability of the routes subject of the application.

Description of Coal and Houselop Lanes (the 2 routes)

- 13 Coal and Houselop Lanes lead off the A68, just north of High Stoop (north west of Tow Law). Houselop Lane initially heads north westerly before turning south westerly for a total of 2.5km, eventually joining Wolsingham Byway 157 (Hexham Lane). Coal Lane forks off Houselop Lane, starting 650m from the A68 and continuing for 1,45km to Saltersgate Lane (Unclassified road 25.1). Both routes, for the most part, cross open heather moor and are not discernible.
- 14 Both routes are shown in more detail in the plan found at **Document C**.
- 15 The land over which both routes run is privately owned.

Documentary Evidence

- 16 The earliest known documentary evidence of Coal Lane is the 1767 Wolsingham Inclosure Award (North Moor). A route generally corresponding with both lanes is also depicted on various 19th century maps.

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

- 17 The relevant section of the Award plan and a typed transcript of the section relating to the Lanes lies within what is called the North Moor and is shown in **Document D**.
- 18 The Award states that ‘...And we do hereby Order Award Direct and appoint that all the said several Common Public Highways above mentioned and set out and called by the several names of**Henslop Lane, Coal Lane**... And every one of them shall and may from time to time and at all time hereafter be used by all manner of persons passing and repassing either on foot or with horse wains carts carriages and cattle and for all other purpose whatsoever at their free will and pleasure and shall be made and for ever remain of the breadth of sixty feet at the least’.
- 19 **Document D** shows the routes depicted on the Award Plan. Houselop Lane follows A-B-C-E while Coal Lane C-D. **Document E** superimposes the award routes onto a modern Ordnance Survey (OS) map (existing registered public rights of way in the vicinity are also shown).

First Edition Ordnance Survey Maps

- 20 The first Ordnance Survey maps (25" to a mile) for the area crossed by the lanes are dated 1860 and shown at **Document F**. There are a number of routes depicted on this OS map with the Awarded Coal Lane showing more resemblance to what was present in 1860 than Houselop Lane. The 1860s map routes, the Awarded routes are depicted on a modern map at **Document G**, as well as the existing public rights of way.
- 21 Saltersgate Lane (the end point of the northwest end of Coal Lane) is already recorded on the List of Streets (register of publicly maintainable highways). On the 1st edition OS (25") this parcel of land is numbered 13a and the corresponding Book of Reference records it as "Public road".
- 22 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

- 23 Several historic maps illustrate routes generally corresponding with both lanes although the route of Coal Lane is more consistently depicted on a more similar line. The routes are shown on the Greenwood map (1820), which is based on a survey completed in 1818 and 1819. A map by Hobson (1840) mirrors the Greenwood representation of the route of Coal Lane. Greenwood's Map is shown in **Document H**.

Evidence on the ground

- 24 The majority of the routes cross open heather moorland and are not evident as clear tracks on the ground. There are some short sections following worn trackways, moorland edge and some semi improved pasture.
- 25 The first 480 metres starting at the A68 is a 'largely undefined' grass track adjacent to the boundary wall following the 1860 OS route. Along Coal Lane there are some 'sunken trackways' in the heather but these are difficult to locate in the open moorland. Houselop Lane is only evident where it follows a worn pathway along the edge of the moor in the vicinity of Houslop Beck where it overlaps with the existing Wolsingham Footpath 59.

Aerial Photography

- 26 Aerial photography from 1940, 2001 and Google Maps (up to date) are consistent with and illustrate the 'evidence on the ground' at paragraphs 22 to 23 above.

Existing Public Rights of Way

- 27 The routes coincide with Wolsingham Footpath 61 along the first 480m section from the A68 and Houselop Lane overlaps with a 150m stretch of Footpath 59 at Houselop Beck.

Objections

- 28 Objections have been lodged by the owners of the land and found at **Document B**. The main concerns expressed are the damage to the heather and peat, spoiling of the area for the existing users e.g. walkers, the 60' width proposed which in the opinion of the objector amounts effectively to the nationalisation of land by the Council, putting the land's business usage into jeopardy and inevitable costs being incurred by the Council in terms of maintenance.

Officer Response

- 29 *The determination of a Modification Order application is constrained by the criteria which have been set out earlier in the Legal Framework part of this report. A decision cannot be made on the basis of the impact of the proposals or their desirability or suitability. There is little flexibility for the Council when making decisions on Definitive Map Modification Order proposals.*
- 30 *Although the owners will have legitimate concerns the Council can work with the land owners to try and reduce the impacts of usage of these routes on the land concerned. Negotiations have taken place with the owners and the Applicant for more suitable routes which could reduce the impact for the management of the land while providing routes that would be easier to use. However, no agreement has been reached.*

Human Rights Act implications

- 31 *Turning to the objections in the context of the Human Rights Act 1998, 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 considered that any interference 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 routes.*

Recommendations and Reasons

- 32 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.
- 33 In addition to the inclosure evidence, 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. Coal Lane is the clearest of the 2 routes on the old OS maps, depicting the majority of it, whereas the Greenwood map illustrates a route indicative of Coal Lane. Houselop Lane is less evident. The OS maps show a route to the north with a slightly different orientation and Greenwoods similarly. It is possible that the function of the Houselop award route may have been part superseded by the route depicted on the 1st OS; however there is no record indicating any legal change or conclusive physical evidence relating to changes to the orientation of the award route.

- 34 The depiction of the existing public footpaths on the Definitive Map is considered to be of little assistance in determining the exact route of Houselop Lane and is not of sufficient accuracy to be of use in the context of this application. Most of Coal Lane has no resemblance to any recorded public rights of way.
- 35 To review the alignment of both routes 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 G**. It is accepted that a comparison of maps, particularly the Award and the OS based maps, is a 'best fit' given that they have different origins and cannot strictly be a like for like comparison. However, 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. In this case the award plan can be plotted on to modern OS mapping data with very reasonable accuracy. For Coal Lane a significant majority of the route shown on the 1st edition OS map falls entirely within the 60ft width of the Award route (as mapped onto GIS). It is considered that on the balance of probabilities these represent the same route.
- 36 In conclusion, on the balance of probabilities, Officers are of the view that 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 to record a public byway (subject to the operation of the 2006 Act) in accordance with the Enclosure and other evidence mentioned above.
- 37 It is however necessary to assess whether the Application to record the 2 routes as byways contained sufficient material to satisfy the statutory requirements of paragraph 1 of Schedule 14 to the 1981 Act. If so, the motor vehicular element of the byway status demonstrated by the evidence outlined above would not be extinguished by the provisions of Section 67(1) of the 2006 Act. If not, then the 2006 Act would operate to extinguish the motor vehicular rights and the 2 routes would only be capable of being recorded as Restricted Byways. It has already been established by the Judicial Review challenge in the High Court that the applications for the other 3 routes were not compliant with paragraph 1 of Schedule 14 to the 1981 Act. Although these 2 routes were not challenged as part of that Judicial Review (different owner), it is of note that the application was

submitted in the same format without the full documentation relied on. Accordingly, it must be concluded that the application for these 2 routes is not properly made and mechanically propelled vehicular rights have therefore been extinguished. In the circumstances, the 2 routes can only be recorded as restricted byways.

- 38 As the Committee resolutions of 3 March 2011 in respect of these 2 routes were not quashed by the High Court, it will be necessary for the Committee to rescind its previous decisions in order to make new decisions on these 2 routes.

RECOMMENDED RESOLUTION

- 39 It is recommended that Members resolve to:
- i) Rescind the resolutions of the Highways Committee of 3 March 2011 to add Coal Lane and Houselop Lanes to the Definitive Map and Statement as Byways Open to All Traffic and
 - ii) Make a Modification Order to add to the Definitive Map and Statement Coal Lane and Houselop Lanes as restricted byways at a width of 60 ft as depicted 'Award Route' on the plan attached at **Document G**.

Documents attached to the report

Document A	Briefing note regarding Inclosure Awards
Document B	Consultation responses
Document C	Overview plan at 1:25,000
Document D	Wolsingham Award Plan (North Moor) and Award Transcript
Document E	Modern OS map overlaid with Definitive Map and Award Routes
Document F	1860s (1 st edition) Ordnance Survey Plan
Document G	Modern OS map overlaid with Award, 1860 OS and Definitive Map
Document H	Greenwood Map 1820s

Contact:	Audrey Christie	Tel: 03000 265332
	Neil Carter	Tel: 03000 269722

Appendix 1: Implications

Finance

Not Applicable

Staffing

Not Applicable

Risk

Not Applicable

Equality and Diversity

Not Applicable

Accommodation

Not Applicable

Crime and Disorder

Not Applicable

Human Rights

See paragraph 31 of report

Consultation

See paragraph 4 of the report

Procurement

Not applicable

Disability Discrimination Act

Not Applicable

Legal Implications

See paragraphs 5 – 12 of report

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Inclosure (or Enclosure) Awards

Briefing Note

Enclosure is the process by which common land, open arable or wasteland has been bounded by fences, ditches, walls or hedgerows. Whilst enclosure in England has been common place since very early times, two main periods are referred to in historical literature; Firstly, the Tudor and Hanoverian movements (15th to 17th Centuries) and secondly the 'Parliamentary' enclosures of the 18th and 19th centuries. Several methods were used to promote enclosure including informal agreements, orders from Courts of Chancery, agreements enrolled in Manorial Courts, Acts of Parliament and Awards by Commissioners under 19th century Inclosure Acts. In general the means adopted to promote enclosure follow this sequence and all have the effect of the elimination of common rights over a piece of land, with the aim of agricultural improvement.

The procedure for Parliamentary enclosure was that a scheme was promoted, usually by the landowner/Lord of the Manor, which was then submitted as a private Act of Parliament. The resultant Act was enabling legislation establishing the procedural framework for the appointment of Commissioners and Surveyors, the making of an Award, the hearing of objections and appeals and the final implementation of allotting the lands, laying out roads, etc.

The 1801 Inclosure Act prescribed in general legislation many of the provisions normally found in private Inclosure Acts, thereby making private Acts shorter and the inclosure process cheaper. Several other general Inclosure Acts followed to amend the general scheme, notably the Acts of 1836 and 1845. By 1876 views had changed and Parliament effectively called a halt to the enclosure process.

Inclosure Acts before 1801 were all 'custom made' and each Act contained unique provisions for the establishment of public highways. After the 1801 Act all public roads were to be a minimum of 30 feet wide and were to be fenced by the adjoining owners. The Commissioners were required to appoint a surveyor to form and complete the new roads and repair existing roads. Once the roads had been declared by the justices to be fully formed and repaired they became maintainable at public expense.

The use of terms in everyday use now may have had different meanings 200 years ago, and may have been used in different ways in different parts of the country. Where a public (publick) or private way is referred to in an Inclosure Award, it is not safe to assume that the words have their normal meaning today: eg a "private carriage road" may mean a public road for use only by private carriages and the use of the words "public" and "private" may be used to refer to the maintenance liability eg private ways may be public highways

maintainable by the landowners and a public way maintainable by the Parish (ie at public expense).

Enclosures in Durham

In County Durham, 44% of the land can be accounted for by documented enclosures, with 41% unaccounted for whilst 15% remains common land. It is likely that many enclosures between 1550 and 1750 have escaped detection or documentation; nonetheless at least 12% of the total County area was enclosed in this period. Whilst all the enclosures before 1750 were by agreement, most of the enclosures after this time were by Act of Parliament. Enclosures after 1750 are well documented and comprise 17% of the total area of the County. Of the 110,749 acres enclosed all but 5,573 acres were classed as common, moor, fell and waste. These Awards were predominantly in the west and northwest of the County. The single greatest enclosure was of 16,302 acres on Lanchester Fell.

During the period between 1750 and 1870 pastoral agriculture was encouraged by the growth of cattle fairs, but the major agricultural achievements lay in increased grain production. Cereal production was increasing from the early 18th century, but was accentuated between 1750 and 1815 by high cereal prices. The combination of the Napoleonic Wars and accelerating pace of population growth in the late 18th century required more substantial supplies; vast acres in upland west Durham were enclosed and then rented or leased at between four and ten times their former value for cereal production. In his 'General view of agriculture of the County Durham' (1794) J Grainger wrote we find wheat being grown on the 'more improveable' parts of Lanchester Fell that had been enclosed in 1781, with returns of 16 to 18 bushels per acre compared with 24 on 'old enclosed lands'.

References:

Fox, H S A and Butlin R A (1979). Change in the Countryside: Essays on Rural England 1505 – 1900. Institute of British Geographers. (Including: Hodgson R I The Progress of Enclosure in County Durham 1550 – 1870).

Durham County Local History Society (1992). An Historical Atlas of County Durham.

Rackham O (1986). The History of the Countryside.

Owner 1

Ms Audrey Christie
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6 February, 2017

WOLSINGHAM NORTH MOOR- COAL AND HOUSELOP LANES

I write further to your letter of 11 January 2017 in connection with Coal and Houselop Lanes.

Once again, Durham County Council ("DCC") are implementing decisions which are fiercely opposed by the local people who are principally effected. Once again, I register my objection to DCC's proposed course of action in this matter which will result in significant damage to precious heather / peat habitat and spoil the area for its existing users.

I note from the committee report that the proposed routes, once recorded on the Definitive Map will be recorded as being 60 feet wide. This represents a significant area and amounts effectively to the nationalisation of land by DCC. The land will be damaged by those using pedal cycles, horses and/or horse drawn vehicles, Section 56 Notices will inevitably be served on DCC in order for the lanes to be repaired, and DCC will end up wasting yet more taxpayers money on reparations.

Yours sincerely,

Owner 2

Ms Audrey Christie
Senior Rights of Way Officer
Durham County Council
County Hall
Durham DH1 5UQ

6 February, 2017

WOLSINGHAM NORTH MOOR- COAL AND HOUSELOP LANES

I write as the owner of Wolsingham North Moor to object strongly to Durham County Council's ("DCC") proposals in regard to Coal and Houselop Lanes.

This area comprises heather moorland, a precious natural resource, which is used for business purposes and is enjoyed by walkers. DCC's actions put the business usage of this area in jeopardy and will certainly destroy the area for walkers.

DCC's plans effectively amount to the nationalisation of land by a local council, and will result in significant damage being caused to the land in question and will result in costs being incurred by DCC following the inevitable issue of Section 56 Notices.

Once again, DCC is demonstrating that it has no respect for taxpayers money.

From: [Redacted]
Sent: 29 January 2017 23:01 British Horse Society 1
To: Public Rights of Way
Subject: Re: Wolsingham North Moor Inclosure Award routes consultation

Hi Audrey,

I have no further evidence to add to your detailed draft, however I would like to emphasise the need to register all historic routes before 2026.

I hope it all goes well.

[Redacted]
BHS Durham ABO

From: [Redacted]
Sent: 30 January 2017 21:12
To: Public Rights of Way
Subject: Re: Wolsingham North Moor Inclosure Award routes consultation

British Horse Society 2

Dear Audrey

Having read a few of the letters re 'fores and againsts' with interest. I believe a Restricted Byway is the only way forward. The habitat needs to be one consideration also the surface would not hold up to motorised vehicles.

Which I know would end up with the route having to be closed and may indeed end up being closed for the foreseeable future. This certainly would deprive others if they were unable to access this route. Vehicles are so high powered nowadays and the damage is far greater.

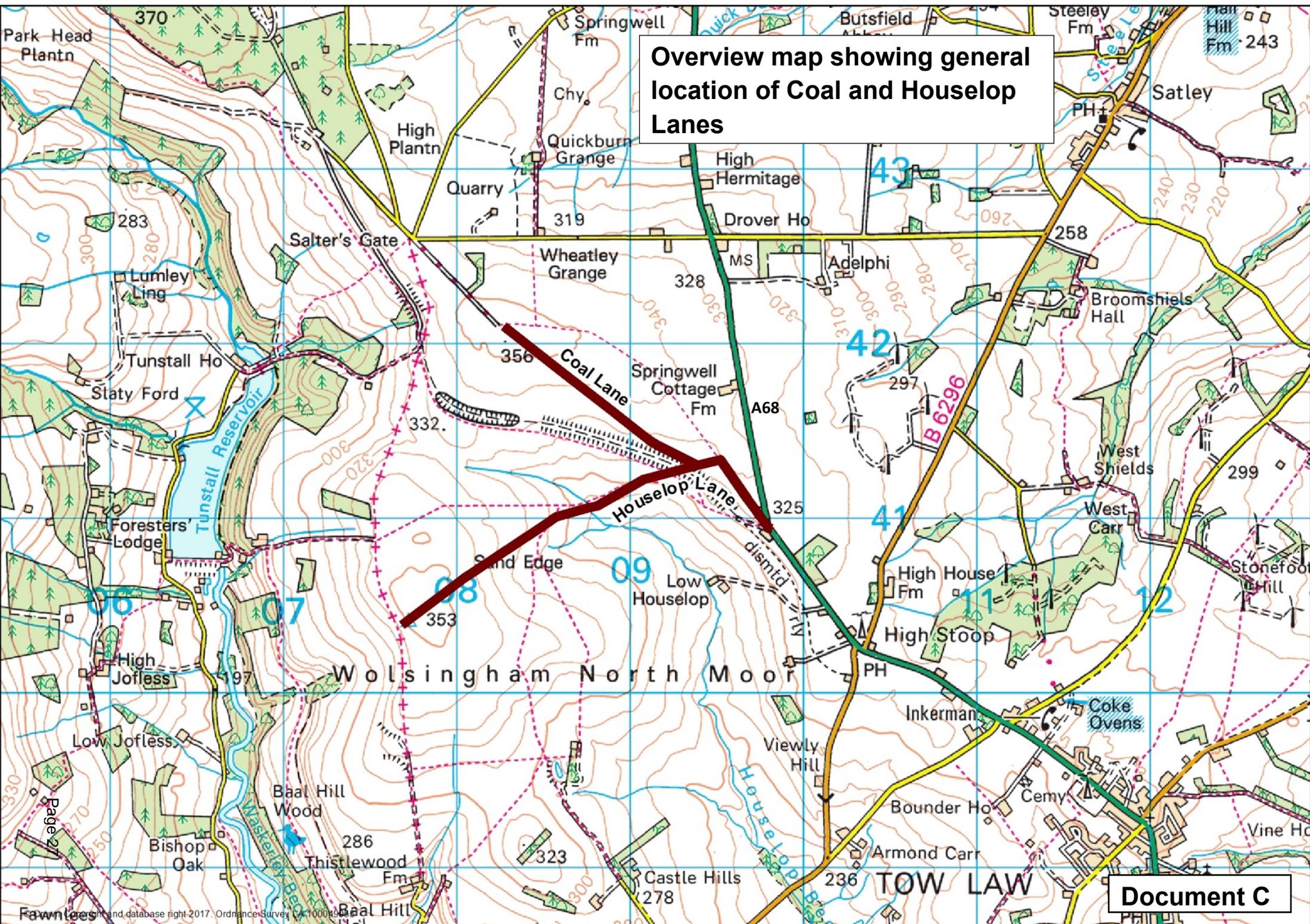
As of this moment I cannot offer anymore historic evidence. We must try and preserve our routes for the future especially as 2026 is looming.

Hope all goes well.

Regards

[Redacted]

Overview map showing general location of Coal and Houselop Lanes



Document C

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Part of the Wolsingham Award Plan illustrating the North Moor.

Document D

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Wolsingham Inclosure Award 1765

The following comprises a transcript of sections of the Act considered relevant to the application.

The Act is sub-titled:-

An ACT For dividing and inclosing certain Moors or Commons, in the Parish of Wolsingham, in the County Palatine of Durham.

Page 2 – records an agreement to divide the land: -

And whereas the said Moors or Commons, in their present State, are of very little Use or Service, and considerable Parts thereof are capable of Cultivation and Improvement: And the said Lord of the said Manor, and the said several Persons intituled to a Right of Common, in, and upon, the said Moors or Commons, have agreed, upon the Conditions hereinafter mentioned, that the said Moors or Commons shall be divided, and allotted unto, and among the several Persons intituled to such Right of Common as aforesaid, which would be of great advantage to all persons interested in the Premises, as it would tend to the Improvement of their several Estates, and would also be of public Utility.

Page 2 – makes provision such that: -

the said several Moors or Commons, shall be divided, set out, and allotted by the Commissioners hereinafter appointed.

Page 6 – It was enacted that: -

after riding the said Boundaries, a true and accurate Survey shall be taken, and one or more Plan or Plans made of the said Moors or Commons, on or before the Twenty-second Day of November, One Thousand Seven Hundred and sixty-five.

Page 14 – (public roads to be set out 60 feet wide to be made, and kept in repair as directed by Commissioners). It was further enacted: -

that the said Commissioners, or any Two of them, shall and may set out, ascertain and appoint, proper Parts of the said Moors or Common, for a common Quarry, or common quarries, common Watering Places for cattle, common Wells, and publick

(...page 15)

Highways, and Roads, in, upon, over and through the said Moors or Commons intended to be divided, which Highways shall not be less than Sixty Feet in Breadth between the Ditches: and also private Ways, Roads and Passages, Sewers, Drains and Water-courses, in, over and through the Grounds so to be inclosed, for the Benefit and Use of the Proprietors, to and from their said several Allotments: and shall order, direct, and appoint the same publick and private Ways, Roads, Passages, Sewers, Drains and Watercourses, to be made, maintained, and kept in Repair, by such Manner and Form, and by such Ways and Means, as to the said Commissioners, or any Two of them, shall seem proper or expedient.

Page 15 – (as soon as allotments, highways etc marked and set out, then draft Award to be prepared with orders and directions for making, laying out and repairing public roads) In order to prevent differences and disputes it was enacted that the Commissioners draw up an Award such: -

that when and as soon as the said Commissioners, or any Two of them, shall have marked and set out, upon the said Moors or Commons, the several Allotments, Highways, common Quarries, common Watering-places, private Ways, and other Matters and Things necessary to complete the said Division, they shall and are hereby required to prepare a Draught of their Award, which shall express and specify the Number of Acres, Roads and Perches, in Statute Measure, contained in the different Plots or Plot, Parcels or Parcel of ground to remain undivided as aforesaid, as well as in every several and respective Allotment, with a Description of the Situation, Buttals and Boundaries of the same, distinguishing the several Tenures thereof as aforesaid, and also the Rent to be paid unto the said Lord Bishop, for and in Respect of every such Allotment, with Orders and Direction for Hedging, Fencing and Ditching thereof, and making, keeping and maintaining, such Hedges, Fences and Ditches, and for making, laying out, and repairing, publick and private Roads, Ways, Passages, Drains, Sewers and Water-courses, in, over, and through the said Moors or Commons, and Allotments.

Page 16 – (Award to be ingrossed and executed): -

And that after settling the said Draught of the said Award as aforesaid, they the said Commissioners shall cause the same to be fairly engrossed upon Parchment, and shall then duly execute the Engorssments thereof, under their Hands and Seals; to which Award there shall be annexed the said Plan or Plans herein before directed to be made of the said Moors or Commons, which shall also be signed by the said Commissioners, and on which the said several Allotments, public and private Roads, Ways, Passages, Sewers and Water courses, and other Matters and Things proper to be described thereon, shall be fairly set-off, marked and expressed.

Page 17 – (Award to be submitted as evidence): -

and that the said Award and Plan or Plans, or the Inrollment of the said Award, or a true Copy of such Inrollment, or of any Part thereof, under the Hand of the said Auditor, or his Deputy, shall be allowed as Evidence in all Courts of Law, and Equity.

Page 17 – (allotments on more improvable land to be accepted within 2 months and enclosed within 12 months, all rights of common over this land then to cease): -

and all and every Person or Persons intituled to any Allotment or Allotments as herein before directed, in the more improveable Parts of the said Moors or Commons, under the said Award shall, and they are hereby required to accept his, her, and their respective Allotments, within the space of Two Calendar Months next after the depositing of the said Award... and also shall, within Twelve Calendar Months next after such depositing of the said Award ... at his, her, and their own Charges respectively, inclose, hedge, ditch, and fence his, her, and their said several Allotments, in such Manner and Form as shall be directed, ordered, and appointed, in and by the said Award.

Anyone refusing to accept and enclose his/her allotment within the stated time: -

shall be totally debarred and excluded from having any Benefit of Advantage by this act; and also from any Estate or Interest, or Right of Common whatever, of, in, or to the Lands or Grounds so allotted to any person or Persons by the said Award.

Page 24 (Commissioners to divide the less improvable Parts of the Commons, and to set off the several Shares by Stakes, and Land Marks) – It was also enacted that: -

after the said Commissioners shall have set off such Part or Parts of the said Moors or Commons, as is or are herein before-mentioned, to remain in their present State, unenclosed, or until the same shall be inclosed, and before they shall make their Award aforesaid, they the said Commissioners ... shall, and they are hereby directed and empowered to set out, ascertain and allot such Part or Parts of the said Moors or Commons to set off, by proper Stakes, Metes and Land marks, unto and amongst the several Persons having Right of Common on the said Moors or Commons ... and with the like Orders and Directions, touching ...Highways, Private Ways, Roads, Passages, Sewers ... as are hereinbefore directed, touching the more improveable Parts of the said Moors or Commons; all which Allotments, Orders and Directions shall be expressed and comprehended in the Award and Plan hereby directed to be expressed, with respect to the more improveable Parts of the said Moors or Commons: (allotments on less improvable land to be accepted and inclosed within 20 years or left as common) And that it shall and may be (page 25) lawful to and for the respective Proprietors of such Allotments, in such less improvable Part or Parts of the said Moors or Commons, to accept and inclose such their respective Allotments therein, or any Part thereof, at any Time ... within Twenty years next after the inrolling and executing of the said Award; such Proprietor ... first giving Notice to the Lord Bishop of Durham ... of their Intention to inclose such Allotment or Allotments, or any Part thereof with a rent of Four Pence an acre to be payable.

Page 25 –

Provided also, that until such Notice shall be given ... and such Allotments shall be respectively inclosed ... the several Allotments which shall remain

unenclosed, shall be deemed and adjudged to be Part or Parts of the said Moors or Commons in their original state, and as such shall be used and enjoyed by the several Persons, intituled to Right of Common thereon (except such as shall have actually inclosed their respective Shares or Allotments).

i.e. the area covered by the Act was split into more and less improvable lands. Within the more improvable area the allotments had to be accepted within 2 months and enclosed within 12 months whereas in the less improvable areas the allottees had 20 years in which to accept and inclose their shares if they so desired. Those allotments not taken up within the less improvable area were to remain as common.

Page 77 –

AND WHEREAS after the riding of the boundaries of the said Moors or Commons as aforesaid a true and accurate survey was taken and a plan made thereof according to the directions in the said Act.

(area of land to be set out as less improveable)

AND WHEREAS the said Commissions did afterwards set off to remain in their present state unenclosed or until the same should be inclosed ...such parts as in their judgement appeared little capable of cultivation or improvement ..., three hundred and forty two acres two roods whereof were afterwards set out for highways and common quarries and the remaining six thousand four hundred and forty three acres three roods and twenty six perches thereof were set out and allotted by the said Commissioners as and for the less improveable parts of the said Moors or Commons as hereinafter is mentioned and awarded concerning the same.

Page 78 – (Inclosures across more improvable parts of the land set out and marked with stakes after 215 acres 1 rood and 38 perches have been set off for Common Lanes and Quarries): -

wherein all Inclosure that had been made for the said Moors and Commons within forty years next after the passing of the said Act are Inclosed, hath been set out and marked with proper stakes meets and land marks into and amongst the several persons having a right of Common on the said Moors or Commons on preparation to their respective rights of common in and upon the same, and also the Highways, Common Quarries, Common Watering places, Private Ways and other matters and things necessary to compleat the said divisions and the said Commissioners did prepare a draught of their Award (page 79) with orders and directions for hedging forming and ditching thereof and making keeping and maintaining such hedges forms and ditches and for the making laying out and repairing public and private roadways passages drains sewers and watercourses in over and through the said Moors or Commons.

AND ALSO having had a due regard to all such matters and things as are fit and proper for our consideration do by virtue and pursuance of the powers authorities and directions given to us given in and by the said Act of Parliament and the said Several Awards of the said Arbitrators making this our Award in writing and concerning the several public highways and other

ways or roads and the several common quarries as well within and upon the more improveable as within and upon the less improveable parts of the said Moors or Commons in manner following (that is to say)

We do hereby Award Order Appoint Ascertain and set out a public highway

There then follows a list of the public highways set out according to their location i.e. North, Park or South Moor: -

And we do hereby set out and appoint another **public highway sixty foot in breadth** through and over another part of the said South Moor or Common as the same hath also been staked out and set out beginning at Hamsterly Common at the east point of lands hereinafter allotted to the said William Hopper for his freehold and from thence leading by the north west to a Lane hereinafter set out and called **Hartop Lane** and so to a Lane hereinafter set out and called Redford Lane and from thence further north westward to a place where the two Lanes hereinafter set out and called by the several names of Sunnyside Lane and North Grain Lane and from thence further north westwards to the said **Middleton Lane** which said last described highway we shall refer to and call by the name of **Pike Stone Lane**.

Page 80

HONSLOP LANE

And we do hereby sett out and appoint another public highway sixty feet in breadth through and over another part of the said North Moor or Common as the same hath also been staked and sett out beginning at Lamb's Cross and from thence leading south west to the north west point of lands hereinafter allotted to the said William Wilkinson and from thence further south west to Honslop Burn and so to the end of Barley Shaw Lane and from thence further south west in a direct Line to end of Castle Hill Lane and from thence to the said Hexham Lane which last described highway we shall hereinafter refer to and call by the name of Honslop Lane

COAL LANE

And we hearby sett out and appoint another public highway sixty feet in breadth through and over another part of the said North Moor or Commons as the same hath also been staked and sett out beginning in the said Honslop Lane at the North East point of lands hereinafter allotted to the said John Greenwell and from thence leading westward to the end of Farmlee Lane and from thence further westward to the end of Hexham Lane which said last described highway we shall hereinafter refer to and call by the name of Coal Lane

Page 85/86 – Width, uses, making up and repair of the allotted common public highways: -

And we do hereby Order Award Direct and appoint that all the said several Common Public Highways above mentioned ascertained and set out and called by the several names of Hexham Lane, Redgate Lane, Durham Lane, Newcastle Lane, **Henslop Lane, Coal Lane**, Cornsay Lane, Fatherly Hill Lane, Tunstall Burn Lane, Park Lane, Hollin Lane, Collier Law Lane, Wear Lane, Middleton Lane, Barnard Castle Lane, Hamsterly Lane, Howleal Lane, Blackburn Lane, Pike Stone Lane, Hartop Lane, Sunnyside Lane, Redford Lane, Blackmoss Lane, Ape Shields Lane, Well Lane, Harophead Lane, Ape Shields Rigg Lane, South Grain Lane, Bollyhope Lane, as the same are hereinbefore severally mentioned and described every of them shall and may from time to time and at all times hereafter be used by all and all manner of persons passing and repassing either on foot or with horses wains carts carriages or cattle and for all other purposes whatsoever at their free will and pleasure and shall be made and for ever remain of the breadth of sixty feet at the least within the ditches and exclusive thereof and that the same shall immediately from the day of the date hereof be made and from time to time forever thereafter set out and allotted to him her and them respectively rateably and in proportion according to the respective yearly values of the said several allotments and that he she they and every of them shall be charged and chargeable with such making and repairs and be obliged and compellable to do the same by reason of the tenure of their respective allotments.

Allotment of Less Improveable Land

Page 193 to page 295 of the Award sets out and allots shares of and in the less improvable parts of the Moors or Commons.

Page 193 – (public highways set out prior to allotments being made): -

WHEREAS we the said Commissioners have hereinbefore sett out the several Common Quarries and publick highways and certain other roads in upon over and through as well the more improveable as the less improveable parts of the said Moors or Commons in such manner as by the said Act is Directed in that behalf no common watering places or common wells sewers drains or watercourses appearing to us to be necessary.

NOW KNOW YE that we the said William Jepson John Dobbinson and Rood Surtees do make this Award touching the Division of the less improveable parts of the said Moors or (page 194) Commons consisting of six thousand four hundred and forty three acres three roods and twenty six perches among the said respective proprietors in manner following (that is to say)

There then follow descriptions of the individual allotments and the second ends with the following paragraph:

Page 295 –

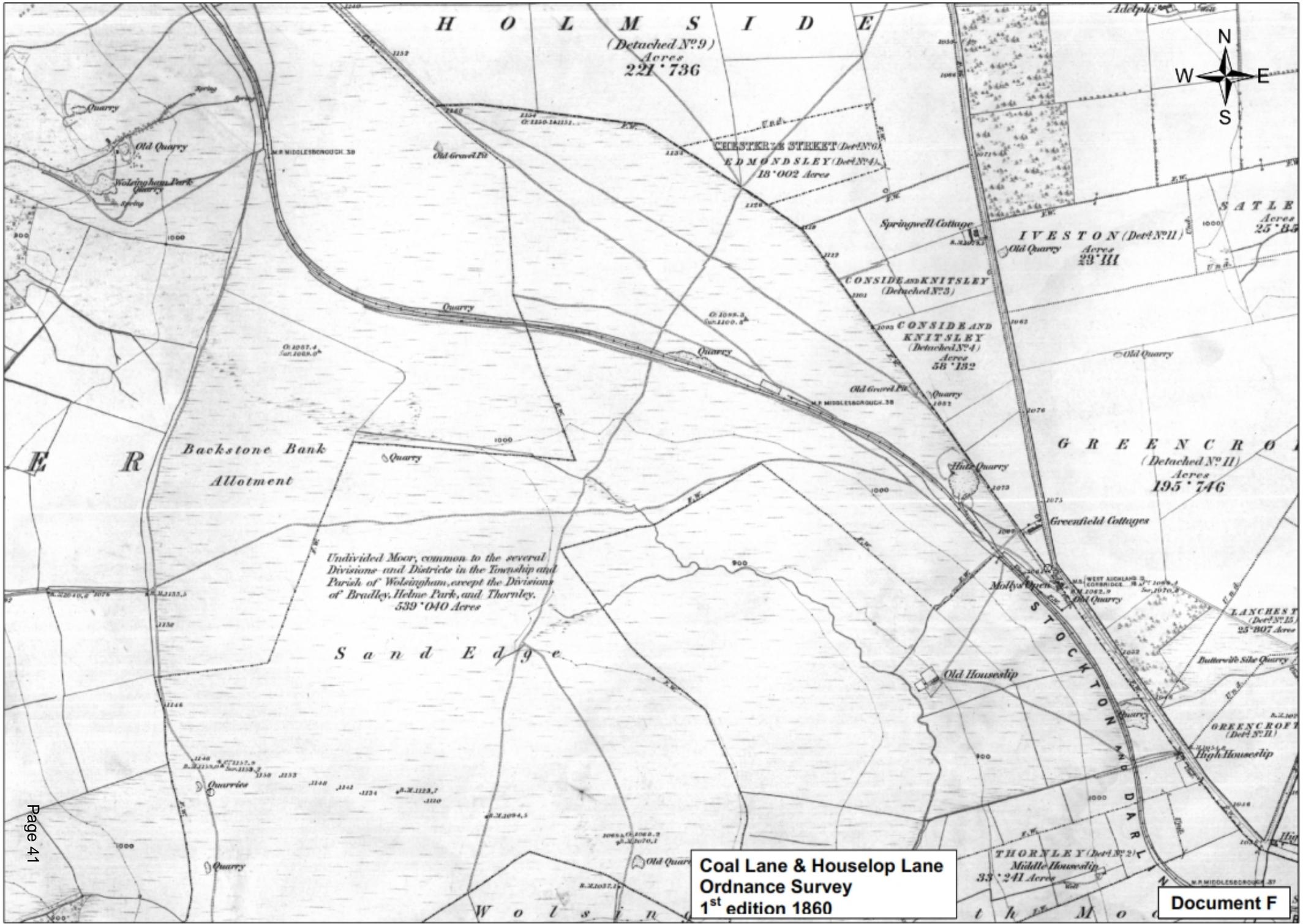
AND WE DO AWARD ORDER AND DIRECT that the said several allotments hereinbefore by us awarded and sett out and through which any road or way

shall lead and pass according to the Orders and Directions hereinafter appointed for that purpose shall be and for ever remain and continue subject and liable to such roads or ways in over and along the same in such manner as hereinbefore is directed in that behalf.

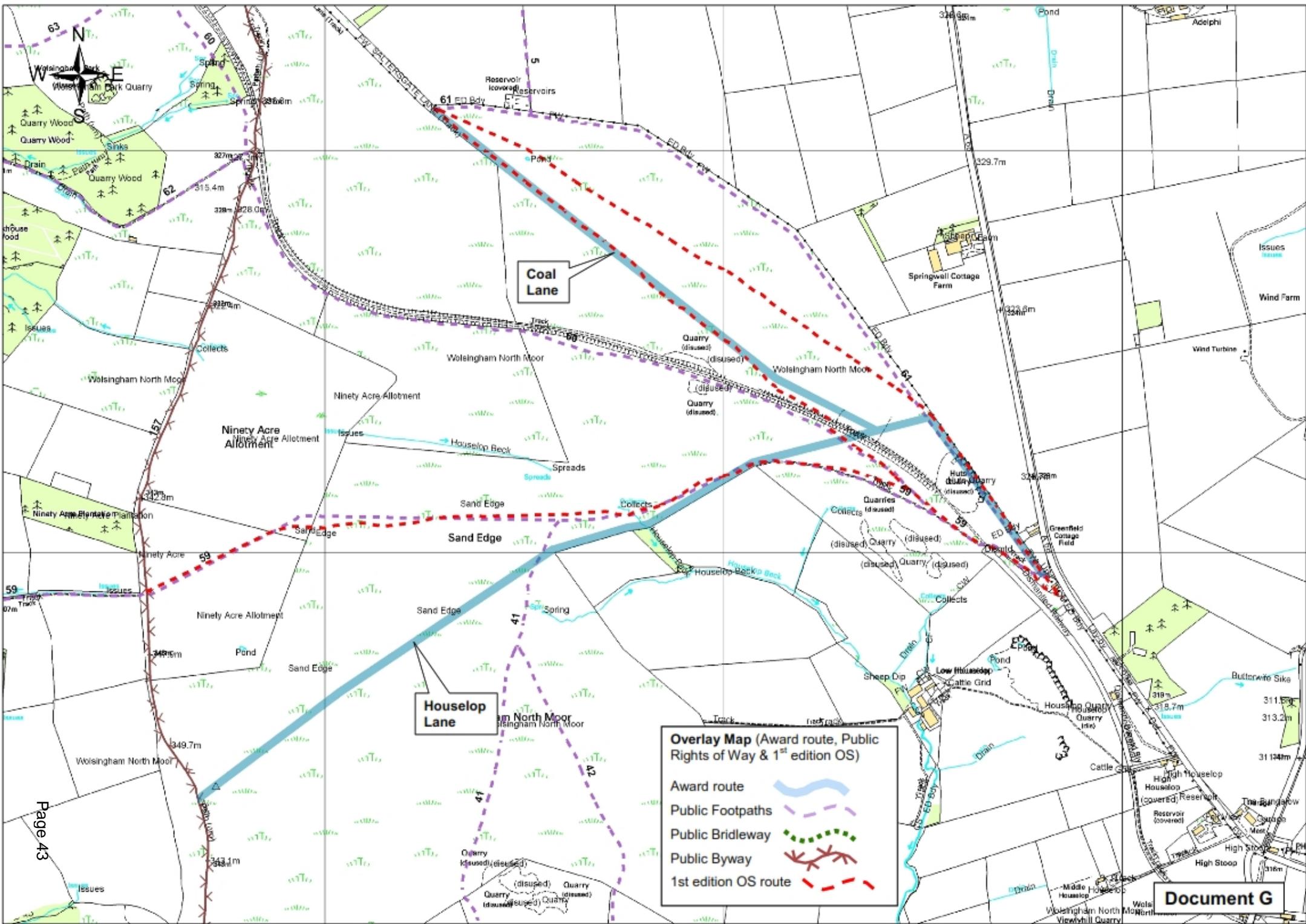
NB: text in bold is to emphasise information relevant to this application.

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Coal Lane

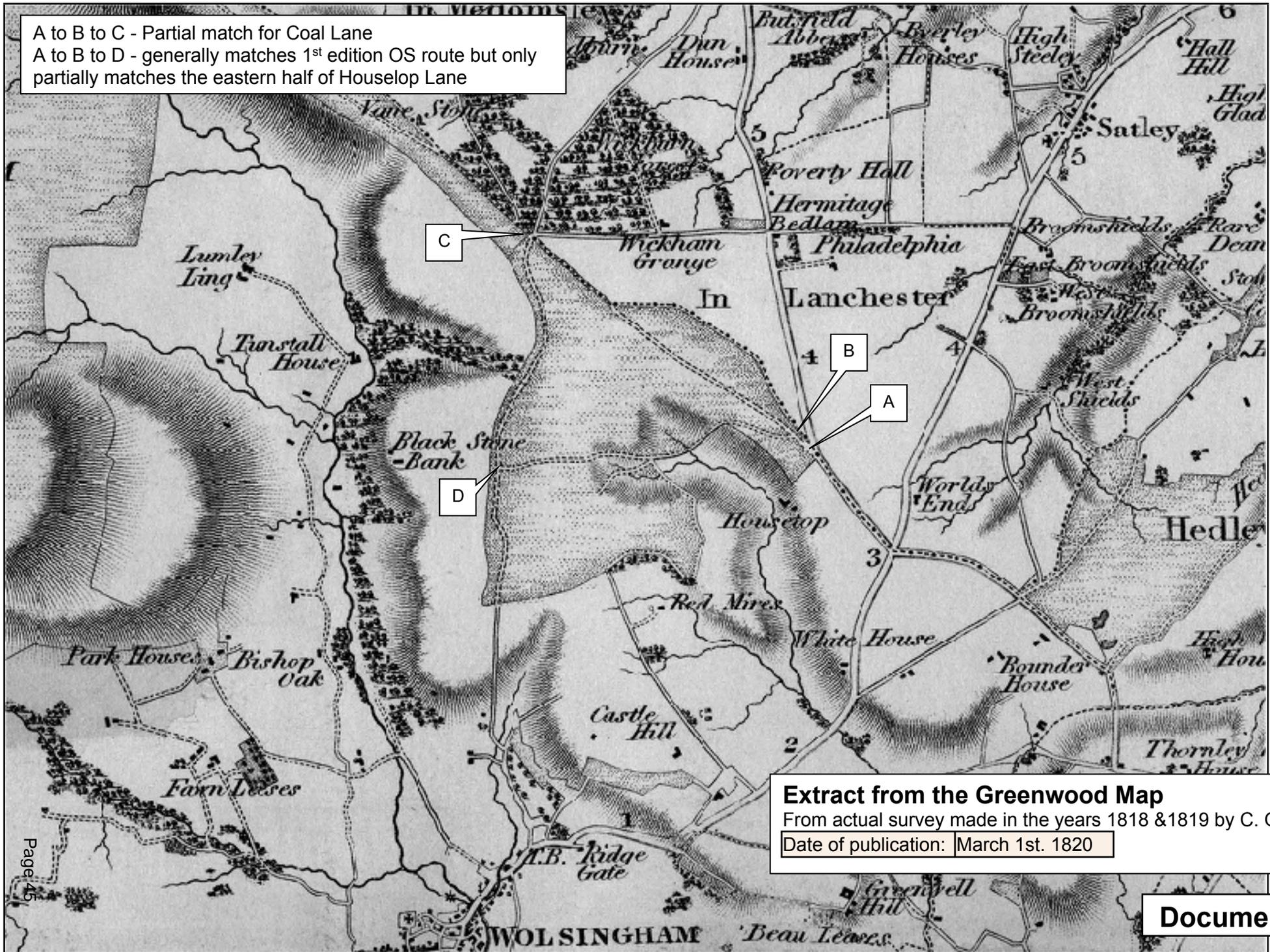
Houselop Lane

Overlay Map (Award route, Public Rights of Way & 1st edition OS)

- Award route 
- Public Footpaths 
- Public Bridleway 
- Public Byway 
- 1st edition OS route 

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A to B to C - Partial match for Coal Lane
A to B to D - generally matches 1st edition OS route but only partially matches the eastern half of Houselop Lane



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