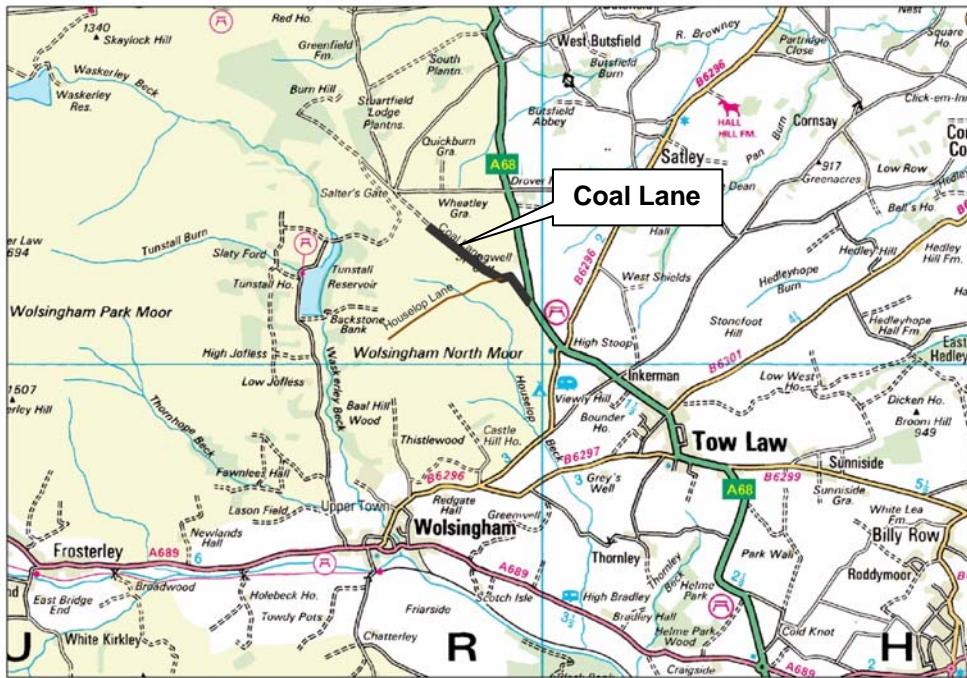


1 Coal Lane Route 4

- 2 Coal Lane extends from the A68, just north of High Stoop (and 1 ½ miles / 2.5 km northwest of Tow Law), to Saltersgate Lane (Unclassified road 25.1). It is approximately 2100 metres in length, crossing for the most part open heather moor. A detailed plan is shown at Document 4A.



- 3 The full extent of the route is recorded on the Wolsingham Award plan (North Moor). Looking at Document 4A and starting from a point adjacent to the A68 and heading northwest, the first 480 metres is adjacent to the southwest side of a boundary wall, following a poorly defined grassy track (points A to B) before bearing sharply west for approximately 150 metres over land that some of which is semi-improved pasture (points B to C). This section is also included in this report as Houselop Lane as the lanes are the same route for this part. It then turns sharply in a northwesterly direction to meet at the termination point of the unclassified road, Saltersgate Lane (points C to D). A large part of the route follows the course of the 1st edition Ordnance Survey plans. It should be noted that the former railway line, crossing the North Moor, was built in the 1840's prior to the production of the 1st edition OS map but after the inclosure award

- 4 The land is owned by Mr TJ F Fenwick.

Documentary Evidence

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

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

- 6 The extent of the Award (shown in Document **0B**) and a typed transcript of the sections relevant to Coal Lane are shown in Document **4B**. Coal Lane lies within that part of the Award plan called North Moor. The Award states that ‘...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... 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’. The route is depicted on the Award Plan in Document **0B** (points **A** to **B** to **C** to **D**) and a modern map showing the public rights of way Definitive Map together overlaid with the awarded route is shown at Document **4C**.

First Edition Ordnance Survey Maps

- 7 The first Ordnance Survey maps (25" to a mile) for the area crossed by Coal Lane are dated 1860. There are a number of routes depicted on this OS map. Matching Coal Lane there is a route is shown from the A68 bearing northwestwards (for approximately 480m) alongside the boundary wall (points **A** to **B** in Documents **4A** and **4D**) and a route is also indicated from the disused railway to Saltersgate Lane (points **C** to **D** in Documents **4A** and **4D**). For the section **B** to **C** there is no coinciding route on this OS map.
- 8 Saltersgate Lane (the termination point of the north west 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”.
- 9 Looking at early OS maps through to those of the 20th century Coal Lane is not evident other than on the 1st edition as described above. The only part of Coal Lane depicted on any other OS map is the very southern section from the A68 along the boundary wall to the site of the Old Gravel Pit (point **B** in Document **4A and D**).
- 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 Several historic maps illustrate a route generally corresponding with Coal Lane (although all show slight differences, particularly at its eastern end). A route is clearly 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 **0C** page 2 of 2.

Evidence on the ground

- 12 The majority of the route crosses open heather moorland with a short section across semi-improved pasture and moorland grass track.
- 13 For approximately 480 metres starting at the southeastern end of the route (from the A68) there is a 'largely undefined' grass track adjacent to the boundary wall, this follows the route shown on the 1st edition OS map (Also recorded on the Rights of Way Definitive Map as Public Footpath no 61, Wolsingham) (points **A** to **B** on Document **4A**).
- 14 There is no clear evidence of a route on the ground from where the route bears sharply westwards or the section immediately adjacent to the disused railway (points **B** to **C** on Document **4A**).
- 15 There are a number of sunken trackways bearing northwesterly from the railway and terminating at Saltersgate Lane. Following the route depicted on the 1st edition OS map, using a GPS device, some evidence of a sunken trackway is visible along part of the route between points **C** to **D** on Document **4A**.

Aerial Photography

- 16 Aerial photography from 1940, 2001 and Google Maps (up to date) concur with the 'evidence on the ground' included at paragraphs 12 to 15.

Existing Public Rights of Way

- 17 The route of Coal Lane coincides partly with the following public right of way as recorded on the Definitive Map: -

| | | |
|------------|------------------------|------|
| Wolsingham | Public Bridleway no 61 | 480m |
|------------|------------------------|------|

Most of the route however is not recorded on the Definitive Map. An overlay of the awarded route plotted on an extract of the Rights of Way Definitive Map is shown in Document **4C**.

Objections

- 18 Objections and/or concerns have been lodged by the landowner, 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 wildlife, damage/conflict by vehicles, destruction of heather, and threat to peace and tranquility.
- 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.

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. 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

- 19 For the reasons set out by Counsel in Document **0M** and in particular the conclusions outlined in paragraphs 52 to 57 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.
- 20 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.
- 21 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. The OS maps depict the majority of the route. The Greenwood map illustrates a route indicative of Coal Lane.
- 22 There is a track on the ground at the southeastern end of Coal Lane, albeit poorly defined and this follows part of a route matching the 1st edition OS map and the award route. There are some visible sections of sunken trackway on the ground between the disused railway and Saltersgate Lane

matching the 1st edition OS map. Saltersgate Lane, beyond the claimed route is a 60ft wide enclosed lane and is an obvious continuation of the route of Coal Lane.

- 23 The depiction of the existing public footpaths on the Definitive Map is considered to be of little assistance in determining the exact route of Coal Lane and is not of sufficient accuracy to be of use in the context of this application. Furthermore, for most of Coal Lane there are no recorded public rights of way.
- 24 To review the alignment of Coal 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 **4E**. 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, 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 whole of the award route can be plotted onto a modern map to a good degree of accuracy using the award plan.
- 25 Approximately 1520 metres (out of 2100 metres) 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 would be sensible to consider that these represent the same route.
- 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 Coal Lane as a public byway as per the Wolsingham Inclosure Act and Award at a width of 60ft (to include the reclassification of that part of Wolsingham footpath no 61 where the Inclosure route and the public footpath intersects within the 60ft Inclosure width), The route is depicted as in Document **4C**.