

RIGHTS OF WAY COMMITTEE

13 March 2018

PUBLIC RIGHTS OF WAY

MODIFICATION ORDER (No 15) 2017

ALLEGED PUBLIC FOOTPATHS Nos 118 & 120 (FORMER WANSBECK DISTRICT)

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

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:

- (i) the Order, together with the objections, be submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination;**
- (ii) on a balance of probabilities, public footpath rights have been shown to exist over the route of Footpath No 118, the Council recommending that the Secretary of State confirm this part of the Order, as made;**
- (iii) on a balance of probabilities, public footpath rights have not yet been shown to exist over the route of Footpath No 120 and that the Council takes a neutral stance with regard to the determination of this part of the Order;**
- (iv) should Arch withdraw their objection to the Footpath No 118 part of the Order before the Order is submitted to the Secretary of State for determination, that the Order be severed, Northumberland County Council, itself, then confirming the Footpath No 118 part as unopposed.**

1.0 Background

1.1 The proposals in the Order seek to add, to the Definitive Map and Statement:

Public Footpath No 118

As a 1.5 metre wide footpath, from the U6554 road, 250 metres east of the General Havelock public house, in a general south-easterly direction following the north bank of the Sleek Burn for a distance of 1015 metres then in a north-easterly direction following the north bank of the River Blyth for a distance of 275 metres to a point 360 metres north of Factory Point.

Public Footpath No 120

As a 5 metre wide footpath, from the C415 road, 100 metres west of number 1 West Bridge street, Cambois, in a southerly direction for a distance of 15 metres, then in a south-westerly direction for a distance of 105 metres, then in a south-easterly direction for a distance of 160 metres. Thereafter as a 1.5 metre wide path, in a south-westerly direction following the north bank of the River Blyth for a distance of 180 metres, to a point 380 metres south-west of number 16 West Bridge Street, Cambois.

- 1.2 The proposals resulted from an application made by Ms D O'Connor and Mr D Blake, in March 2017, seeking to record a public footpath along the riverside between Cambois and East Sleekburn. Ultimately, their application was supported by user evidence from 17 members of the public.
- 1.3 In July 2017, the Rights of Way Committee considered all the available evidence both in support and rebuttal of the alleged public footpath, and resolved that public footpath rights had been reasonably alleged to exist over the western and eastern ends of the route, but not over a 'middle' section separating the two, because this had fenced off for a significant period of time.

2.0 The Order

- 2.1 The proposal was the subject of a Definitive Map Modification Order, made on 16th October 2017, and advertised on 26th October 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 Two letters of objection / representation to Modification Order (No 15) 2017 were received. The objection made by Womble Bond Dickinson on behalf of Arch relates to both Footpath No 118 and Footpath No 120. The objection made by Port of Blyth relates only to Footpath No 120.
- 3.2 By letter, dated 20th December 2017, Womble Bond Dickinson objected to the Order on behalf of Arch (Commercial Enterprise) Limited, stating:

"1. Introduction

1.1 We are instructed by Arch (Commercial Enterprise) Limited (**Arch**) to submit a formal objection to the Definitive Map Modification Order (No.15) 2017 (the Order) which was made by Northumberland County Council (the Council) on 16 October 2017.

1.2 As landowner of the land over which the path crosses, Arch were consulted on the application to add public footpaths Nos 118 and 120 (in the former Wansbeck District area) to the Definitive Map and we were instructed to make representations to the Council. We concluded that there was insufficient evidence to make the Order.

1.3 The Northumberland County Council Rights of Way Committee met on 11 July 2017 and resolved to follow the recommendations set out in the Committee report. The Order was subsequently made on 16 October 2017.

1.4 This objection to the addition of footpaths 118 and 130 to the Definitive Map is made for the following reasons:

1.4.1 In relation to both footpaths we consider there to be insufficient use to reasonably allege the existence of public rights of way; and

1.4.2 Even if there is found to be sufficient evidence of use we consider there has been sufficient action throughout the 20 year period to demonstrate there was no intention during that period to dedicate the route by the landowner.

2. Background

2.1 The alleged routes run over what was historically the site of the Blyth Power Station. Construction of the power station began in 1955 and station A became fully operation in 1960 followed by station B in 1962. National Power then decided in 2000 to decommission and demolish the power station. The site was used for heavy industry throughout the majority of the various "relevant periods" as set out below and the decommissioning process was so extensive and involved such inherently potentially dangerous activities that at times a total exclusion zone was imposed.

2.2 The main site has remained vacant since the demolition of the power station, and was owned and managed by RWE between 2003 and 2016. RWE maintained fencing and signs declaring the site to be private and employed security guards to keep the site secure. Arch purchased the site from RWE in May 2016 for strategic redevelopment and have maintained all fences and signs.

2.3 Arch submitted two letters when originally consulted on the application to modify the definitive map, once from Arch Commercial and one from Arch Developments both to John McErlane at Northumberland County Council and both dated 26 May 2017. We recommend these letters are read alongside this statement of objection as they provide a detailed description of the use of the site throughout the relevant periods.

3. Application to modify the definitive map

3.1 The original application made by Derek Blake and Dorothy O'Connor in March 2017 claimed a continuous route across the former Blyth Power Station from East Sleekburn to Cambois, (U – A – V – B – C – H – D – E – F – G – W) and a spur path leading northwards from the alleged footpath to the C415 road at East Sleekburn (V – X).

3.2 The Council's Right of Way Committee found that there was sufficient evidence to indicate public footpath rights were reasonably alleged to exist between points U – A – B – C – H – D – E (alleged footpath 118) and between F – G – W (alleged footpath 120), but not between V – X or between E – F.

3.3 The Council's committee report considers various dates that the route or part of it was called into question as follows:

Route	Relevant period
U to E (now alleged footpath 118)	March 1997 to March 2017
E to F (insufficient evidence)	May 1988 to May 2008
F to W (now alleged footpath 120)	March 1997 to March 2017 (application made) OR <i>June 1996 to June 2016 (herras fence erected)</i> OR <i>October 1981 to October 2001 (demolition of silo – video evidence)</i>

3.4 The report concludes that for the route between F and W there is insufficient evidence to demonstrate that demolition of the ash barge dock significantly interrupted public use of the footpath. So the relevant period is found to be March 1997 to March 2017.

3.5 We would also add at this point that the route of the path also appears to differ between the consultation map dated April 2017 and the Order map dated August 2017. It is not clear from the Committee Report on what basis this alteration was made. This is discussed in more detail in sections 5.3 to 5.6 below.

3.6 This has left two separate footpaths U – A – B – C – H – D – E (No.118) and F – G – W (No.120) which are both cul-de-sac routes. This objection letter relates to alleged footpaths.

4. Legal Test

4.1 The legal test for the statutory inference of dedication is:

*"where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has **been actually enjoyed by the public as of right and without***

interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it". (Our emphasis).

4.2 Therefore there are two limbs to the legal test, firstly the evidence presented to the Council must on the balance of probabilities show that the route has actually been enjoyed by the public as of right and without interruption for a full period of 20 years. If this can be shown then the landowner must provide evidence that on the balance of probabilities there was no intention during that period to dedicate it.

5. Analysis of User Evidence

5.1 As previously submitted in our letter of representations dated 26 June 2017, our analysis of the 14 user evidence forms submitted as part of the application for a modification order is set out below. We attach a table at Appendix 1 to this letter which sets out the names, addresses, periods of use and comments relating to each form. We will refer to each user evidence form by the number it is assigned in the table throughout this letter.

5.2 It should be noted at the outset that there are very low numbers of claimants and user forms. This goes to the point of whether there can genuinely be said to amount to public use in any event. Moreover, it is apparent from further analysis of the evidence forms submitted that the evidence relied upon is insufficient and therefore fails to meet the necessary tests.

5.3 There is also an inconsistency at the heart of much of the evidence, 13 of the 14 claimed users state that they have walked from East Sleekburn to Cambois and vice versa although the extent or route of the path walked is not clear in many of the forms. The application map shows the route deviating away from the river at A and running to point V and then returning to the river at point B rather than running directly from A to B.

5.4 When looking at the plans submitted it is clear some people used the route A – V- C and other walked along the shore line directly from A – B.

Via V	Forms 9, 11, 13, 4
A – B	Forms 8, 9, 10, 13
Not clear	Forms 1, 2, 3, 5, 6, 7, 12, 14

5.5 The Committee Report (paragraph 8.16) did consider that perhaps only U – F can be reasonably alleged to exist given the uncertainty surrounding the route from A onwards. It is not clear why this idea was dismissed, or why the Order Map shows the direct route between A and B as opposed to the route applied for which runs from A to V to B.

5.6 In any event we agreed with the conclusion that there is not enough evidence to demonstrate long use of a particular route given the discrepancies

in the user evidence forms and on the balance of probabilities public rights of way cannot be established beyond point A.

5.7 We also note:

5.7.1 Two of the user evidence forms (forms 9 and 10) refer to their use as having been permissive. Therefore these evidence forms cannot be taken into account when analysing use "as of right" as permissive use is not as of right. They must therefore be disregarded.

5.7.2 One user (form 4) did not use the route within the relevant period for alleged footpath 118 (March 1997 to March 2017) therefore this use cannot be considered in relation to the analysis of use for these sections of the route.

5.7.3 One user (form 5) declares at 4(a) that she walked from her home in East Sleekburn to the hides, so her evidence only relates to the use of the route from U to D.

5.7.4 One user form (form 8) states the path was eroded "at the east end". This clearly indicates that the user considered that the terminus of that route was the point at which erosion occurred, namely at point E, not point W as the committee report concludes.

5.7.5 Therefore the evidence of at least 5 of the 14 users should have been given no weight when considering whether or not the case has been made to substantiate the Order.

6. Grounds of objection

6.1 Footpath 118

6.1.1 The western alleged footpath 118 runs from East Sleekburn to the fencing erected by RWE in May 2008 at point E.

6.1.2 The committee report concludes that there are 6 path users who have used this route for the full 20 years i.e. 1988 - 2008.

6.1.3 As accepted in the Committee Report, the central F to E section was obstructed by extension of an existing palisade fencing from May 2008 onwards. This palisade fencing had a warning sign and ran down a dangerous revetment, which is a positive and physical act preventing the exercise of the alleged right of way. This therefore constitutes an interruption for the purposes of the statutory test^[1]. We therefore submit that the user evidence relied upon by the residents in East Sleekburn (8 relevant forms), can only be considered as evidence of use "as of right and without interruption" until the fencing was erected at point E from May 2008. After the fencing was erected by RWE, any use from point E onwards cannot be considered "as of right and without interruption" and therefore cannot be taken into account when analysing use for alleged footpath 120.

6.1.4 Therefore none of the user evidence submitted by East Sleekburn residents provides evidence of use as of right between E and W from May

2008 to the current date and likewise, the use by the residents who live in Cambois and have been walking the route in a westerly direction, cannot be considered as of right and uninterrupted from point F onwards past 2008 and therefore this use (forms 1 and 2) must be disregarded in part. This means that there are only 4 people (forms 5, 6, 7 and 8) who claim use of the route for the full 20 years.

6.1.5 Some use is permissive (form 9 and 10). That leaves 5 users (forms 3, 11, 12, 13 and 14) who claim to have walked the route for parts of the relevant period.

6.1.6 On this basis alone we consider this is insufficient use to reasonably allege public footpath rights exist over the alleged footpath 118.

6.1.7 In addition, as discussed at paragraph 3.5 the evidence forms do not indicate clearly which route each person took and there are conflicting routes suggested. Given the uncertainty surrounding the position of the route walked the evidence is insufficient to reasonably allege public footpath rights exist over alleged footpath 118.

6.1.8 Furthermore and in any event, the second limb of the test which is the landowners intention to dedicate has not been met. It is readily apparent that any use alleged of footpath 118 was on the basis of permissive use. The route leads to the hides overlooking the mudflats. It is acknowledged that such point affords a view of wading birds. Hence the name Wader Trail given to the route. It is clear from the document submitted by our client showing the sign for the Wader Trail that the landowner "welcomed visitors" to the Nature Reserve. Such a sign, together with the provision of bird hides is a clear indication that permission was being granted for use of a specific trail associated with a specific purpose. The visitors were invited onto the land for a specific purpose rather than for the enjoyment of a public right of way. In that regard the evidence forms submitted make it clear that nearly every claimant was aware of the existence of the bird hides and the fact these were provided and maintained by the owner of the land. Therefore there is a clear intention not to dedicate this route as a public right of way.

6.2 Footpath 120

6.2.1 The report sets out two potential dates when the use of the claimed route was called into question, 2017 and 2001 respectively. It is our opinion that the demolition of the silo in 2001 would have been obvious to members of the public and therefore caused sufficient interruption to the use of the route to qualify as a "calling into question" event.

6.2.2 However, if March 2017 is the date that the use was called into question, then we submit as follows:

- (a) The route does not join up with a highway network.
- (b) It is a there and-back route to a point of little interest.
- (c) Whilst it is acknowledged that alleged footpath 118 served a purpose of accessing bird hides, alleged footpath 120 the claimed route from W does not reach any point of interest.

6.2.3 Moreover the evidence forms indicate that there are only two residents from Cambois (forms 1 and 2) who claimed to have used the route for all or nearly all of the twenty year period (1997 – 2017).

6.2.4 One claimant living in Cambois (form 3) states she used the route for the first 11 years, but only eight times a year, which is a very limited level of use. The final Cambois resident (form 13) only walked the route for the final 11 years.

6.2.5 The same principle as set out above in relation to interruption applies to the use of the route by the Cambois residents, albeit in the opposite direction. Any use from May 2008 from point F onwards towards U cannot be considered "as of right and without interruption" therefore this use cannot be considered when analysing the use of alleged footpath from 2008 onwards. On this basis, the relevant user evidence from East Sleekburn residents does not demonstrate use of the section of footpath 120 "as of right and without interruption" from May 2008 which leaves a nine year period where the evidence shows only three people used the route. This level of use is not sufficient to support a conclusion that public footpath rights have been reasonably alleged to exist.

6.2.6 Our client has provided evidence that there is a barrier over the service road just past point W which is padlocked and was erected by the Port of Blyth. From the letter submitted by the Port of Blyth dated 26 May 2017 we know that "permitted access has always been restricted to licensed berth holders" who use the west staithe for mooring vessels and who have a key to the barrier and the staithe. There is no date given for the erection of the barrier but the Port confirm there was no unrestricted access from 2001. Case law states that if a gate is locked but people continue to go around the side there is an interruption^[2] in accordance with the legal test. By going around the locked barrier the users "were acknowledging the existence of the obstruction in the way by their very actions to avoid it".

6.2.7 On this basis we submit that the right of way was called in to question when the barrier was erected, which was at the very latest in 2001. If that is correct and we take the relevant period as 1981 to 2001 there are only three path users who used the path for the entire 20 year period (forms 1, 2 and 3). One user (form 5) only walked from East Sleekburn to the hides and therefore did not use F to W. One user (form 4) states that she used the route until 1988 and therefore only for the first few years of the relevant period. There are then only five other evidence forms (6, 7, 8, 11 and 12) which show use in the relevant period and this is all in the last 10 years of the relevant period. As the Council concludes at paragraph 8.18 of the report, this level of use is not sufficient to support a conclusion that public footpath rights have been reasonably alleged to exist.

7. Evidence of no intention to dedicate public rights of way

7.1 On the basis that the Council has concluded that there is sufficient evidence to indicate footpaths 118 and 120 are reasonably alleged to exist, we will turn to the second limb of the test. Even if there is found to be 20 years public use as of right without interruption, there have been multiple actions by

the various landowners throughout the relevant period which demonstrate a contrary intention.

7.2 The majority of the Site over which the path crosses was an operational coal fired power station from 1960 until 2000 and it is inconceivable given the operational requirement and restrictions, use of heavy plant and health and safety legislation unrestricted public access to the Site would have been permitted during this period.

7.3 The decommissioning period involved demolition by explosives throughout 2002 and 2003. Our client has presented evidence of the exclusion zone in place during one period of using explosives which is attached to this report as Appendix 2.

7.4 It would be impossible to demolish and remove the 15-20m high concrete silos, ancillary buildings and storage pens from the site without interrupting the use of the alleged footpaths for noticeable periods of time. It is clear from the 2001 video evidence that one of these silos fell across the route adjacent to the dock and would have taken a considerable amount of time to remove.

7.5 No temporary stopping up orders were sought throughout the decommissioning period.

7.6 Since the demolition of the power station in 2003, RWE managed the site and had security guards present on site. These security guards are still situated on site.

7.7 There are multiple fences, gates and signs erected around the site, clearly signalling that the land is private and access is not permitted. These signs are still on site, photographs of which are included at Appendix 3 along with a plan showing the locations of these signs.

8. Conclusion

8.1 The fact the application relies on user evidence and the fact that the use of the route was interrupted at two different points (E and F) by palisade fencing erected by RWE in May 2008 impacts the way in which the evidence must be considered. When considered as one continuous route the evidence submitted is very limited.

8.2 However, the Order as made sets out two unconnected routes. When considered as two unconnected routes the evidence in support of public "use as of right without interruption" for a continuous period of 20 years is scarce and there are very few users who have evidenced use of any route for the full 20 year period regardless of which relevant period is considered.

8.3 Taking each of the two routes:

8.3.1 Footpath 118: there are very few users over the 20 year period between 1997 and 2017 and there is no certainty that all members of the public used the same route. In any event the use of this path which was

known as the "Waders Trail" was permissive as demonstrated by the visitor signs. Even some users considered their use of the trail as permissive. Therefore there was no intention to dedicate the route as a public right of way.

8.3.2 Footpath 120: this area has been used for heavy industry since the 1950s and records clearly demonstrate it was obstructed for long periods of time during the period of decommissioning in the late 1990s and early millennium. The landowners clearly considered public access when consenting to the wader route. It is very unlikely the landowner created a permissive Wader route on the western side of the site, permitting the public access, but then acquiesced in implied dedication on the eastern site of the site, especially given the clear evidence of fencing and a barred gate. The Port of Blyth who owns some of the land over which alleged route 120 runs, has submitted written evidence^[3] also confirming unrestricted access has never been permitted. A public right of way is directly at odds with the operational aspect of the site. It is precisely for this reason that there is so little evidence of use of this route and the use of this route by the public fails on the balance of probabilities.

8.4 In conclusion there is insufficient use to demonstrate on the balance of probabilities a public right of way can be reasonably alleged to exist over alleged footpaths 118 and 120.

Appendix 1

N o.	Name	Address	Claimed Use	Comments
1	John James	1 Selbourne Terrace, Cambois	1940s – 2016	Lives in Cambois, use from 2008 limited to W - F
2	Derek Blake	2 Selbourne Terrace, Cambois	1959 – 2017	Lives in Cambois, use from 2008 limited to W - F
3	Carol Crossland	39 Dale Street, Cambois	1968 – 2008	Used route 8 times a year lives in Cambois, use from 2008 limited to W - G
4	Nicola Green	3 Stone Cottages, East Sleekburn	1975 – 1988	Not in relevant period for U – E and E - F
5	Julia Barron	9 Southview, East Sleekburn	1989 - 2017	Only walked to the hides Use only relevant for U – D
6	Carol Cummings	11 South View, East Sleekburn	1990 – 2017	Lives in East Sleekburn use from 2008 limited to U – E
7	Kathryn Mason	13 Grange Park Avenue, Bedlington	1990 - ?	Unclear when she moved from East Sleekburn to Bedlington – it is likely she was visiting her mother so use from 2008 limited to U – E

8	Lynda Mason	3 Belle Vue Terrace, East Sleekburn	1990 – 2016	Admits path eroded, use from 2008 limited to U – E
9	Ian Waugh	Town Farm, East Sleekburn	1992 – 2010	Permissive use
10	Edward Richardson	General Havelock, East Sleekburn	1995 – 2010	Permissive use
11	G. Ian Rowland	2 Moorland Court, Bedlington	1996 – 2006	Only 10 years of use
12	F. McCabe	1 Belle Vue Terrace, East Sleekburn	1999 - 2012	Lives in East Sleekburn use from 2008 limited to U – E
13	Dorothy O'Connor	11 Agen Miners Cottages, Cambois	2006 – 2017	Lives in Cambois so use limited from 2008 to W - F
14	Michael Ellis	13 Grange Park Avenue, Bedlington	2007 – recently	Lives with Kathryn Mason, likely use was limited from 2008 to U – E

3.3 By letter, dated 21st December 2017, The Port of Blyth objected to the Order, stating:

“I am writing in response to the above order to add two public footpaths to the Definitive Map. I would like to reiterate my previous correspondence dated 26th May 2017 that the Port of Blyth own a section of land on which one of the Public Rights of Way is located. The land we own is highlighted on the attached map.

“Public Footpath No 120

The Port of Blyth objects to the footpath No 120, Map No 160. The Port permits access to the West Staithes to boat owners with a licence from the Port. Permitted access has always been restricted to licenced berth holders only. Only owners with a licence have a key to access the West Staithes. To access our section of land, owners must use Arch’s private road running next to the Ash Barge Dock.

“Furthermore, the Ash Barge Dock was used during the operational life of the power station for the export of the station’s ash however its use did not stop at the end of the station being operational. Large quantities of scrap were a by-product of the power station’s decommissioning and this scrap was exported across the Ash Barge Dock. There was no access to the public during this intensive period of export activity to the area surrounding the dock as the scrap was transferred from the site directly to the dock, We also confirm that we have never allowed unrestricted access to the general public to this operational area. We

believe these operations began in 2001 but we have tonnage records from Jan 2002 running through until 2004 for the period of these operations. Please see attached tonnage records.”

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 quantity of user evidence supplied in support of Footpath Nos 118 and 120 was not massive, but it was considered to be sufficient to satisfy the “reasonably alleged to exist” test necessary to include these routes in a definitive map modification order. The user evidence for Footpath No 118 is stronger than that for Footpath No 120, and there is very clear evidence of an obviously walked route on the ground, over the easternmost two-thirds of Footpath No 118. It has been argued that those providing user evidence in support of Footpath No 118 haven’t all identified the Order route with sufficient precision but this situation is not uncommon. Those providing user evidence are likely to be a sample, not the totality, of people using this route and anecdotal evidence suggests that many people varied their route, sometimes walking the near-to-the river route but sometimes walking the slightly further inland route.
- 4.3 In objecting to the Order, Womble Bond Dickinson has raised the same rebuttal arguments that it did at the committee stage. They have argued that the signs and fencing from 2003, erected by the previous owners (RWE) declared the site to be private. The signs and fencing do not appear to have directly affected either footpath and they might go entirely unnoticed by someone using Footpath No 118. Officers do not accept that Mr Waugh’s and Mr Richardson’s user evidence forms indicate that their use was entirely permissive and should therefore be disregarded and, as indicated previously, don’t generally accept many of the other criticisms of the user evidence. It is not accepted that National Power’s creation of the Wader Trail precluded the acquisition of public footpath rights on the basis of presumed dedication. The legal point made in their para 6.2.6 is considered to be incorrect. This principle does apply in relation to the two lengths of palisade fencing across the path at Point E and Point F, but is not relevant in the case of a vehicle barrier (designed to stop vehicles) where provision is made for pedestrians to pass to one side of it. The interruptions to use of Footpath No 120 during demolition works might be considered sufficient to prevent presumed dedication, but users have indicated that their ability to use the route was not significantly affected.
- 4.4 Fourteen members of the public have indicated that they used some or all of Footpath No 118 for some or all of the relevant period, 1997 to 2017. There is very little rebuttal evidence for this route. Notwithstanding the lack of certainty regarding path alignment in relation to some of the user evidence (something which officers are confident will be resolved in favour of the Order route at any

public local inquiry), officers believe that, on a balance of probability, public footpath rights have been shown to exist over the route of Footpath No 118 and that this part of the Order should be confirmed as made.

- 4.5 Twelve members of the public have indicated that they used Footpath No 120 for some or all of the relevant period, 1997 to 2017. The rebuttal evidence for this route is stronger than it is for Footpath No 120. Officers are not convinced that, on a balance of probability, public footpath rights have been shown to exist over the route of Footpath No 120. They recommend adopting a neutral stance in relation to this path, when the Order is submitted 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 user and historical documentary evidence available, the County Council believes that, on the balance of probabilities:

- (i) public footpath rights do exist over the route of Footpath No 118 and that this part of the Order ought, therefore, to be confirmed, as made.
- (ii) public footpath rights have not been shown to exist over the route of Footpath No 120, and that the Council intends to take a neutral stance in the determination of this part of the Order.

6. Background Papers

Local Services Group File: F/118+120z

Definitive Map Modification Order (No 15) 2017.

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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 15) 2017

Public Footpaths Nos 118 & 120 (Former Wansbeck District)

This Order is made by Northumberland County Council under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the Definitive Map and Statement of Public Rights of Way for the County of Northumberland require modification in consequence of the occurrence of events specified in Section 53(3)(c)(i), namely, the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.

The authority has consulted every local authority whose area includes the land to which the order relates. The Northumberland County Council hereby order that:

1. For the purposes of this Order the relevant date is 1 September 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 15) 2017.

IN WITNESS whereof the Common Seal of the County Council of Northumberland was hereunto affixed on the 16th day of October 2017

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



Duly Authorised Officer



Definitive Map Modification Order (No 15) 2017

Index

Parish	Path No.	Modification	OS Map Nos.	Def Map Nos.
Former Wansbeck District				
Wansbeck	FP 118	Addition	NZ 28SE / 38SW	159 / 160
Wansbeck	FP 120	Addition	NZ 38 SW	160

Definitive Map Modification Order (No 15) 2017

Description of Modification to Definitive Map and Statement

Former Wansbeck District

Wansbeck **Footpath No 118** **(NZ 28 SE / 38 SW)**

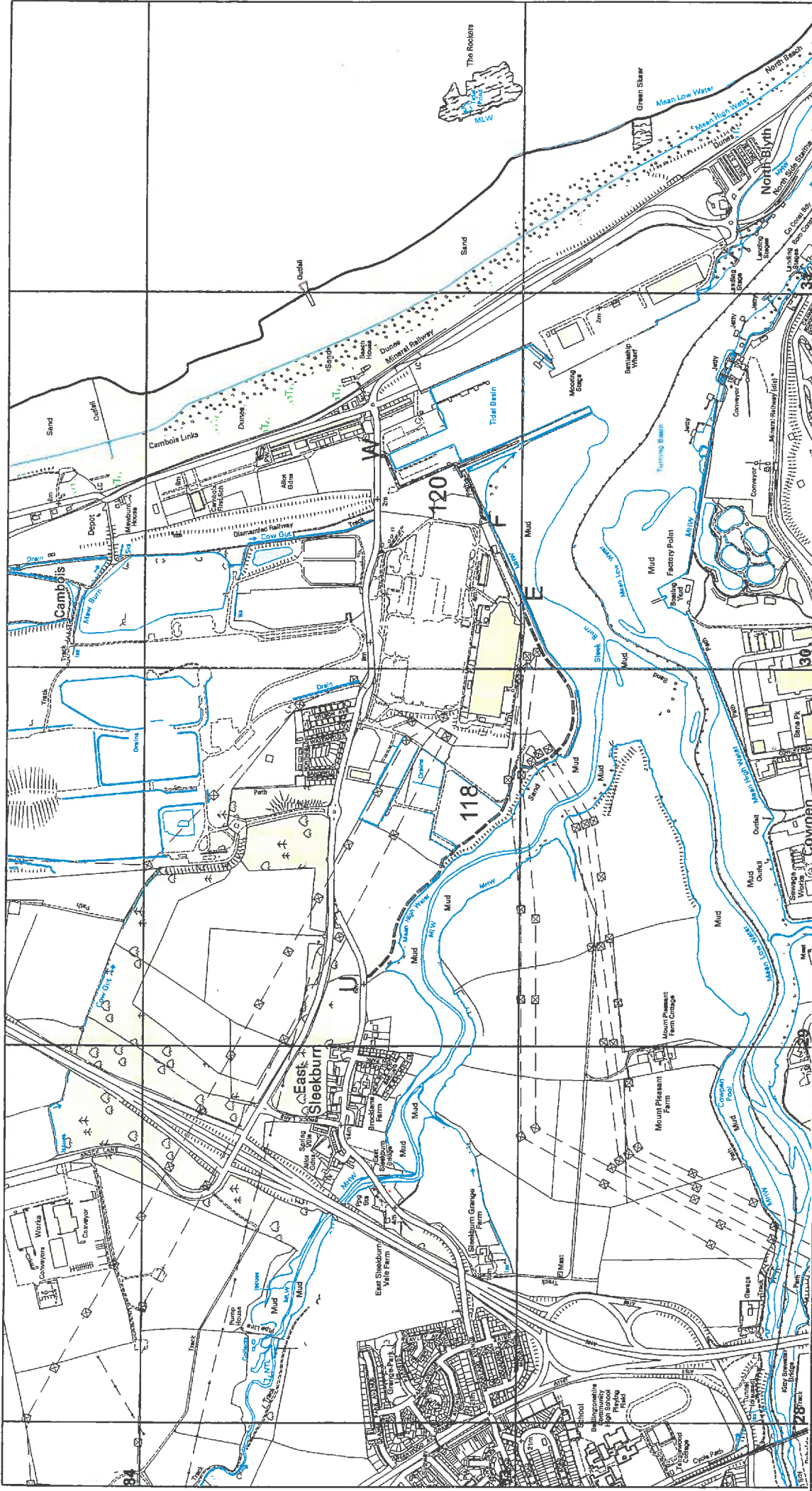
Part I Map: Adding thereto a footpath, from a point marked U, on the U6554 road, 250 metres east of the General Havelock public house, in a general south-easterly then north-easterly direction, for a distance of 1290 metres to a point marked E, on the north bank of the River Blyth, 360 metres north of Factory Point.

Part II Statement: To be prepared as follows:
As a 1.5 metre wide footpath, from the U6554 road, 250 metres east of the General Havelock public house, in a general south-easterly direction following the north bank of the Sleaford Burn for a distance of 1015 metres then in a north-easterly direction following the north bank of the River Blyth for a distance of 275 metres to a point 360 metres north of Factory Point.

Wansbeck **Footpath No 120** **(NZ 38 SW)**

Part I Map: Adding thereto a footpath, from a point marked W, on the C415 road, 100 metres west of number 1 West Bridge Street, Cambois, in a general south-westerly direction for a distance of 460 metres to a point marked F, on the north bank of the River Blyth, 380 metres south-west of number 16 West Bridge Street, Cambois.

Part II Statement: To be prepared as follows:
As a 5 metre wide footpath, from the C415 road, 100 metres west of number 1 West Bridge street, Cambois, in a southerly direction for a distance of 15 metres, then in a south-westerly direction for a distance of 105 metres, then in a south-easterly direction for a distance of 160 metres. Thereafter as a 1.5 metre wide path, in a south-westerly direction following the north bank of the River Blyth for a distance of 180 metres, to a point 380 metres south-west of number 16 West Bridge Street, Cambois.



NORTHUMBERLAND
Northumberland County Council
 Infrastructure
 Local Services
 County Hall, Morpeth, Northumberland
 Telephone 0845 600 6400 NE61 2EF

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Wildlife and Countryside Act, 1981

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

The Northumberland County Council

Modification Order (No. 15) 2017

Public Footpath to be deleted	Public Footpath	Public Bridleway	Restricted Byway	Byway Open to All Traffic
Former District(s) Wansbeck				
Definitive Map No 159/160		Scale: 1/10,000		
O.S. Map NZ 28 SE/38 SW		Date: August 2017		

20 December 2017

Mr L Henry
Northumberland County Council
County Hall
Morpeth
Northumberland
NE61 2EF

By post and email

Email: liam.henry@northumberland.gov.uk

Dear Mr Henry

**Objection to Definitive Map Modification Order (No.15) 2017 Public Footpaths Nos 118 and 120
(Former Wansbeck District)**

I enclose an objection to the above Order submitted on behalf of my clients Arch (Commercial Enterprise) Limited.

Please may you acknowledge safe receipt.

Yours sincerely



Kate Ashworth
Associate
Womble Bond Dickinson (UK) LLP

Copy to

1. Barbara McCabe (barbara.mccabe@northumberland.gov.uk)
2. John McErlane (john.mcerlane@northumberland.gov.uk)
3. Alex Bell (alex.bell@northumberland.gov.uk)

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Our ref:
CB6X/EKA/457155.1
Your ref:

20 December 2017

Objection to Definitive Map Modification Order (No.15) 2017 Public
Footpaths Nos 118 and 120 (Former Wansbeck District)

Arch (Commercial Enterprise) Limited

STRICTLY CONFIDENTIAL

This report has been prepared solely for Arch (Commercial Enterprise) Limited. It should not be used for any other purpose. We do not accept liability to any other person other than those to whom this report is addressed.

1. INTRODUCTION

- 1.1 We are instructed by Arch (Commercial Enterprise) Limited (**Arch**) to submit a formal objection to the Definitive Map Modification Order (No.15) 2017 (the Order) which was made by Northumberland County Council (the Council) on 16 October 2017.
- 1.2 As landowner of the land over which the path crosses, Arch were consulted on the application to add public footpaths Nos 118 and 120 (in the former Wansbeck District area) to the Definitive Map and we were instructed to make representations to the Council. We concluded that there was insufficient evidence to make the Order.
- 1.3 The Northumberland County Council Rights of Way Committee met on 11 July 2017 and resolved to follow the recommendations set out in the Committee report. The Order was subsequently made on 16 October 2017.
- 1.4 This objection to the addition of footpaths 118 and 130 to the Definitive Map is made for the following reasons:
 - 1.4.1 In relation to both footpaths we consider there to be insufficient use to reasonably allege the existence of public rights of way; and
 - 1.4.2 Even if there is found to be sufficient evidence of use we consider there has been sufficient action throughout the 20 year period to demonstrate there was no intention during that period to dedicate the route by the landowner.

2. BACKGROUND

- 2.1 The alleged routes run over what was historically the site of the Blyth Power Station. Construction of the power station began in 1955 and station A became fully operation in 1960 followed by station B in 1962. National Power then decided in 2000 to decommission and demolish the power station. The site was used for heavy industry throughout the majority of the various "relevant periods" as set out below and the decommissioning process was so extensive and involved such inherently potentially dangerous activities that at times a total exclusion zone was imposed.
- 2.2 The main site has remained vacant since the demolition of the power station, and was owned and managed by RWE between 2003 and 2016. RWE maintained fencing and signs declaring the site to be private and employed security guards to keep the site secure. Arch purchased the site from RWE in May 2016 for strategic redevelopment and have maintained all fences and signs.
- 2.3 Arch submitted two letters when originally consulted on the application to modify the definitive map, once from Arch Commercial and one from Arch Developments both to John McErlane at Northumberland County Council and both dated 26 May 2017. We recommend these letters are read alongside this statement of objection as they provide a detailed description of the use of the site throughout the relevant periods.

3. APPLICATION TO MODIFY THE DEFINITIVE MAP

- 3.1 The original application made by Derek Blake and Dorothy O'Connor in March 2017 claimed a continuous route across the former Blyth Power Station from East Sleekburn to Cambois, (U – A – V – B – C – H – D – E – F – G – W) and a spur path leading northwards from the alleged footpath to the C415 road at East Sleekburn (V – X).
- 3.2 The Council's Right of Way Committee found that there was sufficient evidence to indicate public footpath rights were reasonably alleged to exist between points U – A – B – C – H – D – E (alleged footpath 118) and between F – G – W (alleged footpath 120), but not between V – X or between E – F.

- 3.3 The Council's committee report considers various dates that the route or part of it was called into question as follows:

Route	Relevant period
U to E (now alleged footpath 118)	March 1997 to March 2017
E to F (insufficient evidence)	May 1988 to May 2008
F to W (now alleged footpath 120)	March 1997 to March 2017 (application made) OR <i>June 1996 to June 2016 (herras fence erected)</i> OR <i>October 1981 to October 2001 (demolition of silo – video evidence)</i>

- 3.4 The report concludes that for the route between F and W there is insufficient evidence to demonstrate that demolition of the ash barge dock significantly interrupted public use of the footpath. So the relevant period is found to be March 1997 to March 2017.
- 3.5 We would also add at this point that the route of the path also appears to differ between the consultation map dated April 2017 and the Order map dated August 2017. It is not clear from the Committee Report on what basis this alteration was made. This is discussed in more detail in sections 5.3 to 5.6 below.
- 3.6 This has left two separate footpaths U – A – B – C – H – D – E (No.118) and F – G – W (No.120) which are both cul-de-sac routes. This objection letter relates to alleged footpaths.

4. LEGAL TEST

- 4.1 The legal test for the statutory inference of dedication is:

*"where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has **been actually enjoyed by the public as of right and without interruption for a full period of 20 years**, the way is to be deemed to have been dedicated as a highway **unless there is sufficient evidence that there was no intention during that period to dedicate it**". (Our emphasis).*

- 4.2 Therefore there are two limbs to the legal test, firstly the evidence presented to the Council must on the balance of probabilities show that the route has actually been enjoyed by the public as of right and without interruption for a full period of 20 years. If this can be shown then the landowner must provide evidence that on the balance of probabilities there was no intention during that period to dedicate it.

5. ANALYSIS OF USER EVIDENCE

- 5.1 As previously submitted in our letter of representations dated 26 June 2017, our analysis of the 14 user evidence forms submitted as part of the application for a modification order is set out below. We attach a table at Appendix 1 to this letter which sets out the names, addresses, periods of use and comments relating to each form. We will refer to each user evidence form by the number it is assigned in the table throughout this letter.
- 5.2 It should be noted at the outset that there are very low numbers of claimants and user forms. This goes to the point of whether there can genuinely be said to amount to public use in any event. Moreover, it is apparent from further analysis of the evidence forms submitted that the evidence relied upon is insufficient and therefore fails to meet the necessary tests.
- 5.3 There is also an inconsistency at the heart of much of the evidence, 13 of the 14 claimed users state that they have walked from East Sleekburn to Cambois and vice versa although the extent

or route of the path walked is not clear in many of the forms. The application map shows the route deviating away from the river at A and running to point V and then returning to the river at point B rather than running directly from A to B.

- 5.4 When looking at the plans submitted it is clear some people used the route A – V- C and other walked along the shore line directly from A – B.

Via V	Forms 9, 11, 13, 4
A – B	Forms 8, 9, 10, 13
Not clear	Forms 1, 2, 3, 5, 6, 7, 12, 14

- 5.5 The Committee Report (paragraph 8.16) did consider that perhaps only U – F can be reasonably alleged to exist given the uncertainty surrounding the route from A onwards. It is not clear why this idea was dismissed, or why the Order Map shows the direct route between A and B as opposed to the route applied for which runs from A to V to B.

- 5.6 In any event we agreed with the conclusion that there is not enough evidence to demonstrate long use of a particular route given the discrepancies in the user evidence forms and on the balance of probabilities public rights of way cannot be established beyond point A.

- 5.7 We also note:

- 5.7.1 Two of the user evidence forms (forms 9 and 10) refer to their use as having been permissive. Therefore these evidence forms cannot be taken into account when analysing use "as of right" as permissive use is not as of right. They must therefore be disregarded.
- 5.7.2 One user (form 4) did not use the route within the relevant period for alleged footpath 118 (March 1997 to March 2017) therefore this use cannot be considered in relation to the analysis of use for these sections of the route.
- 5.7.3 One user (form 5) declares at 4(a) that she walked from her home in East Sleekburn to the hides, so her evidence only relates to the use of the route from U to D.
- 5.7.4 One user form (form 8) states the path was eroded "at the east end". This clearly indicates that the user considered that the terminus of that route was the point at which erosion occurred, namely at point E, not point W as the committee report concludes.
- 5.7.5 Therefore the evidence of at least 5 of the 14 users should have been given no weight when considering whether or not the case has been made to substantiate the Order.

6. GROUNDS OF OBJECTION

6.1 Footpath 118

- 6.1.1 The western alleged footpath 118 runs from East Sleekburn to the fencing erected by RWE in May 2008 at point E.
- 6.1.2 The committee report concludes that there are 6 path users who have used this route for the full 20 years i.e. 1988 - 2008.
- 6.1.3 As accepted in the Committee Report, the central F to E section was obstructed by extension of an existing palisade fencing from May 2008 onwards. This palisade fencing had a warning sign and ran down a dangerous revetment, which is a positive and physical act preventing the exercise of the alleged right of way. This therefore

constitutes an interruption for the purposes of the statutory test¹. We therefore submit that the user evidence relied upon by the residents in East Sleekburn (8 relevant forms), can only be considered as evidence of use "as of right and without interruption" until the fencing was erected at point E from May 2008. After the fencing was erected by RWE, any use from point E onwards cannot be considered "as of right and without interruption" and therefore cannot be taken into account when analysing use for alleged footpath 120.

- 6.1.4 Therefore none of the user evidence submitted by East Sleekburn residents provides evidence of use as of right between E and W from May 2008 to the current date and likewise, the use by the residents who live in Cambois and have been walking the route in a westerly direction, cannot be considered as of right and uninterrupted from point F onwards past 2008 and therefore this use (forms 1 and 2) must be disregarded in part. This means that there are only 4 people (forms 5, 6, 7 and 8) who claim use of the route for the full 20 years.
- 6.1.5 Some use is permissive (form 9 and 10). That leaves 5 users (forms 3, 11, 12, 13 and 14) who claim to have walked the route for parts of the relevant period.
- 6.1.6 On this basis alone we consider this is insufficient use to reasonably allege public footpath rights exist over the alleged footpath 118.
- 6.1.7 In addition, as discussed at paragraph 3.5 the evidence forms do not indicate clearly which route each person took and there are conflicting routes suggested. Given the uncertainty surrounding the position of the route walked the evidence is insufficient to reasonably allege public footpath rights exist over alleged footpath 118.
- 6.1.8 Furthermore and in any event, the second limb of the test which is the landowners' intention to dedicate has not been met. It is readily apparent that any use alleged of footpath 118 was on the basis of permissive use. The route leads to the hides overlooking the mudflats. It is acknowledged that such point affords a view of wading birds. Hence the name Wader Trail given to the route. It is clear from the document submitted by our client showing the sign for the Wader Trail that the landowner "welcomed visitors" to the Nature Reserve. Such a sign, together with the provision of bird hides is a clear indication that permission was being granted for use of a specific trail associated with a specific purpose. The visitors were invited onto the land for a specific purpose rather than for the enjoyment of a public right of way. In that regard the evidence forms submitted make it clear that nearly every claimant was aware of the existence of the bird hides and the fact these were provided and maintained by the owner of the land. Therefore there is a clear intention not to dedicate this route as a public right of way.

6.2 Footpath 120

- 6.2.1 The report sets out two potential dates when the use of the claimed route was called into question, 2017 and 2001 respectively. It is our opinion that the demolition of the silo in 2001 would have been obvious to members of the public and therefore caused sufficient interruption to the use of the route to qualify as a "calling into question" event.
- 6.2.2 However, if March 2017 is the date that the use was called into question, then we submit as follows:
- (a) The route does not join up with a highway network.
 - (b) It is a there and-back route to a point of little interest.

¹ Merstham Manor Limited v Couldson UDC [1937] 2 K.B. 77

- (c) Whilst it is acknowledged that alleged footpath 118 served a purpose of accessing bird hides, alleged footpath 120 the claimed route from W does not reach any point of interest.
- 6.2.3 Moreover the evidence forms indicate that there are only two residents from Cambois (forms 1 and 2) who claimed to have used the route for all or nearly all of the twenty year period (1997 – 2017).
- 6.2.4 One claimant living in Cambois (form 3) states she used the route for the first 11 years, but only eight times a year, which is a very limited level of use. The final Cambois resident (form 13) only walked the route for the final 11 years.
- 6.2.5 The same principle as set out above in relation to interruption applies to the use of the route by the Cambois residents, albeit in the opposite direction. Any use from May 2008 from point F onwards towards U cannot be considered "as of right and without interruption" therefore this use cannot be considered when analysing the use of alleged footpath from 2008 onwards. On this basis, the relevant user evidence from East Sleekburn residents does not demonstrate use of the section of footpath 120 "as of right and without interruption" from May 2008 which leaves a nine year period where the evidence shows only three people used the route. This level of use is not sufficient to support a conclusion that public footpath rights have been reasonably alleged to exist.
- 6.2.6 Our client has provided evidence that there is a barrier over the service road just past point W which is padlocked and was erected by the Port of Blyth. From the letter submitted by the Port of Blyth dated 26 May 2017 we know that "permitted access has always been restricted to licensed berth holders" who use the west staithes for mooring vessels and who have a key to the barrier and the staithes. There is no date given for the erection of the barrier but the Port confirm there was no unrestricted access from 2001. Case law states that if a gate is locked but people continue to go around the side there is an interruption² in accordance with the legal test. By going around the locked barrier the users "were acknowledging the existence of the obstruction in the way by their very actions to avoid it".
- 6.2.7 On this basis we submit that the right of way was called in to question when the barrier was erected, which was at the very latest in 2001. If that is correct and we take the relevant period as 1981 to 2001 there are only three path users who used the path for the entire 20 year period (forms 1, 2 and 3). One user (form 5) only walked from East Sleekburn to the hides and therefore did not use F to W. One user (form 4) states that she used the route until 1988 and therefore only for the first few years of the relevant period. There are then only five other evidence forms (6, 7, 8, 11 and 12) which show use in the relevant period and this is all in the last 10 years of the relevant period. As the Council concludes at paragraph 8.18 of the report, this level of use is not sufficient to support a conclusion that public footpath rights have been reasonably alleged to exist.

7. EVIDENCE OF NO INTENTION TO DEDICATE PUBLIC RIGHTS OF WAY

- 7.1 On the basis that the Council has concluded that there is sufficient evidence to indicate footpaths 118 and 120 are reasonable alleged to exist, we will turn to the second limb of the test. Even if there is found to be 20 years public use as of right without interruption, there have been multiple actions by the various landowners throughout the relevant period which demonstrate a contrary intention.
- 7.2 The majority of the Site over which the path crosses was an operational coal fired power station from 1960 until 2000 and it is inconceivable given the operational requirement and restrictions, use of heavy plant and health and safety legislation unrestricted public access to the Site would have been permitted during this period.

² R v Secretary of State for Environment ex parte Blake (1984)

- 7.3 The decommissioning period involved demolition by explosives throughout 2002 and 2003. Our client has presented evidence of the exclusion zone in place during one period of using explosives which is attached to this report as Appendix 2.
- 7.4 It would be impossible to demolish and remove the 15-20m high concrete silos, ancillary buildings and storage pens from the site without interrupting the use of the alleged footpaths for noticeable periods of time. It is clear from the 2001 video evidence that one of these silos fell across the route adjacent to the dock and would have taken a considerable amount of time to remove.
- 7.5 No temporary stopping up orders were sought throughout the decommissioning period.
- 7.6 Since the demolition of the power station in 2003, RWE managed the site and had security guards present on site. These security guards are still situated on site.
- 7.7 There are multiple fences, gates and signs erected around the site, clearly signalling that the land is private and access is not permitted. These signs are still on site, photographs of which are included at Appendix 3 along with a plan showing the locations of these signs.

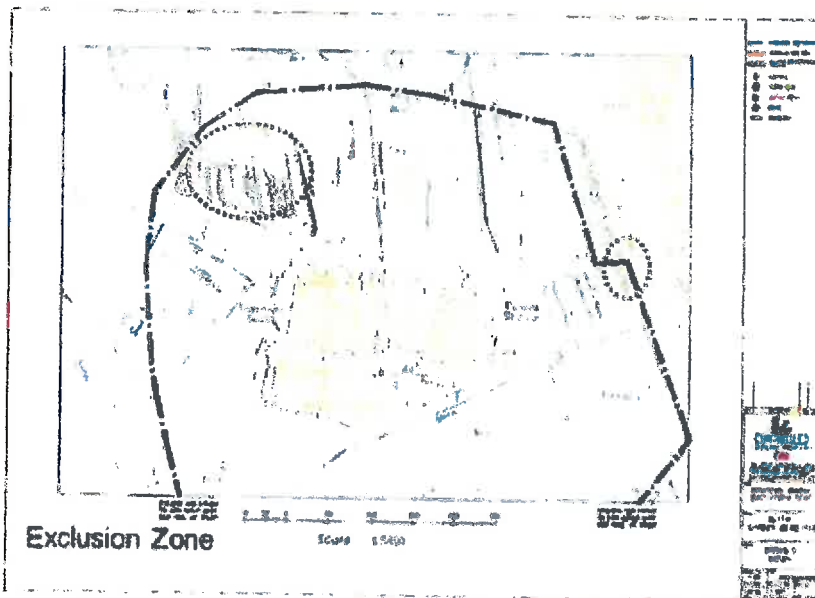
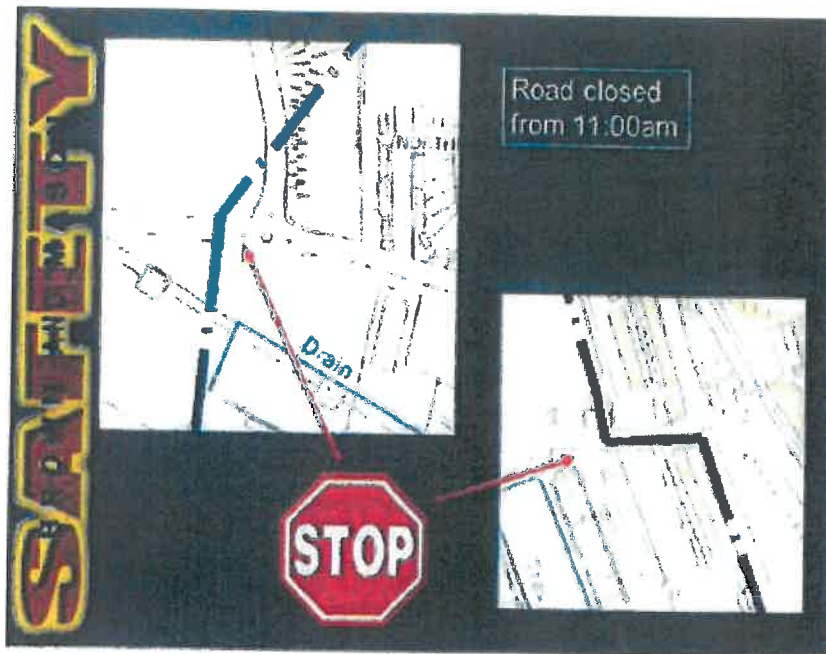
8. CONCLUSION

- 8.1 The fact the application relies on user evidence and the fact that the use of the route was interrupted at two different points (E and F) by palisade fencing erected by RWE in May 2008 impacts the way in which the evidence must be considered. When considered as one continuous route the evidence submitted is very limited.
- 8.2 However, the Order as made sets out two unconnected routes. When considered as two unconnected routes the evidence in support of public "use as of right without interruption" for a continuous period of 20 years is scarce and there are very few users who have evidenced use of any route for the full 20 year period regardless of which relevant period is considered.
- 8.3 Taking each of the two routes:
- 8.3.1 Footpath 118: there are very few users over the 20 year period between 1997 and 2017 and there is no certainty that all members of the public used the same route. In any event the use of this path which was known as the "Waders Trail" was permissive as demonstrated by the visitor signs. Even some users considered their use of the trail as permissive. Therefore there was no intention to dedicate the route as a public right of way.
- 8.3.2 Footpath 120: this area has been used for heavy industry since the 1950s and records clearly demonstrate it was obstructed for long periods of time during the period of decommissioning in the late 1990s and early millennium. The landowners clearly considered public access when consenting to the wader route. It is very unlikely the landowner created a permissive Wader route on the western side of the site, permitting the public access, but then acquiesced in implied dedication on the eastern side of the site, especially given the clear evidence of fencing and a barred gate. The Port of Blyth who owns some of the land over which alleged route 120 runs, has submitted written evidence³ also confirming unrestricted access has never been permitted. A public right of way is directly at odds with the operational aspect of the site. It is precisely for this reason that there is so little evidence of use of this route and the use of this route by the public fails on the balance of probabilities.
- 8.4 In conclusion there is insufficient use to demonstrate on the balance of probabilities a public right of way can be reasonably alleged to exist over alleged footpaths 118 and 120.

³ A letter from Port of Blyth to John McErlane at Northumberland County Council dated 26 May 2017

Appendix 1

No.	Name	Address	Claimed Use	Comments
1	John James	1 Selbourne Terrace, Cambois	1940s – 2016	Lives in Cambois, use from 2008 limited to W - F
2	Derek Blake	2 Selbourne Terrace, Cambois	1959 – 2017	Lives in Cambois, use from 2008 limited to W - F
3	Carol Crossland	39 Dale Street, Cambois	1968 – 2008	Used route 8 times a year lives in Cambois, use from 2008 limited to W - G
4	Nicola Green	3 Stone Cottages, East Sleekburn	1975 – 1988	Not in relevant period for U – E and E - F
5	Julia Barron	9 Southview, East Sleekburn	1989 - 2017	Only walked to the hides Use only relevant for U – D
6	Carol Cummings	11 South View, East Sleekburn	1990 – 2017	Lives in East Sleekburn use from 2008 limited to U – E
7	Kathryn Mason	13 Grange Park Avenue, Bedlington	1990 - ?	Unclear when she moved from East Sleekburn to Bedlington – it is likely she was visiting her mother so use from 2008 limited to U – E
8	Lynda Mason	3 Belle Vue Terrace, East Sleekburn	1990 – 2016	Admits path eroded, use from 2008 limited to U – E
9	Ian Waugh	Town Farm, East Sleekburn	1992 – 2010	Permissive use
10	Edward Richardson	General Havelock, East Sleekburn	1995 – 2010	Permissive use
11	G. Ian Rowland	2 Moorland Court, Bedlington	1996 – 2006	Only 10 years of use
12	F. McCabe	1 Belle Vue Terrace, East Sleekburn	1999 - 2012	Lives in East Sleekburn use from 2008 limited to U – E
13	Dorothy O'Connor	11 Agen Miners Cottages, Cambois	2006 – 2017	Lives in Cambois so use limited from 2008 to W - F
14	Michael Ellis	13 Grange Park Avenue, Bedlington	2007 – recently	Lives with Kathryn Mason, likely use was limited from 2008 to U – E



Total exclusion zone for the public around the chimneys and village and private road area for the explosives demolition of the chimney structures.

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

21 December 2017

Dear Mr Henry,

**Section 53 of the Wildlife and Countryside Act 1981
Definitive Map Modification Order (No 15) 2017**

I am writing in response to the above order to add two public footpaths to the Definitive Map. I would like to reiterate my previous correspondence dated 26th May 2017 that the Port of Blyth own a section of land on which one of the Public Rights of Way is located. The land we own is highlighted on the attached map.

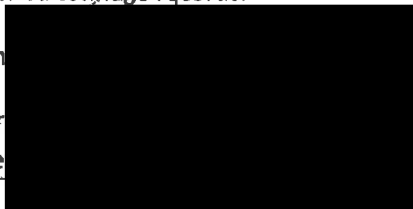
Public Footpath No 120

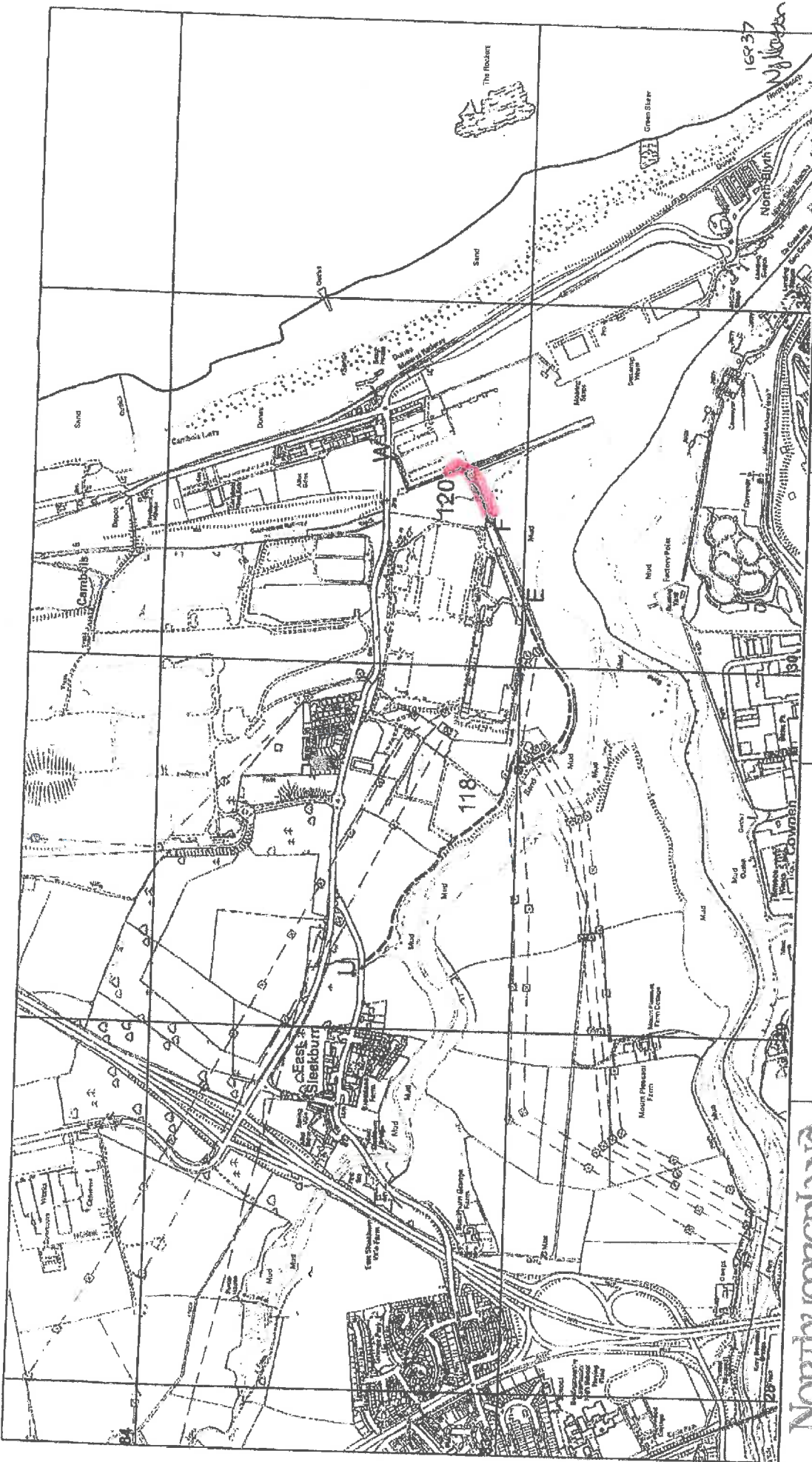
The Port of Blyth objects to the footpath No 120, Map No. 160. The Port permits access to the West Staithes to boat owners with a licence from the Port. Permitted access has always been restricted to licenced berth holders only. Only owners with a licence have a key to access the West Staithes. To access our section of land, owners must use Arch's private road running next to the Ash Barge Dock.

Furthermore, the Ash Barge Dock was used during the operational life of the power station for export of the station's ash however its use did not stop at the end of the station being operational. Large quantities of scrap were a by-product of the power station's decommissioning and this scrap was exported across the Ash Barge Dock. There was no access to the public during this intensive period of export activity to the area surrounding the dock as the scrap was transferred from the site directly to the dock. We also confirm that we have never allowed unrestricted access to the general public to this operational area. We believe these operations began in 2001 but we have tonnage records from Jan 2002 running through until April 2004 for the period of these operations. Please see attached tonnage records.

Yours sincerely

James Br
Customer





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

O.S. Map NZ 28 SE/38 SW Definitive Map No 159/160 Scale: 1/10,000
 Former Districts Wansbeck Parish(es) N/A Date August 2017

**The Northumberland
 County Council**

**Modification Order
 (No.15) 2017**

Wildlife and Countryside Act, 1981

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

NORTHUMBERLAND

Northumberland County Council
 Infrastructure
 Local Services
 County Hall Morpeth Northumberland
 Telephone 0845 600 6400 NE61 2EF

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PORT OF BLYTH
TONNAGES

B	C	D	E	F	G	H	I
4	VESSEL	NO.	BERTH	COMMODITY	CUSTOMER	TONNE EXP	TONNE EXP
5	DATE	NO.	BERTH	COMMODITY	CUSTOMER	TONNE EXP	TONNE EXP
26	09-Jan-02	KILLARNY	6	Ash Dock	EMR	2348	
111	14-Mar-02	RUNNER	57	Ash Dock	EMR	2854.95	
173	04-Apr-02	HERMANN SIBYM	93	Ash Dock	EMR	2608.96	
204	14-May-02	LEESWIG	114	Ash Dock	EMR	2567.52	
271	09-Jun-02	URTE	163	Ash Dock	EMR	2698.95	
298	18-Jul-02	BOUNDER	174	Ash Dock	EMR	2620	
316	06-Aug-02	LUNO	187	Ash Dock	EMR	3531.12	
326	13-Aug-02	BRANDARIS	194	Ash Dock	EMR	2302.23	
368	06-Sep-02	SUURHUIEN	223	Ash Dock	EMR	3743.58	
382	26-Sep-02	LAUDIO	233	Ash Dock	EMR	3374.85	
437	31-Oct-02	VISURGIS	271	Ash Dock	EMR	2865.04	
460	06-Dec-02	WAHLSTEDT	306	Ash Dock	EMR	2921.95	

PORT OF BLYTH
TONNAGES

	B	C	D	E	F	G	H
4							
5	DATE	VESSEL	INO.	BERTH	COMMODITY	CUSTOMER	TONNE EXP
72	06-Feb-04	ALEXANDRA	41	Ash Dock	Scrap	EMR	2250.08
187	07-Apr-04	ARKLOW FAITH	135	Ash Dock	Scrap	EMR	2982.84