

Highways Committee

26 September 2023



**Definitive Map Modification Application
to record, Waldrige Fell Waggon Way Public
Bridle Road- Waldrige, Edmondsley and
Chester-le-Street as a Public Bridleway**

Wildlife and Countryside Act 1981

**Definitive Map Modification Order
Proposal**

**Alan Patrickson, Corporate Director of Neighbourhoods and
Climate Change**

**Councillor John Shuttleworth Cabinet Portfolio Holder for
Highways**

Electoral division(s) affected:

Chester-Le-Street West Central, Sacriston and Chester-Le-Street South

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; upgrading Public Footpaths, or sections of, 11, 24 and 22, and by adding a section (currently permissive footpath) to a Public Bridleway.

Executive summary

- 2 This application seeks to upgrade the status of Public Footpaths, or sections of, 11, 24 and 22, and add a section of Public Bridleway. The route starts at the southern end of a Byway Open to All Traffic (B-O-A-T) 11 (grid reference 425255.551301) in Chester-Le-Street, passes through the Parish of Edmondsley and ends on Waldrige Road (C2) (grid reference 425056.550151) in the Parish of Waldrige.
- 3 The route connects to the public highway at point A and at point B, **Document A**.

Recommendation(s)

- 4 It is recommended that the Committee resolves to make a Definitive Map Modification Order to modify the Definitive Map and Statement by way of upgrading Public Footpaths, or sections of, 11, 24 and 22 and adding a

section (currently permissive footpath) of Public Bridleway between Public Footpaths 24 and 22 shown A-B on *Document A* under section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.

- 5 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

- 6 A Definitive Map Modification Order (DMMO) application was submitted by Mr N Gander, on behalf of the British Horse Society, in July 2019. Historical documentary evidence was submitted to support the application, the most important evidence being the 1800 Chester Enclosure Award and Plan. The applicant wishes that the Definitive Map and Statement be modified to reflect what they believe should be a Public Bridleway.
- 7 The proposed section to be upgraded and added as a Public Bridleway is referenced A-B and is shown in ***Document A***.
- 8 The application route, at point A in *Document A*, connects to a public highway, B-O-A-T 11, in Chester-Le-Street (grid reference 425255.551301). The route terminates at point B on *Document A* where it connects to another public highway, Waldrige Road (C2) (grid reference 425056.550151).
- 9 When considering the evidence submitted, it is considered, on a balance of probability, that the route under investigation was legally established as a Public Bridleway as set out by the 1800 Enclosure Award and Plan.

Consultation and Objections

- 10 Consultations on the proposed upgrade and addition were carried out with the Local Councillors, Parish/Town Council, landowners/occupiers, and user groups/organisations, ***Document B, B.1 and B.2.***
- 11 No objections were received as a result of the consultations. However, three letters of support were submitted, ***Document C***.

The Route

- 12 The route is situated to the south of Chester Burn Close, Pelton Fell and continues in a southerly direction from the end of B-O-A-T 11. For the most part, it follows the line of an original historic wagon way, which later became a way for the transportation of coal from Waldrige Colliery in 1839. The wagon/railway was dismantled sometime in the 1900s and is

now a Public Footpath. The route passes through Cong Burn Wood Nature Reserve and Cong Burn Plantation. The northern section of the route passes through a Local Nature Reserve (LNR) and the southern section passes through a Site of Special Scientific Interest (SSSI). The route was set out in the 1800 Chester Enclosure Award and was assigned Public Bridleway status with a stipulated width of 12ft (3.7m).

- 13 The surface of the route comprises 3 distinct sections. The first section, marked B on *Document A*, is a wide, hardcore metalled surface on a slight gradient. The second section of the route branches off to the right, is fairly narrow, but becomes wider after a short distance and is a hardcore surface which has been encroached upon by sediment and is fairly level. The third, and most northerly, section of the route, marked A on *Document A*, is a metalled, mostly level, surface and ranges in width from between 3 and 11m. The section measuring approximately 11m is mostly an adopted highway and B-O-A-T 11.

Documentary Evidence

- 14 **Document D – 1800 Copy Chester Enclosure Award**
Chester-le-Street Common or Moors Inclosure Award – DHC/M
- 15 The earliest and most important legal documentary evidence which describes and depicts the application route is the 1800 copy Chester Enclosure Award.
- 16 Enclosure 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 Enclosure Awards consisted of Enclosure boundaries, public and private highways, and their uses, rights of way, water courses and drainage etc, as well as details of the landowners. Most Enclosure awards are accompanied by Enclosure plans/maps and provide a pictorial view of the details described in the Enclosure Award.
- 17 The award describes Waldrige Fell Wagonway as being a public bridle road

“And we do hereby also assign set out and appoint one other Public Bridle Road twelve feet in breadth beginning at and leading out of the said Burnt House Road at or near the Place where the said Road crosses Waldrige Fell Wagon Way and thence proceeding Southwards through and over another Allotment hereinafter set out and awarded to the Person or Persons inti tied to the Estate of the said William Henry Lambton and thence Southwards through and over an Allotment hereinafter set out and Awarded to Mary Nicholson

and thence crossing Chester Coal Road and proceeding Southwards and South westwards though and over an Allotment hereinafter set out and Awarded to Isaac Cookson Esquire and thence south westwards and Southward through and over another Allotment hereinafter set out and awarded to the Person or Persons intituled to the Estate of the Said William Henry Lambton to Waldrige Common pursuing the course of the said Waldrige Fell Waggon Way as nearly as possible through and over the said allotments ...". They state that it "may be lawful to and for all person and persons whomsoever at all times to pass and repass in through and along all the said respective Public Bridle Roads last herein before by us assigned and set out on foot and on Horseback only at their free Wills and pleasures".

18 **Document E – 1800 Chester Enclosure Plan** – DHC6/III/6

19 On the plan Waldrige Fell Waggon Way and Public Bridle Road is clearly shown heading in a Southerly direction from Pelton Fell Road (named Chester Coal Road on the Enclosure Plan). It intersects with West Lonning (Mr Lambton's) Private Carriage Road before reaching Cong Burn, which it is shown as crossing. A short section is also shown leading south of Cong Burn, indicating its continuation over and across Waldrige Common.

20 **Document F – Greenwood 1820** - valentine.dur.ac.uk

21 Greenwood maps are county surveys undertaken by John Greenwood between 1817 and 1820 for the purpose of compiling a County Atlas and the roads marked were considered major byways. This map was made for sale to the public, and so is unlikely to show routes that the public could not use. It has a key in which different types of road are distinguished. It does not set out to show bridleways or footpaths but this does not mean that the routes shown did not carry public bridleway rights. The route is shown in the manner of a "Cross Road". Greenwood seems to have meant this to mean any road not specifically a turnpike road.

22 The application route is shown as an enclosed route heading south from what is now Chester Burn Close to Cong Burn. The north side of Cong Burn was the extent of the Inclosure boundaries and to the south the boundary of Waldrige Common. Commons, although they were normally owned by the Lord of the Manor at the time, came with rights that were considered appurtenant, such as the right to pasture (graze animals), estovers (collections of wood), turbary (collection of peat/fuel) etc. By extension, in order to make use of the rights, the public would have stopped, passed and repassed over common lands by many methods.

23 **Document G – 1846 Chester-le-Street Tithe Plan & Apportionment**

Durham University Library -DDR/EA/TTH/1/41

24 These surveys and plans were undertaken pursuant to an Act of Parliament for the purpose of recording landholdings that were liable to taxation (tithes).

25 The route under investigation has been allocated a tithe apportionment number (382) and is listed as a Railway under the 'Name and Description of Land and Premises'. Additionally, land that was considered common/barren/waste, belonging to the church, crown estates or that may have already been considered a public highway at the time were generally not allocated apportionment numbers.

26 **Document H – 1839 Waldrige Tithe Plan**

Durham University Library – DDR/EA/TTH/1/243

27 These surveys and plans were undertaken pursuant to an Act of Parliament for the purpose of recording landholdings that were liable to taxation (tithes).

28 On this plan the route has not been allocated a tithe apportionment number, however, neither have any of the other roads shown on plan that have since become public highways. Some parishes attributed apportionment numbers to all parcels of land and some only allocated apportionment numbers if the land was classed as grazing. Additionally, land that was considered common/barren/waste, belonging to the church, crown estates or that may have already been considered a public highway at the time, were generally not allocated apportionment numbers.

29 **Document I - 1857 1st Edition OS Map (Published 1861 and 1876)**

*Reproduced with the permission of the National Library of Scotland' -
<https://maps.nls.uk> and <https://www.oldmapsonline.org/>*

30 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.

31 The route is marked heading in a general southerly direction from Pelton Fell towards Waldrige Common. It is still labelled as Waldrige Waggon Way and depicted as such.

32 **Document J - 1898 One Inch OS Map**

Reproduced with the permission of the National Library of Scotland' - <https://maps.nls.uk>

33 As above only a larger scale OS production with fewer features marked and labelled.

34 **Document K – Current Definitive Map**

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

35 The route being applied for, which is documented and shown in the Enclosure Award and Plan, has been highlighted in red on an extract of Durham County Councils Definitive Map.

36 **Document L – Satellite View**

Google Earth

37 The blue line shows the approximate route of Waldrige Fell Waggon Way heading in a general southerly direction from Chester Burn Close, Pelton Fell and passing through Cong Burn Local Nature Reserve (LNR) to the north and the Site of Special Scientific Interest (SSSI) to the south.

38 **Document M – Photographic evidence**

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

Legal Framework

40 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)(ii) on the discovery by the authority of evidence which when considered with all other relevant evidence available to them shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.

41 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.

- 42 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.
- 43 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.
- 44 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.
- 45 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

- 46 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 currently shown the map and statement as a public footpath, should be upgraded to public

bridleway. It would be unlawful to consider issues such as the suitability or desirability of the routes subject of the application.

- 47 In this case it is considered that the most important evidence is the 1800 Chester Inclosure Award and Plan (**Documents E and F**). The Inclosure Award specifically created a Public Bridle Road.
- 48 Whilst the other map-based evidence is corroboratory, less weight must be afforded to these in accordance with Section 32 of the Highways Act 1980 as they were not produced for the purposes of showing the status of the route but for other purposes, such as taxation.
- 49 No objections to the proposed upgrade have been received and no evidence has been found suggesting that the public bridleway rights have, or were, ever extinguished.
- 50 Therefore, it is recommended that the Definitive Map and Statement be modified by way of upgrading Public Footpaths 11, 24 and 22 to Public Bridleway and by adding a section of Public Bridleway in accordance with the application.

Main implications

Maintenance

- 51 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

- 52 It is considered, after examining all of the available evidence, that on the balance of probability the route under investigation named as Waldridge Waggon Way Public Bridleway meets the test of section 53(C)(ii) and a Definitive Map Modification Order should therefore be made to update the Definitive Map and Statement to record it as a public bridleway.

Background papers

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

Other useful documents

- Previous Cabinet reports / None

Author(s)

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Appendix 1: Implications

Legal Implications

See paragraphs 40, 41, 42, 43, 44 and 45

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 10 and 11

Equality and Diversity / Public Sector Equality Duty

See paragraph 44

Climate Change

N/A

Human Rights

See paragraph 43

Crime and Disorder

N/A

Staffing

N/A

Accommodation

N/A

Risk

N/A

Procurement

N/A

Appendix 2: Waldrige Fell Waggon Way Public Bridle Road Summary Sheet & Application Form A

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*

I, N Gander	Address: The British Horse Society, Access & Rights of Way Dept. Abbey Park, Stareton, Kenilworth Warwickshire, CV8 2XZ
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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 <input type="checkbox"/>	Adding <input type="checkbox"/>	
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Footpath <input type="checkbox"/>	Bridleway <input type="checkbox"/>	Restricted Byway <input type="checkbox"/>	Byway Open to all Traffic <input type="checkbox"/>
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Path Name:	Starting at:	Ending at:
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2	Upgrading <input checked="" type="checkbox"/>	Downgrading <input type="checkbox"/>	
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Footpath <input type="checkbox"/>	Bridleway <input checked="" type="checkbox"/>	Restricted Byway <input type="checkbox"/>	Byway Open to all Traffic <input type="checkbox"/>
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Path Name: Waldrige Fell Public Bridle Road	Starting at: NZ252513	Ending at: NZ250501
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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).

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

List of documents:

- Chester Enclosure Map and Awards, 1800
- Greenwood Map of County Durham, 1820
- Tithe Map for Waldrige, 1839
- The Local Historian's Table Book of Remarkable Occurrences etc
1846
- Ordnance Survey First Edition 1857

Dated: 29th July 2019..... Signed.....

Appendix 3: Waldrige Fell Waggon Way Public Bridle Road Application (as submitted by the applicant)

EC000

Wildlife and Countryside Act 1981

Definitive Map Modification Order Application

For a route over the Old Waggonway, in the Parishes of Chester-le-Street, Edmondsley and Waldrige to be recorded as a Public Bridleway.

Waldrige Fell Waggon Way Public Bridle Road

Applicant's Reference: CH001

25th July 2019

Quick reference path facts to assist the Surveying Authority in its investigation

OS Explorer Series Map:

308: Durham and Sunderland

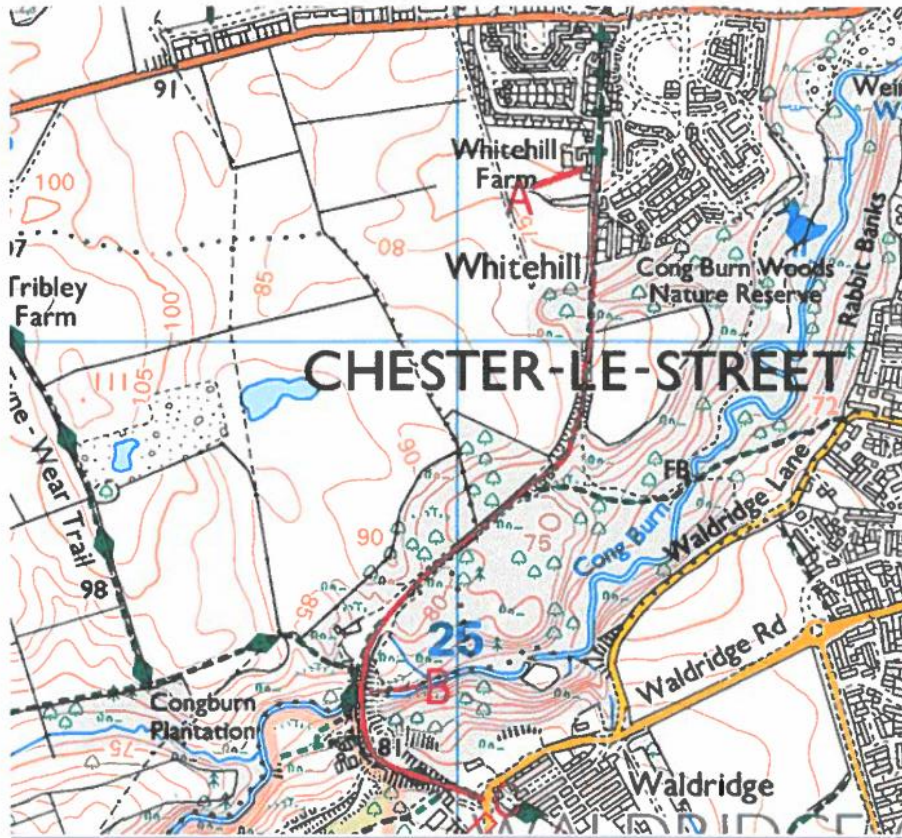
Grid Reference

NZ252513 to NZ250501

1. My name is Neil Gander. I am the applicant for the order. My rights of way experience stems from having been a member of Durham Local Access Forum, and former Durham County Council Voluntary Ranger. I have an HND in Environmental Management from Houghal College, Durham. I have researched Rights of Way in the area for my book, "Beyond Hamsterley – Where to Ride Your Mountain Bike In and Around County Durham" (2005).
2. This application is made because, on the cut off day,
 - a. The effect of s.53(3) and (4)(a) Countryside and Rights of Way Act 2000 on a public path that existed prior to 1949 is to extinguish the bridleway rights and vehicular rights on a route shown in the definitive map and statement as a footpath.
 - b. The effect of s.54A Wildlife and Countryside Act 1981 (as inserted by Sch 5 para 4 of the Countryside and Rights of Way Act 2000) on a route that carries public mechanically-propelled-vehicular rights and is not already on the definitive map as a highway of any description, is to prevent it from being recorded. (This applies if the route is shown to be a highway other than a footpath, bridleway or restricted byway.)

THE APPLICATION ROUTE

3. The application route runs from the southern end of Public Byway BY11 in the Parish of Chester-le-Street to the C91 Waldrige Road. It is recorded on the Definitive Map for County Durham as Footpath FP11 in the Parish of Chester-le-Street and Footpath FP24 in the Parish of Edmondsley and Footpath FP22 in the Parish of Waldrige.
4. The route is shown in the 1:25,000 Ordnance Survey extract below, starting at point A and ending at point C.
5. The route's width is 12 feet, as set out in the Chester Moor Enclosure Awards.



Ordnance Survey 1:25000 scale map extract showing application route. Screenshot from streetmap.co.uk. Not to scale.

DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

6. In order to be able to modify the definitive map and statement, the Surveying Authority needs to have a discovery of evidence which shows, on the balance of probabilities, that highway rights exist. The use of the 'balance of probabilities' test rather than 'beyond reasonable doubt' was confirmed by the High Court in *Todd, Bradley v SOS for EFRA* [2004] 4 All ER 497.

7. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another* [2012] EWCA Civ 334, Lewison LJ said, at paragraph 22,

In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact-finding tribunal may consider, in deciding whether or not to draw an inference, is almost limitless. As Pollock CB famously directed the jury in *R v Exall* (1866) 4 F & F 922:

"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength."

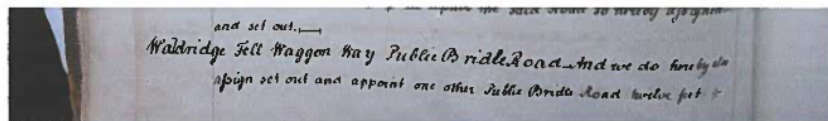
8. While no single piece of evidence is conclusive, the applicant believes that taken as a whole the pieces of evidence demonstrate highway reputation over many years, indicating that the route does indeed have highway status.

9. Chester Enclosure Map and Awards, 1800

a. "Chester Le Street Common or Moor" was enclosed by an Act of Parliament in 1794. A copy of the Awards, dated 1800, is found in Durham University Halmote Collection, under the reference DHC1/M.5.

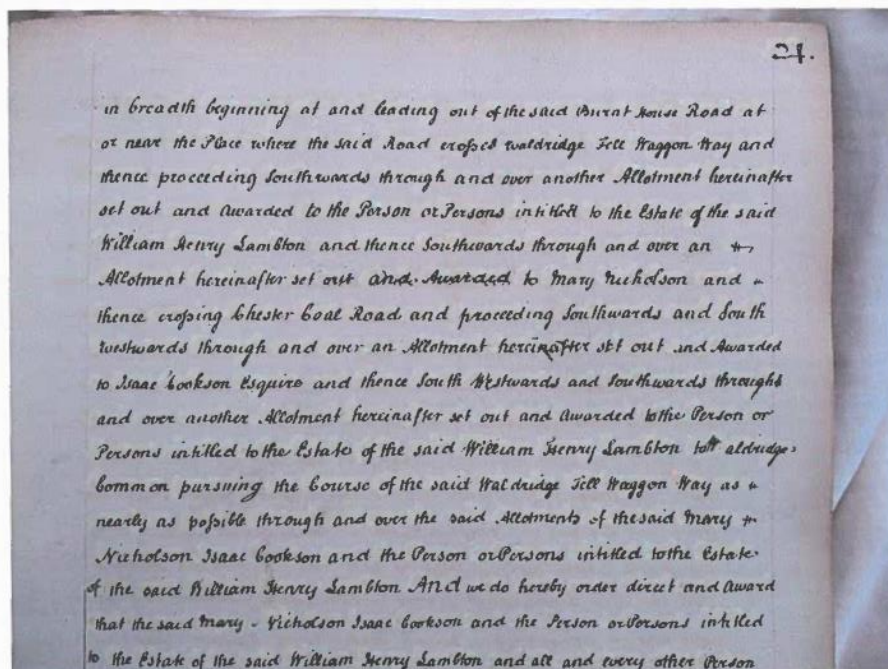
b. The Copy describes the Awards as, "Award (22 September 1800) for Chester-le-Street Common or Moor lying in the manors of Chester-le-Street and Chester Deanery."

c. The Awards name the application route as, "Waldridge Fell Wagon Way Public Bridle Road" as shown below:



Extract 1 from the Chester Enclosures Awards, 1800, Durham University Library Special Collections.

d. The application route is described as follows: "And we do hereby also assign set out and appoint one other Public Bridle Road twelve feet in breadth beginning at and leading out of the said Burnt House Road at or near the Place where the said Road crosses Waldrige Fell Wagon Way and thence proceeding Southwards through and over another Allotment herein after set out and awarded to the Person or Persons intitled to the Estate of the said William Henry Lambton and thence Southwards through and over an Allotment hereinafter set out and Awarded to Mary Nicholson and thence crossing Chester Coal Road and proceeding Southwards and South westwards though and over an Allotment hereinafter set out and Awarded to Isaac Cookson Esquire and thence southwestwards and Southwards through and over another Allotment hereinafter set out and awarded to the Person or Persons intitled to the Estate of the Said William Henry Lambton to Waldrige Common pursuing the course of the said Waldrige Fell Waggon Way as nearly as possible through and over the said allotments..."



Extract 2 from the Chester Enclosures Awards, 1800, Durham University Library Special Collections.

e. The Awards also set out the "Breadth and Uses of the Bridle Roads". They state that it "may be lawful to and for all person and persons whomsoever at all times to pass and repass in through and along all the said respective Public Bridle Roads last herein before by us assigned and set out on foot and on Horseback only at their free Wills and pleasures."

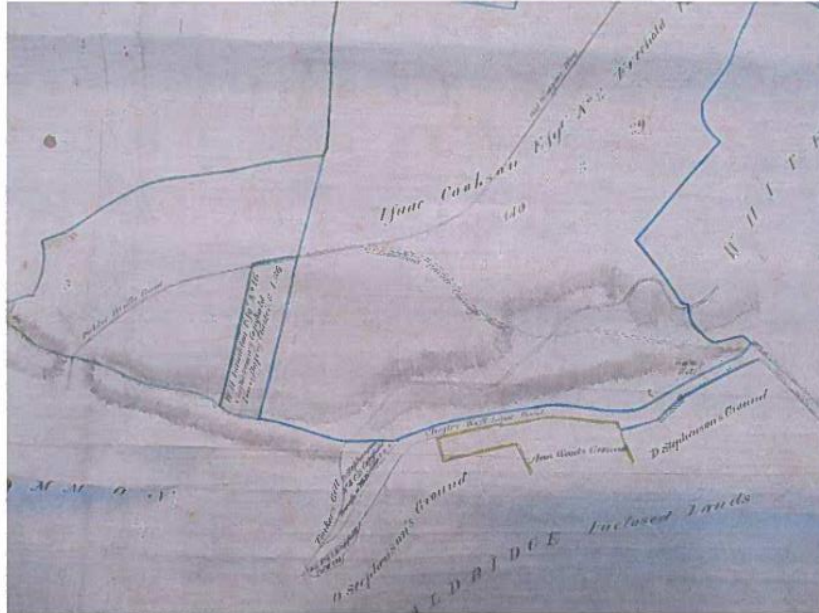
may be lawful to and for all person and persons whomsoever at all times for
 ever hereafter to pass and repass in through and along all the said respective
 public Bridle Roads last herein before by us assigned and set out on foot and
 on Horseback only at their free wills and pleasures. —
 Public Foot Roads, Holme Hill Public Foot Road. And we do also
 hereby set out and appoint a Road or Foot way forty feet in w-

Extract 3 from the Chester Enclosures Awards, 1800, Durham University Library Special Collections.

f. Copies of the accompanying enclosure maps are held among the Halmote Maps from Durham University Library's Special Collections. They can be found under reference DHC6/III/6. The two extracts below show the application route from point A to the limit of the Enclosure at Cong Burn, which is marked as point B in the application map.

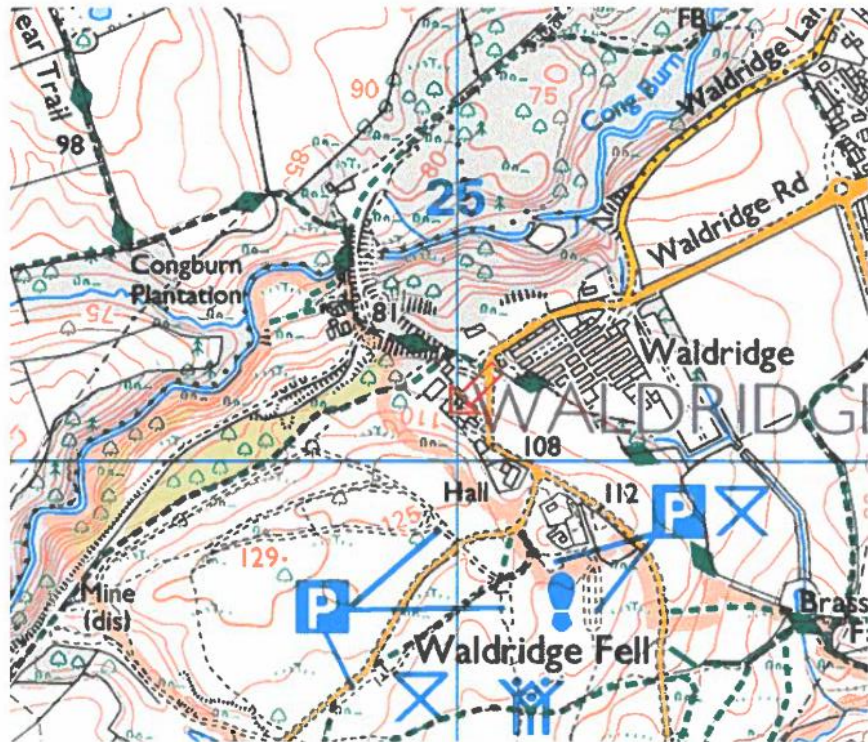


Extract 1 from the Chester Enclosures Map, 1800, showing the northern part of the application route. Part of this portion is already recorded as Chester-le-Street BY11. Durham University Library Special Collections.



Extract 2 from the Chester Enclosures Map, 1800, showing the southwestern end of the Enclosure Awards section of the application route, to its meeting with Cong Burn. Durham University Library Special Collections

- g. Chester le Street Enclosure Act, Awards and maps together constitute a Legal Event which are irrefutable evidence of the existence of a public highway over the portion of the application route included in them.
- h. Since the Enclosure Map also shows the Bridleway continuing beyond the limit of the Enclosure area and onto the unenclosed section of Waldridge Common, this is also very strong evidence that the public rights of at least Bridleway status continue beyond this point.
- i. The Line was opened in 1779 according to one local history researcher <https://historyman1794.wordpress.com/tag/waldridge/> who says, "The earlier (1779) drift mine was west of the former Swan Inn and a spur joined the main way near the top of the incline."
- j. The western course of the railway towards Daisy Hill was much later (1839) and therefore could not have been considered as a route for the bridle way set out in the Enclosures.
- k. The site of the Swan Inn, later the Inn on the Green, is marked with the yellow arrow here:

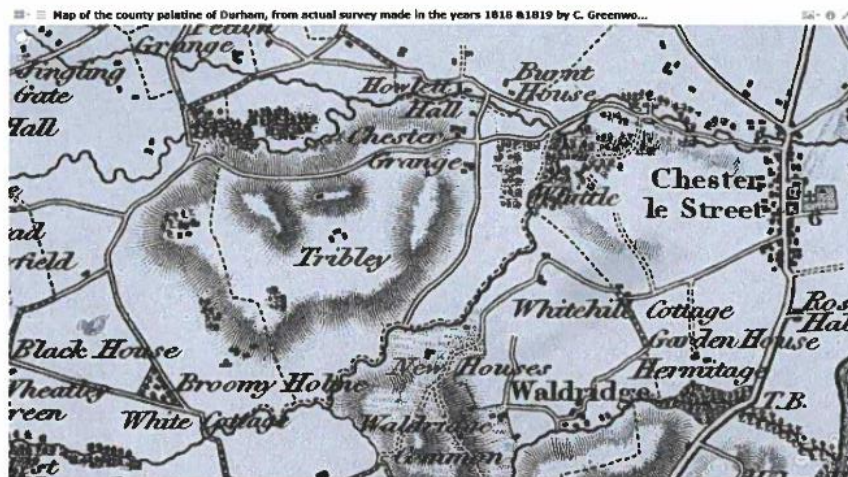


*OS 1:25k map showing the location of the former Swan Inn at Waldridge Colliery.
Screenshot from streetmap.co.uk*

1. Whether or not the pub was already here by 1800, the idea that a bridleway might have stopped short of the public house for all, or most, of its 150-year history seems to the applicant, highly improbable and in any case could not have been tolerated by either the thirsty pack horse guide or the Innkeeper! Therefore it seems, on the balance of probabilities, that the public bridleway would have extended to the junction with Waldridge Lane.

10. Greenwood Map of Durham, 1820

- a. This map is held by Durham University and is available online at the Durham Pictures in Print website at <http://valentine.dur.ac.uk/pip/index.html>
- b. An extract showing the relevant area is reproduced below.



Extract 1 from Christopher Greenwood's Map of Durham, 1820.

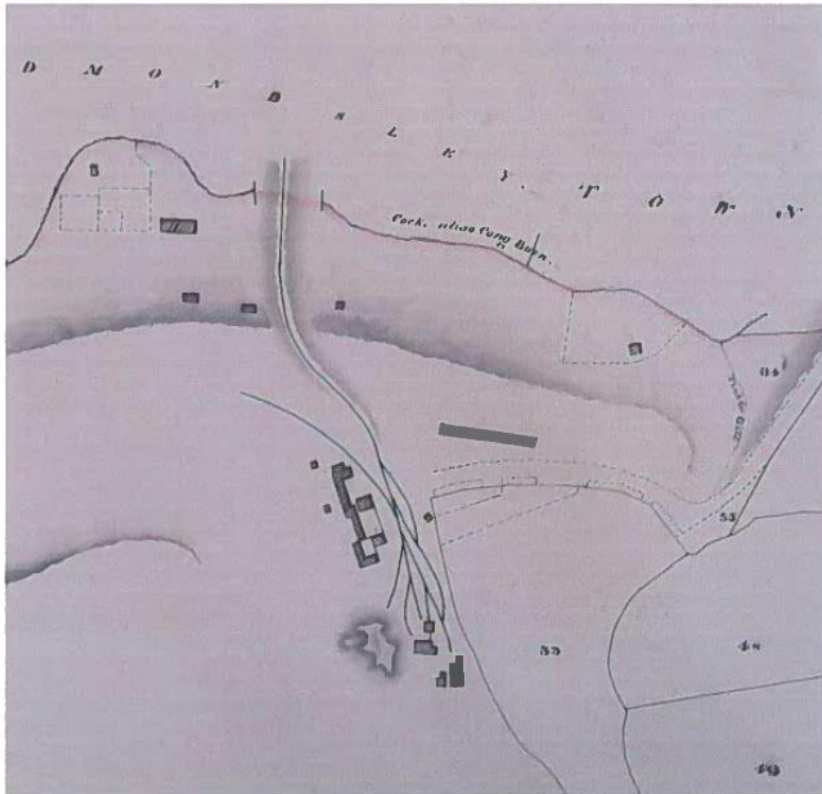
- c. Greenwood rarely shows bridleways, but he considered this one to be important enough to warrant inclusion. He shows it as described in the Awards, ending at the Cong Burn.
- d. Greenwood's map reveals no place of public resort there. Unless the Award Commissioners had considered it worthwhile to create a public bridle road all the way from Burnt House simply to lead a horse to water, it must be considered that the public rights continued beyond, to the road at Waldrige Colliery (shown simply as "New Houses" here).
- e. Note also that, as today, it is possible to lead into Chester-le-Street or west (towards Edmondsley – not shown) and even if the new colliery blocked through-access, as appears to be the case from later maps, a connection one way or the other from the top of the Incline would have been possible.
- f. The map is good evidence of the existence of the public bridle road as set out by the Commissioners' Awards, at the time of Greenwood's survey.

11. Tithe map for Waldrige. (1839)

- a. The Tithe Commutation Act 1836 enabled tithes (literally a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid. The Act was amended in 1837 to allow maps produced to be either first class or second class.
- b. First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners (Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains to the inch. There was a proposed convention of signs and symbols to be used, which included Bridle Roads and Footpaths, but this was not strictly adhered to.

c. The tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. Non-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Footpaths and bridleways were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases highways are coloured yellow or sienna to indicate public status.

d. The tithe map of Waldrige District is held by Durham University Library under reference DDR/EA/TTH/1/243 and can be viewed online from this address: <https://www.dur.ac.uk/library/asc/news/?itemno=22868>. (Note the archive record states a date of 1840 but the map is clearly marked as 1839.)



Extract from the Tithe Map for Waldrige, 1839, showing Waldrige colliery. Durham University Tithe Maps online

e. Low Row appears to be in place by this time, west of the application route. The Square also appears to be in development, in the centre of the map. Although the Tithe Map is not much concerned with the development here, being outside the tithe areas, it gives a good indication of the lie of the land in 1839 and seems likely that it would be possible to access both The Square and Waldrige Lane (leading east from the railway sidings) from the incline at this time.

f. Note that the railway is shown crossing the Cong Burn on a continuous embankment. Inspection of this today shows that this embankment is some tens of feet high and very steep, so that there is no obvious way of escape were bridleway rights end at the Burn. Therefore, it seems reasonable to suppose that rights continued.

12. The local historian's table book, of remarkable occurrences, historical facts, traditions, legendary and descriptive ballads [&c.] connected with the counties of Newcastle-upon-Tyne, Northumberland and Durham. Historical division, Volume 5, 1846

a. This digest of news stories can be found on google books at <https://books.google.co.uk/books?id=DxkHAAAAQAAJ&pg=PA130&lpg=PA130&dq=sacriston+junction+and+south+shields+railway&source=bl&ots=PIITEdK51H&sig=ACfU3U0ilFrJCdSih20XwiUHELNhBY5u5w&hl=en&sa=X&ved=2ahUKEwiO8KKA6-3gAhVFqHEKHRgRBLE4ChDoATAAegQICRAB#v=onepage&q=sacriston%20junction%20and%20south%20shields%20railway&f=false>

b. The book reproduces the following description of the opening day of the Sacriston extension to the Waldrige waggon way. It seems public access to the application route was not forbidden, even as the waggon way became busier.

ook for sacriston junction and south shields railway

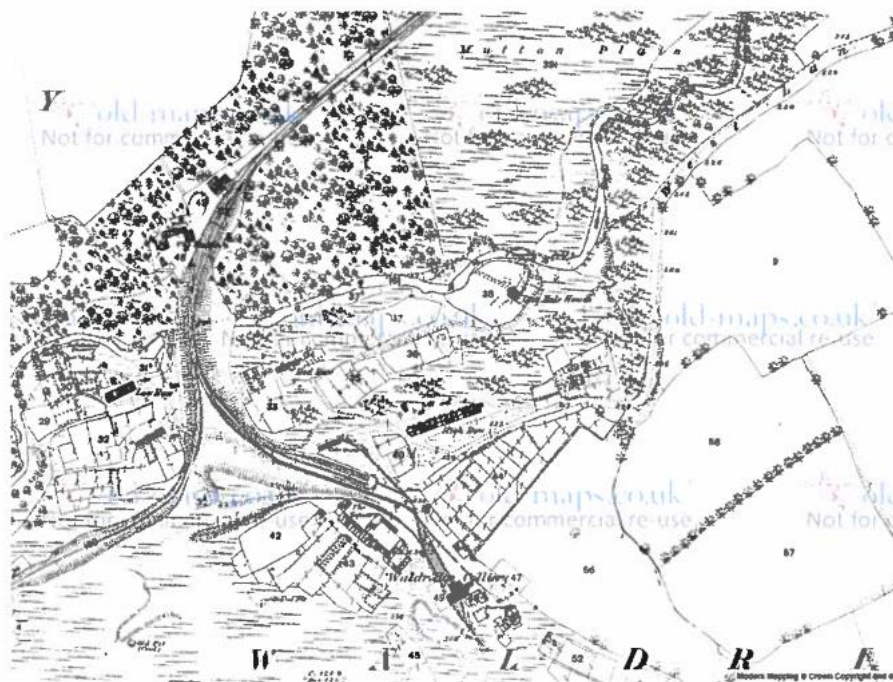
of the prisoners were re-taken early on the following Sunday morning, at a lodging house at Hylton, near Sunderland, when they were immediately conveyed back to prison.—*Local Papers*.

1839 (Aug. 29).—The railway from the new colliery at Sacriston, was opened, on which occasion a procession, consisting of the owners and workmen, accompanied by a numerous body of people connected with the colliery, several waggons, and a band of music, moved from the pit towards Waldrige Fell, and thence to Pelton Fell; at both which places refreshments were liberally supplied by the colliery owners. The proprietors ultimately proceeded to the junctions with the Stanhope and Tyne Railway, where they halted, and the waggons went forward to South Shields. After the return of the waggons, the workmen, attended by the overmen of the colliery, were regaled with a substantial and comfortable dinner. In the evening, a number of females, wives and daughters of the workmen, were invited to tea, and the amusements of the day terminated with a merry dance.—*Ibid*.

August 30.—The opening of the Brandling Junction railway took place. A number of waggons containing South Beaumont coals, from the colliery of lord Ravensworth and partners, were conveyed along the line from Gateshead to Monkwearmouth docks, where they were

13. Ordnance Survey First Edition 6 inch 1857.

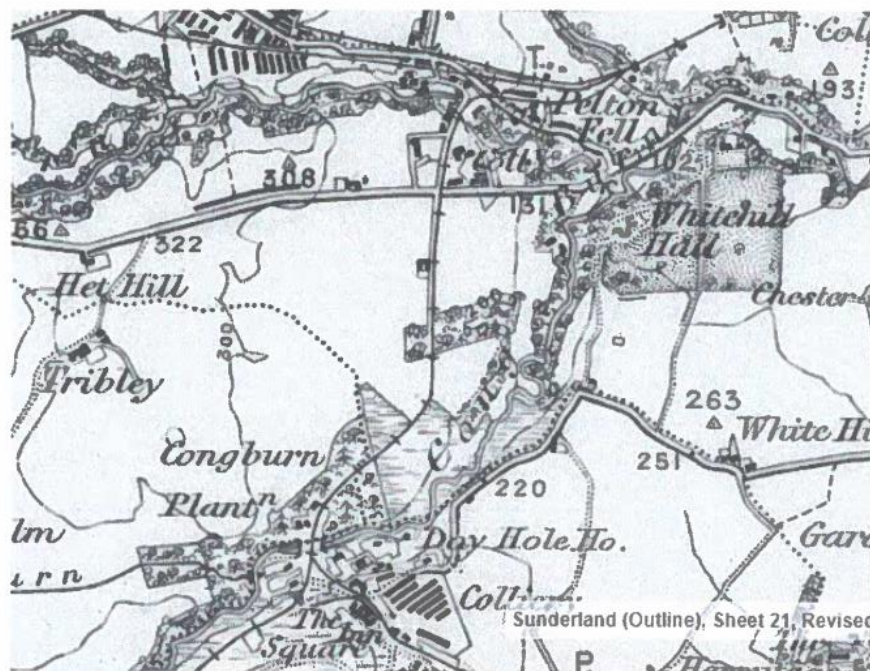
- a. Copies of the first edition Ordnance Survey 25" maps are held by Durham County Records Office. The extracts are from the website old-maps.co.uk
- b. Waldrige Colliery is covered by the map Durham XII.16, surveyed in 1857 but not published until 1876. An extract is shown below.



- c. The map shows how the waggonway leads into Waldrige Colliery. Note how the twisting path through Low Row also leads to the top of the waggonway incline and to The Square.
- d. The Swan public house sits at the northwest corner of The Square and the shape of the building shown in the location corresponds with that of later maps (eg the 1915 survey) which specifically identify the pub.

14. Ordnance Survey Old Series (One Inch) Series (1898)

a. The National Library of Scotland has digitised the entire One-inch series of Ordnance Survey maps and made them available to the public at <http://maps.nls.uk>. This extract is from the Newcastle (Outline), Sheet 20, Revised: 1895, Published: 1898, showing the application route. This shows that the physical route still existed in its entirety at the time of the survey.



Extract from Ordnance Survey One inch map 1898 from National Library of Scotland.

CONCLUSIONS

15. All the evidence produced for the application route suggests that bridleway rights existed at the times the various pieces of evidence were created.

16. The applicant requests the surveying authority to add the route to the definitive map as a bridleway.

Name

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