

RIGHTS OF WAY COMMITTEE

11 July 2017

PUBLIC RIGHTS OF WAY

DEFINITIVE MAP MODIFICATION ORDER (No 13) 2013

ALLEGED RESTRICTED BYWAYS Nos 22, 23 & 33 (PARISHES OF THIRSTON & LONGHORSLEY)

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

Purpose of report

To inform the Committee of the final decision, of the Inspector appointed by the Secretary of State for the Department of the Environment, Food and Rural Affairs to determine, following written representations, the above Order that attracted one objection and one representation.

Recommendations

It is recommended that the Committee note the Inspector's final decision to confirm the Order, subject to an increase in the width of part of the route, as identified in her earlier interim decision.

1.0 BACKGROUND

- 1.1 In November 2013 the County Council made and, in December 2013, advertised Definitive Map Modification Order (No 13) 2013. This Order sought to add restricted byways to the Definitive Map and Statement of Public Rights of Way on the basis of historical documentary evidence. The Order attracted one sustained objection from the landowner and one representation in support of a public right of way from a resident of Newcastle upon Tyne. The objection was made partly on the basis of arguments that no public right of way existed, and partly out of concern that public use of the route would compromise farming operations.
- 1.2 At its meeting in April 2014, the Planning & Environment & Rights of Way Committee agreed with the officer recommendation that, on a balance of probabilities, public non-motor vehicular rights had been shown to exist, that



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 13) 2013

Restricted Byways Nos 22 & 23 & 33 (Parishes of Thirston and Longhorsley)

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), 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.

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 July 2013.
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 13) 2013.

Definitive Map Modification Order (No 13) 2013

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Parish	Path No.	Modification	OS Map Nos.	Def Map Nos.
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Former Castle Morpeth Borough

Longhorsley	RB 33	Addition	NZ 19 NE	111
Thirston	RB 22	Addition	NZ 19 NE	111
Thirston	RB 23	Addition	NZ 19 NE	111

Definitive Map Modification Order (No 13) 2013

Description of Modification to Definitive Map and Statement

Former Castle Morpeth Borough

Thirston Restricted Byway No 22 (NZ 19 NE)

Part I Map: Adding thereto a restricted byway, from a point marked F, on Byway Open to All Traffic No 18, at its junction with the A1 road, 575 metres north-west of Helm, in a general south-easterly direction for a distance of 715 metres, to a point marked G, on the U6004 road, 150 metres east of Helm.

Part II Statement: To be prepared as follows:

a restricted byway varying in width between 8 metres and 15 metres as shown in the 1:2500 1st Edition Ordnance Survey map of 1865

~~As a 9 metre wide restricted byway (incorporating a 2.5 metre wide metalled track) in an easterly direction for a distance of 380 metres, thereafter as an 8.5 to 9 metre wide restricted byway continuing in an easterly direction for a further 30 metres, then in a south-easterly direction for a distance of 205 metres, thereafter as an 8.5 to 9 metre wide restricted byway (incorporating a 2.5 metre wide metalled track) continuing in a south-easterly direction for a further 100 metres to join the U6004 road, 150 metres east of Helm.~~

Thirston Restricted Byway No 23 (NZ 19 NE)

Part I Map: Adding thereto a restricted byway, from a point marked H, on the U6004 road, 150 metres east of Helm, in a southerly direction for a distance of 680 metres, to a point marked K, on alleged Restricted Byway No 33 in the Parish of Longhorsely, 455 metres north of Causey Park Lodge.

Part II Statement: To be prepared as follows:

a restricted byway varying in width between 10 metres and 18 metres as shown in the 1:2500 1st Edition Ordnance Survey map of 1865

~~As a 5 metre wide restricted byway, from the U6004 road, 150 metres east of Helm, in a southerly direction for a distance of 680 metres, to join Restricted Byway No 33 in the Parish of Longhorsely, 10 metres east of the A1 road, 455 metres north of Causey Park Lodge.~~

Longhorsley

Restricted Byway No 33

(NZ 19 NE)

Part I Map:

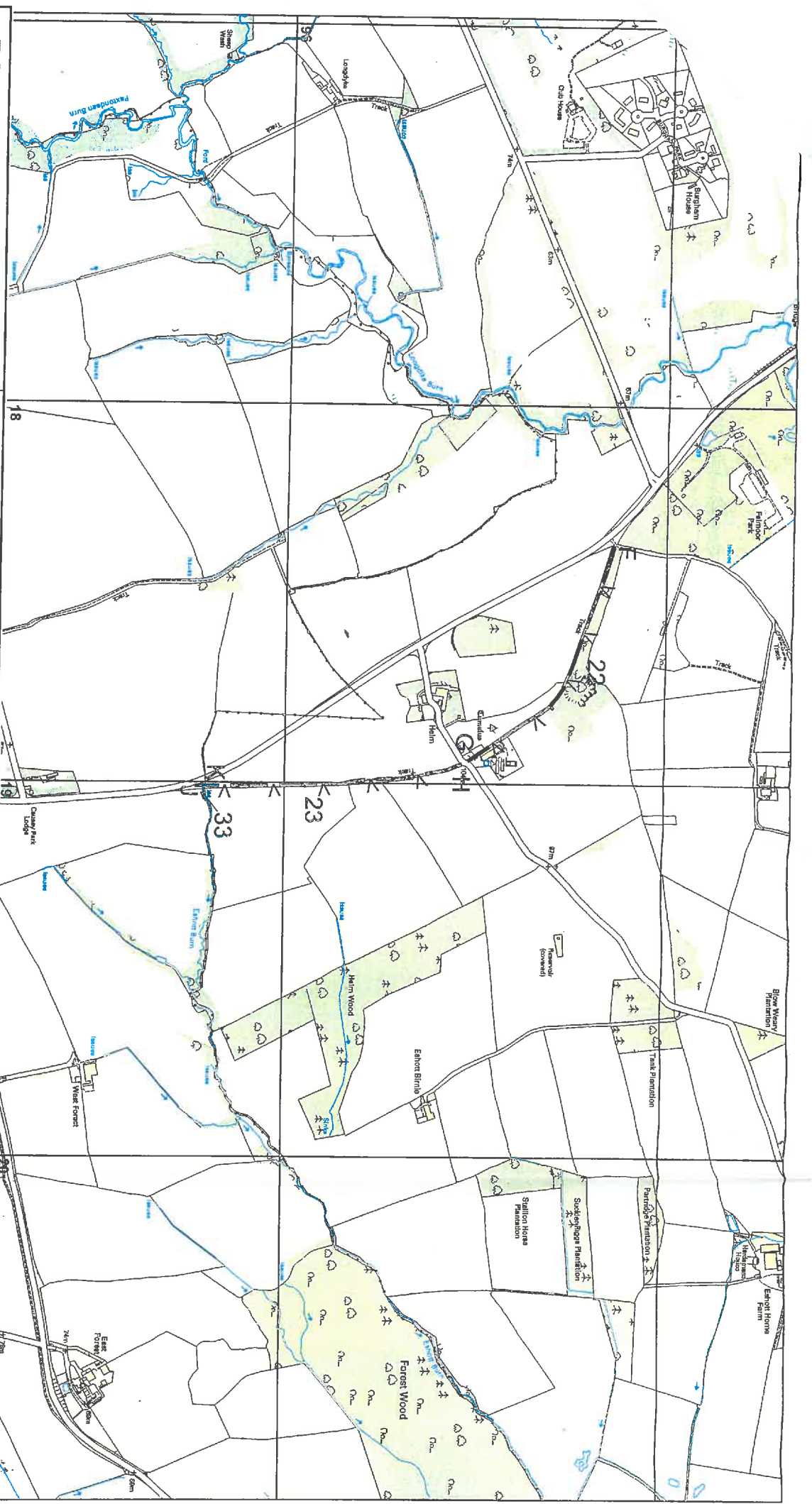
Adding thereto a restricted byway, from a point marked K, on alleged Restricted Byway No 23 in the Parish of Thirston, 455 metres north of Causey Park Lodge in a southerly direction for a distance of 55 metres, to a point marked J, on the A1 road, 400 metres north of Causey Park Lodge.

Part II Statement:

To be prepared as follows:

~~As a 5 metre wide restricted byway,~~ from Restricted Byway No 23 in the Parish of Thirston, 455 metres north of Causey Park Lodge, in a southerly direction for a distance of 55 metres, to join the A1 road, 400 metres north of Causey Park Lodge.

a restricted byway 18 metres in width as shown in the 1:2500 1st Edition Ordnance Survey map of 1865



Northumberland

Northumberland County Council

Sustainable Transport
Local Services

County Hall Morpeth Northumberland
Telephone 0845 600 6400 NE61 2EF

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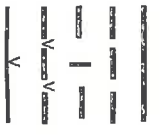
Wildlife and Countryside Act, 1981

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

**The Northumberland
County Council**

**Modification Order
(No. 13) 2013**

- Public Right of Way closed
- Public Footpath
- Public Bridleway
- Restricted Byway
- Byway Open to All Traffic



O.S. Map NZ 19 NE	Definitive Map No 111	Scale: 1/10,000
Former District(s) Castle Morpeth	Parishes) Thirston/ Longhorsley	Date: November 2013

FK

IN WITNESS whereof the Common Seal of the County Council of Northumberland was hereunto affixed on the 25th day of November 2013

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

A

Duly Authorised Officer



The foregoing order is hereby confirmed subject to the red ink modifications thereon

Sue Arnott 04 MAY 2017

An Inspector appointed by The Secretary of State for Environment, Food and Rural Affairs

Order Decision

Site Visit on 22 August 2016

by Sue Arnott FIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 04 May 2017

Order Ref: FPS/P2935/7/48M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Northumberland County Council Definitive Map Modification Order (No 13) 2013.
- The Order is dated 25 November 2013. It proposes to modify the definitive map and statement for the area by recording a restricted byway in the Parishes of Thirston and Longhorsley from the A1 north west of Helm, south east and southwards, crossing the U6004 road and re-joining the A1 near Eshott Burn, as shown on the Order map and described in the Order schedule.
- There were two objections outstanding when Northumberland County Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.
- In accordance with Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 I have given notice of my proposal to confirm the Order with modifications. In response one objection has been submitted together with one representation in support.

Summary of Decision: The Order is confirmed subject to the modifications previously proposed.

Procedural Matters

1. If confirmed with the modifications set out in paragraph 54 of my interim Order Decision issued on 7 September 2016, the Order would record on the definitive map and statement a restricted byway as originally proposed but with different widths.
2. An objection to my proposed modifications was submitted by Ms Summerhill (on behalf of Mr and Mrs Hogg). The basis of this objection is their rejection of the proposed width as being "totally inappropriate" for a restricted byway. In addition, a representation from Mr Kind supports the proposed modifications but takes issue with a number of points within the interim decision.

Reasons

3. Having examined all the evidence previously submitted I was left in no doubt that the Order route was once a carriageway that formed part of the 'Great North Road'. Although public use has diminished, there is no evidence to show it was ever formally stopped up and therefore its status remains a public carriageway. The effect of Section 67(1) of the Natural Environment and Rural Communities Act 2006 leaves this highway a 'restricted byway', as proposed by the Order.
 4. This conclusion has not been challenged and no further evidence has been submitted that might cause me to alter my previous decision on this matter.
-

5. It is the proposed alteration of the width of this highway that is now at issue. As I concluded in paragraphs 41-46 of my interim Order Decision, it seems to me that the Ordnance Survey (OS) map of 1865 at a scale 25" to one mile offers the most accurate representation of the highway when fully in use. Consequently, scaling from this map led me to propose recording the northernmost section (F-G) as varying between 8m and 15m, and the southern sections H-K as varying between 10m and 18m and K-J as 18m wide.
6. Mr Kind helpfully provides a calculation of the average width based on the area of the highway identified by the OS (as parcel 44) and the measured length; his figures accord well with the widths I have proposed.
7. Objectors Mr and Mrs Hogg accept that the width now proposed reflects that shown on the 1865 OS map but wish it to be noted that this will include the verges and hedges and is not the width of the actual track. This is a fair point, and is well illustrated by one of two photographs of the route¹ submitted by Mr Kind. Where walls or hedges still exist which tally with the 1865 map, the extent of the highway will extend from boundary to boundary although the full width may not have a hard surface. Where such boundaries have long since disappeared, the full extent of the highway may now be more difficult to discern on the ground but the public's rights will nonetheless continue beyond the limits of any old stone track.
8. Mr Kind draws attention to the 1910 Finance Act map and the significance of the better quality copy supplied to me by Northumberland County Council (NCC) at my request and copied to all interested parties prior to my interim decision. In his view this should have been regarded as 'new evidence' notwithstanding the fact that a poorer version had already been submitted. That is debateable but of no consequence now in terms of the outcome of this Order.
9. In fact it is the underlying detail on the OS 25" base map that was not discernible on the poor copy which is highlighted by Mr Kind as noteworthy, supporting the significance of the Order route as the main through-route at Helm at a date of survey later than 1865². Indeed this emphasises the value of examining the larger scale OS editions which often reveal some of the finer features that can indicate a highway but which are missing from the smaller scale versions.
10. Mr Kind queries my reasoning in paragraphs 13 and 14 and in footnote 5 relating to the route he described as 'the bottom road', this being referred to in the interim decision as 'the bypass'. However I am not entirely clear where we differ other than on the question of whether, by 1835, the Order route had been supplanted by the bypass or the two roads were then still of equal importance.
11. Mr Kind suggests the 1835 "*Plan of the Present Road showing also the Proposed New Lines of Improvement*" implied that the Order route was to be rendered 'the old road' by the improvements (which were never built) whereas at paragraph 14 I deduced that by 1835 the bypass had by then become the more important of the two. It is not a critical point, but to be clear, I have little doubt that the Order route can be described as an 'ancient highway' since it existed as a public carriageway before 1835 and, in the absence of evidence of stopping up, that it continued with that status until 2006.

¹ These are said to have been taken some time before 2008

² Mr Kind estimates this to be c1895

12. On a balance of probability, I conclude that the Order should be confirmed with the modifications I proposed so as to ensure the width recorded for the Order route reflects the extent of the highway shown on the 1865 OS map.

Conclusion

13. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed subject to the modifications that have been advertised.

Other Matters

14. In relation to Mr and Mrs Hogg's comment that the width(s) proposed are "inappropriate", I refer to my paragraph 47 of the interim Order Decision. Here I recognised that "these measurements may appear hugely discordant both with the site as it exists today and with the likely needs of the public in future" but that "these issues are not relevant in determining the width of the corridor over which people in the distant past once enjoyed a right of way". Neither the merits nor disadvantages of the route can be taken into consideration when determining an Order of this nature which rests on the premise that once a highway has been established at any time in the past, it will continue to exist to its full extent unless formally closed.

Formal Decision

15. I confirm the Order subject to the following modifications:

In the Order schedule: Part II

Thirston Restricted Byway No 22: Statement

- In lines 1 and 2, delete "a 9 metre wide restricted byway (incorporating a 2.5 metre wide metalled track)" and substitute "a restricted byway varying in width between 8 metres and 15 metres as shown in the 1:2500 1st Edition Ordnance Survey map of 1865";
- In line 3, delete "thereafter as an 8.5 to 9 metre wide restricted byway";
- In lines 5, 6 and 7, delete "thereafter as an 8.5 to 9 metre wide restricted byway (incorporating a 2.5 metre wide metalled track";

Thirston Restricted Byway No 23: Statement

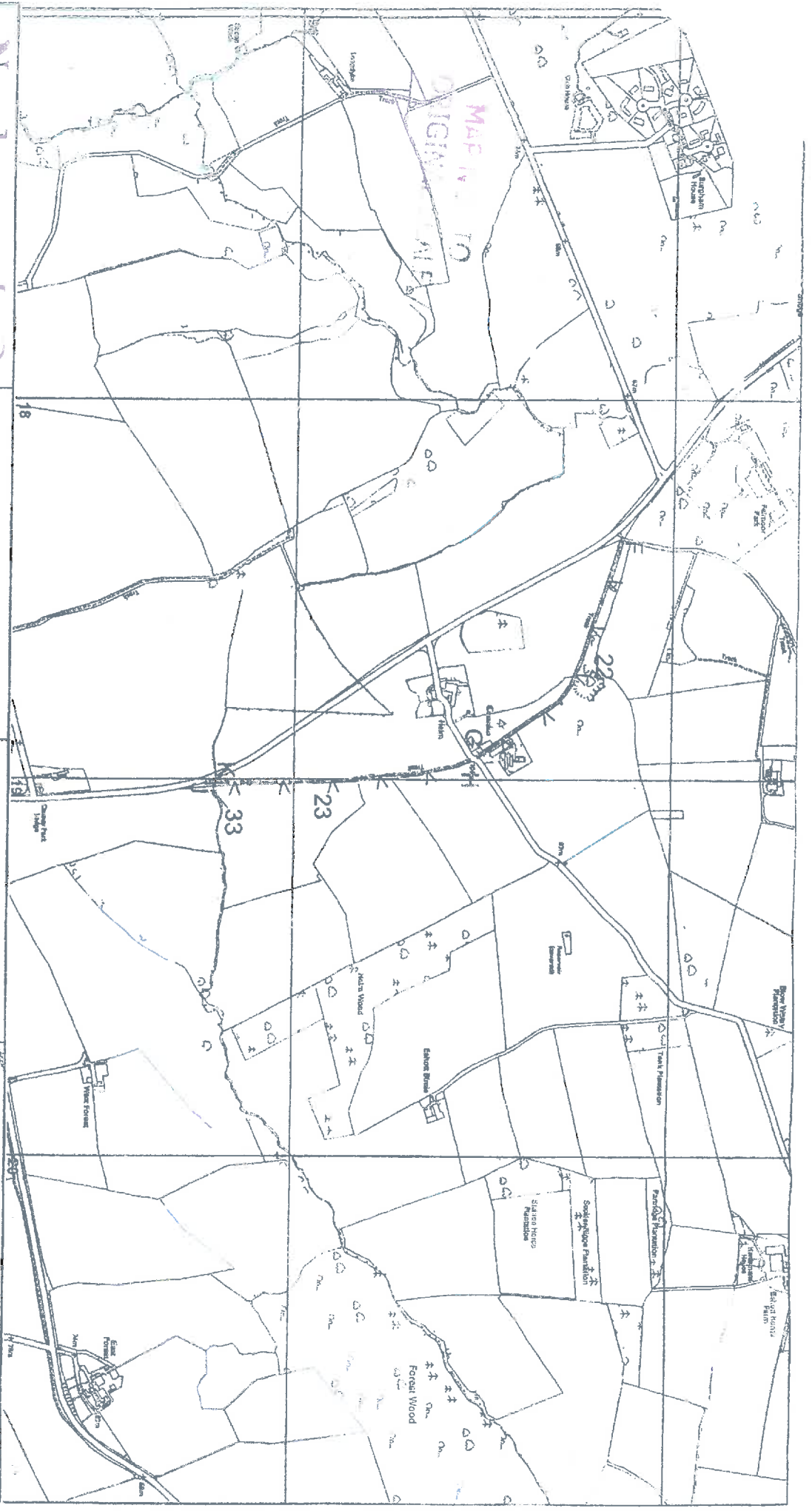
- In line 1, delete "a 5 metre wide restricted byway" and substitute "a restricted byway varying in width between 10 metres and 18 metres as shown in the 1:2500 1st Edition Ordnance Survey map of 1865";

Longhorsley Restricted Byway No 33: Statement

- In line 1, delete "a 5 metre wide restricted byway" and substitute "a restricted byway 18 metres in width as shown in the 1:2500 1st Edition Ordnance Survey map of 1865".

Sue Arnott

Inspector



Northumberland
 Northumberland County Council
 Sustainable Transport
 Local Services

County Hall Morpeth Northumberland
 Telephone 0945 800 6400 NE61 2EP

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Wildlife and Countryside Act, 1981

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 Public Rights of Way
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**The Northumberland
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**Modification Order
 (No. 13) 2013**

- Public Right of Way closed
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- Restricted Byway
- Byway Open to All Traffic



O.S. Map NZ 19 NE

Definitive Map No 111

Scale: 1/10,000

Former Districts Castle Morpeth

Parishes Thirskton/
Longhorsley

Date: November 2013

AK