

NORTHUMBERLAND COUNTY COUNCIL

RIGHTS OF WAY COMMITTEE

At a meeting of the **Rights of Way Committee** held in Committee Room 2, County Hall, Morpeth, NE61 2EF on **Tuesday 11 July 2017 at 11:00 am**

PRESENT

Councillor R Moore
(Chairman, in the Chair)

COUNCILLORS

A Sharp
J D Foster
J J Gobin

J Hutchinson
W Pattison
T S Wilson

OFFICERS IN ATTENDANCE

A Bell
D Brookes
U Filby
J McErlane
K Norris

Definitive Map Officer
Infrastructure Records Manager
Solicitor, Regulation
Infrastructure Records Manager
Democratic Services Officer

ALSO PRESENT

Cllr B Flux (part)
Cllr R Wearmouth (part)
Cllr G Renner-Thompson

9 public
1 press

1. MEMBERSHIP AND TERMS OF REFERENCE

The Chair welcomed everyone to the meeting and asked members to note the membership and committee's terms of reference.

RESOLVED that the membership and terms of reference of the Rights of Way Committee, as agreed by Council on 24 May 2017, be noted.

Ch.'s Initials.....

2. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Gibson.

3. MINUTES

RESOLVED that the minutes of the meeting of the Rights of Way Committee held on Tuesday, 14 March 2017, as circulated, be confirmed as a true record and signed by the Chair.

4. DECLARATIONS OF INTEREST

Councillor Sharp declared an interest in item no. 5, Public Bridleway No. 41, Parish of Melkridge, Request by a Landowner for the Council to use Powers to Divert the Public Bridleway onto Land owned by another Landowner. He said he would leave the meeting during discussion of the application as his firm acted for some of the objectors to the application and he also knew people who had submitted written representations.

Councillor Sharp declared an interest in item no. 7, Review of the Definitive Map and Statement of Public Rights of Way, Alleged Restricted Byways no. 46, 47 and 34, Parishes of Featherstone and Plenmeller with Whitfield as he was a member of Featherstone Parish Council who had objected to the application and he did not want to be perceived as having predetermined the application.

Councillor Hutchinson also declared an interest in item no. 7 (above) as he was a friend of the tenant of Broomhouse Farm.

Councillor Moore declared an interest in item 22, Public Rights of Way Modification Order (No. 30) 2016, Alleged Byways Open to All Traffic Nos. 20 & 17 (Parishes of Bamburgh and North Sunderland) as there had been an objection raised by George F White, the firm he worked for.

5. PUBLIC BRIDLEWAY NO. 41 PARISH OF MELKRIDGE REQUEST BY A LANDOWNER FOR THE COUNCIL TO USE POWERS TO DIVERT THE PUBLIC BRIDLEWAY ONTO LAND OWNED BY ANOTHER LANDOWNER

Councillor Sharp left the meeting for the following item and took no part in the discussion or voting thereon.

David Brookes, Records Infrastructure Manager, introduced the report in which the committee was asked to resolve if the County Council should use its powers under Section 119 of the Highways Act 1980 to divert Public Bridleway No. 41 onto another landowner's land.

Ch.'s Initials.....

Rights of Way Committee, 11 July 2017

A response from Melkridge Parish Council, which had been received that morning, was circulated to members (a copy of which is filed with the official minutes of the meeting). Background information was provided and reference was made to comments from landowners on the draft report as detailed in sections 4.1 to 4.2 of the report.

In response to a question it was noted that the judicial review should not have any bearing on the committee making a decision and if the Order was quashed the public bridleway would not exist on the Definitive Map and Statement.

In response to concerns raised by members of the public, the solicitor advised that there was no public speaking allowed at the meeting unless agreed in advance with the Chair, at his discretion.

Councillor Hutchinson moved acceptance of the recommendation, as set out in the report, which was seconded by Councillor Gobin.

Upon being put to the vote the motion was unanimously agreed and it was:

RESOLVED that the Committee agree that:

The Council should not use its powers contained in Section 119 of the Highways Act 1980 to make an order to divert Public Bridleway No. 41 in the Parish of Melkridge for the reasons set out in the report.

6. REVIEW OF THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY ALLEGED PUBLIC FOOTPATHS Nos. 118 & 119 FORMER WANSBECK DISTRICT

Councillor Sharp returned to the meeting.

The Records Infrastructure Manager, introduced the report in which the committee was asked to consider all the relevant evidence gathered in support and in rebuttal of the existence of (i) a public footpath between the C415 road north of the former Ash Dock at Cambois and the U654 road just east of East Sleekburn and (ii) a public footpath between the above mentioned alleged public footpath and the C415 road, south-east of number 1 Harbour View.

Clarification regarding evidence was provided.

In response to comments it was stated that larger urban areas sometimes received less feedback than remote areas and officers could only use evidence provided. If the Order was made and objections came forward, comments from members would be taken at that stage.

Councillor Gobin proposed acceptance of the recommendation which was seconded by Councillor Sharp.

Upon being put to the vote 6 members voted in favour and 1 against and it was:

RESOLVED that the Committee agree that:

- (i) there is sufficient evidence to indicate that the public footpath rights have been reasonably alleged to exist over the route U-A-B-C-H-D-E;
- (ii) there is NOT sufficient evidence to indicate that public footpath rights have been reasonably alleged to exist over the route E-F;
- (iii) there is sufficient evidence to indicate that the public footpath rights have been reasonably alleged to exist over the route F-G-W;
- (iv) there is NOT sufficient evidence to indicate that the public footpath rights have been reasonably alleged to exist over the route V-X;
- (v) there is NOT sufficient evidence to indicate that the public footpath rights have been reasonably alleged to exist over the route A-V-B or the direct route C-D;
- (vi) the U-A-B-C-H-D-E and F-G-W sections be included in a future Definitive Map Modification Order as public footpaths.

Councillors Hutchinson and Sharp left the meeting for the following item and took no part in the discussion or voting thereon.

7. REVIEW OF THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY ALLEGED RESTRICTED BYWAYS Nos. 46, 47 & 34 PARISHES OF FEATHERSTONE & PLENMELLER WITH WHITFIELD

David Brookes, Records Infrastructure Manager, introduced the report in which the committee was asked to give consideration to all the relevant evidence gathered in support and rebuttal of a proposal to upgrade to restricted byway Parish of Featherstone Public Footpath No.1 from the U7009 road 210 metres west of Low Mill in a north-easterly direction for a distance of 630 metres, crossing the Featherstone/Plenmeller with Whitfield parish boundary then continuing in a general northerly direction along the route of Public Footpath No. 13 and part of Public Footpath No. 12 for a distance of 560 metres, then re-crossing the Plenmeller with Whitfield/Featherstone parish boundary to continue in a northerly and north-westerly direction along the route of public Footpath no. 22 and part of Public Bridleway No. 26 for a distance of 1860 metres to joint the C324 road at the entrance to Broomhouse Farm.

A letter from the National Trust in which the new agricultural tenants of Broomhouse Farm reinforced concerns expressed by the previous tenant was circulated to members for information (a copy of which is filed with the signed minutes).

Clarification was provided regarding the 'saving' provisions applied.

Councillor Pattison proposed acceptance of the recommendation, as set out in the report, which was seconded by Councillor Gobin.

Upon being put to the vote the motion was unanimously agreed and it was:

RESOLVED that the Committee agree that:

- (i) there is sufficient evidence to indicate that, on the balance of probabilities, the public vehicular rights have been shown to exist over the route.
- (ii) the route should be included in a future Definitive Map Modification Order as a restricted byway.

**8. REVIEW OF THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY
ALLEGED BYWAYS OPEN TO ALL TRAFFIC Nos. 38 & 22
PARISHES OF INGRAM & WHITTINGHAM**

Councillors Hutchinson and Sharp returned to the meeting.

For the benefit of new members, the Records Infrastructure Manager explained that the following three reports were the result of officer generated work.

He then introduced the report in which the committee was asked to consider all the relevant vehicular evidence gathered in support and in rebuttal of the existence of the public rights over the U1098 and U4064 roads, between the U1092 road north of Branton Middlesteads and the C169 road east of Mile Moor Plantation.

Councillor Sharp moved the recommendation, as set out in the report, which was seconded by Councillor Hutchinson. Upon being put to the vote the motion was unanimously agreed and it was:

RESOLVED that the Committee agree that

- (i) there is sufficient evidence to indicate that the public vehicular rights have been reasonably alleged to exist over the route H-G-F;
- (ii) the National Environment and Rural Communities Act 2006 would not appear to have extinguished the public's motorized vehicular rights over the majority of the route;
- (iii) the National Environment and Rural Communities Act 2006 would, however, appear to have extinguished the public's motorized vehicular rights over the X-Y section of the route;
- (iv) the H-G-X and Y-F sections of the route be included in a future Definitive Map Modification Order as byways open to all traffic;
- (v) the X-Y section of the route be included in a future Definitive Map Modification order as a restricted byway.

**9. REVIEW OF THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY
ALLEGED BYWAYS OPEN TO ALL TRAFFIC Nos. 18 & 19
PARISH OF CORNHILL**

David Brookes, Records Infrastructure Manager, introduced the report in which the committee was asked to consider all the relevant evidence gathered in support and in rebuttal of the existence of public vehicular rights over part of the U2 road between Melkington and that road's junction with the U51 road, north of New Heaton, and also over the U51 road between the above mentioned road junction and New Heaton itself.

Members were asked to note that Mr and Mrs Sproat no longer lived at Newton Cottage and the new owners had made no comments.

In terms of the route information, paragraphs 8.5, 8.6 and 8.7 should read as follows:

- 8.5 The route of alleged Byways Open to All Traffic Nos. 18 and 19 is identified on the County Council's current List of Streets as being the U2 and U51 roads. The route of Byway No. 19 was not identified as being publicly maintainable on the 1932 Norham & Islandshires Rural District Council Handover Map, nor is it shown on the map of roads produced in relation to the Restriction of Ribbon Development Act 1935 BUT the route of BOAT 18 WAS shown on both. The routes are 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.
- 8.6 The route has been consistently identified as an enclosed road/track on Ordnance Survey maps since circa 1864/5. The Book of Reference accompanying the 1st Edition 25" OS map identifies the northern end of BOAT 16 as "Public road". The route is shown on Armstrong's, Fryer's and Greenwood's County Maps of 1769, 1820 and 1828, and on Cary's Map of 1820-32. On the plans produced in relation to the Finance Act of 1910, part of the route is separated from the surrounding farmland by coloured boundaries - a good indicator that the route was considered to be a public vehicular highway at that time.
- 8.7 The route of BOAT 18 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 and 2 public footpaths terminate on the U2 road. 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. The U51 road

(BOAT 19) WAS recorded on the original Definitive Map as part of Footpath 8.

Councillor Hutchinson proposed the recommendation, as set out in the report, which was seconded by Councillor Sharp.

Upon being put to the vote the motion was unanimously agreed and it was:

RESOLVED that the Committee agree that

- (i) there is sufficient evidence to indicate that the public vehicular rights have been reasonably alleged to exist over the route O-P;
- (ii) there is sufficient evidence to indicate that, on the balance of probabilities, public vehicular rights exist over the route P-X;
- (iii) there is insufficient evidence to indicate that, on a balance of probabilities, public vehicular rights exist over the route X-Q;
- (iv) the National Environment and Rural Communities Act 2006 would not appear to have extinguished the public motorized vehicular rights over the O-P and P-X sections of the route;
- (v) The O-P and P-X sections of the route be included in a future Definitive Map Modification Order as byways open to all traffic.

**10. REVIEW OF THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY
ALLEGED BYWAY OPEN TO ALL TRAFFIC No. 21
PARISH OF CORNHILL**

David Brookes, Records Infrastructure Manager, introduced the report in which the committee was asked to consider all the relevant evidence gathered in support and rebuttal of the existence of public vehicular rights over the U39 road, between the A698 road just north of Cornhill and the western end of Public Bridleway No. 7 at Green Lane Cottage.

Clarification was provided regarding 'saving' provisions.

Councillor Sharp moved acceptance of the recommendations, as set out in the report, which was seconded by Councillor Gobin.

Upon being put to the vote the motion was unanimously agreed and it was:

RESOLVED that the Committee agree that:

- (i) there is sufficient evidence to indicate that the public vehicular rights have been reasonably alleged to exist over the route G-H;
- (ii) the National Environment and Rural Communities Act 2006 would not appear to have extinguished the public motorized vehicular rights over the route;

- (iii) the route be included in a future Definitive Map Modification Order as a byway open to all traffic.

**11. REVIEW OF THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY
ALLEGED BYWAY OPEN TO ALL TRAFFIC No. 22
PARISH OF DODDINGTON**

David Brookes, Records Infrastructure Manager, summarised the report in which the committee was asked to consider all the relevant evidence gathered in support and in rebuttal of the existence of public vehicular rights 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.

Councillor Hutchinson moved acceptance of the recommendation, as set out in the report, which was seconded by Councillor Foster.

Upon being put to the vote the motion was unanimously agreed and it was

RESOLVED that the Committee agree that:

- (i) there is sufficient evidence to indicate that the public vehicular rights have been reasonably alleged to exist over the route Z-A;
- (ii) the National Environment and Rural Communities Act 2006 would not appear to have extinguished the public motorized vehicular rights over the route;
- (iii) the route be included in a future Definitive Map Modification Order as a byway open to all traffic.

**12. REVIEW OF DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY
ALLEGED BYWAYS OPEN TO ALL TRAFFIC Nos. 52 & 53
PARISH OF KIRKNEWTON**

David Brookes, Records Infrastructure Manager, introduced the report in which the committee was asked to consider all the relevant evidence gathered in support and in rebuttal of the existence of public vehicular rights over the U1118 road between Hethpool and Elsdonburn, and over the U1119 road between the U1118 road and Trowupburn.

In response to a query regarding the width of the road, it was noted that there was a default position of 5 metres.

Councillor Pattison moved the recommendation, as set out in the report, which was seconded by Councillor Hutchinson.

Upon being put to the vote the motion was unanimously agreed and it was:

RESOLVED that the Committee agreed that

- (i) there is sufficient evidence to indicate that the public vehicular rights have been reasonably alleged to exist over the route N-P-M and the route P-Q;
- (ii) there is sufficient evidence to indicate that, on the balance of probability, public vehicular rights have been shown to exist over the 40 metre long section of U1118 road/Public Bridleway No. 10, north of Elsdonburn;
- (iii) the National Environment and Rural Communities Act 2006 would not appear to have extinguished the public motorized vehicular rights over these routes;
- (iv) public footpath rights exist over the 10 metre long 'gap' between the existing southern end of the U1119 road and northern end of Public Footpath No. 13 at Point Q;
- (v) the routes be included in a future Definitive Map Modification Order as two byways open to all traffic and a short addition to existing Public Footpath no. 13.

**13. PUBLIC RIGHTS OF WAY
DEFINITIVE MAP MODIFICATION ORDER (No. 13) 2013
ALLEGED RESTRICTED BYWAYS Nos. 22, 23 & 33
(PARISHES OF THIRSTON & LONGHORSLEY)**

David Brookes, Records Infrastructure Manager, stated that following five reports (items 13 to 17) were for information only.

The above report informed 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.

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

**14. PUBLIC RIGHTS OF WAY
DEFINITIVE MAP MODIFICATION ORDER (No. 3) 2014
ALLEGED PUBLIC FOOTPATH No. 5
(PARISH OF SANDHOE)**

The above report informed the Committee of the decision, by the Secretary of State for the Department of the Environment, Food and Rural Affairs, when determining the above Order that originally attracted 3 objections (though these objections were later withdrawn).

RESOLVED that the Committee note the Secretary of State's decision NOT to confirm the Order.

**15. PUBLIC RIGHTS OF WAY
DEFINITIVE MAP MODIFICATION ORDER (No. 13) 2014
PUBLIC FOOTPATH No. 44
PARISH OF KIRKWHELPINGTON**

The above report informed the committee of a decision, by an Inspector appointed by the Secretary of State for the Department of the Environment, Food and Rural Affairs, to determine, following the written representation procedures, the above Order that attracted an objection.

RESOLVED that the Committee note the Secretary of State's decision to confirm the above Order, as made.

**16. PUBLIC RIGHTS OF WAY
DEFINITIVE MAP MODIFICATION ORDER (No. 2) 2016
BYWAY OPEN TO ALL TRAFFIC No. 30
(PARISH OF CARHAM)**

The above report informed the Committee of the 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 five objections.

RESOLVED that the Committee note the Secretary of State's decision to confirm the above Order, as made.

**17. PUBLIC RIGHTS OF WAY
REVIEW OF THE DEFINITIVE MAP AND STATEMENT
ALLEGED RESTRICTED BYWAY No. 158
PARISH OF ALLENDALE**

The report informed the committee of a decision, by an Inspector appointed by the Secretary of State for the Department of the Environment, Food and Rural Affairs, to determine an appeal under Paragraph 4(1) of schedule 14.

RESOLVED that the committee note the decision of the Secretary of State for the Department for the Environment, Food and Rural Affairs to allow the appeal.

**18. PUBLIC RIGHTS OF WAY
DEFINITIVE MAP MODIFICATION ORDER (No. 7) 2016
ALLEGED BYWAYS OPEN TO ALL TRAFFIC Nos. 11, 55 & 37
(PARISHES OF LILBURN, CHATTON & WOOLER)**

Ch.'s Initials.....

Rights of Way Committee, 11 July 2017

David Brookes, Records Infrastructure Manager, stated that the above report was before the committee because of objections received but the objections had subsequently been withdrawn.

Councillor Sharp moved the recommendation, as set out in the report, which was seconded by Councillor Foster.

Upon being put to the vote the motion was unanimously agreed and it was:

RESOLVED that the Committee agree that this Order no longer needs to be referred to the Secretary of State for determination, and should be confirmed by the County Council as an unopposed Order.

**19. PUBLIC RIGHTS OF WAY
DEFINITIVE MAP MODIFICATION ORDER (No. 5) 2016
DEFINITIVE MAP MODIFICATION ORDER (No. 20) 2016**

David Brookes, Records Infrastructure Manager, stated that the above report was before the committee because of objections received but the objections had subsequently been withdrawn.

A member pointed out that the title of the parish was missing from the report.

Councillor Foster moved the recommendation, as set out in the report, which was seconded by Councillor Sharp.

Upon being put to the vote the motion was unanimously agreed and it was:

RESOLVED that the Committee agree that these Orders no longer need to be referred to the Secretary of State for determination, and should be confirmed by the County Council as unopposed Orders.

**20. PUBLIC RIGHTS OF WAY
DEFINITIVE MAP MODIFICATION ORDER (No. 11) 2016
DEFINITIVE MAP MODIFICATION ORDER (No. 14) 2016**

David Brookes, Records Infrastructure Manager, stated that the above report was before the committee because of objections received but the objections had subsequently been withdrawn.

Councillor Hutchinson moved approval of the recommendation, as set out in the report, which was seconded by Councillor Foster.

Upon being put to the vote the motion was unanimously agreed and it was:

RESOLVED that the Committee agree that these Orders no longer need to be referred to the Secretary of State for determination, and should be confirmed by the County Council as unopposed Orders.

**21. PUBLIC RIGHTS OF WAY
DEFINITIVE MAP MODIFICATION ORDER (No. 15) 2016
ALLEGED PUBLIC BRIDLEWAY No. 27
PARISH OF CHATTON**

The above report asked the committee for its views on the action now thought appropriate in determining the above mentioned Order. John McErlane, Definitive Map Officer, stated that objections had been received and these had not been resolved.

Councillor Hutchinson moved the recommendation, as set out in the report, which was seconded by Councillor Foster.

Upon being put to the vote the motion was unanimously agreed and it was:

RESOLVED 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 Department of the Environment, Food and Rural Affairs for determination, accompanied by a recommendation that the Order be confirmed, as made.

**22. PUBLIC RIGHTS OF WAY
MODIFICATION ORDER (No. 30) 2016
ALLEGED BYWAYS OPEN TO ALL TRAFFIC Nos. 20 & 17
(PARISHES OF BAMBURGH & NORTH SUNDERLAND)**

Councillor Moore left the meeting for the above item taking no part in the discussion or voting thereon.

Councillor Sharp (Vice Chair in the Chair)

David Brookes, Records Infrastructure Manager, introduced the report which asked the committee for its views on the action now thought appropriate in determining the above mentioned Order.

Councillor Hutchinson moved the recommendation, as set out in the report, which was seconded by Councillor Foster.

Upon being put to the vote the motion was unanimously agreed and it was:

RESOLVED 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 Department of the Environment, Food and

Rural Affairs for determination, accompanied by a recommendation that the Order be confirmed, as made.

**23. PUBLIC RIGHTS OF WAY
PARISH OF FELTON (PUBLIC FOOTPATH No. 5)
DIVERSION ORDER 2017**

Councillor Moore returned to the meeting and resumed the Chair.

David Brookes, Records Infrastructure Manager, introduced the report which asked the committee for its views on the action now thought appropriate in determining the above mentioned Order.

In response to a question it was noted that there was no planning permission in place for a Doctor's surgery and no proposals had been put forward. However, if a surgery was to be built in the future the public footpath would have to be diverted.

Councillor Sharp moved the recommendation, as set out in the report, which was seconded by Councillor Foster.

Upon being put to the vote the motion was unanimously agreed and it was:

RESOLVED that the Committee agree that, unless the objection to the Order is subsequently withdrawn, or an alternative diversion order attracts no objections, this Order, together with the objection, be submitted to the Secretary of State for the Department of the Environment, Food and Rural Affairs for determination, accompanied by a recommendation that the Order be confirmed, as made.

CHAIR

DATE