

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, 9 January 2018** at **11:00 am**.

PRESENT

Councillor A Sharp
(Vice Chair in the Chair)

MEMBERS

R Gibson
J J Gobin

J I Hutchinson (part)
W Pattison

OFFICERS

Bell A
Brookes D
Filby, U
McErlane J
Norris, K

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

46. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Moore and Wilson. It was noted that Councillor Hutchinson would be late as he was attending another meeting.

47. MINUTES

RESOLVED that the Minutes of the Rights of Way Committee held on Tuesday, 14 November 2017, as circulated, be agreed as a true record and signed by the Chair.

48. REVIEW OF THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY ALLEGED PUBLIC FOOTPATHS NOS 24 & 25 PARISH OF ALNMOUTH

The Infrastructure Records Manager introduced the report to Members of the Committee who were asked to consider all the relevant evidence gathered in support and rebuttal of a proposal to add to the Definitive Map and Statement a public right of way from existing Public Footpath No 2, north of the junction, with Public Footpath No 7, in a general north-easterly direction for a distance of 870 metres, to rejoin Public Footpath No 2 at a point west of Marden Rocks, including a 110 metre spur to Marden Rocks.

Reference was made to the plan of the two routes, L - M and N - O on page 24 of the report. Background information, and details of evidence were provided. Clarification was given with regards to the rebuttal date of October 1977 which meant that 9 members of the public could still claim to have walked those routes prior to that date. Members would need to consider whether 9 users was a sufficient number for the route to be alleged. Officers considered that the frequency and purpose of use was sufficient to meet the lower level test and recommended that the Order be made to include the two routes on the Definitive Map and Statement.

In response to queries about the route being in the middle of a golf course, the Infrastructure Records Manager confirmed that land use could not be considered in the decision making process. He added that it was not unusual to have public footpaths over golf courses in Northumberland. A member pointed out that if a member of the public chose to use the public footpath across the golf course, they would be aware of the risk and would have the choice not to do so.

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

Upon being put to the vote 3 members voted in favour and 1 against. It was therefore:

RESOLVED that the Committee agreed:-

- i) There is sufficient evidence to justify that a public right of way has been reasonably alleged to exist over the claimed route L - M;
- ii) there is sufficient evidence to justify that a public right of way has been reasonably alleged to exist over the claimed route N - O;
- iii) both routes be included in a future Definitive Map Modification Order as Public Footpaths.

**49. REVIEW OF THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY
ALLEGED BYWAY OPEN TO ALL TRAFFIC No 30
PARISH OF ANCROFT**

The Infrastructure Records Manager introduced the report to Members of the Committee who were asked to give consideration to all the evidence gathered in support and in rebuttal of the existence of public vehicular rights over part of existing Public Footpath No 3 (which is also part of the U17 road), between Goswick Golf Course club house and Goswick.

This was officer generated work to correctly record routes on the Definitive Map and Statement and keep it under continuous review to make Modification Orders upon the discovery of evidence. Background information and details of evidence were provided.

In response to a query from the Chair, it was confirmed that the whole route was tarmac.

Clarification was provided regarding the private road.

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

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, on a balance of probability, public vehicular rights have been shown to exist over the route T-U;
- (ii) the Natural Environment and Rural Communities Act 2006 would not appear to have extinguished the public's 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.

**50. REVIEW OF THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY
ALLEGED BYWAY OPEN TO ALL TRAFFIC No 6 & RESTRICTED BYWAY No 5
PARISH OF EWART**

The Infrastructure Records Manager introduced the report to Members of the Committee who were asked to give consideration to all the evidence gathered in support and in rebuttal of the existence of public vehicular rights over part of the U1018 road, between its junction with the U1020 road at Lanton House and its western end at Lanton Mill, and then a short continuation passing beyond Lanton Mill to existing Public Bridleway No.1.

This was officer generated work to correctly record routes on the Definitive Map and Statement and keep it under continuous review to make Modification Orders upon the discovery of evidence.

In terms of the consultation, there had been no specific objections to the proposal and no further correspondence had been received from the landowner.

Background information and details of evidence were provided.

It was queried why these could not be left as 'U' roads. In response it was stated that designation did not make it clear what public rights of way existed over the route and this was to make sure the rights of way were correctly recorded.

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

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 public vehicular rights have been reasonably alleged to exist over the route O-N-R-M-L;
- (ii) the Natural Environment and Rural Communities Act 2006 would not appear to have extinguished the public's motorized vehicular rights over the O-N-R-M portion of the route;
- (iii) that Natural Environment and Rural Communities Act 2006 would appear to have extinguished the public's motorized vehicular rights over the M-L portion of the route;
- (iv) the O-N-R-M route be included in a future Definitive Map Modification Order as a byway open to all traffic;
- (v) the M-L route be included in a future Definitive Map Modification Order as a restricted byway.

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

**ALLEGED PUBLIC FOOTPATHS Nos 8 & 8
PARISHES OF EWART & KIRKNEWTON**

The Infrastructure Records Manager introduced the report to Members of the Committee who were asked to give consideration to all the relevant evidence gathered in support and in rebuttal of the existence of public footpath rights over a route between the existing northern end of Public Footpath No. 8 in the Parish of Kirknewton and the U1018 road, between Lanton House and Lanton Mill.

Background information was provided.

It was noted that the route of existing Public Footpath No. 8 (E-Q) was not clearly defined on the ground. It was assumed that people would most likely be taking a direct route south of the footbridge (rather than using existing Footpath No. 8), and it was therefore suggested that if a modification order be made to record the new Footpaths Nos 8, a consultation could then take place with the landowner for a more sensible alignment.

In response to a query it was noted that another route, P-X-N, was not a usable route at present, and had not yet been the subject of a report to Committee.

Councillor Gibson moved acceptance of the recommendations set out in the report which was seconded by Councillor Pattison.

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

RESOLVED that the Committee agreed that there is sufficient evidence to indicate that public footpath rights have been reasonably alleged to exist over the route Q-R and that the route be included in a future Definitive Map Modification Order.

**52. 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**

The Infrastructure Records Manager introduced the report to Members of the Committee who were asked to reconsider the decision it made in July 2017, in relation to existence of public vehicular rights over the U1098 and U4064 roads, between the U1092 road north of Branton Middlesteads and the C169 road east of Mile Moor Plantation. The reconsideration was considered necessary in light of a recent High Court decision.

Background information was provided regarding the High Court decision and its relevance for this route. When officers became aware of the case law referred to in paragraph 1.4 of the report, they were aware the Committee had made a decision similar to that so brought it back to Committee with the recommendation to make an Order to record the whole route as byway open to all traffic as that would be the correct thing to do on the basis of Justice Holman's decision.

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

Upon being put to the vote 3 members voted in favour of the motion and 1 against. It was therefore:

RESOLVED

- (i) there remains sufficient evidence to indicate that public vehicular rights have been reasonably alleged to exist over the route H-G-F;
- (ii) in light of the July 2017 High Court decision, the Natural Environment and Rural Communities Act 2006 would not appear to have extinguished the public's motorized vehicular rights over this route;
- (iii) the whole route be included in a future Definitive Map Modification Order as byways open to all traffic

**53. DEFINITIVE MAP MODIFICATION ORDER (No 14) 2014
PUBLIC FOOTPATH NO 46
PARISH OF WARKWORTH**

The Infrastructure Records Manager introduced the report to to Members of the Committee in which they were advised 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 local inquiry, the above Order that attracted objections.

RESOLVED that the Inspector's decision to confirm the Order, with modifications, be noted.

**54. DEFINITIVE MAP MODIFICATION ORDER (No 10) 2015
PUBLIC FOOTPATH NO 116
WANSBECK DISTRICT**

The Infrastructure Records Manager introduced the report to Members of the Committee in which they were advised 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.

RESOLVED that the Inspector's decision not to confirm the Order be noted.

**55. PUBLIC RIGHTS OF WAY
PROPOSED STOPPING UP OF PUBLIC FOOTPATH No 120
(FORMER WANSBECK DISTRICT)**

The Infrastructure Records Manager introduced the report to Members of the Committee in which they were asked to consider proposals to extinguish alleged Public Footpath No. 120 (Former Wansbeck District) at Cambois.

The landowner had requested that the public right of way W-J be extinguished stating that it was necessary in order to permit the site to be developed in line with planning permission that had been granted. In future there would be regular vehicular movements between the proposed dock and the commercial units and access between the two would be required at all times. They were requesting the Order imminently to pursue development of the site and any delay would hold up that opportunity.

Councillor Hutchinson entered the meeting at 11.49 am but took no part in discussions or voting.

Background information was provided regarding the footpath. It was pointed out that it would be usual for the developer to provide an alternative route but the applicant had argued that, in this instance, there was no suitable alternative route. In terms of balancing the disadvantages of losing the public footpath against the advantages the development would bring, officers considered that it would be appropriate to make an Order under Section 257 of the Town and Country Planning Act 1990 to stop up the 440 metre long W-J section of footpath. It was also stated that if the W-J section was being stopped up, it would also be appropriate to stop-up

the 20 metre long J-F section under Section 118 of the Highways Act 1980 at the same time on the grounds that it would not be needed for public use.

It was noted that the developer had objected to the addition of public footpaths no's 118 and 120 on the Definitive Map and Statement .

Reference was made to some confusion regarding the red line boundary of the planning application. It was considered that that the recommendations should be amended to include Clause 3 so that it could be agreed that officers be given delegated authority to determine how much of the route W-J-F would be extinguished under the Town & Country Planning Act 1990 and how much under the Highways Act 1980.

The Chair commented that it was quite a long footpath and, as there were no alternative routes, people would have to stop. The Infrastructure Records Manager confirmed that was correct and said because of current and future aspirations for the site the developer would not consider an alternative route. Officers were satisfied that, on the basis of what the applicants had said, it would not be safe for the public to be on that site. He added that if an Order was made to extinguish the route, members of the public would be able to object and if they did it would be for the Secretary of State to determine whether or not the Order should be confirmed.

A Member expressed sympathy for the objectors but said health and safety issues were paramount.

Councillor Gibson moved acceptance of the recommendations set out in the report, with an additional recommendation, as suggested, which was seconded by Councillor Pattison.

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

RESOLVED

- (i) public footpath rights be extinguished over the route W-J, by means of an order made under the Town & Country Planning Act 1990, to allow development to take place, in line with planning permission already granted;
- (ii) public footpath rights be extinguished over the route J-F, by means of an order made under the Highways Act 1980, on the grounds that (if the W-J section is stopped up) it is no longer needed for public use;
- (iii) officers are given delegated authority to decide after discussions with the developer/landowner the extent of the route to be extinguished by S257 of the Town and Country Planning Act 1990 and by S118 of the Highways Act 1980.

CHAIR _____

DATE _____