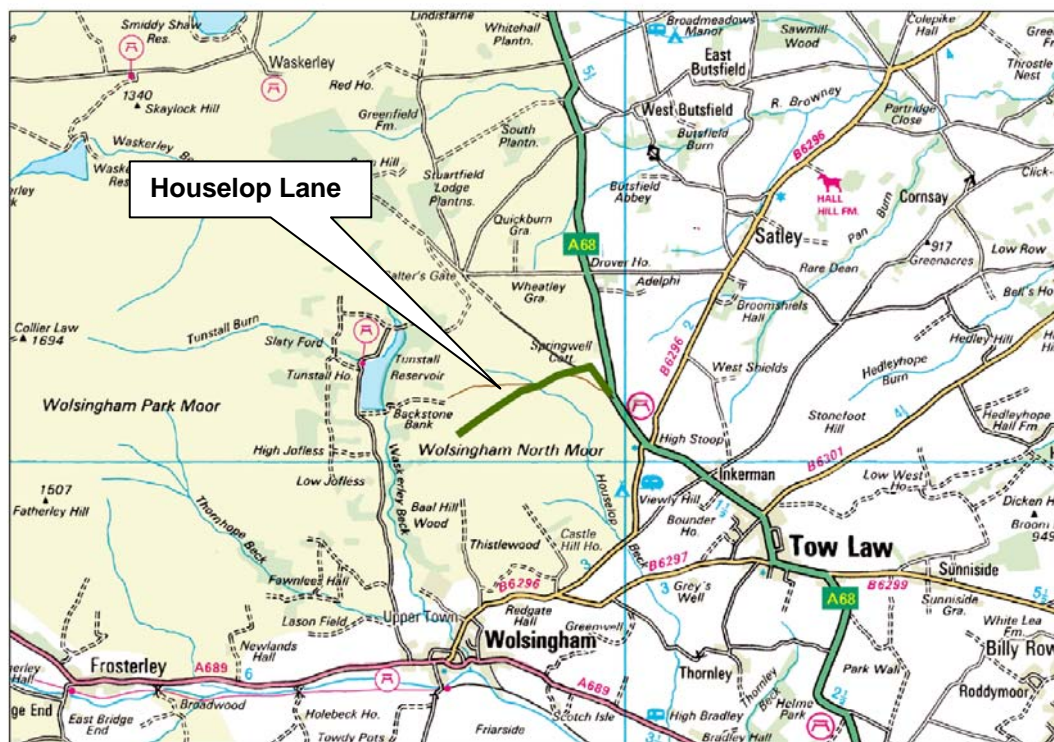


## 1 **Houselop Lane Route 5**

- 2 Houselop Lane extends from the A68, just north of High Stoop (and 1.5 miles / 2.5 km northwest of Tow Law), to Hexham Lane (Byway no 157, Wolsingham). It is approximately 2500 metres in length, crossing for the most part open heather moor. A detailed plan is shown in Document **5A**.



- 3 The full extent of Houselop Lane is recorded on the Wolsingham Award plan (North Moor). Looking at Document **5A** 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 of which some is semi-improved pasture (points **B** to **C**). This section is also included in this report as Coal Lane as the lanes are the same route for this part. From point **C** it then crosses the disused railway and open heather moor to point **D**. There is a substantial embankment where the Inclosure Award route crosses the disused railway. The route continues along the north side of a boundary wall (points **D** to **E**) before crossing open heather moorland (points **E** to **F**), terminating at Hexham Lane (Byway no 157, Wolsingham) at point **F**.

- 4 The land is owned by T J F Fenwick.

## **Documentary Evidence**

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

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

- 6 The extent of the Award relating to the 'North Moor' (shown in Document **0B**) and a typed transcript of the sections relevant to Houselop Lane are shown at Document **5B**. Houselop Lane lies within that part of the Award plan called North Moor.  
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 ..... Coal Lane.....**Houselop 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'. A copy of the Award Plan (**A to B to C to E**) is shown in Document **0B** and a modern plan showing the Rights of Way Definitive Map overlaid with the awarded route is shown in Document **5C**.

### **First Edition Ordnance Survey Maps**

- 7 The first Ordnance Survey maps (25" to a mile) for the area crossed by Houselop Lane is dated 1860. There are a number of routes on this map depicted by double pecked lines. Apart from a short 80 metre stretch close to the disused railway line there is not a route that matches the awarded one. An extract from the 1<sup>st</sup> edition OS plan is shown in Document **5D** (the 1<sup>st</sup> edition OS route and the closest route to Houselop Lane is indicated by points **A to B to C to D to E**). This route is a close match to Public Footpath no 59 Wolsingham.
- 8 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**

- 9 Several historic maps illustrate a route generally corresponding with the 1<sup>st</sup> edition OS map, as above, rather than the Inclosure Award route (although there are 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 Houselop Lane. A plan showing the Greenwood's map is shown in Document **0C** (page 2).

### **Evidence on the ground**

- 10 The majority of Houselop Lane crosses open heather moorland with a section following a poorly defined grass track (between points **A** and **B** on Document **5A**) and a section (between points **D** and **E** on Document **5A**) which partly overlaps existing worn trackways and moorland edge . There is no indication of a route on the ground matching the awarded route between points **B** and **D** and points **E** and **F** on Document **5A**.

- 11 There are short sections of sunken trackways matching the route depicted on the 1<sup>st</sup> edition OS map (between points **A** to **C** on Document **5D**). A route across the open moor is not clearly evident (points **C** to **D** on Document **5D**), however, A worn pathway is visible (between points **D** and **E** on Document **5D**) where the path enters semi-improved pasture. Much of this route matches Footpath no 59 Wolsingham.

### **Aerial Photography**

- 12 Aerial photography from 1940, 2001 and Google Maps (up to date) concur with the 'evidence on the ground' included at paragraphs 9 and 10. This also shows a number of short sections of trackways with a similar orientation to the tracks shown on the 1<sup>st</sup> edition OS map, albeit not matching exactly.

### **Existing Public Rights of Way**

- 13 The route of Houselop Lane as depicted on the Award Plan only coincides with existing public rights of way for a short stretch:

Wolsingham	Public Footpath no 59	150m
Wolsingham	Public Footpath no 61	480m

An overlay of the awarded route plotted on an extract of the Rights of Way Definitive Map is shown in Document **5C**.

### **Objections**

- 14 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**

- 15 For the reasons set out by Counsel in Document **OM** 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.
- 16 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.
- 17 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. In this case the OS maps do not depict the majority of Houselop Lane but do show a route to the north with a slightly different orientation. The Greenwood map also illustrates a route indicative of the track shown on the 1<sup>st</sup> edition route but again, not Houselop Lane as depicted on the Award Plan. It is possible that the function of the award route may have been part superseded by the route depicted on the 1<sup>st</sup> OS; however there is no record indicating any legal change or conclusive physical evidence relating to changes to the orientation of the award route.
- 18 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.
- 19 To review the alignment of Houselop Lane a GIS based mapping exercise has been carried out to overlay the 1<sup>st</sup> 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 **5E**. 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 award plan can be plotted on to modern OS mapping data with very reasonable accuracy.

- 20 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.
- 21 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 nos 59 where the Inclosure route and the public footpath intersects within the 60ft Inclosure width), The route is depicted as in Document **5C**.