

Appendix 3

**Compilation of Consultation Responses
objections followed by letter of support**

Contact: Josephine Upchurch/Dagmar Richardson
Direct Tel: 03000 265 341 / 340
Email: Josephine.upchurch@durham.gov.uk
Dagmar.richardson@durham.gov.uk
Our ref: REAL/ST/AROW/JU/6/19/041

18 November 2019

Consultation Letter– Wildlife and Countryside Act 1981 - Proposed Amendment to the Definitive Map of Public Rights of Way Alleged At – Eden Lodge, South Bedburn – 6/19/041

I have received evidence in support of the council making a Modification Order to the Definitive Map and Statement under the provisions of Section 53 of the Wildlife and Countryside Act 1981. The evidence in support of the Right of Way comes from historical documentary research that shows the route as having had such rights since its conception.

Under the provisions of Section 53 of the Wildlife and Countryside Act 1981 the County Council has a duty to keep the Definitive Map and Statement under continuous review and make appropriate modifications by Order.

The Modification Order application is for the upgrade of c.830m of footpath 14 and c.860m of footpath 15 to a Bridleway. Please see the enclosed plan for location details.

I am currently seeking the views of local councillors, the Parish Council, relevant land owners and user organisations and will be pleased to include any comments you may wish to offer regarding the proposed modification to the Highways Committee. A draft report will be composed and will incorporate any views, objections and additional evidence submitted by those in receipt of this consultation. Parties responding to the consultation will receive a copy of the draft report to ensure their representations have been noted accurately.

It is likely that the Highways Committee will not review the claim mentioned above until 2020. However, it would be appreciated that you submit your views, objections or additional evidence within 30 days of receipt of this letter.

Please note that if you do make representations, then by virtue of the Local Government (Access to Information) Act 1985, the County Council may make them available for public inspection. Additionally, they may also be disclosable under the Freedom of Information Act 2000.

Cont.

If you have any queries or wish to discuss the matter, please do not hesitate to contact me.

Your sincerely



Josephine Upchurch

Definitive Map Officer

Public Rights of Way
Regeneration & Local Services
Durham County Council,
County Hall,
Durham
DH1 5UQ

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TRINITY
CHAMBERS

28 January 2022

Durham County Council
Public Rights of Way
County Hall
Durham
DH1 3HL

Dear Ms Richardson and Ms Upchurch

RE: APPLICATIONS FOR MAP MODIFICATION ORDERS – DURHAM COUNTY COUNCIL

As you are aware I am acting for various landowners and South Bedburn Parish Council in relation to DMMOs in their parish.

My clients understand that the Council has a duty to keep the Definitive Map (“the DM”) under review¹ and respond to applications for DMMOs and take no issue with this process. The subject applications are made by the BHS under s.53 and appear to allege mistakes which rely on s.54(c) to modify the DM. In that context my clients wish to be assured that these applications will be dealt with fairly and lawfully and on a proper understanding of the evidence. It should be noted that the purpose of DMMOs is to ascertain what rights exist and not to determine the suitability or desirability of the ways and rights claimed.

It is crucial that the Council as OMA addresses whether the applications have been duly made in terms of Paragraph 1 of Schedule 14 to the 1981 Act and in particular that applications must comply with all of the requirements of this section. The Court of Appeal held in *Winchester*² that the test is whether the application has been “made in accordance” with (all three) of the requirements and not whether the Council is willing to waive the obligation to provide copies of the documentary evidence relied upon. *Winchester* also addresses the point whereby the applicant fails to provide documents because they are unable to obtain them. The Court held (albeit in relation to s.67) that *minor* departures from paragraph 1 will not invalidate an application, applying the *de minimis non curat lex* principle.

It is plain that many of these applications rely on the Inclosure Award and Plans, full legible copies of which do not always accompany the applications. In such circumstances I fail to see how the Council can conclude the applications meet the strict requirements of schedule 14. Further the BHS provides no adequate explanation as to why full legible copies of the documents have not been provided. It is no answer to this fault to assert as Miss Upchurch has done (in correspondence with me in 2019) that the relevant documents can be found in the local library.

Whilst the Palace Green Library provides digital copies of the Inclosure Act and Award this has been closed for much of the consultation period and the fact it has been open only recently does not cure the applicants’ failure to provide evidence with the application. It is also the case that the Hamsterley Book of Reference is not available online.

¹ WCA 1981 s.53(2)

² *Winchester*

The main constraint is the closure of the County Records Office during Covid and its operating from 1 November 2021 for limited periods and by appointment only. The consultation letter for Eden Lodge was received on 15 December 2021 leaving only 3 days to access the facility before it was closed for the Christmas break. It has now been closed permanently without proper notice. This lack of access for those wishing to engage in the DMMO process will be brought to the attention of the Inspector appointed by The Secretary of State to determine the Orders.

The closure of the Records Office means landowners, the PC or other third parties cannot access other documents including Stopping Up Orders, Justice of the Peace Quarter Sessions and County Surveyor records. It is plain that without access to these documents the Council cannot properly assess any of the applications and any objectors will be severely prejudiced. I would therefore ask that the Council check these records as they are the only party with access to them.

It is also the case that the Council in applying s.53(3)(c) are content that new evidence has been discovered and the application is not merely a re-interpretation of evidence previously before the OMA. This approach is consistent with authorities including the Court of Appeal in *Simms and Burrow³s* and *Fowler⁴*. The PC has recently searched their own records (held by the Council) and can submit evidence that the South Bedburn PC was well aware of the Inclosure Awards throughout the 1920s to 1950s and this would have been communicated to the Council when it made the DM.

The PC has copy minutes of correspondence between the PC and the Council from 1950 to 1953 regarding meetings with the County Surveyor and completed maps and forms detailing claimed ways during the making of the DM. I will be making an FOI request to the Council to provide copies of this correspondence and records.

In relation to the Eden Lodge application [041] I would make the following observations. The application does not include a full copy of the Enclosure Act 1758, the Enclosure Plan is illegible, the Award extracts are illegible (albeit some parts are transcribed and these may suffice) and the Hamsterley Book of Reference and the OS maps relied upon are illegible. A barely legible copy was provided by the Council (not the applicant) on 26 January 2022 when the consultation period now closes on 31 January.

Secondly there is no evidence that even if this route was the subject of an award (which is not accepted on the evidence provided) it was accepted and made up as such. Absent this evidence there is no proof of a highway.

Thirdly the route does not appear on any of the County maps including Armstrong (1700), Carey (1809), Greenwood (1818) and Hobson (1840) which is completely ignored in the application. The lack of this route on any County Map casts doubt on the fact it was ever made up. Fourthly it is well established that OS maps only record physical features on the ground and do not distinguish between public and private ways. The surveyors were instructed not to concern themselves with rights of way and not to enquire into them.

Since 1889 the OS disclaimer has stated "The representation on this map of a Road, Track or Footpath is no evidence of the existence of a right of way.

On the 25" series the annotation BR only shows that the surveyor found a path *apparently* used as a bridleway; but the use of such letters does not necessarily mean such ways are public.

³ *Simms and Burrows* [1991] 2 QB 354 and *Purchas LJ* at 60, *Glidewell LJ* at 388 and *Russell LJ* at 392

⁴ *Fowler v SSE & Devon County Council* [1992] 64 P&CR 16 at 22

Finally this area was extensively mined in the 20th century and if any right of way did exist it may well have been extinguished to facilitate these operations. I would invite the Council to check its own records in this regard.

The PC would be happy to provide you with its evidence to date, but given the Eden Lodge application is not validly made I would invite the council to dismiss it at this stage and save unnecessary work and expense for all parties. Therefore I would appreciate your position on the preliminary issue of validity.

Should you have any queries or wish to discuss the above them please do not hesitate to contact me.

Yours sincerely

A black rectangular redaction box covering the signature of Miss Nicola Allan.

Miss Nicola Allan
BA (Hons) Dip Law MRTPI

ENCLOSURES

South Bedburn Parish Minutes 1930s
South Bedburn Parish Minutes 1950s

Points of Objection Raised in the above letter from the Barrister Nicola Allan acting on behalf of South Bedburn Parish Council. The objection is summarised first (pre-fix O) followed by DMMO officer response (pre-fix A).

O1: The Barrister states that the applicant's evidence was not sufficient to meet the required test for an application, which is that full legible copies of the inclosure award were not provided with the applications, and therefore the applications do not comply with the requirements of schedule 14:

A1: Evidence documents which accompanied the application(s) were certainly legible, sufficiently sized and perfectly referenced. The Barrister states that "*It is plain that many of these applications rely on the Inclosure Award and Plans, full legible copies of which do not always accompany the applications*". It is not a necessary requirement to have full copy of an Inclosure Award and Plan with the application, an extract to the relevant section and full reference is all that is required. However, the applicant did indeed include a full copy, and the original documents kept at Palace Green University Library, were checked by me and a colleague when investigating the application.

The Barrister makes this assertion regarding legibility because the copies we sent to her were in PDF format and resolution of PDF is poorer than in Word Document Format, but file size is reduced. The law makes no mention of the quality of evidence copies. I would also expect that anyone objecting would visit repositories of the evidence and view the originals or search for counter evidence.

The Barrister goes on to state that the evidence was not sent (to them) until 26th January 2022, however consulting on this application began in November 2019, and copies of the evidence had previously been sent to the South Bedburn Parish Council for which the Barrister is acting.

O2: Access to documents is the second objection made, the Barrister states "The closure of the Records Office means landowners, the Parish Council or other third parties cannot access other documents including 'Stopping Up Orders, Justice of the Peace Quarter Sessions, and County Surveyor records. She further states "it is plain that without access to these documents the Council cannot properly assess any of the applications and any objectors will be severely prejudiced".

A2: It is important to reiterate that consultation regarding this application first begun in November 2019, when Record Offices and Libraries were open and fully accessible. On 20th January 2020 South Bedburn Parish Council requested a two-month extension to the consultation period. We obliged the Parish by granting an extension until March, but on the March 5th, 2020, they again requested a further extension, it was granted until the end of the month, but obviously Covid Lockdown occurred mid-March.

It is patently clear that neither the Parish nor subsequently the Barrister, made any attempt either to view the original evidence submitted, nor to look for counter evidence when they had several months to do so and whilst relevant offices were open and accessible prior to the Covid lockdown.

We strongly feel that sufficient time had been given due to the extension of the consultation period, as the Parish stated they needed the extension to access to Archives and Libraries. Due to the points above the second consultation was intended to last for just over a month running from 15 December 2021 to 31 January 2022, it was unfortunate that the Archives closed on the 23rd of December (which we had not expected). However, it is important to stress remote searches were and are available on request, and that the crucial evidence pertaining to this application was available to view at Palace Green Library which had been fully open and accessible since July 2021.

O3: Third objection states that when the original survey for the first Definitive Map (1950) was undertaken, the Parish were already aware of the Inclosure Act and Award and this would have been communicated to the Council Surveyor', so therefore evidence submitted via the application is not 'new evidence', and on this basis the application should be refused.

"Section 53(3)(c)(i) of Highways Act, where the application seeks a Modification order to record additional rights over a way already shown on the definitive map: The evidence submitted in this case must be new evidence, not evidence that was previously considered when the Definitive Map was drafted. Before making an order, the surveying authority must have discovered evidence which (when considered with all other relevant evidence available to the authority) shows that the additional rights exist. Before confirming the order, the authority or the Secretary of State must be satisfied that the additional rights exist".

A3: The original Parish Survey, which we possess clearly shows that no reference was made to the Inclosure Award with regard to the public's 'rights' over the application route. In fact, no reference was made regarding any of the other routes added to the Definitive Map in that Parish. Therefore, the provisions for use recorded in the Award Book is new evidence. The Parish was invited to come and view the original survey documents and quarter session records to verify this but declined. Whilst the Parishes' own minutes (**Document 3**) do make mention of the Inclosure Award with regard to 'Beating the Bounds' they do not do so with regard to Surveying and recording routes for addition to the Definitive Map. If the Parish were fully aware of the Inclosure Award etc when compiling the Parish Survey of PROW, then they couldn't have failed to come to the conclusion that this route (and others in the Parish) were of bridleway status. The fact that they didn't suggests that they actually had no regard to the Inclosure Award when compiling the survey

O4: The Barrister states "the route does not appear on any of the County maps including Armstrong (1700), Carey (1809), Greenwood (1818) and Hobson (1840) which is completely ignored in the application. The lack of this route on any County Map casts doubts on the fact it was ever made up. Fourthly it is well established that OS maps only record physical features on the ground and do not distinguish between public and private ways. The surveyors were instructed not to concern themselves with rights of way and not to enquire into them".

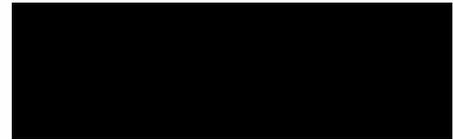
A4: Armstrong's 1700 map predates the Inclosure Act (1758). The fact that the route is not shown on Carey, Greenwood or Hobson mapping is likely because the routes destination at this period was Podgehole Mill, and it wasn't a road suitable for a carriage. The text of the Inclosure Award indicates the reasoning behind the creation/recognition of this route where it states, 'the way is for use of all manner of persons passing and re-passing on foot or on horseback and also to lead and drive all, all manner of cattle loaded and un-loaden". The

primary use of the route was access to and from Podgehole Mill and Podgehole Mill Road (UNC41/3), the routes that predominate the Maps of Greenwood, Cary and Hobson deal more broadly with Turnpikes and Crossroads, these were commercial maps dedicated to the Nobility, Gentry and Clergy, whose subscriptions provided the financing required to undertake a County Survey. In respect of Ordnance Survey Maps, it clearly states in the text of the application report that it is well understood by the applicant and the County Council that Ordnance Survey Maps are not a record of public rights.

Q5: The area was extensively mined during the 20th century and if any right of way did exist it may well have been extinguished to facilitate these operations.

A5: There was certainly open cast operations undertaken in several areas around the application route, however, the route (Footpaths 14, 15) was never extinguished from the Definitive Map, and there are no notes in the accompanying statements to Footpaths 14 and 15 which reference closure due to mining, nor are there any copies of correspondence within the Footpath Folders relating to said closure.

Mr & Mrs Taylor



2nd December 2019

Dear Josephine

Reference Consultation Letter- Wildlife and Countryside Act 1981 – Proposed Amendment to Definitive Map of Public Rights of Way Alleged at – Eden Lodge, South Bedburn – 6/19/041

Further to our telephone conversation on the 2nd December to clarify the consultation process I am now formally making my representation to the consultation.

We have lived at the current address for approximately 30 years and during that period the public footpath that runs through the property, as defined on the map, has been used 6 times.

Whilst living at the farm we have experienced a considerable increase in rural crime with unwanted visitors entering the farm and stealing property. The support of the local police in tackling this issue has been non-existent. One example of theft was an £18,000 caravan stolen during the day. In an attempt to deter unwanted visitors, I have had to resort to locking the farm gates at the entrance and double locking all the farm buildings. Since adopting this strategy, we have had no unwanted visitors or thefts from the farm.

I have worked closely with Peter Crinnion your Public Rights of Way Office to ensure that there is a Public footpath through the farm, this has entailed building styles at my own expense, in order to give full access. Clearly these measures are fine for people on foot. However, if the footpath was to be upgraded to a bridleway it considerably changes the access to the farm, preventing us from locking the gates making the farm open to unwanted visitors, vehicular traffic and significantly increasing the risk of theft of farm equipment and machinery.

Despite my best efforts to make the public footpath accessible once it leaves Eden Lodge and passes into West Plantation the path becomes completely unpassable. The plantation is the

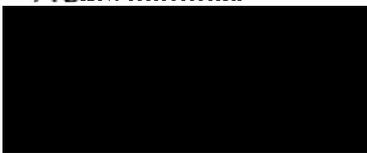
site of an old drift mine which is full of small sink holes and fallen trees and is completely overgrown due to years of neglect. It is a health and safety risk and dangerous to use it as a public footpath, consequently of the 6 people that are we are aware of, who have attempted to use the footpath, have not entered the plantation but trespassed on my farm land to divert around the plantation. Being a horse rider at no point would I attempt to ride a horse on the proposed bridleway through the plantation, it would be reckless and clearly put the horse and rider in danger of being injured.

As far as I understand Barbara Herd on behalf of the British Horse Society has made the application to upgrade the Public Footpath to a bridleway obviously their research it would seem that it has been carried out as a desk top exercise. If they had walked the public footpath, they would realize by upgrading it to a Bridleway giving access to horse riders would be putting their members and other horse riders at considerable risk. On that basis I am very surprised and disappointed that the British Horse Society are making the application, from my knowledge base it is a totally irresponsible application.

I therefore strongly object to the application on the following grounds: -

1. It would significantly expose the farm to potential thefts and trespass.
2. The proposed route as a Public Footpath is currently impassable and upgraded to Bridleway would be dangerous and a significant Health and Safety Risk to users and animals.
3. The historical documentary research would not have to consider a duty of care. However, the County Council do have a duty of care and they would be failing in that duty of care if the upgrade was granted.

Yours faithfully



Paul A Taylor



If this application proceeds it calls into question the construction of stiles to create a permissive route. I am still prepared to construct the stiles to assist with access for the public footpath by using a permissive route. However, can you provide me with some reassurance that if I carry out the work it will not be in vain.

Can your department please keep me updated on any developments with regard to the application so I have the opportunity to register my objections at future meetings or in relation to correspondence.

Regards

Paul Taylor

Sent from [Mail](#) for Windows 10

-----Original Message-----

From:

Sent: 26 November 2019 18:15

To: Public Rights of Way <pro@durham.gov.uk>

Subject: Ref: REAL/ST/AROW/JU/6/19/041

In response to my letter received, dated the 18/11/19 my objections/concerns still stand regarding the proposed alterations.

From speaking to one of your team members earlier in the year, when we received the first letter, I raised my concerns about the proposed route and had a few questions that couldn't really be answered.

The area in question was heavily mined many years ago and has subsequently caused numerous pit falls in the West Plantation, which I personally feel, as a ex horse rider, would be unsuitable for it to be changed to a bridle way.

A couple of questions that I had previously, and would still like a answer to are as follows:

- What evidence have DCC received towards this proposed amendment?
- Who is financing this? ie gates, stiles, paths, fitting and upkeep?
- What happens if a accident occurs on the proposed bridleway? Am I liable?
- Who's accountable for loss, or damage to livestock ie leaving a gate open?
- Does this amendment change anything regarding land registry or any matters regarding DEFRA?

I hope to hear a response from one of your team members soon regarding this matter, any answers to the above questions would be gratefully received.

Kindest regards,

Jackson Forrest

From: Josephine Upchurch
Sent: 23 December 2019 11:45
To: ian martin
Cc: 'Dagmar Richardson (dagmar.richardson@durham.gov.uk)'
Subject: RE: Bridle Way Eden Lodge, South Bedburn

Hi Ian

Thank you for your email. Concerns have been raised regarding the current condition of certain sections of the route, however, should the order be confirmed these would likely be assessed and dealt with to ensure the route is suitable and safe for use by those in relation to its legal status. Your objection is noted and will be put on file for future reference and will be incorporated in the draft and final report for the Highways Committee, of which you will receive a copy in due course.

Best wishes for Christmas and the New Year

Josephine Upchurch

Definitive Map Officer
Public Rights of Way
County Hall
Durham
DH1 5UQ
03000 265341

www.durham.gov.uk/prow

-----Original Message-----

From: i [REDACTED]
Sent: 20 December 2019 17:00
To: [REDACTED] >
Subject: Bridle Way Eden Lodge, South Bedburn

Hello Josephine, In relation to a recent email that I sent on the 12th December regards a proposed Bridle Way in this area I have decided that I must object to the proposal on the grounds that it seems a very difficult area and most likely unsuitable for horses.

Regards, Ian Martin
Footpath Officer Barnard Castle Ramblers.

From: [REDACTED]
Sent: 01 December 2019 11:53
To: Josephine Upchurch
Cc: Dagmar Richardson
Subject: Re: Consultation Letter - Eden Lodge, South Bedburn - 6/19/041 (Our reference REAL/ST/AROW/JU/6/19/041)

The Open Spaces Society has no objection.
Jo Bird

From: Josephine Upchurch
Sent: Tuesday, November 19, 2019 4:17 PM
To: Jo Bird
Cc: Dagmar Richardson
Subject: Consultation Letter - Eden Lodge, South Bedburn - 6/19/041 (Our reference REAL/ST/AROW/JU/6/19/041)

Dear Jo

Consultation Letter – Wildlife and Countryside Act 1981 - Proposed Amendment to the Definitive Map of Public Rights of Way Alleged At – Eden Lodge, South Bedburn – 6/19/041

I have received evidence in support of the council making a Modification Order to the Definitive Map and Statement under the provisions of Section 53 of the Wildlife and Countryside Act 1981. The evidence in support of the Right of Way comes from historical documentary research that the applicant believes shows the route as having had such rights since its conception.

Under the provisions of Section 53 of the Wildlife and Countryside Act 1981 the County Council has a duty to keep the Definitive Map and Statement under continuous review and make appropriate modifications by Order.

The Modification Order application is for the upgrade of c.830m of footpath 14 and c.860m of footpath 15 to a Bridleway. Please see the attached plan for location details.

I am currently seeking the views of local councillors, the Parish Council, relevant land owners and user organisations and will be pleased to include any comments you may wish to offer regarding the proposed modification to the Highways Committee. It would be appreciated if you could send any reply within 30 days of the date of this email or inform me if you require more time to consider the matter.

Please note that if you do make representations, then by virtue of the Local Government (Access to Information) Act 1985, the County Council may make them available for public inspection. Additionally, they may also be disclosable under the Freedom of Information Act 2000.

If you have any queries or wish to discuss the matter, please do not hesitate to contact me.

Kind regards

Josephine Upchurch
Definitive Map Officer
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Patron Her Majesty The Queen

The British Horse Society
Abbey Park
Stareton
Kenilworth
Warwickshire
CV8 2XZ

Email: access@bhs.org

Tel: 02476 840515

The
British
Horse
Society

Fulfilling your passion for horses

To:
Josephine Upchurch
Definitive Map Officer
Public Rights of Way
Durham County Council,
County Hall,
Durham
DH1 5UQ

Ref. REAL/ST/AROW/JU/6/19/041

Consultation Letter – Wildlife and Countryside Act 1981 - Proposed Amendment to the Definitive Map of Public Rights of Way Alleged At – Eden Lodge, South Bedburn – 6/19/041

Dear Josie

Response from the British Horse Society

The British Horse Society supports this proposal to upgrade the alleged right of way, part of FP 14 and FP 15 at Eden Lodge to a Bridleway.

This proposal will bring greater safety for those who ride horses and cycles and future generations can also enjoy them.

Regards

Sylvia Briggs
British Horse Society
Access and Bridleway Officer
Durham

On Behalf of 'The British Horse Society' (Durham)