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Our Ref: WOL609121/DRP/ks
Your Ref:
Date: 31st January 2020

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SENT BY EMAIL ONLY

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Dear Josephine

MR [REDACTED]
STATUTORY CONSULTATION, DEFINITIVE MAP MODIFICATION - WATERGATE LANE - 3/18/075

I refer to the above, and your letter dated 21st October 2019.

As previously stated, my client wishes to object to the proposed modification to the definitive map in the strongest possible terms. There is not sufficient evidence to prove the existence of the suggested right; and furthermore the precise location of the suggested route is not clear.

In order to assist the Committee, I set out below a commentary in regard to the evidence provided by the Applicant which accompanied your letter of 21st October 2019:

Reference	Source	Commentary
Evidence provided with Application		
1.	Current OS Map	It is not clear whether the new right proposed by the Applicant is to be on the line of the existing footpath; or the position of the line marked purple. The location of the suggested bridleway is not therefore considered to have been identified with sufficient precision to allow this application to proceed.
2.	Current Definitive Map	This is agreed to show the line of the existing public footpath.
3.	Satellite Image	This image shows marked purple a route that does not match either the existing footpath, or the route marked purple on the excerpt from the current OS Map as described at No.1 above. This serves to cast further doubt as to the actual position of the suggested right of way proposed by the Applicant. I enclose for clarity a plan marked GFW -1 showing the route of the existing footpath (red), and both of the Applicant's

		suggested routes (purple). The plan also indicates in black the historic route of the railway line for reference.
4.	Enclosure Plan and Award	This appears to show the route of the 'Private Carriage Way' described within the Enclosure Award. The award clearly restricts the right to use the route to a specific number of private users and is therefore taken as clear evidence that no public right existed to the extent proposed as at the date of the Enclosure Award.
5.	Railway Plan, Stockton & Darlington Railway	In the supplied form, these plans are not clear enough to have any evidential value. Furthermore, by the Applicant's own admission, the marked route that they seek to rely on is different from that shown on the Ordnance Survey Maps, and their own suggested route.
6.	Hobson 1840	This plan indicates a track of undefined nature; but one that does not run for the full length suggested by the Applicant. The fact that the track is shown as a dead end is taken as evidence that in 1840 there was no through route available to the public, contrary to the suggestion of the Applicant.
7.	Greenwood 1850	This plan shows a route that is materially different to that suggested by the Applicant.
8.	Tithe Maps DUL	In the supplied form, these plans are not clear enough to have any evidential value. Furthermore, the Applicant acknowledges that the route shown does not cover the entire route suggested. As with No.6 above, this is taken as evidence that there was no through route of the nature suggested by the Applicant.
9.	Ordnance Survey Boundary Remark Book 1379	It is not clear that this plans relates to the relevant area. They cannot be reconciled with more reliable sources and should therefore be disregarded.
10.	Ordnance Survey 1 st Edition	In the supplied form, these plans are not clear enough to interpret or rely on.
11.	Weardale and Shildon District Waterworks Aqueducts 1865	In the supplied form, these plans are not clear enough to interpret or rely on.
12.	New road plan 1891 showing intended route of current A689	In the supplied form, these plans are not clear enough to interpret or rely on.
13.	OS 1897 1:2,500 Sheet	None of these plans indicate any use of the route over and above that set out within the enclosure award. I have enclosed for reference a number of historic aerial photographs that undermine the Applicant's assumptions as to the hierarchy of local routes.
14.	OS 1924 XXXIV 1:10,500	
15.	OS 1:2,500 1921	
16.	OS one inch England and Wales, Sheet 26 Wolsingham 1898	
17.	OS 25 inch 1947 Sheet XXXIV 5 NLS	
18.	1910 Finance Act Watergate Finance Plan sheet XXXIII	The Applicant themselves note how the central portion of the route is treated differently to that at either end; as per No.6 and No.8 above, this would appear to confirm that there was no through route of the nature proposed by the Applicant in

		existence at any point during the 70 years covered by these sources.
19.	New popular OS 1 inch 1947	I enclose aerial photographs from 1945 and 1947 which clearly show that contrary to the suggestion of the Applicant, there was no minor road in existence in 1947.
20.	OS 1:25,000 1953 NZ13	The Applicant acknowledges that this records the route in question as being a public footpath only.
21.	Photographic Evidence	The photographs provided by the Applicant provide no proof of the suggested historic use of the route by the wider public. It is also noted that the Applicant acknowledges the ford identified does not match with their suggested route further undermining their Application.
Supplementary Evidence		
1.	Enclosure award text	Without being linked to a plan the Applicant's analysis of the award carries no weight; furthermore, it is simply not logical that the Award would make specific provision for a qualified private right, and then also a public right to the same extent on the same route within the same enclosure award.
2.	Bell 1852	This simply appears to confirm the existence of a track in the general location as at 1852 but does not confirm the basis upon which it was used. There is no reason to suggest that it was not in use as a private carriageway, as provided for by the Enclosure Award in 1761.

Whilst it is appreciated that the issues of the substantial cost and disruption that my client would suffer if the modification order were to be approved may not in themselves constitute valid grounds for objection; they do serve to highlight the importance of ensuring any modification of the definitive map is based upon clear and unequivocal evidence. It is respectfully submitted that the current application falls well short of this threshold both in respect of establishing the right, or a location, and it should therefore be dismissed.

I look forward to hearing from you in due course.

Yours sincerely,



Managing Partner



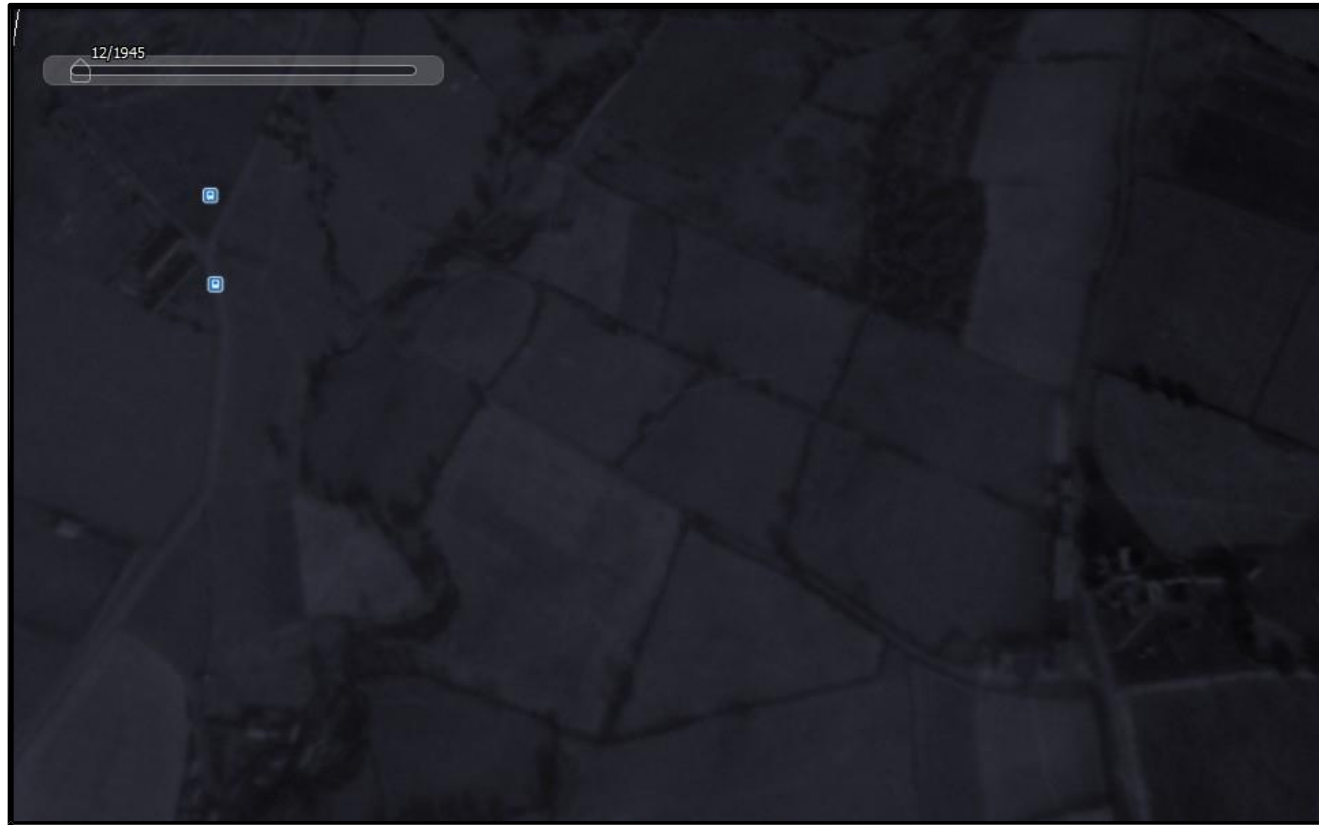
For and on behalf of George F White LLP

Enc. Plan marked GFW-1
Aerial Photographs

GFW-1



Aerial Photograph – December 1945



Aerial Photograph – March 1947



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Your Ref:
Date: 11th March 2021

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SENT BY EMAIL ONLY

Dear Josephine

MR [REDACTED] - [REDACTED]
STATUTORY CONSULTATION, DEFINITIVE MAP MODIFICATION - WATERGATE LANE - 3/18/075

I refer to the above, and write further to your e-mail of 19th February 2021 attaching your draft committee report.

As set out in my letter of 31st January 2020, my Client objects to the proposed modification on a number of grounds. In addition to those grounds set out within my letter of the 31st January 2020, we must ask that the following additional points are also considered:

1. The amended plan that you include within your report is materially different from that originally submitted by the Applicant, and which was circulated and considered for the purposes of the Statutory Consultation. We would suggest therefore that the current application must be summarily dismissed.

Without prejudice to our assertion above that the application should be dismissed on procedural grounds, we also set out the following comments in respect of the application:

2. As you will be aware, modification of the definitive map pursuant to s.53(3)(c) requires the *discovery* of evidence. We do not believe that the Applicant has specifically identified any evidence as having been discovered, and therefore there are no valid grounds on which the application can proceed. In his judgement in Burrows v Secretary of State for Environment, Food and Rural Affairs ([2004] EWHC 132 (Admin)) Andrew Nichol QC confirms as follows (para. 26):

"It is plain that the section intends that a definitive map can be corrected, but the correction (via this route as opposed to s.53(3)(a) or (b)) is dependent on the 'discovery of evidence'. An Inquiry cannot simply re-examine the same evidence that had previously been considered when the definitive map was previously drawn up."

The Applicant suggests that the route in question was previously a RUPP, and was subsequently reclassified by the Local Authority. This reclassification is most likely to have occurred at some point between the introduction of the CountrysideAct1968, and May 2006 (when it would have been converted automatically to a restricted byway pursuant to the CountrysideandRightsofWayAct 2000). In the absence of evidence to the contrary, it must be assumed that this decision to reclassify the route was made by the Local Authority acting with the benefit of all the appropriate evidence.

The burden of proof must lie with the Applicant to demonstrate that the requirements of s.53(3)(c) are satisfied, and they have clearly failed in this regard.

3. Our Client has identified that there appears to have been some confusion as to the location of Watergate as is referred to in the Hunwick Edge Enclosure Award. Prior to the expansion of Crook, Watergate was located significantly further north than the route of Footpath 56. This is confirmed by the extract from the Ordnance Survey 1st edition included within the Application.

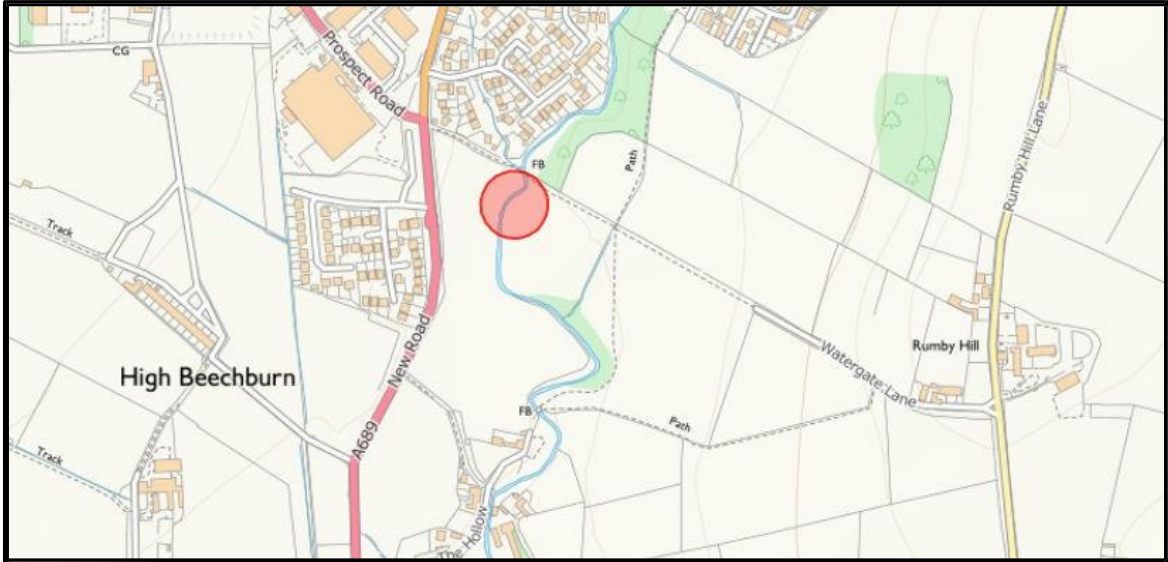
It would therefore not make sense for the private carriageway described within the Enclosure Award running “*from Romby Hill Lane Northwestwards to Watergate*” to follow the line of footpath 56. A more logical explanation would be that the private carriageway described was in the vicinity of footpath 169 as shown below:



Footpath 169 also runs in a north westerly direction from Rumby Hill Lane, but would have been much closer to Watergate as it existed when compared with footpath 56.

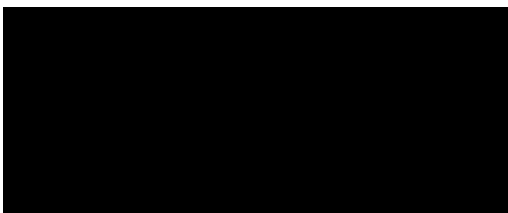
Our Client is clear that there was historically two tracks on the land in question, with one providing access to the farm and some of the land from Rumby Hill Lane, and the other providing access to Rumby Hill Colliery (to the north of footpath 56) from the west. However, the two tracks never joined, with a footpath only spanning the ‘gap’ in the centre. This correlates with the historic mapping, and the features that can be seen on the ground today.

4. The plan originally supplied by the Applicant shows the route of the proposed bridleway running through an area where historically there were traditional outbuildings associated with the former settlement at Rumby Hill at the eastern edge of the route.
5. Contrary to the suggestion in the Application, my Client confirms that there is no ford to the south of the footbridge, nor has there ever been one to their recollection within the area highlighted red below. The only ford was to the north to provide access to the Colliery when accessed from the western side:



I trust that the above is of assistance in considering the matter further, and look forward to hearing from you in due course.

Yours sincerely,



For and on behalf of George F White LLP

Document D.a - Durham County Council Rebuttal Statements

Document D - Points 1 & 3 - suggest that the application is invalid due to where the applicant has decided to highlight the route.

The placement of coloured lines are not to be taken as the exact location of the route being applied for. They merely highlight the route in question whilst allowing the pre-existing Public Rights of Way and topographical features associated with route being claimed, to remain clearly visible. This is also the case with the additional satellite images that have been added by the Definitive Map Officer to further highlight and explain the topographical features, associated with different sections of the application route, which correlate to those described in the Enclosure Award. The applicant states in the DMMO application (Appendix 3) that the route proposed for upgrade follows the route of FP 56, Crook.

The applicant has also submitted a new map where the coloured lines, used to highlight the route being claimed, appear over the existing public right of way proposed for upgrade (Document Y.a) and (Appendix 2).

Document D - Point 4 (original evidence) and 1 (supplementary evidence) – Suggests that the description ‘Private Carriage Way’ does in fact mean that it is Private and that the supplementary Enclosure Award text does not link to the Inclosure Award Plan.

We agree that the Award describes Watergate as a Private Carriage Road and that it sets out and appoints private rights for it's use as a Carriage Way, however, the Award clearly sets out and appoints the use of Watergate Lane as Public Bridleway and for Sack and Seam (Slide 4 - Document F.a).

Additionally, the supplementary Award text (Document F.a) can be linked to Document G, the Award plan, by way of carriageway/highway names and descriptions, such as [Watergate Lane](#), and [Romby Hill](#):

“We do hereby divert and appoint that there shall be another publick bridleway and for sack and seam from [Romby Hill](#) westward to [Watergate](#). We do also order and appoint that there shall be a publick foot road from and ancient stile in the hedge or fence belonging to the said William Wrights inclosure at High Bitchburn leading to [Watergate Lane](#) near to [Romby Hill](#) and along the said William Wrights said copyhold allotments and the said Wm Spearmans said allotments”.

Points 5,8,9,10,11 and 12 Document D – Argues that the format in which the copies of evidence were supplied were indecipherable.

The evidence submitted in support of the claim was supplied in a PDF format and although it can be argued that the finer details incorporated in the evidence degrades when the documents are enlarged, copies of the evidence in an alternative format i.e. Word.docx could have been requested, or, an appointment could have been arranged to consult the original documents as, if asked for, references could have been provided. Neither of the viable options listed above were acted upon.

Document D Points 6, 7 and 18 (original evidence) & Point 2 (supplementary evidence) – Suggests that the evidence supplied does not show the entire route proposed for upgrade or that the route is shown to be substantially different to that proposed for upgrade.

When observing the topographical features detailed on Documents J, K and M it is clear that the section of the route being proposed for upgrade is depicted. Additionally, the route is not shown as a dead end, rather it has been left open ended. This does not mean that the route itself, and the status most likely assigned to it, did not exist but more likely that it may have been left staked or partially enclosed rather than fully enclosed from the ends of the enclosed roads, parish finances often determined the extent of the solid boundaries used to enclose a highway. It would have been unlikely that reputable map makers such as Hobson, Greenwood, Bells and the surveyors acting on behalf of the government, to produce the Finance Plans, would have depicted routes that terminated in a cul-de-sac and/or were not considered for public use at the time.

With particular regards to Document K, the only feature that could be misconstrued as representing the route as being “materially different to that suggest by the applicant”, without any explanatory comments as to what the material difference is, would be the gap created by the map seam making it appear as though the route is not continuous. However,

the route shown in the aforementioned documents is depicted as being in the same location as that set out and described in the Enclosure Award (Document G).

Document S shows the section of Watergate Lane being applied for in its entirety. It was not uncommon to depict a way, public or otherwise, as being partially enclosed with either one solid boundary and a dashed line or double dashed lines. It was likely that the entire route was not fully enclosed with solid boundaries at the time of surveying, therefore, the surveyors depicted the route as it was shown on the ground. The lack of two solid enclosure boundaries running the entire route does not conclude that the way did not exist as a through route nor does it conclude that provisions were not made for a public bridleway or that it did not acquire through use, public bridleway status.

Maps produced by Hobson, Greenwood and Bells, although considered accurate in what they depicted on the ground, the scales, in comparison to modern day mapping and that of Ordnance Survey, are considered indeterminable which would account for minor misalignments of features across different maps. However, the route being proposed for upgrade is shown on each map and remains constant in its extent and location. Furthermore, the topographical features associated with and intersected by Watergate Lane, such as Beechburn Beck, Rumby Hill Lane and other highways, and later the railway, are consistently identifiable across all maps and correspond the earliest description and depiction of the route in the Enclosure Award and Plan.

Points 13, 14, 15,16,17 and 19 Document D – 1)“None of these plans indicate any use of the route over and above that set out within the Enclosure Award”, and, 2) the historical aerial imagery supplied as rebuttal evidence which “undermine the applicants assumptions regarding the hierarchy of local routes”.

The OS Maps submitted in support of the claim, although they cannot be taken as representing the legal status assigned to the route at that time, are further evidence that a way has subsisted through time.

All of the OS Maps submitted show Watergate Lane as a partially enclosed road, crossing Beechburn Beck with the most detailed maps noting ‘Ford’ and ‘F.B. – Footbridge’. These depictions are in keeping with the other historical documents regarding the routes extent an location.

The Enclosure Awards sets out, appoints and makes provision for a public bridleway and for sack and seam (carts).The statement "none of these plans indicate any use of the route over and above that set out within the Enclosure Award" can be agreed given that the application is to upgrade the route from a public footpath to a public bridleway which is not over and above that set out in the Enclosure Award but falls within the expressed provisions.

It is impossible to determine how the historical aerial imagery, dated 1945 and 1947 supplied as rebuttal evidence, undermines the applicant's assertion regarding the routes historical legal status. The applicants assertion is not that the route in question was a minor highway in 1945 and 1947 but that a public bridleway was set out and appointed in 1761.

Document D - Points 20 and 21 – Applicant acknowledges the route is currently only a public footpath and that the photographs provided provide no proof of the suggested historic use of the route by the wider public.

The 1953 OS Map shows public rights of way that were determined after 1949 when local authorities were required to produce an official record of the public rights of way. The surveyors at the time based their decisions on the status of a route, not on historical documentary evidence, but rather by what they considered as being suitable for a particular mode of transit at the time.

The photographs that have been submitted as evidence provide a visual representation that allows the archaeological and topographical features described throughout the report to be put into context. They show features that are acknowledged as being associated with the identification of historic ways such as enclosure roads and cart roads.

Due to the change in use of the route over time, lack of maintenance, nature reclaiming the area where the Ford most likely once was and development has rendered any potential insitu historical evidence of the Fords location difficult to determine. The current footbridge is not likely to be the original and its position has most likely been altered slightly over time

Closing argument Document D - "Any modification order should be based upon clear unequivocal evidence of which this application falls well short"

As the route in question is described in an enclosure award and depicted on an enclosure plan, legal documents still to this today and endorsed by an Act of Parliament, in addition to being supported by other reputable historical maps and documents the surveying authority considers that the evidence which has been submitted, when considered with all other relevant evidence, shows that; a highway of a particular description ought to be shown as a highway of a different description, as per the legal framework:

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 (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 highway of a particular description ought to be shown as a highway of a different description.

The **only** considerations that the Council can take account of are those that relate to whether the highway of a particular description ought to be shown as a highway of a different description. It would be unlawful to consider issues such as the suitability or desirability of the routes subject of the application.

Durham County Council - Additional Rebuttal Statements

Point 1) - That the plan accompanying the application is different to that consulted upon

The applicant supplied an amended map in February 2020 on which the route under consideration has been highlighted directly over the definitive line of Footpath 56. Subsequently, all relevant documents were updated with the revised map. Furthermore, despite one map not highlighting the exact line of Footpath 56, it does not adversely affect the strength of the evidence submitted in support of the application.

Point 2) - That the evidence has not been 'discovered'

The Historical Documentary Evidence submitted in support of this application can be considered as 'discovered' for the purposes of S53(3)(c) and the case law referred to by the objector, in that it is not simply a reconsideration of previously considered evidence. In particular, 1) it has not been considered via the appropriate channels provided by the current legislation and introduced for the purpose of Historical Documentary Evidence based Definitive Map Modification Orders and 2) there is no evidence or documentation, held by Durham County Council or the Rights of Way department to suggest that Historical Documentary Evidence was previously considered as part of the 1972 Special Limited Review reclassification. Had Historical Documentary Evidence been considered as part of the 1972 Special Limited Review it is probable that Watergate Lane would have been reclassified as either a Bridleway or Restricted Byway. Although the objector refers to a reclassification pursuant to the Countryside and Rights of Way Act 2000 in the mid 2000s, this reclassification exercise actually took place at a much earlier time (1972).

Cont.

Point 3) - Location of Watergate and that the BW is not on the alignment of FP56 as there are two other historic tracks it could be

When taking into account that the Inclosure award and plan was produced in 1761 and that the Watergate feature, identified as being Watergate Farm in an archaeology survey and report by Allan Archaeology Ltd carried out in 2020, and the colliery tramway to which the objector refer both postdate this by some 100 years or more, neither of these two tracks can be the Bridleway referred to in the Inclosure Award. The earliest evidence of a location or feature named Watergate is shown on the 1761 Inclosure plan as being located on Bitchburn Beck along Watergate Lane (Document G) and this links to the section of text in the Inclosure award (Doc F.a) which relates specifically to a bridleway and cart road being appointed from Rumby Hill (Rumby Hill Lane) westward to Watergate. The Watergate Farm buildings do not appear on the Newton Gap (1848), Hemlington Row (1839), St Andrew Auckland or the Crook and Billy Row (1839) tithe plans (Durham University Library). The earliest depiction of a Watergate feature referred to by the objector is between 1855-1895, on the 1st edition OS County Series Map and the earliest depiction of a colliery and tramway, on any Historical Documentary Evidence, first appears on the 1920 -1921 OS County Series Map (National Library of Scotland and Old Maps UK). Therefore the Inclosure award, which sets out and appoints a bridleway in 1761, could not be referring to either a track or tramway that relate to either the Watergate Farm buildings or the colliery tramway as the Inclosure award predates the documents in which these features first appear. It is highly probably that the Watergate feature being referred to in the additional rebuttal statements took its name from the Watergate located on Bitchburn Beck along Watergate Lane.

Point 4) - That the alignment of the BW would conflict with former buildings

In 1761, when the Inclosure award set out and appointed Watergate Lane as a private carriageway, cart road for sack and seam and a public bridleway, the enclosed section of Watergate Lane ran adjacent to and to the south of the buildings shown on the Inclosure plan, not through them. However, should buildings have been erected over the application route of Watergate Lane at any time since 1761 the route and legal status assigned to it in 1761 are still extant, unless the legal rights have been extinguished and in this case there is no evidence to suggest this.

Point 5) - The location of the old ford

A ford was annotated as crossing Bitchburn Beck along the route of Watergate Lane on the OS Six Inch County Series Map (revised in 1896, published in 1898) but not Rumby Hill Colliery (National Library of Scotland). The Ford continued to appear on OS maps up until 1938 at which time the 1938 County Series OS Map depicts the crossing as a Footbridge. Whilst the objector says that they cannot recall a ford in this location, this is perhaps unsurprising given that it ceased to exist (having been replaced by a footbridge) no later than 1938. Additionally, the applicant has identified in their application that there was a Ford to the North of the footbridge, which is now inaccessible due to development and that there is another useable ford to the south of the footbridge.

We, the surveying authority, have reviewed the additional evidence and rebuttal statements and we do not consider them of sufficient evidential value to contradict or undermine the evidence submitted by the applicant or that they warrant a change in Durham County Councils recommendation.

The **only** considerations that the Council can take account of are those that relate to whether the highway of a particular description ought to be shown as a highway of a different description. It would be unlawful to consider issues such as the suitability or desirability of the routes subject of the application.