

**Alleged Public Footpath from PRow 87,
along the North side of Thornhope
Beck, Wolsingham to stepping stones
on PRow 81.**

Wildlife and Countryside Act 1981

**Definitive Map Modification Order
Application**

**Report of Alan Patrickson, Corporate Director of neighbourhoods
and Climate Change and Helen Lynch, Head of Legal and
Democratic Services.**

Electoral division(s) affected:

Wolsingham, County Durham

Purpose of the Report

- 1 In this report the Highways Committee is asked to consider all the relevant evidence gathered in support of an application to modify the Definitive Map and Statement of Public Rights of Way (PRow) by adding a public footpath that branches away from PRow 87, heading West along the north side of Thornhope Beck, to join PRow 81 in the Parish of Wolsingham. (**Document A, point A-B**).

Executive summary

- 2 In September of 2020 Durham County Council received a user evidence-based application to modify the Definitive Map and Statement by way of adding a public footpath that runs along the north side of Thornhope Beck in Wolsingham (**Document B**). The footpath leaves PRow 87 heading in a westerly direction through pasture/meadow field and crosses a stone wall with a field gate, and a ladder stile that bridged the wall and was still in place in June 2021. The path continues in a westerly direction through more pasture/meadow fields, passes a private wooden bridge to the south that spans Thornhope Beck, to a fence orientated north to south, that until April 2020 had a stile, before crossing more pasture/meadow fields and eventually joining PRow 81 near the stepping stones crossing Thornhope Beck further upstream. (**Document C, Photos A-I**).

- 3 The evidence submitted consists of user evidence forms and witness statements (**Document D**). A total of 31 individuals submitted user evidence. Of the 31 users that submitted evidence 16 have the required 20 years or more use and 11 of the 16 provided witness statements. The information provided by those that submitted user evidence and witness statements indicates that use has been by the wider community/public at large for leisure purposes.
- 4 A representative acting on behalf of the affected landowner submitted a representation and two pieces of documentary evidence pertaining to a permissive path; an extract of the minutes from a Wolsingham Parish Council meeting held June 2016, and an extract from The Wolsingham Wayfarers website (**Document E**), prior to the formal consultation which he believes are sufficient to demonstrate that the path being claimed is, and always has been, permissive in nature. However, Durham County Council Highways Solicitor advised that the evidence was not sufficient in that regard.
- 5 An informal 30-day consultation period was agreed to allow the landowner and their representative the opportunity to view the user evidence that had been submitted in support of the claim before commencing the formal consultation period.
- 6 Formal consultations on the proposed modification were carried out from February to March 2022 for a period of 30 days with landowners/occupiers, Local Councillors, The Parish Council, and user groups/organisations (**Document F**). The consultations resulted in two letters of support (**Document G**) and representation/rebuttal statements and comments from the landowner's representative (**Document H**).
- 7 The rebuttal statement/objections circulate around; the landowners belief that the path is, and always had been, permissive as they believe is evidenced by the extracts contained in **Document I**.
- 8 Durham County Council have provided a rebuttal statement which can be found in paragraph 33.
- 9 After careful consideration and a thorough investigation of the user and documentary evidence Officers are of the view that the legal test has been met, and that the objector's evidence is insufficient to demonstrate that the path has been used otherwise than as of right.
- 10 The witness statement of the previous landowner, who owned the land for 53 years from 1963 to 2016 is therefore a strong piece of evidence which directly contradicts the objector's case on the issue of permission. Nor has the current landowner taken any steps during the relevant 20 year period which would render the public's use of the way by permission.

Recommendation(s)

- 11 It is recommended that a Definitive Map Modification Order be made under the Wildlife and Countryside Act 1981 to add a public footpath along the route shown in **Document A** to the Definitive Map and Statement and;
- 12 To thereafter confirm the Order as unopposed, or in the event of relevant objection(s), to refer the Order to the Secretary of State for determination

Background

Application

- 13 The alleged path was brought to the attention of Durham County Council in April 2020 by Wolsingham Parish Council after several residents queried the closure of the path. After being informed that the route in question did not actually appear on the Definitive Map as a Public Right of Way, information on how to have a footpath added to the Definitive Map was requested.
- 14 Wolsingham Parish Council coordinated the collection of user evidence from members of the public and residents of Wolsingham and submitted a formal application in September 2020 (**Document B**). Witness interviews and statements were carried out and documented by members of the Access & Rights of Way Team. Copies of the user evidence forms and witness statements can be found in **Document D**.
- 15 The evidence submitted consists of a combination of 31 user evidence forms and 11 witness statements.

Route

- 16 The alleged path is c.250m in length and leaves PRow 87 heading in a westerly direction across pasture/meadow field to a stone wall. The stone wall currently has a field gate, and a ladder stile which was still in place in June 2021. The path continues in a westerly direction, crosses more pasture/meadow field, and passes a small private wooden bridge which spans Thornhope Beck to the south, before intersecting with what was a wire boundary fence orientated north-south, which had a stile at the southern end nearest Thornhope Beck. Continuing from the wire fence in a westerly direction, crossing more pasture/meadow field, the path joins PRow 81 near to the stepping stones which span Thornhope Beck further upstream. The surface of the alleged path is predominantly earth and grass.

- 17 The route passes over privately owned plots of land which were purchased by the former landowner in the early 1960s. The former landowner knew of the path, assumed it was already a PRoW, and so it remained open for use. Two stiles and way markers were installed along the route at various points in time prior to the land changing hands. One stile was installed, in the north-south fence midway along the route, by the former landowner himself. It is not known who was responsible for installing the way markers along the route. The former landowner did not take steps to prevent public use of the path at any time during their ownership and the land was sold to the current owner in 2016. The path, along with the stiles and field gate, remained in use by the public until April 2020. The way markers also remained in place and visible until April 2020. The new owner removed the stile midway and erected notices stating that it was not a PRoW which challenged the use of the path.

Consultation and Objections

- 18 An informal 30-day period was agreed to allow the landowner and their representative the opportunity to view the evidence that had been submitted in support of the claim before commencing the formal consultation period.
- 19 Formal consultations on the proposed modification were carried out from February to March 2022 for a period of 30 days with landowners/occupiers, Local Councillors, The Parish Council, and user groups/organisations (**Document F**). The consultations resulted in two letters of support (**Document G**) and a rebuttal statement, comments and documentary evidence from the landowner's representative (**Document H**).
- 20 The rebuttal statement/comments circulate around the landowner's belief that the path is, and always had a been, permissive as they believe is evidenced by the extracts contained in **Document I**.
- 21 Durham County Council have provided a rebuttal statement which can be found in paragraph 33.
- 22 The only considerations that the Council can take into account are those that relate to whether the alleged footpath, currently not shown on the Definitive Map, meet the legal tests a set out under section 31 of the Highways Act 1980 & section 53(3)(c)(i) of the Wildlife and Countryside Act 1981.

Legal Framework

- 23 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 under Section 53(3)(c)(i) on the discovery by the authority of evidence which, when considered with all other relevant evidence available to them, shows that a right of way subsists or is reasonably alleged to subsist.
- 24 The Highways Act 1980, Section 31 states that, in the absence of contrary intention, a way may be 'deemed to have been dedicated as a highway' where 'it has been actually enjoyed by the public as of right and without interruption for a full period of twenty years', that period to be calculated retrospectively from the date when the right of public use was brought into question. As of right means without force, without secrecy and without permission. The use must be sufficient for a landowner to understand that rights are being asserted.
- 25 The Human Rights Act is of relevance. Whilst article 1 to the first protocol (peaceful enjoyment of property) and article 8 (right to respect for family, private life and home) are engaged, it is important to note that these rights are qualified, not absolute, which means that they can be interfered with in so far as such interference is in accordance with domestic law and is necessary in a democratic society for the protection of the rights and freedoms of others. It is considered that any interference occasioned by the making of a Modification Order is both in accordance with domestic law (the Wildlife and Countryside Act 1981) and is in the public interest as it is necessary in a democratic society for the protection of the rights and freedoms of others, namely the public who wish to use the way.
- 26 The Council has a duty arising from Section 149 of the Equality Act 2010 to have due regard to the need to achieve the following objectives:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

It is not considered that the assessment of this application raises any specific Public Sector Equality duty matters.

- 27 Should Members resolve that a Modification Order be made in accordance with the above legislation, this is not necessarily the end of the legal process. Should a Modification Order be made, the applicant and the landowner/s must be informed. The landowner will have an opportunity to object to the Modification Order, therefore necessitating referral to the Secretary of State, who will then either confirm the Modification Order or decline to do so.

Relevant Evidence

- 28 **Document D** – User Evidence and witness statements
Document I – Extract from the minutes of Wolsingham Parish Council June 2016 and comments on the Wolsingham Wayfarers website.

Assessment of the evidence

- 29 The evidence suggests the earliest date this route was brought into question was April 2020 when the path was closed to the public by the removal of the stile, located in the fence midway along the route running north-south, and use was discouraged by signs erected stating “no footpath/right of way”. These were acts considered sufficient to bring the route into question and therefore the relevant twenty-year period should be calculated retrospectively from April 2020 i.e. April 2000 – April 2020.
- 30 The evidence submitted consists of user evidence forms and witness statements (**Document D**). A total of 31 individuals submitted user evidence. Out of the 31 users that submitted evidence 16 have the required 20 years or more use and 11 provided witness statements. The information provided by those that submitted user evidence is consistent in their account of the landscape and features associated with the path as well as the route taken and indicates that use has been by the wider community/public at large for leisure purposes.
- 31 There is no evidence over the relevant period of use that the route has ever been obstructed, that any user has ever been prevented from using it or of the landowner doing anything to prevent a public footpath coming into being such as the erection of signage or periodic closure of the path. Accordingly, on the face of it, the use is as of right.
- 32 The user evidence that was submitted in support of the application was thoroughly investigated. Out of the 31 individuals that submitted user evidence and 11 provided witness statements: all users have indicated that they used the route for recreational purposes; 16 have indicated that they have used the route for 20 or more years and for recreational purposes. The former landowners and the wife of a former tenant

farmer also submitted user evidence and a witness statements which unfortunately have to be discounted, however, it is very unusual for landowners to submit user evidence. The former landowner indicates in their witness statement that they assumed, during their ownership, that the path in question was already a Public Right of Way, and that they continued to use the route for recreational purposes after they sold the land. The 16 users that submitted evidence of 20 or more years use is more than adequate to substantiate use of the path as of right for over the relevant period of time to warrant the recommendation of having the alleged footpath added to the Definitive Map and Statement.

- 33 The objector's case is that the use of the path over the relevant period has been by permission and therefore not as of right. Two documents are put forward in support of this case, namely the minutes of the Wolsingham Parish Council's meeting of 14 June 2016 and an extract from the website of the Wolsingham Wayfarers' website relating to maintenance of footpaths from January 2015 – January 2016 (*Document I*). Both of these documents describe the path as permissive. It is also said that such permission was extended in part by the objector following his ownership (from 2016).

Conclusion

- 34 It is considered, after examining all of the available evidence, that the route under investigation, leading from PRow 87, running along the North side of Thornhope Beck in a westerly direction to PRow 81, meets the legal test as per section 31 of the Highways Act 1980 and 53(3)(c)(i) of the Wildlife and Countryside Act 1981, and a Definitive Map Modification Order should therefore be made to update the Definitive Map and Statement to record it as a public footpath.

Background papers

F:\Rights of Way\Modification Orders\A Wolsingham - Ladley Burn

Other useful documents

- Previous Cabinet reports / None

Author(s)

Josephine Upchurch

Mike Ogden

Neil Carter

Tel: 03000 365341

Tel: 03000 265331

Tel: 03000 269723

Appendix 1: Implications

Legal Implications

N/A

Finance

N/A

Consultation

See paragraphs 5, 6, 18 and 19

Equality and Diversity / Public Sector Equality Duty

N/A

Climate Change

N/A

Human Rights

See paragraph 25

Crime and Disorder

N/A

Staffing

N/A

Accommodation

N/A

Risk

N/A

Procurement

N/A

