

Highways Committee

12 December 2022



Alleged public Bridleway, Windside Moor Public Bridle Road, from Road C28 to grid reference 388757.536877, St-John's-Chapel, Stanhope.

Wildlife and Countryside Act 1981

Definitive Map Modification Order Proposal

Report of Corporate Management Team: Alan Patrickson, Corporate Director of Neighbourhoods and Climate Change and Helen Lynch, Head of Legal and Democratic Services.

Electoral division(s) affected:

Weardale

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 by adding a public bridleway in the ward of St-John's-Chapel, Stanhope starting at Road C28 (grid reference 389554.536399) and ending at grid reference 388757.536877 following the route marked A-B **Document A**.

Executive summary

- 2 This application seeks to add route with public bridleway status from grid reference Road C28 and ending at grid reference 388757.536877 in the parish of St-John's-Chapel and that it be reflected by amending the Definitive Map and Statement.
- 3 The route to be added connects to the public highway at point A on *Document A* but not at point B on *Document A*. However, there are two other applications being considered today, North Grain and Chapel Pasture Public Bridle Roads, which if agreed, would result in a continuous through route from C Road C28, St-John's-Chapel to C Road C27, St-John's-Chapel, point A to B on **Document B**.
- 4 Pre consultation correspondence was received from H&H Land and Estates in 2019 on behalf of one of their clients who recollects an extinguishment order for the route. However, when investigating the

evidence and checking for extinguishment orders, none was found. No further mention of an extinguishment was made during the consultation period (**Document C.1**).

- 5 A consultation on the proposed addition was carried out with local Councillors, the Parish Council, landowners, and, user groups and organisations (**Document C.2, C.3 and C.4**) which resulted in objections and support to the proposed amendment to modify the Definitive Map and Statement.
- 6 Objections were received from Mr R Jauneika (H&H Land and Estate), on behalf of their client Mr Vickers, and from Stanhope Parish Council (**Document D**), and support has been expressed by The British Horse Society and The Open Spaces Society (**Document E**) to the proposed addition.
- 7 The objections lodged by H&H Land and Estate, on behalf of their client, are based on the evidence. In summary, they argue that the evidence submitted in support of the application is not sufficient to prove that a route was legally established as a public bridleway and also suggest that it has been stopped up/extinguished.
- 8 Durham County council refutes these objections which are detailed at points one and three in *Document D* due the evidence being Inclosure documents. This is considered in more detail at paragraphs 49 to 53 under the heading of 'Assessment of the Evidence'.
- 9 The objections lodged by Stanhope Parish Council cannot be afford weight as the legislation does not allow objections based on suitability and/or desirability of the route to be taken into account.

Recommendation(s)

- 10 It is recommended that the Committee resolves to make a Definitive Map Modification Order to amend the Definitive Map and Statement by way of adding a public bridleway shown A-B on Document A under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981.
- 11 Note that the Definitive Map Modification Order will be referred to the Secretary of State for determination in the event objections are made. or confirmed as an unopposed order should no such relevant objections be received.

Background

Application

- 12 A Definitive Map Modification Order (DMMO) application was submitted by Mrs S Briggs, on behalf of the British Horse Society, in July 2019. Historical documentary evidence was submitted to support the

application, the most important evidence being an the 1815 Weardale Inclosure Award and Plan. The applicant wishes that the Definitive Map and Statement be modified to reflect what they believe should be a public bridleway.

- 13 The proposed section to be added as a public bridleway is referenced A-B and is shown in (**Document A**).
- 14 The application route, at point A in *Document A*, connects to a public highway C Road C28 (grid reference 389554.536399). The route terminates at point B on *Document A* and does not currently connect to another public highway. However, there are two other DMMO applications, also being consider today, which rely on the 1815 Weardale Inclosure Award and Plan to demonstrate their historical legally status.
- 15 When considering the evidence submitted, together with the other two DMMO applications, a continuous through route is created which connects to the public highway at both ends (**Document B**).

Consultation and Objections

- 16 Pre consultation correspondence was received from H&H Land and Estates in 2019 on behalf of one of their landowner clients who recollect an extinguishment order for the route. However, when investigating the evidence and checking for extinguishment orders, none was found. (**Document C.1**).
- 17 Consultations on the proposed upgrade were carried out with the Local Councillors, landowners/occupiers, and user groups/organisations (**Document C.2, C.3 and C.4**).
- 18 Objections were received from Mr R Jauneika (H&H Land and Estate), on behalf of their client Mr Vickers, and Stanhope Parish Council, (**Document D**) and support has been expressed by The British Horse Society and The Open Spaces Society (**Document E**) to the proposed addition.
- 19 The objections lodged by H&H Land circulate around the belief that the evidence submitted in support of the application is not sufficient to prove that a route was legally established as a public bridleway and/or that there may have been a subsequent extinguishment of it.
- 20 Durham County council refutes these objections with regards to objection point one and three detailed in *Document D* due the evidence being Inclosure documents. This is considered further in paragraphs 49 to 53 under the heading of '*Assessment of the Evidence*'.
- 21 ***The only considerations that the Council can take into account are those that relate to whether the alleged public right way ought to be shown as a bridleway. The key legal test section 53(3)(C)(i) is that a***

right of way that is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this part applies. Hence, it would be unlawful to consider issues such as the suitability or desirability of the routes subject of the application.

The Route

- 22 The route to be added starts at grid reference 388575.536877 and proceeds in a general north westerly direction. The route passes a first order stream, Ramshaw's Well, and is intersected by Public Bridleway No. 90, and passes through three field boundaries. The route terminates at grid reference 388575.536877, another field boundary, which is labelled 'Level Gate' on the Inclosure Plan.
- 23 The route is situated on the fell side, from east to west it sits between 390 and 440 m.a.s.l (metres above sea level), and crosses Open Access land. The route was set out in the Inclosure Award as a Horse Road Pack and Prime Way and was assigned public bridleway status with a stipulated width of 20ft (6.1m).
- 24 The surface of the route is predominantly a mixture of peaty moorland and pasture. At the eastern end of the route, where it leaves public highway Road C28, topographical features in the form of a short, level surface slightly banked on the south side, where it follows the lower contours of a spur, potentially indicate the existence of the historic public bridle road. As the route progresses north westward, these features become less visible.

Documentary Evidence

- 25 **Document F –1799 Weardale Inclosure Act**
Park and Forest of Weardale (Act 39 Geo III) – DRC D/CG 32/40 (previously DCG 13/492)
- 26 Inclosure Acts were produced to allow for the consolidation of what was once open land into sperate parcels that could be individually owned.
- 27 **Document G – 1815 Weardale Inclosure Award**
Park and Forest of Weardale Inclosure Award – PAL 1/3/2
- 28 The earliest and most important legal documentary evidence which describes and depicts the application route is the 1815 Weardale Inclosure Award and Plan.
- 29 Inclosure awards are legal documents, the purpose of which were to record the reorganisation and distribution of parcels of land in addition to providing legal proof and evidence of ownership. They also typically

created highways. The details described in many Inclosure Awards consisted of Inclosure boundaries, public and private highways, and their uses, rights of way, water courses and drainage etc, as well as details of the landowners. Most Inclosure awards are accompanied by Inclosure plans/maps and provide a pictorial view of the details described in the Inclosure Award.

- 30 The award describes Windyside Moor as a Horse Road and Pack and Prime Way and states “*And we do hereby assign set out and appoint another public Horse Road Pack and Prime Way twenty feet in breadth as the same is now staked and set out by Stakes and Land Marks and which for distinctions sake we shall hereinafter refer to and call by the name of “**Windyside Moor Public Bridle Road**” begining at and leading from a gate in the boundary wall between the said **Windyside Moor** and **Chapel Pasture** called **Level Gate** and prceeding eastwards through and over the allotment hereinafter sety out to Thomas Wears upon the said **Windyside Moor** to and across the said **Windyside Moor Private Carriage Road** and from thence further south eastwards through and over the allotments hereinafter set out to William Blackburn and Christopher Emerson respectively upon the said **Windyside Moor** to and into the **Great Drift Road** south of the river Wear”.*
- 31 **Document H – 1815 Weardale Inclosure Plan**
Park and Forest of Weardale Inclosure plans – PAL 1/3/2
<https://iif.durham.ac.uk/index.html?manifest=t2m47429954d&canvas=t2t2j62sd835> - Sheet 9.
- 32 On the plan Windyside Moor Public Bridle Road is clearly shown heading a north westerly direction from road C28 (labelled Great Drove/Drift Road on the Inclosure Plan). It crosses Ramshaw’s Well and passes through three field boundaries. These features are shown on both the 1815 Inclosure Plan and on current day maps. Additionally, the surrounding Inclosure boundaries remain, for the most part, as there were some 200 years ago with only minor alterations (**Document H.a – 1815 Weardale Inclosure Plan and current day Definitive Map overlay**).
- 33 **Document I – 1895 1st Edition OS (Ordnance Survey) 1:2,500**
(www.old-maps.co.uk) Sheet XXXIII.5 & 8
- 34 OS maps were produced pursuant to an Act of Parliament as an official survey of England and Wales. Originally produced under the Board of Ordnance to aid with military manoeuvres in preparation for rebellions or war in the late 1700s. By the mid to late 1800s OS maps had evolved considerably and, due to the expense of surveys and the production of revised editions, Ordnance Survey had to diversify. This meant producing maps that could be sold to the public as the revenue would help fund revisions. It is suggested that historic documents, maps, plans and

interviews with locals were used to identify, clarify, and depict, through use of shading, different classifications of highways. However, there are no references that conclusively clarify the methods utilised by the surveyors to determine the status of a highway.

35 Windyside Moor Public Bridle Road is not shown on the above-mentioned historic OS map. Neither has it been described in the accompanying area book. The details of the features associated with the plots of land are described below:

36 Plot 2136 – Rough pasture &c. Plot 2137 –Rough pasture. Plot 2138 – Rough pasture. Plot 2172 is described and classified as a public road. This road is named Windyside Moor Private Carriage Road in the Inclosure Award and Plan. Ordnance Survey maps on their own are not conclusive evidence that a public right of way exists. However, as they show what was on the ground as at the date of the survey, they are often useful corroboratory evidence. However, in this instance even though the OS map does not depict Windyside Moor, nor the area book contain details of it, this does not mean that it had ceased to exist legally.

37 **Document J – Current Definitive Map**

<https://www.durham.gov.uk/definitivemap>

38 The route being applied for, which is documented and shown in the Inclosure Award and Plan, has been highlighted in red on an extract of Durham County Councils Definitive Map. However, the Definitive Map itself does not show the physical existence of the application route.

39 **Document K – Current OS Maps**

www.ordnancesurvey.co.uk

40 As above

41 **Document L – Photographic evidence**

42 The photographic evidence provides a visual representation of the application route.

Legal Framework

43 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 which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this part applies.

- 44 Section 32 of the Highways Act 1980 deals with the consideration of documentary evidence when determining whether a highway has been dedicated. It allows for any maps, plans or history of a locality or other relevant document to be tendered in evidence and for appropriate weight to be placed on the document including the antiquity of the document, the status of the person by whom and the purpose for which it was created and the source from which it has been stored and produced.
- 45 Once a highway comes into existence, it can only cease to be a highway in certain circumstances, such as by way of a formal stopping up procedure. The fact that the highway may have fallen into disrepair, disuse and/or seems physically to not exist at all has no impact upon its status as highway.
- 46 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.
- 47 Section 149 of the Equality Act 2010 requires public authorities when exercising their functions to have due regard to the need to i) eliminate discrimination, harassment, victimisation and any other prohibited conduct, ii) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and iii) foster good relations between persons who share a relevant protected characteristic and persons who do not share that characteristic. In this instance, officers have assessed all relevant factors and do not consider that there are any equality impacts identified.
- 48 Should Members resolve that a Modification Order be made in accordance with the above legislation, this is merely the start of the legal process. Once a Modification Order is made, it must be publicised, and the owners will have an opportunity to formally object to it. Should objections be received, the Modification Order would have to be referred to the Secretary of State who would usually hold a Public Inquiry before deciding upon whether or not to confirm the Modification Order.

Assessment of the evidence

- 49 The County Council, as Surveying Authority, must make a decision in accordance with the case law and relevant legislation, in particular the

provisions of the 1981 Act and the Human Rights Act 1998. The only considerations that the Council can take into account are those that relate to whether the alleged public right of way that is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this part applies. It would be unlawful to consider issues such as the suitability or desirability of the routes subject of the application.

50 In this case it is considered that the most important evidence is the 1815 Weardale Inclosure Award and Plan (***Documents G & H***). The Inclosure Award created a Horse Road or Sack and Seem Way and also specifically created a public bridleway.

51 Whilst the other map-based evidence does not show the physical existence of the route, less weight must be afforded to these in accordance with Section 32 of the Highways Act as they were not produced for the purposes of showing the status of the route but for other purposes, such as taxation.

52 The objectors have not submitted any evidence of their own which would contradict the above Inclosure Award and Plan evidence. Instead, the objections have focussed on either; the evidence submitted in support of the application not being sufficient to prove that a route was legally established as a public bridleway, and, the suitability and desirability. However, it is considered that none of the objections are sufficient to undermine or displace the evidential force of the Inclosure Award which is sufficiently clear and precise to demonstrate that a Bridleway was created along the route claimed. Furthermore, despite the anecdotal evidence as to a stopping up of the route, no such order has been located. Additionally, the legislation does not allow objections based on suitability and/or desirability to be taken into consideration when determining historical documentary evidence based applications

53 Therefore, the lack of a public bridleway at the location shown in *Document A* needs to be rectified and it is recommended that the route be added to the Definitive Map and Statement as a public bridleway in accordance with the application.

Main implications

Maintenance

54 If this route is added to the Definitive Map as a Public Bridleway, the County Council as Highway Authority will become responsible for the maintenance of the surface in line with its status.

Conclusion

55 It is considered, after examining all of the available evidence, that on the balance of probability the route under investigation known as Windyside Moor Public Bridleway meets the test of section 53(C)(i) and a Definitive Map Modification Order should therefore be made to update the Definitive Map and Statement to record it as a bridleway.

Background papers

- [..\DMMO Application & Evidence](#)

Other useful documents

- Previous Cabinet reports / None

Author(s)

Josephine Upchurch

Tel: 03000 365341

Mike Ogden

Tel: 03000 265331

Neil Carter

Tel: 03000 269722

Appendix 1: Implications

Legal Implications

See paragraphs 43, 44, 45, 46, 47 and 48.

Finance

Durham County Council will be responsible for the initial installation of furniture associated with the upgraded legal status for the first six months and future maintenance of the surface to bridleway standards.

Consultation

See paragraphs 5 and 17

Equality and Diversity / Public Sector Equality Duty

See paragraph 47

Climate Change

N/A

Human Rights

See paragraph 46

Crime and Disorder

N/A

Staffing

N/A

Accommodation

N/A

Risk

N/A

Procurement

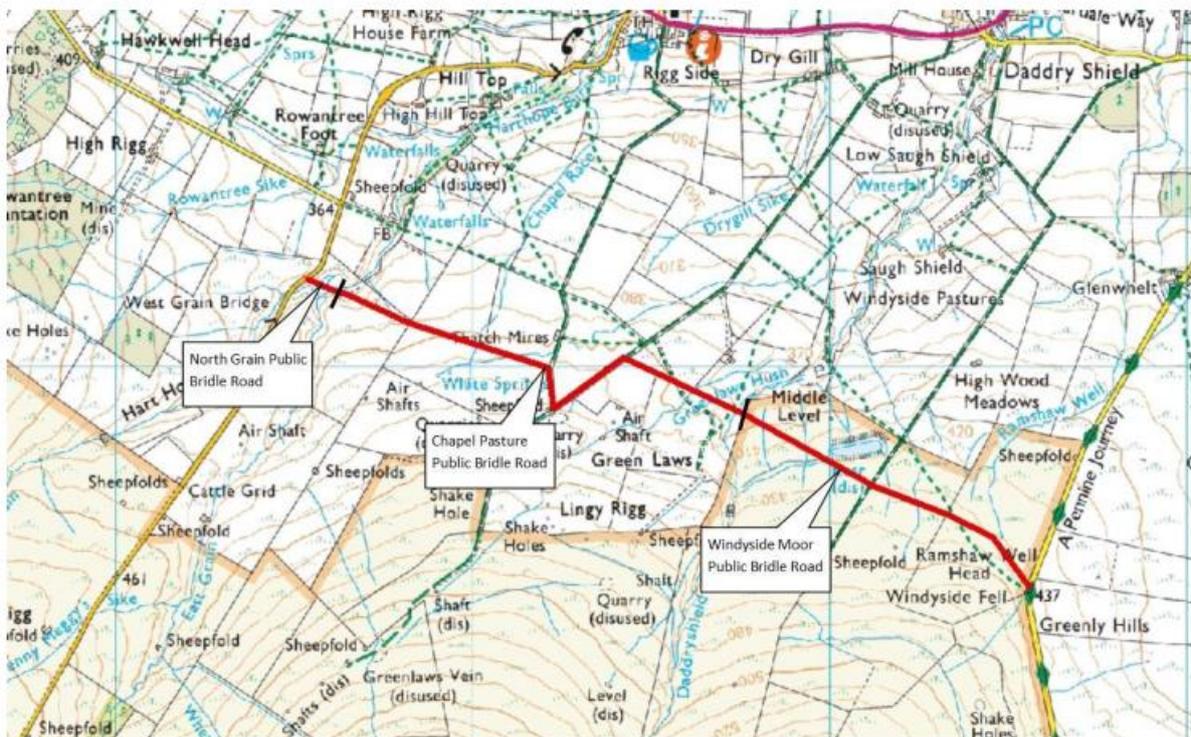
N/A

Appendix 2: Windyside Moor Public Bridle Road Summary Sheet & Application Form A

Definitive Map Modification Order Application Register

St Johns Chapel – Windyside Moor Public Bridle Road

Description of the intended effect	Adding Bridleway
Description of Geographical Location	Grid Reference: 388757.536877 to 389552.536401
Parish Postcode	St Johns Chapel and Westgate DL13 1NN, DL13 1NW, DL13 1NX.
Applicant's Details	See Form A
Date Application Received	10 July 2019
Durham County Council Contact	Senior Rights of Way Officer, Access & Rights of Way, Environment, Durham County Council, County Hall, Durham DH1 5UQ. Tel: Number 03000 265 342. Email: Prow@durham.gov.uk
Reference Number	3/19/098
Determination of the Application by DCC	



Application Form for a Definitive Map Modification Order

FORM A

**To: Corporate Director of Regeneration and Local Services,
Durham County Council, County Hall, Durham DH1 5UQ**



Wildlife and Countryside Act 1981

The Definitive Map and Statement of Public Rights of Way for the County of Durham

<p>S Briggs</p>	<p>Address C/O Access and Rights of Way Department The British Horse Society Abbey Park, Stareton, Kenilworth, Warwickshire, CV8 2XZ</p>
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Hereby apply for an order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the Definitive Map and Statement for the County of Durham by:-

1 Deleting Adding ➔ Select the appropriate status

Footpath Bridleway Restricted Byway Byway Open to All Traffic

Starting at NY 887 368 Ending at NY 895 364

Path name / Reference: (for deletions only) Windyside Moor Public Bridle Road (Inclosure)

2 Upgrading Downgrading ➔ to a

Footpath Bridleway Restricted Byway Byway Open to All Traffic

Path name / Reference:

Starting at Ending at

as shown on the plan attached (this must be of a scale of at least 1:25,000 and sufficient to determine the way on the ground).

1/ attach copies of the following documentary evidence (include user evidence forms) in support of this application:-

List of documents | 1799 Weardale Inclosure Act | 1815 Weardale Inclosure Plan and Award | 1895 OS Revised 1st Edition and Area Book | Current Day map | DMMO Application | Photographic Evidence |

Dated 10.7.19 Signed

Appendix 3: Windyside Moor Public Bridle Road Application (as submitted by the applicant)

Wildlife and Countryside Act 1981 Application to modify the definitive map

Windyside Moor Public Bridle Road.

The Route

- i. The route is in the Stanhope Parish, St John's Chapel Ward and Westgate Ward and is shown on OS OL 31 North Pennines, Teesdale and Weardale.
- ii. The alleged route starts at the boundary wall between Chapel Pasture and Windyside Moor at a place called **Level Gate Grid Ref. NY 887 368. A.** The route goes in a generally south east direction crossing the Inclosure Windyside Moor Private Carriage Road, (Bridleway 90) via a gate on either side. Keeping the direction the same to the next gate in a wall then curving more southerly and passing an old Well and continuing more or less following FP 46 to the gate onto the road **Grid Ref. NY 895 363. B.**
- iii. A grass stone and general moorland surface runs for most of the proposed route, apart from the Bridleway 90 which has been well churned up with tractors and it is being used as a feeding trough.
- iv. There is no real definition of the width of the pasture track now although it was made as 20 feet wide as described in the Inclosure Award. The Public Bridleway 90 is approximately 5 to 6 metres wide between the walls.

See photographic evidence

Documentary Evidence

1a. 1799 Weardale Inclosure ACT

Extracts from Durham Record Office (DRO) DCG 13/492

The Act lays out the powers and responsibilities of the Commissioners, specifically in respect of roads, public and private.

See extract 1a

1b. 1815 Weardale Inclosure Windyside Moor Public Bridle Road Award Original and Plan PAL 1_3_2 IX

From Level gate at **A** crossing Windyside Moor Private Carriage Road and continuing to **B.** The Windyside Moor Public Bridle Road is labelled on the plan as well as being set out in the award.

Windyside Moor Public Bridle Road. Transcription

*And we do hereby assign set out and appoint another public Horse Road Pack and Prime Way twenty feet in breadth as the same is now staked and set out by Stakes and Land Marks and which for distinctions sake we shall hereinafter refer to and call by the name of "**Windyside Moor Public Bridle Road**" beginning at and leading from a gate in the boundary wall between the said Windyside Moor and Chapel Pasture called Level Gate and proceeding eastwards through and over the allotment hereinafter set out to Thomas Wears upon the said Windyside Moor to and across the said Windyside Moor Private Carriage Road and from thence further south eastwards through and over the allotments hereinafter set out to William Blackburn and Christopher Emerson respectively upon the said Windyside Moor to and into the Great Drift Road south of the river Wear.*

Uses of the Public Bridle Roads

And we do hereby direct and award that all the said several Horse roads or Pack and Prime ways hereinbefore by us set out and appointed shall for ever hereafter be and continue in the narrowest parts thereof respectively of the breadth of twenty feet statute measure and that it shall and may be lawful to and for all persons whomsoever at all times hereafter to pass and repass in upon through over and along the same respectively on foot and on horseback only at their free wills and pleasures. **And we do hereby** order direct and award that the present and all future owners or occupiers of the said several allotments or parcels of ground through over or along which any of the said several Horse Roads or Pack and Prime ways are set out as aforesaid shall respectively within twenty days now next ensuring make and place and forever thereafter uphold maintain and keep or repair good and sufficient well going gates on the line of all such last mentioned Road in the fences of their several and respective allotments for the more commodious enjoyment of the same roads respectively.

See extract 1b

2. 1895 OS 1st edition Revised Scale 1:2,500 (25") Sheet XXIII.13 Extract from www.old-maps.co.uk
Area Book Stanhope PH, Forest Quarter Page 53 and 54 Durham Record Office (DRO) D/CG13/322

The Inclosure Windyside Moor Public Bridle Road is shown above from Level Gate **A** and passing through;

Plot 2136 –Rough Pasture &c
Plot 2137 - Rough Pasture
Plot 2138 –Rough Pasture
Plot 2172 – **Public Road**

-to the bend in the road as indicated **B**

Two of these plots, carry tracks, streams, and a well which is actually named on the map. They are still only defined as Rough Pasture unlike Plot 2136 which is shown &c meaning other features.

There were obviously errors made when defining the Land Use at the very least it should have had 'c' alongside the Rough Pasture land use.

See extract 4

Conclusion

As an Enclosure Way this route has a clear legal identity. It is one of a number of Public Bridle Roads awarded. Another 2 Inclosure Public Bridle Roads (Chapel Pasture and North Grain) join onto this bridle road. The complete route would be a valuable addition to the off road network. It is part of the historically important Inclosure system.

This is a link Bridle Road and two others to the West complete the picture to make a traffic free route not too far from villages in the 'dale' and is a potential good off road cycling, riding and walking route and would be an asset to the network of bridleways and paths in the area.

Please could this case be investigated, in the hope that the route could be recorded on the definitive map as a bridleway?