



Northumberland County Council

NORTH NORTHUMBERLAND LOCAL AREA COUNCIL
21 June 2018

PUBLIC RIGHTS OF WAY

MODIFICATION ORDER (No 12) 2017

ALLEGED BYWAY OPEN TO ALL TRAFFIC No 22

(PARISH OF DODDINGTON)

Report of the Executive Director of Local Services
Cabinet Member: Councillor Glen Sanderson, Environment and Local Services

Purpose of report

In this report, the Committee is asked for its views on the action now thought appropriate in determining the above mentioned Order.

Recommendations

It is recommended that the Committee agree that, unless all the objections are subsequently withdrawn, the Order, together with the objections, be submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination, accompanied by a recommendation that the Order be confirmed, as made.

1.0 Background

1.1 The proposals in the Order seek to add, to the Definitive Map and Statement:

Byway Open to All Traffic No 22

As a variable 10 to 15 metre wide byway open to all traffic, from the U1033 road, 625 metres south-east of Routin Lynn, in a southerly direction for a distance of 460 metres. Thereafter as a 14 to 15.5 metre wide byway continuing in a southerly direction for a further 380 metres. Thereafter as a 15 to 15.5 metre wide byway in a south-easterly direction for a distance of 315 metres to a junction with Public Bridleway

No 11, then for a further 10 metres to a field gate across the road, 825 metres east of Fenton Hill Farm.

- 1.2 The proposals resulted from the discovery of historical documentary evidence by the County Council.
- 1.3 In July 2017, the Rights of Way Committee considered all the available evidence both in support and rebuttal of the public right of way and resolved that public vehicular rights had been reasonably alleged to exist over the U1034 road, between the U1033 road south-east of Routin Lynn and the western end of Public Bridleway No 11, east of Fenton Hill Farm, and that these rights had not been affected by the Natural Environment and Rural Communities Act 2006.

2.0 The Order

- 2.1 The proposal was the subject of a Definitive Map Modification Order, made on 2nd October 2017, and advertised on 19th October 2017. Public advertisements were displayed in the local press and on site, and all known owners and occupiers of the land affected were notified, with 56 days given for formal objections / representations.

3.0 Objections

- 3.1 Three letters of objection / representation to Modification Order (No 12) 2017 were received.
- 3.2 By letter, dated 17 November 2017, Mr A Kind of Newcastle upon Tyne objected to this and several other Orders, stating:

“Re Definitive Map Modification Order (No 12) 2017 BOAT 22, Parish of Doddington.

“Reference your orders listed above, on behalf of the Trail Riders Fellowship Limited, I object to all on the ground that the routes do not meet the statutory test for byway status. I also make a representation to all the orders, that I have some evidence of public carriageway status, which I wish to have considered as part of the determination of the orders.

“As always I am happy to discuss the available evidence and legal issues in all of these cases.”

- 3.3 By letter, dated 18th October 2017, Mr T Richardson, objected to the Order on behalf of the Lambton Estates, stating:

“I refer to a letter from Barbara McCabe (BMCC/011490) dated 16th October together with enclosures which includes details regarding this road and BOAT having been granted.

“Having read the detail, I was surprised to see the width that is being proposed ranges from 10 meters to 15.5 meters as the actual existing road, being U1033, is probably no more than 3 - 3.5 metres in width for the full 825 meters being from Z to A on your plan.

“I would be grateful if you could please clarify.”

3.4 By letter, dated 14th December 2017, Mr T Richardson, raised further objections to the Order on behalf of the Lambton Estates, stating:

“I write to make further formal objections to this application, which will include the content detailed in my initial objection letter dated 18th October (a copy of which is attached), my further comments are as follows:

“1. The proposed BOAT route leads to a closed gate (at Point A on your plan). Beyond the gate the road continues on private land, owned by the Lambton Estate, where there is no third party access permitted. If one were to take access, they would eventually end up on the Doddington to East Fenton road. It is a concern that the users of the BOAT will get to the dead end, being the closed gate, see that the road continues (despite it being private with no unauthorized access) and continue on through until they rejoin the public highway, being the Doddington to East Fenton road.

“Looking west at Point A, there is another closed gate on to a private farm track, this eventually leads to Fenton Hill Farm. The farm track has a public right of way running parallel with it, though again, there is no third party use of motor vehicles permitted.

“I am afraid that it doesn't make logical or indeed practical sense to allow a BOAT, which will be used by motor vehicles and ends as a dead end long the U1034 to point A. The end point (A) will become a turning circle and a churned up mess, once the drivers realize that they are unable to continue along the route past point A. Are Northumberland Council going to be responsible for the maintenance of this turning circle should this DMO be passed? I suspect not and it will no doubt be the responsibility of the adjoining landowners to maintain.

“2. I refer to OS plans for NT9836 and NT9936, dated 1965, which although it does show a road, there is no suggestion that the route between Z and A is a public path, restricted byway or byway open to all traffic (sectional copy enclosed, titled A).

“3. I refer to OS plans for the period 1937 to 1961, though published in 1957 which again although does show a road there is no suggestion that the route between Z and A is a public path, restricted byway or byway open to all traffic (sectional copy enclosed, titled c). Furthermore the plans colourings do not suggest that the route is a dedicated road.

“4. I refer to OS plans for the same area as point 3 above, for the period 1842-1952, though published in 1899 (sectional copy enclosed, titled B), which although does show a road, it does not show any public

path, restricted byway or byway open to all traffic between points Z and A.

“The evidence provided in the draft committee report does not show any record of a road or track in the 1769 Armstrong’s County Map, the Greenwood’s County Map of 1828 and the Glendale RDC Handover Map of 1932 does show a track (similar to my points 1, 2 and 3) though does not list it as a publicly maintained road. Suggesting that it was merely Estate access to Fenton House and other parts of the Estate. The route is also recorded within the Estate Title under ND147321, suggesting that it is not a Council owned road.

“I would be grateful if my letter together with enclosures stating the above reasons for objecting can formally be logged against this application.”

4. Discussion

- 4.1 The procedures under the 1981 Act empower this Authority to confirm proposals only where these are unopposed and no modification is needed. Where there is an unresolved objection, or where a modification, however minor is needed, the proposal must be submitted for determination by the Secretary of State for the Environment, Food and Rural Affairs.
- 4.2 The route of alleged Byway Open to All Traffic No 22 is identified on the County Council’s current List of Streets as being the U1034 road. The route was not identified as being publicly maintainable on the 1932 Glendale Rural District Council Handover Map, nor does it appear to be shown in the schedule of roads produced in relation to the Restriction of Ribbon Development Act 1935. The route is, however, clearly identifiable on the Council’s 1951 Highways Map and is recorded in the 1958 County Road Schedule and in the 1964 County Road Schedule and on the Highways Map, produced at that time, to accompany that schedule. It is also recorded in the 1974 County Road Schedule. It was not identified as a public road on the plans produced in relation to the 1910 Finance Act.
- 4.3 The route has been consistently identified as an enclosed road / track on Ordnance Survey maps since 1899. The route is shown on Fryer’s County Map of 1820, and on Cary’s Map of 1820-32, but is not shown on Armstrong’s or Greenwood’s County Maps of 1769 and 1828. Armstrong’s Map is the least detailed of these documents. There are many minor roads omitted from this particular map.
- 4.4 The route does not appear to have been considered for inclusion on the original Definitive Map of Public Rights of Way (as footpath, bridleway or Road Used as Public Path) in the 1950s, despite the fact that a public bridleway terminates on it, just 10 metres north of its southern end. This implies that the road was considered to be a public highway, but presumably one of sufficiently high status that it was not considered appropriate to record it on the Definitive Map.

- 4.5 Mr Richardson's first letter of objection on behalf of the Lambton Estate concerned the width of the Order route. Mr Richardson considered that the public highway could be no more than 3 to 3.5 metres wide, reflecting the extent of the current tarmac carriageway. Generally, however, there is a boundary to boundary presumption for public highways. On that basis the Council identified Byway Open to All Traffic No 22 with a width varying from 10 to 15 metres. This width was identified in the draft committee report which Mr Richardson had sight of.
- 4.6 The byway open to all traffic would be identified as terminating at the gate across the road at Point A (the same termination point that is reflected on the Council's List of Streets). The landowner has erected signs adjacent to this gate indicating that the continuation beyond the gate is a private road.
- 4.7 The perceived practicality of a route is not a consideration which Northumberland County Council (or Inspectors appointed by the Secretary of State) can take into account. The process is concerned with accurately identifying the public rights which exist. If only very low numbers of public vehicles are driving as far as Point A now, there is no reason to believe this will change, significantly, in the future. Since the Council considers that the full width of the Z-A corridor comprises the publicly maintainable highway, it follows that the 'turning area' would be its responsibility too.
- 4.8 The OS map extracts Mr Richardson supplied show that an enclosed track physically existed along the Order route. Although Mr Richardson asserts that the maps he labelled 'A' and 'B' do not suggest that the route is a public path, restricted byway or byway open to all traffic, the same could be argued of virtually every public road. It is not clear how Mr Richardson expects the Ordnance Survey maps to differentiate the public routes from the private ones. With regard to the Ordnance Survey map he labelled 'C', the order route is not marked with stipples in the way that more major roads (e.g. the U3033) are, but this reflects the Ordnance Survey's mapping conventions based upon the width of the tarmac carriageway, not the status of the route.
- 4.9 The Natural Environment and Rural Communities Act 2006 (NERCA 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.
- 4.10 Of the saving provisions above, (b) applies to the Order route (i.e. the whole route was identified on the List of Streets on 2 May 2006, without any of it also being shown on the Definitive Map as something less than a byway open to all traffic).
- 4.11 Mr Kind has objected on the basis that although this route is a motor vehicular right of way, it doesn't meet the statutory test for being recorded as a byway

open to all traffic. A byway open to all traffic is a route over which the public has a motor vehicular right of way, but which is nevertheless used by the public more on foot, horseback and bicycle. This route is cul-de-sac for public motor vehicles with a public bridleway continuing in a general easterly direction, from its southern end. It appears to be a popular location for dog walkers. On both the occasions that I have visited this route, I have observed a car / several cars parked at the U3033 - U3034 road junction and have passed one / two dog walkers along the road itself. For these reasons it is considered likely that public use of this route will be primarily non-motor vehicular, thereby satisfying the criteria for recording it as a byway open to all traffic.

5. Council's Position Regarding Submitting the Order to the Secretary of State

- 5.1 In view of the historical documentary evidence available, the County Council believes that, on the balance of probabilities, public vehicular rights do exist over the route identified in the Order; that the NERCA 2006 has not extinguished the public's motor vehicular rights over the route; that the character of the route means that it is one which it would be appropriate to record on the definitive Map as a byway open to all traffic; and that the Order should, therefore, be confirmed, as made.

6. Background Papers

Local Services Group File: B/14/22z

Definitive Map Modification Order (No 12) 2017.

Report Author Alex Bell – Definitive Map Officer
(01670) 624133
Alex.Bell@Northumberland.gov.uk

Wildlife and Countryside Act 1981

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

The Northumberland County Council

Definitive Map Modification Order (No 12) 2017

Byway Open to All Traffic No 22 (Parish of Doddington)

This Order is made by Northumberland County Council under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the Definitive Map and Statement of Public Rights of Way for the County of Northumberland require modification in consequence of the occurrence of events specified in Section 53(3)(c)(i) and (iii), namely, 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; and that there is no public right of way over 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.

The authority has consulted every local authority whose area includes the land to which the order relates. The Northumberland County Council hereby order that:

1. For the purposes of this Order the relevant date is 1 September 2017.
2. The Definitive Map and Statement of Public Rights of Way for the County of Northumberland shall be modified as described in the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as The Northumberland County Council Definitive Map Modification Order (No 12) 2017.

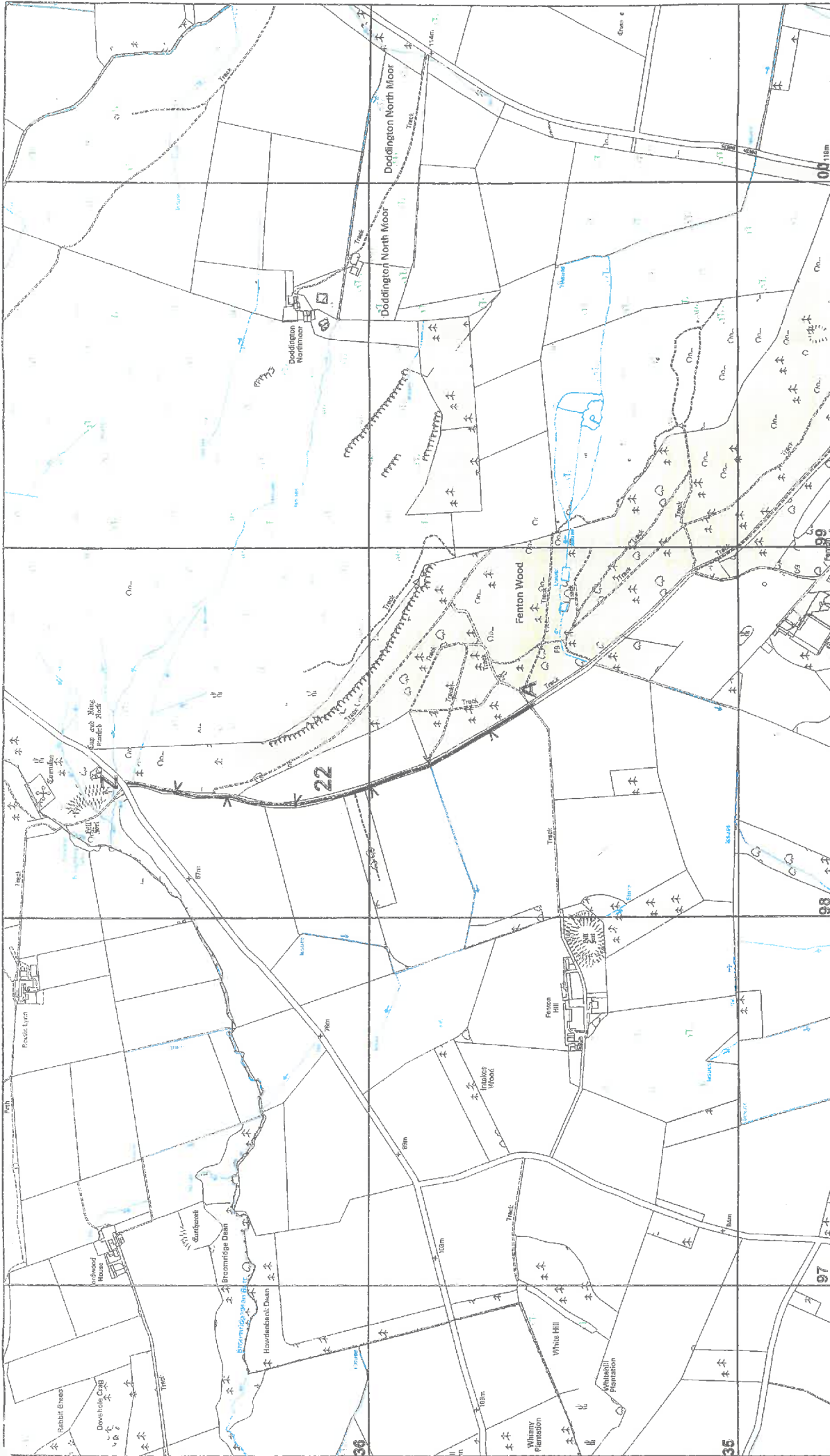
Definitive Map Modification Order (No 12) 2017

Index

Parish	Path No.	Modification	OS Map Nos.	Def Map Nos.
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Former Berwick-upon-Tweed Borough

Doddington	BR 11	Amend Statement	NT 93 NE	20
Doddington	BOAT 22	Addition	NT 93 NE	20




Public Footpath to be deleted	Public Footpath	Public Bridleway	Restricted Byway	Byway Open to All Traffic
<p>O.S. Map NT 93 NE</p> <p>Former District(s) Berwick</p>				
<p>Definitive Map No. 20</p> <p>Parish(es) Doddington</p>				
<p>Scale: 1/10,000</p> <p>Date: July 2017</p>				

**The Northumberland
County Council**

**Modification Order
(No.12) 2017**

Wildlife and Countryside Act, 1981

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


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

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IN WITNESS whereof the Common Seal of the County Council of Northumberland was hereunto affixed on the 2nd day of October 2017

The common Seal of Northumberland County Council was hereunto affixed in the presence of:-

Peter Green

Duly Authorised Officer



LEGAL SERVICES

20 NOV 2017

REC'D

from Alan Kind
45 The Fairway
Gosforth
Newcastle upon Tyne
NE3 5AQ

e-mail mondard@mac.com

Legal Services Manager
Northumberland County Council
County Hall
Morpeth
NE61 2EF

17 November 2017

Dear Sir,

- Re: Definitive Map Modification Order (No 11) 2017. BOAT 21, Parish of Cornhill.
- Re: Definitive Map Modification Order (No 10) 2017. BOAT 18 & 19, Parish of Cornhill.
- Re: Definitive Map Modification Order (No 8) 2017. BOAT 35 & 36, Parish of Adderstone with Lucker.
- Re: Definitive Map Modification Order (No 9) 2017. BOAT 45 & 31, Parishes of Eglington & Newton-by-the-Sea.
- Re: Definitive Map Modification Order (No 12) 2017. BOAT 22, Parish of Doddington.

Reference your orders listed above, on behalf of the Trail Riders Fellowship Limited, I **object to all** on the ground that the routes do not meet the statutory test for byway status. I also make a **representation to all** the orders, that I have some evidence of public carriageway status, which I wish to have considered as part of the determination of the orders.

As always I am happy to discuss the available evidence and legal issues in all of these cases.

Yours faithfully

Alan Kind

LAMBTON ESTATES
LAMBTON ESTATE OFFICE
LAMBTON PARK
CHESTER-LE-STREET
COUNTY DURHAM
DH3 4PQ

LEGAL SERVICES

Our Ref: TER/LT

Mr L Henry
Legal Services Manager
Northumberland County Council
County Hall
Morpeth
NE61 2EF

REC'D

18th October 2017

Dear Mr Henry,

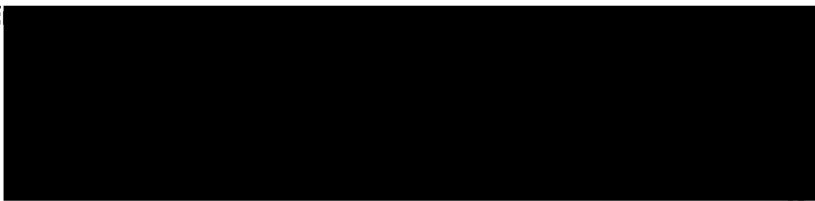
**LAMBTON ESTATE – FENTON
BYWAY OPEN TO ALL TRAFFIC NO 22 (PARISH AT DODDINGTON)**

I refer to a letter from Barbara McCab (BMCC/011490) dated 16th October together with enclosures which includes details regarding this road and BOAT having been granted.

Having read the detail, I was surprised to see the width that is being proposed ranges from 10 meters to 15.5 meters as the actual existing road, being U1033, is probably no more than 3 – 3.5 meters in width for the full 825 meters being from Z to A on your plan.

I would be grateful if you could please clarify.

Yours si



Tom Richardson MRICS FAAV
Resident Agent
EMAIL: TRichardson@Lambtonestates.com

TEL: 0191 3852435 FAX: 0191 3856838
www.lambtonestates.com

LAMBTON ESTATES
LAMBTON ESTATE OFFICE
LAMBTON PARK
CHESTER-LE-STREET
COUNTY DURHAM
DH3 4PQ

Our Ref: TER/LT

Mr L Henry
Legal Services Manager
Northumberland County Council
County Hall
Morpeth
NE61 2EF

14th December 2017

BY EMAIL ONLY

Dear Mr Henry,

**LAMBTON ESTATE – FENTON
BYWAY OPEN TO ALL TRAFFIC NO 22 (PARISH AT DODDINGTON)**

I write to make further formal objections to this application, which will include the content detailed in my initial objection letter dated 18th October (a copy of which is attached), my further comments are as follows:

1. The proposed BOAT route leads to a closed gate (at point A on your plan). Beyond the gate the road continues on to private land, owned by the Lambton Estate, where there is no third party access permitted. If one were to take access, they would eventually end up on the Doddington to East Fenton road. It is a concern that the users of the BOAT will get to the dead end, being the closed gate, see that the road continues (despite it being private with no unauthorized access) and continue on through until they re-join the public highway, being the Doddington to East Fenton road.

Looking west at point A, there is another closed gate on to a private farm track, this eventually leads to Fenton Hill Farm. The farm track has a public right of way running parallel with it, though again, there is no third party use of motor vehicles permitted.

I am afraid that it doesn't make logical or indeed practical sense to allow a BOAT, which will be used by motor vehicles and ends as a dead end along the U1034 to point A. The end point (A) will become a turning circle and a churned up mess, once the drivers realize that they are unable to continue along the route past point A. Are Northumberland Council going to be responsible for the maintenance of this turning circle should this DMO be passed? I suspect not and it will no doubt be the responsibility of the adjoining landowners to maintain.

2. I refer to OS plans for NT9836 and NT9936, dated 1965, which although it does show a road, there is no suggestion that the route between Z and A is a public path, restricted byway or byway open to all traffic (sectional copy enclosed, titled A)
3. I refer to OS plans for the period 1937 to 1961, though published in 1957 which again although does

TEL: 0191 3852435 FAX: 0191 3856838
www.lambtonestates.com

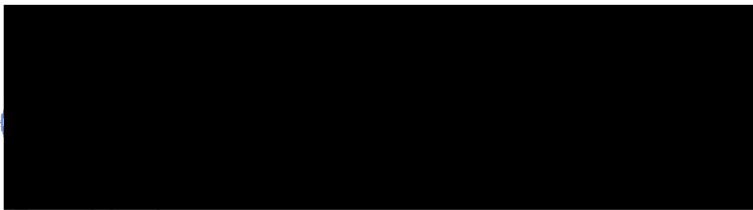
LAMBTON ESTATES
LAMBTON ESTATE OFFICE
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COUNTY DURHAM
DH3 4PQ

show a road, there is no suggestion that the route between Z and A is a public path, restricted byway or byway open to all traffic (sectional copy enclosed, titled c). Furthermore the plans colourings do not suggest that the route is a dedicated road.

4. I refer to OS plans for the same area as point 3 above, for the period 1842-1952, though published in 1899 (sectional copy enclosed, titled B), which although does show a road, it does not show any public path, restricted byway or byway open to all traffic between points Z and A.

The evidence provided in the draft committee report does not show any record of a road or track in the 1769 Armstrong's County Map, the Greenwoods County Map of 1828 and the Glendale RDC Handover Map of 1932 does show a track (similar to my points 1, 2 and 3) though does not list it as a publically maintained road. Suggesting that it was merely Estate access to Fenton House and other parts of the Estate. The route is also recorded within the Estate Title under ND147321, suggesting that it is not a Council owned road.

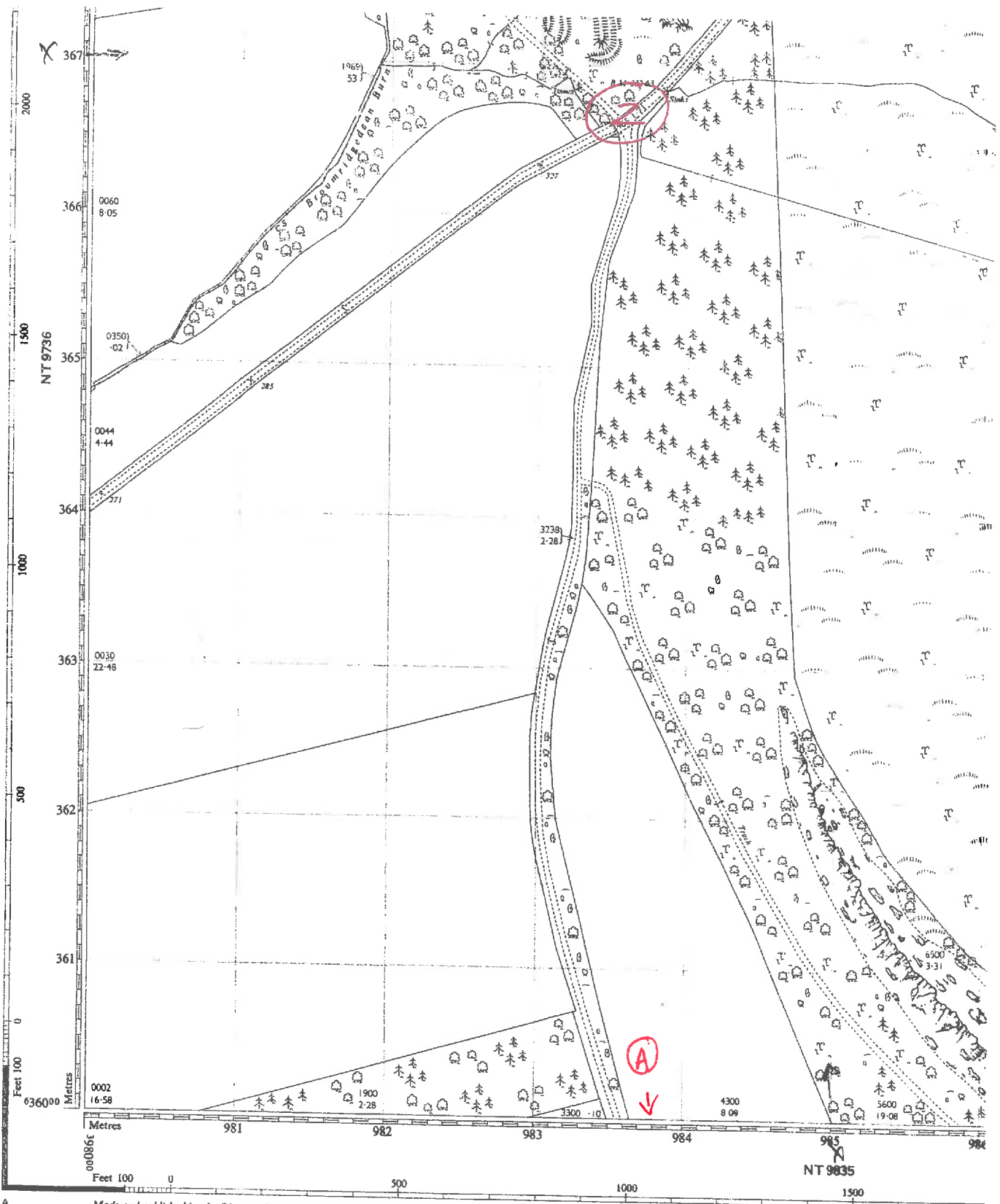
I would be grateful if my letter together with enclosures stating the above reasons for objecting can formally be logged against this application.



Tom Richardson MRICS FAAV
Resident Agent
EMAIL: TRichardson@Lambtonestates.com

Enc

A



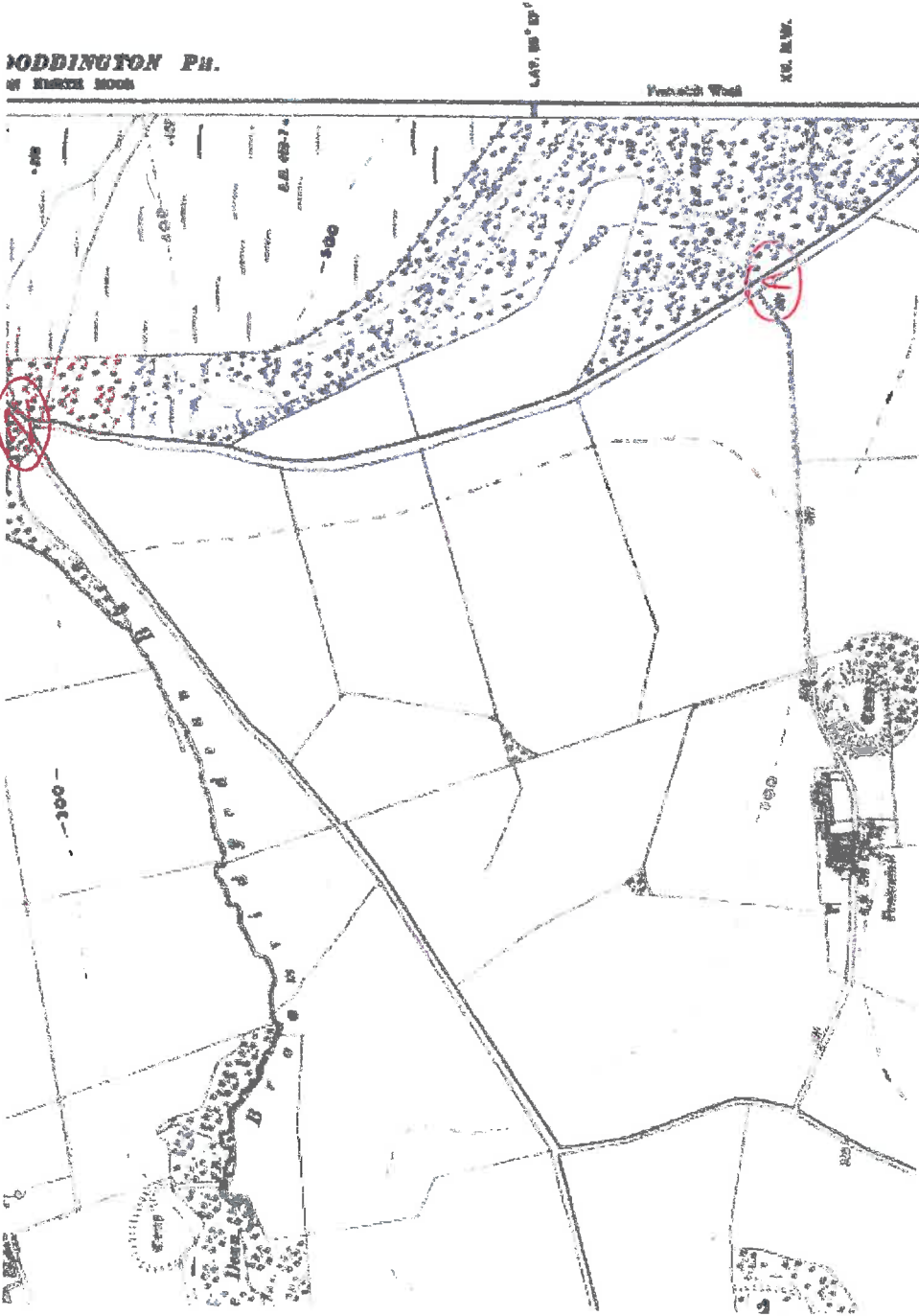
Made and published by the Director General of the Ordnance Survey, Chessington, Surrey, 1965.
Reconstituted from former County Series plans and revised 1964.

The West half of this sheet is Plan NT 9836
The East half of this sheet is Plan NT 9936

- | | | |
|--|----------------------------------|---------------|
| Antiquities..... (site of) | Bench Mark..... | Surface Le |
| Change of boundary marking..... | " " Fundamental..... | Revision P |
| Limit of area within which the acreages of individual parcels are not shown..... ? | Parcels joined for acreages..... | Triangulation |
- Leveling Information
Altitudes of Bench Marks and Surface Levels are given in feet above the Newlyn 28
Bench Mark lists, containing fallar and possibly later leveling information, are obtainable from the Elements
- | | | |
|-----------------------------------|--|------------|
| Boundary Marking Abbreviations | | |
| Base of Bank..... BB | Centre of Old Course of Stream..... COCS | Face of W |
| Centre of Bank..... CB | Centre of Road, etc..... CR | Side of R |
| Centre of Canal, etc..... CC | Centre of Stream..... CS | Trunk of R |
| Centre of Drain, etc..... CD | 4 feet from Root of Hedge..... 4/ RH | Trunk of L |
| Centre of Covered Stream..... CCS | Face of Fence..... FF | Defaced, I |

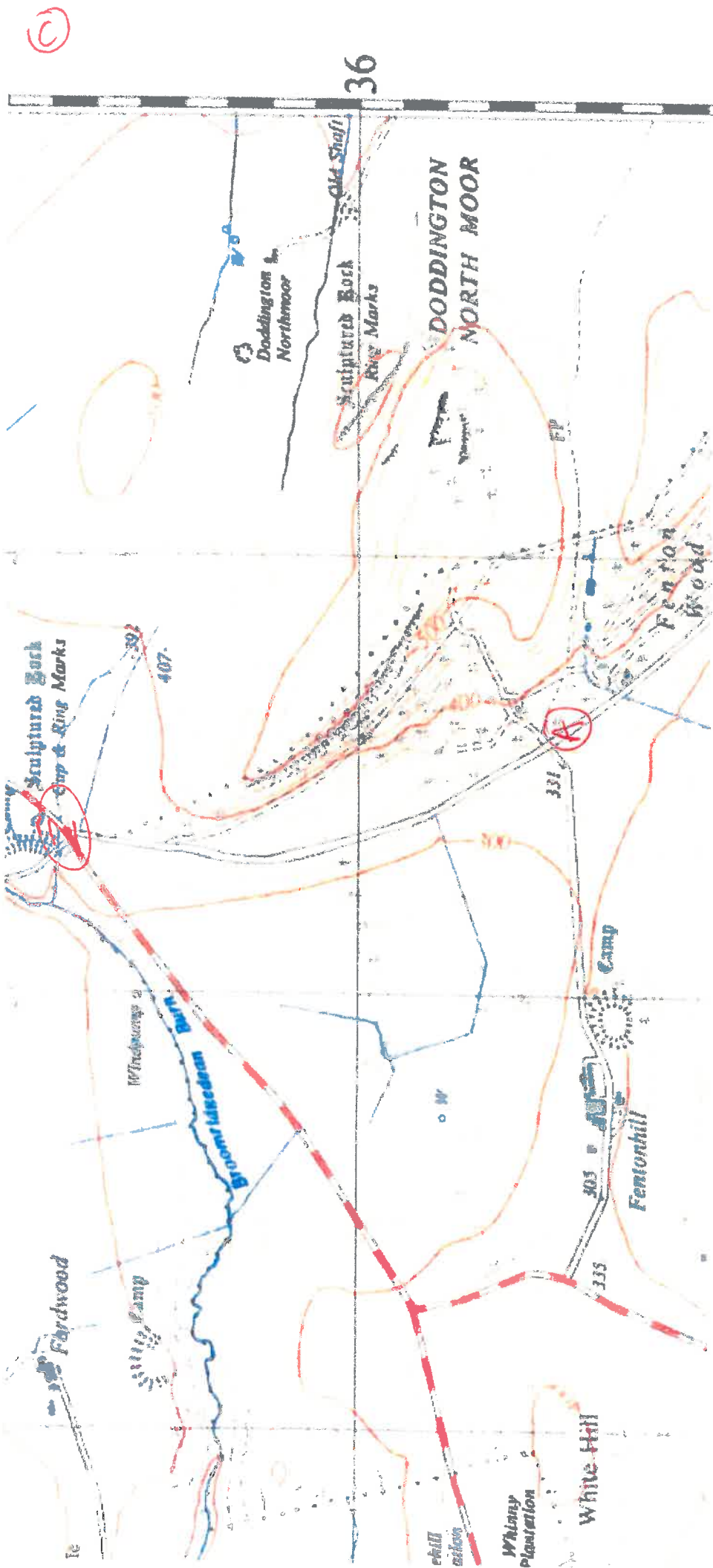
PLAN NT 9836 & PLAN NT 9936

8



View: Northumberland XIV.NE (includes: Ford; Nesbit.) - Ordnance Survey Six-inch England and Wales, 1842-1952
<http://maps.nls.uk/view/101026635>





View: NT93 - Ordnance Survey 1:25,000 maps of Great Britain, 1937-1961
<http://maps.nls.uk/view/91578559>