

NORTH NORTHUMBERLAND LOCAL AREA COUNCIL RIGHTS OF WAY SUB-COMMITTEE

28 October 2020

REVIEW OF THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY

ALLEGED BYWAYS OPEN TO ALL TRAFFIC Nos 1 & 29 ALNWICK TOWN

Report of the Executive Director of Local Services
Cabinet Member: Councillor Jeff Watson, Healthy Lives

Purpose of report

In this report, the North Northumberland Local Area Council Rights of Way Sub-Committee is asked to consider all the relevant evidence gathered in support and in rebuttal of the existence of public vehicular rights over part of existing Public Bridleway No 1 (which is recorded as being part of the U3129 road), and over part of existing Public Footpath No 29 (which is recorded as being part of the U3155 road and also as part of the U3129 road), at Willowburn, in Alnwick.

Recommendation

It is recommended that the Sub-Committee agrees that:

- (i) there is sufficient evidence to indicate, on a balance of probabilities, that public vehicular rights exist over the routes X-Y and Q-Z-A;
- (ii) the Natural Environment and Rural Communities Act 2006 would not appear to have extinguished the public's motorized vehicular rights over these routes;
- (iii) the routes are unlikely to satisfy the balance of user / character test necessary for them to be included on the Definitive Map as a byways open to all traffic;
- (iv) when the law is amended to allow it, an Order be made to delete the X-Y section of Public Bridleway No 1 and the Q-Z-A section of Public Footpath No 29 from the Definitive Map.

1.0 BACKGROUND

- 1.1 By virtue of section 53 of the Wildlife and Countryside Act, 1981 the County Council is required to keep the Definitive Map and Statement under continuous review and make modification orders upon the discovery of evidence, which shows that the map and statement need to be modified.
- 1.2 The relevant statutory provision which applies to adding a byway open to all traffic to the Definitive Map and Statement based on historical documentary evidence is Section 53(3)(c)(i) of the Wildlife and Countryside Act, 1981, which require the County Council (as Surveying Authority) to modify the Definitive Map and Statement following:

"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 such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;"

1.3 Alternatively, in a case where the route is already shown on the Definitive Map as a highway of a lesser status then Section 53(3)(c)(ii) covers situations where:

"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;"

1.4 However, where what is actually being proposed is the removal of a public right of way from the Map altogether, then Section 53(3)(c)(iii) would seem to be the only available option. This covers situations where:

"the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:

"that there is no public right of way over the land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification."

1.5 Unfortunately, it would seem that the Court of Appeal's decision in relation to Masters versus the Secretary of State (2000) established a limited set of circumstances in which the "or any other particulars contained in the map and statement require modification" could be made to apply. Unless the law is changed, there appears to be no mechanism currently available which would permit the deletion of footpaths and bridleways from the definitive map on the basis that these routes have subsequently become a part of the 'normal' road network.

- 1.6 Nevertheless, it is considered worthwhile examining the evidence in cases such as these for two reasons. Firstly, it is sensible to establish that the Natural Environment and Rural Communities Act 2006 has <u>not</u>, in fact, extinguished the public's motor vehicular rights. The more time that elapses before these cases get considered, the harder it may become to establish what the effect of the 2006 Act really was, particularly in more marginal circumstances. Secondly, there is a hope that at some point in the future, the law will be amended to address this recognized shortcoming.
- 1.7 All the relevant statutory provisions and competing rights and interests have been considered in making this report. The recommendation is in accordance with the law and proportionate, having regard to individuals' rights and the public interest.

2.0 PUBLIC EVIDENCE

- 2.1 The route of Bridleway No 1 has appeared as a track on historical maps from the 1860s onwards, and has been recorded on the Definitive Map of Public Rights of Way since the original map was prepared, with a relevant date of 22 September 1952.
- 2.2 The current route of Footpath No 29 did not appear on maps until the footpath was diverted onto this alignment in 1980.
- 2.3 Over three installments, between 1981 and 1986, Alnwick District Council dedicated the route between the roundabout, north of point Y, and the A1068 road, at point A, as public highway. The route between point X and the roundabout north of point Y appears to have evolved into a public vehicular right of way without, apparently, leaving a paper trail to support this transformation. The route between Q-Z was only adopted as publicly maintainable highway (of presumably vehicular status) in December 2018. Since the Q-Z section of road post-dates the 2006 Natural Environment and Rural Communities Act, it is considered that this particular section of highway will not be affected by the extinguishing powers of that Act.
- 2.4 The Definitive Map and Statement of Public Rights of Way are legal documents which identify the existence of public highway rights (footpaths, bridleways, restricted byway and byways open to all traffic), but the Definitive Map and Statement do not usually identify who has the maintenance responsibility for those rights of way. The List of Streets is a document which identifies which routes the County Council acknowledges it has a maintenance responsibility for, but a route's inclusion on that list does not establish its status (i.e. it need not necessarily be a vehicular rights of way).
- 2.5 Whilst there is no obstacle to a publicly maintainable public bridleway or footpath being identified on the Council's List of Streets, it is not believed that the U3129 road was recorded on that basis, or that this or any other part of the U3129 is in fact no more than a public bridleway / footpath. This report will consider the available evidence to determine what the correct status of the X-Y section of existing Public Bridleway No 1 and the Q-Z-A section of existing Public Footpath No 29 is, and explore whether or not it is appropriate for these section of bridleway / footpath to be upgraded so as to accurately reflect any higher rights which might exist.

3. LANDOWNER EVIDENCE

3.1 Since the paths in question appear to form part of the ordinary road network, and the only known landowner (for the southern part) was Northumberland County Council, no landowner consultations were carried out in this instance.

4. CONSULTATION

- 4.1 In February 2018, the Council carried out a consultation with the Parish Council, known owners and occupiers of the land, the local County Councillor and the local representatives of the "prescribed and local organisations" listed in the Council's "Code of Practice on Consultation for Public Path Orders". Two replies were received and are included below.
- 4.2 By email, on 26th February 2018, Ms H Evans responded to the consultation, on behalf of Cycling UK, stating:

"Ted has now looked at these and come back to me with the attached and also the comment that "Most are standard changes to confirm existing BOATs but a few are really good gains to the access network. No comment means we support and no comments are necessary".

Cycling UK did not make any comments in relation to this particular proposal.

4.3 By email, on 14th May 2018, Ms S Rogers responded to the consultation on behalf of the British Horse Society, in respect of other paths in Alnwick Town, but without making any observations regarding these two paths.

5. DOCUMENTARY EVIDENCE

5.1 A search has been made of archives relating to the area. Evidence of Quarter Sessions Records, Council Highways records, County Maps and O.S. Maps was inspected, and the following copies are enclosed for consideration.

1769 Armstrong's County Map

There is no evidence of a road or track approximating to the routes of either existing Public Bridleway No 1 or Public Footpath No 29.

1820 Fryer's County Map

There is no evidence of a road or track approximating to the routes of either existing Public Bridleway No 1 or Public Footpath No 29.

1827 Cary's Map

There is no evidence of a road or track approximating to the routes of either existing Public Bridleway No 1 or Public Footpath No 29.

1828 Greenwood's County Map

There is no evidence of a road or track approximating to the routes of either existing Public Bridleway No 1 or Public Footpath No 29.

c.1860 Ordnance Survey Map: Scale 1:2500

There is clear evidence of a mainly enclosed road / track over the route of existing Public Bridleway No 1. The track seems to provide access to the surrounding agricultural land. The track is identified as parcel number "250" in Edlingham township. In the accompanying Book of Reference, this parcel is identified as "Private road". There is very little evidence of a path or track over the route of existing Public Footpath No 29. The only obvious continuation, beyond the Willow Burn, is a south-easterly one, to join the Great North Road.

1867 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a mainly enclosed road / track over the route of existing Public Bridleway No 1. The track seems to provide access to the surrounding agricultural land. As with the 25" O.S. Map, there is very little evidence of a path or track over the route of existing Public Footpath No 29. The only obvious continuation, beyond the Willow Burn, is a south-easterly one, to join the Great North Road.

1881 North Eastern Railway Deposited Plan

There is clear evidence of a mainly enclosed road / track over the route of existing Public Bridleway No 1. It is identified as being parcel number "14". In the accompanying Book of Reference, this parcel is identified as "Public Highway".

1899 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a mainly enclosed road / track over the route of existing Public Bridleway No 1. There is no evidence of a path or track over the route of existing Public Footpath No 29. The only obvious continuation, beyond the Willow Burn, is a south-easterly one, to join the Great North Road.

1923 Ordnance Survey Map: Scale 1:2500

There is clear evidence of an enclosed road / track over the route of existing Public Bridleway No 1. There is no evidence of a path or track over the route of existing Public Footpath No 29. There is evidence of a south-easterly continuation, beyond the Willow Burn, to the Great North Road. This continuation is annotated "Foot Path".

1926 Ordnance Survey Map: Scale 1:10,560

As with the 25" map, there is clear evidence of an enclosed road / track over the route of existing Public Bridleway No 1. There is no evidence of a path or track over the route of existing Public Footpath No 29.

There is evidence of a south-easterly continuation, beyond the Willow Burn, to the Great North Road. This continuation is annotated "F.P.".

c.1952 Definitive Map - original Survey Schedules & Map

The route of existing Public Bridleway No 1 exists on the base map, and is identified with a solid turquoise line to indicate that the route is a public bridleway. Footpath No 29 is not shown. The south-easterly continuation to the Great North Road is shown on the base map but it is not identified as a public right of way (much of it lies outside the Alnwick Urban District area).

Draft Map

The route of existing Public Bridleway No 1 exists on the base map, and is identified with a solid turquoise line to indicate that the route is a public bridleway. Footpath No 29 is not shown. The south-easterly continuation to the Great North Road is shown on the base map but it is not identified as a public right of way (a pencilled annotation indicates that part of it is a public footpath, lying within Alnwick Urban District, not in the Rural District area).

Provisional Map

The route of existing Public Bridleway No 1 exists on the base map, and is identified with a solid turquoise line to indicate that the route is a public bridleway. Footpath No 29 is not shown. The south-easterly continuation to the Great North Road is shown on the base map and the northern half of that link is identified as Public Footpath No 1.

1957 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of an enclosed road / track over the route of existing Public Bridleway No 1. There is no evidence of a path or track over the route of existing Public Footpath No 29. There is evidence of a south-easterly continuation, beyond the Willow Burn, to the Great North Road. This continuation is annotated "F.P.".

1961 Ordnance Survey Map: Scale 1:2500

There is clear evidence of an enclosed road / track over the route of existing Public Bridleway No 1. The St James Estate, north of point Y, would now appear to have been completed.

1962 Original Definitive Map

The route of existing Public Bridleway No 1 exists on the base map, and is identified with a solid turquoise line to indicate that the route is a public bridleway. Footpath No 29 is not shown. The south-easterly continuation to the Great North Road is shown on the base map and the northern half of that link is identified as Public Footpath No 1.

First Review Definitive Map

The route of existing Public Bridleway No 1 exists on the base map, and is identified with a solid turquoise line to indicate that the route is a public bridleway. Footpath No 29 is not shown. The south-easterly continuation to the Great North Road is shown on the base map and the northern half of that link is identified as Public Footpath No 1.

1977 Ordnance Survey Map: Scale 1:10,000

There is clear evidence of an entirely enclosed road / track over the route of existing Public Bridleway No 1, and also over the western half of existing Public Footpath No 29.

1981 Highway Dedication Plans signed on behalf of Alnwick District Council

The two plans (signed on 22nd April 1981) by "R Hughes, District Secretary" set out to dedicate one section of public highway in the vicinity of point Y and another section of public highway between point A and a point about 30 metres south-east of point Z.

1985 <u>Definitive Map Modification Order (No 1) 1985</u>

This 'Legal Event' Definitive Map Modification Order shows that Alnwick Town Footpath No 29 (then still known as Footpath No 1), along with Denwick (Detached) Footpath No 17, was diverted onto its current alignment by a public path diversion order, confirmed on 23 October 1980.

1986 Highway Dedication Plans signed on behalf of Alnwick District Council

The plan (signed on 19 May 1986) by "R Hughes" set out to dedicate a section of public highway between a point just south of point Y and a point about just to the south-east of point Z (thereby linking the two sections of highway previously dedicated by the District Council in 1981).

2005 Definitive Map Modification Orders (No 2 & 2A) 2005

In this Definitive Map Modification Order, Bridleway / Footpath No 1 was divided into two separate parts (one exclusively bridleway, the other exclusively footpath). The Bridleway part 'stayed' as Public Bridleway No 1, whereas the footpath part was renumbered as Public Footpath No 29.

2006 The Council's 'List of Streets' (2 May 2006)

The route of the alleged byway (the U3054) is clearly identified as publicly maintainable highway.

2018 Highway Adoption - Final Certificate

This plan shows the extent of highway adopted by Northumberland County Council upon issue of a final certificate, dated 20 December

2018. The north-eastern end of this route incorporates the Q-Z part of existing Public Footpath No 29.

- The Survey Schedule for this route, completed in association with the Survey Map (produced at the very beginning of the original Definitive Map process) states that the route starts at Sea View Terrace and proceeds to the Willow Burn. The route was apparently repaired at public expense.
- 5.3 The original Definitive Statement for Public Bridleway / Footpath No 1 states:

"From the West end of Sea View Terrace in a southerly direction past St Jame's [sic] Park, under the Alnwick - Cornhill Railway to the Alnwick Urban District Boundary at the Willow Burn, turning south-east along this boundary for about 160 yards to join Path No 17 in the Parish of Denwick Detached)."

The route's status and character is described as:

"F.P. and Bridle Road varying in width from 20 feet to 3 feet - About 430 yards metalled."

And in the Other Relevant Information section it states:

- "(a) Repaired at Public expense.
- "(b) Rights of Way Act, 1932 Map deposited with Alnwick Urban District Council."

6. SITE INVESTIGATION

- 6.1 The northern part of the U3129 road (i.e. from point X, northwards) would appear to have been already accepted as part of the 'ordinary road network' at the time the Definitive Map of Public Rights of Way started being prepared in the early 1950s. It was not, therefore, identified for inclusion on the Map.
- 6.2 From Point X (west of number 9 Augur Terrace), the route of existing Bridleway No 1 is now a two lane tarmacadam carriageway, with associated footways on both sides (a width of at least 10 metres). This carriageway proceeds in a southerly direction for a distance of 210 metres to a point west of number 25 St James Estate, and just north of the roundabout. This point is also the northern extent of the District Council's 1981 highway dedication.
- 6.3 The route of Bridleway No 1 now continues in a southerly direction for a distance of 70 metres, across the roundabout and diagonally across Willowburn Avenue to the western boundary of the U3129 road, 170 metres north-west of Willowburn Leisure Centre (point Y).
- 6.4 The section of existing Public Bridleway No 1 south of point Y, to the Willow Burn, then the section of existing Public Footpath No 29 proceeding north-eastwards, from it, along the the north bank of the Willow Burn to point Q, are not affected by these proposals.

- 6.5 From point Q, the 80 metre long section of Footpath No 29 that continued eastwards, to point Z, has now been subsumed within the new public road which provides access to the new Duchess Community High School and the new housing estate beyond that. The two lane tarmacadam carriageway, with associated footways on both sides, is over 15 metres wide.
- 6.6 From point Z, the 195 metre long section of Footpath No 29 that continued in a south-easterly direction to a junction with the A1068 road at point A has been subsumed within the 2 to 3 lane tarmacadam carriageway with two associated footways that was dedicated in 1981. This section of road is typically 15 to 24 metres wide.

7. DISCUSSION

7.1 Section 53 (3)(c) of the Wildlife and Countryside Act 1981, requires the County Council to modify the Definitive Map when evidence is discovered 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 such that the land over which the right subsists is a public path, a restricted byway or; subject to section 54A, a byway open to all traffic; or 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; or that there is no public right of way over the land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

- 7.2 When considering an application / proposal for a modification order Section 32 of the Highways Act, 1980 provides for "any map, plan or history of the locality or other relevant document" to be tendered in evidence and such weight to be given to it as considered justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.
- 7.3 The representation of a path or track on an Ordnance Survey Map is not evidence that it is a public right of way. It is only indicative of its physical existence at the time of the survey.
- 7.4 The maps from the 1800s (with the exception of the 1881 North Eastern Railway deposited plans) suggest that this route was not considered to be a public vehicular right of way during that time. The Railway plan indicated that the route was a "Public Highway". Public footpaths and public bridleways are public highways, though when this term is used in the deposited railway plans, it is typically reserved for highways over which the public have vehicular rights.
- 7.5 The X-Y section was identified as a public bridleway during the Definitive Map preparation process, begun in the early 1950s. The Survey, Draft and Provisional maps, all appear to have been drawn on the 6" Ordnance Survey base map that was published in 1938. This base map indicates that Augur

Terrace (then labelled as Queen's Road) and the eastern half of Greensfield Avenue already existed, before the Definitive Map process started. It is curious, therefore, to find that the road providing access to these properties was still being identified only as a public bridleway. One could speculate that residents were content to rely on private rights of access at this time, or simply that the adoption process was a particularly long and drawn out one in this case. Either way, the public bridleway has clearly been very deliberately drawn to extend northwards beyond these two streets, and the Definitive Statement explicitly states that the bridleway starts at the west end of Sea View Terrace.

- 7.6 The original Definitive Map for the Alnwick Urban District area has a Relevant Date of 22 September 1952. Although the Definitive Map process as a whole was not actually completed until around ten years later, the 1952 date represents the particular moment in time where the Map would be correct. This date is significant. What it meant was that any changes to the rights of way network, that took place after 22 September 1952, couldn't be incorporated within the Definitive Map process. The 6" Ordnance Survey map that was published in 1957, indicates that the western half of Greensfield Avenue has now been completed, and that Augur Terrace has been extended further to the east, behind the allotments. Access to both of these additions was presumably over the northern end of Bridleway No 1. The 1961 Ordnance Survey map shows that the St James Estate has now been built (the access being along an even longer section of Public Bridleway No 1), and this situation seems to be essentially unchanged on the 1977 OS map.
- 7.7 Thus far, for the section of road between point X, and the roundabout entrance to the St James Estate, no vehicular highway dedication or formal adoption documentation has been found within the Council's highway records. Precisely when various sections of this road acquired vehicular status isn't at all clear, but the route is identified on the Council's List of Streets as a publicly maintainable highway (part of the U3129 road), it is a two lane tarmacadam surfaced highway that is used by hundreds of vehicles every day, and is indistinguishable from the rest of the ordinary road network. Notwithstanding the lack of supporting documentation, its current vehicular status would not apparently appear to be in any doubt.
- 7.8 In 1980, the section of public footpath which continued in a south-easterly direction from the current southern end of Bridleway No 1 was diverted onto its present alignment (which includes the length Q-Z-A). In April 1981, Alnwick District Council appears to have dedicated public vehicular rights over most of the Z-A section (that was almost certainly their intention, but paragraph 7.12, below, explores some complications in relation to this). The County Council's public rights of way section could have chosen not to show the new road section as part of Footpath No 29, when it made legal event Definitive Map Modification Order (No 1) 1985, but they did. Possibly they were not aware of the 1981 highway dedication. Also in 1981, the District Council appears to have dedicated public vehicular rights over part of Bridleway No 1 (between point Y and the roundabout to the north); again see paragraph 7.12, below, for complications.
- 7.9 In 1986, the 'missing' section of Willowburn Avenue (from just south of point Y to just south of point Z) was dedicated as public highway by Alnwick District Council. Once again, see paragraph 7.12, below, for complications.

7.10 On 22nd April 1981, two documents / plans were signed on behalf of Alnwick District Council upon which it was stated:

"We Alnwick District Council of Allerburn House, Alnwick, Northumberland, NE66 1YY do hereby declare that We have dedicated to the use of the public as a highway that portion of land situated adjacent to St James Housing Estate Alnwick in the County of Northumberland, which is coloured red hereon as from today's date."

and

"We Alnwick District Council of Allerburn House, Alnwick, Northumberland, NE66 1YY do hereby declare that We have dedicated to the use of the public as a highway that portion of land situated adjacent to South Road (Sterling Winthrop) Alnwick in the County of Northumberland, which is coloured red hereon as from today's date."

The St James Estate roundabout to point Y part of existing Public Bridleway No 1 is highlighted in red on the first plan. The south of point Z to point A part of existing Public Footpath No 29 is highlighted in red on the second plan. The width of the highways being dedicated is not given, but the highlighting is not limited to the width of the carriageway - adjacent footways and / or verges are also included.

7.11 On 19th May 1986, a further document / plan was signed on behalf of Alnwick District Council upon which it was stated:

"I, R Hughes of Alnwick District Council, We Alnwick District Council of Allerburn House, Denwick Lane, Alnwick, do hereby declare that I / We have dedicated to the use of the public as a highway that portion of land situated at Willowburn Avenue, Alnwick in the County of Northumberland which is coloured red hereon as from today's date."

A section of Willowburn Avenue, that connects the earlier two 1981 highway dedications, is highlighted in red on the plan. The south of point Z to point A part of existing Public Footpath No 29 is highlighted in red on the second plan. The width of the highway being dedicated is not given, but again the highlighting is not limited to the width of the carriageway - adjacent footways and / or verges are also included.

7.12 Unfortunately, in none of the three dedication documents was it specified, precisely, what public highway rights were being dedicated. Those highway rights need not, necessarily, be vehicular ones. Public footpaths and public bridleways are also "highways". There are a number of reasons why it could reasonably be argued that the landowner's' actual intention was to dedicate a public vehicular highway:

- Firstly, persons unfamiliar with highway law are unlikely to be aware that public footpaths and bridleways are public highways; the term "highway" in everyday usage is generally used to refer to a vehicular route.
- Secondly, given the width of the highways being dedicated (two lanes of carriageway with associated footways (and in one case, a roundabout)), it seems unlikely that the landowners were dedicating something less than a public vehicular right of way.
- Thirdly, since the roundabout to point Y section was already recorded as being a publicly maintainable public bridleway, there would be no need for the landowners to dedicate public footpath or bridleway rights over this section.
- Fourthly, since the point Z to point A section was already a publicly maintainable public footpath, there would be no need for the landowners to dedicate public footpath rights over this section (though a bridleway dedication might be conceivable).
- Fifthly, if the landowners had simply been intending to upgrade the existing public footpath to a public bridleway, this would almost certainly have been achieved through negotiations with the Council's Countryside Service (not its 'roads' section), the dedication would have explicitly mentioned the creation of public bridleway rights, and the Definitive Map would then have been amended to reflect the route's new status.
- 7.13 In December 2018, the County Council appears to have issued a final certificate in relation to the adoption of a section of new road (Taylor Drive), proceeding from a new roundabout on Willowburn Avenue, south-westerly towards the new Duchess Community High School and new housing estate beyond that. The section of highway being adopted is a two lane tarmacadam carriageway with associated footways and verges. This section of road was constructed over the Q- Z part of existing Public Footpath No 29.
- 7.14 The County Council accepts that, given the way the regulations were written with regard to the way highway authorities could include publicly maintainable highways in the List of Streets, there was no impediment to public bridleways and public footpaths also being included. That is not to say that any bridleways or footpaths were so shown just that they could be. It must, therefore, be entirely proper to consider each Unclassified County Road on a case by case basis, but that does not mean that we should begin with the assumption that each UCR is no more than a public footpath unless higher rights can be proven by other means. In this instance, it seems unlikely that Bridleway No 1 and Footpath No 29 were identified on the List of Streets as parts of the U3129 and U3155, simply because they were (still) considered to be just a publicly maintainable bridleway and publicly maintainable footpath.

- 7.15 Letters from DEFRA, dated 2003 and November 2006, and Rights of Way Circular 1/09 set out the approach Inspectors and order making authorities should take in determining the status of routes included on the List of Streets. In summary, the guidance states that the inclusion of a route on the List of Streets is not a record of what legal rights exist over that highway but may provide evidence of vehicular rights. However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights. Highway Authorities are recommended to examine the history of such routes and the rights that may exist over them on a case by case basis in order to determine their status.
- 7.16 The Natural Environment and Rural Communities Act 2006 (NERC Act 2006) had a major impact upon the recording of byways open to all traffic based upon historical documentary evidence. Under section 67 of the Act, any existing, but unrecorded, public rights of way for mechanically propelled vehicles were extinguished unless one of the 'saving' provisions applied. In brief, these saving provisions were: (a) if the main lawful public use between 2001 and 2006 was with motor vehicles; (b) if the route was on the List of Streets (on 2 May 2006) and not also on the Definitive Map as something less than a byway open to all traffic; (c) the route was legally created expressly for motor vehicular use; (d) the route was a road deliberately constructed for public motor vehicular use; or (e) the vehicular highway came about as a result of unchallenged motor vehicular use before December 1930.
- 7.17 Of the saving provisions above, (b) will clearly not apply to the X-Y or Z-A sections of the U3129 road. Where a route <u>is</u> shown on the Definitive Map as a footpath or bridleway, then the fact that it is shown on the List of Streets will not be sufficient to prevent the public's motor vehicular rights from being extinguished. It is necessary to see whether or not one of the other saving provisions might apply.
- 7.18 Under section 67(2)(c) of NERCA 2006, the public's motor vehicular rights would not be extinguished if those rights had been created on terms that expressly provided for a right of way for mechanically propelled vehicles. Officers are not aware of any documents dedicating the northern part of Bridleway No 1 (i.e. north of the St James Estate roundabout) as a public road. For the roundabout to point Y and the point Z to point A sections we do have the 1981 and 1986 Alnwick District Council highway dedications, however, whilst the District Council's intentions are relatively clear, the wording of the dedication documents themselves is considered to be insufficiently precise to satisfy this requirement.
- 7.19 Under section 67(2)(a) of NERCA 2006, the public's motor vehicular rights would not be extinguished if they are over a way whose main lawful use by the public during the period of 5 years between 2nd May 2001 and 2nd May 2006 was with mechanically propelled vehicles. The difficulty here is that the Council has no evidence regarding the balance of public user during this 5 year period. That said, the U3129 road is a well made up tarmac road which

is clearly now being used by the public with 'normal' motor vehicles many hundreds of times, every day. The initial 1981 dedications produced two cul-de-sacs, but the 1986 dedication, created a through route. Whilst recent residential and commercial development of this area will almost certainly have increased the volume of motor vehicular traffic along this route now, there can be little doubt that it is also the case that during the 5 year period, May 2001 to May 2006, motor vehicles were the dominant type of user. On a balance of probabilities, therefore, it is believed that this balance of user saving provision will apply to the X-Y and Z-A sections of the U3129 road.

- 7.20 Under section 67(2)(e) of NERCA 2006, the public's motor vehicular rights would not be extinguished if they are over a way that had been in long use by mechanically propelled vehicles before 1930, when it first became an offence to drive 'off-road'. There is no evidence of long-standing public motor vehicular use before 1930 in this instance.
- 7.21 Finally, under section 67(2)(d) of NERCA 2006, the public's motor vehicular rights would not be extinguished if they are over a way that had been created by construction of a road intended to be used by MPVs. The modern day tarmac road was clearly constructed with motor vehicular use in mind but, based upon the historical documentary evidence available, this route has evolved in stages. The section between point X and the St James Estate roundabout (in particular) may have become a public road, ahead of any 'proper' road construction taking place. This saving provision might possibly apply to the section of road between the St James Estate roundabout and the A1068 road.
- 7.22 For a route to be a byway open to all traffic, it has to be (i) a public motor vehicular right of way and (ii) a route which is nevertheless used (or is likely to be used) by the public mainly for the reasons which footpaths and bridleways are used.
- 7.23 Both the U3129 and the U3155 roads have an excellent tarmac surface and are heavily used, every day, by the public, with motor vehicles. Based on the historical documentary evidence available, and the pattern of public user it seems clear that the routes are public vehicular rights of way. As discussed in paragraph 7.19 above, it seems to be the case that public motor vehicular use of these routes will exceed the combined total of pedestrian, equestrian and bicycle use, and for that reason, it would not be appropriate to record either the X-Y or Z-A sections of the U3129 road or the Q-Z section of the U3155 road as byways open to all traffic.
- 7.24 Since the X-Y section of existing Public Bridleway No 1 does not appear to fit the character / balance of user criteria for being recorded as a byway open to all traffic, but is clearly more than just a public bridleway, the most appropriate course of action would seem to be to delete this length of public bridleway from the Definitive Map. Since the Q-Z-A section of existing Public Footpath

No 29 does not appear to fit the character / balance of user criteria for being recorded as a byway open to all traffic, but is clearly more than just a public footpath, the most appropriate course of action would seem to be to delete this length of Public Footpath No 29 from the Definitive Map. It had been considered that section 53(3)(c)(iii) of the Wildlife & Countryside Act 1981 might provide a mechanism to delete bridleways and footpaths such as these, from the Definitive Map. This appeared to be a catch-all provision to cover unspecified situations where "any other particulars contained in the map and statement require modification". Unfortunately, Paragraphs 36 and 37 of Lord Justice Roch's judgment, when Masters v Secretary of State for Transport was considered by the Court of Appeal in 2000, appears to rule out this course of action.

7.25 The only alternative to deleting these sections of bridleway and footpath from the Definitive Map is to leave them unchanged. Doing so would have the effect of continuing to identify the routes with a status that is not just incorrect, but known to be so; a somewhat misleading state of affairs. Given that the main exception which is being relied upon to 'save' the U3129 road's status as motor vehicular highways relates to patterns of use during the 5 years prior to commencement of the Act in 2006 it is considered desirable to ask the Rights of Way Sub-Committee to determine the correct status of this 'dual-classified' route sooner rather than later, even if no mechanism for updating the Definitive Map currently exists.

9. CONCLUSION

- 9.1 In light of the user and documentary evidence submitted, it appears that, on a balance of probability, public vehicular rights have been shown to exist over the X-Y section of existing Public Bridleway No 1.
- 9.2 In light of the user and documentary evidence submitted, it appears that, on a balance of probability, public vehicular rights have been shown to exist over the Q-Z-A section of existing Public Footpath No 29.
- 9.3 The Natural Environment and Rural Communities Act 2006 would <u>not</u> appear to have extinguished the public's motor vehicular rights over either of these routes.
- 9.4 It would <u>not</u> be appropriate to recognize the public's motor vehicular rights over the X-Y section of Bridleway No 1 or the Q-Z-A section of Footpath No 29 by upgrading either of them to be byways open to all traffic, because these lengths would not appear to satisfy the necessary balance of user test (see 7.23 above).
- 9.5 Although the most appropriate course of action would seem to be to delete these sections of Public Bridleway No 1 and Public Footpath No 29 from the Definitive Map altogether, at present no mechanism for doing so currently exists. They must, therefore, remain on the Definitive Map as a public bridleway and public footpath (effectively, in error) until such time as the law is suitably amended.

BACKGROUND PAPERS

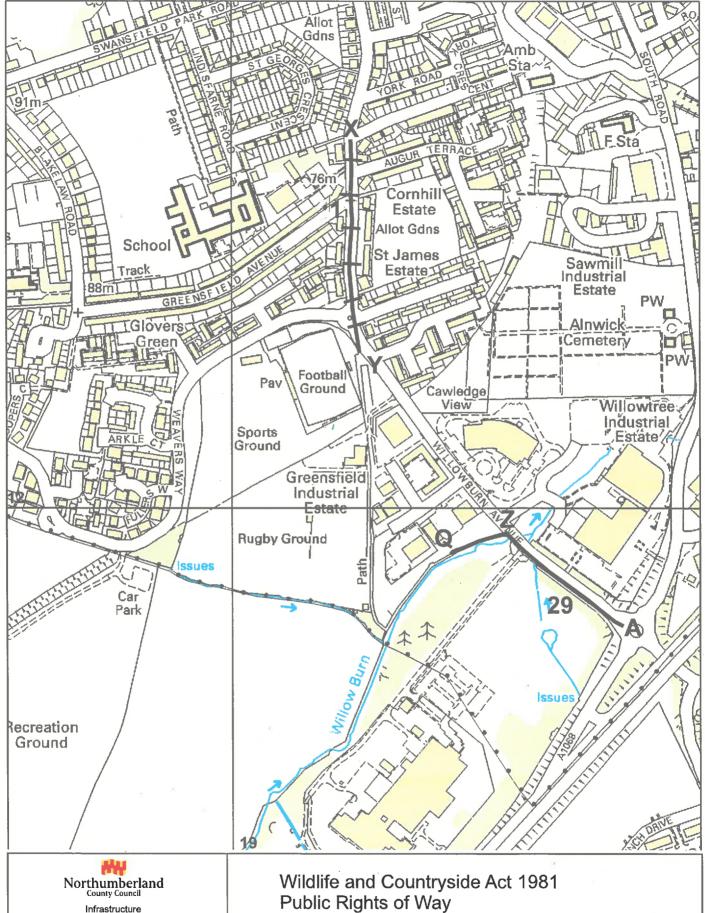
Local Services Group File: A/4/1+29z

Report Author

Alex Bell - Definitive Map Officer

(01670) 624133

Alex.Bell@Northumberland.gov.uk



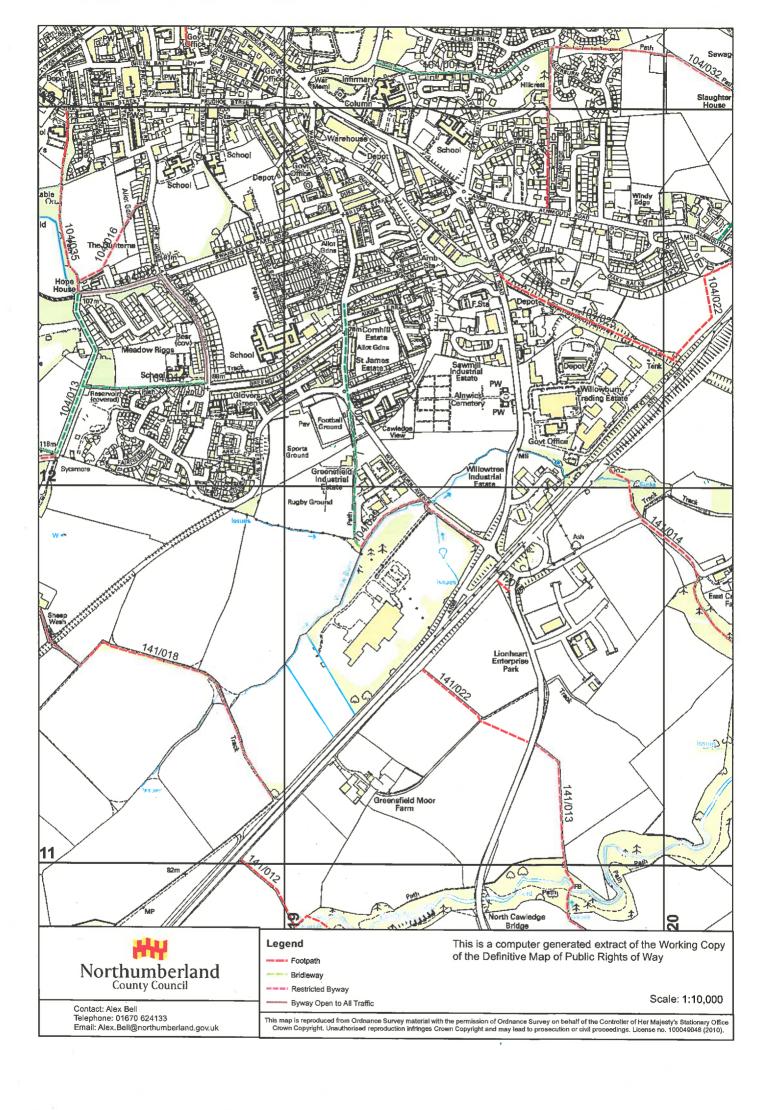
Infrastructure Local Services County Hall Morpeth Northumberland NE61 2EF Telephone 0845 600 6400

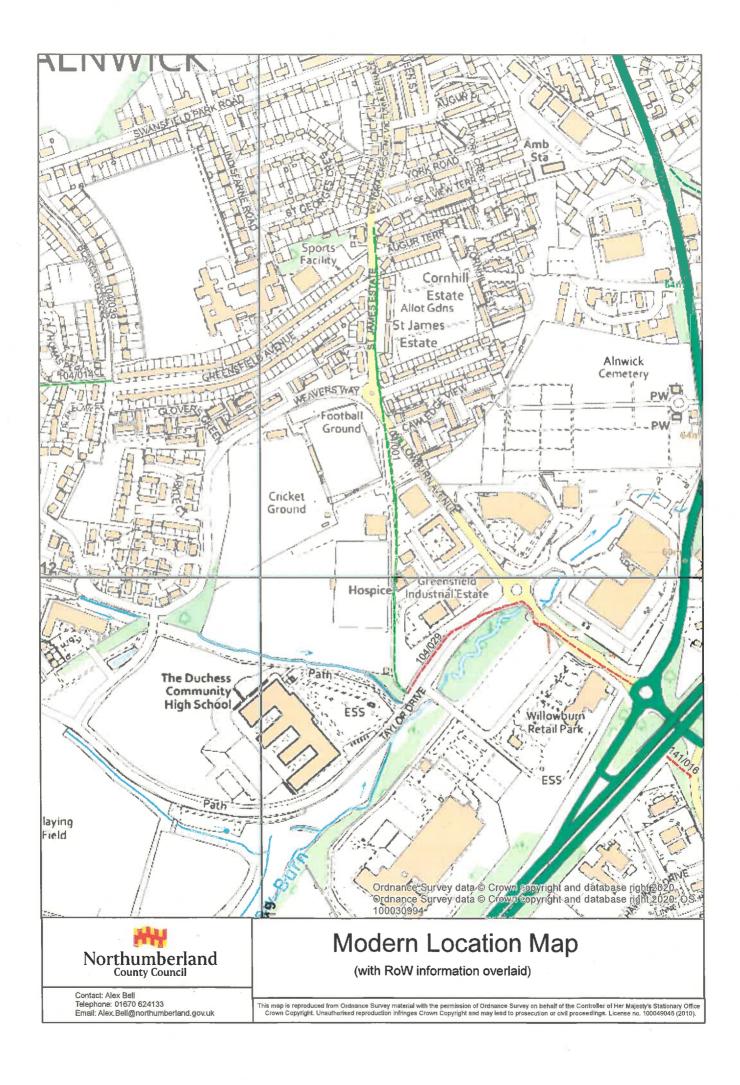
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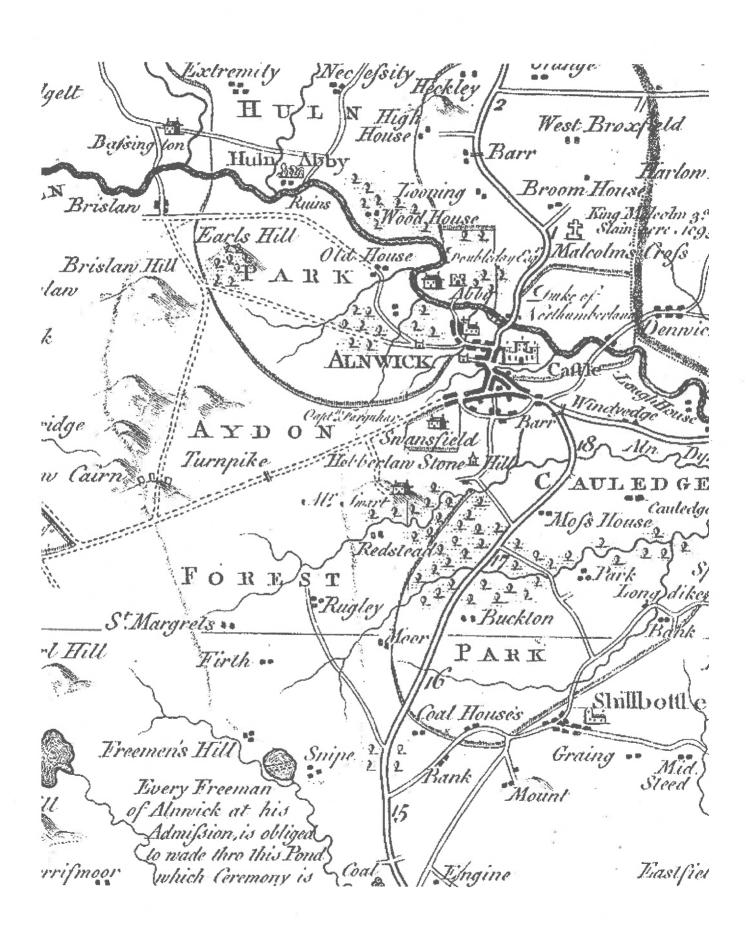
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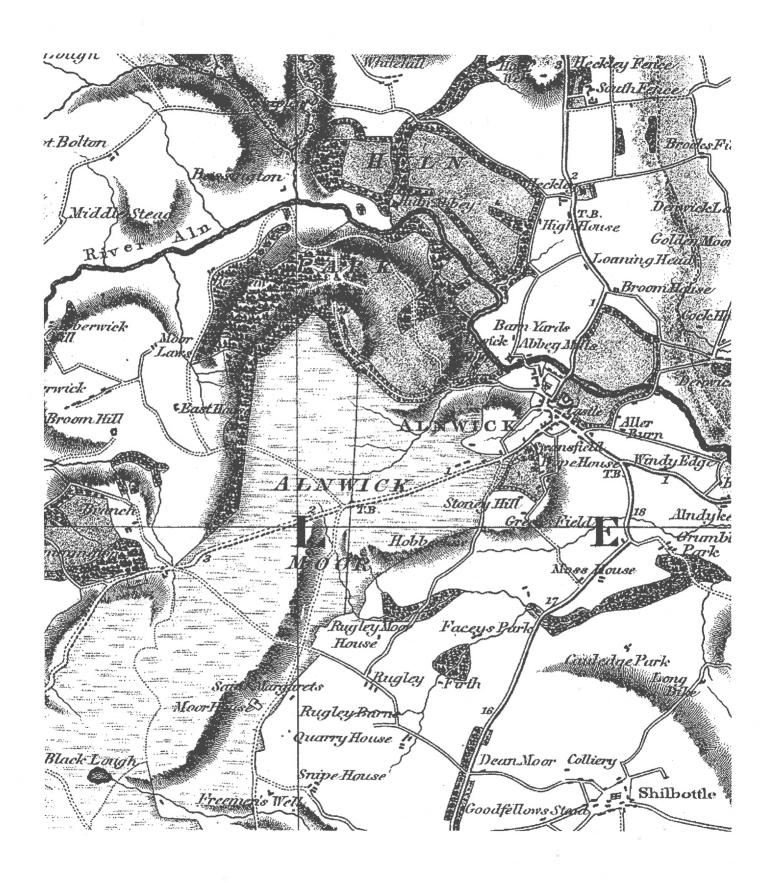
Public Bridleway now part of Vehicular Highway Public Footpath now part of Vehicular Highway

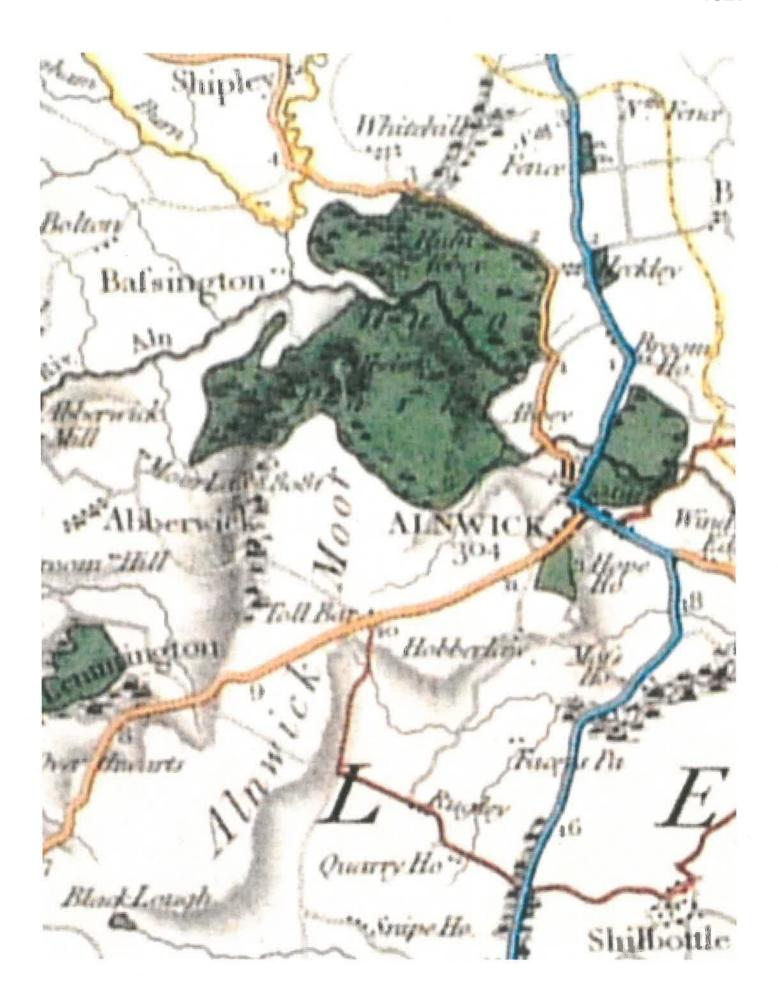
Former District(s) Alnwick	Parish(es) Alnwick	Scale 1:5,000
Def. Map No.	O.S. Map	Date
69	NU 11 SE	October 2020













1st Edition 25" O.S. Map c.1860

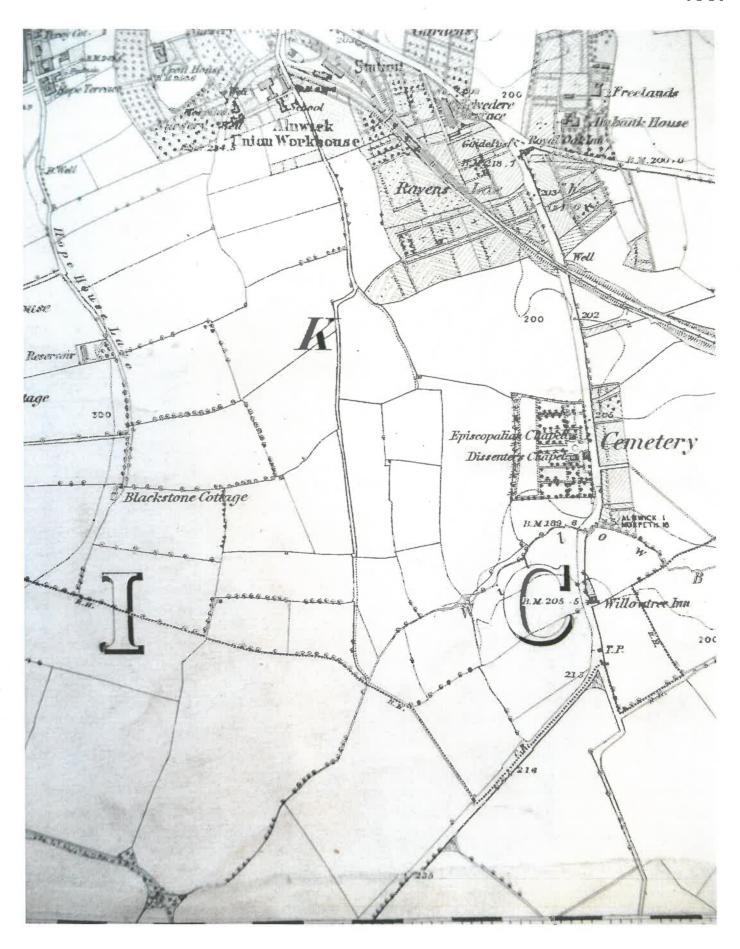


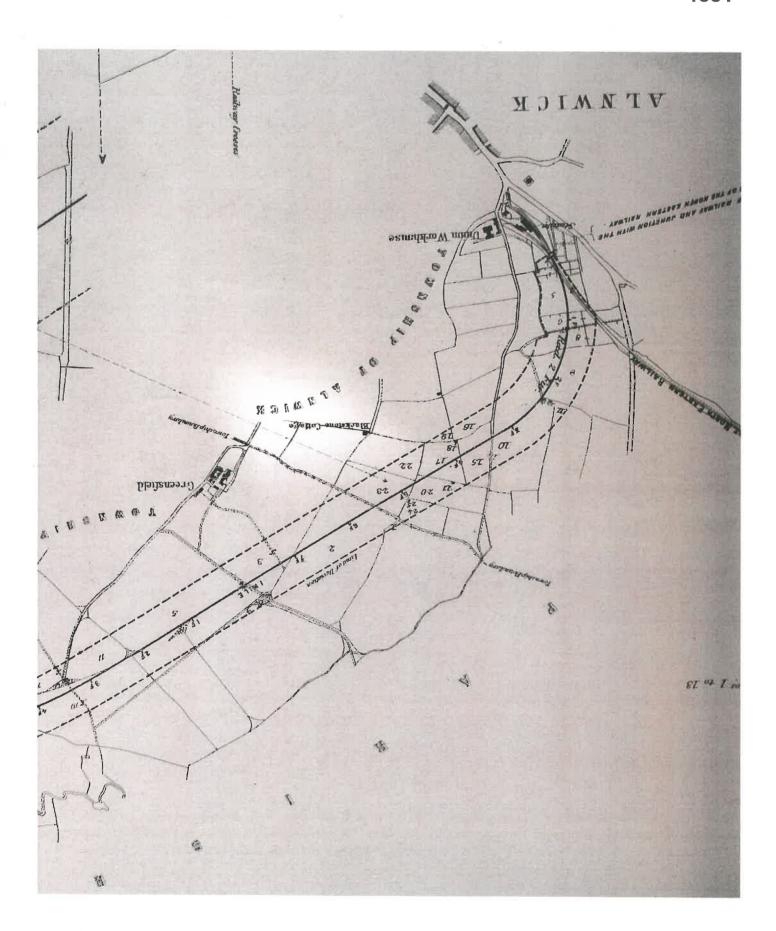
Book of Reference for 1st Edition 25" O.S. Map

PARISH OF ALNWICK.

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266	3.313		310		26:445	Arable, &c.
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200:	.010	Quarry). House.	813		9-070	Arable, quarry, &c.
267	20.720		818		7-437	Arable, &c.
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280	27-316	Ornamental ground.	328 327		1-141	Pasture, &c.
281	.009	Wood.	328		1384	Wood, &c.
282	.010	Wood,	329		902	Garden, &c.
283	-072	Wood.	. 023	ļ	.803	Houses, yards, &c.
284	020	Wood.	830		-020	(Stonyhill), House,
286 286	054	Wood.	331		G-154	Pasture, &c.
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1st Edition 6" O.S. Map 1867

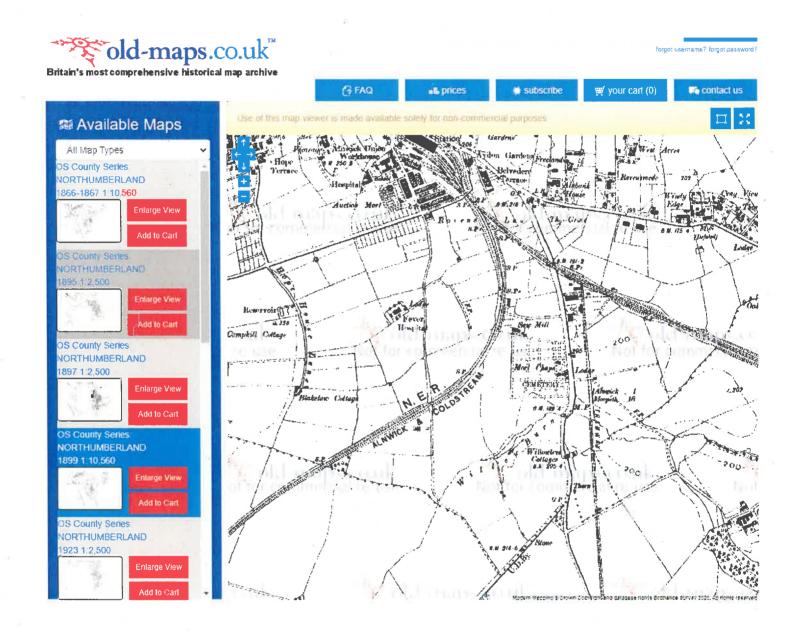




North Eastern Railway (Alnwick and Cornhill Branch) Book of Reference 1881

PLAN.	DESCRIPTION OF PROFERTY.	OWNERS OR REPUTED OWNERS.	IMSFBES OR REPUTED LESSEES.	OCCUPIEBS.
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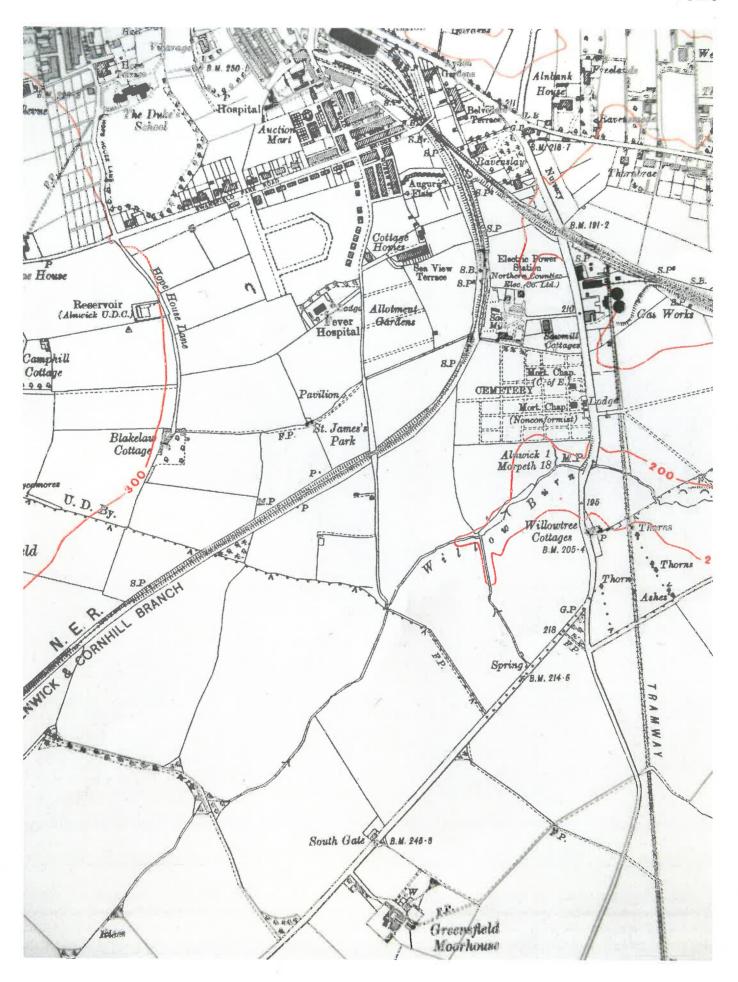
2nd Edition 6" O.S. Map 1899



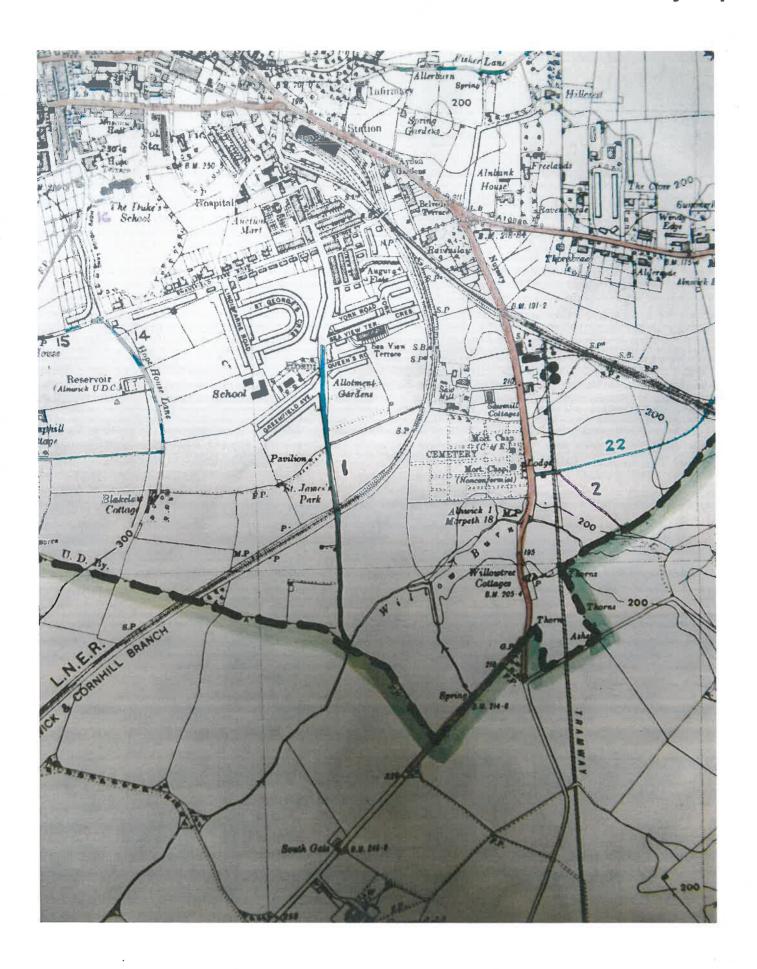
3rd Edition 25" O.S. Map 1923



3rd Edition 6" O.S. Map 1926



Survey Map



NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949. SCHEDULE ACCOMPANYING SURVEY MAPS.

Parish of in the Rural District o
Borough
Urban District of (Delete whichever is inapplicable).
(Dood wishings a supperson).
1. Number of highway on Map 2. Kind of Path (i.e., F.P., B.R.) BR.
3. Starts at Sta Vin Textee to Willen Bun
4. Name of Path (if any)
5. Is the Path well defined?
6. Is the Path metalled? If so, define length fles #30 ijds
7. If its width can be stated, insert here Yorks now 200 um 30°
8. What is the present condition of the path, stiles, etc. ?
9. Is it subject to being ploughed out?
10. Details of any notice boards, direction signs or warning signs against trespassers, stating their location, wording on them, their condition and date of erection, if known
1804
11. Grounds for believing the path to be public (if known), e.g. "Awarded," "Repaired a Public Expense" (with date) or "mentioned in Minutes of Parish Council" or any other evidence such as that of an old inhabitant
Ripair of Kablic experie
12. Have persons been prevented using the highway?
13. Give particulars of any obstructions Name
14. Names of owners of freehold and previous owners, if known, for past 30 years
(Inserting the second of the s
15. What maps have been consulted, and where are they deposited?
Make of right of way will hight of way lot
1932 Deposite Inthe Chesorie U.D. C.
Services and the services of t
16. What records have been consulted, and where are they deposited !
17. Any other relevant information
Surveyed by Address Dates of Survey
F. Beaty From Turning 11 D.C. 5-5-51
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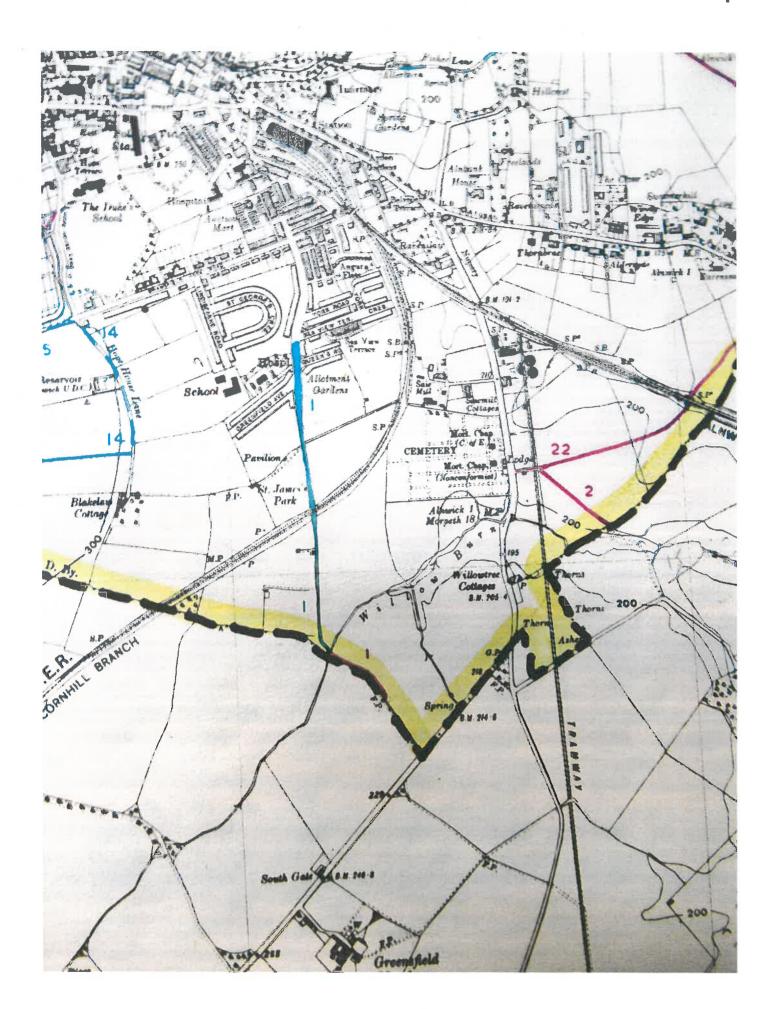
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Important :—Sheet No. of Map on which Highway is shown

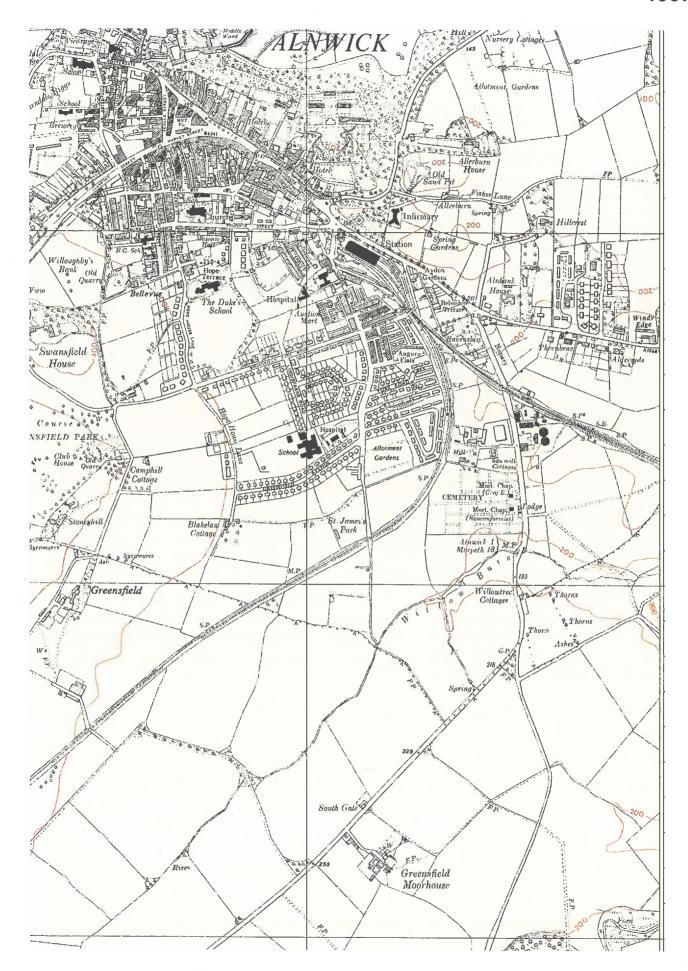
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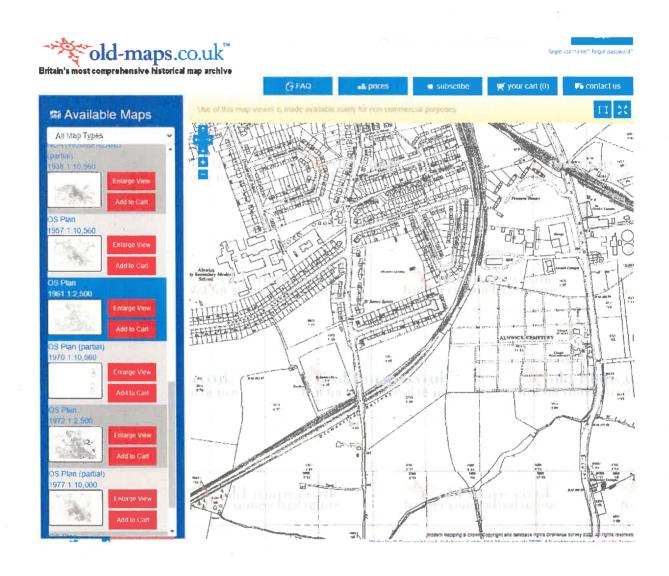
Provisional Map



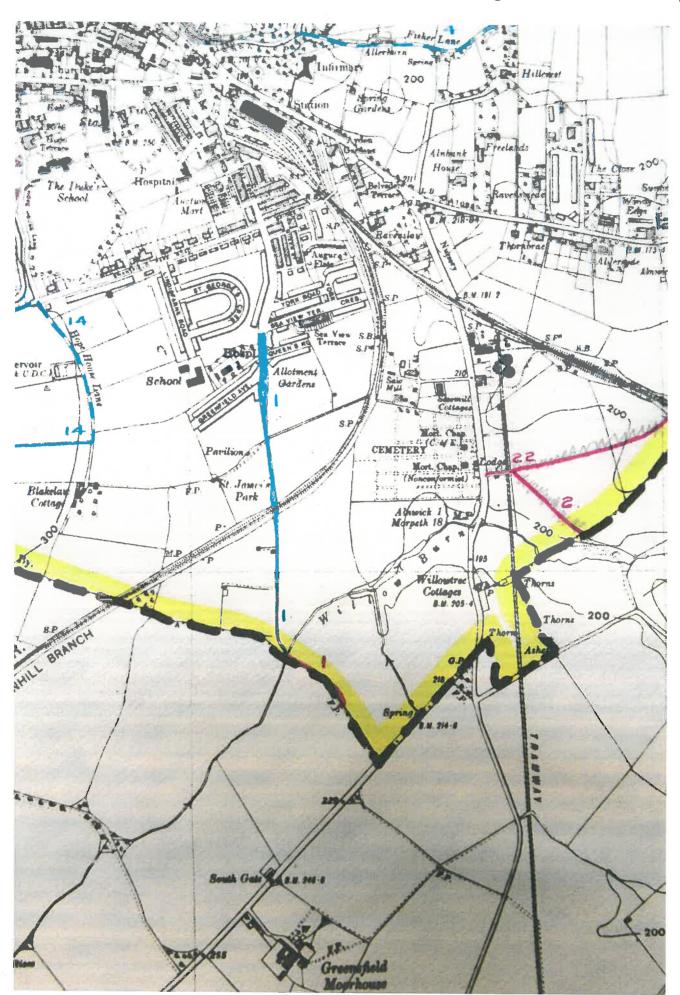
1:10,560 O.S. Map 1957



1:2500 Ordnance Survey Map 1961



Original Definitive Map



NORTHUMBERLAND COUNTY COUNCIL.

NATIONAL PARKS AND ACCESS TO THE COUNTRISIDE ACT. 1949. PART IV.

PUBLIC RIGHTS OF WAY - STATEMENT.

Borough-	***************
Urban District	ALNWICK.
Rural-District	# * * * * * * * * * * * * * * * * * * *
Periok-	*****************
Number of Footpath on Map	J.
Name of Path	F.P. and Bridle Road varying in width from
Kind of Path, (i.e. FP/BR)	20 feet to 3 feet - About 430 yards metalled
	From the West end of Sea View Terrace in a
	Boundary at the Willow Burn, turning south-east
along this boundary for about	160 yards to join Path No. 17 in the Parish of
Denwick (Detached).	********************************
************************	***************************************
	*
Other relevant information	
(a) Repaired at Pu	ablic expense.
(b) Rights of Way	Act, 1932 - Map deposited with Almwick

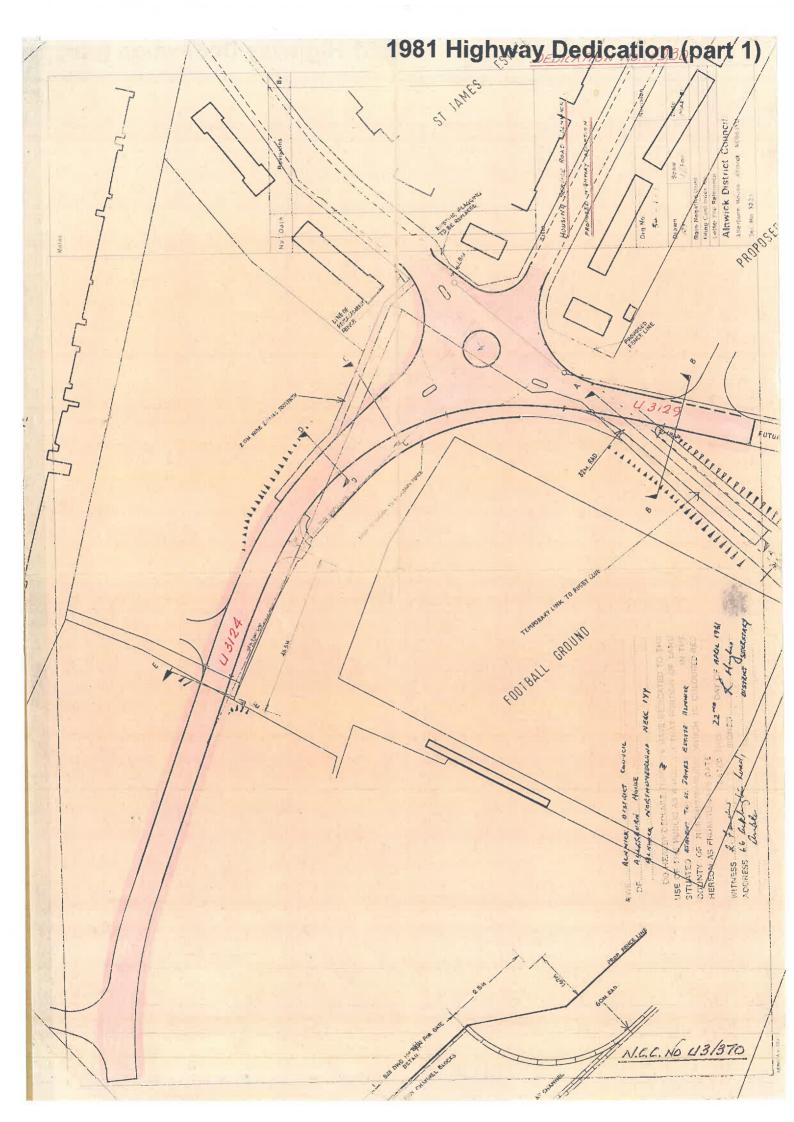
7-18.7	THE PP OF CAR PUTTY SHE
	Urban District Rural Bistrict Parish Number of Footpath on Map Name of Path Kind of Path, (i.e. FP/BR) General Description of Path southerly direction past St. to the Almwick Urban District along this boundary for about Denwick (Detached). Other relevant information (a) Repaired at Path (b) Rights of Way Urban District

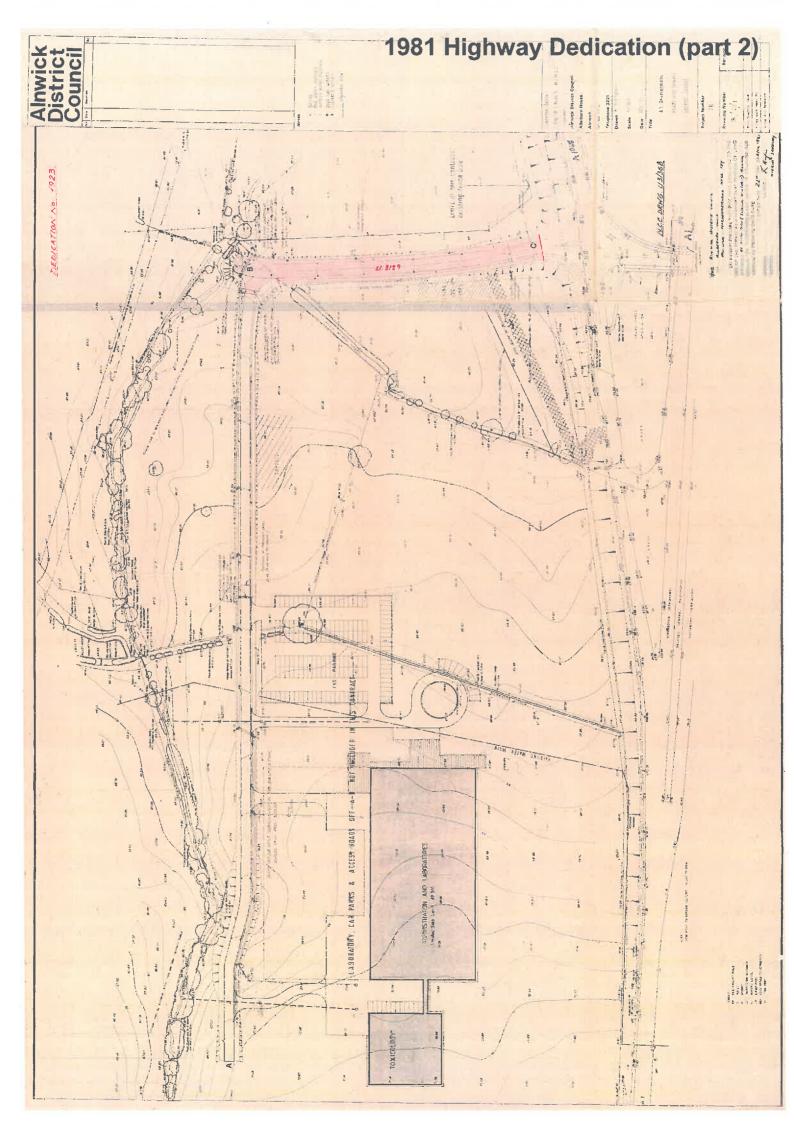
First Review Definitive Map



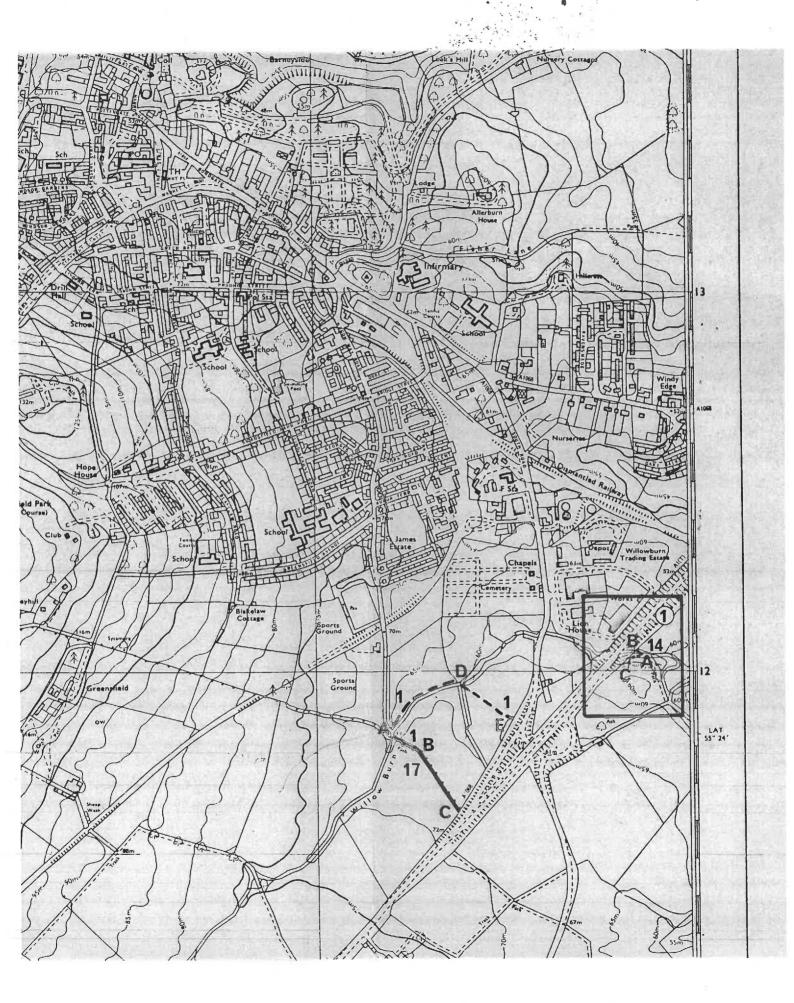
1:10,000 O.S. Map 1977

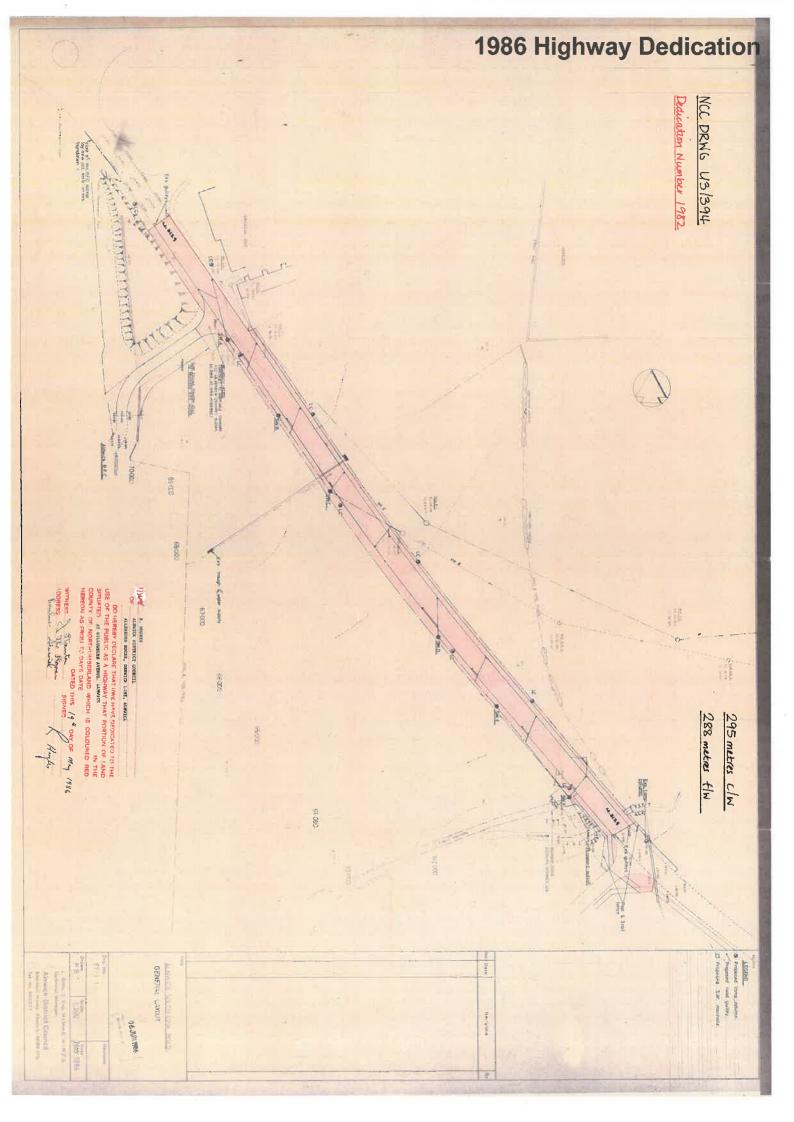






Definitive Map Modification Order (No 1) 1985







Northumberland

COUNTY COUNCIL

Director of Community & Environmental Services
Community & Environmental Services Directorate
County Hall Morpeth Northumberland
Telephone (01670) 533000 NE61 2EF

Definitive Map of
Public Rights of Way
for the
County of Northumberland

Wildlife and Countryside Act, 1981

The Northumberland County Council (Public Rights of Way) Modification Order (No. 2) 2005

Alnwick.shp
Public Footpath
Public Bridleway
Byway Open to All Traffic
Parish Boundary

District: Alnwick

Parish(es): Alnwick Town O.S. Map(s): NU 11 SE Definitive Map No(s): 69

Date: April 2005 Scale: 1:10,000

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Highways Act 1980 Section 36(6) County Of Northumberland List of Streets which are highways maintainable at the public expense As at 02-May-2006

Road Number	Description	Length - Metres
U3127		
	ORCHARD TERRACE FOOTWAY	48
	MEADOWLANDS CUL-DE-SAC - LESBURY	61
	MEADOWLANDS - LESBURY	48
	ORCHARD TERRACE	48
	OLD ALNWICK ROAD - LESBURY	134
	U3127 TOWNFOOT STEADING - LESBURY	60
	B1339 JCT TO CROFTLANDS LESBURY	137
	B1339 JCT TO LEALANDS LESBURY	229
	LEALANDS ESTATE LESBURY	109
	LEALANDS ESTATE LESBURY	89
	Total length for U3127	1,057
U3128		
	C110 JCT TO TOGSTON LINKS	696
	Total length for U3128	696
U3129		
	A1/A1068 JCT TO 30MPH SOUTH - ALNWIC	29
	ST JAMES RBT TO BRIDGE STREET/SWAN	461
	BRIDGE STREET / SWANFIELD AVENUE T	320
	ST JAMES ROUNDABOUT ALNWICK	92
	30MPH ALNWICK SOUTH TO ST JAMES RO	526
	Total length for U3129	1,428
U3130		
	B6345 JCT TO END OF OLD ROAD	86
	Total length for U3130	86
U3131		
	B6345 JCT TO HOPE HOUSE FARM	340
	Total length for U3131	340
02 May 2006		Page 244 of 700
02-May-2006		Page 241 of 730

