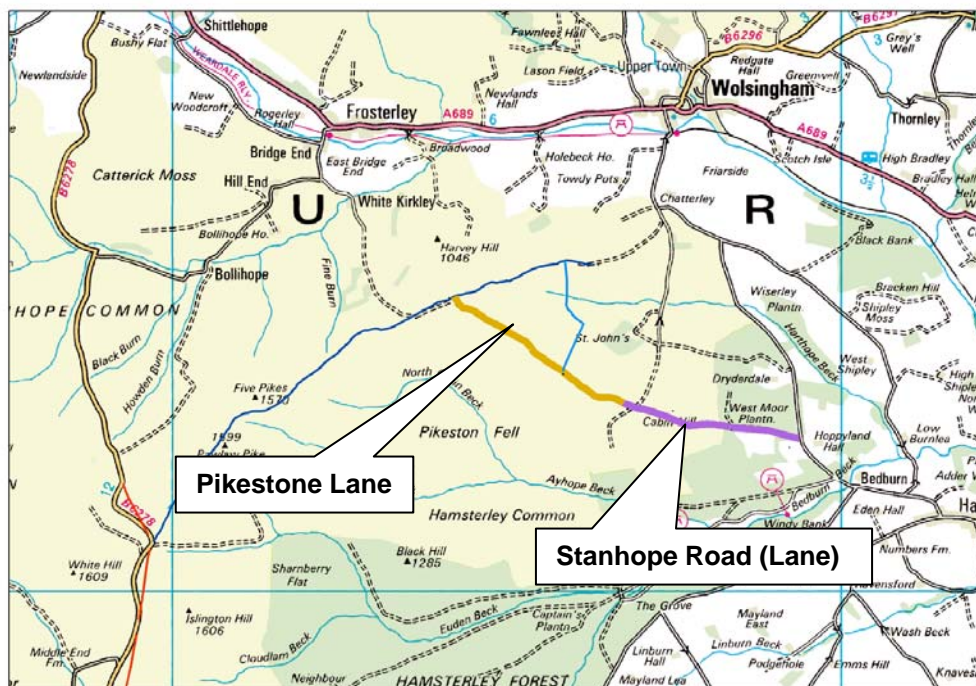


1 **Pikestone Lane and Stanhope Road (Lane) Route 2**

- 2 Pikestone Lane and Stanhope Road (Lane) form a continuous route, approximately 5800 metres long. The western end - Pikestone Lane - is approximately 2900 metres long and the eastern end - Stanhope Road (Lane), approximately 2900 metres. Pikestone Lane commences from a point on Middleton Lane to the south of Frosterley and follows in a generally south easterly direction across moorland to meet Stanhope Road (Lane) at a point on the moorland close to Doctor's Gate at the boundary of Wolsingham Parish, which then continues to meet the C30 (Shull Bank). Of the total route, only 1050 metres of Stanhope Road (Lane) is visible as a clearly bounded track. The majority of the route crosses moorland. A detailed plan is shown in Document **2A**.



- 3 Looking at the plan at document **2A** about 2900 metres at the western end of Pikestone Lane (points **A** to **B**) is recorded on the Wolsingham Award plan while 1200 metres (points **C** to **D**) at the eastern end - Stanhope Road (Lane) - is recorded in the Hamsterley etc Award. The central 1700 metres does not cross land contained within any inclosure award but it is annotated on the Hamsterley Award plan - being on land that is left as undivided moorland common (points **B** to **C**). A complete and continuous route is shown on the 1st edition OS maps.
- 4 The owner of the land is Arago Ltd (commonly known as the Bollihope Estate) who are represented by Oglethorpe, Sturton and Gillibrand Solicitors and Savills (Chartered Surveyors).

Documentary Evidence

- 5 The earliest known documentary evidence of Pikestone Lane and Stanhope (Road) Lane are the Wolsingham Award (1767) and the

Hamsterley Award (1760). The route is also depicted on the OS maps of 1860 (and later) and maps prepared by lead mining companies.

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

- 6 The extent of the Award and a typed transcript of the section relevant to Pikestone Lane are shown at Document **0H** and **2B** respectively. Pikestone Lane lies within the South Moor and the Award states that 'And we do hereby set out and appoint another public highway sixty foot in breath we shall refer to and call by the name of Pike Stone Lane'. The Award plan indicates Pikestone Lane from its junction with Middleton Lane at the northwest end and then the Wolsingham Parish boundary at its southeast extent (points **A** to **B** in document **2A** – Overview of Award route onto modern map) and (points **C** to **E** to **F** in Document **0A** – Award Plan).

Hamsterley, Lynesack, Softley and South Bedburn Inclosure Act and Award (1760)

- 7 The extent of the Award and a typed transcript of the section relevant to Stanhope Road (Lane) are shown at Document **0H** and Document **2C** respectively. Stanhope Road (Lane) lies to the west of Hoppyland Hill Farm and the Award states that 'Wee do also hereby Order and Appointe that there shall be one other common Highway.....we shall hereafter refer to and call by the name of Stanhope Road'. The section of the route referred to in the Award is 1200 metres of Stanhope Road's total 2900 metres and is shown as point **A** to **B** on the Award plan (Document **0D**). This plan also depicts a continuation of the route beyond its boundaries onto the moorland which is labeled 'road from Stanhope'.

First Edition Ordnance Survey Maps

- 8 The first Ordnance Survey maps for the area crossed by the route are dated 1860 and 1864. Due to the length of the route it crosses a number of OS sheets. These maps identify a route from a point on Middleton Lane running in a south easterly and easterly direction to Shull Lane. The majority of the route crosses the open moorland and is shown as double pecked lines (numbered 17) with the eastern most section of Stanhope Road (Lane) (1050 metres) as an enclosed lane (numbered 882). The first edition OS maps are shown in Document **2E**.
- 9 The first edition OS maps are accompanied by a Book of Reference which describes the land use for each parcel of land numbered on the map. For the eastern most section of Stanhope Road (Lane) (1050 metres) which is numbered 822 is described in the Book of Reference as 'Public road and trees' (points **C** to **D** in documents **2A** and **2E**). The middle section of the route (1660 metres) is numbered 17 and this is described as 'public road' (points **B** to **C** in documents **2A** and **2E**).

- 10 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

- 11 Prior to the mid nineteenth century there was little recognition of the route on what would have been widely available maps except for Greenwood's Map of 1820 (shown on Document **0C**) which depicted the whole of it. The complete route was later shown on maps by Hobson 1840, Dower 1856, Weller 1885 and on Bacon 1910. Pikestone Lane, as far as Doctor's Gate, was also depicted on Hall 1833, Moule 1842 and Malby 1859.
- 12 The Tithe Map for the Township of Hamsterley, 1848 shows Stanhope Road (Lane) coloured brown and the lane was not part of a parcel which was subject to tithe.
- 13 The eastern 1050 metres of Stanhope Road (Lane) has been consistently shown on OS maps throughout the 20th century including the most up to date 1:10,000 map. However, the remaining majority of the route has become less evident on more modern OS maps and is not shown on the current 1:10,000 map

Evidence on the ground

- 14 Most of the route crosses heather moorland which is underlain by sandstone substrata. At first sight there would appear to be little evidence of any route across the moorland. However, a GPS device has been used to follow the route depicted on the 1st OS map (that generally coincides with the award route of Pikestone Lane) and at various points along the way a sunken lane and trackways can be clearly seen matching both position and orientation quite accurately. The western section of Stanhope Road (Lane) is unclear and undefined while the easternmost (1050 metres) section, as depicted on the 1st OS map and currently designated as South Bedburn Bridleway no 23a), is a clearly visible track with boundaries.

Aerial Photography

- 15 Aerial photography from 1940, 2001 and Google Maps (up to date) generally concurs with the evidence on the ground included above although it is considered that overall the evidence on the ground is more visible than from aerial photography.

Existing Public Rights of Way

- 16 The route of Pikestone Lane and Stanhope Road (Lane) also coincides (in a north west to south east direction) very approximately with the following public rights of way: -

Wolsingham	Public Footpath no 115	3100 metres
Lands Common to	Public Footpath no 3	1660 metres

Hamsterley, S Bedburn and Lynesack & Softley		
South Bedburn	Public Bridleway no 23a	1050 metres

It is known that the OS base sheet (1:10,000) onto which these paths were drawn for the 1979 Definitive Map and from which the current 2010 map has been transcribed was of a poor quality and depicted little detail of features in an already open landscape. The Definitive Map was drawn freehand onto this OS map which will have inevitably resulted in inaccuracies for the paths across open moorland.

An overlay of the Award routes plotted on an extract of the Rights of Way Definitive Map is shown in Document **2D**.

Objections

- 17 Objections and/or concerns have been lodged by the landowners, Natural England, the Barnard Castle and the Crook groups of the Ramblers' Association and the Allen Valleys Action Group. The proposals are supported by the Trail Riders Fellowship and the Open Spaces Society. Responses received are shown in Document **0L**.

The main thrust of the objections and concerns relate to:

- a) Environmental issues including impact on habitats - Pikestone Lane crosses land designated as a Site of Special Scientific Interest (SSSI) which itself is situated within European designated nature conservation sites - the North Pennines Special Protection Area (SPA) and Special Area of Conservation (SAC). Additionally it is stated that to research this modification application constitutes a 'Plan or Project' in relation to the Habitats Directive and would require the consent of Natural England. Also cited is damage to the surface and conflict caused by vehicles.
- b) that the application was not properly 'made' (due to the evidence submitted with the application) under the provisions of Schedule 14 paragraph 1 of the Wildlife and Countryside Act 1981 such that any rights for mechanically propelled vehicles would be extinguished
- c) Disproportionate costs incurred by those involved.

Response

- a) *The determination of a Modification Order application is constrained by the criteria which have been set out in the introduction to this report. Taking into account other considerations would therefore be outside the remit of the Committee. Furthermore, the assertion that the 'Plan or Project' would need the consent of Natural England is not accepted as the Council has consulted with Natural England (response found at Document 0L), which has made no such assertion. However, the Council has a policy that the use of byways should be subjected to an environmental impact assessment and measures taken to ensure that use is environmentally sustainable. At present an impact assessment is being carried out with a view to consultation on appropriate management options.*

- b) *As described at paragraph 13-15 of the introduction to this report the advice of Counsel was sought as to whether this and the other applications were properly 'made' in view of the Court of Appeal case described. The advice concluded that the applications did contain adequate material to be considered as 'qualifying' applications.*
- c) *The Council has a statutory duty to consider modification order applications and therefore the costs must be borne by the 'public purse'. There are no provisions available for interested parties to reclaim their costs other than at a public inquiry if a party against whom costs are sought is shown to have behaved unreasonably.*

Recommendations and Reasons

- 18 For the reasons set out by Counsel in Document **OM** and in particular the conclusions outlined in paragraphs 29 to 31 of that document, it is accepted that the application for this route was properly made in that it contained sufficient material to satisfy the statutory requirements of paragraph 1 of Schedule 14 to the 1981 Act. Therefore any byway status demonstrated by the evidence outlined above is not extinguished by the provisions of Section 67 (1) of the NERC Act.
- 19 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. Pikestone Lane is shown in its entirety on the award plan and described within the award.
- 20 The Hamsterley, Lynesack & South Bedburn Inclosure Act and Award of 1760 is also considered undisputable evidence of the creation of the public highways specified within it. Stanhope Road (Lane) is shown on the award plan labeled 'Road from Stanhope' and described in the award as 'Stanhope Road'. Part of the route, west of the South Bedburn Parish boundary, although clearly shown on the award plan is on land undivided and left as common. However the OS not only show a track along the line of Stanhope Road (Lane) across the undivided open moor, but also describe the route in the OS Book of Reference as 'Public Road and Trees' and through the 'Undivided Moor' section as 'Public Road'.
- 21 The eastern section of the claimed route of Stanhope Road (Lane) within South Bedburn Parish does not match the route shown on the award plan or match the description of its starting point on Shull Bank. However it does match a route shown on the 1st edition OS mapping onwards, this route (also currently designated Bridleway no 23a, South Bedburn) is labeled 'Stanhope Lane' on the 2nd edition OS map and is characteristic of an Inclosure road (at 40ft wide). This section is clearly evident on the ground and on aerial photography. In the absence of contrary evidence it would be sensible to assume that all necessary procedures would have

taken place to alter the original Inclosure Award route to the current line of Stanhope Lane as per OS mapping.

- 22 The most significant of the historic map evidence is the OS plans of the 1860's followed by Greenwood's Map of 1820. The OS plans were based on their own surveys and Greenwood's mostly from original survey. The OS maps depict a continuous route of Pikestone Lane and Stanhope Road (Lane) as does the Greenwoods map.
- 23 The depiction of the existing public footpaths and bridleway on the Definitive Map is considered to be of little assistance in determining the exact route of Pikestone Lane and Stanhope Road (Lane), although in this case, the section of Stanhope Road (Lane) designated Bridleway 23a, as depicted on the Rights of Way Definitive Map, is a reasonable indication of the route. Generally however the method by which the existing definitive map was produced is described in para 16 and is not of sufficient accuracy to be of use in the context of this application.
- 24 To further extrapolate the alignment of both Pikestone Lane and Stanhope Road (Lane) a GIS based mapping exercise has been carried out to overlay the 1st edition OS, Inclosure Award plans and existing public rights of way onto a modern OS map in order to assess whether the routes are one and the same. This is shown at Document **2F**. It is accepted that a comparison of maps, particularly the Award and the OS based maps, is a 'best fit' seeing that they have different origins and cannot strictly be a comparison between like and like. However, it should also be understood that the inclosure plans were created at a time when surveying and drafting methods were well advanced in order for accurate plans to have been made and related to features on the ground. They should be considered as being accurate, as well as the OS plans.
- 25 In the case of Stanhope Road (Lane), it is considered that public route for the eastern section of the Road (Lane) is one aligned with the track depicted on the 1st edition OS map, coinciding with the existing South Bedburn Bridleway 23a (labeled 'Stanhope Lane' on the 2nd edition OS map). For the section of Stanhope Road (Lane) that crosses the undivided common/moor, it is considered that as this award plan acknowledged a meeting point with Pikestone Lane, as shown on the Wolsingham Award plan, that the route exists between the enclosed section (existing Bridleway 23a) at the eastern end to Pikestone Lane at the west.
- 26 In conclusion, on the balance of probabilities, there is sufficient evidence of the dedication of a public byway under Section 32 of the Highways Act 1980 and the requirements of the Wildlife and Countryside Act 1981 Section 53(c)(i) and (ii) have been fulfilled to record a public byway in accordance with the Inclosure and other evidence mentioned above.
- 27 It is recommended that a Modification Order is made to record Pikestone Lane as a public byway as per the Wolsingham Inclosure Act and Award at a width of 60ft (to include the reclassification of those parts of Wolsingham footpath no 115 where the Inclosure route and the public footpath intersects with the 60ft Inclosure width), to record as a public byway a

continuation of this route through Lands Common to Hamsterley, South Bedburn and Lynesack and Softley at a width of 5 metres (to include the reclassification of those parts of Footpath no 3 Lands Common etc where this route and the footpath intersect) and to record Stanhope Road (Lane) as a public byway as per the Hamsterley, Lynesack, Softley and South Bedburn Inclosure Act and Award and laid out along the route of South Bedburn bridleway no 23a at a width of 40ft. The route is depicted in Document **2F**.