

## RIGHTS OF WAY COMMITTEE

13 March 2018

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### PUBLIC RIGHTS OF WAY

#### MODIFICATION ORDER (No 9) 2017

#### ALLEGED BYWAYS OPEN TO ALL TRAFFIC Nos 45 & 31 (PARISHES OF EGLINGHAM & NEWTON-BY-THE-SEA)

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

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#### **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**It is recommended that the Committee agree that, unless all the objections are subsequently withdrawn:**

- i) the order be severed into two parts, with the County Council confirming (as unopposed) the Byway Open to All Traffic No 31 (Parish of Newton-by-the-Sea) part of the Order;**
- ii) the remainder of the Order (relating to Byway Open to All Traffic No 45 (Parish of Eglington)), 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 45**

As an 8 to 9 metre wide byway open to all traffic, from the A1 trunk road, opposite its junction with the C47 road at North Charlton, in a southerly direction for a distance of 155 metres. Thereafter, as a 5 metre wide byway in an easterly direction for a distance of 680 metres. Then as a 7 to 8.5 metre wide byway in an easterly direction for a

distance of 180 metres, then as an 8 to 9.5 metre wide byway in a north-easterly direction for a distance of 160 metres to join Byway Open to All Traffic No 31 in the Parish of Newton-by-the-Sea, 520 metres north of Charlton Hall.

### **Byway Open to All Traffic No 31**

As a 14 metre wide byway open to all traffic, from Byway Open to All Traffic No 45 in the Parish of Eglington, 520 metres north of Charlton Hall, in a south-easterly direction for a distance of 145 metres.

Thereafter as a 9 to 12 metre wide byway, in a north-easterly direction for a distance of 185 metres to a 3-way junction of the U3002 road.

Thereafter as a 5.5 to 6 metre wide byway, continuing in a north-easterly direction for a distance of 290 metres to a junction with Public Footpath No 25. Then as a 5 to 6.5 metre wide byway in a north-westerly direction for a distance of 215 metres, and across the Shipperton Burn. Thereafter as a 7 metre wide byway in a northerly direction for a distance of 35 metres. Then as a 10 metre wide byway continuing in a northerly direction for a further 70 metres to join Public Footpath No 25, immediately west of number 2 Doxford Farm Cottages.

- 1.2 The proposals resulted from the discovery of historical documentary evidence by the County Council. The A-Z section of alleged Byway Open to All Traffic No 31 has been recorded on the Definitive Map of Public Rights of Way, as a part of Public Footpath No 25 (Parish of Newton-by-the-Sea), since the original map was drawn up in the 1950s (Relevant Date: 20 September 1954). This section, and also the 290 metre long north-east-south-west section to the west of point Z, were the subject of a highway dedication, by Viscount Runciman in 1962.
- 1.3 In March 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, on a balance of probability, public vehicular rights had been shown to exist over the A-Z section of alleged Byway No 31 and that public vehicular rights had been reasonably alleged to exist over the remainder of alleged Byway No 31 and all of alleged Byway No 45.

## **2.0 The Order**

- 2.1 The proposal was the subject of a Definitive Map Modification Order, made on 18<sup>th</sup> September 2017, and advertised on 28<sup>th</sup> September 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 9) 2017 were received. Subsequently, by email on 15 February 2018, George F White LLP confirmed that its objections on behalf of CH & CE Armstrong and Mr RJ

Shell relate only to the western end of BOAT 45. By letter, dated 23 February 2018, Mr Kind withdrew his objection to the BOAT 31 part of the Order.

- 3.2 By letter, dated 17 November 2017, Mr A Kind of Newcastle upon Tyne objected to this and four other Orders, stating:

“Re: Definitive Map Modification Order (No 9) 2017 BOAT 45 & 31, Parishes of Eglington & Newton-by-the-Sea.

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 22<sup>nd</sup> November 2017, George F White LLP objected to the Order, on behalf of CH & CE Armstrong of North Charlton, stating:

“I write further to the above report from the Northumberland County Council Rights of Way committee meeting on the 14 March 2017.

George F White LLP as agents for and on behalf of CH & CE Armstrong, Middlemoor, North Charlton, Chathill, Northumberland, NE67 5HP and we wish to submit the representations, comments and objections to the committee.

The standpoint of the Armstrong family is as follows:

- A. That there is no Byway Open To All Traffic (BOAT) between point X to the “Lodge” north of Charlton Hall. This has always been an Estate and Farm track and used solely for Estate & agricultural traffic and animal movements and not been used by members of the public.
- B. More specifically point C-X is half owned by Highways England and the Armstrong Family. This is a means of access from the underpass that was installed to the fields as a safe means of access. The diversion applied does not cover all of the width of this track.
- C. Should a Public Right Of Way (PROW) be deemed to be apparent between Points C-Y then it would be a danger to the Public as it would be required to have an access directly onto the A1. This would mean traffic can turn directly on and off the Highway on a 70mph speed area with no slip road. This would be a danger to road users and would cause serious accidents. People would also be able to cross over the A1 from the east to the west of the A1 – this would be a serious issue.

- D. Highways England should be consulted on the issues of access directly to the A1. We understand from our discussions that they would be against such access on grounds of safety.

The grounds on which these views have been made are as follows:

1. As previously made aware to the committee of the ownership of the land between points X-C-Y by my client on the 4<sup>th</sup> September 2014, this property was originally part of Charlton Hall Estate.
2. The Track that runs from East Lodge at Charlton Hall to the Reading Rooms at North Charlton has been in situ for many years as evidenced by the maps provided by the council. This road though is clearly the main form of access from Charlton Hall to the rest of the estate and is clearly an internal estate road.
3. Since the Estate was broken up, only the landowners who own the land have used the track and it has not been used by anyone else.
4. During the ownership of the Armstrong family the road has been gated at all times due to the fields having livestock in and no-one has used this road as it is impassable without agricultural vehicles.
5. There is no evidence on the farm records to demonstrate that this has been a byway open to all traffic. It was utilised at that point as a private access road for estate traffic and animals only.
6. There is no direct user evidence provided by the Council – user evidence therefore cannot be used to justify this inclusion.
7. Section 4.0 Consultation – Mr Roberts of the Cyclists' Touring Club did not highlight the route between X-C-Y as being a route that is a utilised route by groups or individuals on bikes. Thus adding to the view that no PROW exists over the route.
8. Ms S Rogers response is vague on the whole with regards to the area apart from making it clear that it is a 'dead end'. She is unable to give specific details of any members that use the route and makes account for 'dog walkers' as well and provides no valid evidence of use.
9. To reinforce point B above the plans show contradictory evidence as detailed below:
  - a. 1769 – Shows a dotted line thus being a private/estate road for estate traffic, which directly crossed the A1 and did not turn north but continued onto the rest of the estate
  - b. 1820 – Similarly shows an estate road that leads straight onto the A1 and does not turn north. It is also an inaccurate plan due to the linear nature of all the roads and does not follow the routes of any of the roads around and should therefore be discounted.

c. 1828 - Shows an unenclosed farm track that runs directly out onto the A1 and onto the rest of the estate

d. 1820-32 – The Cary's map is unclear in its quality and does not show clear evidence of there being a public maintainable highway or PROW over the route of the alleged BOAT 45. It is noted that the route is not coloured red and no comment is made as to the key and what this defines.

e. 1866-67 – Is clearly a farm track that follows the field boundary and turns directly out onto the A1 and onto the rest of the estate.

f. 1899 – Reinforces previous comments of a farm track and direct agricultural access onto the A1 and onto the rest of the estate.

g. 1925-26 – No evidence of a track recorded, therefore this is map evidence that no use of this road was recorded by public use.

h. 1932 (Handover Map) – The map is unclear and seems to reference 14. This evidence needs further investigation.

i. 1935 & 51 – Similarly will have been crib from the 1932 map and there is no evidence to confirm that a declaration or formal surrender of the route to a public unnamed road has been put forward.

j. The Survey, Draft, 1957 & Provisional Maps all show no evidence of the route being a PROW or Unnamed Road.

k. Original Map shows a dotted black line along the route and not a solid one we believe the route has been highlighted in error in the belief that the field boundary to the north has been mistaken for a road marking as they do not differ. Similarly this and the 1964 map access goes directly onto the A1 and onto the rest of the estate and there is not route between C-X.

l. 1977-78 – shows a clear farm track.

m. The A1 Trunk Road – the plan included in page 56 of 58 shows a blue area 'A' and there is no legend to confirm what this area means. It differs from the red area '1'. We believe that this is due to the blue area intended to be private access only. Similarly the plan states that the underpass is "(farm crossing)". This therefore means that the Highways England never intended it to be Open to All Traffic and was installed for the sole use of the Agricultural vehicles.

n. It is clear that the underpass can only be used by the owners of North Charlton and Tynley and therefore this cannot be used as an access. Therefore the only access onto the A1 is via the gate currently in situ if the BOAT were to be granted. This is dangerous to road users and will cause a serious accident. As the BOAT cannot be granted

over the underpass then the BOAT can only be a dead-end and therefore cannot meet the criteria for a BOAT.

10. All points raised in the letter provided to the Council dated 2 March 2017 remain as first provided.

We would like to reinforce our objection to the alleged BOAT 45 in that the evidence provided is not conclusive that the route has been maintained by NCC or is a PROW and the area between C-X was always installed for private access to the agricultural fields only.

There is NO user evidence.

The Council are merely relying on maps created from 1932 but cannot provide any documents to support why these may have been included on the register at that time. We contest this was a mistake.

The Council have not provided any evidence to demonstrate that the track has been maintained at the public expenses. Despite several requests only unreadable schedules have been sent that do not show where the works have been carried out. Given the Armstrong's can categorically state that no works have occurred during these alleged times, we assume these works have been carried out on the highway between East Lodge and Shellig Bridge Road.

If a PROW was included it would need to turn out directly onto the A1 and thus cause traffic to cross 4 lanes of traffic going at speeds of 70mph. This would be dangerous and potentially life threatening. We believe it would be irresponsible of the Rights of Way Committee to include this on the definitive map given the risks associated.

We wish this objection to be considered going forward. ”

3.4 By letter, dated 22<sup>nd</sup> November 2017, George F White LLP objected to the Order, on behalf of Mr RJ Shell Limited, stating:

I write further to the above report from the Northumberland County Council Rights of Way committee meeting on the 14 March 2017.

George F White LLP as agents for and on behalf of Mr RJ Shell Limited the owner of Charlton Hall, Chathill, Northumberland, NE67 5DZ and we wish to submit the representations, comments and objections to the committee. The views of Mr Shell are in line with Mr Armstrong of Middlemoor. Mr Shell owns the first part of the farm track from East Lodge heading west towards the A1 up to the boundary with Mr Armstrong's land.

The standpoint of the Mr Shell is as follows:

A. That there is no Byway Open To All Traffic (BOAT) between point X to the “Lodge” north of Charlton Hall. This has always been an Estate and Farm track and used solely for Estate &

agricultural traffic and animal movements and not been used by members of the public.

- B. More specifically the farm track from the East Lodge running west to the farm boundary is owned by Mr Shell completely. This is a means of access that was installed to the fields as a safe means of access.
- C. Should a Public Right Of Way (PROW) be deemed to be apparent between Points C-Y then it would be a danger to the Public as it would be required to have an access directly onto the A1. This would mean traffic can turn directly on and off the Highway on a 70mph speed area with no slip road. This would be a danger to road users and would cause serious accidents. People would also be able to cross over the A1 from the east to the west of the A1 – this would be a serious issue.
- D. Highways England should be consulted on the issues of access directly to the A1. We understand from our discussions that they would be against such access on grounds of safety.

The grounds on which these views have been made are as follows:

1. As previously made aware to the committee of the ownership of the land between points X-C-Y by my client on the 4<sup>th</sup> September 2014, this property was originally part of Charlton Hall Estate.
2. The Track that runs from East Lodge at Charlton Hall to the Reading Rooms at North Charlton has been in situ for many years as evidenced by the maps provided by the council. This road though is clearly the main form of access from Charlton Hall to the rest of the estate and is clearly an internal estate road.
3. Since the Estate was broken up, only the landowners who own the land have used the track and it has not been used by anyone else.
4. During the ownership of Mr Shell the track has been gated at all times due to the fields having livestock in and no-one has used this road as it is impassable without agricultural vehicles.
5. There is no evidence on the Charlton Hall records to demonstrate that this has been a byway open to all traffic. It was utilised at that point as a private access road for estate traffic and animals only.
6. There is no direct user evidence provided by the Council – user evidence therefore cannot be used to justify this inclusion.
7. Section 4.0 Consultation – Mr Roberts of the Cyclists' Touring Club did not highlight the route between X-C-Y as being a route that is a utilised route by groups or individuals on bikes. Thus adding to the view that no PROW exists over the route.
8. Ms S Rogers response is vague on the whole with regards to the area apart from making it clear that it is a 'dead end'. She is unable to give

specific details of any members that use the route and makes account for 'dog walkers' as well and provides no valid evidence of use.

9. To reinforce point B above the plans show contradictory evidence as detailed below:
  - a. 1769 – Shows a dotted line thus being a private/estate road for estate traffic, which directly crossed the A1 and did not turn north but continued onto the rest of the estate
  - b. 1820 – Similarly shows an estate road that leads straight onto the A1 and does not turn north. It is also an inaccurate plan due to the linear nature of all the roads and does not follow the routes of any of the roads around and should therefore be discounted.
  - c. 1828 - Shows an unenclosed farm track that runs directly out onto the A1 and onto the rest of the estate
  - d. 1820-32 – The Cary's map is unclear in its quality and does not show clear evidence of there being a public maintainable highway or PROW over the route of the alleged BOAT 45. It is noted that the route is not coloured red and no comment is made as to the key and what this defines.
  - e. 1866-67 – Is clearly a farm track that follows the field boundary and turns directly out onto the A1 and onto the rest of the estate.
  - f. 1899 – Reinforces previous comments of a farm track and direct agricultural access onto the A1 and onto the rest of the estate.
  - g. 1925-26 – No evidence of a track recorded, therefore this is map evidence that no use of this road was recorded by public use.
  - h. 1932 (Handover Map) – The map is unclear and seems to reference 14. This evidence needs further investigation.
  - i. 1935 & 51 – Similarly will have been crib from the 1932 map and there is no evidence to confirm that a declaration or formal surrender of the route to a public unnamed road has been put forward.
  - j. The Survey, Draft, 1957 & Provisional Maps all show no evidence of the route being a PROW or Unnamed Road.
  - k. Original Map shows a dotted black line along the route and not a solid one we believe the route has been highlighted in error in the belief that the field boundary to the north has been mistaken for a road marking as they do not differ. Similarly this and the 1964 map access goes directly onto the A1 and onto the rest of the estate and there is not route between C-X.
  - l. 1977-78 – shows a clear farm track.



We would like to reinforce our objection to the alleged BOAT 45 in that the evidence provided is not conclusive that the route has been maintained by NCC or is a PROW and the area between East Lodge and the Charlton Hall boundary is a private track and has been historically.

There is NO user evidence.

The Council are merely relying on maps created from 1932 but cannot provide any documents to support why these may have been included on the register at that time. We contest this was a mistake.

The Council have not provided any evidence to demonstrate that the track has been maintained at the public expenses. Despite several requests only unreadable schedules have been sent that do not show where the works have been carried out. Given Mr Shell can categorically state that no works have occurred during these alleged times, we assume these works have been carried out on the highway between East Lodge and Shelligg Bridge Road.

If a PROW was included it would need to turn out directly onto the A1 and thus cause traffic to cross 4 lanes of traffic going at speeds of 70mph. This would be dangerous and potentially life threatening. We believe it would be irresponsible of the Rights of Way Committee to include this on the definitive map given the risks associated.

We wish this objection to be considered going forward.”

#### **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 majority of the order route was shown on Ordnance Survey maps in 1866/7 and 1899 and is also identified on Armstrong's, Fryer's and Greenwood's County maps of 1769, 1820 and 1828 and on or Cary's Map of 1820-32. The eastern part of the route to Doxford Farm (the section that was the subject of Viscount Runciman's 1962 highway dedication), is not shown on the County maps, and the north-south dog-leg at North Charlton is not shown on any of the earlier maps (it only being created by The A1 Trunk Road (Brownieside Improvement Side Roads) Order 1991. The core (non-1962 highway dedication and Side Roads Order) element was identified as a publicly maintainable road on the 1932 Alnwick Rural District handover map and also on the 1939 schedule and map prepared under the Restriction of Ribbon Development Act 1935. It was identified as a publicly maintainable highway on the Council Highway maps and schedules prepared in 1951, 1958, 1964 and 1974.

- 4.3 The route was identified as a maintainable public highway on the Council's List of Streets as at 2 May 2006 (and, apart from the A-Z section, it was not shown on the Definitive Map and Statement as a public footpath, public bridleway or a restricted byway). On that basis officers consider that the Natural Environment and Rural Communities Act 2006 did not extinguish the public's motor vehicular rights over the route.
- 4.4 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. The route is considered to be minimally used with motor vehicles, by the general public. The road is not a through route for 'normal' motor vehicles. Although metalled in an easterly direction, to Doxford Farm, the continuation north of Point A (or south of Point Z) is just public footpath. Although metalled in a westerly direction, as far as "Lodge", beyond the Lodge the route is not driveable with a normal family car. George F White has asserted that this unmetalled section has not been used by anything other than farm traffic for a significant period of time. User group consultation responses suggest that this route could form part of a useful local network for horse riders.
- 4.5 The limited user evidence available was not a significant factor in reaching a decision to make an Order. Vehicular rights were considered to be reasonably alleged to exist (shown to exist on a balance of probability in the case of the A-Z section) on the basis of the historical documentary evidence. The user evidence did help to reinforce the view of officers that this route was one that was likely to be used by the public more on foot, horseback and bicycle, than with motor vehicles. User evidence is not a necessary requirement for this route being recorded as a byway open to all traffic. Motor vehicular use is not a requirement for a route to be recognized as a byway open to all traffic. The section of road between North Charlton and Charlton Hall might, conceivably, never have been used by the public with motor vehicles.
- 4.6 Recent maintenance, by the highway authority is not a requirement for a route to be recognized as a byway open to all traffic. Although a route may have been identified as a publicly maintainable highway in 1932, when a Rural District Council handed over responsibility to the County Council, it is conceivable that it might never, subsequently, have received any public maintenance. The Council's responsibility is to maintain a publicly maintainable highway so that it is suitable for the ordinary traffic of the neighbourhood. A little used route may legitimately require little or no public maintenance. Even if a highway authority did fall short in its duty to adequately maintain a public highway, this failure would not remove any public rights that existed, nor would a failure to maintain a route for a period of time absolve the Council of its future maintenance responsibilities.
- 4.7 George F White states that the section of alleged Byway No 45, between The Lodge and the A1 road, "has always been an Estate and Farm track used solely for Estate & agricultural traffic and animal movements and has not been used by members of the public." It is not made clear what period of time this

statement relates to, whether it relates any type of public use or just public vehicular use, or how they can be so confident that this assertion is correct.

- 4.8 The provenance of the whole length of the original U3002 road, between the B6347 road south-east of Shielrigg and the A1 road just south of North Charlton is the same. The whole route was identified on the historical maps, and on the 1932 Handover Map and in the Restriction of Ribbon Development schedule / map and in the 1958, 1964 and 1974 County Road Schedules. It is not the case that there is evidence of some landowner highway dedication for the Shielrigg - The Lodge section of road that is lacking for its westerly continuation to the A1. Only a small proportion of Northumberland's road network is covered by documents relating to express dedication by the landowner.
- 4.9 When the original Definitive Map was being drawn up in the 1950s, Public Bridleway No 26 was identified as terminating on the (tarmac surfaced section of) U3002 road, North of Charlton Hall. This bridleway would have been an unlikely cul-de-sac if this part (at least) of U3002 road was not a public highway of at least bridleway status too. And if it was also just a public bridleway, why wasn't it identified as such on the original Definitive Map. The most credible reason why the U3002 road was not identified on the Definitive Map as a public right of way was not because it had no public status, but because it was already acknowledged to be a vehicular public highway, which did not warrant being recorded on the Definitive Map.
- 4.10 The most easterly 610 metres of alleged Byway Open to All Traffic No 31 was the subject of a highway dedication made by Viscount Runciman of Doxford in February 1962. It was not identified in Council highway maintenance records as a publicly maintainable highway before that date, but was acknowledged in Council highway maintenance records as a publicly maintainable highway after that date.
- 4.11 The most westerly 155 metres of alleged Byway Open to All Traffic No 45 was set out as a public road (a direct replacement for the 24 metre long section of existing U3002 road that was to be lost when the A1 road was widened / turned into a dual carriageway) in The A1 Trunk Road (Brownieside Improvement Side Roads) Order 1991, made by the Department of Transport. It was not identified in Council highway maintenance records as a publicly maintainable highway before that date, but was acknowledged in Council highway maintenance records as a publicly maintainable highway after that date.
- 4.12 George F White LLP has argued that, in 1932, Council staff mistakenly identified the section of track west of The Lodge as being part of the road network, and that this error has been perpetuated in the Council's highway records which identify the extent of the publicly maintainable highway network ever since. The Council would argue that, under the "presumption of regularity" it should be assumed that the extent of the public highways was (and subsequently has been) identified correctly, unless clear evidence of an error can be produced. There is no "presumption of a mistake".

- 4.13 George F White LLP's recent clarification that their objection did not relate to Byway Open to All Traffic No 31 (Parish of Newton-by-the-Sea), and Mr Kind's withdrawal of his objection to that part of the Order, means that it is now possible for the Council to confirm this (unobjected to) part of the order, as unopposed, prior to submitting the contentious part of the Order to the Secretary of State for determination.

**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 of Byway Open to All Traffic No 45 identified in the Order, 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 this part of Order ought, therefore, to be confirmed, as made.

**6. Background Papers**

Local Services Group File: A/12/45z & A/26/31z

Definitive Map Modification Order (No 9) 2017.

Report Author	Alex Bell – Definitive Map Officer (01670) 624133 Alex.Bell@Northumberland.gov.uk
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# **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 9) 2017**

##### **Byways Open to All Traffic Nos 45 & 31 (Parishes of Eglington and Newton-by-the-Sea)**

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)(ii) 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; that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; 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 May 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 9) 2017.

# Definitive Map Modification Order (No 9) 2017

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Parish	Path No.	Modification	OS Map Nos.	Def Map Nos.
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### Former Alnwick District

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# Definitive Map Modification Order (No 9) 2017

## Description of Modification to Definitive Map and Statement

### Former Alnwick District

#### **Eglingham**                      **Footpath No 37**                      **(NU 12 SE)**

Part I      Map:              The map is not affected.

Part II      Statement:      To be amended as follows:  
From Byway Open to All Traffic No 45 (the U3002 road) east of North Charlton in a general northerly direction for 200 metres, following the eastern boundary of the A1 Trunk Road and then continuing for 210 metres on the former C71 road to join Bridleway No 24 at the Ellingham Parish boundary 490 metres south of Tynely.

#### **Eglingham**                      **Byway Open to All Traffic No 45**                      **(NU 12 SE)**

Part I      Map:              Adding thereto a byway open to all traffic, from a point marked X, on the A1 trunk road, opposite its junction with the C47 road at North Charlton, in a general easterly direction along the U3002 road, for a distance of 1175 metres to a point marked Y, on alleged Byway Open to All Traffic No 31 in the Parish of Newton-by-the-Sea, 520 metres north of Charlton Hall.

Part II      Statement:      To be prepared as follows:  
As an 8 to 9 metre wide byway open to all traffic, from the A1 trunk road, opposite its junction with the C47 road at North Charlton, in a southerly direction for a distance of 155 metres. Thereafter, as a 5 metre wide byway in an easterly direction for a distance of 680 metres. Then as a 7 to 8.5 metre wide byway in an easterly direction for a distance of 180 metres, then as an 8 to 9.5 metre wide byway in a north-easterly direction for a distance of 160 metres to join Byway Open to All Traffic No 31 in the Parish of Newton-by-the-Sea, 520 metres north of Charlton Hall.

**Newton-by-the-Sea      Footpath No 25      (NU 12 SE)**

Part I      Map:      Deleting thereto the footpath, from a point marked Z, 355 metres south-east of Doxford Farmhouse, in a general north-westerly direction for a distance of 320 metres to a point marked A, immediately west of number 2 Doxford Farm Cottages, as a consequence of this section being upgraded to byway open to all traffic status (and renumbered as part of Byway open to All Traffic No 31).

Part II      Statement:      To be amended as follows:  
From the Charlton Mires - Chathill road opposite West Lodge in a general westerly direction to join Byway Open to All Traffic No 31, 355 metres south-east of Doxford Farmhouse. Resuming from the northern end of Byway Open to All Traffic No 31, immediately west of number 2 Doxford Farm Cottages, in a general northerly direction, crossing the bridge over the Charlton Burn continuing in a northerly direction by Dunstan Hill to join the Tynely - Burnhouses road south-west of Doxford Hall.

**Newton-by-the-Sea      Bridleway No 26      (NU 12 SE)**

Part I      Map:      The map is not affected.

Part II      Statement:      To be amended as follows:  
From the Charlton Bridge - Christon Bank Station road south-east of Tynely in a south-easterly direction along the parish boundary, crossing the bridge over the Charlton Burn and the bridge over the Shipperton Burn, continuing in a south-easterly direction to join Byway Open to All Traffic No 31 (the North Charlton - Christon Bank road) north of Charlton Hall.



**Newton-by-the-Sea Byway Open to All Traffic No 31**

**(NU 12 SE)**

**Part I Map:** Adding thereto a byway open to all traffic, from a point marked Y, on alleged Byway Open to All Traffic No 45 in the Parish of Eglington, 520 metres north of Charlton Hall, in a south-easterly, north-easterly and north-westerly direction along the U3002 road, for a distance of 940 metres to a point marked A, on Public Footpath No 25, immediately west of number 2 Doxford Farm Cottages.

**Part II Statement:** To be prepared as follows:  
As a 14 metre wide byway open to all traffic, from Byway Open to All Traffic No 45 in the Parish of Eglington, 520 metres north of Charlton Hall, in a south-easterly direction for a distance of 145 metres. Thereafter as a 9 to 12 metre wide byway, in a north-easterly direction for a distance of 185 metres to a 3-way junction of the U3002 road. Thereafter as a 5.5 to 6 metre wide byway, continuing in a north-easterly direction for a distance of 290 metres to a junction with Public Footpath No 25. Then as a 5 to 6.5 metre wide byway in a north-westerly direction for a distance of 215 metres, and across the Shipperton Burn. Thereafter as a 7 metre wide byway in a northerly direction for a distance of 35 metres. Then as a 10 metre wide byway continuing in a northerly direction for a further 70 metres to join Public Footpath No 25, immediately west of number 2 Doxford Farm Cottages.



IN WITNESS whereof the Common Seal of the County Council of Northumberland was hereunto affixed on the 18<sup>th</sup> day of September 2017

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



**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  
NE6 1 2EF

17 November 2017

Dear Sir,

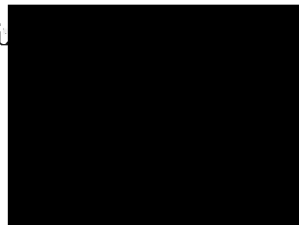
- Re: Definitive Map Modification Order (No 11) 2017. BOAT 21, Parish of Cornhill.
- Re: Definitive Map Modification Order (No 10) 2017. BOAT 18 & 19, Parish of Cornhill.
- Re: Definitive Map Modification Order (No 8) 2017. BOAT 35 & 36, Parish of Adderstone with Lucker.
- Re: Definitive Map Modification 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



# GEORGE F. WHITE

4-6 Market Street, Alnwick  
Northumberland NE66 1TL

t 01665 603231  
www.georgefwhite.co.uk

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

Email: [barbara.mccabe@northumberland.gov.uk](mailto:barbara.mccabe@northumberland.gov.uk)

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Barnard Castle	t 01833 690390
Bedale	t 01677 425301
Shiptonthorpe	t 01430 876010
Duns	t 01361 883488

Direct Dial: 01665 511981

Mobile:

Email: [hamishsmiles@georgefwhite.co.uk](mailto:hamishsmiles@georgefwhite.co.uk)

Our Ref: ALN509039/HS/

Your Ref:

Date: 22 November 2017

Dear Sir,

## FORMAL OBJECTION TO THE DEFINITIVE MAP MODIFICATION ORDER FOR THE ALLEGED BYWAYS OPEN TO ALL TRAFFIC NOS 45 & 31 (PARISHES OF EGLINGHAM AND NEWTON-BY-THE-SEA)

I write further to the above report from the Northumberland County Council Rights of Way committee meeting on the 14 March 2017.

George F White LLP as agents for and on behalf of CH & CE Armstrong, Middlemoor, North Charlton, Chathill, Northumberland, NE67 5HP and we wish to submit the representations, comments and objections to the committee.

The standpoint of the Armstrong family is as follows:

- A. That there is no Byway Open To All Traffic (BOAT) between point X to the "Lodge" north of Charlton Hall. This has always been an Estate and Farm track and used solely for Estate & agricultural traffic and animal movements and not been used by members of the public.
- B. More specifically point C-X is half owned by Highways England and the Armstrong Family. This is a means of access from the underpass that was installed to the fields as a safe means of access. The diversion applied does not cover all of the width of this track.
- C. Should a Public Right Of Way (PROW) be deemed to be apparent between Points C-Y then it would be a danger to the Public as it would be required to have an access directly onto the A1. This would mean traffic can turn directly on and off the Highway on a 70mph speed area with no slip road. This would be a danger to road users and would cause serious accidents. People would also be able to cross over the A1 from the east to the west of the A1 – this would be a serious issue.
- D. Highways England should be consulted on the issues of access directly to the A1. We understand from our discussions that they would be against such access on grounds of safety.

The grounds on which these views have been made are as follows:

1. As previously made aware to the committee of the ownership of the land between points X-C-Y by my client on the 4<sup>th</sup> September 2014, this property was originally part of Charlton Hall Estate.
2. The Track that runs from East Lodge at Charlton Hall to the Reading Rooms at North Charlton has been in situ for many years as evidenced by the maps provided by the council. This road though is clearly the main form of access from Charlton Hall to the rest of the estate and is clearly an internal estate road.

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A list of members' names is open to inspection at our registered office: 4-6 Market Street, Alnwick, Northumberland NE66 1TL  
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AGRICULTURE RESIDENTIAL COMMERCIAL DEVELOPMENT INVESTMENT ENERGY ENVIRONMENTAL

3. Since the Estate was broken up, only the landowners who own the land have used the track and it has not been used by anyone else.
4. During the ownership of the Armstrong family the road has been gated at all times due to the fields having livestock in and no-one has used this road as it is impassable without agricultural vehicles.
5. There is no evidence on the farm records to demonstrate that this has been a byway open to all traffic. It was utilised at that point as a private access road for estate traffic and animals only.
6. There is no direct user evidence provided by the Council – user evidence therefore cannot be used to justify this inclusion.
7. Section 4.0 Consultation – Mr Roberts of the Cyclists' Touring Club did not highlight the route between X-C-Y as being a route that is a utilised route by groups or individuals on bikes. Thus adding to the view that no PROW exists over the route.
8. Ms S Rogers response is vague on the whole with regards to the area apart from making it clear that it is a 'dead end'. She is unable to give specific details of any members that use the route and makes account for 'dog walkers' as well and provides no valid evidence of use.
9. To reinforce point B above the plans show contradictory evidence as detailed below:
  - a. 1769 – Shows a dotted line thus being a private/estate road for estate traffic, which directly crossed the A1 and did not turn north but continued onto the rest of the estate
  - b. 1820 – Similarly shows an estate road that leads straight onto the A1 and does not turn north. It is also an inaccurate plan due to the linear nature of all the roads and does not follow the routes of any of the roads around and should therefore be discounted.
  - c. 1828 - Shows an unenclosed farm track that runs directly out onto the A1 and onto the rest of the estate
  - d. 1820-32 – The Cary's map is unclear in its quality and does not show clear evidence of there being a public maintainable highway or PROW over the route of the alleged BOAT 45. It is noted that the route is not coloured red and no comment is made as to the key and what this defines.
  - e. 1866-67 – Is clearly a farm track that follows the field boundary and turns directly out onto the A1 and onto the rest of the estate.
  - f. 1899 – Reinforces previous comments of a farm track and direct agricultural access onto the A1 and onto the rest of the estate.
  - g. 1925-26 – No evidence of a track recorded, therefore this is map evidence that no use of this road was recorded by public use.
  - h. 1932 (Handover Map) – The map is unclear and seems to reference 14. This evidence needs further investigation.
  - i. 1935 & 51 – Similarly will have been crib from the 1932 map and there is no evidence to confirm that a declaration or formal surrender of the route to a public unnamed road has been put forward.
  - j. The Survey, Draft, 1957 & Provisional Maps all show no evidence of the route being a PROW or Unnamed Road.
  - k. Original Map shows a dotted black line along the route and not a solid one we believe the route has been highlighted in error in the belief that the field boundary to the north has been

mistaken for a road marking as they do not differ. Similarly this and the 1964 map access goes directly onto the A1 and onto the rest of the estate and there is not route between C-X.

- l. 1977-78 – shows a clear farm track.
- m. The A1 Trunk Road – the plan included in page 56 of 58 shows a blue area 'A' and there is no legend to confirm what this area means. It differs from the red area '1'. We believe that this is due to the blue area intended to be private access only. Similarly the plan states that the underpass is "(farm crossing)". This therefore means that the Highways England never intended it to be Open to All Traffic and was installed for the sole use of the Agricultural vehicles.
- n. It is clear that the underpass can only be used by the owners of North Charlton and Tynley and therefore this cannot be used as an access. Therefore the only access onto the A1 is via the gate currently in situ if the BOAT were to be granted. This is dangerous to road users and will cause a serious accident. As the BOAT cannot be granted over the underpass then the BOAT can only be a dead-end and therefore cannot meet the criteria for a BOAT.

10. All points raised in the letter provided to the Council dated 2 March 2017 remain as first provided.

We would like to reinforce our objection to the alleged BOAT 45 in that the evidence provided is not conclusive that the route has been maintained by NCC or is a PROW and the area between C-X was always installed for private access to the agricultural fields only.

There is NO user evidence.

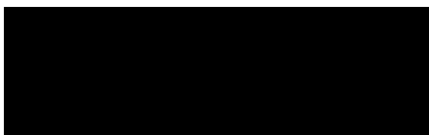
The Council are merely relying on maps created from 1932 but cannot provide any documents to support why these may have been included on the register at that time. We contest this was a mistake.

The Council have not provided any evidence to demonstrate that the track has been maintained at the public expenses. Despite several requests only unreadable schedules have been sent that do not show where the works have been carried out. Given the Armstrong's can categorically state that no works have occurred during these alleged times, we assume these works have been carried out on the highway between East Lodge and Shelligg Bridge Road.

If a PROW was included it would need to turn out directly onto the A1 and thus cause traffic to cross 4 lanes of traffic going at speeds of 70mph. This would be dangerous and potentially life threatening. We believe it would be irresponsible of the Rights of Way Committee to include this on the definitive map given the risks associated.

We wish this objection to be considered going forward.

Yours sincerely



For and on behalf of George F White LLP



# GEORGE F. WHITE

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Direct Dial: 01665 511981  
Mobile:  
Email: hamishsmiles@georgefwhite.co.uk  
Our Ref: ALN509039/HS/  
Your Ref:  
Date: 22 November 2017

Email: [barbara.mccabe@northumberland.gov.uk](mailto:barbara.mccabe@northumberland.gov.uk)

Dear Sir,

## **FORMAL OBJECTION TO THE DEFINITIVE MAP MODIFICATION ORDER FOR THE ALLEGED BYWAYS OPEN TO ALL TRAFFIC NOS 45 & 31 (PARISHES OF EGLINGHAM AND NEWTON-BY-THE-SEA)**

I write further to the above report from the Northumberland County Council Rights of Way committee meeting on the 14 March 2017.

George F White LLP as agents for and on behalf of Mr RJ Shell Limited the owner of Charlton Hall, Chathill, Northumberland, NE67 5DZ and we wish to submit the representations, comments and objections to the committee. The views of Mr Shell are in line with Mr Armstrong of Middlemoor. Mr Shell owns the first part of the farm track from East Lodge heading west towards the A1 up to the boundary with Mr Armstrong's land.

The standpoint of the Mr Shell is as follows:

- A. That there is no Byway Open To All Traffic (BOAT) between point X to the "Lodge" north of Charlton Hall. This has always been an Estate and Farm track and used solely for Estate & agricultural traffic and animal movements and not been used by members of the public.
- B. More specifically the farm track from the East Lodge running west to the farm boundary is owned by Mr Shell completely. This is a means of access that was installed to the fields as a safe means of access.
- C. Should a Public Right Of Way (PROW) be deemed to be apparent between Points C-Y then it would be a danger to the Public as it would be required to have an access directly onto the A1. This would mean traffic can turn directly on and off the Highway on a 70mph speed area with no slip road. This would be a danger to road users and would cause serious accidents. People would also be able to cross over the A1 from the east to the west of the A1 – this would be a serious issue.
- D. Highways England should be consulted on the issues of access directly to the A1. We understand from our discussions that they would be against such access on grounds of safety.

The grounds on which these views have been made are as follows:

1. As previously made aware to the committee of the ownership of the land between points X-C-Y by my client on the 4<sup>th</sup> September 2014, this property was originally part of Charlton Hall Estate.
2. The Track that runs from East Lodge at Charlton Hall to the Reading Rooms at North Charlton has been in situ for many years as evidenced by the maps provided by the council. This road though is

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clearly the main form of access from Charlton Hall to the rest of the estate and is clearly an internal estate road.

3. Since the Estate was broken up, only the landowners who own the land have used the track and it has not been used by anyone else.
4. During the ownership of Mr Shell the track has been gated at all times due to the fields having livestock in and no-one has used this road as it is impassable without agricultural vehicles.
5. There is no evidence on the Charlton Hall records to demonstrate that this has been a byway open to all traffic. It was utilised at that point as a private access road for estate traffic and animals only.
6. There is no direct user evidence provided by the Council – user evidence therefore cannot be used to justify this inclusion.
7. Section 4.0 Consultation – Mr Roberts of the Cyclists' Touring Club did not highlight the route between X-C-Y as being a route that is a utilised route by groups or individuals on bikes. Thus adding to the view that no PROW exists over the route.
8. Ms S Rogers response is vague on the whole with regards to the area apart from making it clear that it is a 'dead end'. She is unable to give specific details of any members that use the route and makes account for 'dog walkers' as well and provides no valid evidence of use.
9. To reinforce point B above the plans show contradictory evidence as detailed below:
  - a. 1769 – Shows a dotted line thus being a private/estate road for estate traffic, which directly crossed the A1 and did not turn north but continued onto the rest of the estate
  - b. 1820 – Similarly shows an estate road that leads straight onto the A1 and does not turn north. It is also an inaccurate plan due to the linear nature of all the roads and does not follow the routes of any of the roads around and should therefore be discounted.
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  - i. 1935 & 51 – Similarly will have been crib from the 1932 map and there is no evidence to confirm that a declaration or formal surrender of the route to a public unnamed road has been put forward.
  - j. The Survey, Draft, 1957 & Provisional Maps all show no evidence of the route being a PROW or Unnamed Road.

- k. Original Map shows a dotted black line along the route and not a solid one we believe the route has been highlighted in error in the belief that the field boundary to the north has been mistaken for a road marking as they do not differ. Similarly this and the 1964 map access goes directly onto the A1 and onto the rest of the estate and there is not route between C-X.
- l. 1977-78 – shows a clear farm track.

We would like to reinforce our objection to the alleged BOAT 45 in that the evidence provided is not conclusive that the route has been maintained by NCC or is a PROW and the area between East Lodge and the Charlton Hall boundary is a private track and has been historically.

There is NO user evidence.

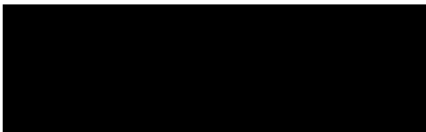
The Council are merely relying on maps created from 1932 but cannot provide any documents to support why these may have been included on the register at that time. We contest this was a mistake.

The Council have not provided any evidence to demonstrate that the track has been maintained at the public expenses. Despite several requests only unreadable schedules have been sent that do not show where the works have been carried out. Given Mr Shell can categorically state that no works have occurred during these alleged times, we assume these works have been carried out on the highway between East Lodge and Shelligg Bridge Road.

If a PROW was included it would need to turn out directly onto the A1 and thus cause traffic to cross 4 lanes of traffic going at speeds of 70mph. This would be dangerous and potentially life threatening. We believe it would be irresponsible of the Rights of Way Committee to include this on the definitive map given the risks associated.

We wish this objection to be considered going forward.

Yours sincerely

A large black rectangular redaction box covering the signature area.

For and on behalf of George F White LLP

---

## Word Documents

**Hamish Smales** <hamishsmales@georgefwhite.co.uk>  
To: Alex Bell <alex.bell@northumberland.gov.uk>

15 February 2018 at 10:58

Dear Alex,

Please see attached the letter as promised (eventually)

I can confirm the two are objecting to the western end of the proposed BOAT.

Many thanks

Hamish

**HAMISH SMALES**

Estate Manager



**d** 01665 511981

**t** 01665 603231

**m** 07894 096226

**e** hamishsmales@georgefwhite.co.uk

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LEGAL SERVICES

26 FEB 2018

REC'D

from Alan Kind  
45 The Fairway  
Gosforth  
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NE3 5AQ

e-mail mondard@mac.com

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

23 February 2018.

Dear Sir,

- **Re: Definitive Map Modification Order (No 9) 2017. BOAT 45 & 31, Parishes of Eglington & Newton-by-the-Sea.**

Reference your order above, on behalf of the Trail Riders Fellowship Limited, I objected and made a representation on 17 November 2017.

Now, as regards BOAT 31 only, I am withdrawing that objection and representation.

Yours faithfully,

Alan Kind

