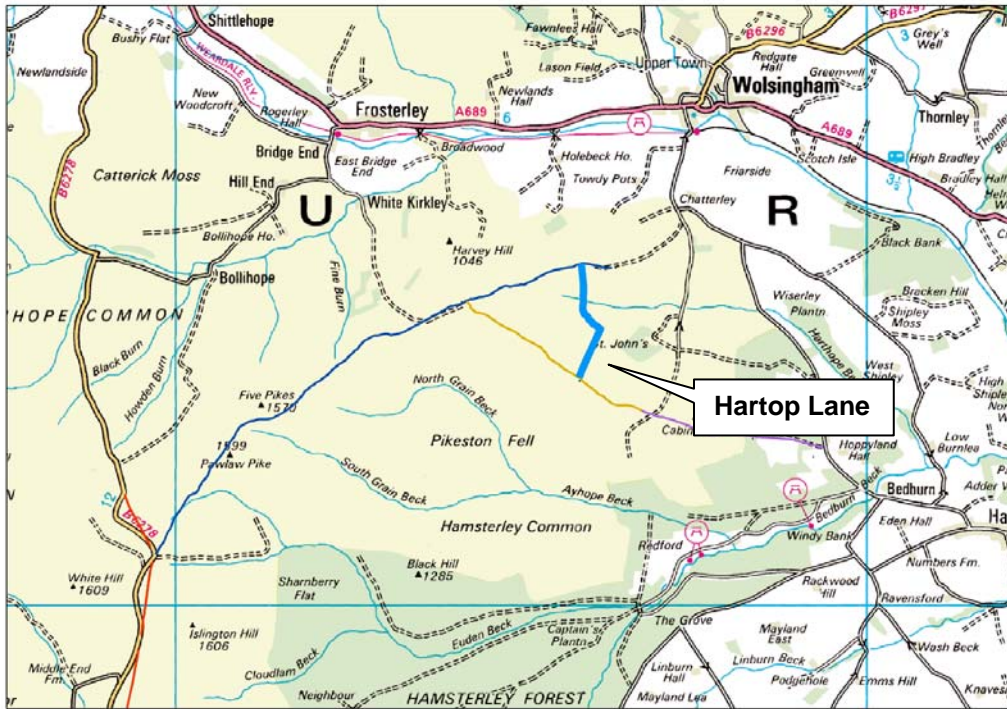


1 Hartop Lane Route 3

2 Hartop Lane links two of the other claimed byway routes, Middleton Lane and Pikestone Lane. It is approximately 1825 metres in length, following a boundary wall and crossing open heather moor. A detailed plan is shown in Document **3A**.



3 Hartop Lane is recorded on the Wolsingham Award plan (South Moor), starting at its northern end at Middleton Lane (also coinciding with Bridleway no 107, Wolsingham) approximately 450 metres west of the termination point of the cul de sac unclassified road (UNC32.2). Looking at Document **3A**, it commences at point A and follows in a southerly direction running adjacent to the western side of a drystone wall for much of its length to point B. The remaining stretch, approximately 140 metres, extends into open moorland to meet the Inclosure Award route of Pikestone Lane (points B to C). The route also dips relatively steeply where tributaries of Harthope Beck intersect with Hartop Lane.

4 The owner of the land is Arago Ltd (traditionally referred to 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 Hartop Lane is the 1767 Wolsingham Inclosure Award (South Moor).

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

6 The extent of the Award (shown in Document **0A**) and a typed transcript of

the sections relevant to Hartop Lane are shown at Document **3B**.
The Award states that ...'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 and set out beginning in Middleton Lane at the north west points of lands hereinafter lastly allotted to the said Deborah Wilkinson and William Wilkinson in respect of their leasehold for years and from thence leading southward to the north point of lands hereinafter lastly allotted to the said John Shepherd and others in respect of their copyhold and from thence turning south east to the east point of the same allotment and from thence turning south west to the said Blackburn Lane and from thence further by the south west to the said Pike Stone Lane which said last described highway we shall hereinafter refer to and call by the name **Hartop Lane**'.

Hartop Lane is found on the Award Plan shown in Document **0A** as points **B** to **E**.

First Edition Ordnance Survey Maps

- 7 No routes are shown on the 1st edition OS maps matching Hartop Lane, however the boundary wall adjacent to Hartop Lane is clearly indicated.

Other Maps

- 8 Hartop Lane does not appear on any known historic or modern map including OS maps.

Evidence on the ground

- 9 Hartop Lane follows a drystone boundary wall for much of its length. However there are no clear trackways or obvious evidence of sunken lanes along the route. The route crosses the Harthope Beck and its tributaries but there are no formal crossing points

Aerial Photography

- 10 Aerial photography from 1940, 2001 and Google Maps (up to date) concur with the 'evidence on the ground' included at para 9.

Existing Public Rights of Way

- 11 There are no recorded Public Rights of Way matching Hartop Lane.

Objections

- 12 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 - Hartop Lane crosses land designated as a Site of Special Scientific Interest (SSSI) which itself is situated within the North Pennines Special Protection Area (SPA) and Special Area of Conservation (SAC), and damage/conflict by vehicles
- b) that the application was not properly 'made' (due to the evidence submitted with the application) under the provisions of paragraph 1 of the Wildlife and Countryside Act 1981 such that any rights for mechanically propelled vehicles would be extinguished
- c) Disproportionate costs incurred by those involved.
- d) The inspector who considered the Orders at Public Inquiry and issued his decision in 1999 did not confirm Hartop Lane due to lack of evidence so there is no application outstanding.

Response

- a) *The determination of a Modification Order application is constrained by the criteria which have been set out in paragraph 3 of 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*
- d) *At the time Hartop Lane was considered by the inspector it was necessary to evidence byway status not just with documentary evidence but also with usage. Since that time case law has moved on and removed the need for the usage element.*

Recommendations and Reasons

- 13 For the reasons set out by Counsel in Document **OM** and in particular the conclusions outlined in paragraphs 37 to 39 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.

- 14 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.
- 15 Hartop Lane follows a boundary wall which is depicted on the 1st edition OS map and Award Plan and is still in existence today, therefore there are no significant issues relating to its location or alignment.
- 16 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) has been fulfilled.
- 17 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 as shown in Document **3C**.