

## RIGHTS OF WAY COMMITTEE

9 January 2018

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### PUBLIC RIGHTS OF WAY

#### DEFINITIVE MAP MODIFICATION ORDER (No 10) 2015

#### PUBLIC FOOTPATH NO 116 WANSBECK DISTRICT

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

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#### **Purpose of report**

To inform 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 a public hearing, the above Order that attracted objections.

#### **Recommendation**

**It is recommended that the Committee note the Inspector's decision to not to confirm the Order.**

#### **1.0 BACKGROUND**

- 1.1 Definitive Map Modification Order (No 10) 2015 was made on 23<sup>rd</sup> November 2015 and advertised on 3<sup>rd</sup> December 2014. The Order sought to add to the Definitive Map and Statement a public footpath, from the U6508 road at Viewlands in a southerly and easterly direction to the east of Hirst Yard, crossing part of a car park, to rejoin the U6508 road at Reiverdale Road.
- 1.2 At its meeting on 12<sup>th</sup> July 2016 the Council's Rights of Way Committee considered the objections to the Order and resolved to submit the Order to the Secretary of State for determination with a recommendation that the County Council support the Order at any subsequent public local inquiry.
- 1.3 The Secretary of State appointed an Inspector to determine the Order by holding a public hearing. On 2<sup>nd</sup> November 2017, the Inspector issued a decision, in which she concluded that the order should not be confirmed. A copy of the decision letter together with a plan showing the Order route are appended to the report.

## 2.0 CONCLUSION

- 2.1 The Inspector's decision appears to be well reasoned and it is proposed that the County Council note the report.

## BACKGROUND PAPERS

Local Services Group File: Modification Order (No 10) 2015 & F/116z

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## Order Decision

Hearing Held on 26 September 2017

Site visit made on 25 September 2017

**by Susan Doran BA Hons MIPROW**

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

**Decision date: 02 November 2017**

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### **Order Ref: ROW/3169913**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Northumberland County Council Definitive Map Modification Order (No 10) 2015.
- The Order is dated 23 November 2015 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown in the Order plan and described in the Order Schedule.
- There were 4 objections outstanding at the commencement of the hearing.

**Summary of Decision: The Order is not confirmed**

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### **Procedural Matters**

1. This case concerns the addition of a public footpath at Ashington from the U6508 road at Viewlands (point A on the plan attached to the Order) running in a southerly and easterly direction to the east of Hirst Yard and crossing part of a car park to re-join the U6508 at Reiverdale Road (point B). The Applicant is Mrs Renton, and the Objectors are members of the Pollard family.
2. I carried out an unaccompanied visit to the Order route on the afternoon of Monday 25 September. Neither Northumberland County Council ('the Council') nor the other parties requested that I make a further visit, and no issues arose at the Hearing to necessitate a further inspection.

### **The Main Issues**

3. The Order has been made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 ('the 1981 Act') which requires me to consider whether, on a balance of probabilities, the evidence shows that a footpath subsists over the Order route.
4. The evidence gathered is of claimed use by the public. This requires me to consider whether dedication of the way as a public footpath has occurred through public use. This may be either by presumed dedication as set out in the tests laid down in Section 31 of the Highways Act 1980 ('the 1980 Act'), or by implied dedication under common law.
5. Section 31 of the 1980 Act requires me to establish the date when the public's right to use the Order route was brought into question. The evidence can then be examined to determine whether use by the public has been as of right and without interruption for a period of not less than 20 years ending on that date. Finally, it is necessary to consider whether there is sufficient evidence that

there was during this 20 year period no intention on the part of the landowners to dedicate public footpath rights.

6. The evidence may also be considered under common law whereby a right of way may be created through expressed or implied dedication and acceptance. The onus of proof is on the claimant to show that the landowners, who must have the capacity to dedicate, intended to dedicate a public right of way; or that public use has gone on for so long that it could be inferred; or that the landowners were aware of and acquiesced in public use. Use of the claimed way by the public must be as of right (without force, secrecy or permission) however, there is no fixed period of use, and depending on the facts of the case, may range from a few years to several decades. There is no particular date from which use must be calculated retrospectively.

## **Reasons**

### ***Presumed dedication under Section 31 of the 1980 Act***

7. It is not disputed that use of the Order route was brought into question when, in January 2004, the landowner, Mr G Pollard, fenced off the triangle of land over which part of the path runs south of point A and east of Hirst Yard. This prevented public passage. Accordingly, the 20 year period to consider is 1984 to 2004.
8. Evidence of claimed use is provided in 23 user evidence forms from residents and former residents of Viewlands, and people visiting friends and relations there. It is argued that these do not represent the public and reflect only a small part of the population of Ashington. I would not regard use by members of a single family and their friends as sufficient to represent 'the public'. \_\_\_\_ However, use by a number of people who may sensibly be taken to represent the local community would suffice, and I conclude that to be the case here.
9. Claimed use during the 20 year period is by and large daily or more frequent, for recreational purposes, to get to work, school, the shops and so forth. There is nothing to suggest that use was carried out with force or in secret. Neither is there anything to suggest it was interrupted during the 20 year period. However, it is suggested that it was permissive. The former landowner, Mr Ramshaw, is said to have allowed and encouraged use of the land, which would have included the Order route. In addition, he established an access to his shop in the gable end of the building and provided a hard surface of paving slabs, more or less on the line of the Order route as it crosses the triangle of land. However, it is not clear whether this was an invitation to the public to use the claimed path, or to access his business premises. There is no evidence that any express permission was granted to use the Order route, and no evidence that he prevented anyone from using it. There is no evidence of a third party access operating over the triangle of land as believed to be the case by supporters of the Order.
10. The triangle of land was formerly owned by the National Coal Board ('NCB') and a lease between the NCB and Mr Ramshaw contained a clause preventing encroachment or easements over the land. This operated between 1973 and 1985, one year into the 20 year period. However, there is no evidence of any actions by the landowner to enforce this or to restrict access over the Order route; and no evidence that the terms of the lease were made known to the

public. There is no evidence that Mr Ramshaw demonstrated a lack of intention to dedicate the Order route as a public footpath across his land.

11. The houses on Viewlands were also owned by the NCB, until 1988. A similar lease clause may have existed, but this would not have included the land over which the Order route passed, other than possibly as regards the year 1985 prior to its sale to Mr Ramshaw. Accordingly, I would not regard use of the Order route by Viewlands residents' as permissive in this regard.
12. The original application concerned the addition of a public footpath between Viewlands and the car park (south of the triangle of land). However, the Council considered two possible routes on the basis of the maps attached to the user evidence forms. Mr Pollard argued that, as open land, people used the triangle as a whole (as described in some of the user evidence forms) and that, depending on where people were going they would take the most direct route. To confirm the Order, I need to be satisfied that there has been consistent use of a defined route<sup>1</sup>.
13. I have considered the user evidence forms and the maps attached carefully. Seven of the 23 claimants marked the claimed path between Viewlands and the car park either with no indication of their onward direction of travel, or indicated a route to the west/south-west across the car park. A further 5 depicted a more direct route south of the triangle of land across the car park towards Woodhorn Road. Four people gave no description of the route they used and two others described it as simply between Viewlands and the car park. At the Hearing, when exploring whether or not a consistent route had been used, Mrs Renton described and illustrated that if she wanted to reach Woodhorn Road to get to the bus stop she followed Viewlands road rather than the Order route. If she wanted to reach the main street in Ashington she would cross the triangle of land and then turn south-west across the car park.
14. In view of the above, the weight I can attach to this evidence of use is greatly reduced. Although Mr Pollard queried the amount of claimed use, commenting there was no evidence of a worn path when he bought the land, it seems to me that users followed the Order route from point A across the triangle of land. However, they did not follow the Order route to point B once leaving the triangle of land. Rather, they took a variety of alignments across the car park depending on where they were going to (or from), or indeed on Mrs Renton's evidence to the Hearing, did not follow the Order route at all. On balance and on the evidence available to me, I am not satisfied that there has been consistent use of a defined route necessary to establish a public right of way. Neither, in my view, is there sufficient evidence to raise a presumption of dedication if taking the remaining evidence forms at face value.

#### *Conclusions on presumed dedication*

15. In view of my findings above, I conclude that the tests under Section 31 of the 1980 have not been met and the claim must fail. I turn next, therefore, to consider the evidence at common law.

#### **Common law dedication**

16. Claimed use dates back to 1960. However, Mrs Renton also referred to a Scout Hut, Colliery Band Hut and the Pitman Painters Hut behind Viewlands which she

<sup>1</sup> It is established law that a public right of way follows a defined route.

said people accessed by using the Order route, including a resident who had accessed the Scout Hut over 50 years ago. This may have continued into the 20 year period considered above. However, there is no substantive evidence before me to support this claimed use for any period.

17. Mrs Renton also described the residents as having put down cinders to provide a surfaced path, closer to the gable wall of the building rather than along the present line of paving slabs, but more or less along the Order route.
18. The NCB as landowner, and later Mr Ramshaw, would have had the capacity to dedicate a public right of way. However there is no evidence to demonstrate that they did so. The clause in the NCB lease referred to above suggests they had no intention to dedicate a right of way. The actions of Mr Ramshaw may have been associated with his business rather than with public rights of access, although they may also be interpreted as an invitation to the public to use the way, at least across the triangle of land, or to use the land as a whole.
19. In any event, whilst I do not doubt that there has been use of a route across the triangle of land, for the reasons given above I find that use beyond this land to the public highway is more akin to wandering than of a defined route. It follows in my view that a case is not made out at common law.

#### **Other matters**

20. A range of matters were raised in the submissions. These included the existence of, or suggestions for, alternative routes for use by the public; public safety and the potential for conflict between pedestrians and vehicles by walkers having to use Viewlands road; the presence of the fencing and nearby of a bottle bank and their effect on sight lines; the proximity of the Order route to and within the curtilage of the business premises at Hirst Yard; the effect of the Order, if confirmed, on property values, and potential planning applications in relation to the business.
21. Whilst I understand the importance of these matters, both generally and to those raising them, they have had no influence on my decision as I am unable to take such issues into account in determining the existence or otherwise of a public right of way. The 1981 Act does not allow me to give weight to such matters.

#### **Conclusions**

22. Having regard to these and all other matters raised at the Hearing and in written representations, I conclude that the Order should not be confirmed.

#### **Formal Decision**

23. I do not confirm the Order.

*S Doran*

**Inspector**

## **APPEARANCES**

### **For the Order Making Authority**

Mr John McErlane

Definitive Map Officer, Northumberland  
County Council

### **Supporters**

Mrs J Renton

Applicant

Mr J D Renton

### **Objectors**

Mr G L Pollard

Mrs A G Pollard

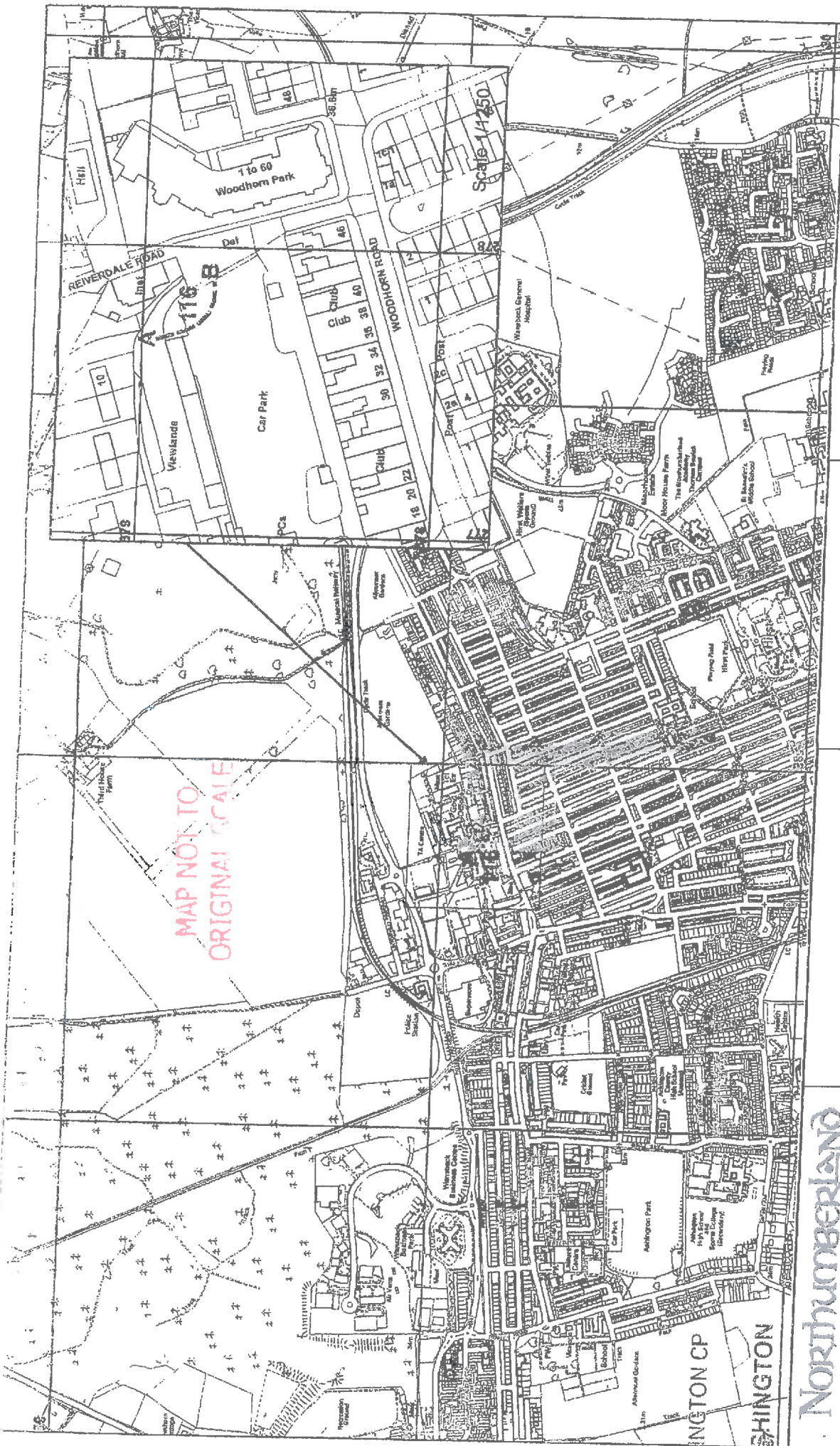
Mrs M Pollard

Mr D L Pollard

## **DOCUMENTS**

1. Statement of Mrs Renton together with bundle of photographs showing the Order route and surrounding area, submitted by Mrs Renton
2. Plan showing the extent of public highway, submitted by Northumberland County Council





**Northumberland**

Northumberland County Council

Infrastructure

Local Services

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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.10) 2015**

- Public Footpath to be deleted
- Public Footpath
- Public Bridleway
- Restricted Byway
- Byway Open to All Traffic

O.S. Map NU 28 NE

Deductive Map No 143

Scale: 1/10,000

Former (District) Wansbeck

Parishes: Ashington

Date: September 2015