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Your ref: Our ref:

Enquiries to: Nichola Turnbull

Email: nichola.turnbull@northumberland.gov.uk

Tel direct: 01670 622617 **Date:** Monday, 6 June 2022

Dear Sir or Madam,

Your attendance is requested at a meeting of the TYNEDALE LOCAL AREA COUNCIL to be held in CEREMONY ROOM - HEXHAM HOUSE, Gilesgate, Hexham, Northumberland, NE46 3NH on TUESDAY, 14 JUNE 2022 at 4.00 PM.

Yours faithfully

CHOOL .

Daljit Lally
Chief Executive

To Tynedale Local Area Council members as follows:-

T Cessford (Chair), D Kennedy (Vice-Chair), A Scott (Vice-Chair (Planning)), A Dale, Fairless-Aitken, C Horncastle, JI Hutchinson, N Morphet, N Oliver, J Riddle, A Sharp, G Stewart and H Waddell

Members are referred to the risk assessment, previously circulated, for meetings held in County Hall. Masks should be worn when moving round but can be removed when seated, social distancing should be maintained, hand sanitiser regularly used and members requested to self-test twice a week at home, in line with government guidelines.





AGENDA

PART I

It is expected that the matters included in this part of the agenda will be dealt with in public.

1. MEMBERSHIP AND TERMS OF REFERENCE

The committee are asked to note the following membership and terms of reference for the Tynedale Local Area Council which were agreed by Council on 4 May 2022.

The membership is made up of the county councillors who represent the 13 electoral divisions in the Tynedale area:

Chair: T Cessford

Vice-Chair: D Kennedy

Vice-Chair (Planning): A Scott

Quorum - 4

Conservative	Labour	Independent	Liberal	Green	Ind Non-
		Group	Democrat	Party	Grouped
T Cessford	A Scott	D Kennedy	SH	N	HR
			Fairless-	Morphet	Waddell
			Aitken	-	
CW		A Dale	A Sharp		
Horncastle			-		
I Hutchinson					
N Oliver					
JR Riddle					
G Stewart					

Terms of reference

- (1) To enhance good governance in the area and ensure that the Council's policies take account of the needs and aspirations of local communities and do not discriminate unfairly between the different Areas.
- (2) To advise the Cabinet on budget priorities and expenditure within the Area.
- (3) To consider, develop and influence policy and strategy development of the Council, its arms-length organisations, and other relevant bodies, to ensure that they meet local requirements and facilitate efficient and transparent decision making.
- (4) To receive information, consider and comment on matters associated with service delivery including those undertaken in partnership agencies, affecting the local area to ensure that they meet local requirements, including matters relating to community safety, anti-

- social behaviour and environmental crime.
- (5) To consider and refer to Cabinet any issues from a local community perspective with emerging Neighbourhood Plans within their area, and consider local planning applications as per the planning delegation scheme
- (6) To consider and recommend adjustments to budget priorities in relation to Local Transport Plan issues within their area, and to make decisions in relation to devolved capital highway maintenance allocations.
- (7) To engage, through the appropriate networks, with all key stakeholders from the public, private, voluntary and community sectors to facilitate the delivery of area priorities. This will include undertaking regular liaison with parish and town councils.
- (8) To inform, consult and engage local communities in accordance with Council policy and guidance, through the appropriate networks.
- (9) To, as appropriate, respond or refer with recommendations to local petitions and councillor calls for action.
- (10) To make certain appointments to outside bodies as agreed by Council.
- (11) To determine applications for grant aid from the Community Chest, either through Panels for individual Local Area Councils, or through the Panel of Local Area Council Chairs for countywide applications.
- (12) To refer and receive appropriate issues for consideration to or from other Council Committees, and as appropriate invite Portfolio Holders to attend a meeting if an item in their area of responsibility is to be discussed.
- (13) To exercise the following functions within their area:-
 - (a) the Council's functions in relation to the survey, definition, maintenance, diversion, stopping up and creation of public rights of way.
 - (b) the Council's functions as the Commons Registration Authority for common land and town/village greens in Northumberland.
 - (c) the Council's functions in relation to the preparation and maintenance of the Rights of Way Improvement Plan.
 - (d) the Council's functions in relation to the Northumberland National Park and County Joint Local Access Forum (Local Access Forums (England) Regulations 2007.
 - (e) the Council's role in encouraging wider access for all to the County's network of public rights of way and other recreational routes.

2. APOLOGIES FOR ABSENCE

3. MINUTES (Pages 1 - 18)

Minutes of the meeting of the Tynedale Local Area Council, held on 10 May 2022, as circulated, to be confirmed as a true record, and signed by the Chair.

4. DISCLOSURE OF MEMBERS' INTERESTS

Unless already entered in the Council's Register of Members' interests, members are required where a matter arises at a meeting;

- a. Which directly relates to Disclosable Pecuniary Interest ('DPI') as set out in Appendix B, Table 1 of the Code of Conduct, to disclose the interest, not participate in any discussion or vote and not to remain in room. Where members have a DPI or if the matter concerns an executive function and is being considered by a Cabinet Member with a DPI they must notify the Monitoring Officer and arrange for somebody else to deal with the matter.
- b. Which **directly relates to** the financial interest or well being of a Other Registrable Interest as set out in Appendix B, Table 2 of the Code of Conduct to disclose the interest and only speak on the matter if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain the room.
- c. Which directly relates to their financial interest or well-being (and is not DPI) or the financial well being of a relative or close associate, to declare the interest and members may only speak on the matter if members of the public are also allowed to speak. Otherwise, the member must not take part in discussion or vote on the matter and must leave the room.
- d. Which **affects** the financial well-being of the member, a relative or close associate or a body included under the Other Registrable Interests column in Table 2, to disclose the interest and apply the test set out at paragraph 9 of Appendix B before deciding whether they may remain in the meeting.
- e. Where Members have or a Cabinet Member has an Other Registerable Interest or Non Registerable Interest in a matter being considered in exercise of their executive function, they must notify the Monitoring Officer and arrange for somebody else to deal with it.

NB Any member needing clarification must contact monitoringofficer@northumberland.gov.uk. Members are referred to the Code of Conduct which contains the matters above in full. Please refer to the guidance on disclosures at the rear of this agenda letter.

RIGHTS OF WAY

5. REVIEW OF THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY, ALLEGED RESTRICTED BYWAY NO. 62, PARISH OF BARDON MILL

(Pages 19 - 86)

The Local Area Council is asked to give consideration to all the relevant evidence gathered in support and rebuttal of the existence of restricted byway rights over a route (the majority of which is identified as the U7044 road on the Council's List of Streets) from the B6318 road, south-west of Housesteads, in a general northerly then north-easterly direction to a point south-east of East Hotbank.

6. REVIEW OF THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY, ALLEGED RESTRICTED BYWAY NO. 26, PARISH OF WEST ALLEN

(Pages 87 - 156)

The Local Area Council is asked to give consideration to all the relevant evidence gathered in support and rebuttal of the existence of restricted byway rights over the route of existing Public Footpath No. 26, from the Cumbria County boundary at Blacklaw Cross, in a general northerly direction, to existing Byway Open to All Traffic No. 37, at Keirsleywell Bank.

7. DATE OF NEXT MEETING

The next meeting will be held on Tuesday, 12 July 2022.

8. URGENT BUSINESS

To consider such other business as, in the opinion of the Chair, should, by reason of special circumstances, be considered as a matter of urgency.

IF YOU HAVE AN INTEREST AT THIS MEETING, PLEASE:

- Declare it and give details of its nature before the matter is discussed or as soon as it becomes apparent to you.
- Complete this sheet and pass it to the Democratic Services Officer.

Name:		Date of meeting:		
Meeting:				
Item to wh	ich your interest relates:			
Nature of Interest i.e. either disclosable pecuniary interest (as defined by Table 1 of Appendix B to the Code of Conduct, Other Registerable Interest or Non-Registerable Interest (as defined by Appendix B to Code of Conduct) (please give details):				
у прешани	to double of dollars, (produce give dotte			
Are you int	ending to withdraw from the meeting?	•	Yes - 🗆	No -

Registering Interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012". You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)**.

"Disclosable Pecuniary Interest" means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

"Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

- 1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
- 2. A 'sensitive interest' is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
- 3. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

Non participation in case of disclosable pecuniary interest

- 4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest.
 - Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
- 5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which *directly relates* to the financial interest or wellbeing of one of your Other Registerable Interests (as set out in **Table 2**), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

Disclosure of Non-Registerable Interests

- 7. Where a matter arises at a meeting which *directly relates* to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in **Table 1**) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
- 8. Where a matter arises at a meeting which affects
 - a. your own financial interest or well-being;
 - b. a financial interest or well-being of a relative or close associate; or
 - c. a financial interest or wellbeing of a body included under Other Registrable Interests as set out in **Table 2** you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied
- 9. Where a matter (referred to in paragraph 8 above) affects the financial interest or well-being:
 - a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
 - b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise, you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

Table 1: Disclosable Pecuniary Interests

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the <u>Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.</u>

Subject	Description
Employment, office, trade, profession or	Any employment, office, trade, profession or
vocation	vocation carried on for profit or gain.
	[Any unpaid directorship.]
Sponsorship	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by
	him/her in carrying out his/her duties as a councillor, or towards his/her election expenses.
	This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council
	(a) under which goods or services are to be provided or works are to be executed; and
Land and Property	(b) which has not been fully discharged.
Land and Property	Any beneficial interest in land which is within the area of the council. 'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.
Licenses	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer
Corporate tenancies	Any tenancy where (to the councillor's knowledge)— (a) the landlord is the council; and (b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.

Securities	Any beneficial interest in securities* of a
	body where—
	(a) that body (to the councillor's knowledge)
	has a place of business or land in the
	area of the council; and
	(b) either—
	i. the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or ii. if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the
	councillor, or his/ her spouse or civil partner or the person with
	whom the councillor is living as if
	they were spouses/civil partners
	has a beneficial interest exceeds

* 'director' includes a member of the committee of management of an industrial and provident society.

one hundredth of the total issued

share capital of that class.

* 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Table 2: Other Registrable Interests

You have a personal interest in any business of your authority where it relates to or is likely to affect:

- a) any body of which you are in general control or management and to which you are nominated or appointed by your authority
- b) any body
 - i. exercising functions of a public nature
 - ii. any body directed to charitable purposes or
 - iii. one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)



NORTHUMBERLAND COUNTY COUNCIL

TYNEDALE LOCAL AREA COUNCIL

At a meeting of the **Tynedale Local Area Council** held at County Hall, Morpeth on Tuesday, 10 May 2022 at 4.00 p.m.

PRESENT

Councillor T Cessford (Chair, in the Chair)

MEMBERS

A Dale N Oliver
SH Fairless-Aitken JR Riddle
C Horncastle A Sharp
I Hutchinson G Stewart
D Kennedy HR Waddell

N Morphet

OFFICERS

K Blyth Planning Area Manager (West)

M Bulman Solicitor

A Fisher Construction Manager

D Hunt Neighbourhood Services Area

Manager

R McCartney Infrastructure Manager

E Sinnamon Development Service Manager N Snowdon Principal Programme Officer

(Highways Improvement)

N Turnbull Democratic Services Officer

ALSO PRESENT

K. McGuiness, Police Crime Commissioner and colleague

F. Forsythe and Dr M Chainey, Tyne Valley Community Rail Partnership

12 members of the public and 1 representative from the press.

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Scott.

2. MINUTES

Minute No. 101

Ch.'s Initials.....

Local Cycling and Walking Infrastructure Plans

The 9th bullet point on page 14 of the minutes be amended to read:

'Facilities were needed to enable residents to use cycles as part of a longer journey as currently there was a limit of 2 cycles on some trains and very few busses accepted cycles.'

Minute No. 99bii)

Petition - Allendale Road, Hexham

Councillor Dale queried the procedure regarding amendments to recommendations. The Solicitor obtained clarification that the minute was correct and agreed to provide advice regarding motions outside of the meeting.

RESOLVED that the minutes of the meeting of the Tynedale Local Area Council, as circulated, be confirmed as a true record and signed by the Chair, subject to the above amendment.

DEVELOPMENT CONTROL

3. PROCEDURE TO BE FOLLOWED AT MEETINGS

The Chair advised members of the procedure which would be followed at the meeting.

4. DETERMINATION OF PLANNING APPLICATIONS

The committee was requested to decide the planning applications attached to the report using the powers delegated to it. Members were reminded of the principles which should govern their consideration of the applications, the procedure for handling representations, the requirement of conditions and the need for justifiable reasons for the granting of permission or refusal of planning applications.

RESOLVED that the information be noted.

5. 21/03959/FUL

Resubmission: Erection of rural worker's dwelling Land South of Woodside Cottage, Bardon Mill, Northumberland

The Planning Area Manager (West) introduced the application with the aid of a powerpoint presentation and advised that there were no updates following publication of the report.

Miss Ferguson, agent for the applicant, spoke in support of the application. She highlighted the following:-

- The owners had commenced discussions with her four years previously due to there being a genuine and pressing need on the farm for two workers to care adequately for their livestock. This had led to the son living in a caravan on the farm for most of his adult life.
- The process had been delayed due to Covid, staff shortages and the sadly the death of the applicant's wife before the appeal hearing.
- The report concluded that there was a clear functional need on the farm for a second worker to live there, otherwise there it would result in harm to the livestock and the business. It was imperative that the livestock had year-round care including nighttime calving and lambing.
- The report also concluded that the business was financially viable and had a reasonable prospect of remaining so. The family had farmed there for four generations.
- The only issue in dispute was the availability and suitability or otherwise of an existing dwelling, 'Keeper's Cottage', to meet the need. This was the reason the Inspector dismissed an appeal for a larger house two years ago and the recommended reason for refusal.
- Keeper's Cotttage was a private investment with the income being part of the applicant's pension planning. It was also succession planning and was to be left to his daughter, whilst the son would inherit the farm in which he was now a partner. The alternative was that the farm be split upon the death of the applicant which would be to its detriment.
- Paragraph 10 of planning practice guidance states that a decision maker could take into account the fact that a new dwelling on site is essential for the continued viability of a farming business through the farm succession process. The Inspector overlooked this material consideration, and it is also not mentioned in the committee report.
- They were of the view that Keeper's Cottage was beyond the means of a farm worker and was rented out with stables and land. The appeal Inspector considered that the cost of building the new dwelling would not be dissimilar to the rent for Keepers Cottage, assuming that the house was separated from the land and stables and a reduced rent was accepted.
- They believed that there was an error within the Inspector's decision at paragraph 10 that the daughter owned the house, which was not true at that time.
- In a letter to the Council, the daughter states that she would not consent to a reduction in the rental income of her investment. Nor does she consider it reasonable to evict long-standing tenants from the property. She has no financial interest in the farm.
- Significant changes since the appeal hearing which should be taken into account when arriving at a decision include:
 - The size of the proposed dwelling has been reduced to make it cheaper to build.
 - The daughter had inherited a 50% share in Keeper's Cottage and confirmed that she would not accept a reduced rent for it or permit the eviction of the current tenants.
 - The son has been made partner in the farm, securing his future in the business and the farm's succession.

- The rent at Keeper's Cottage had been reviewed and had increased from £1000 to £1500 per month, making it even less viable for the son to rent.
- Ridley Farm was a successful farming business as a result of the commitment and hard work of the applicant and his son. It was the sort of rural businesses that planning and the Council should look to support and protect. They hoped that Members would therefore grant permission.

Mr Ferguson, the applicant, added they wanted to keep a young person on the farm in a tied agricultural cottage. It was difficult to get young people involved in farming and important not to lose valuable skills. They needed to do everything necessary to keep young people involved.

In response to questions from Members of the Committee the following information was provided:-

- The availability of properties on site which would meet the needs of the farming enterprise needed to be explored. Those properties did not need to be owned by the farm or the family.
- The Inspectors decision on a similar proposal was that it had not been demonstrated that there was no other suitable accommodation in the area which would meet the needs of the farming enterprise and available to a farm worker.
- The intention of the family did not mean that Keeper's Cottage was unavailable.
- Information received with this application stated that the secure tenancy benefitted from succession which differed to the information submitted with the previous application. An independent assessment carried out on behalf of the Council by Alan Jackson stated that as the tenancy of the farm was granted after 1984, it was only secure for the lifetime of the applicant with no succession rights. However, it was expected that the agricultural tenancy would pass from father to son on the father's retirement.
- NLP Policy HOU 8 states that the development of isolated homes in the open countryside will only be supported where:
 - a. There is an essential and clearly established need for a full-time rural worker necessary to meet the operational needs of a rural business to live permanently at or near their place of work in the countryside, and where it can be demonstrated that:
 - i. The business is financially sound and viable with a clear prospect of remaining so, the activity and landholding units concerned having been established for at least three years and been profitable for at least one of those last three years; and
 - ii. The functional need could not be fulfilled by any existing dwelling on the landholding unit or any other existing accommodation in the immediate area, which is suitable (including by means of refurbishment or appropriate extension) and potentially available for occupation by the workers concerned.
- The aforementioned policy required consideration of suitable properties in the area. They did not need to be owned by the farm or the family.
 Officers had concluded that Keeper's Cottage could be made available. If

- Members concluded differently, this could be justification for a decision that the application be granted.
- The application under consideration was smaller than the property considered by the Inspector.
- Eviction of a short-term tenant of Keeper's Cottage was not a material planning consideration.
- The costs of building the smaller property had been reviewed by Alan Jackson and had not found a significant difference between the rent on Keeper's Cottage and the annual costs of constructing and fitting out a new dwelling.
- The Inspector had concluded that Keeper's Cottage was not economically unviable for use as a rural worker's dwelling.
- The rent of Keeper's Cottage had been set by the family and had not been tested.

Councillor Hutchinson proposed that the application be granted planning permission, contrary to the officer recommendation, and that the wording of conditions to be delegated to the Director of Planning with the agreement of the Chair, including an agricultural occupancy condition. It was accepted that the business satisfied the tests in Northumberland Local Plan Policy HOU 8 and required 2 workers to reside at or near the farm. Keeper's Cottage was privately owned and was not available as a rural worker cottage and at an affordable rent for a rural worker and there was not suitable alternative accommodation elsewhere in the vicinity of the farm.

This was seconded by Councillor Sharp.

There was some concern regarding the view taken on other applications of a similar nature and setting a precedent for applications in the future. Other members were familiar with the business and believed there was a genuine need for a rural workers cottage and did not agree with the Inspector that there was an available property on site. They also commented that each application was judged on its own merits.

Upon being put to the vote the results were as follows: -

FOR: 8; AGAINST: 3; ABSTENTION: 1.

RESOLVED that the application be **GRANTED** permission and that the wording of conditions to be delegated to the Director of Planning with the agreement of the Chair, including a condition ensuring that occupation is limited to a rural worker only.

6. 20/03425/FUL

Development of 9 no. residential dwellings (100% affordable) including associated access, car parking, landscaping and all other ancillary works (amended layout and housing mix)

Land North of Piper Road, Piper Road, Ovingham, Northumberland

The Planning Area Manager (West) introduced the application with the aid of a powerpoint presentation and explained that the application had previously

been considered by the committee on 15 February 2022 although the Section 106 agreement had not been completed prior to the adoption of the Northumberland Local Plan (NLP) on 30 March 2022. The Section 106 would now only look to secure affordable housing on the site and no longer include a financial requirement to contribute to sport and play provision. Adoption of the Northumberland Local Plan had not changed the previous suitability assessment although the report and conditions had been updated to reflect the adopted Northumberland Local Plan policies and include additional conditions no. 30 for accessible housing and no. 31 climate change mitigation. She added that condition no 31 should be amended to refer to Policy STP4 and an additional condition no. 32 be added regarding broadband, see below:

In response to questions from Members of the Committee the following information was provided:-

- The conditions and informative would be checked to ensure that the wording agreed last time regarding the size of plants for replacement hedging was repeated in this application.
- A condition regarding EV chargers had been included.
- Tynedale had been in the minority with regard to former policies which sought contributions under Section 106 agreements for sport and play provision. Overall, the new plan would deliver better infrastructure across the county.
- It was disappointing that the decision notice had not been issued prior to adoption of the Northumberland Local Plan, the number of units proposed at this site was under the new threshold of 10 units. Whilst a contribution from this site could not be obtained for sport and play provision, funds for Ovingham could be available from a cumulative fund.
- It was confirmed that all of the units would be affordable housing for rent and managed by a social housing landlord.
- An additional condition regarding broadband was to be added in accordance with the new NLP policy ICTZ which required that fibre broadband be provided in rural areas.
- Officers could not speculate on the familiarity of the applicant with the new NLP and thresholds contained within its policies.
- It was agreed that good design did not have to be expensive, and officers would seek to increase design standards under the NLP.
- There was no specific policy which stated that EV chargers or solar panels
 must be installed at a site. However, condition no. 31 required details of
 proposals to minimise use of resources and mitigate and adapt to climate
 change before construction; developers could not refuse to incorporate
 measures such as the aforementioned.

The Development Service Manager agreed to obtain a briefing paper from Strategic Service Manager to explain the changes and benefits of the new plan in relation to Section 106 agreements.

Councillor Oliver proposed acceptance of the recommendation to approve the application subject to:

Completion of a Section 106 agreement for affordable housing.

- Amendment of condition no 31 to refer to Policy STP4.
- Inclusion of an additional condition regarding provision of broadband.
- Provision of EV chargers for every property.
- The wording of conditions to be delegated to the Director of Planning with the agreement of the Chair.

This was seconded by Councillor Kennedy.

Upon being put to the vote, the motion was unanimously agreed.

RESOLVED that the application be **GRANTED** permission for the reasons and with the conditions as outlined in the report and subject to:

- Completion of a Section 106 agreement for affordable housing.
- Amendment of condition no 31 to refer to Policy STP4.
- Inclusion of an additional condition regarding provision of broadband.
- Provision of EC chargers for every property.
- The wording of conditions to be delegated to the Director of Planning with the agreement of the Chair.

Councillor Riddle left the meeting whilst the following application was discussed.

7. 20/02417/FUL

Residential development of 9 detached and semi-detached dwellings, single and two storey, plus associated infrastructure works (amended description)

Land North of Lonkley Lodge, Lonkley Head, Allendale, Northumberland

The Planning Area Manager (West) introduced the application with the aid of a powerpoint presentation and explained that the application had previously been considered by the committee on 10 August 2021 although the Section 106 agreement had not been completed prior to the adoption of the Northumberland Local Plan (NLP) on 30 March 2022. There was no longer a requirement to include a Section 106 agreement to seek a financial contribution for sport and play provision. Adoption of the Northumberland Local Plan had not changed the previous suitability assessment although the report and conditions had been updated to reflect the adopted Northumberland Local Plan policies and include additional conditions for accessible housing, climate change mitigation, reference to policy STP 4 and broadband, see below:

Mr. P. Barber spoke in objection to the application and raised the following concerns:

- Flood risk. Whilst the inclusion of condition no 21 was welcomed to deal
 with foul and surface water from the development, as it was drafted it did
 not specify changes to the existing drainage systems.
- 2 properties were to be built over an underground conduit and it was suggested that condition no. 21 should include reference to rerouting of

- any existing water carrying cundies or conduits, otherwise there was a potential flood risk, and their objections would need to be maintained.
- The deliverable 5-year housing supply equated to 10.9 years across the county and therefore there appeared to be no need to approve the proposal in terms of housing need.
- The local perception of housing need was for smaller, more affordable houses than larger and more expensive units which would be purchased by wealthier families moving to Allendale.
- There was a covenant which prohibited development of the land and the current beneficiary of the covenant had confirmed that they had not been contacted regarding its removal. The availability of the land was therefore queried and that the covenant issues should be dealt with before building commenced to ensure that it did not become an abandoned building site.

Parish Councillor Mike Kirk stated that the Parish Council were concerned regarding the loss of the Section 106 contribution for sport and play. However, he had listened to the discussion on the previous application and understood the explanation. He requested that a copy of the briefing paper be shared with all parish councils so they could better understand the replacement policies and funding arrangements.

Mr. A. Herdman, agent for the applicant, spoke in support of the application. He wished to address the following points raised by the objectors:-

- It had not been in the developer's interest not to progress matters as they had raised finance to purchase the land. If they did not sell the houses, they did not make money.
- The application had previously been approved in August 2021 which had led to the purchase of the land and an application to change ownership with the Land Registry in September 2021. Due to staff shortages at the Land Registry, this had not been completed and received until March 2022. The Council's legal section had been unable to progress the Section 106 agreement until the title had been in the applicant's name. The delay had not been of benefit to the developer or the architect.
- There had been no changes to the proposals from August 2021 and that the principles of the development complied with the Northumberland Local Plan.
- Lengthy discussions had been held with Northumbria Water and the Lead Local Flood Authority regarding drainage and the risk of flooding to ensure that the design and calculations dealt with surface water. The proposed conditions specified the quantity and rate that could be put in the network and costly measures for underground storage.
- The development consisted of 2-4 bedroom dwellings with a mix of single and two storey, detached and semi-detached properties. The cost of houses had increased rapidly in the UK due to there not being enough houses.
- The issue with the covenant was not a planning matter. If land had been purchased which could not be developed, this was not relevant to the planning decision.

In response to questions from Members of the Committee the following information was provided: -

- The covenant issue was not one which was considered by officers when considering the planning application. Whether the site could be developed was a separate issue.
- A new decision was required, although there had been no changes to the
 plans and the principle of development had been accepted at the previous
 meeting. The report had therefore been updated to reflect policies and
 conditions in the newly adopted Northumberland Local Plan which no
 longer included a requirement for sport and play provision.
- Condition no. 35 was similar to condition no. 31 on the previous application (20/03425/FUL) discussed earlier in the meeting. It was also agreed that it would be helpful to include informative no.14 from the aforementioned application.
- The minutes of the meeting on 10 August 2021 and conditions agreed would be checked and replicated to ensure that protective measures around the pond did not exclude wildlife. It was suggested that this could be included in the landscaping condition as SUDS water features acted as a natural draw to children, they therefore needed to meet health and safety requirements whilst ensuring that there were also ecological benefits.
- Condition no. 16 would be amended to remove repeated wording.

Councillor Dale proposed acceptance of the recommendation to approve the application subject to:

- Amendment of condition no. 35 to refer to Policy STP4.
- Inclusion of an additional condition regarding provision of broadband.
- Amendment of condition no. 16 to remove repetitive wording.
- The wording of condition no. 10 on landscaping to include details regarding safety measures and fencing to be provided around the pond.
- Informative no. 14 from 20/03425/FUL be included.
- Delegated authority be given to the Director of Planning, following consultation with the Chair regarding the additional wording/conditions.

This was seconded by Councillor Stewart.

Members expressed their disappointment regarding the loss of funding from the Section 106 agreement which would have been of benefit to facilities in Allendale. It was also disappointing that the number of units was below the threshold where there would have needed to be some provision for affordable housing.

Upon being put to the vote the results were as follows: -

FOR: 10; AGAINST: 1; ABSTENTION: 0.

RESOLVED that the application be **GRANTED** permission for the reasons and with the conditions as outlined in the report and subject to:

Ch.'s Initials.....

- Amendment of condition no. 35 to refer to Policy STP4.
- Inclusion of an additional condition regarding provision of broadband.
- Amendment of condition no. 16 to remove repetitive wording.
- The wording of condition no. 10 on landscaping to include details and regarding safety measures and fencing to be provided around the pond.
- Informative no. 14 from 20/03425/FUL be included.
- Delegated authority be given to the Director of Planning, following consultation with the Chair regarding the additional wording/conditions.

8. PLANNING APPEALS UPDATE

The report provided information on the progress of planning appeals.

Councillor Dale requested that her thanks be given to Melanie Francis for the work to defend the Council on the appeal in respect of 20/01932/FUL Land South of Church Lane, Riding Mill, which had been a particularly difficult appeal.

RESOLVED that the information be noted.

Councillor Horncastle left the meeting.

The meeting adjourned at 5.55 p.m. until 6.05 p.m.

LOCAL AREA COUNCIL BUSINESS

9. PUBLIC QUESTION TIME

There were no questions from members of the public.

10. POLICE AND CRIME COMMISSIONER

The Police and Crime Commissioner, Kim McGuinness was in attendance to give an overview of policing and community safety matters in the Tynedale area. She raised the following points:

- The role of the Police and Crime Commissioner was to determine strategic policies and was not involved in operational decisions.
- The 'Fighting Poverty, Fighting Crime' campaign focused on the root causes of offending by tackling deprivation and unemployment.
- A reduction in the number of police officers meant that they needed to focus on prevention.
- Unfortunately, there was a positive link between poverty and crime.
- Operation Payback was a funding initiative sourced from the proceeds of crime. Applications for grants could be made twice per year from community groups that that supported vulnerable people or projects that provided diversionary activities to help tackle anti-social behaviour.
 Allendale Youth Ambition had been successful in a recent bid.
 Applications would be open in June 2022 from organisations in

- Northumberland for grants up to £5,000 to provide activities during the summer holidays.
- Rural crime, including theft of vehicles and machinery, was being addressed by tackling organised criminal groups, FarmWatch schemes and Operation Checkpoint.
- Northumberland and the police force region were very safe areas.

She provided the following information in response to questions:

- They were working on plans for the former police houses in Fairfield, Hexham which had previously been identified for sale. She agreed to liaise with Councillor Kennedy.
- There had been drug related deaths and crime in Haltwhistle which was uncharacteristic of the area and needed a two-pronged approach with preventative work. There had been drug related arrests and a recent substantial sentence for the supply of drugs by one individual. They needed to raise awareness with the community of the consequences.
- Other methods of consultation and engagement were being used instead
 of the local multi agency panels. They welcomed discussions to find
 alternative ways of working with partners, but they could not be funded
 from the proceeds of crime fund. Members expressed concern that their
 involvement and local knowledge was lost when LMAPs had ceased.
- The recruitment of new police officers was going well with 423 new officers in post out of the allocation of 615. However, they did not entirely replace the 1,100 officers that had previously been lost when austerity measures had been implemented.
- Whilst unemployment was an issue, more people were living in poverty which had a huge impact on crime and the victims of crime.
- The role of the Police and Crime Commissioner did not involve operational matters. They hoped to influence the environment and ask questions, which could be seen as political.
- She was attending each of the Northumberland Local Area Council's to address issues relevant to the different areas of the county. She agreed that it was important to acknowledge the causes of problems and commented that there had been a significant reduction in money spent on youth services in the last 12 years which had led to an increase in youth disorder.
- Implementation of drug testing within schools was not within her authority.
 However, a pilot drug test on arrest scheme in Newcastle was to be rolled out across the force area.
- She was very proud of the Violence Reduction Unit and their work to prevent young people becoming vulnerable to drugs and targeting those that made their living out of selling drugs.
- The decision to close police stations had been an operational one following an in-depth analysis regarding their use. The Police and Crime Commissioner would not have been involved in that decision. Unfortunately, they did not have the funds to reopen police stations and her preference was to employ more officers than provide desks. Comments regarding the consultation process in Prudhoe would be passed to the relevant section.

• The allocation of seats on the Northumbria Police and Crime Panel was determined by the Council and its administration.

Several of the Members thanked the Police Crime Commissioner and police officers for their work keeping residents safe in Northumberland.

RESOLVED that the information be noted.

11. PETITIONS

This item was to:

a) Receive any new petitions:

There were no new petitions.

b) Consider reports on petitions previously received:

i) Dangerous Road (Peth Head, Hexham)

Catherine Bell, Lead Petitioner, explained the background leading to the current position on Peth Head. She commented as follows:

- The new bus station had opened on Dene Avenue in 2016 with measures
 to control the traffic including traffic lights, speed bumps and roundabouts.
 It was a busy 20 mph road with large volumes of vehicles which had been
 successfully calmed, creating a safer road for drivers and pedestrians.
- Dene Street and Peth Head ran parallel to the main road. The latter being a small side street designed for light traffic in an area populated by families, pensioners and with a vet practice. It was also 20 mph but with no signage or speed restrictions in place.
- The traffic calming measures on Dene Avenue had worked so well that drivers diverted their vehicles on alternative routes to bypass the main road which meant that there was a new main route without any of the traffic calming methods instigated on the intended main road.
- Between 8am 10pm vehicles of all sizes, including buses, lorries, car carriers, logger wagons, school vehicles and buses, tractors, sheep transporters etc. used the street as a 'rat run' to avoid the roundabouts, traffic lights and speed bumps and disregarded the speed limit. It was suggested that if this was now the main road, it should have the same traffic calming measures as the other road.
- The lanes on Peth Head were 8 foot 9 inches wide whereas the lanes on Corrbridge Road were 12 feet 6 inches wide. The average width of a logging wagon, bus or car transporter was 8 foot 4 inches, without wing mirrors. This meant there was under 5 inches spare on Peth Head compared to 3 foot 9 inches spare on the main road. It could not be safer for larger vehicles to use the alternate route so it must be quicker due to there being no enforceable speed restrictions, despite both being 20mph. The main road was purposely built to accommodate large vehicles turning which Peth Head was not and observance of the speed limit was questioned.

 Quotes from residents referred to the structural damage from larger vehicles, difficulties crossing roads, the speed of vehicles, limited visibility, the dangers of using the road.

The Chair commented on his familiarity with the roads and the issues that the lead petitioner had raised.

Neil Snowdon, Principal Programme Officer (Highways Improvement), reported that the area office had been asked to arrange additional repeater signs in the areas and that 20 mph road marking roundels be provided at both entrances to Peth Head. A speed survey would also be carried out to determine actual vehicle speeds.

Several of the members expressed their support for the petition as vehicle speed and road safety was a concern and had been highlighted by one of the Councillors several months previously.

Robin McCartney, Infrastructure Manager, referred to the usefulness of site visit which had been held the previous week. He agreed with the comments made regarding the perception of speed and the difficulties crossing the road. He provided the following information in response to questions:

- The Highways mailbox received 300-400 emails per month and confirmed that the unanswered email would be investigated.
- An explanation of the Local Transport Plan process which required speed / traffic surveys; unfortunately, there was a backlog of requests. Those identified as a priority were carried out within 1-2 months, however there was an average waiting time of approximately 6/7 months whilst some had taken up to 12 months to be carried out. Officers were trying to improve communication and performance monitoring. Stage 2 required funding for a feasibility study if the traffic survey results indicated that this was required. Schemes had to be assessed and ranked against each other to determine the priority for the next round of the LTP programme. Depending on the conclusions, stage 3 required that if physical measures were required to be installed, a scheme be assessed and prioritised against others in the next financial year.
- If the survey identified that safety measures needed to be implemented quickly, this would need to be discussed with Members and a business case made to obtain support. Members Local Improvement Scheme funds could also be used to support and hasten projects
- Construction of pedestrian crossings could cost in excess of £100,000.

RESOLVED that the contents of the report be noted and the following proposed actions be supported:

- a) Introduction of additional repeater signs and 20mph roundels (road markings) to be provided at either end of Peth Head.
- b) A speed survey be arranged to assess actual vehicle speeds. Depending on the outcomes of the survey, consideration be given to whether any further measures would be appropriate.

c) To consider updates on petitions previously considered:

There were none to consider.

12. LOCAL SERVICES UPDATE

Members received the following updates from the Area Managers from Neighbourhood Services and Technical Services:

Technical Services:

- The winter services period had now finished and had been mostly relatively mild. All staff involved were thanked for their participation.
- Preparation for surface dressing works had been taking place over the last 6 weeks for 11 schemes in the Tynedale area and over 450,000m2 across the county.
- Work on LTP schemes would commence in June. A one-way system was to be implemented for Hencotes in Hexham during the 6-week summer holidays.
- The number of actionable defects had continued to reduce over the last few months.
- The Tynedale area had received a new hot box which meant that more repairs could be carried out each day. A new gulley wagon had also been delivered and was working around the programmed route and also responding to issues raised.
- A dedicated drainage gang continued to work in the area renewing gulley pots, cross drains and ditching as well as visiting known problem areas including several locations in Haltwhistle, Newbrough and Riding Mill.
- A number of Members schemes had been programmed.
- Visits to wards could be arranged with the Highways Delivery Area Manager on request.

The following issues were discussed:

- Resurfacing work around Hexham High School was scheduled to take place during the Autumn half term school holiday.
- Councillor requested gulleys be cleaned on the A695 at Riding Mill and agreed to email a list of locations after the meeting.
- Timing of repair work from a vehicle collision with the Shambles was
 queried and whether it could be completed before anniversary
 celebrations due to take place in October. It was noted Property Services
 were coordinating repairs from the motor vehicle accident as well as some
 electrical work and whether listed building consent was required.

Scheme start dates and updates would be provided to Councillors Kennedy, Fairless-Aitken, Stewart, Waddell, Hutchinson,

Councillor Riddle reported that discussions were ongoing regarding design work on Allendale Road which were expected by the end of July. They were taking account of work at the school, could possibly include 20 mph on the

lower section and whether a physical chicane was necessary or if it would create additional road safety concerns for HGV movement.

Neighbourhood Services:

- Residual and recycling waste collection services continued to perform well.
- The service was under significant strain from the loss of HGV drivers.
 Recruitment has proved difficult given the national shortage of HGV drivers and options were being explored including a new job advert strategy.
- Changes had been required at times to meet demand for the bulky waste service, which was constantly monitored, and extra booking slots created to meet the target of collection within 8 days.
- There were nearly 7,200 garden waste customers in the Tynedale area.
- Grass cutting had commenced with 2 or 3 cuts having been carried out which was what was expected with an approximate 3-week cycle. Some delays had been experienced due to wet weather around the bank holiday weekend.
- Weed spraying had commenced and would be carried out over the next 4-6 weeks period if weather conditions permitted. This was not during wet or windy conditions. Any areas of particular concern should be reported to the officers.
- Verge cutting was expected to take place in June and July.

Responses to issues raised by Councillors included:

- Issues regarding contamination of recycling bins were now being investigated by newly appointed officers. Households were normally given a warning letter with contaminated recycling bins emptied with the next residual waste collection. Recycling would then recommence once the bin was emptied.
- Glass could not currently be disposed of in the recycling bins as the
 processing plant for waste from Northumberland was unable to segregate
 materials when glass broke. A glass recycling trial was taking place within
 4 areas of the county to enable the Council to collect data when
 Government funding became available. A food waste trial was also
 proposed be held in the near future.

RESOLVED that the updates be noted.

13. TYNE VALLEY COMMUNITY RAIL PARTNERSHIP

Fiona Forsyth, Community Rail Partnership Officer and Dr Malcolm Chainey, Chair, were in attendance to explain the role of the partnership in delivering the Department for Transport's Community Rail Strategy. (A copy of the power point presentation was enclosed with the signed minutes and would be circulated electronically after the meeting):

The presentation highlighted:

- The background and composition of the partnership. They were founded in 2004 and provided a link between communities and the rail industry.
- Tyne Valley Rail User's Group was a separate organisation with some overlapping aims.
- Community rail was originally developed to safeguard the future of local lines. The latest strategy was published in 2018 by the Department of Transport 'Connecting Communities with the Railways.
- Delivery of four key pillars:
 - providing a voice for the community
 - promoting sustainable, healthy and accessible travel
 - bringing communities together and supporting diversity and inclusion
 - supporting social and economic development.
- They worked with the rail industry, shareholders and education establishments across all age groups.
- There were 70 community rail partnerships across the UK. With the assistance of volunteers, they worked to increase passenger numbers on community rail lines.
- The Tyne Valley Community Rail Partnership were based at the Booking Hall in Haltwhistle which was used for meetings and also for free educational visits for schools which included train travel.
- They worked with the local Rail Academy at Newcastle College which to develop the skills required for rail employees and promoted the area as a visitor attraction at railway stations such as Glasgow and Teeside.
- With the support of CrossCountry they had previously provided a student with a marketing internship. It was hoped that this could be repeated in the future.
- Delivery of an anti-trespass competition, Backtrack, as well as inclusion competitions such as Lyric and Line which explored reasons (and barriers) to travel, through music and song.
- Current projects included revival of the waiting rooms and redundant wooden buildings at Haltwhistle Railway Station.
- A review of the buildings, facilities and environment of the stations on the Tyne Valley Line had been undertaken by the Infrastructure Director to consider accessibility issues and develop projects should funding streams become available.
- Assistance could be provided by:
 - Working with them to improve stations.
 - Promotion of their education work.
 - Promotion of their inclusion work
 - Improve the interface between County and Railway.

Information provided in response to questions, included:

 Post pandemic, the railway required large amounts of public funding to keep it running. It was critical that the timetable met people's needs and that trains ran at the right time to enable connection with busses and the metro to increase passenger numbers. It was vital that these did not reduce further. Through ticketing would also be beneficial.

- Passenger numbers were increasing. Data was normally published annually in December for the previous financial year. They were also provided with some confidential Northern ticket sales data. The information was used to determine where efforts should be directed to target stations or journeys which were not being used.
- The difficulties of travelling with cycles was acknowledged given the restrictions on local trains and inability to make a reservation. The type of train used also determined how many cycles could be transported at a time. Some of the rolling stock was not adaptable. They had spoken to Northern who were looking at engineering solutions, but change was difficult and slow. They requested that members used their contacts to lobby the Government.
- Marketing opportunities were to be explored for off-peak leisure travel which would 'smooth' the number of users at peak travel times.
- Use of public transport was increasing and had been seen by increasing vehicle numbers at Prudhoe train station.

Members commented that some stations were well used but that poor lighting was a deterrent to potential passengers at others. Other issues included the availability of shelter on platforms and the timetable. A Councillor intended to enquire whether the Members Local Improvement Scheme fund could be used to help finance improvements at his local railway station(s).

RESOLVED that the presentation be received and that the comments be noted.

14. OUTSIDE BODIES

Members considered a list of appointments to outside bodies for 2022/23.

RESOLVED that the following list of appointments be confirmed:

- Groundwork North East Land of Oak and Iron Project Board G
 Stewart
- Haltwhistle Partnership Limited A Sharp
- Haltwhistle Swimming & Leisure Centre Man. Cttee A Sharp
- Hexham TORCH Centre Management Committee T Cessford
- Prudhoe Community Partnership A Scott
- Queens Hall Arts Trust SH Fairless-Aitken
- Sport Tynedale N Oliver
- Tyne Valley Community Rail Partnership Board H Waddell

15. MEMBERS LOCAL IMPROVEMENT SCHEMES - PROGRESS REPORT

The Local Area Council received a progress update on Members' Local Improvement Schemes as at 1 March 2022. (A copy of the report is enclosed with the minutes.)

RESOLVED that the report be noted.

16. LOCAL AREA COUNCIL WORK PROGRAMME

A list of agreed items for future Local Area Council meetings was circulated. (A copy is enclosed with the minutes.)

Members were invited to email any requests to the Chair and / or Democratic Services Officer between meetings.

RESOLVED that the work programme be noted.

17. DATE OF NEXT MEETING

The next meeting would be held on Tuesday 14 June 2022 at 4.00 p.m.

CHAIR		
DATE	 	

Agenda Item 5



TYNEDALE LOCAL AREA COUNCIL 14 June 2022

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

ALLEGED RESTRICTED BYWAY No 62 PARISH OF BARDON MILL

Report of the Executive Director of Local Services Cabinet Member: Councillor Jeff Watson, Healthy Lives

Purpose of report

In this report, the Tynedale Local Area Council is asked to consider all the relevant evidence gathered in support and in rebuttal of the existence of restricted byway rights over a route (the majority of which is identified as the U7044 road on the Council's List of Streets) from the B6318 road, south-west of Housesteads, in a general northerly then north-easterly direction to a point south-east of East Hotbank.

Recommendation

It is recommended that the Local Area Council agrees that:

- there is sufficient evidence to indicate that public vehicular rights have been reasonably alleged to exist over the route S-X-R-P-Q;
- (ii) the Natural Environment and Rural Communities Act 2006 would appear to have extinguished the public's motorized vehicular rights over the S-X part of the route;
- (iii) by virtue of common law (see Kotegaonkar V SoS for EFRA [2012]) the public's motorized vehicular rights would also appear to have been extinguished over the X-R-P-Q part of the route;
- (iv) the whole route be included in a future Definitive Map Modification Order as a restricted byway.

1.0 BACKGROUND

1.1 By virtue of section 53 of the Wildlife and Countryside Act, 1981 the County Council is required to keep the Definitive Map and Statement under continuous review and make modification orders upon the discovery of evidence, which shows that the map and statement need to be modified.

1.2 The relevant statutory provision which applies to adding a public right of way to the Definitive Map and Statement, based on historical documentary evidence, is Section 53(3)(c)(i) of the Wildlife and Countryside Act, 1981. This requires the County Council (as Surveying Authority) to modify the Definitive Map and Statement following:

"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;"

1.3 All the relevant statutory provisions and competing rights and interests have been considered in making this report. The recommendations are in accordance with the law and proportionate, having regard to individuals' rights and the public interest.

2.0 PUBLIC EVIDENCE

- 2.1 In the late 1980s the County Council carried out consultations regarding proposals to add a number of unsealed tracks in the north of the County to the Definitive Map as byways open to all traffic on the basis that the routes were included in the County Council's "List of Streets" as unclassified County roads (UCR). The rationale for doing so was that it would not be obvious to members of the public (particularly horse riders, walkers and cyclists) that they were legally entitled to use routes such as these (which were considered to have vehicular status), because their physical appearance might suggest otherwise.
- 2.2 The view, held by those officers of the Council responsible for maintaining the 'List of Streets' for the County of Northumberland was (and still is) that only public roads (not public bridleways or public footpaths) were shown on this List. The only exceptions to this are the surfaced paths and alleyways providing pedestrian links between roads, in urban areas. Thus, tracks in rural settings, which have their own unique reference numbers (e.g. the 'U7044' road), were considered to be all-purpose public highways maintainable at public expense.
- 2.3 Shortly afterwards, the processing of applications from third parties seeking to record public footpath or public bridleway rights was afforded a higher priority. Later on, the process of recording UCRs as byways open to all traffic was effectively suspended because the Ordnance Survey indicated that they would be showing such routes on their published maps as being an "Other route with public access". Although, on that basis, members of the public would still be unclear as to precisely what rights they had over routes identified in this fashion.
- 2.4 The most recent advice from DEFRA (paragraph 4.42, Rights of Way Circular 1/09) is that inclusion on the List of Streets may provide evidence of vehicular rights but that this should be examined on a case by case basis. In view of this advice, it is considered prudent to evaluate the status of the U7044

unclassified County road based upon more than simply its inclusion in the List of Streets.

3. LANDOWNER EVIDENCE

3.1 To date, no landowner comments have been received.

4. CONSULTATION

- 4.1 In May 2021, the Council carried out a consultation with the Parish Council, known owners and occupiers of the land, the local County Councillor and the local representatives of the "prescribed and local organisations" listed in the Council's "Code of Practice on Consultation for Public Path Orders". Three replies were received and are included below.
- 4.2 By email, on 8 August 2021, Cycling UK responded to the consultation, stating:

"10, RB 62,

S to R: existing BOAT

R to P: existing access (Pennine Way)

P to Q existing access

Support = Academic

Comment: Motors would ruin S to R (due to Hadrian's Wall) and wreck R to P."

4.3 By email, on 27 August 2021, the British Horse Society responded to the consultation, stating:

"Alleged restricted byway 62. Plan 10.

"This route is well defined on the ground and much of it is well used by the public. However it is shown as a dead end at Q on the parish boundary, at a point called 'King's Crag Gate'. The name suggests that it continues beyond this point.

"On the tithe award plan for Simonburn parish & township dated 1840, a road is shown going east across the common, which is labelled 'Drift Road from Scotland to Stagshaw Bank'. It crosses the boundary between the parishes of Haltwhistle and Simonburn in an area that is labelled 'Haughton Green Estate'. From a study of old maps, it can be seen that Haughton Green was a local hub of routes that had crossed open country, so of considerably greater importance than it has today.

"In 'A History of Northumberland in Three Parts. Part 2, Volume 2' by John Hodgson, which was published in 1832, the history of the estate that included Haughton Green can be followed from the 17th century when it passed from the Widdrington family to that of Sir Thomas Riddell on the marriage of his son.

"The area is now covered in mature forest and only a bothy is to be found there.

"There seems little point in upgrading a route that results in a dead end so it is suggested that its continuation eastwards is investigated in addition to adding this ancient highway to the definitive map, which the British Horse Society supports."

4.4 By email, on 21 September 2021, Bardon Mill Parish Council responded to the consultation, stating:

"Alleged Restricted Byway No 62 Military Road (north of East Crindledykes) to East Hotbank

"First part of route from Military Road to the Vallum has no current legal access status but is a permissive footpath. The remainder of the route is a detached length of unclassified public highway (U7044) with no right of access or egress at either end; nor along the route, except where crossed by footpaths.

"As far as Bardon Mill Parish Council is aware, the route is used only by walkers. One of our councillors has driven past the southern end of the route twice a day for twenty years and has observed only walkers using that part of the route.

"The Council is concerned that if a restricted byway were to be designated, it would open up the route to illegal use by motorised vehicles which would be impossible to police.

"The understanding is that a public right of way must connect two points where there is a right of public access. That requirement does not appear to be met at the northern end of this proposed route (other than by access land)."

5. DOCUMENTARY EVIDENCE

5.1 A search has been made of archives relating to the area. Evidence of Quarter Sessions Records, Council Highways records, County Maps and O.S. Maps was inspected, and the following copies are enclosed for consideration.

1769 Armstrong's County Map

There is no evidence of track approximating to the route of alleged Restricted Byway No 62.

1797 Thorngrafton Inclosure Award

On the Award plan, there is clear evidence of a route, labelled "Public Bridle Road", approximating to the S-X-R portion of the alleged restricted byway route. In the Award itself, the following is set out:

"Public Bridle Road

Thirty feet in breadth as delineated on plan hereunto annexed. Beginning at the Military Turnpike Road and leading from thence northward through the Allotment awarded to Sir Edward Blackett to a place in the Roman Wall called Rabbishaw Gap."

1820 Fryer's County Map

There is clear evidence of an unenclosed road or track over the southernmost 40% of the alleged restricted byway route (i.e. between the B6318 road and existing Footpath No 1, north-west of Housesteads).

1827 Cary's Map

As with Fryer's Map, there is clear evidence of an unenclosed road or track over the southernmost 40% of the alleged restricted byway route (i.e. between the B6318 road and existing Footpath No 1, north-west of Housesteads).

1828 Greenwood's County Map (Northumberland)

There is clear evidence of a track (identified with a symbol not depicted in the map key, but matching the one used for two nearby routes which have been labelled as "Bridle Road") approximating to the route of alleged restricted byway route.

1844 Thorngrafton Tithe Award

Although the enclosed public road on the south side of the Military Road is shown, there is no evidence of a track over the route of alleged Restricted Byway No 62.

c. 1860 Ordnance Survey Map: Scale 1:25,000 (in 3 parts)

The is clear evidence of an unenclosed road or track over the route of alleged Restricted Byway No 62. Just east of Cragend this track is labelled with the reference number "24a". Just north of the Military Road, this track is labelled with the reference number "10a".

c. 1860 Ordnance Survey Book of Reference

In the Book of Reference published to accompany the 25" 1st Edition Ordnance Survey Map, parcel number 24a in the Township of Ridley (Detached) is described as "Public road". Similarly, parcel number 10a in the Township of Thorngrafton is also described as "Public road".

1867 Ordnance Survey Map: Scale 1:10,560 (reduced)

There is clear evidence of an unenclosed path / track over the route of alleged Restricted Byway No 62.

1898 Ordnance Survey Map: Scale 1:10,560 (reduced)

There is clear evidence of an unenclosed path / track over the route of alleged Restricted Byway No 62. The section just north of Hadrian's Wall is annotated "FP".

1924-6 Ordnance Survey Map: Scale 1:10,560 (reduced)

There is clear evidence of an unenclosed path / track over the route of alleged Restricted Byway No 62. The section just north of Hadrian's Wall is annotated "FP".

Finance Act 1910 plan

There is clear evidence of an unenclosed path / track over the route of alleged Restricted Byway No 62. Being unenclosed, it wouldn't be shown separated from the surrounding land with coloured boundaries in the way that enclosed vehicular public highways typically were. Sometimes unenclosed roads, bridleways and footpaths were nevertheless annotated on the plans, though this isn't the case in this instance.

1932 Haltwhistle RDC Handover Map

The alleged Restricted Byway No 62 route appears to be a pencilled addition to this map. The northern X-R-P-Q part of the route is numbered "49", whereas the southern X-S part of the route is marked with a cross / asterisk. The map key suggests that "Scheduled Roads" are identified with a path number, whilst "Unscheduled Roads" are identified with a cross.

1939 Restriction of Ribbon Development Act 1935 Map & Schedule

There does not appear to be a surviving map, covering the former Haltwhistle Rural District area. The route of the alleged byway is, however, identified within the Schedule of unclassified roads identified under the provisions contained within the 1935 Act. The entry for route number 56 states:

"56. Road from a point 430 yards south of East Hotbank via Cragend and Rapishaw Gap to its crossing of the course of the Roman Vallum."

1951 Highways Map

The X-R-P-Q part of alleged Restricted Byway No 62 is coloured in purple (to show it is publicly maintainable) and identified as the U7044 road.

c.1952 Definitive Map – original Survey Schedules & Map (Haltwhistle RD)

The route of alleged Restricted Byway No 62 exists on the base map, and most of it is coloured brown. Known public roads were generally coloured brown to indicate what the extent of the road network was considered to be. The brown line through the field immediately north of Hadrian's Wall follows the perimeter rather than diagonally across the centre. The S-X section is also coloured brown (though this section isn't identified as publicly maintainable, on the List of Streets).

c.1952 Definitive Map – original Survey Schedules & Map (Hexham RD)

The route of alleged Restricted Byway No 62 exists on the base map, and is coloured brown (even though this is within the neighbouring Haltwhistle RD area). Despite this being identified, no continuation (neither brown road nor public right of way) is identified within the Hexham RD area.

Draft Map

The route of alleged Restricted Byway No 62 exists on the base map. Although the section crossing the field immediately north of Point R, is identified for inclusion as a public footpath ("1"), the rest of the route is not identified for inclusion on the Definitive Map as either a public footpath, public bridleway or Road Used as a Public Path (RUPP), though two public footpaths (numbered "1" and "2") are identified connecting with the alleged restricted byway. A further footpath (also numbered "2") ends on the 'wrong' alignment of the road, north of Point R. One red pencilled annotation to the plan appears to identify the bottom part of the alleged restricted byway as "U7044" and a pencilled annotation further up appears to identify the route as "COUNTY ROAD".

Provisional Map

As with the Draft Map, the route of alleged Restricted Byway No 62 exists on the base map. Although the section crossing the field immediately north of Point R, is identified for inclusion as a public footpath ("1"), the rest of the route is not identified for inclusion on the Definitive Map as either a public footpath, public bridleway or Road Used as a Public Path (RUPP), though two public footpaths (numbered "1" and "2") are identified connecting with the alleged restricted byway. A second Footpath "2" ends on the 'wrong' alignment of the road.

1957 Ordnance Survey Map: Scale 1:10,560 (reduced)

There is clear evidence of an unenclosed path / track over the route of alleged Restricted Byway No 62. The section just north of Hadrian's Wall is labelled "FP".

1958 County Road Schedule

The entry for the U7044 road, in the 1958 County Road Schedule. states:

> "U7044 East Hotbank – Rapishaw Gap From the Bellingham Rural District Boundary at East Hotbank via Cragend and Rapishaw Gap to the course of the Roman Vallum."

The length of the U7044 road is identified as 2.21 miles.

1962 Original Definitive Map (Haltwhistle RD)

The route of alleged Restricted Byway No 62 exists on the base map but, apart from the diagonal field crossing north of point R (which is

Page 25

identified as part of Footpath No 1), it is not identified as a public footpath, public bridleway or Road Used as a Public Path (RUPP).

The original Definitive Statements for the public right of way intersecting with the alleged byway open to all traffic state:

Public Footpath No 1 - missing

Public Footpath No 2

"From FP 1 near Hotbank in a North-westerly and north easterly direction to the Bradley Gate – East Hotbank road north-west of Cuddy's Crags."

Public Footpath No 3

"From the Bradley Gate – East Hotbank road north of Jenkin's Burn in a northerly direction to the Hexham Rural District boundary east of Stonefolds joining FP 14 in the Parish of Simonburn."

Public Footpath No 25

"From the Public road south of Cuddy's Crags in a north-easterly direction along the Roman Wall by Housesteads Crags and the Roman fort to the Hexham Rural District boundary joining FP 3 in the Parish of Haydon.

1962 Original Definitive Map (Hexham RD)

The route of alleged Restricted Byway No 62 (in the Haltwhistle RD area) exists on the base map. There are no public rights of way continuations, within the Hexham RD area, identified from the eastern end of the alleged Restricted Byway No 62 route.

1964 County Road Schedule

The entry for the U7044 road, in the 1964 County Road Schedule, states:

"U7044 East Hotbank – Rapishaw Gap From the Bellingham Rural District Boundary at East Hotbank south-westwards via Cragend and Rapishaw Gap to the course of the Roman Vallum."

The length of the U7044 road is identified as 2.21 miles.

First Review Definitive Map (Haltwhistle RD area)

The route of alleged Restricted Byway No 62 exists on the base map but it is not identified as a public footpath, public bridleway or Road Used as a Public Path (RUPP). Significantly, Footpath No 1 has been realigned to follow the perimeter of the field (effectively swapping places with the previously identified route of the road).

The revised Definitive Statement for the amended Public Footpath No 1, intersecting with the alleged restricted byway, states:

Public Footpath No 1

"From FP 4 in the Parish of Henshaw at the Parish Boundary near Crag Lough in a north-easterly direction along Hadrian's Wall to the West side of Cuddy's Crags then in a north-westerly and easterly direction crossing the County Road (U7044) to the Hexham Rural District Boundary at King's Wicket joining FP 4 in the Parish of Haydon."

1964 Highways Map

The X-R-P-Q part of alleged Restricted Byway No 62 is coloured in purple (to show it is publicly maintainable) and identified as the U7044 road.

1974 County Road Schedule

The entry for the U7044 road, in the 1974 County Road Schedule, states:

"U7044 East Hotbank – Rapishaw Gap (Detached) From the Simonburn Parish boundary at East Hotbank (NY 794709) South-westwards via Cragend and Rapishaw Gap to the course of the Roman Vallum (NY 781681)."

The length of the U7044 road is identified as 2.21 miles.

2006 The Council's 'List of Streets' (2 May 2006)

The X-R-P-Q part of the route of the alleged restricted byway (the U7044) is clearly identified as publicly maintainable highway. Neither the S-X part of the route, nor any continuation beyond point Q, nor any other intersecting routes, are identified as publicly maintainable highway.

6. SITE INVESTIGATION

6.1 From Point S on the B6318 Military Road, 100 metres east of that road's junction with the C312 road, a 2 to 3 metre wide, mainly grass surfaced track proceeds in a northerly direction for a distance of 335 metres, having passed through a field gate, set back slightly, from the road, to Point X at The Vallum, south of Hadrian's Wall. The track continues, northerly, for a further 60 metres to a field gate, with adjacent ladder stile. Beyond this gate, a 2 metre wide grass surfaced track proceeds in a westerly direction for a distance of 110 metres, then in a general northerly direction for 385 metres to a field gate with adjacent ladder stile at Point R, at Rapishaw Gap / Hadrian's Wall. Beyond the wall, a 1 to 2 metre wide grass surfaced path proceeds in a northerly direction for 505 metres across the field to another field gate / ladder stile combination. Where it crosses the wet lowest point of the field, public passage is aided by a flagstone causeway. A 2.5 metre wide stone / earth / grass surfaced path continues, northerly, across the next field for a distance of 360 metres to yet another field gate and ladder stile combination. A 1.5 metre wide grass / stone / earth surfaced track then proceeds in a westerly then north-westerly then northerly direction for 540 metres to a junction with Footpath No 3 (though FP3, itself, isn't evident on the ground). The grass surfaced path continues in a north-easterly direction for a further 120 metres. At this point, the U7044 road / allegater 25 tricted Byway No 62 continues in a

north-easterly direction as a 0.3 metre, petering out to nothing, grass path for a further 60 metres to a point where its junction with a 'proper' stone track is obstructed by a wire fence and drainage ditch. Pedestrian traffic appears to avoid this fence / ditch by turning north-west to join the stone track at a field gate, further to the west. This 'unofficial' diversion is signposted as part of the Pennine Way. Beyond the fence and ditch obstruction, the U7044 / alleged Restricted Byway follows a substantial 2.5 metre wide stone / earth / grass surfaced track in a north-easterly direction for 555 metres to another field gate / ladder stile combination, then continuing for a further 880 metres to Point Q, 400 metres south-east of East Hotbank. The track itself appears to continue, northwards, to East Hotbank. Maps appear to show another track continuing, easterly, to a gate at Kings Crag, though this track is much less evident on the ground now.

7. DISCUSSION

7.1 Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981, requires the County Council to modify the Definitive Map when evidence is discovered 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.

- 7.2 When considering an application / proposal for a modification order, Section 32 of the Highways Act 1980 provides for "any map, plan or history of the locality or other relevant document" to be tendered in evidence and such weight to be given to it as considered justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.
- 7.3 The representation of a path or track on an Ordnance Survey Map is not evidence that it is a public right of way. It is only indicative of its physical existence at the time of the survey.
- 7.4 The X-R-P-Q part of the route of alleged Restricted Byway No 62 is identified on the County Council's current List of Streets as being the U7044 road. This part of the route was identified on the Council's 1951 and 1964 Highways Maps and on the 1958, 1964 and 1974 County Road Schedules. The route was identified (albeit, apparently, as a pencilled addition, on the 1932 Handover Map and can be identified in the Schedule produced under the Restriction of Ribbon Development Act 1935.
- 7.5 The Definitive Statements for the four public footpaths intersecting with the alleged restricted byway all describe it as a road. Clearly the route was considered to be a public road at this time if it had been believed to be a highway of a lesser status, we would have expected this to be identified for inclusion on the Definitive Map as a footpath or bridleway.
- 7.6 The route has been consistently identified as an unenclosed road / track Page 28

on Ordnance Survey maps since c.1860. In the Book of Reference accompanying the 1st Edition map, the route is described as "public road". Although not shown on Armstrong's County Map of 1769 the southernmost 'half' is clearly depicted on Fryer's County Map of 1820, Cary's Map of 1827, and the whole route would appear to be shown on Greenwood's County Map of 1828. The southern part of the route, between the Military Road and Hadrian's Wall, is identified as a Public Bridle Road in the Thorngrafton Inclosure Award.

- 7:7 The County Council accepts that, given the way the regulations were written with regard to the way highway authorities could include publicly maintainable highways in the List of Streets, there was no impediment to public bridleways and public footpaths also being included. That is not to say that any bridleways or footpaths were so shown just that they could be. It must, therefore, be entirely proper to consider each UCR on a case by case basis, but that does not mean that we should begin with the assumption that each UCR is no more than a public footpath unless higher rights can be proven by other means. In Northumberland there is no evidence to suggest that public footpaths and public bridleways were deliberately shown on the 1958, 1964 or 1974 County Road Schedules (forerunners of the modern day List of Streets). The fact that a route is shown on these schedules must, therefore, be evidence of some weight that public vehicular rights exist.
- 7.8 Letters from DEFRA, dated 2003 and November 2006, and Rights of Way Circular 1/09 set out the approach Inspectors and order making authorities should take in determining the status of routes included on the List of Streets. In summary, the guidance states that the inclusion of a route on the List of Streets is not a record of what legal rights exist over that highway but may provide evidence of vehicular rights. However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights. Highway Authorities are recommended to examine the history of such routes and the rights that may exist over them on a case by case basis in order to determine their status.
- 7.9 The Natural Environment and Rural Communities Act 2006 (NERC Act 2006) had a major impact upon the recording of vehicular public rights of way based upon historical documentary evidence. Under section 67 of the Act, any existing, but unrecorded, public rights of way for mechanically propelled vehicles were extinguished unless one of the 'saving' provisions applied. In brief, these saving provisions were: (a) if the main lawful public use between 2001 and 2006 was with motor vehicles; (b) if the route was on the List of Streets (on 2 May 2006) and not also on the Definitive Map as something less than a byway open to all traffic; (c) the route was legally created expressly for motor vehicular use; (d) the route was a road deliberately constructed for public motor vehicular use; or (e) the vehicular highway came about as a result of unchallenged motor vehicular use before December 1930.
- 7.10 Of the saving provisions above, the main one (b), will apply to the U7044 part (i.e. X-R-P-Q) of the route. Where a route is <u>not</u> shown on the Definitive Map as a footpath, bridleway or restricted byway, then the fact that it is shown on the List of Streets will be sufficient to prevent the public's motor vehicular rights from being extinguished.
- 7.11 None of the above saving provisions would appear to apply to the S-X section

- of the alleged restricted byway route. Nor would they appear to apply to any continuation of the vehicular highway, beyond Point Q, or to any other track connecting with the X-R-P-Q route.
- 7.12 It seems fairly clear that the X-R-P-Q section of publicly maintainable highway was identified as an apparently marooned section of publicly maintainable highway not because this section of public road existed in isolation, but because its continuation(s) south of Point X (and north and / or east of Point Q) were considered to be privately maintainable public highway.
- Although the NERC Act 2006 did not directly extinguish the public's motor vehicular rights over the X-R-P-Q portion of the route, the practical effect of it extinguishing public motor vehicular rights over the X-S section, and over any northerly continuation or any other connecting route, is that the public's motor vehicular rights over the X-R-P-Q are now isolated. If they were not isolated, it would be appropriate to recognise these public motor vehicular rights by recording this section of the route as byway open to all traffic. However, case law would seem to indicate that these public motor vehicular rights cannot exist in isolation. The Kotegaonkar v Secretary of State for Environment, Food and Rural Affairs case, was determined in the High Court, in 2012. It considered a situation where an Inspector appointed by the Secretary of State had confirmed a definitive map modification order adding a public footpath across land in between a health centre carpark and the forecourt of some shops. The public had unhindered access to the car park and the forecourt, though neither of these were public highways. It was the owner of the land in between these two locations that disputed that a public right of way could be established between them. Mr Justice Hickinbottom found against the Secretary of State, citing the earlier case of Bailey v Jamieson (1875-76) he concluded:

"Therefore, as a matter of law, on principle and authority, I do not consider that a way to which the public has no right of entry at either end or at any point along its length can be a public highway at common law."

- 7.14 The Kotegaonkar and Jameison cases both concerned public footpaths. These footpaths could not exist in isolation. Applying the same principle to the X-R-P-Q route, it is considered that public motor vehicular rights cannot exist in isolation the public has no right of entry to the route (with a motor vehicle) at either end or at any point along its length. This does not mean that all public rights have been extinguished over the X-R-P-Q route. The public still has a right of entry to the route on foot, on horseback, by bicycle and with non-motor vehicles. These same non-motor vehicular rights will, therefore, still remain over the X-R-P-Q route.
- 7.15 The Cycling UK and Bardon Mill Parish Council consultation responses voice concerns regarding motor vehicular use of this route, and the harm that could be caused by motor vehicles. The X-R-P-Q section is an unclassified County road and, as such, most people might presume the public had motor vehicular rights over it. The National Park Authority has recently indicated that it was aware of, and concerned about, instances of public motor vehicular use of the route. Concerns regarding damage that might be caused by public vehicular use of the route aren't considered to be relevant, when determining what public rights actually exist. That said, by clarifying that the S-X section is only a restricted byway, and by establishing that, public motor vehicular rights would appear to have been extraggisted over the X-R-P-Q unclassified

County road section too, the Council believes that motor vehicular use of the route will actually be discouraged, not facilitated.

7.16 Advice from the Planning Inspectorate in their 'consistency guidelines' states that it is important to have the correct width, where known, recorded in the definitive statement. Where no width can be determined by documentary means (such as an Inclosure Award, Highway Order or dedication document), there is usually a boundary to boundary presumption for public highways. The S-X-R section was set out as a 30 foot (i.e. 9.14 metre) wide public bridleway in the Thorngrafton Inclosure Award. The restricted byway, over this section, should not be less than that. Since the remainder of the route is not enclosed now, nor does it appear to have been enclosed previously, it is proposed that, if it is to be recorded as a restricted byway, it should be identified with the Council's standard default width of 5 metres (i.e. wide enough for two carts, travelling in opposite directions, to pass each other.

8. CONCLUSION

- 8.1 In light of the documentary evidence available, it appears that public vehicular rights have been reasonably alleged to exist over the route of alleged Restricted Byway No 62.
- 8.2 The Natural Environment and Rural Communities Act 2006 would appear to have extinguished the public's motor vehicular rights over the S-X part of the route.
- 8.3 At common law, the public's motor vehicular rights over the X-R-P-Q part of the route would also appear to have been extinguished.
- 8.4 It would be appropriate to recognize the public's remaining rights over the S-X-R-P-Q route by recording this as a restricted byway on the Definitive Map.

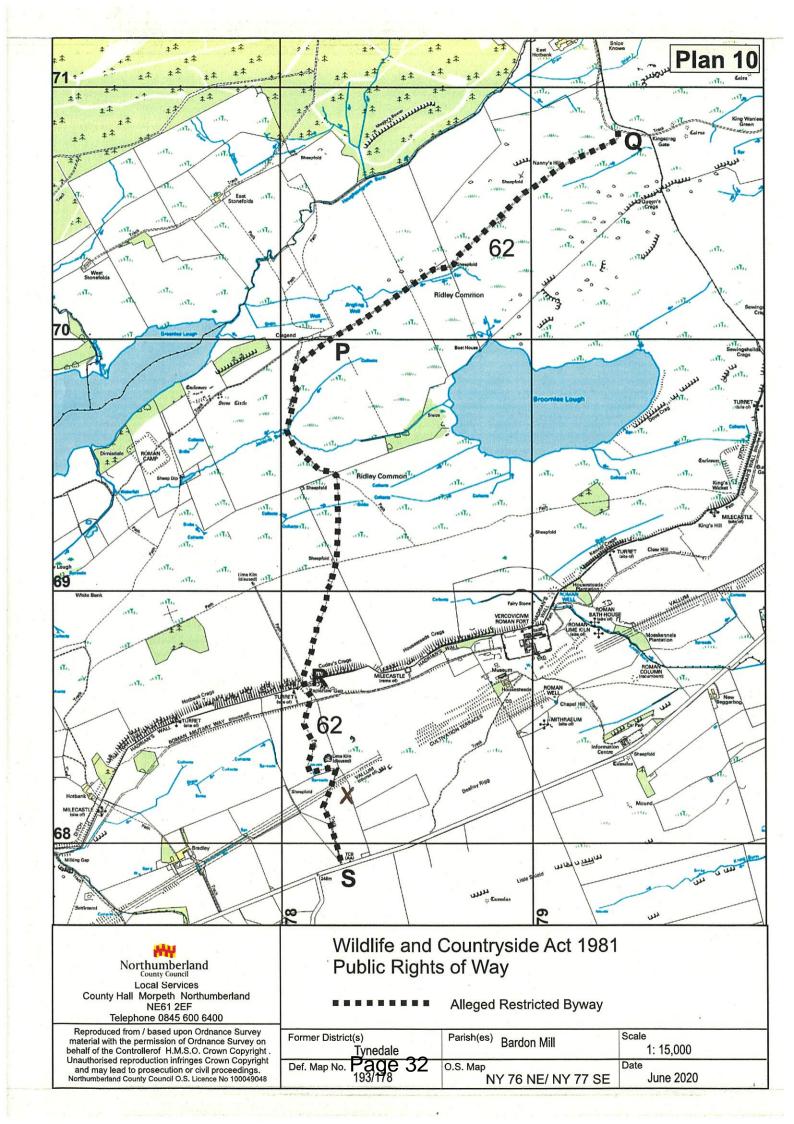
BACKGROUND PAPERS

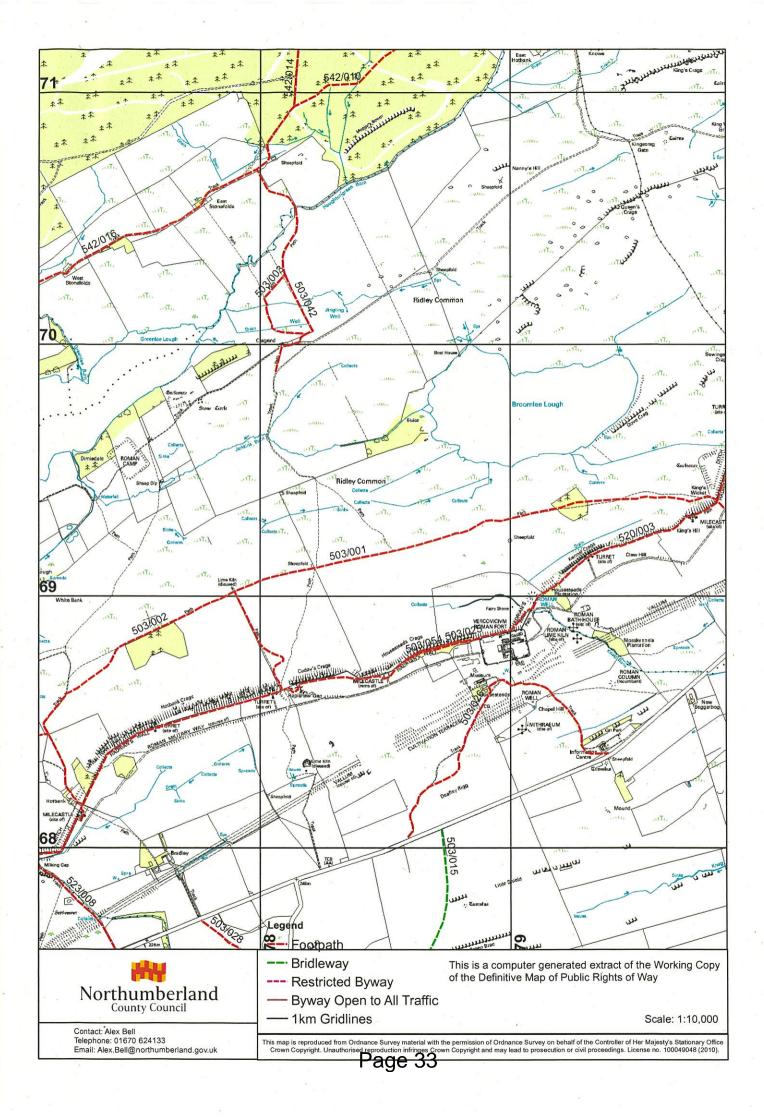
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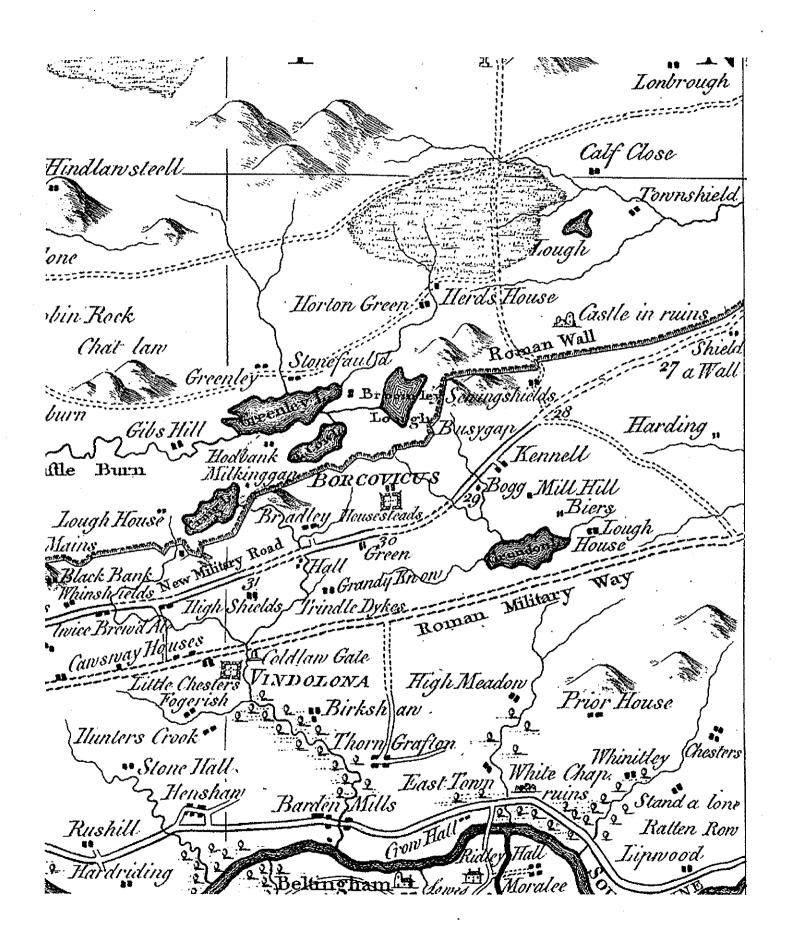
Report Author Alex Bell – Definitive Map Officer

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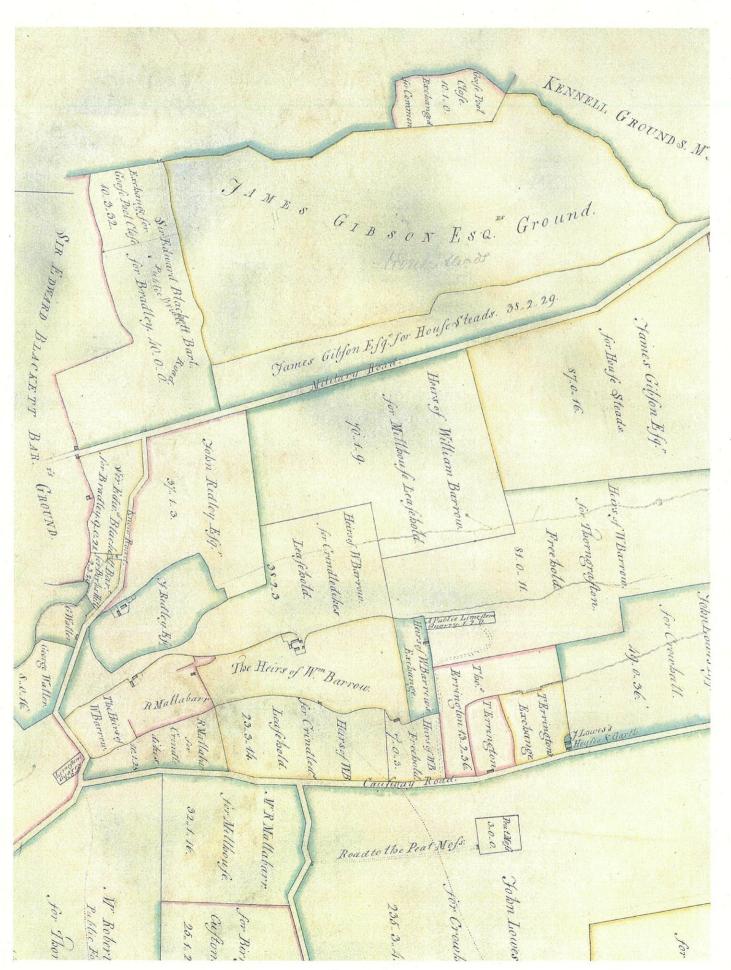
Alex.Bell@Northumberland.gov.uk





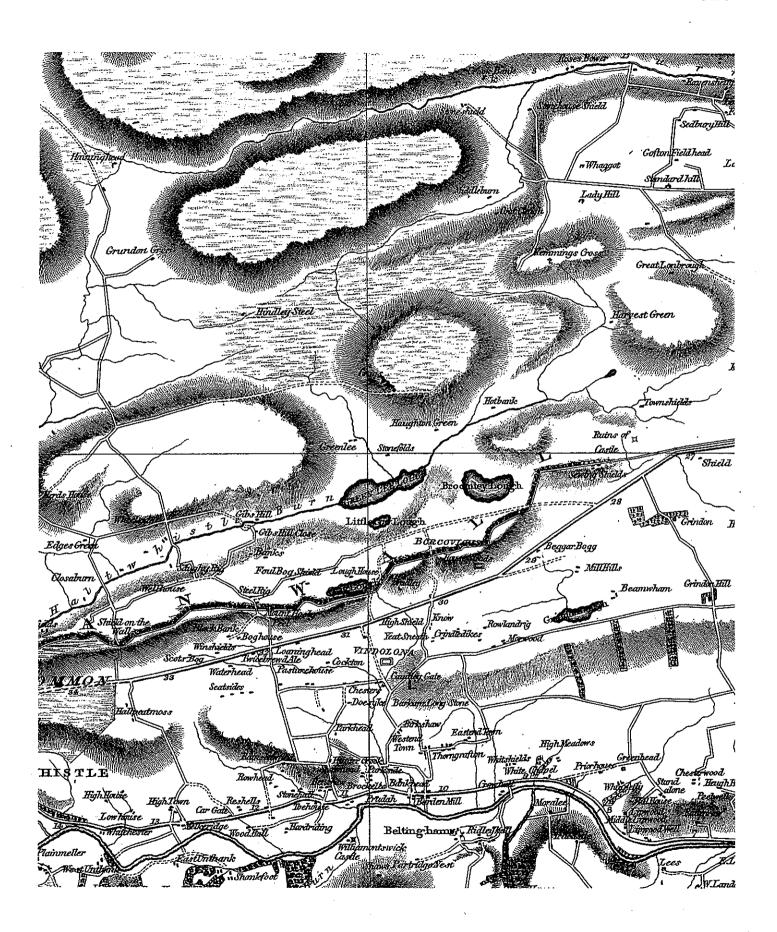


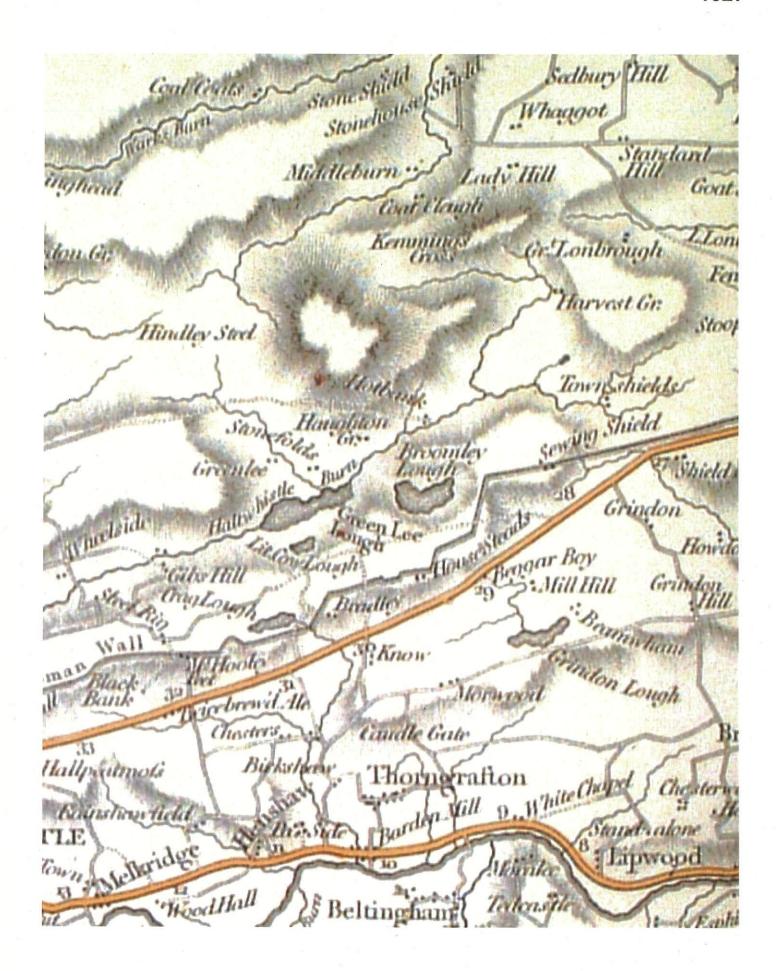
Thorngrafton Inclosure Award 1797

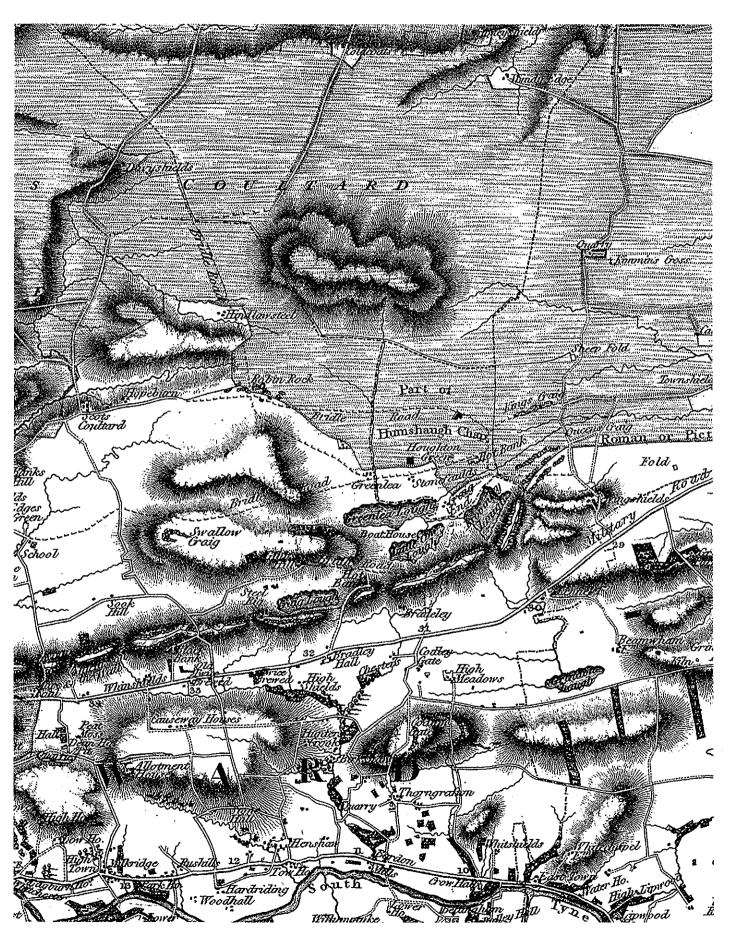


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Fryer's County Map 1820

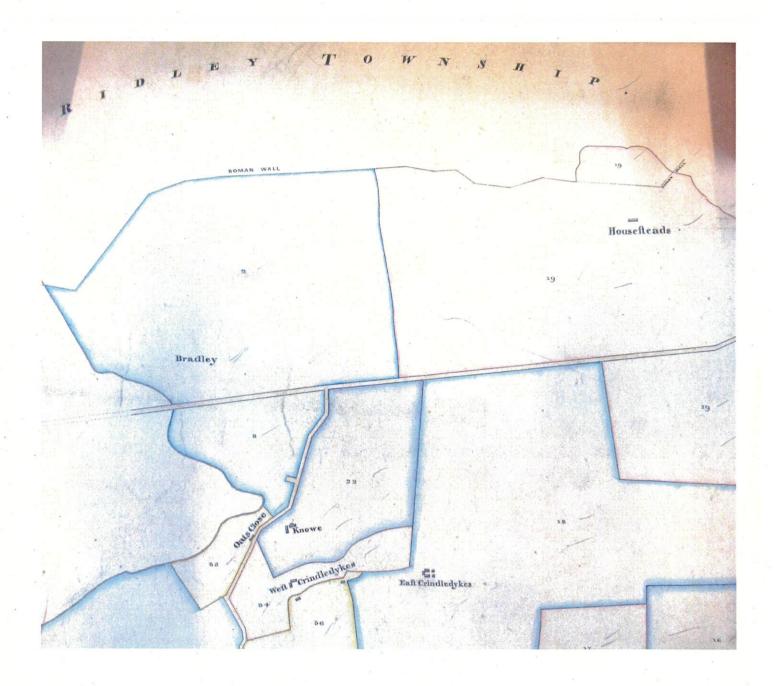


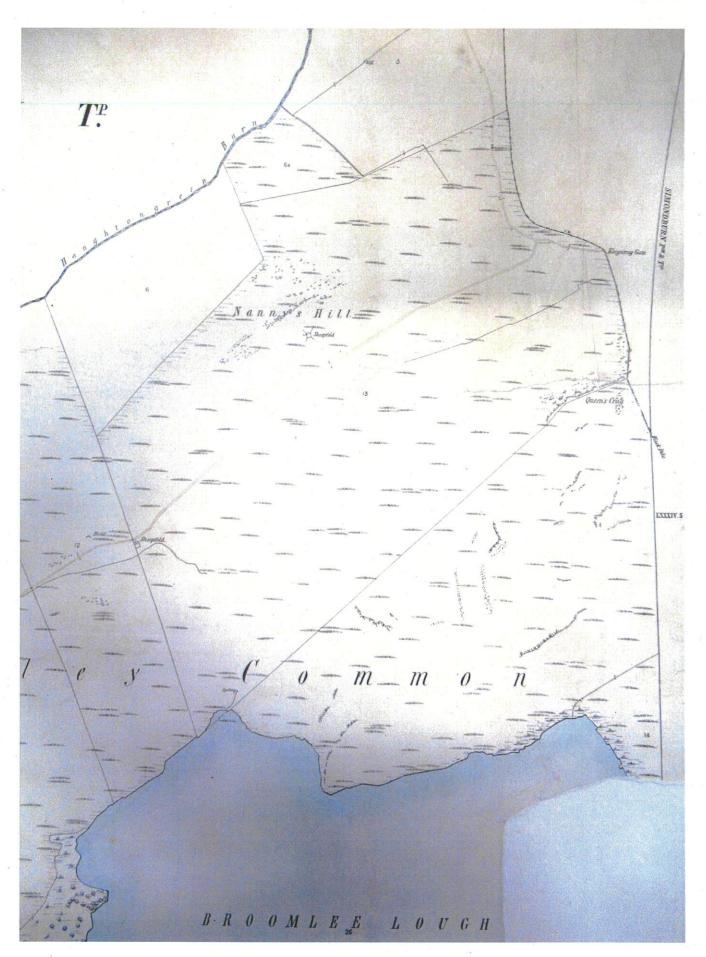




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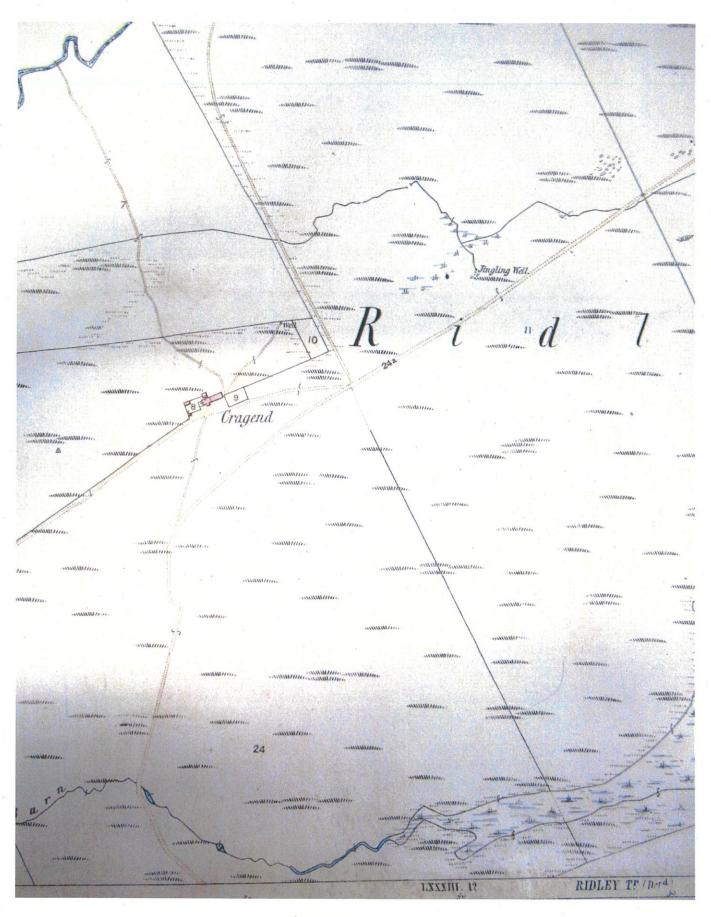
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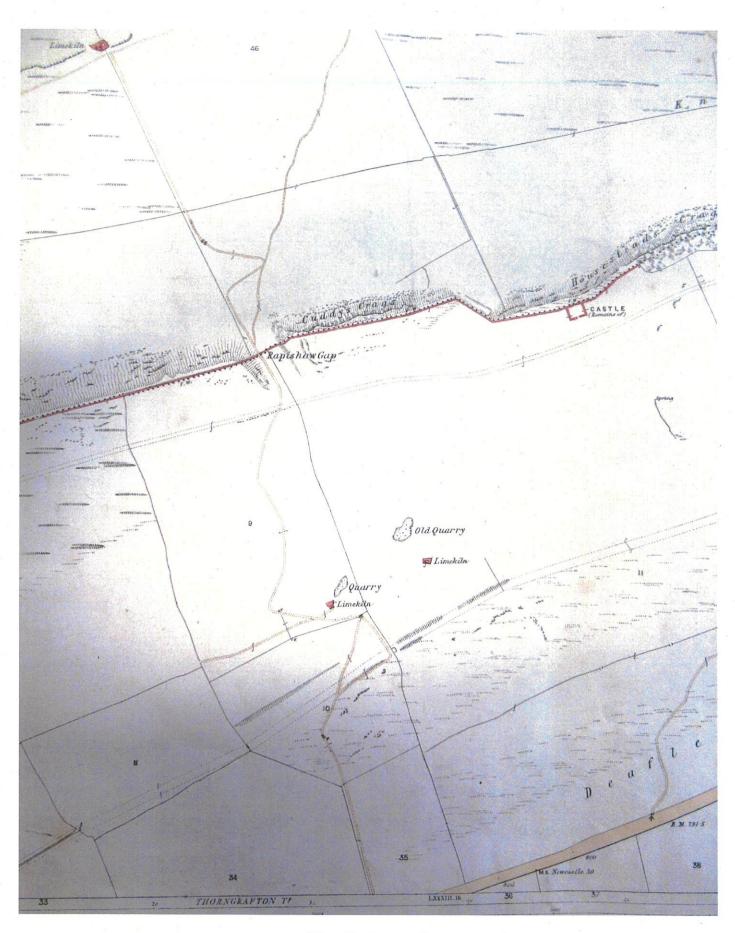
1st Edition 25" O.S. Map c.1860



(Middle section)

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1st Edition 25" O.S. Map c.1860



(Southern end) Page 43

Description.	Brought forward.	Pasture, &c.	Fasture,		Llouse, yard, gardens,	C. Darbie and	House moude 6.		gardens.		s, gardens,	Houses gardens	Salucins, C	1.	Houses, gardens, 6	&c. (Church &	graveyard).	Pasture, &c.	Pasture, &c.	Houses, yards, garden,	&c. (Glenwhelt).	Garden.	Garden.	Pasture.	Pasture, &c.	Houses, gardens, &c.	Houses, yards, gardens,	Pasture	Pasture.	Arable.	Arable.	Pasture, &c.		Pasture, &c.	Pasture.	Rough pasture, &c.	Arable, &c.	, garden,) A	~	granden & E &		Public road	Pasture, &c.	Pasture.	Garden.	Pasture, &c.	Pasture.	Pasture.	Carried forward.
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PARISH OF HALTWHISTLE.

Brought forward. House (Presbyterian Chapel, Scotch).

413-578

18a

Description

Area in Acres.

No on Plan House, gardens, & (New Beggarbog).

388

10

Pasture, &c.
Pasture.
House, yards, & gurden (Beggarbog).

4.217 1.324 176

222

Pasture, &c.
Pasture, &c.
Pasture, &c.
Pasture, &c.
Pasture, &c.

Houses, yards, gardens,

Pasture, &c. Pasture, &c.

Pasture.

5.424 9.818 3.680 16.849 6.407 7.624 23.821 19.261

23 23 23 23 30 30 30

AC Ed	
Acres in Description. Acres in Acres Description. RECAPITULATION. 2518-706	den (House Steads). Wood. Rough pasture, &c. Pasture, &c. Pasture, &c. Rough pasture, &c. Public road. Pasture, &c. (Chapel Pasture, &c. Carried forward.
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Acres in	(Mossy Walls): Pasiure, &c. Rough pasture, stream, &c. Pasture, &c. River Irthing. Pasture, &c. Rough pasture, &c. Pasture, &c. Pasture, &c. Rough pasture, &c. Pasture, &c. Stone-bed (island):
The control of the	Pasin Roug Roug Pastu Rivet Pastu Pastu Pastu Pastu Pastu Pastu Pastu
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Brought forward. Arable, &c. Arable, &c. Arable, &c. Arable, &c. House & yards. Wood, &c. Wood, &c. Wood, &c. Wood, &c. Willpond. Wood, &c. Wood, &c. Wood, &c. Wood, &c. Wallpond. Pasture, &c. House & garden. Fasture, &c. Arable, &c. Fasture. Fasture. Fasture. Fasture. Arable, &c. House & garden. Fasture. Arable, &c. House & garden. House & garden. Arable, &c. House & garden. House & garden. Arable, &c. House & garden. Arable, &c. House & garden. Koufh pasture. House & garden. Arable, &c. Arable, brashwood, &c. Arable, brashwood, &c. Arable, brashwood, &c. Arable, brashwood, &c.	
Area in Agrees. 1.1537.458 4.326 5.320 -029 2.605 7.42059 8.190 8.190 8.190 8.190 8.190 8.190 8.190 8.190 8.190 8.190 8.190 8.190 8.190 8.192 9.181 16.188 16.152 16.188 16.152 16.188 16.152 16.188 16.152 16.188	[8]
265 265 265 265 265 265 265 265 265 265	2992 2992 2993 2994 2995 2996 300 300 300 300 300 300 300 300

Pasture, &c.
Pasture, &c.
Pasture, &c.
House & garden (Bradley Gate).

Pasture. Rasture, &c. Grass, &c. Pasture.

4.528 7.139 .157 .693 2.688

52 52 54 54 55 54 55 54 55

Rough pasture. Pasture, stream, &c.

asture, &c.

asture & tree.

Pasture, &c. Pasture, &c. Pasture, &c. Grindon Lough.

1.110 7.609 172-119 172-119 172-119 172-119 88.347 87.43 87.609 10.877 10.877 10.877 16.60 16.00 18.296 14.291 18.296 14.291 16.00 1

Pasture. Pasture, &c. Pasture, &c. Pasture, &c.

asture.

asture, &c.

Pasture, &c.

Houses and garden (Oatsclose). Houses, yards, & garden(Grandy's Knowe) Pasture.

.488

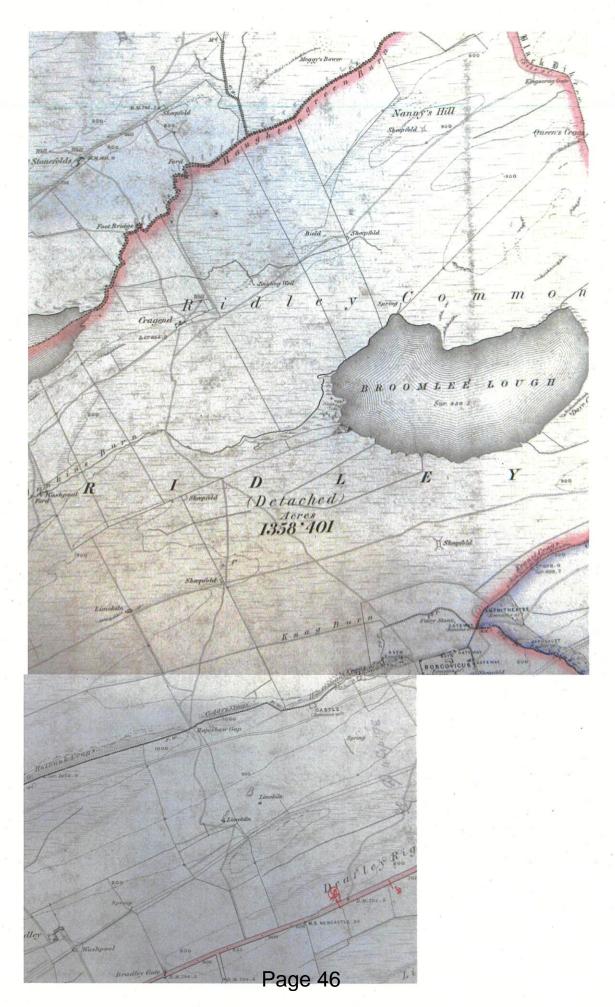
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3.890 4.482

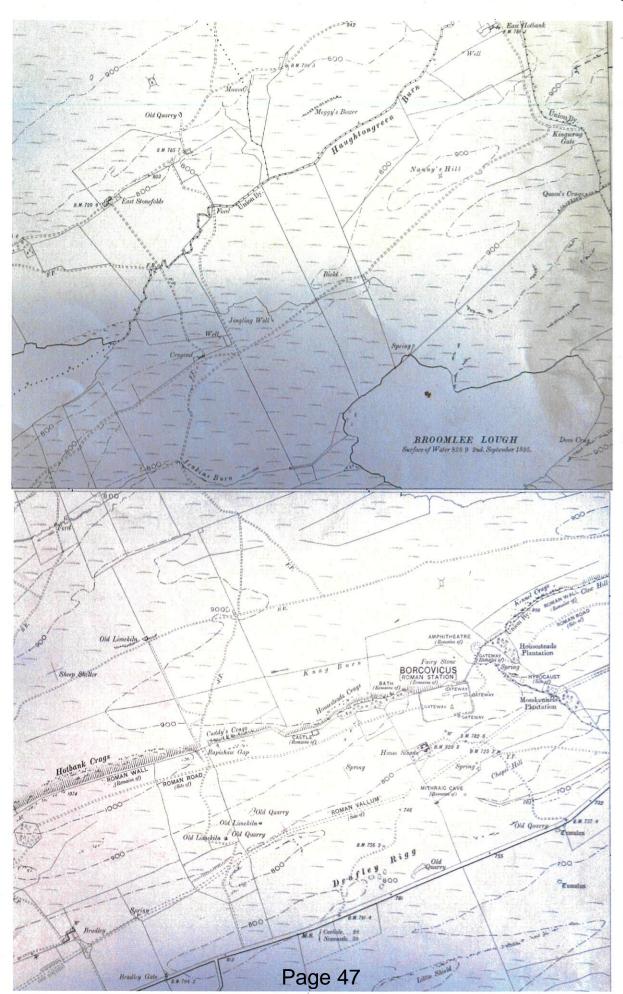
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Carried forward.

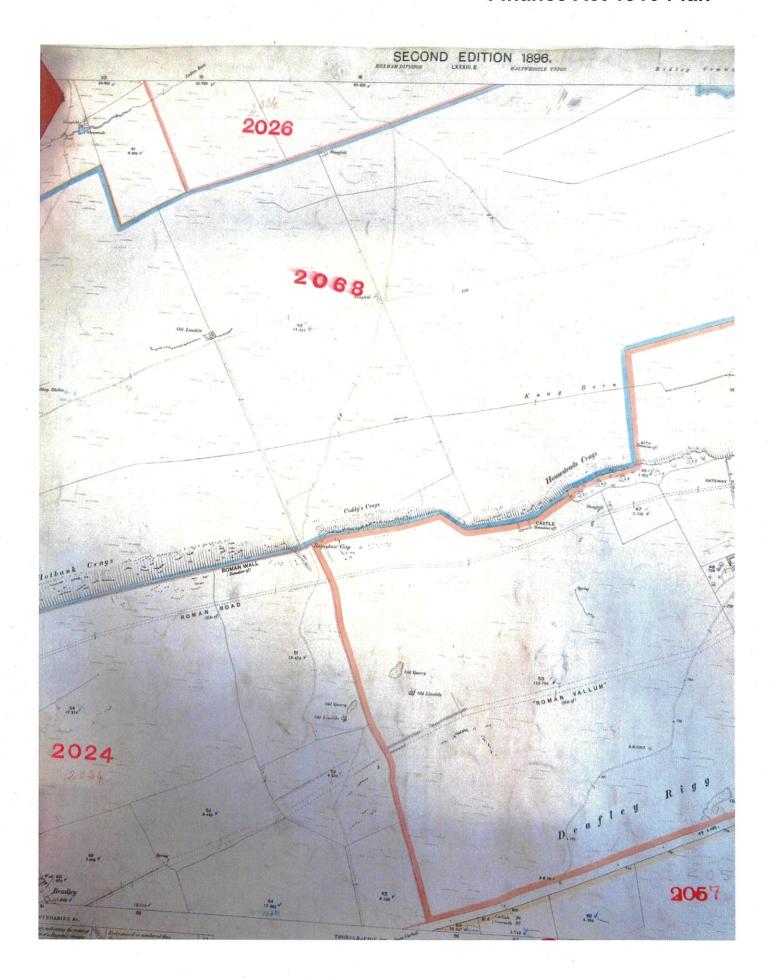
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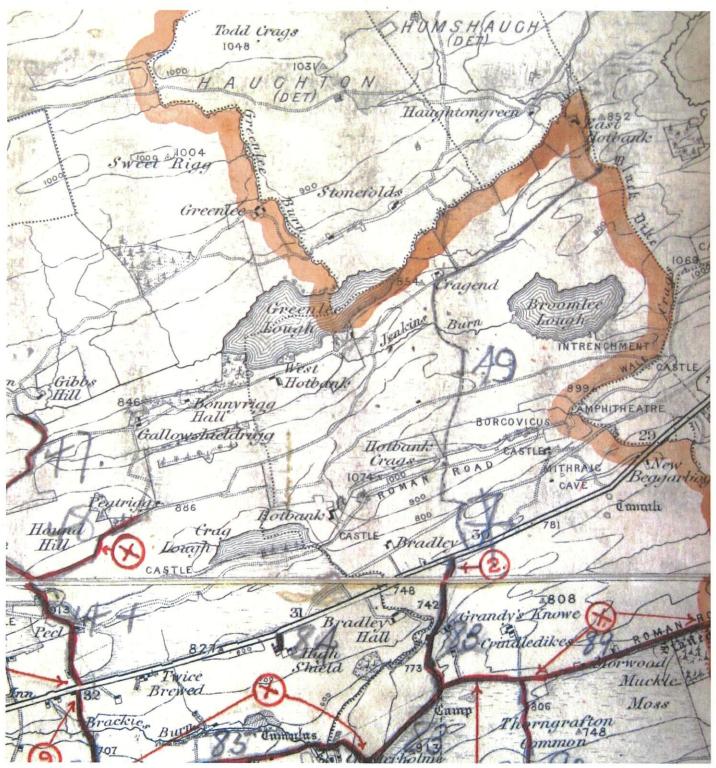
2nd Edition 6" O.S. Map 1898



Finance Act 1910 Plan



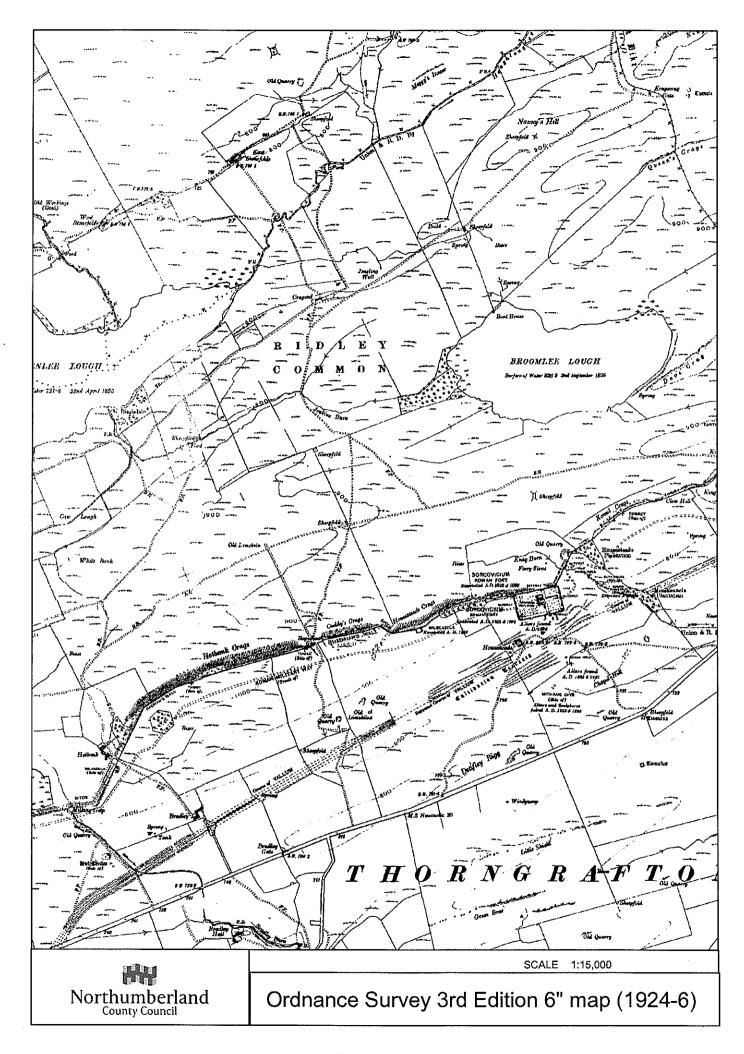




- Rond from a point on the Chollerford-Greenhead rond B.6318, 500 yards west of the entrance to Fell End via Painsdale Cottage, Birchfield Gate and Park Road to the Hexham-Carlisle road A.69 at New Inn, Haltwhistle. Ę.
- gate," via Edge Hill, Combhill House and Aesica Road to the junction of that road with the Hexham-Carlisle road A.69 at Road from the Chollerford-Greenhead road B.6318 at "Stane-Haltwhistle. ç
- Road from the Chollerford-Greenhead road B.6318 at Common House Inn via Burnhead, Whiteside, Edges Green, Cawburn School and Shield on the Wall to a point on the Chollerford-Greenhead road B.6318, 520 yards east of Mixistone House. ₹2.
- Road from a point on the Common House Inn-Burnhead-Edges Green road, 390 yards west of Benkshill Gate via Whiteside Earn to the culvert over Pudgement Sike on the road to Burn 2
 - Road from the Chollerford-Greenhead road B.6318 at Once Brewed Youth Hostel via Peel and Cutty Well House to a point on the Edges Green-Shield on the Wall road, 400 yards south of Cawburn School. 6
 - Road from a point on the Once Brewed-Cutty Well House road. 350 yards east of Cutty Well House to Saughy Rigg. Š
- Road from Cawburn Bigg northwards for a distance of 1,000 yards to the gateway at its junction with the road leading to Wealside. ű,
- Rund from the Dipper at the Pont Gallon Burn via Slippy Stones and Buck Bog to Grindon Green. 얁
 - Road from the Whiteside-Shield on the Wall road at Edges Green to Wealside Farm. 3
- Road from a point on the Once Brewed-Cutty Well House road, 730 yards east of Cutty Well House north-eastwards to the culvert over the Caw Burn on the road to Gibbs Hill Farm.
- 600 yards north-west of Peel eastwards to the gateway at the east end of Peatrigg Plantation. Road from a point on the Once Brewed-Cutty Well House road S.
 - Road from a point 430 yards south of Bast Hotbank via Cragend and Rapishaw Gap to its crossing of the course of the Roman , <u>; ;</u>
- Road from the Chollerford-Greenhead road B.6318 at Leeshall Gate towards Lees Hall for a distance of 130 yards. . .
- Mill Lane, Haltwhistle, from the Hexbam-Carlisle road A.69 at Castle Hill northwards for a distance of 100 yards. ŝ
- Lanty's Lonning, Haltwhistle, from the Hexham-Carlisle road A.69 southwards for a distance of 150 yards. 65
- Chapel, Haltwhistle, via High Road and Fuir Hill to the north end of Aesica Road. Road from the Hexham-Carlisle road A.69 at the Methodist 3
- Road from the Hexham-Carlisle road A.69 at the Police Station, Haltwhistle, westwards to a point on Fair Hill, 110 yards east of the Church School. 5
 - Road from Fair Hill, Haltwhistle, at the Church School via Willia Road and South Tyne Colliery to the culvert at the top of Broomshaw Hill Bank. 귏

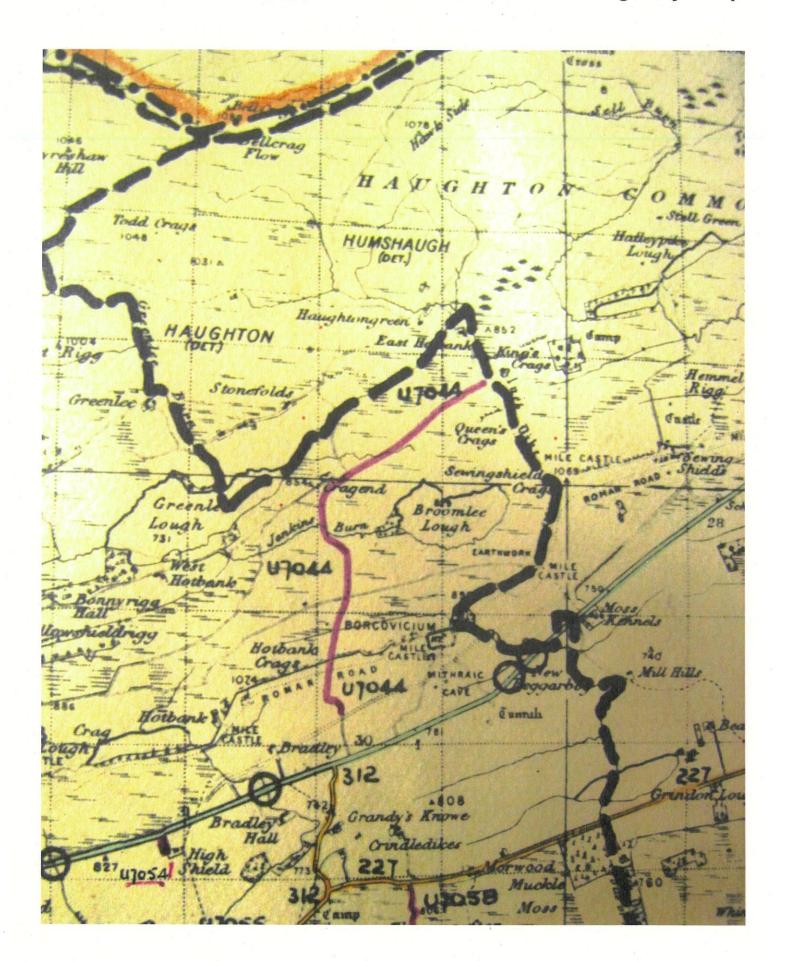
BRIDGES AND ROADS-20TH MARCH, 1939

- Woodhead Lane, Haltwhistle, from the Aesica Road-Comb Hill road at the foot of Comb Hill to the Greenholme Institution renr gate.
 - Road from the Hexham-Carlisle road A.69 at Town Boot, Hall 64.
- Road from the Hexban-Carlisle road A.69 at Melkridge Village via Melkridge Colliery and Hallpeat Moss to a point on the "Chollerford-Greenhead road B.6318, 550 yards west of Melkwhistle, via Moorfield to the Chollerford-Greenhead road B.6318, at Common House Inn. . .
- Road from a point on the Hexham-Carlisle road A.69, 730 yards east of the entrance to Stone Hall via Henshaw Primitive Methodist Chapel, Brownside House, and Smith's Shield to the Chollerford-Greenhead road B.6318 at Once Brewed Youth Hostel. £
- Road from a point on the Melkridge-Hullpeat Moss road, 539 yards south-east of Dean Houses via Cranberry Brow to a point on the Henshaw-Once Brewed road, 600 yards south of Smith's Shield. 67.
- Road from the Hexham-Carlisle road A.69 at the entrance to Hardriding via Ramshaw Field to a point on the Henshaw-Once Brewed road, 480 yards west of Brownside House. 68
- Road from a point on the Hexham-Carlisle road A.69, 540 yards east of the entrance to Stone Hall, via Henshaw Village to the Henshaw-Once Brewed road at Bog House, Henshaw Vil. 69
- Road from the All Hallows Church-Henshaw road in Henshaw Village, north-eastwards to a point on the Tow House-Once Brewed road, 140 yards north of Henshaw Primitive Methodist Chapel. 20.
- Road from the Hexham-Carlisle road A.69 at Riverdale, Bardon Mill, via Chainleyford and Birkshaw to a point on the Chollerford-Greenhead road B.6318, 200 yards east of Bradley Gate.
 - Road from High Shield Farm to a point on the Chollerford-Greenhead road B.6318, 2-mile west of Bradley Gate. દાં
- south of Snith's Shield via Causeway House and Codley Gate to a point on the Riverdale-Bradley Gate road, 780 yards north of Birkshaw House. Road from a point on the Henshaw-Once Brewed road, 110 yards 33
- Road from the Henshaw-Once Brewed road at Layside Bank Foot via Huntercrook Plantation and Park Lane to a point on the Riverdale-Bradley Gate road, 70 yards west of Chainley 7.4
- Road from the Henshaw-Once Brewed road at Iluntercrook Farm northwards to the Layside Bank Foot-Chainley Ford road at Huntercrook Plantation. 3
- Road from a point on the Layside Bank Foot-Chainley Ford road. 150 yards north of Huntercrook Plantation via Kingcairn Hill to a point on the Smith's Shield-Codley Gate road, 330 yards east of Causeway House. 56
- Road from a point on the Riverdale-Bradley Gate road, 200 yards south-east of the west entrance to West Crindledikes via West Morwood to the eastern boundary of Blackdyke Plantation. 7

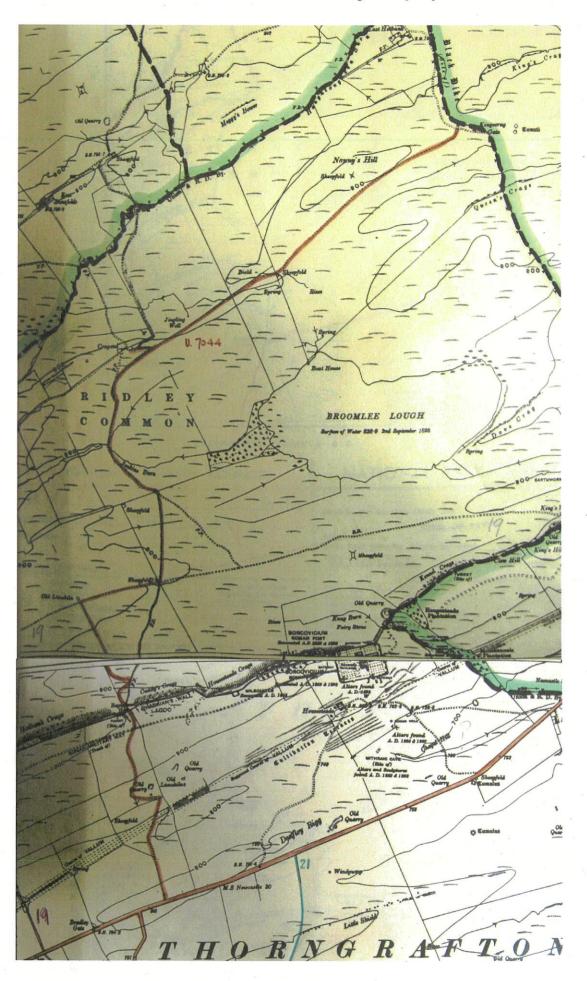


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Extract from the Council's 1951 Highways Map

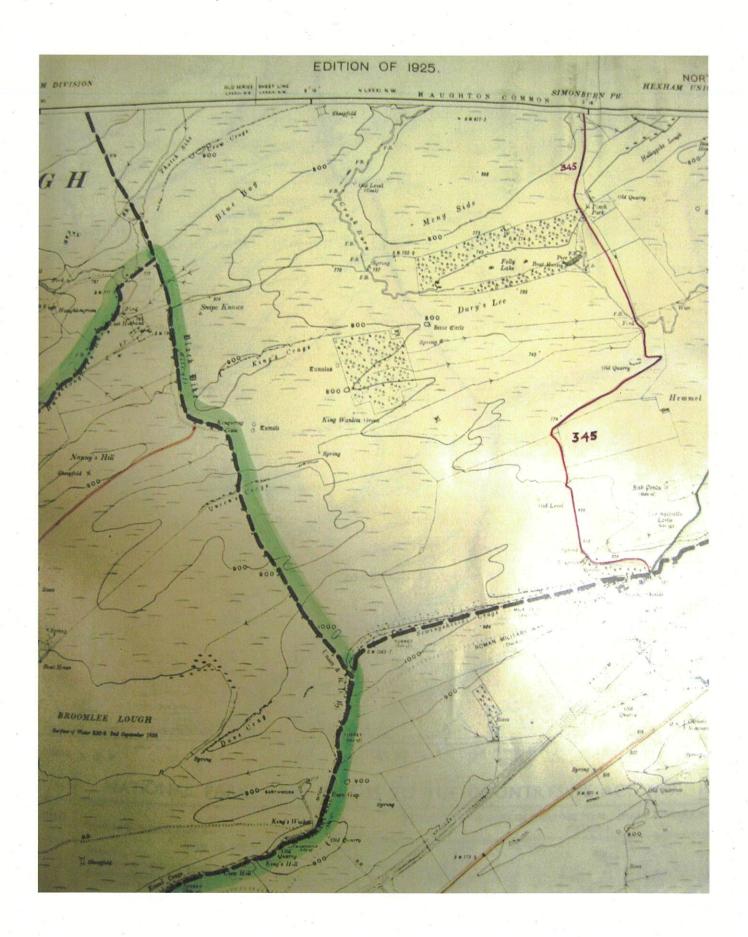


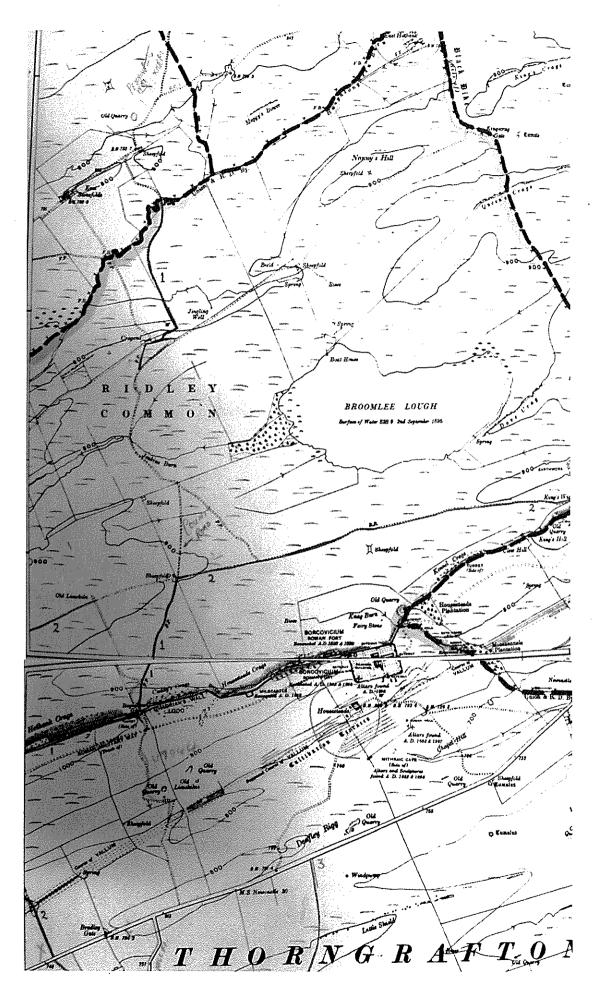
Survey Map (Haltwhistle RD area)



Page 53

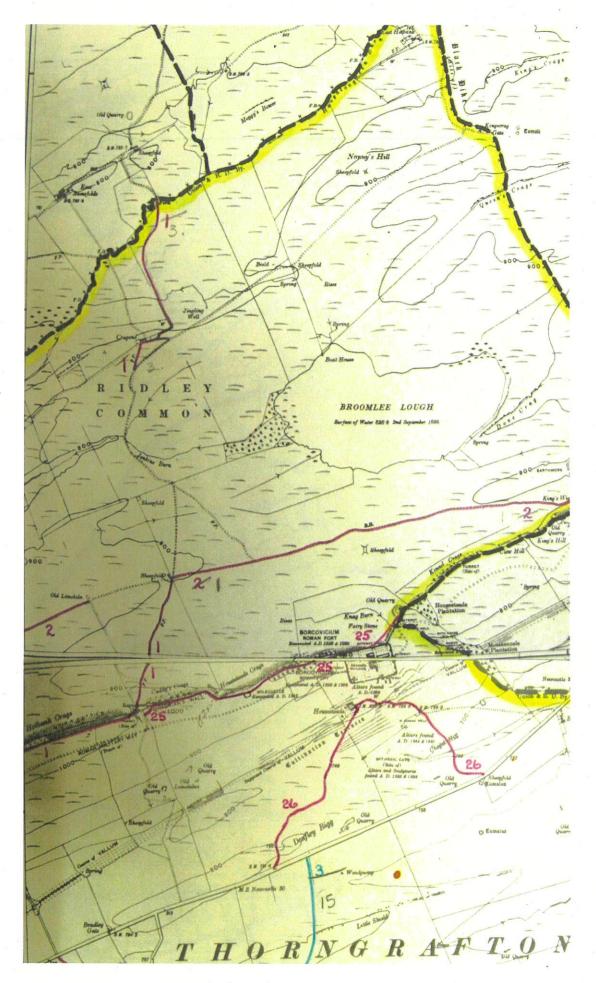
Survey Map (Hexham RD area)





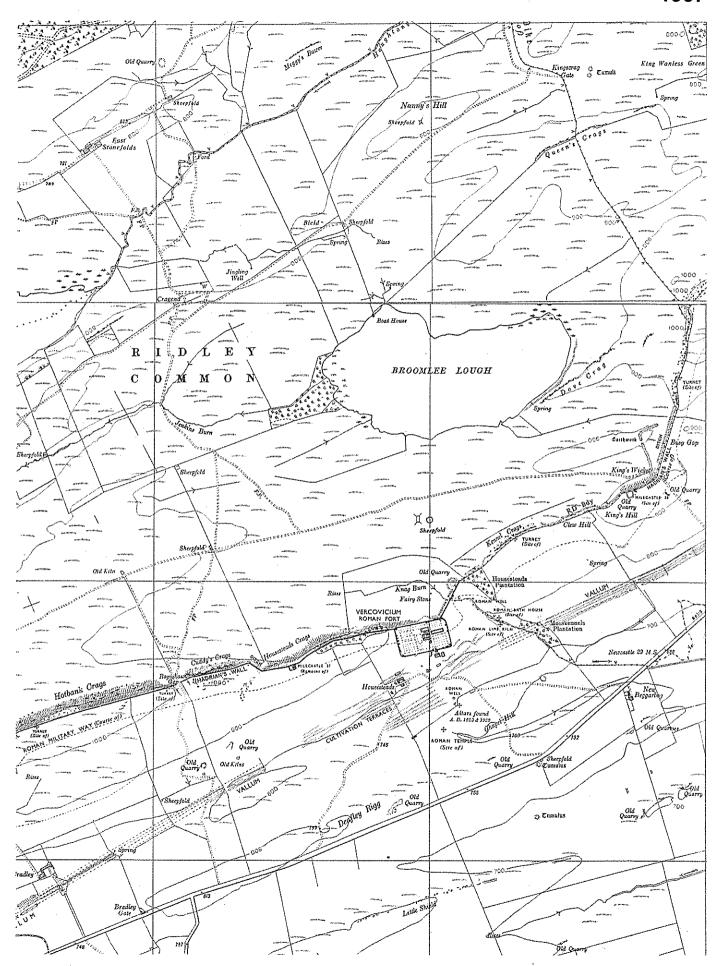
Page 55

Provisional Map



Page 56

1:10,560 O.S. Map 1957



Page 57

1958 County Road Schedule

30.79

0,28

1.44

2,97

0.71

2,27

0.17

0,60

HALLWHISTLE DIVISION.

	<u>Unclassifie</u>	Unclassified Roads in Haltwhistle Rural District Brought Forward
U.7033	Low Tipelt Farm.	From Hangingshields Rigg to a point 60 yards south of Low Tipalt Farm.
U.7034	Leeshall Gate - Craig Cottages.	From Road to Lees Hall 130 yards south of Leeshall Gate, crossing B.6318 at Leeshall Gate to U.7032 at Graig Cottage.
U.7035	Haltwhistle - Stanegate	From A.69 at Haltwhistle via Aesica Road to B.6313 at Stanegate.
U.7036	Common House Inn - Wealside Barm.	From B.6318 at Common House Inn. Burnhead and Edges Green to Wealside Ferm.
U.7037	Thiteside Ferm Road.	From U.7036 west of Bankshill Gate via Whiteside to Pudgement Sike.
⊃ <u>&</u> C	Once Brewed - Camburn School.	From B.6318 at Once Brewed via Peel C.305 south of Cawburn School.
) e 25	Saughy Rigg Road.	From U.7038 east of Cutty Well House to Saughy Rigg.
0.78%	Cawburn Rigg - Weelside.	Cawburn Rigg northwards to junction with road to Weelside.
τ†ο / •n	Pont Gallon Burn - Grindon Green.	From PontGallon Burn at the Dipper via Slippy Stones and Buck Boy to Grindon Green.
U.7042	Gibbs Hill Farm Road	From U.7038 east of Cutty WealHouse to Gibbs Hill Farm.
U.7043	Pestrigg Plantation.	From U.7038 north-west of Peel to east end of Peatrigg plantation.
7701 ° 1	East Hotbank - Rapishaw Gep.	From the Bellingham Rural District Boundary at East Hotbank via Gragend and Rapishaw Gap to the course of the Roman Vallum.
U.7045	Mill Lene, Haltwhistle.	From A.69 at Castle Hill northwards for 100 yards.
U.7046	Lenty's Lonning, Heltwhistle. and Streets in Haltwhistle.	From A.69 at Haltwhistle South for 150 yards, Sycamore Street 102 yards, Sycemore back 50 yards, Church Street, 90 yards, Ashcroft Terrace 97 yards.
U•7047	High Road and Fair Hill, Heltwhistle.	From A.69 at Methodist Chapel, Heltwhistle via High Road and Fair Hill to north end of Aesica Road.

0.58

2,21

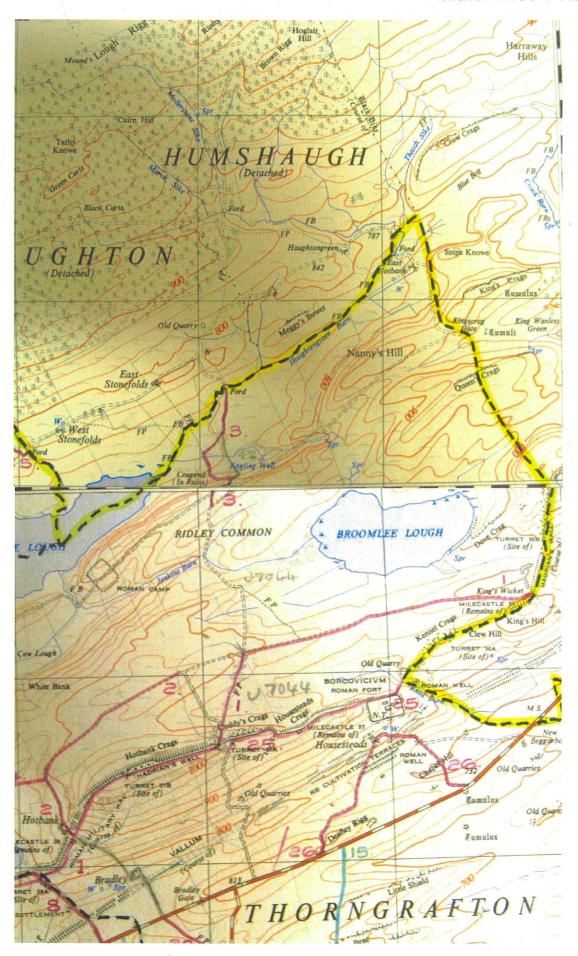
90.0

0.82

2,85

0.28

Original Definitive Map Haltwhistle RD area



NORTHUMBERLAND COUNTY COUNCIL

MATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949. PART IV.

PUBLIC RIGHTS OF WAY - STATEMENT.

ı.	Berough	
	deben District	*****************
	Rural District	HALTWHISTLE.
2.	Parish	BARDON MILL
3.	Number of Footpath on Map	2
4.	Name of Path	*******************************
5.	Kind of Path (i.e. FP/BR)	
6.	westerly and north easterly Hotbank road north-west of C	From F.P. 1 near Hotbank in a North-direction to the Bradley Gate - East
	*****************	,
7.	Other relevant information	
	*************	·

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NORTHUMBERLAND COUNTY COUNCIL

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949. PART IV.

PUBLIC RIGHTS OF WAY - STATEMENT.

1.	Borough	******************************
•	Urbeno Districtx	*****************************
	Rural District	HAITWHISTLE
2.	Parish	BARDON MILL
3.	Number of Footpath on Map	3
4.	Name of Path	*****************************
5•	Kind of Path (i.e. FP/BR)	***************************************
6 .	Rural District boundary east	From the Bradley Gate - East Hotbank n a northerly direction to the Hexham of East Stone folds joining F.P. 14 in the
	4 + 6 + 7 + 6 + 7 + 8 + 8 + 8 + 8 + 8 + 8 + 8 + 8 + 8	***************************************
7.	Other relevant information	******************************
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NORTHUMBERLAND COUNTY COUNCIL

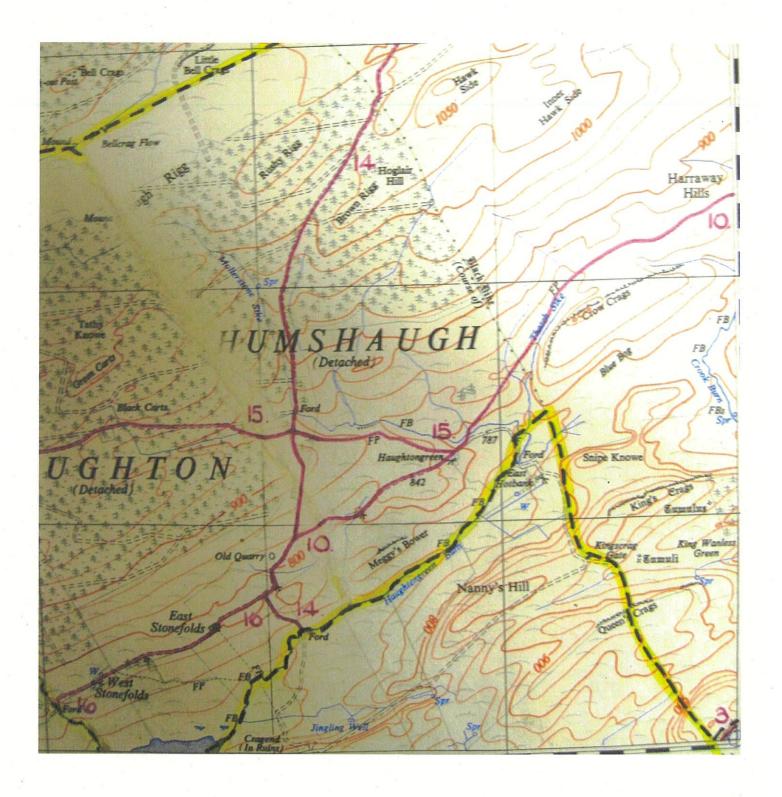
NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949. PART IV.

PUBLIC RIGHTS OF WAY - STATEMENT.

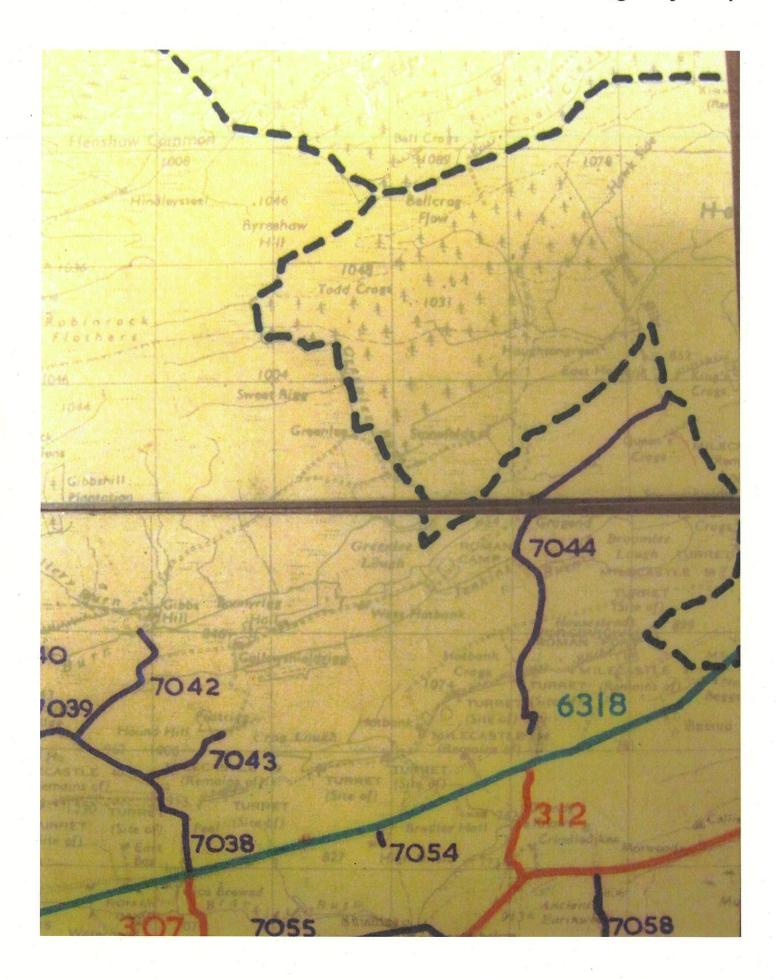
1.	Berengh	
	Nichen Bistrict	************
	Rural District	HALTWHISTLE
2.	Parish	BARDON MILL
3.	Number of Footpath on Map	25
4.	Name of Path	2 * 5 ± 5 * 5 * 5 * 6 * 5 * 5 * 6 * 6 * 6 * 6 *
5.	Kind of Path (i.e. FP/BR)	F. P.
6.	Grags and the Roman fort to the F.P. 3 in the Parish of Haydon	From the Public road south of Guddy's ection along the Roman Wall by Housesteads he Hexham Rural District boundary joining
7.	Other relevant information	*******************************

	***********	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
	*************	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

Original Definitive Map Hexham RD area



Extract from the Council's 1964 Highways Map

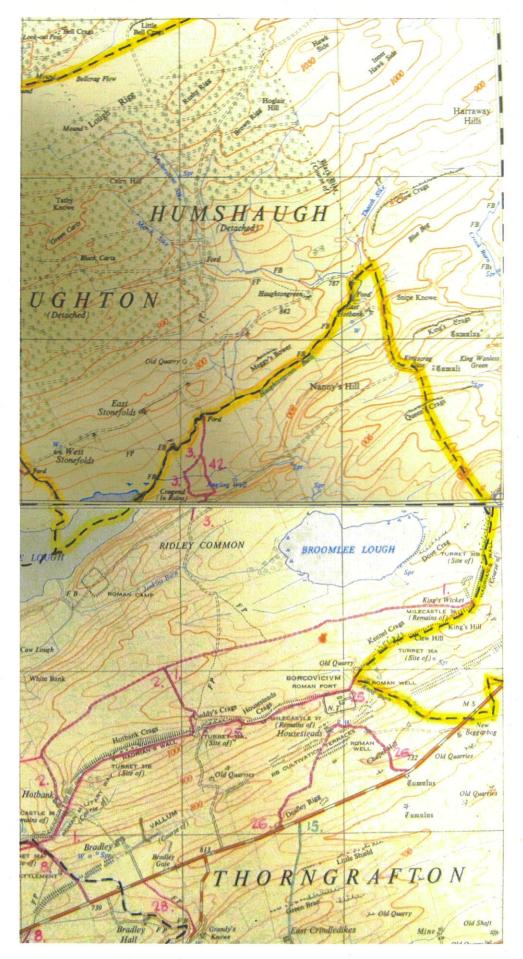


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1964 County Road Schedule

121 1

							•					÷	-
	rotal <u>Mileage</u> .	0.71	2.27	0.17	09*0	2,85	0.82	0.58	2.21	90*0	•	0.33	0.28
	Mileage.		•					- 4,5	•	~			
Responsible	Division or Authority.	Hexbam.	Hexham.	Hexham.	Hexham.	Hexham	Hexham.	Hexham.	Hexham.	Hexham.		Hexham.	Hexham
	Description.	From U.7036 west of Benkshill Gate northwards via Whiteside to Pudgement Sike.	From B.6318 at Once Brewed northwards and westwards via Peel and Well House to join 6.305 south of Cawburn School.	From U.7038 east of Well-House northwards to Saughy Rigg.	From Cawburn Rigg northwards to junction with road to Wealside.	From Pont Gallon Burn at the Dipper via Slippy Stones and Buck Boy to Grindon Green.	From U.7038 east of Well House north-eastwards to Gibbs Hill Farm.	From U.7038 north-west of Peel to east end of Peatrigg Plantation.	From the Bellingham Rural District boundary at East Hotbank south-westwards via Gragend and Rapishaw Gap to the course of the Roman Vallum.	From C.302 at Castle Hill, Haltwhistle, northwards for 100 yards.	The following streets running southwards off C.302.in Haltwhistle: Ashcroft Terrace cul-de-sac Lanty's Lonning from Main Street,	C.302, southwards to A.69. Church Street cul-de-sac. Sycamore Street cul-de-sac. Sycamore Street Back Sycamore Street Back Howard Terrace.	From C.302 at Methodist Chapel westwards via High Road and Fair Hill to join U.7035 at north end of Aesica Road.
	Name of Road.	Whiteside Farm Road.	Once Brewed-Cawburn School.	Saughy Rigg Road.	Cawburn Rigg-Wealside.	Pont Gallon Burn-Grindon Green,		Peatrigg Plantation Road.	East Hotbank-Rapishaw Gap.	Mill Lane, Haltwhistle.	Haltuhistle Streets, south of Main Street, 0.302.	for auditional information.	High Road and Fair Hill, Haltwhistle,
	Route No.	U.7037	U.7038	U.7039	0702.0	T/04.0	40/5 a	^{€70} 2.65	n.7044	U.7045	970k•n		U°7047



EMENDED BY MODIFICATION ORDER (NO3) ICICIA

MONIDOMBERGALMON COUNTY COUNCIL

FIRST REVIEW OF DEFINITIVE MAP RELEVANT DATE: 1 NOVEMBER 1963

NORTHUMBERLAND COUNTY COUNCIL.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT. 1949. PART IV.

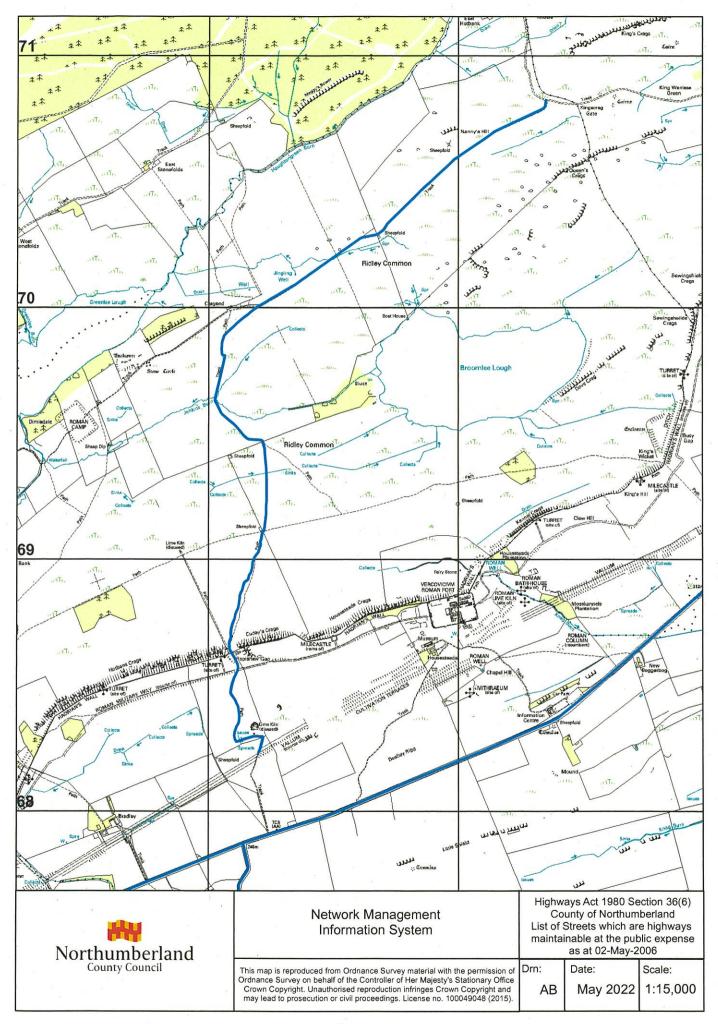
PUBLIC RIGHTS OF WAY - STATEMENT.

1.	Boxough	***************************************
	Urban District	***************************************
	Rural District	Haltwhistle
	Parish	Bardon Mill
3.	Number of Footpath on Map	1
4.	Name of Path	***************************************
5.	Kind of Path (i.e. FP/BR)	Footpath
6.	General Description of Path	From F.P.4 in the Parish of Henshaw at that
	Parish Boundary near Crag Loug	th in a north-easterley direction along Hadrian's
	Wall to the West side of Cuddy	v's Crags then in a north-westerly and easterly
	direction crossing the County Boundary at King's Wicket join	Road (U.7044) to the Hexham Rural District
	*****************	****************
7.	Other relevant information	***************

	******************	***************
	*****************	************************************
	******************	****************
	*********************	Paga 67

1974 County Road Schedule

					A
Name of Road		Description	Responsible Division or Authority	Mileage	Total Mileeg
Whiteside Farm Road.		From U.7036 west of Bankshill Gate (NY 706690) northwards via Whiteside to Pudgement Sike.	Hexham Dîvîsion.		0.71
Once Brewed-Cawburn School.		From B.6318 at Once Brewed (NY 753670) northwards and westwards via Peel and Well House to join G.305 south of Cawburn School. (NY 725674).	Hexham Division.	,	2.27
Saughy Rigg Road.		From U.7038 east of Well House (NY 740582) northwards to Saughy Rigg.	Hexham Division.	, .	0.17
Cawburn Rigg-Wealside. (Detached).		From Cawburn Rigg (NY 748683) northwards to junction with road to Wealside (NY 735690).	Hexhamç Division.	•	09*0
Edges Green - Grindon Green.		From U.7036 just north of Edges Green (NY 723688) via Herding Crags, Ventnor's Hall Colliery Site, Rebin Rock Drift site and Buck Bog to Grindon Green(NY 730706).	Hexham Division.		3.70
Gibbs Hill Farm Road.		From U.7038 east of Well House (NY 743681) north-east-wards towards Gibbs Hill Farm as far as, and including, the bridge over the Caw Burn.	Hexham Division.		0,82
Peatrigg Plantation Road.		From U.7038-north-west of Peel (NY 750678) to east end of Peatrigg Plantation.	Hexham Division.		0.58
East Hotbank-Rapishaw Gap. (Detached)		From the Simonburn Parish boundary at East Hotbank (NY 794709) South-westwards via Cragend and Rapishaw Gap to the course of the Roman Vallum (NY 781681).	Hexham Division.		2.21
Mill Lane, Haltwhistle.	1	From C.302 at Castle Hill, Haltwhistle (NY 712642) northwards for 100 yards.	Hexham Division.		90.0
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Highways Act 1980 Section 36(6) County Of Northumberland List of Streets which are highways maintainable at the public expense As at 02-May-2006

Road Number	Description	Length - Metres
U7041		
	Total length for U7041	6,004
U7042		
	U7038 JCT TO CAWBURN BRIDGE	1,336
	Total length for U7042	1,336
U7043	rotal longith of 67072	7,000
07043	LIZZON JOT TO DEATRICO DI ANITATIONI	
	U7038 JCT TO PEATRIGG PLANTATION	926
	Total length for U7043	926
U7044		
	COURSE OF ROMAN VALLUM TO EAST HO	3,587
	Total length for U7044	3,587
U7045		
	C302 JCT TO MILL LANE	105
	Total length for U7045	105
U7046		
	GRANGE ROAD TO BACK OF WESTGATE	24
	SYCAMORE BACK STREET	38
	SYCAMORE BACK STREET	15
	C302 JCT TO SYCAMORE STREET	76
	GRANGE ROAD	73
	WESTGATE BACK STREET	45
	C302 JCT TO GRANGE ROAD	49
	C302 JCT TO GRANGE ROAD	50
	C302 JCT TO BLACK BULL LANE	90
	C302 JCT TO MARKET PLACE	32
	C302 JCT TO ASHCROFT TERRACE	94
	C302 JCT TO 30MPH HALTWHISTLE (SOUT	103
	30MPH HALTWHISTLE (SOUTH) TO A69 JC	91
02-May-2006		Page 461 of 730



Neutral Citation Number: [2012] EWHC 1976 (Admin)

Case No: CO/2453/2012

IN THE HIGH COURT OF JUSTICE **QUEEN'S BENCH DIVISION** ADMINISTRATIVE COURT IN MANCHESTER

Manchester Civil Justice Centre 1 Bridge Street, Manchester M60 9DJ

Date: 19/07/2012

Before:

Between:

Kumar Shamrao Kotegaonkar

Claimant

- and -

- (1) The Secretary of State for Environment, Food and Rural Affairs
 - (2) Bury Metropolitan Borough Council

Defendants

Stephen Sauvain QC (instructed by Jubilee Law) for the Claimant Tim Buley (instructed by the Treasury Solicitor) for the First Defendant The Second Defendant not appearing.

Hearing dates: 28 June 2012

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

THE HON MR JUSTICE HICKINBOTTOM

MR JUSTICE HICKINBOTTOM:

Introduction

1. This claim raises this question: can a way which is not connected to another public highway, or to some other point to which the public have a right of access, itself be a public highway?

Legal Background to the Claim

- 2. Under section 53(2)(b) of the Wildlife and Countryside Act 1981, a surveying authority has a duty to prepare and keep under continuous review a "definitive map and statement" recording public rights of way within the administrative area for which it is responsible, and to modify that map and statement where events listed in section 53(3) occur which appear to the authority to require such a modification. Those events include:
 - "(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path...
 - (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows
 - (i) that a right of way which is not shown on 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 footpath...".
- 3. Schedules 14 and 15 set out a procedure by which a member of the public can apply to the authority for a modification of the map and statement. If, upon investigation, the authority is satisfied that a ground for amendment is made out, then it may make an order of modification. However, if an objection to that order is lodged within the specified time period, then the order does not take effect unless and until it is confirmed by the Secretary of State, who may (and usually does) appoint an inspector under paragraph 10 of schedule 15 to make the appropriate decision.
- 4. Schedule 15 of the 1981 Act and the Rights of Way (Hearings and Inquiries Procedure) (England) Rules 2007 (SI 2007 No 2008) provide the procedure for the inspector to follow. He may decide to confirm the order, with or without modifications (paragraph 7(3) of schedule 15); or not confirm the order, in which event the order does not take effect (paragraph 2 of schedule 15). The inspector must give reasons for his decision (rules 14(2) and 26(2) of the 2007 Rules).
- 5. By paragraph 12 of schedule 15, if a person is aggrieved by an order which has taken effect, then he may apply to the High Court which may, if satisfied that the order was not made within the powers of the Act, quash the order or the relevant part of it.

Other than by that procedure, the validity of an order "shall not be questioned in any legal proceedings whatsoever" (paragraph 12(3)).

Factual Background to the Claim

- 6. In the late 1990s, the Claimant Dr Kumar Kotegaonkar wished to purchase a plot of land in Mill Lane, Bury ("the plot of land"), between the Mile Lane Health Centre and a parade of shops, from the Second Defendant ("the Council"). The health centre is privately owned by the Bury Primary Care Trust ("the PCT"). The shops are privately owned by the Claimant and a third party, jointly.
- 7. Because a route of paving stones was visible, from the health centre car park across the plot of land to the forecourt of the shops, during the negotiations for the sale and purchase of the plot of land, the Claimant's solicitors wrote to the Council, as vendor, to enquire about it. Having earlier noted that no such path was shown on the definitive map, on 24 June 1999 the Council Solicitor wrote to the Claimant's solicitors:

"In respect of the paving stones which have been laid across the site I have received confirmation from the Borough Engineer that the Health Centre Manager was verbally given permission to place the paving stones along the Council's land and therefore there is no possibility of prescriptive rights being acquired as the Council's consent was initially sought..."...

- 8. The sale and purchase of the plot of land proceeded to completion in 2002.
- 9. In April 2008, the Claimant sought planning permission from the Council to develop the plot of land for sheltered housing. There was some opposition to this development; but planning permission was granted on 7 August 2008.
- 10. On 15 August 2008, an anonymous letter accompanied by 30 right of way user forms was submitted to the Council, claiming a public right of way over the plot of land from the health centre car park to the forecourt of the shops. On 16 February 2009, a formal application was made to the Council as the relevant surveying authority under schedule 14 of the 1981 Act for recognition of the claimed path as a public footpath, by a modification order to add the path to the definitive map and statement. The claimed path was from Watling Street (a public highway), over the land on which the health centre stands, and then along the line of paving stones across the plot of land to the forecourt of the shops.
- 11. The Council duly made an order (the Metropolitan Bury (Public Footpath Number 181, Bury) Order 2010, "the Footpath Order"), but limiting the route of the path to where it left the health centre land, on the basis that there was no identifiable specific route across that land. The public footpath was consequently restricted to the crossing of the plot of land.
- 12. The Claimant objected to the Footpath Order and, under the provisions of the 1981 Act to which I have referred, the Secretary of State appointed an inspector, Ms Susan Doran ("the Inspector"). Following investigation, she found that the footpath was dedicated both under the provisions of section 31(1) of the Highway Act 1980 (to

which I shall turn shortly), and at common law. She dismissed the objection, and confirmed the Footpath Order; a decision which, effectively, disenables the Claimant from proceeding with the development of the plot of land in accordance with the planning permission he has obtained.

13. In this claim, he seeks to quash the Inspector's decision.

Highways

- 14. Curiously, "highway" is not defined in any of the Highways Acts, nor does it appear to be defined in any other relevant statute. Even the interpretation provisions of the main statute (now section 328 of the Highways Act 1980) do not define the term: they merely provide that it includes "the whole or part of the highway". Consequently, for the definition of "highway", recourse must be had to the common law.
- 15. In the words of Wills J in Ex parte Lewis (1888) 21 QBD 191 at 197, a highway is:
 - "... a right for all Her Majesty's subjects at all seasons of the year freely and at their will to pass and repass without let or hindrance."

Whilst later cases may have used less flamboyant language, that definition is uncontroversial, well-settled and is adopted as the definition of "highway" in Halsbury's Laws of England, Vol 55, "Highways, Streets and Bridges", 5th Edition (2012).

- 16. At common law, a "highway" is therefore a public right of way, defined by reference to a number of essential characteristics, namely:
 - i) The passage must be as of right, not mere permission.
 - ii) The right must be a right to pass at will.
 - iii) Although the right may be for a limited purpose such rights of passage may be for vehicles (i.e. a road), or for pedestrians and animals (i.e. a bridleway), or for pedestrians only (i.e. a footpath) it must be a right owned by the whole of the public, not merely a portion of the public.
 - iv) The right must be over a defined route: the common law did not recognise a right to stray or wander over land.
 - v) The right must be permanent: a highway cannot be extinguished at common law except by way of complete physical destruction, hence the maxim, "Once a highway, always a highway". Short of physical destruction, extinguishment relies upon statutory provisions.
- 17. Before the Highway Act 1835, the creation of a highway was also dependent upon the common law, which identified two essential elements: dedication by the owner of the land, and acceptance by the public of the way. Each element was important. For a landowner, the dedication of a highway over his land meant that he divested himself forever of the right to exclude members of the public from using the dedicated land for the purposes for passing and repassing. For the public, the dedication of a

highway meant the adoption of a burden as well as a benefit: for example, liability for the repair of almost all highways fell upon the public in the form of the parish in which the highway was situated. It is therefore unsurprising that the common law required an intention both on the part of the landowner permanently to divest himself of some of his proprietorial rights, and on the part of the public to accept the utility of the way.

- 18. Dedication by a landowner could be by way of express act or declaration; but, even in the absence of clear evidence of such an express intention, it could be inferred from usage by the public and acquiescence in that use by the landowner. Although sometimes referred to as a "presumption", there was no presumption of dedication at common law: the common law simply accepted that a conclusion that dedication by the owner had occurred at some time in the past could be inferred from evidence as to the manner and length of usage (although, at common law, no particular length of time of usage was either necessary or sufficient). Such a conclusion, however, could only be based upon a finding, express or implicit, that the usage of the route in the past had been as a highway.
- 19. Therefore, for the route to become dedicated as a highway the past usage had to be by the public, and not a mere section of the public: the inference would therefore be thwarted by a restriction of the persons enabled to use the way, e.g. to the inhabitants of a particular parish (Poole v Huskisson (1843) 11 M & W 827). Further, the previous use had to be as of right, and not, e.g., by way of permission of the landowner: so that the inference might also be thwarted by evidence of signs placed on the way making clear that the landowner granted permission for the public to use the route over his land.
- 20. The common law rules remain important, as will soon become apparent. However, the creation of highways is now the subject of statute.
- 21. The current provisions are found in the Highways Act 1980. These provisions cover creation by (for example) construction, agreement, declaration and order. In addition, whilst the common law required actual dedication by a landowner (whether express or implied), section 31(1) of the 1980 Act creates a statutory presumption of dedication of a route as a highway, in the following terms:

"Where a way over any land, other than a way of such 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" (emphasis added).

Unlike the common law, that provision does create a true legal presumption. If the conditions of the provision are satisfied, then, as a matter of law, dedication is deemed to have occurred; although the presumption is expressly rebuttable, by evidence that there was no intention during that period to dedicate it.

22. As can be seen, this statutory provision retains common law concepts. By virtue of the emphasised words, there can be no deemed dedication of a highway under section 31 if the way over which such dedication is alleged is of such a character that, at common law, use of it could not give rise to a inference of dedication. As I have already indicated, there was no presumption of dedication known to the common law (see paragraph 18 above): "presumption" here clearly means "inference". Additionally, the statutory requirements retain such common law concepts as enjoyment of the way by the public as of right.

The Inspector's Findings and Decision

23. The Inspector found as follows:

. . . .

- i) The health centre land and the land on which the shops are situated which are joined by the footpath over the plot of land are in private ownership, and there is no public right of way over either of them. In so far as members of the public enter either piece of land (e.g. to get to the footpath), they do so as licensees. The Inspector dealt with that issue thus:
 - "13. There is no legal requirement that a public right of way must lead to publicly owned land, and clearly many public rights of way cross private land. I agree with the Council that the shopping parade is a place to which the public would wish to go (it presently contains amongst other facilities a supermarket and Post Office), indeed I consider the public would have a reasonable expectation to go there. The Health Centre car park may also be considered to be a place to which the public may wish to resort.
 - 16. On balance I consider that in connecting two places to which the public resort the [path] is not precluded from existing as a highway.
 - 37. It was suggested that if the Order were to be confirmed, the PCT could fence off their land at point B [i.e. where the path meets the PCT land]. However, this is not a matter relevant to my consideration of whether or not the tests have been met and a right of way subsists."

In the light of those extracts, I should perhaps say, for the avoidance of doubt, that, even if a public right of way did not exist across the plot of land, members of the public could very easily walk from the health centre to the shops, along Watling Street and Mile Lane (both public highways), although the walk may be a few yards longer. The path would do no more than effectively cut off the short corner made by those two public highways.

- ii) The relevant date for "calling into question" the existence of the footpath was 2008, so that, for the purposes of section 31, it was necessary for the proponents of the footpath to show uninterrupted use of the path as of right by the public in the 20 year period from 1988.
- iii) There had been a "longstanding short cut across the [plot of] land, as reflected by the Order" which had been used, uninterruptedly, by members of the public for the relevant 20 year period.
- iv) The key issue was whether the public use of the footpath had been with the permission of the landowner. It had not.
- v) There was no evidence to rebut the presumption of dedication consequently arising under section 31.
- 24. There is no challenge to these findings of fact. On the basis of them, the Inspector found that the footpath was deemed to have been dedicated to the public as a highway, under section 31.
- 25. In the alternative, she held that an implication of dedication arose under the common law. However, before me, it was common ground that, if dedication could not be deemed under section 31, then it could not be inferred at common law. The alternative ground for confirming the Footpath Order therefore adds nothing of substance; and I need not deal with it further.

The Issue

- 26. The Inspector's findings of fact set out above satisfy many of the requirements of section 31: they amount to findings that the way over the plot of land had been enjoyed by members of the public without interruption for a period of 20 years, and there was insufficient evidence of intention not to dedicate it during that period.
- 27. However, there is a caveat to section 31, namely that the relevant way must not be "a way of such character that use of it by the public could not give rise at common law to any presumption of dedication". In this case, Mr Sauvain QC for the Claimant submitted that this path was such a way; because, at common law, a route that is inaccessible to the public as of right cannot be a public highway: a highway has the essential characteristic of being open to passage and repassage by all members of the public at will, and a way to which the public has no right of entry at either end or at any point along its length cannot be a public highway at common law, as a matter of law.
- 28. Mr Buley for the Secretary of State submitted that it could. He accepted that the fact that a route was inaccessible to the public as of right may be relevant to the question of whether the landowner had an intention to dedicate or, in the terms of section 31, whether the landowner could rebut the presumption of dedication after 20 years usage. However, he submitted that the common law does not say that, as a matter of law, a route that is inaccessible to the public as of right cannot be a public highway.
- 29. There is an additional claim, that the Inspector's reasons were deficient but that is not a claim of substance, because, whatever her reasons, the Inspector was either right

or wrong in proceeding on the basis that a route that is inaccessible to the public as of right is capable of being a public highway.

30. It is that issue upon which this claim falls to be decided.

The Characteristics of a Highway

- 31. The common law, coyly and somewhat surprisingly, does not appear to have any authority directly on this issue; and the authorities to which I was referred are, in the main, old and of limited assistance. The submissions of Mr Sauvain and Mr Buley were consequently based largely upon general principles, as, inevitably, is this judgment.
- As a matter of principle, in my judgment, the concept of an "isolated highway" (i.e. a highway that is unconnected to any other highway, either directly or via land over which the public have a right of access) is incongruous, because such a way does not have all of the requisite essential characteristics of a highway, for it is not a way over which there is "a right for all Her Majesty's subjects at all seasons of the year freely and at their will to pass and repass without let or hindrance".
- Where, as here, the only people who can lawfully pass or repass along the relevant route are those with a licence to enter and cross other land, the public do not have a right to pass over that route "freely and at their will". They can only do so at the will of the owners of the land over which they have to exercise a license to get to the way. As a matter of law, those owners may, if they wish, withdraw the licence at any time; or, in more practical terms, physically block access to the way by walls, fences or other hindrances, with the result that the way is unusable by all or possibly any members of the public. A highway, once in existence, has the additional characteristic of permanence, in the sense that it cannot cease to exist at common law, short of physical destruction. Where access to the way might lawfully be blocked at any time by adjacent landowners, the public's ability to pass along the way is not as of right and is of such fragility that it simply does not and cannot have the necessary characteristics of a highway.
- 34. The fact that, in practice, the owners of the land at either end of the path may not have put any restrictions on those who are allowed to cross their land, either currently or in the recent past, is not to the point. The definition of a highway is determined by the nature of those who use the way; they must have a right, practically enforceable, to do so.
- 35. The position would of course have been different in this case if there was additionally a public right of way over the health centre land and/or the land on which the shops are situated, joining one or both ends of the route over the Claimant's land to the public highway; but the Inspector made an express finding that that was not the case.
- 36. In the terms of section 31, in my judgment a way to which the public has not had access from another highway or from other land over which the public have access as of right fails to meet the statutory criteria because, on a true analysis of the common law principles upon which the statutory criteria are founded, (i) it has not been enjoyed "as of right" for the requisite (or, indeed, any) period; and (ii) it is a "a way of such character that use of it by the public could not give rise at common law to any

- presumption of dedication". These are not, in truth, distinct deficiencies; but rather two reflections of the fact that an essential characteristic of a highway is that it must be a way enjoyed by the public as of right.
- 37. There is good justification for that principled approach. A public highway, once in existence, imposes burdens on the public, including keeping the way free from obstructions and, often, the burden of repair and maintenance. There seems to me no good reason why the common law would or should impose such burdens on the public, unless the public has the legal right, practically enforceable, to use the way without any let or leave. If a philanthropic landowner wishes to allow people to cross his land, in circumstances falling short of those necessary to create a public highway, then he may do so by other legal means, such as a licence, with possibly a wide scope of beneficiaries, and possibly of long-standing if not indefinite duration. However, he cannot, for example, dedicate a route across his land as a public highway if its use is restricted to a portion of the public, or if the route is insufficiently defined. He cannot create a public highway, with the obligations that that imposes on the public, if that which he wishes to give away falls short of the criteria required by law for a highway to exist.
- 38. If that is the direction that principle points, are there any authorities that point another way?
- 39. I should at the outset thank Mr Sauvain and Mr Buley for their assiduous and helpful research, and their submissions on the cases they have found. I am confident that they have missed none of relevance.
- 40. I appreciate that the point appears never to have been directly in issue; but it is noteworthy that in none of these cases has a way that is unconnected to any other highway, either directly or via land over which the public have a right of access, been found to be a public highway; nor, in my judgment, do any suggest that such a way might, as a matter of law, be a public highway.
- 41. The authorities grapple with (and, in my respectful view, occasionally confuse) two issues, namely (i) the essential characteristics of a highway (a question of law), and (ii) the intention of the landowner to dedicate (essentially a question of fact, for determination on the available evidence). The two issues of course are interrelated, because some factors (such as permission) are relevant to both, and the nature of the route may generally be evidence for or against its earlier dedication as a highway: as I have indicated, a finding of dedication can only be based upon a finding, express or implicit, that the usage of the route in the past had been as a highway with all the necessary characteristics that that entails.
- 42. However, the issues are nevertheless analytically discrete; they have different bases (the former being a question of law, and the latter a question of fact); and, in some circumstances, it may be important to consider them separately. For example, whatever a landowner's intention, as I have indicated, he cannot dedicate (expressly or by implication) a route as a public highway, if that route does not have the necessary attributes to be a highway.
- 43. I have set out above (paragraph 16) the essential characteristics of a highway. Most of the cases to which I was referred considered whether there was a further such

- characteristic, namely whether, as a matter of law, a highway must have a terminus a quo and a terminus ad quem, i.e. a public terminus at either end.
- Early cases suggested that that might be a legal requirement for a highway. However, by 1925, it was well-established that a cul-de-sac could be a public highway. In Moser v Ambleside Urban District Council (1925) 89 JP 118 at page 120, having approved a passage from another passage from Wills J in Eyre v New Forest Highway Board (1892) 56 JP 517, Atkin LJ said:

"It has been suggested that you cannot have a highway except insofar as it connects two other highways. That seems to me that too wide a proposition. I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway...".

- 45. Two points are worthy of note from that passage. First, the reference to "a place of popular resort" marks the difficulty of proving that a landowner intended to dedicate a way for public use over his land, where that way is from a place where the public have a right to be (such as public highway) to a place where the public have no right to be. The case makes clear that that is not a legal bar, but only an evidential challenge to the person asserting that a highway has been created; but it may be a substantial challenge in a case concerning a cul-de-sac in a rural place (see, e.g., https://dx.doi.org/nc.ed/ a case concerning a cul-de-sac in a rural place (see, e.g., Attorney General v Antrobus [1905] 2 ChD 188, especially at pages 206-7). It will be easier to prove if the cul-de-sac goes to "a place of popular resort", such as a local beauty spot.
- 46. Second, Atkin LJ did not suggest that a way without any connection to a highway or other land to which the public have a right of access might be a highway; indeed, he referred specifically in the case of the cul-de-sac to the ability "to return on your tracks by the same highway" (emphasis added).
- 47. The other main authority to which I was referred, at some length, was <u>Bailey v</u> <u>Jamieson</u> (1875-76) LR 1 CPD 329, an old and far from easy case. It was refreshing to see that the case, to show cause on a rule nisi made by Pollock B at the Newcastle Spring Assize, was heard in a single day by a Divisional Court of Common Pleas of three judges (Lord Coleridge CJ, Denman and Lindley JJ), with each judge giving judgment in a single paragraph that same day. It is on the other hand dispiriting that, over 130 years later, academic writers still debate what the case decided, a debate which, by virtue of this case, has now spread to this court.
- 48. The facts, at least, were straightforward. The case concerned a public highway in the form of a footpath from Sheepcote Rectory to the village of Bothal, in Northumberland. However, as a result of stopping up orders properly made by the local quarter sessions in respect of other highways, there ceased to be any access to the footpath from a highway, or any other land to which the public had access. That the earlier stopping up orders had left this isolated footpath appears to have been an error: if a stopping up order had been sought in respect of this footpath also, it seems inevitable that it would have been granted. However, it was not sought. The evidence was that the defendants had no permission from any adjacent landowners to be on

their land; so that they could only access the footpath by trespassing on the adjacent land to get to it.

49. The defendants relied upon the common law maxim, "Once a highway, always a highway". They submitted that the public footpath could only be extinguished by a stopping up order or other device provided by statute. However, the court discharged the rule, holding, as the headnote says:

"A way ceases to be a 'public highway' where the access to it at either end has become impossible by reason of ways leading to it having been legally stopped up."

- Mr Buley submitted that this case supported his submission that, as a matter of law, at common law a way isolated from a highway or other land to which the public had a right of access could be a highway, the difficulty for the proponent of such a highway being not legal, but evidential. Where a way is isolated from highways and other land over which the public have the right of passage or access, for obvious reasons it may be evidentially difficult to show that there was an intention to dedicate the land for public passage.
- In support of that proposition, and in support of his interpretation of <u>Bailey v</u> <u>Jamieson</u>, he relied on two passages from Mr Sauvain's own book, "Highway Law", 4th Edition (2011). At paragraph 1-18, the author says:

"The existence of a public right of passage across land implies some reason for the public to exercise the right of way. Traditionally, highways have been links between towns and villages. Thus, the need for a public terminus at either end (a terminus a quo and a terminus ad quem) has been considered in the past as a necessary characteristic of a highway. This must, however, be considered with some caution. Certainly it has been held, probably as a rule more of convenience than of legal principle, that if access to a highway is cut off at both ends, as a result of stopping-up orders, the remaining section, to which the public could only have access by trespassing over private land, ceases to be a highway... Essentially, the existence of a public terminus is an important element in the evidence to prove a highway: "It is always a strong observation to a jury that the way leads nowhere" (per Crompton J in Bateman v Bluck (1852) 18 QB 870...). However, there is certainly no rule of law that a cul-de-sac may not be a highway, whether it be in a town or in the country. In the latter case, however, a practical evidential problem may arise in establishing some reason for the creation of the public right of way."

52. He then refers to Moser v Ambleside Urban District Council and Eyre v New Forest Highway Board, before proceeding:

"Where no obvious reason for public use of a cul-de-sac appears, then other evidence (for example, of repair) will

assume greater importance in establishing that the road is a highway...".

53. The second passage is from the chapter on "Extinguishing and Diversion of Highways". Having indicated that the common law did not recognise any concept of abandonment of a highway, except where the route had been physically destroyed, the text continues (at paragraph 9-05):

"A more difficult point is whether a highway, which becomes isolated through the physical destruction or legal stopping up of all its connecting highways, remains a public right of way even though the public no longer have access to it. In <u>Bailey v Jamieson</u> it was held that a highway, connected at both ends to a highway which was then stopped up, itself ceased to be a highway. In that case the highway had become isolated and there was no question of any other land being served by the highway and the decision seems to emphasise the maxim that a highway needs a *terminus a quo* and a *terminus ad quem*. However, that maxim is most commonly applied to the need for evidence of public utility in order to establish public user, and is not an essential attribute of a highway. The extent of the principle in <u>Bailey v Jamieson</u>, which seems on its facts to have been based on pragmatism, must be uncertain."

54. A footnote then continues:

"A case for stopping up such a highway on the grounds that its retention is unnecessary would seem, however, to be unanswerable."

- 55. Mr Sauvain is, thankfully, still alive and well; and Mr Buley relied upon those passages, not for their inherent authority, but for the reasoning they deploy.
- 56. Unfortunately, I do not accept that reasoning; nor do I accept the premise that <u>Bailey v Jamieson</u> supports the Secretary of State's cause. Indeed, in my view, it substantially undermines it.
- 57. The judgments in <u>Bailey v Jamieson</u> are short; but each makes clear that the footpath in question, having been isolated from other highways in the manner I have described, ceased to be a highway because it ceased to have all of the essential characteristics of a highway. The Lord Chief Justice said (at page 332-3):

"It is necessary, therefore, to determine whether or not [the footpath] remains a highway. I am of opinion that it does not. Its character of a public highway is altogether gone."

Denman J agreed, and added that, despite the dictum, "Once a highway," always a highway.":

"... I think we are compelled to hold that this is a case where that which formerly was a highway, but which, though it has

been not been stopped by statutory process, has, by reason of legal acts at either end of it, ceased to be a place which the Queen's subjects can have access, loses its character of a highway."

Lindley J also agreed, adding:

"[The plaintiff's] argument amounts in substance to this, that there cannot be a public highway public access to which has lawfully been stopped at either end. I agree to that."

- Each judgment was therefore apparently firmly based on the premise that a way which is not connected to another public highway, or to some other point to which the public have a right of access, cannot itself be a public highway because it lacks an essential characteristic of a highway.
- 59. Mr Buley made two submissions in respect of that.
- 60. First, he submitted that this case was distinguishable from <u>Bailey v Jamieson</u>, because in that claim the defendants could not get to the footpath without trespassing over adjacent land, whereas in this case members of the public could get to the footpath, from either end, by exercising a licence granted to them to do so by the owners of the land at either side. Indeed, the Inspector appears to have found that the public had exercised such a licence at one end of the path or the other or both for over 20 years, although not such as to create a public highway over either the health centre land (express finding of no public right of way) or the land on which the land was situated (no finding either way).
- 61. However, this difference between the cases is immaterial. As I have already indicated, the public have no *right* to access the footpath in this case, over either parcel of adjacent land. They may lawfully be prevented from going onto the health centre land or the shopping parade today. It is certainly not fanciful to suggest that the licences might be withdrawn: before the Inspector, both landowners objected to the right of way over the plot of land. On the other hand, in <u>Bailey v Jamieson</u> the defendants or others could have been granted a licence by adjacent landowners to access the path in that case. But those circumstances cannot affect the legal status of the relevant footpath, which is dependent upon the public having a *right* of access to it. In neither <u>Bailey v Jamieson</u> nor this case, irrespective of licences that may or may not have been given to members of the public to cross the adjacent land, was there any such right.
- 62. Second, Mr Buley relied upon the judgment of the Lord Chief Justice in <u>Bailey v</u> <u>Jamieson</u>, with which the rest of the court agreed, that the relevant characteristic of a highway that was missing in that case was the fact that the footpath did not have a terminus a quo and a terminus ad quem. He said (at page 332):
 - "... [T]o constitute a highway, there must be some notion of a passage which begins somewhere and ends somewhere, and along which the public have a right to drive or to walk from its beginning to its end. Here, that notion is entirely absent."

- 63. That is a reference to the early cul-de-sac cases (see paragraphs 43-46 above), and, submitted Mr Buley, it is now accepted that, in the cul-de-sac cases, the absence of a terminus is not legally fatal for the proponent of the footpath; it is merely an evidential challenge. In this case, on the evidence, the Inspector found that the owners of the plot of land had intended to dedicate the land to the public. That finding is not challenged.
- 64. I accept that, in his judgment, Lord Coleridge relied upon old cases which suggested that it was a necessary requisite for a highway to have a *terminus a quo* and a *terminus ad quem*; and that, at least since 1925, that has not been a legal requisite (see paragraph 43 above). However:
 - i) That quoted passage has to be considered in the context of the Lord Chief Justice's judgment as a whole. He said of the cul-de-sac cases:

"The conclusion to which the court came in those cases was that the stoppage of one end did not make a road cease to be a common highway; for, though it thereby became a cul-de-sac, the public still might have the right to go over it to the end and back."

When read as a whole, the full judgment makes it clear that the prevention of the right of access to the public at either end of a way *does* deny that way the attributes necessary for it to be a public highway.

- ii) In any event, although they agreed with him, the other two judges of the court made it abundantly clear that it was that missing characteristic that prevented that way being a highway.
- 65. Nor am I impressed with a number of suggestions in Mr Sauvain's book; relied upon by Mr Buley. I do not agree that <u>Bailey v Jamieson</u> emphasises the now outdated proposition that a highway must have a *terminus a quo* and a *terminus ad quem*. Rather, in my view, the judgments when read as a whole, properly emphasise the need for a highway to be connected to another highway, or to other land to which the public have a right of access. Nor do I consider that, when properly construed, <u>Bailey v Jamieson</u> is at all focused on the evidential challenge for those seeking to show that a way has been dedicated as a highway. Nor do I consider that the decision is based upon pragmatism, rather than principle. Nor do I agree, so far as Mr Sauvain's book or Mr Buley's submissions suggest, that Bailey v Jamieson is wrong.
- When properly interpreted, in my judgment, the decision in <u>Bailey v Jamieson</u> is authority for the common law principle that a way which is not connected to another public highway, or to some other point to which the public have a right of access, cannot itself be a public highway because it lacks an essential characteristic of such a highway namely a right for the public to pass and repass over the route at will.
- 67. Mr Buley relied upon two other authorities with which, for the sake of completeness, I should deal.
- 68. First, he relied upon the only authority in which <u>Bailey v Jamieson</u> appears to have been cited, namely <u>Great Central Railway Company v Balby-with-Hexthorpe Urban</u>

<u>District Council</u> [1912] 2 ChD 110. The case concerned various sections of a highway, one issue being whether the extinguishment of public rights of way over one section (the yellow section) resulted in the extinguishment of such rights in another section (the red section). Joyce J said (at page 123):

"[The railway company] say reasonably, I think, by reason of the case of <u>Bailey v Jamieson</u>, that if both ends of a piece of land, which is subject to a public right of way, are closed, and there is no access to the intervening piece for the public, then the latter as a matter of fact is also closed, although perhaps, technically there may still be some public legal rights existing in respect of it."

- 69. Mr Buley submitted that this suggested that <u>Bailey v Jamieson</u> was decided on the basis that the absence of any connection with land to which the public had access was one factor taken into account in respect of the question of fact as to intention to dedicate, not in respect of the question of law as to the essential characteristics of a highway. However:
 - i) Although the passage I have quoted is not unambiguous, I am not at all sure that that was Joyce J's understanding of <u>Bailey v Jamieson</u>; because he immediately continued:

"I think, however, that if the rights of way are extinguished over the yellow, then, on the authority of this case of <u>Bailey v Jamieson</u>, the railway company would have established that the public rights over the red and yellow were gone."

That suggests that they would have "gone" as a matter of law.

- ii) In any event, his comments appear to have been obiter dicta; and, in so far as they suggest that <u>Bailey v Jamieson</u> did no more than indicate that, in assessing whether a landowner had an intention to dedicate a way to the public the court had to take into account all circumstances including the fact that a way was isolated, then I respectfully consider them to be wrong.
- 70. The second authority was the recent case of Newhaven Port and Properties Ltd v East Sussex County Council [2012] EWHC 647 (Admin). This concerned the registration of West Beach, Newhaven, as a village green under the Commons Act 2006. The Commons Act concerns the rights of "a significant number of inhabitants of any locality... [to indulge in] lawful sports and pastimes on the land for a period of at least 20 years." One issue in the case there were many was whether such a right could exist in respect of land to which the public had no right of access. Ouseley J considered that the absence of any right of access was not determinative of the issue as to whether there was a right to perform sports and pastimes: it would be merely evidence that there was no such right (see [163]-[164]).
- 71. I can deal with the case shortly. Although of course there are some parallels between the scheme for creation and recognition of highways, and that for the creation and recognition of village greens, the schemes have obvious differences. In particular, as

I have explained, for a way to be a highway, it must have certain essential characteristics. One, retained by section 31, is that it must be available to the whole of the public as of right. A village green certainly does not have to have the same characteristics. The comments of Ouseley J about the intention to dedicate on the part of landowners in each scheme does not bear on the question of whether access to a highway or other land to which the public have a right to access is a necessary characteristic of a highway. For those reasons, I do not consider the Newhaven case to be of any material assistance to me.

Conclusion

- 72. Therefore, as a matter of law, on principle and authority, I do not consider that a way to which the public has no right of entry at either end or at any point along its length can be a public highway at common law.
- 73. The Inspector, in directing herself that it was capable of being a public highway, misdirected herself in law. She was not referred to <u>Bailey v Jamieson</u>; and I am afraid that, understandably but erroneously, she misconstrued the relevance of the "place of public resort" in the context of cul-de-sac cases, and wrongly applied it to this case. In my judgment, to be a highway, it is insufficient for a way to be linked to a place to which "the public would have a reasonable expectation to go" or "a place to which the public may resort", as the Inspector considered to be the case: a highway, by definition, requires to be linked to a highway or to other land to which the public have a right of access.
- 74. For the reasons I have given, the Inspector unfortunately erred; and, as a result, I am satisfied that the Footpath Order was not made within the powers of the 1981 Act.
- 75. I consequently allow the claim, and quash that Order.

Agenda Item 6



TYNEDALE LOCAL AREA COUNCIL 14 June 2022

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

ALLEGED RESTRICTED BYWAY No 26 PARISH OF WEST ALLEN

Report of the Executive Director of Local Services Cabinet Member: Councillor Jeff Watson, Healthy Lives

Purpose of report

In this report, the Tynedale Local Area Council is asked to consider all the relevant evidence gathered in support and in rebuttal of the existence of restricted byway rights over the route of existing Public Footpath No 26, from the Cumbria County boundary at Blacklaw Cross, in a general northerly direction, to existing Byway Open to All Traffic No 37, at Keirsleywell Bank.

Recommendation

It is recommended that the Local Area Council agrees that:

- (i) there is still insufficient evidence to indicate, on a balance of probabilities, that public vehicular rights have been shown to exist over the route A-B;
- (ii) there is, however, sufficient evidence to indicate, on a balance of probabilities, that public bridleway rights have been shown to exist over the route A-B;
- (iii) the route be included in a future Definitive Map Modification Order as a public bridleway.

1.0 BACKGROUND

- 1.1 By virtue of section 53 of the Wildlife and Countryside Act, 1981 the County Council is required to keep the Definitive Map and Statement under continuous review and make modification orders upon the discovery of evidence, which shows that the map and statement need to be modified.
- The relevant statutory provision which applies to upgrading an existing public right of way on the Definitive Map and Statement, based on historical documentary evidence, is Section 53(3)(8)(ii) of the Wildlife and Countryside

Act, 1981. This requires the County Council (as Surveying Authority) to modify the Definitive Map and Statement following:

"the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:

"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."

- 1.3 This route has been the subject of two previous applications. In February 1998, Alan Kind made an application to upgrade existing Footpath No 26 to Byway Open to All Traffic status. This application was refused (insufficient evidence for public vehicular or public bridleway rights) by the County Council's Rights of Way Committee in January 2001. The applicant appealed this decision to the Secretary of State, and the Secretary of State allowed the appeal, directing the County Council to include the route in a future Definitive Map Modification Order (DMMO). DMMO (No 10) 2003, identifying the route as a byway open to all traffic, was made on 12 May 2003. The Order attracted 7 sustained objections, and was referred to the Secretary of State for determination. Following a public local inquiry on 6 & 7 April 2004, the Inspector concluded (decision letter dated 10 September 2004) that there was insufficient evidence to demonstrate the existence of carriageway rights.
- 1.4 On 22 November 2016, Mr Kind made a fresh application, supported by some extra documentary evidence, seeking to upgrade Footpath No 26 to restricted byway status. This application was refused (insufficient evidence for public vehicular rights) by the County Council's Rights of Way Committee in November 2017. Again, the applicant appealed this decision to the Secretary of State, though this time the Secretary of State rejected the appeal. The Inspector concluded (decision letter dated 19 December 2018) that there was insufficient evidence to demonstrate the existence of restricted byway rights.
- 1.5 All the relevant statutory provisions and competing rights and interests have been considered in making this report. The recommendations are in accordance with the law and proportionate, having regard to individuals' rights and the public interest.

2.0 PUBLIC EVIDENCE

- 2.1 In October 2019, Alan Kind of Newcastle upon Tyne made a formal application seeking to modify the Definitive Map of Public Rights of Way by upgrading, to restricted byway status, existing Public Footpath No 26, from the northern end of existing U3111 road in Cumbria, at the County boundary at Blacklaw Cross, in a general northerly direction over the route of existing Public Footpath No 26, to existing Byway Open to All Traffic No 37, at Keirsleywell Bank, west of Fairplay.
- The application is supported by the following evidence: The Hexham and Allendale Inclosure Act 1792, The Alston Moor Inclosure Act 1803, Extracts from the Hexham and Allendale Inclosure Award 1799, Extracts from the Alston Moor Inclosure Award 1820, a Paper on widths and photographs of Blakelaws Road, a Report on the State and Condition of the Roads and Mines on the Estates of the Greenwich Hospital in the Counties of Cumberland, Durham, and Northumberland Pagew86 Lockyer (1823), Greenwood's Map

of Northumberland 1827, Hodkinson & Donald's Map of Cumberland 1770, Greenwood's Map of Cumberland 1823/4, OS 27/3789 extract from the National Archives, 2nd Edition 25" OS map extract, OS Book of Reference page to accompany the 1st Edition 25" OS map, an extract from Richard Oliver in Ordnance Survey Maps: a concise guide for historians (2005), a satellite image of the application route, and case law, as cited in the accompanying Statement of Grounds.

2.3 Mr Kind supplied the following background and analysis of the evidence to accompany his application:

"Earlier Orders Concerning This Route

This route has been the subject of two previous applications which were each rejected by the surveying authority, and later rejected by the Secretary of State on appeal under Schedule 14.

Reopening the Issue of Status

- 1. It is established law that the process of applying for, and (separately) making, an order to modify the definitive map, is not barred to further orders after an initial order has been made. (Express statutory provision apart, such as regarding restricted byways in CRoWA 2000). What matters is the 'discovery' of evidence, and that discovered evidence must then be considered with all other available evidence, whether 'new', or not. In the Wildlife and Countryside Act 1981, S.53(3)
- (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-
- (i) 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;
- 2. In R v. Secretary of State for the Environment, ex p. Riley [1989] CO/153/88, the ability to 'reopen' the question of the status of a way previous subject to a definitive map reclassification order was considered. Held: that there is no res judicata in this statutory provision, and MacPherson J provided an oft-quoted reference to a 'better greybeard's evidence being added to a (earlier) "not very convincing greybeard's evidence," and the whole being weighed together (at D-E on page 10 of the judgement).
- 3. Stubbing Court v Secretary of State for EFRA [2012] (consent order) is a case concerning an order to delete a public right of way from the definitive map and statement. The Secretary of State consented to judgement on the point that there is no 'gatekeeper test' for the discovered evidence (the 'new evidence'). Once there is new evidence then the test of sufficiency (cogency, positivity, etc.) is applied to all the evidence together. It is wrong to apply any different test to any part of the evidence: the relevant test must be applied to all the evidence.
- 4. In this application there is the evidence previously considered, plus 'new evidence', which is also evidence that speaks to the historical public status of the road. Pages 89 matter if this 'new evidence' alone

is not sufficient to establish the claimed status. What matters is whether this 'new evidence', plus all other evidence, weighed together, is sufficient to prove.

- 5. The correct approach is to establish that there is discovery of evidence and, if there is, discount that the route has been subject to an earlier application, or order. Consider this application as a fresh, standalone issue.
- 6. To facilitate this approach the discovered evidence (the 'new evidence') is identified below, and then all the evidence is set out in this submission.

Overview

- 7. The application route The Carriers' Way is highlighted in blue. It is 'bookended' by two lengths of inclosure award public carriage road (in green). The road highlighted yellow is the pre-1823 turnpike road. The A686, A689 & B6294 are part of JL McAdam's 1823 turnpikes.
- 8. The essential proposition is this: There is no direct evidence as to the highway status of the application route, but the continuation at each end is an awarded public carriage road. There is no place of public resort over which the application route runs. The totality of the indirect evidence points clearly to the whole through route being the same public traffic status throughout.

The 'New Evidence'

- 9. Three items of evidence, not previously considered, have been found and are put in as part of this application. These are:
- 9.1 John McAdam's plan of his proposed turn pike roads, 1823.
- 9.2 C & J Greenwood's Map of Cumberland, 1823/4. Copy located online at the Cumbria Record Office, with a higher-resolution version later found on the 'Guides to the Lakes' website.
- 9.3 Extracts relating to Gateley Road in the Hexhamshire and Allendale Inclosure Award.
- 10. This document is set out firstly as regards the evidence in Northumberland, and secondly as regards the evidence in Cumbria (Cumberland, as was). Each county section is in chronological sequence.

Northumberland Historical Evidence

- 11. The Hexham and Allendale Inclosure Act 1792
- 11.1 An Act for dividing and inclosing certain parts of the commons, moors, or tracts of waste land, called Hexhamshire, and Allendale Common, and also certain town fields within the regality or manor of Hexham, in the county of Northumberland, and for stinting the depasturing of other parts of the said commons, moors, or waste land.

- 11.2 This Act provides for two distinct processes. The first is "dividing and inclosing certain parts of" and the second is "stinting the depasturing [grazing] of other parts..."
- 11.3 Thus the process of allotment of stints is not "dividing and inclosing". It is a separate and different process.
- 11.4 S.17 provides (marginal title) "Commissioners to set out the best part of the commons or wastes to be divided and inclosed".
- 11.5 S.17, (marginal title) "Roads", "... the said commissioners ... shall and they are hereby authorised and required, in the first place, to set out and appoint such publick carriage roads in, over, and upon the lands and grounds intended to be divided and allotted as they shall think necessary and proper, all of which publick road shall be and remain of the breadth of sixty feet at the least.
- 11.6 S.17, "Roads" on page 3254, "... none of the inhabitants of the said parishes of Hexham and Allendale (other than the owners and proprietors of the said lands and grounds to be divided and allotted) shall be charged and chargeable (over and above the statute duty) towards the forming and putting the said roads into repair, until the same shall be completely formed and made good."
- 11.7 S.18 "Commissioners to determine to what township roads belong" empowers the commissioners to allocate roads to townships, even where these are "ancient ones".
- 11.8 S.18 continues (page 3256) to provide that once the commissioners have set out public highways over the lands to be "divided and allotted", it shall be unlawful to use other roads, and such other roads shall be deemed part of the lands to be divided and allotted.
- 11.9 S19 provides that the commissioners shall have the power to "assign and set out such common, publick, and private horse and other roads, ways, passages, bridges, stiles ... in, over, and through the said lands and grounds to be divided as they shall think proper, useful and convenient ..."
- 11.10 S36 "The residue of the commons, etc, to be held as stinted pastures" "... after the fifteen thousand acres of the said commons, moors, or tracts of waste land shall have been set out and allotted in manner herein-before directed, the residue and remainder of the said commons, moors, or tracts of waste land shall be held and enjoyed as stinted pastures ..."
- 11.11 Thus, this Act empowers the commissioners to alter existing public and private roads, keep existing roads, and make new roads, in the lands to be afterwards divided, inclosed and allotted. There is no power to the commissioners to do anything with, or to, the public and private roads in the residue of the lands directed to be "held and enjoyed as stinted pastures".
- 12. The Hexham and Allendale Inclosure Award 1799 (QRA31/1)

- 12.1 The inclosure award has 'private roads' set out by the commissioners. One such is shown and named on the inclosure plan as 'Gaterly Road, and is set out thus, "One other private carriage road sixty feet in breadth, beginning at Houstie Carrs Road, opposite the end of Coldcoats road, and then leading eastward to the stinted pasture, for the use of the owners and occupiers, for the time being, of lands and allotments in the township of Catton Grieveship."
- 12.2 So it was perfectly within powers for the inclosure commissioners to set out private roads to the stinted pasture.
- 12.3 It has previously been suggested that there is some significant distinction between the award stating that some public carriage roads run "to the stinted pasture" and some "into the stinted pasture". There seems to be no obvious explanation for this linguistic distinction. Consider two roads adjacent to Alston Road as examples Keirsleywell Road, and Appletreeshield Road both of these are set out as running "to the stinted pasture", yet on a simple view of the inclosure planand Ordnance Survey map, both must also have run through / over the stinted pasture. Appletreeshield Road would be a dead end, both ends, if it did not.
- 12.4 And further, Alston Road is set out as "Alston Road, beginning at a place called Powstile gate, and leading south-westwards to the stinted pasture near Knights-cleugh head." On the face of that wording, that road is also a double-dead-end public road, and there is no such thing known to the law. It would be irrational to hold that an awarded public road called 'Alston Road' went only about 1.25 miles and then stopped as a dead end.
- 12.5 The unclassified public road that runs up the hill from Hawkuplee to the northern end of the application route is set out in the award as a public carriage road called "Alston Road", thus, "beginning at a place called Powstile gate, and leading southwestward to the stinted pasture near Knights-cleugh head."
- 12.6 Judging from the old maps there is little doubt that the unclassified road / BOAT from Ninebanks, up the awarded 'Alston Road', to Long Cross, and down to the pre-1823 road at Clarghyll Colliery, was a principal route from Alston Moor towards Tyneside. But it was not necessarily the only route. Using online mapping, the route from Powstile Gate, along 'Alston Road', via Longcross, on pre-1823 roads, to Alston marketplace, is just over 5.6 miles.
- 12.7 Measuring from Powstile Gate, along 'Alston Road', via the application route, Blagill (pre-1823 roads) and Gossipgate, measures at just over 5.7 miles. Nothing in it.
- 12.8 And further, when the award plan is superimposed on modern OS mapping (below), it is clear that the Long Cross road makes a thirty-degree turn to the right, off the line of the 'Alston Road', through what is shown as an unbroken boundary on the award plan.
- 12.9 By contrast, the application route continues the straight alignment of 'Alston Road' for abopt age before making a turn of about ten

degrees at the end of the 'funnel' between allotments, which is where 'Alston Road' blends into the stinted pasture.

- 12.10 This below is the same location from a satellite photograph.
- 12.11 Simply, 'Alston Road' on the award plan, and as set out, is anciently as likely to be the end of application route as it is of the Long Cross road. The Long Cross road makes a lateral connection with a much straighter alignment. This suggests that 'Alston Road' and the application route is the older route, and the Long Cross route was, at one time, a side branch off it.
- 13. Greenwood's Map of Northumberland 1827/8
- 13.1 It is often difficult to understand and reconcile 'simplistic' early commercial maps, based on magnetic north, with modern Ordnance Survey maps based on grid north and with much more detail and precision.
- 13.2 This below is that Greenwood map, superimposed as a seethrough layer on a same-area piece of outline First Edition 6" scale OS map, rotated to register common features (such as junction of Alston Road and the order route).
- 13.3 It is clear that Greenwood is showing the order route to and beyond Blakelaw Cross, and also the Long Cross road. The representation is somewhat schematic, but the commonality of features and reasonably precise registration leave little doubt that Greenwood was showing a through route along the order route in 1827.
- 13.4 It might be observed that Greenwood shows a 'dog-leg' in the county boundary line to the west of Blakelaw Cross, whereas the OS shows a dog-leg to the east. It may be that Greenwood was in error here, but his location of Blakelaw Cross is accurate. It may be that Greenwood is showing a schematic representation of the boundary line around Hard Rigg. It may be that the boundary line has altered over time. Hodkinson and Donald's map of Cumberland suggests that is the case. Whichever, what matters is the reasonably accurate (by today's exacting standards) representation of Long Cross, Blakelaw Cross, and the roads leading to those.
- 13.5 There is a particularly important point to be made about Greenwood's map. It was published in 1827 / 8 (different reference books give the different dates). Greenwood shows a road in this extract from the southwest end of the 'Alston Road', reasonably directly to 'Black Cross'. Greenwood shows a shallow reflex curve in the route, which schematically mimics that still shown on the Ordnance Survey map. In 1827 Greenwood had no map to copy from. Fryer (1820) and Cary (1825) do not show this road. According to Richard Oliver, the county was not surveyed by the Ordnance Survey until 1855. It is improbable that Greenwood dreamed-up a road here that quite accurately predicts the course shown since 1855 by the Ordnance Survey. It is probable that there was a road here, well-enough defined to be seen, followed and mapped.

- 14. Ordnance Survey, First and Second Edition Maps
- 14.1 There is no visible change between the first edition OS large-scale maps (1855-64) and the first revision (1894-7). This extract below is from the 1896 issue, 25" scale map, available online on the National Library of Scotland website. It is from sheet CVI.II, and has the name 'Carriers' Way' printed alongside the application route.
- 15. Ordnance Survey Book of Reference
- 15.1 The Ordnance Survey published 'Books of Reference' (in some places) to accompany the first edition 25" maps. This copy below is from 1858/9 (dated by its being made in 'large letterpress') and for the same map sheet CVI.II, lists 'Carriers' Way' as being 'A cart road'. The accompanying extract from Richard Oliver's book (page 54) explains how these Books of Reference were made.
- 16. Ordnance Survey Boundary Sketch Book
- 16.1 The Ordnance Survey made 'Boundary Sketch Books' as part of the first surveys, which are now held at the National Archives under reference OS27. These records were made under the authority of the Ordnance Survey Act 1841, and the surveyor had statutory power to summon the clerk of the peace, and any documents he wished to see. The Boundary Sketch Books were then advertised for public inspection. The books are held in the National Archives and the extract below was taken there.
- 16.2 The relevant sketch for Blakelaw Cross, made in 1858, is OS27/3789. This below is the catalogue reference and the sketch itself. The sketch shows a 'road' to each side of the county boundary, labelling the Cumberland side as 'Black Laws / Road', and the Northumberland side as 'Carriers Way / Road'.

Cumberland Historical Evidence

- 17. Hodkinson & Donald's Map of Cumberland 1770
- 17.1 This is the earliest map of Cumberland to show any significant pattern of roads. I does not show any road to, or past, Blacklaw Cross. It does show a road past Long Cross. It does not show the 'low road' northeastward from Clarghyll. It does not show many roads in the area depicted, which must have existed to connect settlements.
- 18. The Alston Moor Inclosure Act 1803
- 18.1 An Act for dividing, allotting, inclosing and otherwise improving several commons, moors, or wastes, within the manor of Alston otherwise Alston Moor and Carrigill in the parish of Alston, and county of Cumberland. 11 June 1803.
- 18.2 This Act (page 1462) imports the provisions of the 'General Inclosure Act' of 1801, unless otherwise stated. No variation from the 1801 provisions is made as regards 'roads'.
- 18.3 S.8 of the 1801 Act requires that a public carriage road is set out at least 30 feet in breadth. The annotated plan here shows widths taken at intervals along Blakelaws Road. The road is walled (some parts have disappeared, leaving foundations) and is historically wider than 30 feet throughout.

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- 18.4 Blakelaws Road is a publicly maintainable road on the list of streets, and has been on the county council's records of publicly maintainable highways since 1929 (the handover from the rural district council l.e. a road under the authority of the rural district council).
- 18.5 Nobody is questioning the status and origins of Blakelaws Road. The setting out of this road by the 1803 inclosure award, and its becoming a pre-1835 publicly maintainable highway is valid by virtue of the award and the view of the court in R v. The Inhabitants of the Parish of Enford 28 March 1955.
- 18.6 The setting out of Blakelaws Road is important evidence regarding the status of the order route. The 1820 award is 21 years after the 1799 award. The adjoining land in Northumberland had been statutorily inclosed 21 years earlier; it could not in the normal way of things be inclosed again. The many stint holders hold that land in severalty, and it would be effectively impossible for a highway to be dedicated at common law. Thus the idea that the Alston commissioners set out Blakelaw Road in anticipation of the Carriers' Way being later dedicated in the same status is not a rational explanation of the facts.
- 18.7 The stint holders in the 1799 inclosure award are all Northumberland land-holders or land-occupiers. None of them are Cumberland people. the stinted pasture is not any sort of place of public resort. Although both the Alston and Allendale inclosure acts provide power to set out 'private roads', the commissioners do not set out the order route, or its linear continuation along Blakelaws Road, as a private road for the stint-holders.
- 18.8 The Alston Moor commissioners did set out private roads. This is an example quite close to Blakelaws Road.
- 18.9 This raises a strong presumption that in 1820 when Blakelaws Road was set out as a public carriage road there was a purpose a utility in that setting out. That purpose was most probably making a through-route from the Weardale Turnpike, to Blakelaw Cross, along the order route, and to Ninebanks beyond. There is case law on 'through route presumption', the study of which assists here, and is set out below. It is important, here to consider the evidence as a whole.
- 19. The Alston Moor Inclosure Award 1820
- 19.1 The inclosure award sets out as a 'Public Carriage Road': Blakelaws Road beginning at the Weardale Turnpike road near Nenthall and leading northward to the boundary of the regality or Manor of Hexham near Blake Laws Cross."
- 19.2 None of the awarded roads in this award are set out as 'leading into' lands outside the award boundaries, and similarly none are shown on the plan as extending beyond the award boundaries, although all or some, e.g. the Weardale Turnpike road, must have. The pre-award Long Cross road is set out and mapped as 'stopping' at the inclosure boundary.

- 20. JL McAdam's Turnpike Road Plan 1823
- 20.1 In his plan of a proposed turnpike road from Alston into Weardale (which was largely an improvement of the existing road) McAdam marks and names a number of public roads, including (to the east of Alston) Limekiln Road, "From Blagill", "To Galligill", Blakelaws Road & Rampgill Rake Road. This suggests that McAdam regarded Blakelaws Road as being a public road of some 'traffic connection' to the proposed turnpike, rather than no more than a dead-end with no incoming traffic.
- 21. Report on the State and Condition of the Roads and Mines on the Estates of Greenwich Hospital in the Counties of Cumberland, Durham and Northumberland, with suggestion for their improvement. Edward Lockyer 1823.
- 21.1 This is an early report into the process that engaged John McAdam to survey the roads with a view to their improvements. These improvements were put into effect by the turnpiking of the lower roads. Mr Lockyer notes on page 3, "The public roads are carried over the highest hills with scarce attempt to find an easier level, and the surface is loaded with an immense quantity of heavy stones, without the least consideration of the wear and tear of carriages and cattle employed in the conveyance."
- 21.2 'Cattle' in this context means draught animals, not 'cows'. The reference to 'carriages' in the context of "roads ... carried over the highest hills" is good evidence of reputation that the hill roads were before 1823 used by 'carriages' vehicles. Carriages are not just 'stage coaches' or vehicles for the carriage of persons. A carriage is a 'means of conveyance'. If hill roads were used by vehicles for the trade of the area in 1823 then it is probable that they were also used before this time for as long as the trade traffic existed.
- 22. C & J Greenwood's Map of Cumberland, 1823/4
- 22.1 Greenwood's map of 1823/4 shows Blakelaws Road running up to Blakelaw Cross, and continuing for a distance into Northumberland. Greenwood shows the Long Cross road and the Hexham Turnpike, in the same way. Greenwood, in his 1827/8 Map of Northumberland (above) shows the south crossing the boundary at Blakelaw Cross'and continuing a little way into Cumberland.
- 23. Topography
- 23.1 The physical existence and nature of a route is some evidence, taken with other evidence, as to its antiquity and status. Satellite images (from the website wheresthepath.com) clearly show a linear feature on the same line as the footpath on modern OS mapping, and as the 'Carriers' Way' on the first and second edition OS mapping.
- 23.2 It is improbable that such a feature was made by public foot traffic alone in a remote area. It is improbable that a public footpath would have been identified by the Ordnance Survey as a 'cart road', and would have survived for another (almost) 165 years with such visibility.

24. The 'Through Route Presumption'

- 24.1 There is considerable judicial consideration regarding 'dead-end roads in the countryside. Two examples will suffice here. These views should be applied to Blakelaws Road, south to north, to where that road finishes on the Alston inclosure award at Blacklaw Cross.
- 24.2 In Leicestershire County Council (R on the application of) v. Secretary of State for EFRA [2003] EWHC 171, Mr Justice Collins, at paragraph 16, "The Inspector notes that it was highly improbable that the footpath actually finished at the northern boundary of Manor Cottage. That seems to me to be a matter of common sense because it would serve no practical purpose unless it went through to the road." That view sems entirely applicable to the present case. A 'status change' is as much a cul de sac as is a 'full stop' to a highway of any sort.
- 24.3 In Eyre v. New Forest Highway Board (1892) JP 517, the Court of Appeal under Lord Esher, MR, considered an appeal against a decision by Wills J, who had rejected an application by Mr Eyre that Tinker's Lane in the New Forest was not a publicly repairable highway and should not be made up by the Board. Lord Esher commended Wills J's summing up as "... copious and clear and a complete exposition of the law on the subject; it was a clear and correct direction to the jury on all the points raised."
- 24.4 "But supposing you think Tinker's Lane is a public highway, what would be the meaning in a country place like that of a highway which ends in a cul-de-sac, and ends at a gate onto a common? Such things exist in large towns ... but who ever found such a thing in a country district like this, where one of the public, if there were any public who wanted to use it at all, would drive up to that gate for the purpose of driving back again? It is just an observation that if you think that Tinkers Lane was a public highway, an old and ancient public highway. why should it be so unless it leads across a common to some of those places beyond? I cannot conceive myself how that could be a public highway, or to what purpose it could be dedicated or in what way it could be used so as to become a public highway, unless it was to pass over from that side of the country to this side of the country. Therefore it seems to me, after all is said and done, that the evidence with regard to this little piece across the green cannot be severed from the other it would take a great deal to persuade me that it was possible that that state of things should co-exist with no public way across the little piece of green ... I am not laying this down as law; but I cannot understand how there could be a public way up to the gate – practically, I mean,; I do not mean theoretically, - but how in a locality like this there could be a public highway up to the gate without there being a highway beyond it. If there were a public highway up Tinker's Lane before 1835, it does not seem to me at all a wrong step to take, or an unreasonable step to take, to say there must have been one across that green."

25. Summary

25.1 As stated in the 'overview' above, there is no direct evidence of status of the application route, but there is a large and informative set of indirect evidence.

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- 25.2 In Commision for New Towns v JJ Gallagher [2002] EWHC 2668 (Ch); [2003] 2 P&CR 3, Neuberger J at paragraph 83, "While each of these aspects of the evidence has to be initially considered on its own, it must, of course, also be assessed in light of the other aspects. In the end, after considering all of these aspects together, I have to ask myself whether, bearing in mind that the onus of proof is on the Commission, I am satisfied on the balance of probabilities that the use and reputation of Beoley Lane was such as to justify the inference that it was dedicated as a public carriageway."
- 25.3 In considering the indirect evidence it is easier to aggregate the evidence by considering the whole through route, effectively from the Alston to Stanhope Turnpike in Cumbria, northwards to Ninebanks in Northumberland, and onwards towards Tyneside.
- 25.4 In 1820, inclosure commissioners set out a public carriage road leading from the turnpike (before McAdam's 1823 turnpike, this road was previously turnpiked) northwards towards Blacklaw Cross. This road was formed and inclosed, is about 1.75 miles long, and is and has been since a recognised publicly maintainable highway.
- 25.5 The fundamental question is this: why would the Alston Moor inclosure commissioners set out, form and make a public carriage road, nominally 30 feet wide, only for it to stop dead at the county boundary, where there was no place of public resort? The commissioners could set out private roads, foot roads and bridle roads, and if the Carriers' Way was in 1820 only a foot road, then it is improbable that they would have set out a public carriage road.
- 25.6 There is evidence which suggests that the road ran on northwards from Blacklaw Cross, albeit never 'made' as it was in Cumberland. The two Greenwood maps show a through road 30 years before the Ordnance Survey made its first survey here.
- 25.7 The Allendale inclosure award in 1799 sets out 'Alston Road'. As set out above, this road most probably went to Alston, and from the maps and topography there is no greater case that it went by Long Cross than it did by Blacklaw Cross.
- 25.8 But nothing says that there was only one route from the top of the awarded Alston Road. The Long Cross road is undisputed, but the inclosure boundaries, and the direction taken by each of the Long Cross Road and the application route point to the Blacklaw Cross route as once being more important, or at least older, than the Long Cross route.
- 25.9 Then there is the Ordnance Survey, starting about 1858. The map calls the route the Carriers' Way. The Book of Reference describes this as a cart road. The Boundary Sketch Book has Black Laws Road one side of the county boundary, and the Carriers' Way on the other side.
- 25.10 The 'through route presumption' is not a legal presumption; rather it is a matter of commonsense and joining-up the dots. The courts have no problem Papple in the court have no problem papple in the court

25.11 It really is very hard to see how commonsense can be applied to Blakelaws Road without reaching the view that the same public highway continued along the Carriers' Way, and made a direct linear connection with the awarded Alston Road."

3. LANDOWNER EVIDENCE

3.1 Under covering letter, dated 25 March 2022, Warners (solicitors) responded on behalf of the Wellhope Partnership, supplying a detailed report prepared by their rights of way consultant, Liz Sobell:

"Parish of West Allen Alleged Restricted Byway No 26 Comments on behalf of the Wellhope Partnership

- 1. I have been asked by Mr Tom Warde-Aldam of Galbraith LLP, on behalf of the Wellhope Partnership, to research what historical evidence might exist in relation to the alleged restricted byway which is currently recorded as the Parish of West Allen Public Footpath No. 26.
- 2. The claimed route, known as the Carriers Way, is entirely within Northumberland, beginning at the Cumbria County boundary near Blacklaw Cross and joining a point on the U8039 road (Byway No 37) at Keirsleywell Bank. The current application is the third claim made for this route by Mr Kind.
- 3. The first application led to a two-day public inquiry in 2004 (Order Ref. FPS/R2900/7/30). The Inspector Mr Alan Beckett did not agree with Mr Kind's proposal that the status of the claimed route should be upgraded from public footpath to byway open to all traffic, stating 'I conclude the evidence before me is insufficient to show the existence of public carriageway rights over the Order route.' (Order Decision FPS/R2900/7/30, § 35).
- 4. Mr Kind's second attempt was made in 2016, when his application for a restricted byway over the same route was made under the provisions of the Wildlife and Countryside Act 1981, s.53(3)(c)(ii). This is the duty of the surveying authority to keep the definitive map under review and to react appropriately to any discovery of new evidence which would lead to an alteration of the description of a highway. In such a situation, all relevant evidence must be considered along with newly discovered evidence.
- 5. Northumberland County Council (the surveying authority) refused the application by letter in November 2017. Mr Kind's appeal (Ref: FPS/P2935/14A/5) was decided by the Inspector Mr Rory Cridland, who noted that most of the evidence submitted had already been considered in detail at the 2004 inquiry, stating 'I have seen nothing which would lead me to reach a different conclusion on that evidence'. (§6).
- 6. The two pieces of documentary evidence submitted in order to trigger the 2016 claim were the Alston Moor Inclosure Act of 1803, and a copy of an Ordnance Survey Boundary Sketch Map of 1858. Both will be discussed further below.
- 7. The argument put forward by Mr Kind was that his claim should succeed on the 'through route presumption', patie 1991 a length of way between two

- public highways should benefit from a presumption that it shared the same highway rights.
- 8. However, in his summary Mr Cridland stated that 'I agree with the conclusions of the Inspector in 2004 that the evidence in support is so meagre that this presumption does not weigh heavily in favour' and that 'Accordingly, I do not consider that it has been demonstrated on the balance of probabilities that Footpath 26 ought to be shown as a restricted byway. As such, the appeal must fail'. (§14 & §15).
- 9. For the current, third, application Mr Kind has cited three documents which he puts forward as new evidence. His numbered list contains a total of seventeen items, one of which is the location plan. Discounting this plan, along with case law (No.17), satellite imagery (No.15), a paper on widths and photographs (No.6), a passage from a reference book (No.14), and a statement of grounds in support of his application (No.16), Mr Kind has submitted eleven historical documents, eight of which have already been considered by one or both Inspectors who refused to confirm the 2004 and 2016 applications owing to the 'meagre' and 'insufficient' evidence that had been provided.
- 10. The remaining three items of 'newly discovered' evidence currently supplied by the applicant therefore need to be sufficient (when added to all previous evidence) to demonstrate on the balance of probabilities that Footpath 26, the Carriers Way, should be given the status of restricted byway. Paragraphs 11 to 18 below consider these.

J.L. MacAdam's Proposed Turnpike Roads NRO QRUP 13, Map 4, (1823)

- 11.Mr Kind devotes only one paragraph (§20) to a discussion of this 'newly discovered' evidence. He points out that MacAdam correctly identifies public roads branching off the proposed turnpike, including Blakelaws Road. However, this map is dated 1823, three years after the Alston Moor Inclosure Award, and therefore would be expected to show roads in the vicinity to help locate the line of the proposed turnpike.
- 12. Mr Kind claims too much for Blakelaws Road as it appears on the 1823 turnpike map. It is not disputed that Blakelaws Road was set out as a public highway in 1820. MacAdam's plan does not extend to the county boundary. Therefore, it is of no assistance as evidence of the status of the alleged route, the Carrier's Way, which is entirely within Northumberland.

C & J Greenwood's Map of Cumberland 1823

- 13. As with the previous item of 'newly discovered' evidence, only one paragraph (§22.1) is allocated by Mr Kind in reference to Greenwood's Cumberland map of 1823. He points out that the extract shows Blakelaws Road. Since The Alston Moor Inclosure Award was made in 1820 and Greenwood's map was published three years later, it would be surprising if his map failed to show Blakelaws Road.
- 14. Therefore, two out of the three pieces of 'newly discovered' evidence cite maps which post-date the Alston Moor Inclosure Award by three years and correctly show Blakelaws Road. The existence of this awarded road is not disputed but is <u>not the alleged route</u>. Greenwood's maps of Cumberland and Northumberland will be discussed further below.

Extracts relating to Gaterley Road, Hexhamshire & Allendale Commons Inclosure Award (1799)

- 15. Mr Kind uses the example of Gaterley Road (§12.1) which was set out in the 1799 Award as a private road with its eastern terminus at the stinted pasture. Use of the road was restricted to owners and occupiers of the township of Catton Grieveship.
- 16. In paragraph 12.2, Mr Kind states 'So it was perfectly within powers for the inclosure commissioners to set out private roads to the stinted pasture.' This is all that is said about Gaterley Road: no coherent argument is made to demonstrate how this helps identify the status of the Carriers Way. From §12.3 onward, no more mention is made of the road.
- 17. Mr Kind's following paragraphs contain his views concerning the respective importance of the Alston and Long Cross Roads. It is very difficult to accept the Gaterley Road extract as evidence of any kind, 'newly discovered' or otherwise. Its function seems to be to allow a repetition of Mr Kind's assertions about the Hexhamshire and Allendale Commons Inclosure, which have already been submitted as evidence in 2004 and 2016 and found insufficient by two Inspectors.

Greenwood's Maps of Cumberland (1823) and Northumberland (1828)

- 18. Paragraph 13 of Mr Kind's application deals with Greenwood's map of Northumberland which was published in 1828. It might have been expected that the applicant would show extracts of both the Cumberland and Northumberland maps side by side to demonstrate the continuation of the alleged route spanning two counties.
- 19. However, when Greenwood's county maps are placed side by side, it becomes obvious that the Cumberland map of 1823 is much more highly detailed and accurate than his 1828 Northumberland map. (See Appendix 1). The topography shown in the Northumberland map is vague in comparison, leading to inaccurate locations of some landscape features.
- 20. This is clear in the case of the Northumberland map, where Black Laws Cross (Greenwood: 'Black Cross') is located to the north-west of Mohope Head instead of to the south-west. This and other inaccuracies were pointed out in the 2004 decision letter (FPS/R2900/7/30). The inspector stated 'In the light of these errors from an otherwise reputable cartographer, I do not attach much weight on this map as evidence of the existence of the claimed road over the moor' (§22).
- 21. The late J.B. Harley, in his 1962 book *Christopher Greenwood County Mapmaker and his Worcestershire Map of 1822* (pp1-24) devotes a chapter to an analysis of Greenwood's map-making business. Harley compared Greenwood's expenses per square mile with those of the Board of Ordnance survey in Ireland. He concluded that Greenwood had spent approximately 30 shillings per square mile surveyed, whereas evidence given to the inquiry into the Survey of Ireland in 1828 estimated that a proper survey would cost £16 per square mile.
- 22. Harley stated 'Moreover, as many costs such as the drawing, engraving and advertisement of a map would be the same throughout most surveys of the period, it is most likely that the economies were effected in the topographical survey.' (pp. 31-32). Despite his page in open on omies, Greenwood's business

was failing by the late 1820s and he was unable to complete his intended series of county maps. Greenwood's Northumberland County map of 1828 is therefore an example of an insufficiently surveyed (consequently unreliable) map published by a company in financial difficulties.

Ordnance Survey Boundary Sketch Book Extract (OS 27/3789)

- 23. This extract (below) was submitted by Mr Kind in 2016, but not considered to provide significant detail about the alleged route's status or use (Appeal Decision FPS/P2935/14A/5, §10). However, the sketch provides evidence of correction of the naming of it: Close examination shows that later corrections to the sketch were made in red ink, whereas black ink was used for original annotations. The black ink original marked 'Black Laws' on the Cumberland side of the county boundary, and 'Road' on the Northumberland side. Red ink corrections deleted 'Road' on the Northumberland side and substituted the name 'Carriers Way'. The designation 'Road' was confined to the Cumberland side, added below 'Black Laws'.
- 24. These corrections were made either by Ordnance Survey Examiners, or else reflect an objection made when the boundary sketches were open to public scrutiny. As a result, a distinction was made between the name of a route in Cumberland and its apparent continuation in Northumberland. Appendix 2 shows a description of the work of Ordnance Survey Assistants. It was not part of the duties of Ordnance Survey employees to ascertain the legal status of ways being mapped, as demonstrated by the details of their duties given in Appendix 2.
- 25. The second edition of the 25-inch OS map carries the disclaimer 'N.B. The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way'. The entry in the Book of Reference as 'Cart Road' merely describes the appearance, not the status, of the Carriers Way.

The 'Through Route Presumption'

- 26. All three of Mr Kind's applications for this route have argued that the status of Carrier's Way should be upgraded on 'the through route presumption'. However, he has not been able to cite any document which on the balance of probability demonstrates the existence of a highway for wheeled traffic along the alleged route.
- 27. All documents submitted in applications to alter the definitive map ought to be understood according to the historical context of their creation. The following paragraphs explain the background to the two relevant Inclosures, that of Hexhamshire and Allendale Commons (1799) and Alston Moor (1820).
- 28. In the case of Hexhamshire and Allendale Commons, the lord of the Manor of Hexham when the Act (NRO 691/61/29) was passed in 1792 was Sir Thomas Blackett, who died very soon after. He was succeeded by his daughter and son in law, Diana and Colonel Thomas Richard Beaumont. No Act proposing to inclose commons or 'wastes' within a manor could proceed without the agreement of the lord of the manor.
- 29. There were three Commissioners of the Hexhamshire & Allendale Inclosure: one appointed by the lord of the manor, Colonel Beaumont, another by major landowners (in this instance the Greenwich Hospital Commissioners), and a

third commissioner recommended by the first two. The inclosure outcome was the result of close cooperation between Greenwich Hospital and the Beaumonts to ensure that the division was carried out to their best advantage. The Commissioners were John Fryer, William Bates, and Thomas Bates.

- 30. The scope of the enabling Act of 1792 covered the whole area of the commons, hence the legal necessity to perambulate the boundary: the lord of the manor, commissioners, and all persons entitled to right of common or their agents were required to 'openly, publickly, and in the Day Time, ride or perambulate, or cause to be ridden or perambulated, the Boundary of the said Commons, Moors, or Tracts of Waste Land intended to be divided and stinted' (NRO 691/29, clause VI, pp.3240-3241).[1]
- 31. Since large areas of the Hexhamshire and Allendale Commons were assessed as incapable of agricultural improvement, it was decided to allot limited grazing rights or 'stints' over the common land which would not be made into fields.
- 32. Those who held tenements valued at less than £10 per annum could choose to take their awarded allotment as either land or stints (clause XXXVIII, pp.3274-4). Therefore, the land designated as stinted pastures was allotted under the same powers as lands which were divided and allotted as fields. It was not, as Mr Kind claims, outside the powers of the Commissioners to decide what happened in the stinted pastures.
- 33. The 1792 Act ordered that the Commissioners should set out roads and ways over the former Commons, and that following the Inclosure no former roads or ways would be lawful unless set out in the Award. Once the newly confirmed roads had been certified by Justices of the Peace, they were to be maintained as parish roads at the expense of the inhabitants of the townships they crossed (clause XVIII, pp.3255-6).
- 34. No roads, other than Allenheads Road, were set out across the stinted pastures, yet lead ore still had to be carried across the moors over which the 1792 Act operated. Transport of lead ore by packhorse was a major expense, and clearly could have been affected by alteration to routes in the mining areas had not the following clause been included in the Act.
- 35. Clause LI (pp.3284-5) reserved to the lord of the manor all of his rights to minerals under the former Commons, 'together with all convenient and necessary Ways and Wayleaves.....and leading and carrying away the Lead, Lead Ore, Coals, Stones, and other things to be gotten thereout, or out of any other Mines, Minerals, and Quarries or Collieries belonging to the said Sir Thomas Blackett, his heirs and Assigns..'
- 36. Therefore, all tracks and Carriers Ways crossing the former Commons could continue to be used as occupation ways for the Lord of the Manor's lead transport, including materials transported from any mines elsewhere owned by the lord.
- 37. The township inhabitants (who were mostly employed as lead miners, smelters and farmers who also worked as carriers) were responsible for the maintenance of roads as far as the stinted pastures, but ways over the undivided pastures were the financial responsibility of the mineral owners, Colonel and Mrs Beaumont.

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- 38. To require roads to be formed and then maintained over the Stinted Pastures would have been a grossly unfair burden on the Township inhabitants, especially since those ways existed for the future profit of their manorial lord.
- 39. Before the completion of the inclosure process, Colonel and Mrs Beaumont were naturally concerned that the inclosure should not in any way lessen the profits of their lead business, and wrote to their Hexham Manor Bailiff, John Bell, asking his opinion as to whether their lead interests would be harmed by it.
- 40. In a letter dated 10th March 1793 to John Erasmus Blackett, (Chief Steward of the Blackett Lead Company), John Bell wrote that the Greenwich Hospital's Northern Receiver had made enquiries in Weardale and Teesdale where there were stinted pastures. They had found that lead transport costs were no more expensive there than costs over open moorland.
- 41. Bell also pointed out that roads between the inclosed fields were 'to be made by the Proprietors and when the Carriers get upon that Part of the Common which is to be stinted they will then have the open wide Moor to pick their Way upon in the best manner they can as they do now'
 - (Extract of letter written by John Bell to J.E. Blackett, Allendale Estate Archive, now moved to Northumberland Archives but not yet catalogued).
- 42. Paragraphs 29 to 40 above have shown that there were powers comprised in the 1792 Hexhamshire and Allendale Commons Inclosure Act for the Commissioners not only to allot land and set out publicly maintainable roads within certain areas of former common, but also to allot limited grazing rights and set out roads over land designated as stinted pastures.
- 43. The fact that no public road other than Allenheads Road was set out over the stinted pastures must be seen as a deliberate decision on the part of the Commissioners, because the lord of the manor's mineral rights allowed full rights to make ways convenient for his lead business. The tracks whose names contain the word *Way* reflect this right.
- 44. Turning now to Alston Moor Inclosure (Act 1803 NRO 324/A83/6; Award 1820 CRO/QRE/1/108), the following paragraphs describe the historical background of the event.
- 45. The Manor of Alston belonged, in 1803, to the Commissioners and Governors of the Royal Hospital for Seamen at Greenwich. In 1735 this charitable foundation had been awarded the former Northern Estates of the Earl of Derwentwater following his attainder and execution for taking part in the 1715 Jacobite Uprising. The Northern Estates were administered by Receivers, who got approval to instigate an Inclosure of the extensive Common land within the Manor.
- 46. The Receivers were the same people who had worked closely with Hexham Manor's administrators between 1792 and 1799 to bring about the inclosure of Hexhamshire and Allendale Commons. The two manors shared a boundary at Black Laws Cross and for a considerable distance in either direction. The whole extent of Alston Moor was awarded as allotments of land to be fenced off into individual plots. No area was designated as stinted pasture.

- 47. The Commissioners appointed to carry out the Alston Moor Inclosure were John Fryer, William Bates, and William Donkin, two of whom had also been Commissioners for the Hexhamshire and Allendale Inclosure.
- 48. Alston Moor was also a very productive lead mining area. Greenwich Hospital leased the mines to the London Lead Company but retained the duty ores, which were taken via the Whitfield Valley to their own smelt mill at Langley. London Lead Company smelted their ore at the Cupola Mill in Whitfield, but from 1746, the Company's ores were smelted at Nenthead. Neither Greenwich Hospital nor London Lead Company used a route via Black Laws as the primary means to carry lead ore to their smelt mills.
- 49. Since the administrators of both Hexham and Alston Moor manors were on demonstrably good and cooperative terms, and Greenwich Hospital had benefited greatly from the land and stints awarded to it by the 1799 Inclosure, it can be assumed that the Receivers were familiar with the Hexhamshire and Allendale Commons Inclosure Award plans.
- 50. As joint promoters of that Inclosure, they did not object during the planning period to the stinted pastures having no public roads set out apart from Allenheads Road. It is reasonable, therefore, to look for an alternative reason for the creation within their own manor of a publicly maintainable road leading as far as the Cumberland county boundary.
- 51. Blakelaws Road was set out with this description: 'Blakelaws Road beginning at the Weardale Tumpike near Nent Hall and leading Northwards to the boundary of the Regality or Manor of Hexham near Blakelaws Cross'.

 Appendix 3 is an extract of the Alston Moor Inclosure Award plan.
- 52. Two other public highways were set out leading from Blakelaws Road: these were Blagill Greens Road and Nentsberry Greens Road. Blagill Greens Road ran east from the old Hexham Turnpike Road into Blakelaws Road, allowing access to newly allotted lands.
- 53. Nentsberry Greens Road ran south-east from Blakelaws Road, crossing Gudamgill Burn, then into Nenthead from the north-east. It provided access to new allotments, lead mines, and a quarry.
- 54. As well as the two public roads which joined Blakelaws Road from east and west, the road itself gave direct access to six newly awarded fields on the east side, and five on the west side before the junction with Foreshield Private Carriage Road.
- 55. Continuing north from that point up to the County boundary, the west side of the road allowed access to a block of approximately 950 acres awarded in five parcels to the Greenwich Hospital, lords of the manor, promoters and chief beneficiaries of the inclosure.
- 56. Since two public roads joined Blakelaws Road, it would not have been appropriate to set it out as a private carriage road limiting its use to owners of allotments on either side, as that would have blocked access to and from Blagill Greens and Nentberry Greens Roads.
- 57. For this reason, I suggest, it was simpler (and more beneficial to Greenwich Hospital) to set out Blakelaws Road as a public highway whose maintenance was the responsibility of the parispage 105

Conclusion

- 58. This report has demonstrated that out of the eleven historic documents submitted by the applicant only three items can be claimed as 'newly discovered' evidence: however, two of these, MacAdam's Turnpike Plan of 1823 and Greenwood's 1823 Map of Cumberland, do not add any helpful information about the claimed route. The third, the Gaterley Road extract, is completely irrelevant to the route. The remainder of the applicant's submitted evidence has already been considered and rejected in 2004 and 2016.
- 59. I have described the historical context in which the inclosures of the Hexhamshire and Allendale, and Alston Moor Commons were carried out, providing evidence which gives a plausible explanation for the existence of a public highway in Cumbria which at the county boundary meets with a track which was once used as an occupation road for lead ore transport. The historical context in this instance makes the through route presumption untenable.

Liz Sobell MA, 8 February 2022.

[1] NB: I have not submitted the entire text of the 1792 Act, as I have previously supplied both the Surveying Authority and (indirectly) Mr Kind with this document.

4. CONSULTATION

- 4.1 In January 2021, the Council carried out a consultation with the Parish Council, known owners and occupiers of the land, the local County Councillor and the local representatives of the "prescribed and local organisations" listed in the Council's "Code of Practice on Consultation for Public Path Orders". One reply was received and is included below.
- 4.2 By email, in March 2021, the British Horse Society responded to the consultation, stating:

"Parish of West Allen

Alleged restricted byway no 26

"As this proposal is supported by inclosure awards, a source that requires an Act of Parliament, it can be assumed that the origin of the public rights associated with it will have a legal origin.

"The change of the recorded status of the route as it passes from Cumbria to Northumberland through Blacklaw Cross, high on the watershed of the North Pennines, has long been recognised as an anomaly. Why should a recognised county road in one county (Cumbria) become a public footpath once it crosses into the adjacent one (Northumberland)? There is surely no reason why anyone in the past would have made the demanding journey with a horse & cart up to the top of the ridge, if they did not plan to travel down the other side? A similar ancient way, Long Cross road, a little further north crosses the county boundary without a change in status.

"Map evidence suggests that the fenced lane, recorded as a horse & cart route in Cumbria postinued as a route of similar status, although

unfenced, as it descended the hillside on the Northumberland side of the county boundary. This means that the route should be recorded as a restricted byway rather than a public footpath. Whether the route is suitable for a horse & cart today is not a consideration for the purpose of recording the public rights. If those rights existed in the past, they still exist today so the BHS supports the recording of this alleged restricted byway."

5. DOCUMENTARY EVIDENCE

5.1 A search has been made of archives relating to the area. Evidence of Quarter Sessions Records, Council Highways records, County Maps and O.S. Maps was inspected, and the following copies are enclosed for consideration.

1769 <u>Armstrong's County Map</u>

Although "Black Cross" is depicted on the map, there is no evidence of track, approximating to the route of alleged Restricted Byway No 26, leading up to it.

1800 <u>Hexhamshire & Allendale Inclosure Award</u>

"Alston Road" is depicted on the award map. It enters the stinted pasture a short distance north-east of Point A. There is no evidence of any track approximating to the alleged restricted byway through the stinted pasture.

1820 <u>Alston Moor Inclosure Award</u> (in Cumbria)

"Blakelaws Road" is depicted on the map. It proceeds in a general northerly then north-easterly direction, to the county boundary at Blakelaw Cross (Point B).

1820 Fryer's County Map

"Blakelaws Cross" is depicted on the map, but there is no evidence of a track, approximating to the route of alleged Restricted Byway No 26, leading up to it. The "Long Cross" route, slightly further to the north, is identified.

1823 JL McAdam's Turnpike Road Plan 1823

The western end of Blakelaws Road is clearly identified (and labelled as such) on the map. Map not included here – original map supplied is small scale and copies made from this are of poor quality.

1823 Greenwood's County Map (Cumberland)

There is clear evidence of a road or track following the continuation of alleged Restricted Byway No 26 on the Cumberland side of the county boundary (in the vicinity of "Blacklaw Cross"). In common with other cross-border routes, a short extension of the road / track is shown in Northumberland.

1827 Cary's Map

There is no evidence of track, approximating to the route of alleged Restricted Byway No 26, on the Northumberland side of the boundary, and no evidence of a track on the Cumbria side of the boundary either. The route passing Long Cross, slightly further to the north, is depicted.

1828 Greenwood's County Map (Northumberland)

There is clear evidence of a road or track approximating to the route of alleged Byway No 26, crossing the boundary in the vicinity of "Black Cross". Another route is shown crossing the boundary in the vicinity of Long Cross, although "Long Cross" itself, is not identified.

1858 Ordnance Survey Boundary Remarks Sketch Book

There is clear evidence of a route crossing the border, at what appears to be Point B (the southern end of alleged Restricted Byway No 26). On the Cumberland side it is identified as an enclosed road. On the Northumberland side it appears to identified as an unenclosed road or track. The entry for this boundary crossing appears to have been amended (originally both sides of the boundary were depicted as parts of "Black Laws Road") so that the Cumberland side (only) is "Black Laws Road" with the Northumberland side relabelled as "Carriers Way".

c. 1860 Ordnance Survey Book of Reference

In the extract taken from the back of the Book of Reference published to accompany the 25" 1st Edition Ordnance Survey Map, "Carriers Way" is described as "A cart road".

1865 Ordnance Survey Map: Scale 1:10,560 (reduced)

There is clear evidence of an unenclosed path / track over the route of alleged Restricted Byway No 26. It is labelled "Carriers' Way".

1898-99 Ordnance Survey Map: Scale 1:10,560 (reduced)

There is clear evidence of an unenclosed path / track over the route of alleged Restricted Byway No 26. It is labelled "Carriers' Way".

1924-6 Ordnance Survey Map: Scale 1:10,560 (reduced)

There is clear evidence of an unenclosed path / track over the route of alleged Restricted Byway No 26. It is labelled "Carriers' Way".

c.1952 Definitive Map – original Survey Map

The route of existing Public Footpath / alleged Restricted Byway No 26 exists on the base map. It is labelled "Carriers' Way", but no public rights of way are identified for inclusion over it.

Draft Map

As with the Survey Map, the route of existing Public Footpath / alleged Restricted Byway No 26 exists on the base map. It is labelled "Carriers' Way", but no public rights of way are identified for inclusion over it.

1957 Bridges and Roads Committee minutes (16 December 1957)

These state that "The County Surveyor has carefully considered a large number of representations made by the Ramblers' Association for the inclusion of paths on the draft map for the Rural Districts of Belford, Castle Ward, Haltwhistle, Hexham and Norham and Islandshires and his recommendation on these are based upon the evidence he has been able to obtain from local sources." Some one hundred and ninety-two routes were identified, and all of them appear to be footpaths.

Draft Map (Modified)

The routes of existing Public Footpaths Nos 12, 26 and 27 are all identified (in purple) for inclusion as public footpaths (then numbered 30, 31 and 32), as a result of successful representations at the Draft Map stage.

Provisional Map

As with the Draft Map (Modified), the route of existing Public Footpath / alleged Restricted Byway No 26 exists on the base map and is identified (by the purple colouring) as a public footpath (then numbered "30").

1962 Original Definitive Map

The route of existing Public Footpath / alleged Restricted Byway No 26 exists on the base map and is identified (by the purple colouring) as a public footpath (then numbered "125") in the Parish of Allendale.

2004 Inspector's Decision regarding DMMO (No 10) 2003

The Inspector determined that, on a balance of probabilities, public vehicular rights had not been shown to exist.

2018 Inspector's Decision re appeal against NCC's refusal to make an Order

The Inspector determined that, on a balance of probabilities, public vehicular rights had not been shown to exist.

6. SITE INVESTIGATION

6.1 From Point A, on existing Byway Open to All Traffic No 37, a 3 to 5 metre wide, overgrown and slightly sunken grass surfaced track proceeds in a south-westerly direction for a distance of 150 metres to a field gate. A parallel, 0.5 metre wide trodden grass path, on slightly higher ground, just to the north-west of the track, appears to be the route favoured by walkers today. There is a pool of standing water at the gateway. An adjacent step stile provides access for walkers. Beyond the field gate are stored.

moorland, in a general southerly direction for a distance of 2480 metres to Point B, at the north end of the U3111 road in Cumbria, at a field gate, at Blacklaw Cross.

6.2 The track across the open moor is almost entirely grass surfaced. It is mostly clearly defined (and helpfully identified by waymark posts, at regular intervals), but the width is variable, ranging from 30 centimetres up to around 3 metres. The widest sections are most evident up to about 100 metres from the field gates at either end. The track fords 4 minor watercourses. In other places the grass surface was quite saturated with water.

7. COMMENTS RECEIVED ON THE DRAFT REPORT

- 7.1 In May 2022, a draft copy of the report was circulated to the applicant and those landowners / occupiers who responded to the initial consultation for their comments.
- 7.2 By email, on 27 May 2022, Tom Warde-Aldam of Galbraith LLP submitted the following comments in relation to the Draft Report:

"I refer to your letter dated the 13 May to Michael McNally of Warners Law LLP.

"My firm, Galbraith LLP, act as agents for the Wellhope Partnership which owns valuable sporting rights over the footpath in question.

"I note your recommendation that there is not sufficient evidence to record RB (Restricted Byway) Rights, but also your further recommendation that there is sufficient evidence to support the existence of Bridleway Rights.

"I am writing, on behalf of my Client, to make an objection to your recommendation in relation to the Bridleway proposal. I would make the following comments:

"You suggest in your report that the NCC Rights of Way Committee refused Mr Kind's original 1998 Application for Byway status on the grounds of "insufficient evidence for vehicular or Public Bridleway Rights". This decision was appealed, leading to a two day Public Enquiry in 2004. The Inspector in that case refused the appeal on the grounds that the evidence did not reach the standard required for a balance of probability test on *either* level of rights.

"The next application in 2016 for a Restricted Byway over the route of Footpath 26 also failed on Appeal in 2018 for the same reasons. Both Inspectors commented on the "meagre" nature of the applicant's evidence.

"The 2019 application is once again for Restricted Byway status using the trigger of "newly discovered evidence". Liz Sobell's carefully researched report showed that what was submitted amounted to only three pieces of previously unsighted evidence; one of these was totally irrelevant (Gaterley Road) and the other two did not show the route under consideration.

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"All three applications have relied heavily on the presumption of a "through route" linking two public roads. However, this is an argument twice rejected by Planning Inspectors in 2004 and 2018, because there was insufficient documentary evidence to support it.

"Section 8 of your draft report states at paragraph 8.6 that "it does not appear that the possibility of Public Bridleway Rights existing over this route has been properly explored." It further assumes that in rejecting the claims for public and vehicular rights, no other status had been considered by the two Inspectors in 2004 and 2018. We would suggest that this is an unjustified conclusion on your part; the Inspectors had full powers to order that the route should have been recorded as a Public Bridleway if they had concluded that the evidence submitted had shown that, on the balance of probabilities.

"None of the "newly discovered evidence" adds any support to a claim for Public Bridleway status, nor has Mr Bell's own documentary research added any support to such a conclusion.

"On this basis, we have to disagree with the recommendations for elevating Footpath 26 to Bridleway status. The decision by the Rights of Way Committee should be based on the strength or otherwise of the documentary evidence in relation to this alleged Restricted Byway, not on un-evidenced supposition.

"I trust that you will take this into account in your report and will highlight our clients' strong objection to the Rights of Way Committee."

8. DISCUSSION

8.1 Section 53 (3)(c)(ii) of the Wildlife and Countryside Act 1981, requires the County Council to modify the Definitive Map when evidence is discovered which, when considered with all other relevant evidence available to them shows:

"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."

- When considering an application / proposal for a modification order, Section 32 of the Highways Act 1980 provides for "any map, plan or history of the locality or other relevant document" to be tendered in evidence and such weight to be given to it as considered justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.
- 8.3 The Natural Environment and Rural Communities Act 2006 (NERC Act 2006) had a major impact upon the recording of vehicular public rights of way based upon historical documentary evidence. Under section 67 of the Act, any existing, but unrecorded, public rights of way for mechanically propelled vehicles were extinguished unless one of the 'saving' provisions applied. In brief, these saving provisions were: (a) if the main lawful public use between 2001 and 2006 was with motor vehicles; (b) if the route was on the List of Streets (on 2 May 2006) and not laggen 14el Definitive Map as something less

than a byway open to all traffic; (c) the route was legally created expressly for motor vehicular use; (d) the route was a road deliberately constructed for public motor vehicular use; or (e) the vehicular highway came about as a result of unchallenged motor vehicular use before December 1930.

- 8.4 None of the above saving provisions would appear to apply to the alleged restricted byway route. This point would appear to have been acknowledged by the applicant. Whilst his 1998 application was for a byway open to all traffic, his (post NERC Act 2006) 2016 and 2019 applications, only sought to record the route as a restricted byway.
- 8.5 The representation of a path or track on an Ordnance Survey Map is not evidence that it is a public right of way. It is only indicative of its physical existence at the time of the survey.
- 8.8 It is possible to detect a degree of frustration, from the landowners, that this matter is being considered for a third time, on the basis of, what they consider to be, very limited new evidence. On the one hand, whilst it is an important principle that the discovery of new evidence should enable a matter to be revisited, it should not be followed in such a way that an applicant might be encouraged to withhold evidence and then drip feed additional documents into the equation, so they can have multiple bites at the cherry. Notwithstanding these reservations, new evidence has been introduced to support this most recent application to record a restricted byway and, significantly, it does not appear that the possibility of public bridleway rights existing over this route has been properly explored. The Inspector determining DMMO (No 10) 2003 does not appear to have considered this aspect (he simply found that there was insufficient evidence in support of public vehicular rights). The Inspector considering Mr Kind's appeal against the Council's refusal to make an order pursuant to his 2016 restricted byway application, similarly found against Mr Kind in relation to the existence of public vehicular rights without, apparently, considering the possibility that public bridleway rights might exist.
- 8.7 Mr Kind and Ms Sobell have both devoted a certain amount of time to the subject of whether those pre-existing public highways over the stinted pasture land, that were not specifically set out in the inclosure award, were extinguished by the inclosure award process. Mr Kind's view is that they were not. The Inspector determining DMMO (No 10) 2003, in 2004, agreed with him on this particular point, and I would also agree with this position. The Hexhamshire and Allendale Inclosure Award did not set out or otherwise identify any public rights over the alleged restricted byway route. Accepting that any pre-existing public rights over the stinted pasture were not extinguished by the inclosure process does not mean that any public highway rights necessarily continued through the stinted pasture or that any highway rights that did exist were necessarily vehicular ones. Ultimately, whilst the Inspector determining DMMO (No 10) 2003 agreed with Mr Kind regarding the effects of the inclosure process, he found against Mr Kind in relation to the overall strength of the evidence in support of vehicular rights.
- 8.8 The landowner is not impressed with the new JL McAdam's turnpike plan evidence. They aren't contesting that Blakelaws Road was set out as a public vehicular highway in the Alston Moor Inclosure award, only three years previously. Ms Sobell considers, not unreasonably, that the turnpike road's intersection with Blakelaws Road would have been identified as a point of reference. This part of Blakelaws Road might be used by traffic from Blagill Greens Road or from Nentberg (Recent 2004) and not necessarily by people

travelling across the county boundary. I would have to agree that the turnpike plan – which appears to identify many connecting routes, not just a select few – adds little weight to support the reputation of Blakelaw Road as part of a cross-border through route for public vehicular traffic.

- 8.9 Ms Sobell is critical of the accuracy of Greenwood's Map of 1828. She, not unfairly, points to a lack of precision with regard to the location of Blacklaws Cross. She also notes that JB Harley, writing in 1962 about Greenwood's Worcestershire Map of 1822, had concluded that Greenwood spent approximately 30 shillings per square mile surveyed, which compared unfavourably with the £16 per square mile cost information supplied to the inquiry into the Survey of Ireland in 1828. I'm not sure this is necessarily comparing like with like, however. If the Board of Ordnance survey in Ireland amounts to an Ordnance Survey standard survey, it is to be expected that this would be vastly more expensive to conduct. The level of detail provided on Ordnance Survey maps dwarfs that shown on the commercially produced County maps. In my own experience, the accuracy of and detail on Greenwood's County Map of Northumberland compares favourably with the map produced by Fryer. In general, the County maps do have a tendency to be slightly schematic.
- 8.10 Mr Kind has drawn attention to Edward Lockyer's report, of 1823, into the condition of roads on Greenwich Hospital Estate's land in the area. Mr Lockyer observes "The public roads are carried over the highest hills". Whilst this certainly does indicate that wheeled traffic was using some of the upland routes in this area, Mr Lockyer does not appear to identify which ones. This comment may relate to routes which are, today, accepted public roads it need not apply to the application route.
- 8.11 Ms Sobell has also noted that the Ordnance Survey Boundary Sketch Book entry, illustrating where the route crosses the Cumberland Northumberland boundary, appears to have been corrected. The original entry had the words "Black Laws" on the Cumberland side of the boundary, with "Road" on the Northumberland side, implying that the cross border route was uniformly known as "Black Laws Road". The correction (made in red) identifies "Black Laws Road" as being the route on the Cumberland side of the boundary and "Carriers Way" its continuation on the Northumberland side. The word "Road", on the Northumberland side, has been crossed through with a red line. This correction could, of course, simply be due to the fact that the route was known by different names, depending which side of the boundary you were on, but it might also reflect a perceived difference in the status of the route.
- 8.12 The applicant has acknowledged that he has no direct evidence identifying the alleged restricted byway route, itself, as a public vehicular highway. He considers that since, at its eastern end, the alleged restricted byway begins on a recognised public vehicular highway, and because its westerly continuation (within Cumbria) has also been determined to be a public vehicular highway, it is reasonable to conclude that the central (alleged restricted byway) section is also public vehicular highway. He has supported this proposition with two legal judgements (Leicestershire County Council v Secretary of State for EFRA [2003] and Eyre v New Forest Highway Board [1892]).
- 8.13 On the face of it, this is a fairly convincing general principle, but it cannot be assumed to apply universally. It would be particularly persuasive in circumstances where a route didn't intersect with any other highways, traversed fairly uniform terrain an and and and that, historically, had always

been owned by a single landowner. The situation at Mohope could be explained simply by differential dedication. The route across the stinted pasture (and its continuation within Cumbria) may, historically, have been something less than a public vehicular right of way. If the Alston Moor Inclosure Commissioners elected to 'upgrade' the Cumbria continuation to vehicular status, this wouldn't alter the status of the section across the stinted pasture in Northumberland.

- Mr Kind has argued that it wouldn't make sense for the Cumbrian continuation of the alleged restricted byway route to have been set out as a public road if the continuation within Northumberland didn't have the same status. Members of the public driving vehicles along Blakelaws Road, within Cumbria, would be forced to turn round at the County boundary, and there is no obvious reason why anyone would derive any utility from this. This argument is not without merit. As Mr Kind points out, the inclosure commissioners could have set out Blakelaws Road (or the section east of that road's junction with Blagill Greens Road, at least) as a public highway of lower status (to match the continuation within Northumberland had the inclosure process there, some twenty years previously, established the status of the route across the stinted pasture) or as a private road (potentially, with public footpath or bridleway rights along the same route).
- 8.15 Ms Sobell has suggested that since two public roads joined Blakelaws Road, it would not have been appropriate to set it out as a private road, thereby limiting access to the Blagill Greens and Nentbury Greens public roads. She has also argued that it was simpler - and more beneficial to the Greenwich Hospital Estate – for Blakelaws Road to be set out as a public highway. because then the maintenance responsibility would fall on the parish, rather than on specific landowners. The commissioners could have solved the first difficulty by setting out most of Blakelaws Road as public - so as to preserve a through connection between the Blagills Green and Nentbury Greens Roads. but naming the northern end (the cul-de-sac section leading to the County boundary) as something different (with a lower status). I would suggest that the maintenance argument does have merit, however. No parcels of land (in Cumberland) would rely on the extension up to the County boundary. The Greenwich Hospital and Joseph Dickinson plots, lying either side of this route. would both still have direct access to the public road network, even if this extension didn't exist. There may have been influential landowners on the Northumberland side of the boundary (perhaps with private rights, or perhaps satisfied by the existing footpath or bridleway rights through the stinted pasture, in the Northumberland) keen to preserve access on the Cumberland side of the boundary. I wonder whether there may, potentially, have been some difficulty setting out a private road to protect these interests, if the beneficiaries in Northumberland (who would usually be expected to initially finance and subsequently maintain the route) weren't actually landowners involved in the Alston Moor inclosure. By making this route a public road, the maintenance burden would, as Ms Sobell points out, be shared amongst the whole parish.
- 8.16 There are, in fact, a significant number of other non-through route vehicular highways, apparently set out in the Hexhamshire and Allendale Inclosure Award. I have attached a small scale map extract showing the existing public rights of way network between Allendale and Hexhamshire. The yellow routes are ordinary roads (shown on the OS base map). The routes represented by solid brown lines are recorded on the Definitive Map as byways open to all traffic, the broken green line Page Ulicaridle ways and the broken red lines

are public footpaths. Starting in the 12 o'clock position, and working round clockwise, Greenridge Road, Ardley Road, Eshells Road, Lightside Road, Westburnhope Road, Lousley Road, Houstie Carr's Road, Shilburn Road, Watch Currock Road and Newfold House Road are all byways open to all traffic that were set out as public roads in the Allendale and Hexhamshire Inclosure Award. All of these roads were set out only as far as the stinted pasture separating the two valleys. All of the highway continuations crossing the stinted pasture, connecting with byways open to all traffic on the other side, are currently recorded on the Definitive Map as public bridleways – not as vehicular rights of way (nor as footpaths). Whilst it is certainly possible that one or more of the crossover routes could be more than just public bridleways, I haven't, as yet, been made aware of any compelling evidence to demonstrate that any of them are.

- 8.17 In relation to the above area between Allendale and Hexhamshire, I have also attached extracts from Fryer's (1820) and Greenwood's (1828) County maps. Both Fryer and Greenwood appear to have identified the majority of the inclosure awarded roads leading up to the stinted pasture. At present, there are 7 public bridleways recorded on the Definitive Map crossing over the stinted pasture to connect with the ends of these roads. Fryer has depicted 3 of them and Greenwood appears to have depicted 5 (possibly 6) of them. The majority of the public highways shown on Fryer's and Greenwood's County maps are vehicular ones. Given the scale of the mapping, this is almost inevitable – it would be impossible to show, in any meaningful way, every public bridleway and footpath, too, though Greenwood did specifically identify a few (i.e. less than 20) bridleway routes (labelling them as bridleways) within Northumberland. I would suggest that both Fryer and Greenwood may have shown a small number of routes where the status wasn't absolutely certain. They may have believed they were likely to be vehicular, but in reality they might have been of a lower (most likely, public bridleway) status.
- 8.18 The cumulative documentary evidence in support of public vehicular rights over the alleged restricted byway route is not considered to be sufficient to satisfy the balance of probabilities test. Whilst the "through route presumption" undoubtedly has significant merit, it cannot automatically apply in every case. The numerous identified examples of inclosure awarded roads (many of them now recorded as byways open to all traffic) terminating at the stinted pasture between Allendale and Hexhamshire, with public bridleways forming the upland link between them, reinforces that position. If the alleged Restricted Byway No 26 route (like the connecting routes between Allendale and Hexhamshire) is not a vehicular highway, it does, however, seem more likely than not that (again, like the connecting routes between Allendale and Hexhamshire) it will be of public bridleway rather than public footpath status. It may be significant that the Allendale to Hexhamshire routes were all originally identified as public bridleways at the Draft Map stage, whereas the Mohope route was only identified for inclusion following representations to that Draft Map, by the Ramblers' Association – a walking group.
- 8.19 Commenting on a draft version of this report, Galbraith LLP (for the Wellhope Partnership), objected to the recommendation in support of the existence of public bridleway rights. The sequence of events outlined in paragraph 1 of their comments section isn't quite correct. It is quite true that the NCC Rights of Way Committee refused Mr Kind's 1998 application to record a byway open to all traffic on the grounds of "insufficient evidence for vehicular or public bridleway rights". Mr Kind appealed against this refusal and this appeal was successful. Northumberland Collage of 165 was directed, by the Secretary of

State, to include the route in a future Definitive Map Modification Order as a byway open to all traffic. An Order (DMMO (No 10) 2003) was duly made, and attracted objections, which led to the Order and objections being submitted to the Secretary of State for determination, and it is this which led to the two day public inquiry – not the appeal against the County Council's refusal to make an Order. Following the public inquiry, the Inspector declined to confirm DMMO (No 10) 2003 on the grounds that "the evidence before me is insufficient to show the existence of public carriageway rights over the Order route."

- 8.20 The applicant's appeal against the County Council's refusal to make a definitive map modification order pursuant to his 2016 application failed. The Inspector concluded "I do not consider that it has been demonstrated on a balance of probabilities that Footpath 26 ought to be shown as a restricted byway. As such, the appeal must fail."
- 8.21 Galbraith LLP has also argued that the amount of new evidence produced to support the new application is extremely meagre. Although the new evidence in support of vehicular rights is certainly modest, whilst investigating this application, additional evidence that further challenges the through route presumption was discovered. This draws on the treatment (within the same Inclosure Award) of routes linking the Allendale and Hexhamshire valleys. Whilst the Award set out numerous public roads leading up to the stinted pasture, no continuation was identified continuing through the stinted pasture itself, though there are multiple public bridleways recorded crossing over that pasture, on the Definitive Map, today, adding support to the hypothesis that the application route might be something less than public vehicular but more than public footpath.
- 8.22 Galbraith LLP is correct in asserting that the Inspector had the power to amend DMMO (No 10) 2003, if he had believed the route was a public bridleway, and the Inspector considering the 2017 appeal might have been able to direct the County Council to make an Order for public bridleway, even if he hadn't been convinced that public vehicular rights existed. Neither of them did, but this is perhaps unsurprising, because neither Inspector appears to have addressed the potential existence of public bridleway rights. If an Inspector had actually considered the existence of public bridleway rights, and then dismissed the evidence in support as being insufficient, it is not unreasonable to expect that they would have stated as much.
- 8.23 Advice from the Planning Inspectorate in their 'consistency guidelines' states that it is important to have the correct width, where known, recorded in the definitive statement. Where no width can be determined by documentary means (such as an Inclosure Award, Highway Order or dedication document), there is usually a boundary to boundary presumption for public highways. Since this route is not enclosed now, nor does it appear to have been enclosed previously, it is proposed that, if it is to be upgraded to public bridleway status, it should be recorded with the Council's standard default width of 3 metres (i.e. wide enough for two horses, travelling in opposite directions, to pass each other.

9. CONCLUSION

9.1 In light of the documentary evidence available, it appears that, on a balance of probabilities, public vehicular rights have not been shown to exist over the route of alleged Restricted BRANCIA 16

- 9.2 In light of the documentary evidence available, it appears that, on a balance of probabilities, public bridleway rights have been shown to exist over the route of alleged Restricted Byway No 26.
- 9.3 It would be appropriate to recognize the public's higher rights over the route of existing Footpath No 26 by upgrading this to public bridleway status on the Definitive Map.

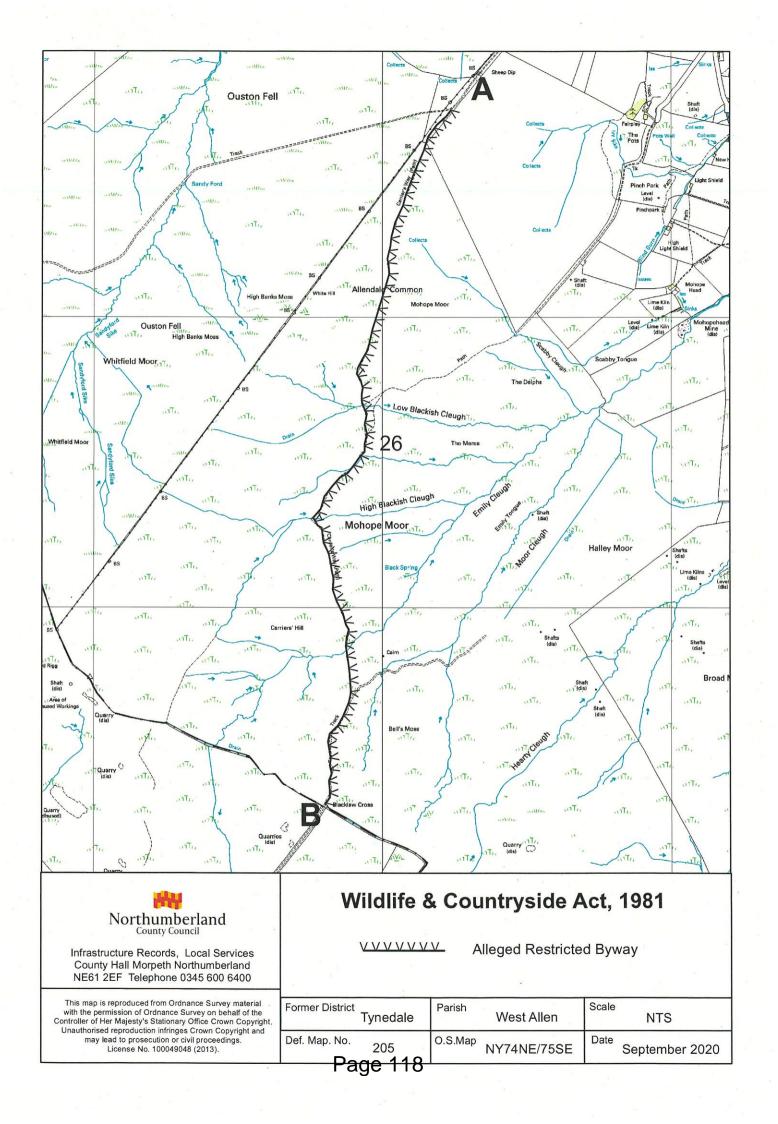
BACKGROUND PAPERS

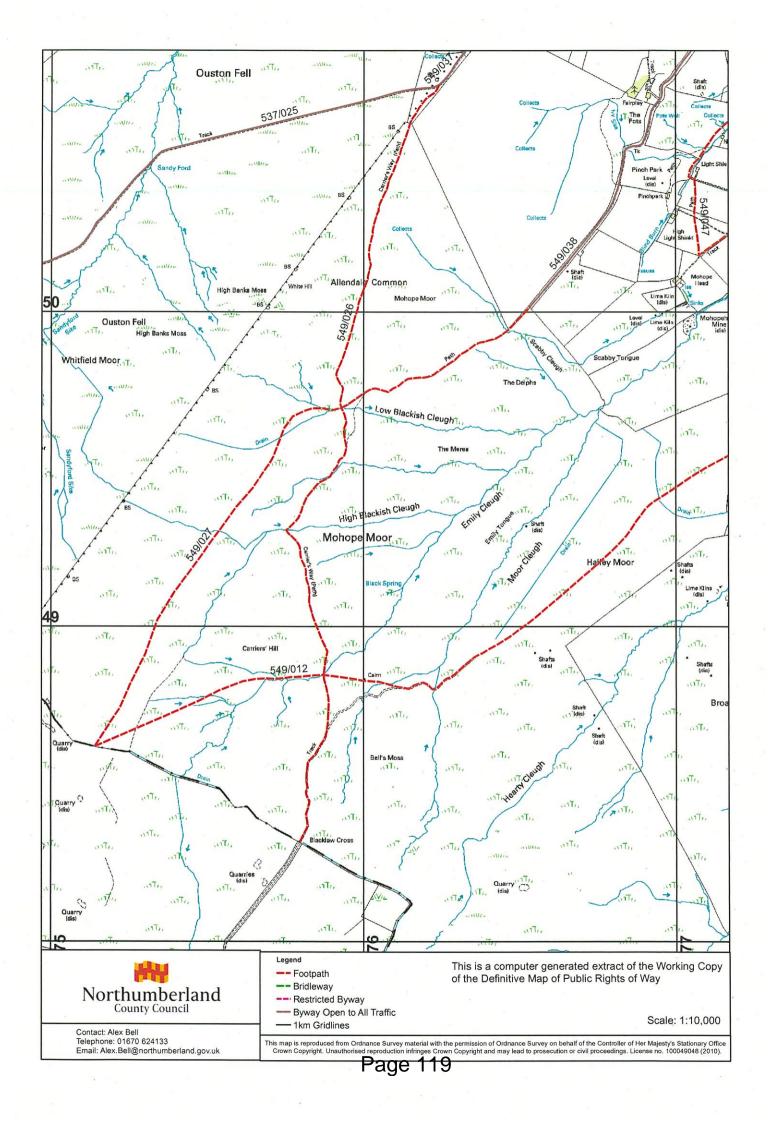
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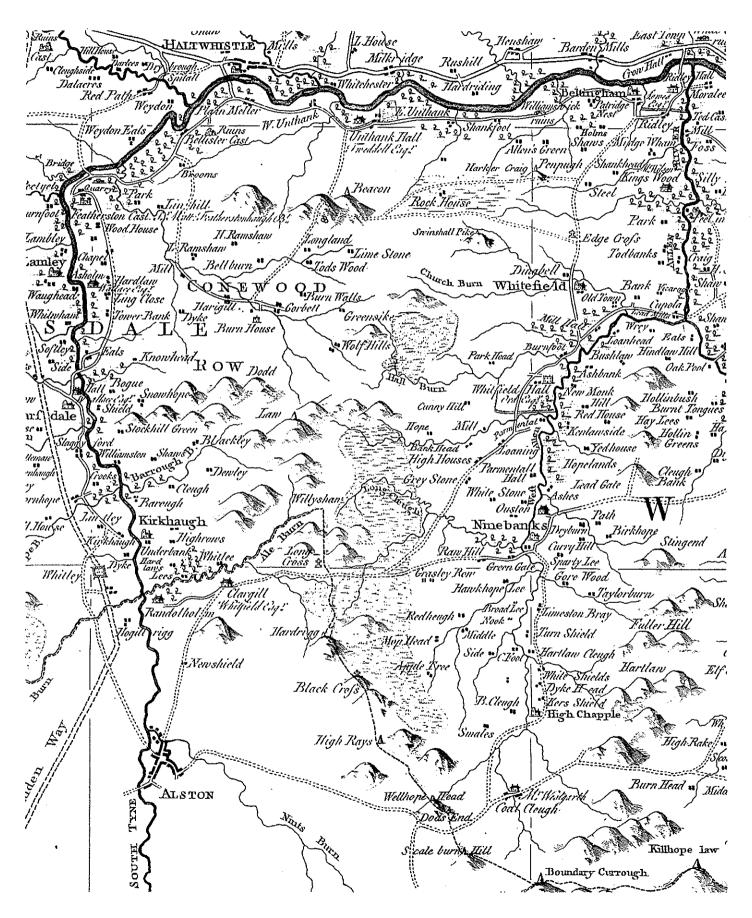
Report Author Alex Bell – Definitive Map Officer

(01670) 624133

Alex.Bell@Northumberland.gov.uk

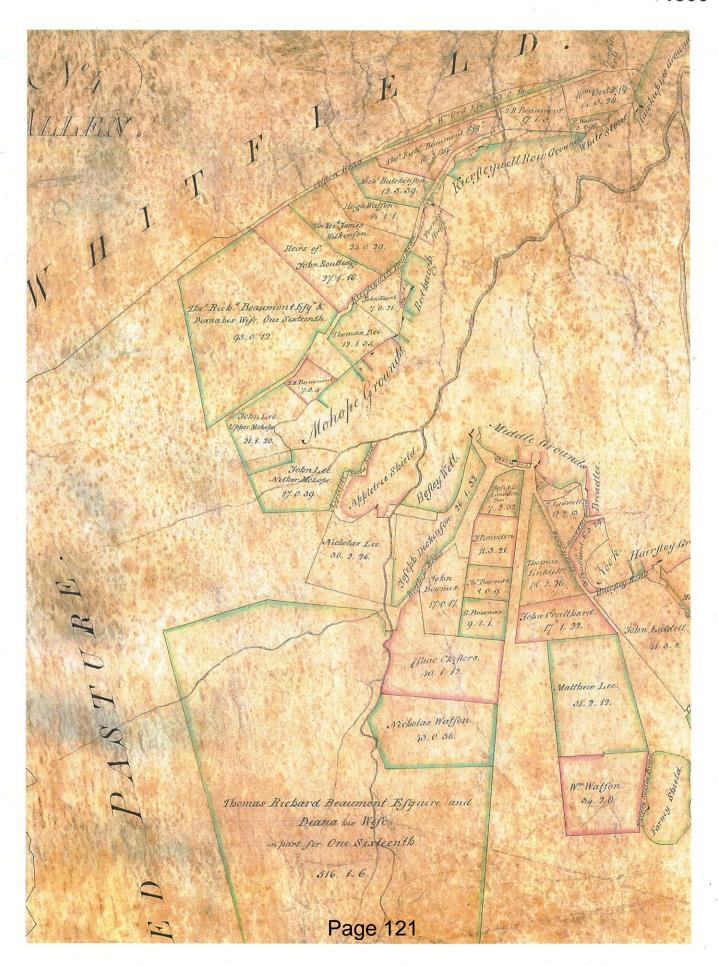




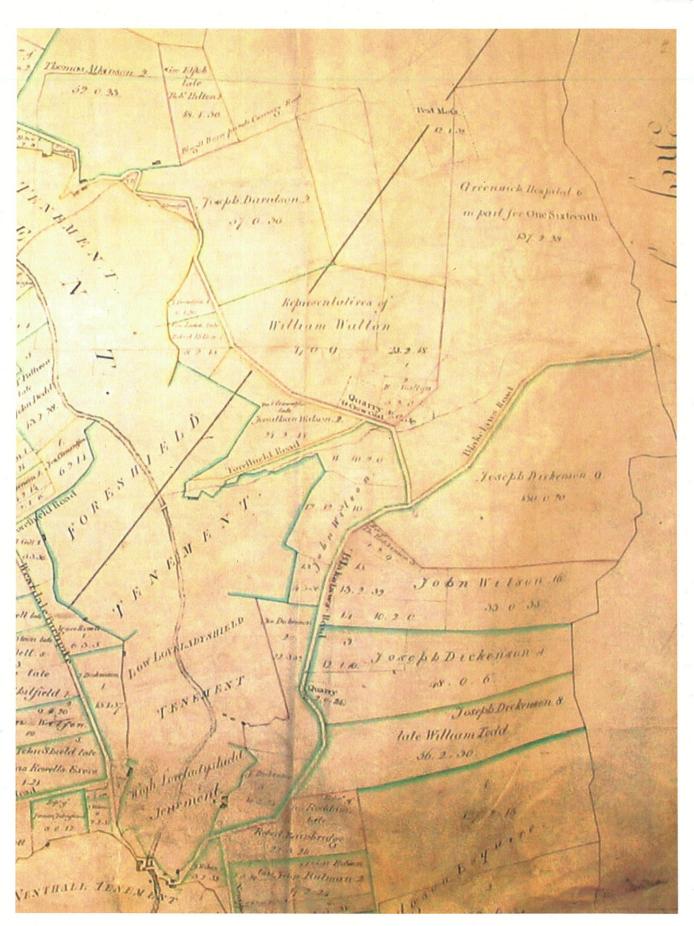


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Hexhamshire & Allendale Inclosure Award 1800

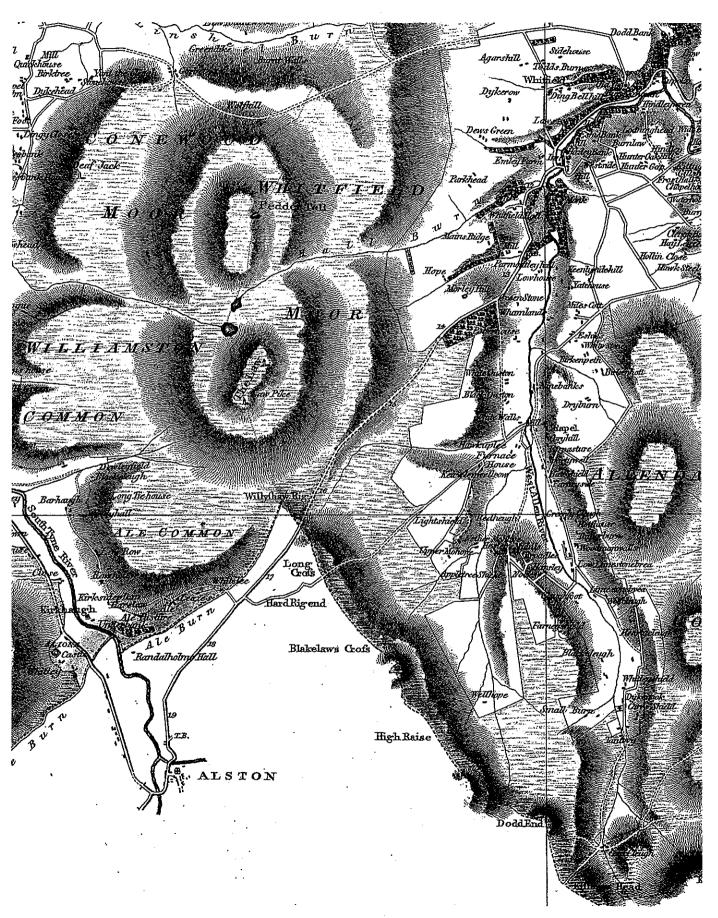


Alston Moor Inclosure Award 1820

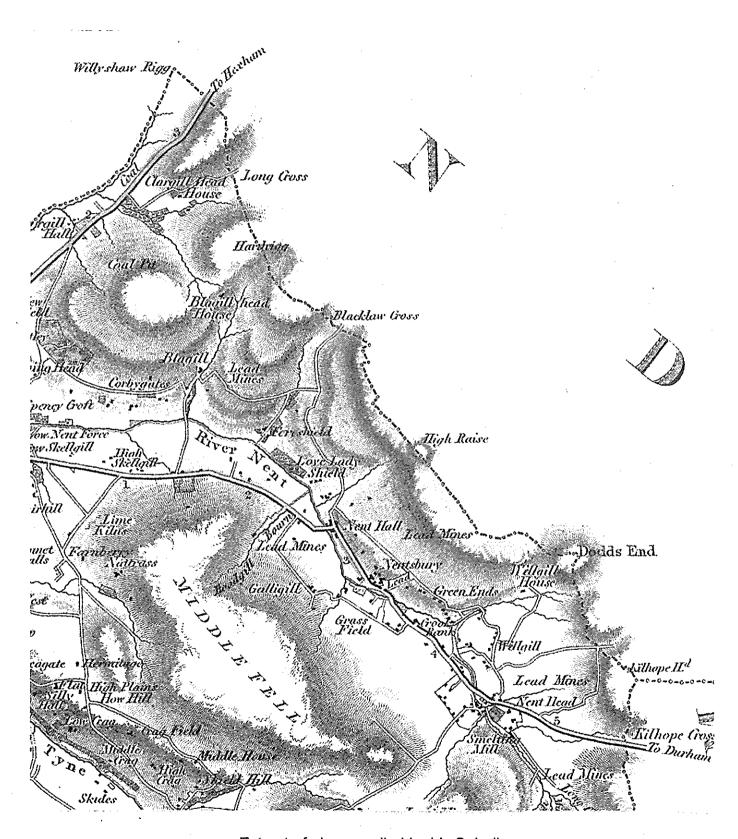


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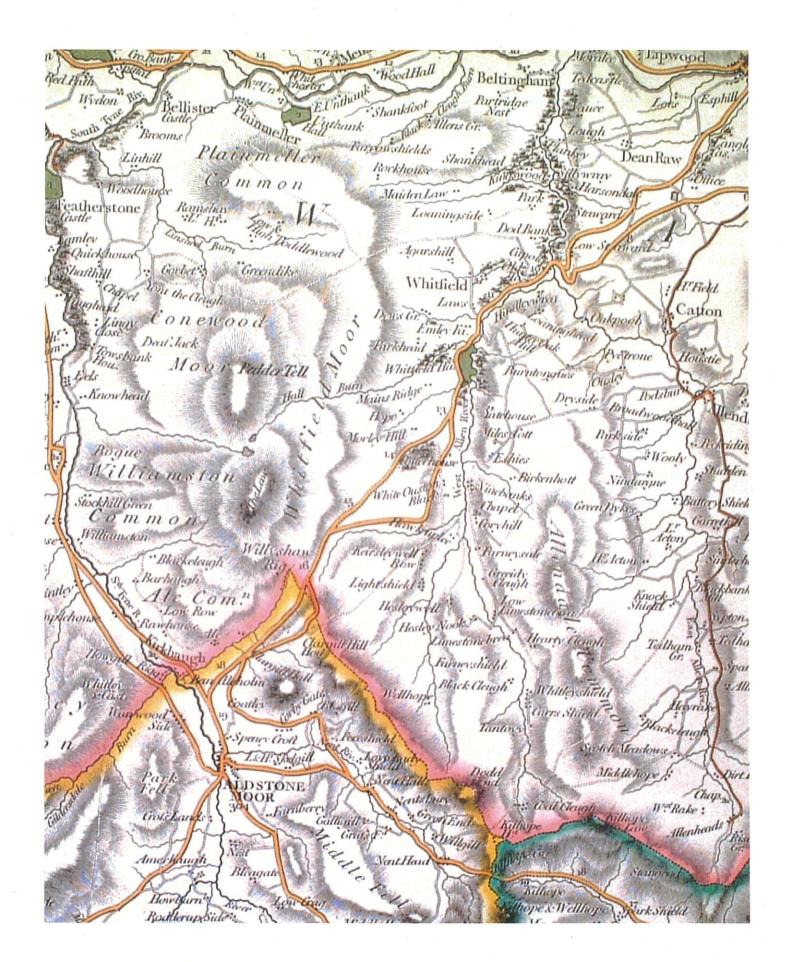
Fryer's County Map 1820

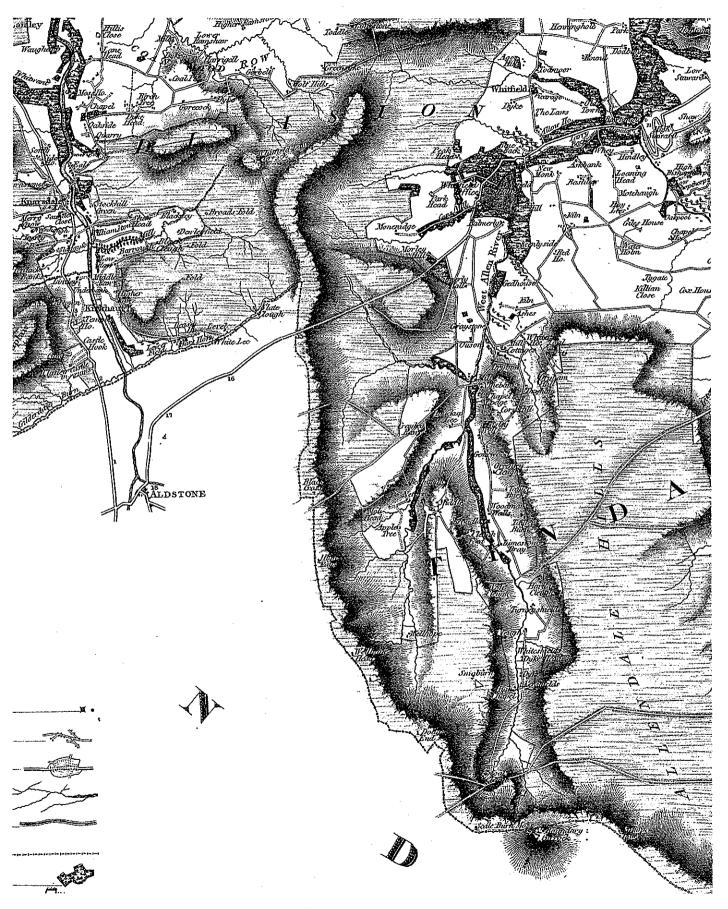


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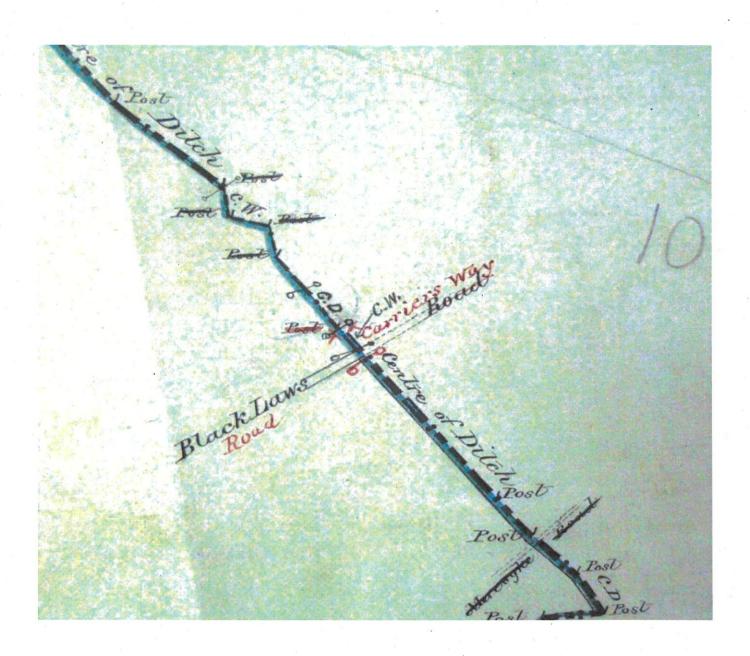
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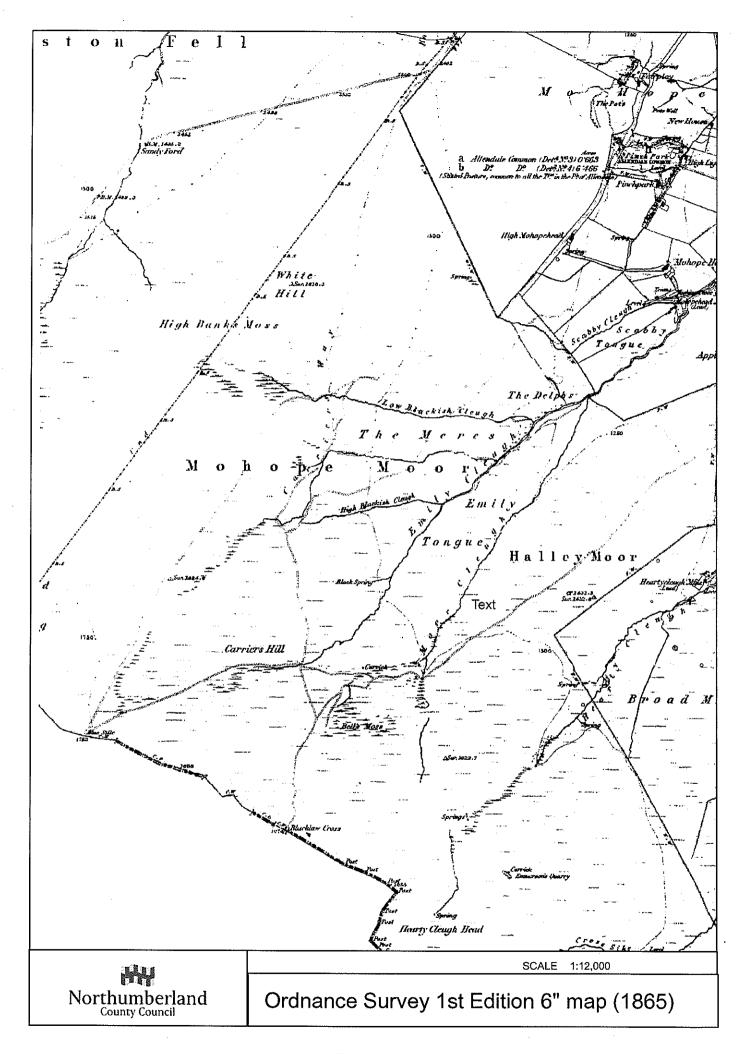


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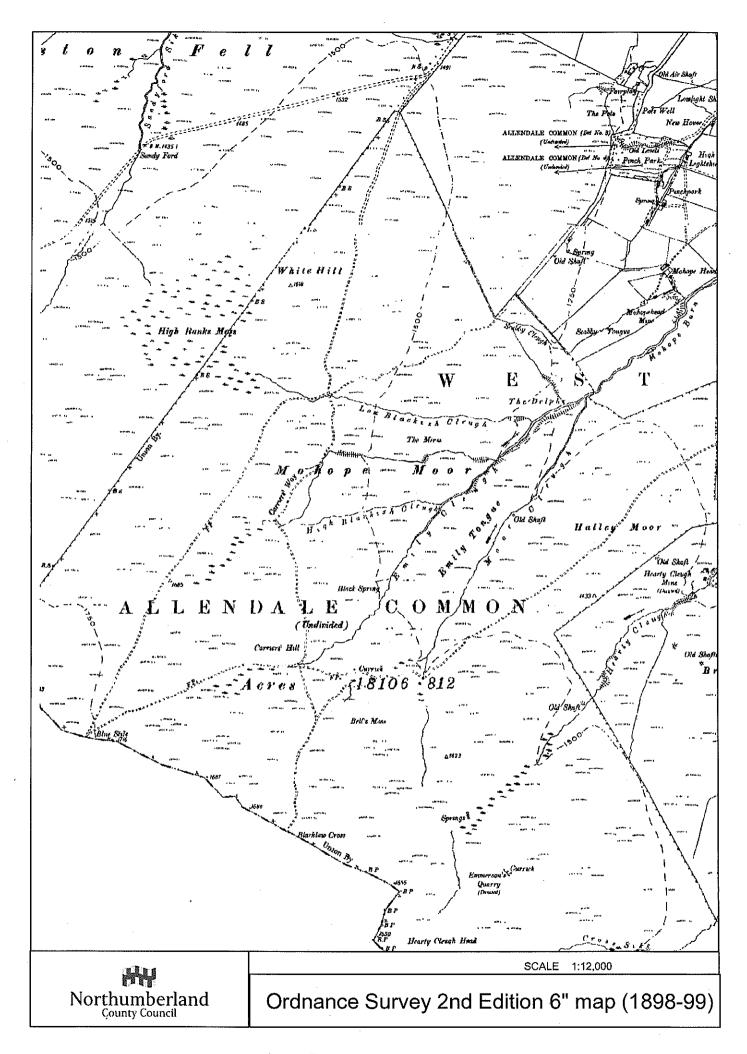
Ordnance Survey Boundary Sketch Book (1858)



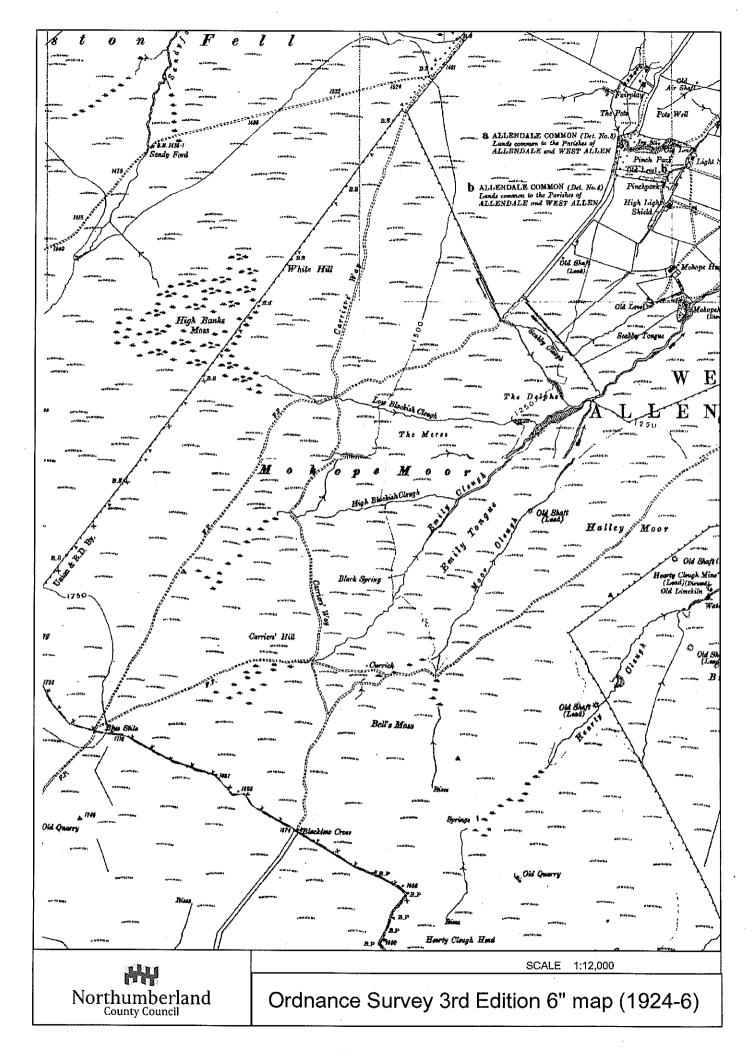
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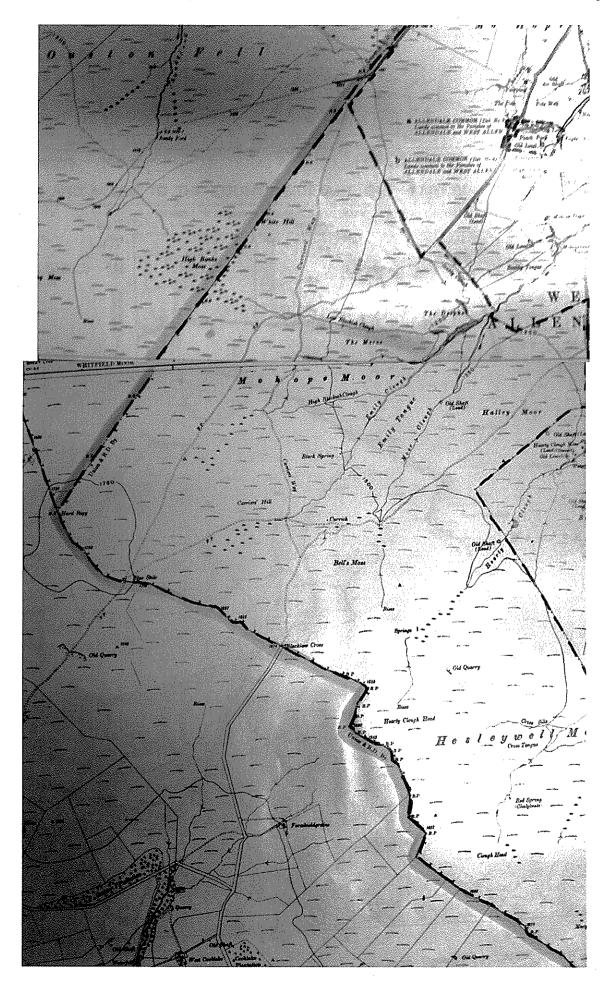
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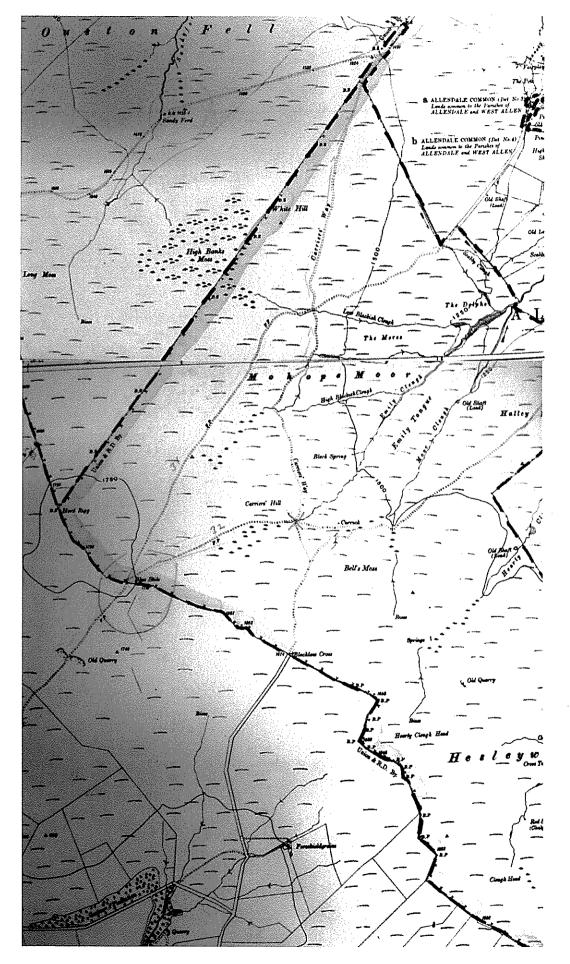


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Draft Map



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BRIDGES AND ROADS-16TH DECEMBER, 1957.	and any objections which are made will be heard in accordance with the	rocedure faid down in the Act:
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Recommendation.	The inclusion of a mash face	the Dukesfield Bridge road south of Dukesfield Mill following the Dovil's Water by Crag Nook to join Path No. 17 at Wrae's Bank.	The inclusion of a path from the Hexham-Whitley Chapel	road about 120 yards north- west of Sunnyside Lodge entrance in a south-western	direction through the planta- tion to join Newbiggin Bridge-Linnel's Cottage road at the ford north of Lamb	Shield. The inclusion of a path from	Lamb Shield in an east and northerly direction by Hazel- hurst to join the Linnel's road north of Hazelhurst.	The inclusion of a path from Path No. 14 in the Hexham Urban District at Hole House southwards across the West	Dipton Burn along the south bankof the Burn in an easterly direction then south to Hill Road at Newbiggin Hill.	The inclusion of a path from Path No. 14 in the Hexham Urban District at Hole House	in a westerly direction to join Path No. 16 at the Hexham Urban District boundary north-east of Dipton Bridge.	
Representation made by.							C. D. Wood, Esq.					
Path No.	Slafev	F.P. 23	Hexham Low Quarter,	r.F. 10		Hexham Low	Quarter, F.P. 11	Hexham Low Quarter, F.P. 12		Hexham Low Quarter, F.P. 13	,	

The County Surveyor has carefully considered the large number of representations made by the Ramblers' Association for the inclusion of paths on the draft map for the Rural Districts of Belford, Castle Ward, Haltwhistle, Hexham and Norham and Islandshires, and his recommendations on these are based upon the evidence he has been able to obtain from local sources.

The Sub-Committee are accordingly recommended to approve the inclusion in the draft map of the footpaths set out below, and consequent upon the Sub-Committee's approval the modifications will be advertised

Path.	Description.
Belford Rural District. Bradford, F.P. 3 Fron	From the Goldenhill-Lucker Road at Goldenhill From to Farm buildings in a north-westerly direction to join the Bradford-Bamburgh Road direction to join the Bradford-Bamburgh
Detchant, F.P. 12	north-east of Bradford. From Path No. 6 at Lower Swinhoe Lane northwest by Swinhoe Crag to join B.R. No. 1 at
Detchant, F.P. 11	Greymare Farm. Fenwick Road at Detchant Park From Detchant-Fenwick Road to join Path No. 2 west through Detchant Wood to join Path No. 2
Detchant, F.P. 13	at Glendale Rural District Dountain; From Path No. 11 in Detchant Wood at light rail- way crossing north-west to Glendale Rural way crossing north-west to John Path No. 53 at that District Boundary to join Path No. 53 at
Detchant, F.P. 12	
Castle Ward Rural District. East Shaftoc, F.P. 4 Bounda Bounda bounda then so	
•	casterly via Pipers Chair, east along the electron Tailor and His Man then south by Ferney Chesters of the Newcastle-Otterburn Road.
East Shaftoe, F.P. 3	From Part No. 2 at the Morpeth Rural District From Part in a southerly direction via the lake and East Shaftoe Hall to the Bradford Parish Boundary
Bradford, F.P. 4	10 join Path No. 4 in that Farish. From Path No. 3 at the East Shaftoe Parish Boundary in a southerly direction to join the West ary in a southerly direction to join the West ary in a southerly Road about 200 yards Tofthill-Makemerick Road about Road
Whalton, F.P. 2	From Path No. 2 Rivergreen at the Morpeth Rural From Path No. 2 Rivergreen at the Morpeth Rural District Boundary in a southerly direction by Whalton North Farm to join the Meldon-Whalton
Gallowhill, F.P. 2.	.
Riplington, F.P. 1	Riplington Parish Boundary, Johnnes In that Parish. In that Parish. From Path No. 2 Gallowhill at the Parish Boundary in a southerly direction by Dark Plantation in a southerly direction by Dark Hill to the prediction Plantation and Howburn Hill to the
a Direct Wo	Corporation of the Trewick Parish Boundary, joining Patt Corporation of the Trewick Parish at the How Burn.

423

Hexhamshire West

Path No.

Quarter and Detached,

F.P. 4 Hexhamshire West

F.P. 5 Hexhamshire West

Quarter and Detached, F.P. 6

Quarter and Detached,

Hexhamshire West

Quarter and

Detached,

Warden, F.P. 18

Dilston, F.P. 7

Dilston, F.P. 8 Dilston, F.P. 9

				¥					
Description.	From Path No. 26 on the West Allen Parish boundary in a south-easterly direction to the county road west of Greenleycleugh Crags. From Path No. 16 at Little Hill in a north-westerly direction by Jacksons Moss, Middle Rigg and Quarry Hill to join Path No. 8 West Allen.	From the Allendale Parish boundary at Dodd Top and Path No. 82 in that Parish in an easterly direction to Path No. 11 then from a point further north on Path No. 11, in an easterly direction across Westend Burn to join the county road at Bird Pot. From Path No. 56 Allendale in a south-westerly direction across Path No. 22 to join Path No. 15				From Path No. 7 north of Sipton Bridge in an easterly, north-easterly, northersteady and easterly direction by Sipton Burn, Sinderhope Carrs and the Long Drag to the boundary of Lands Common to Allendale and West Allen and Path No. 11.		ц 1	
Path No.	Lands Common to Allendale and West Allen, F.P. 33 Lands Common to Allendale and	F.P. 34 Lands Common to Allendale and West Allen, F.P. 35 E.P. 35 Lands Common to	West Allen, F.P. 36 Lands Common to Allendale and West Allen, F.P. 37	Lands Common to Allendale and West Allen, F.P. 38	Lands Common to Allendale and West Allen,	Lands Common to Allendale and West Allen, F.P. 40	West Allen, F.P. 25 West Allen, F.P. 26	West Allen, F.P. 27	
Description.	From the Lowes Fell-Low gate road south-east of Lowes Fell in a northerly and north-easterly direction past Path No. 6 and Coastley Fell House to join Path No. 3 north-west of Coastley. From the Branchend-Stublick Colliery road southwest of Stublick Hill in a south-easterly direction to the boundary of Lands Common to Allendale	From the Keepers Shield-Greenshaw Plain road near the Neepers Shield-Greenshaw Plain road near the Newbrough Parish boundary in a southwesterly direction over the Hexham and Allendale Branch Railway through Glen Dhu Wood then southerly and south-easterly south of Glen Dhu to Join Path No. 4 south-west of Coastley Fell House.	Shire High Middle and West Quarters and Path No. 9 in a north-westerly direction by Low Stublick to the Hexham-Allendale road. From Path No. 9 east of Laverick Plantation in a north-easterly direction to the camp. From Path No. 6 south of Dilston South Park in a	Souri-Westerly, south-easterly and westerly direction to the Hexham Urban District boundary to join Path No. 31 in that District. From Path No. 24 Slaley in a northerly direction to join Path No. 4 east of Linnoldswood Farm. From Path No. 13 Corbridge in a south-westerly,	westerly, southerly, south-easterly and south-westerly direction to join Path No. 2 at the Slaley Parish boundary. From Path No. 1 at Gills Crag in a south-easterly direction by Eddybroth Well to join Path No. 1	near the Ovingham Parish boundary. From Path No. 5 Hexhamshire West Quarter in a south-easterly direction to cross Path No. 1 east of Rebel Hill then in a southerly direction to join Path No. 2 south-east of Gaterly Hill.	From the Powstile Bridge-Long Cross road near the West Allen and Whiffield Parish boundaries in a southerly direction by the Carriers Way across Path No. 31 near Carriers Hill and on to the County boundary at Blacklaw Cross. From the end of the county road near Scabby Cleugh in a south-westerly direction to Blue Stile on the Cumberland County Boundary.	From Blue Stile on the Cumberland County Boundary in a north-easterly direction across Path No. 30, by Halley Moor to the West Allen Parish boundary joining Path No. 25 of that Parish.	

Lands Common to Allendale and West Allen, F.P. 29

Whittle, F.P. 6

Lands Common to Allendale and

West Allen, F.P. 30

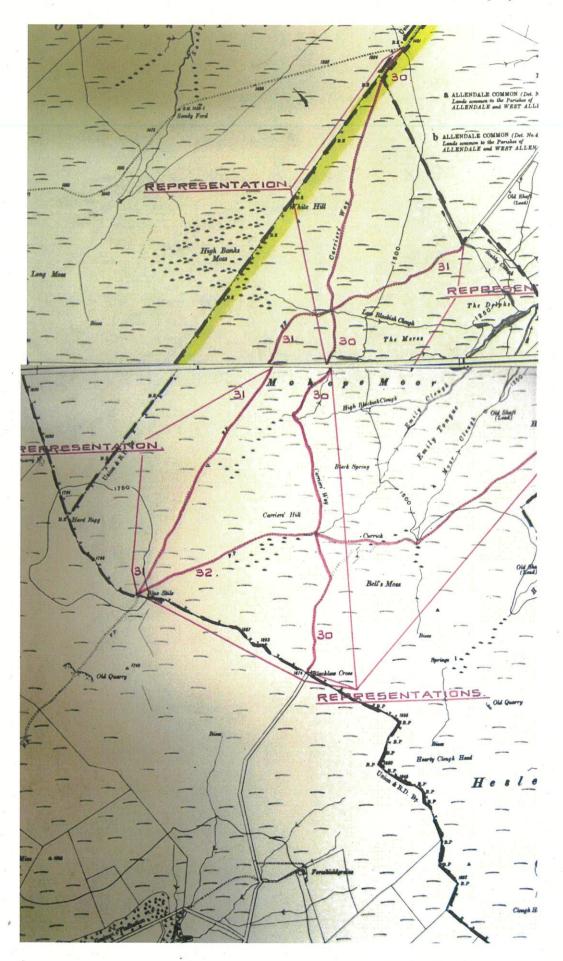
West Allen, F.P. 31 Lands Common to

Allendale and West Allen, F.P. 32

ands Common to

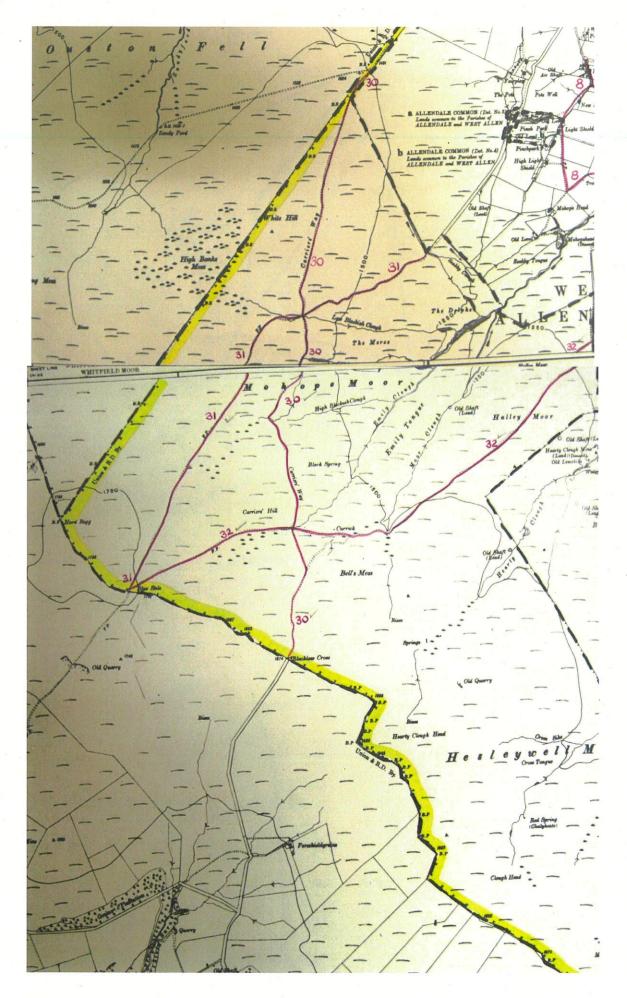
Allendale and

Draft Map (Modified)



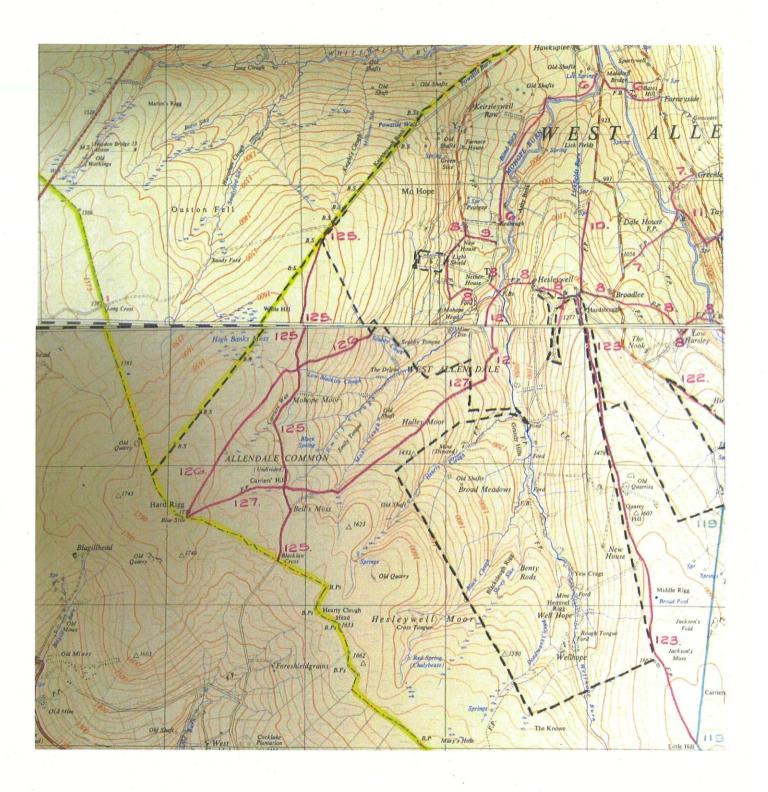
Page 136

Provisional Map



Page 137

Original Definitive Map





Order Decision

Inquiry opened on 6 April 2004

by Alan Beckett BA, MSc, MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs The Planning Inspectorate
409 Kite Wing
Temple Quey Flouse
2 The Square
Temple Quey
Bristol BS1 6PN
18 0117 372 6372
e-mail: enquines@planning
Inspectorate.get.gov.uk

10 SEP 2004

Order Ref: FPS/R2900/7/30

- This Order is made under Section 53(2) (b) of the Wildlife and Countryside Act 1981 and is known as the Northumberland County Council (Public Rights of Way) Modification Order (No. 10) 2003.
- Northumberland County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- The Order is dated 12 May 2003, and there were seven objections outstanding at the commencement of the inquiry.
- The Order proposes to modify the Definitive Map and Statement for the area by upgrading Footpath No 26, Parish of West Allen, to Byway Open to All Traffic.

Summary of Decision: The Order is not confirmed.

Procedural Matters

- 1. The effect of the Order, if confirmed without modification, would be to modify the Definitive Map and Statement for the area by upgrading to Byway Open to All Traffic ("BOAT") Public Footpath No. 26 West Allen which runs from Blakelaw Cross (point A on the Order plan) in a generally northerly direction to the U8039 road at Kiersleywell Bank (point B), an overall distance of approximately 2635 metres.
- 2. I have been appointed to determine the Order in accordance with Paragraph 10(1) of Schedule 15 to the Wildlife and Countryside Act 1981 ("the 1981 Act").
- 3. I held a public local inquiry into the Order on Tuesday 6 April and Wednesday 7 April. I carried out an unaccompanied inspection of the right of way on Monday 5 April. The parties to the Order did not require me to carry out a further accompanied inspection.
- 4. At the inquiry the owners of the land affected by the Order were represented by Counsel. Five of the seven objections outstanding were withdrawn when the inquiry opened.
- 5. Northumberland County Council had made the Order following a direction from the Secretary of State under paragraph 4(2) of Schedule 14 to the 1981 Act. The County Council, as order making authority, remained neutral at the inquiry and the case for the Order was made by the applicant, Mr A D Kind.
- 6. At the inquiry, it was confirmed on behalf of the County Council that all statutory procedures had been complied with.

The main issues

7. The requirements of Section 53 (3) (c) (ii) namely, the discovery of evidence which when taken with all other relevant evidence available shows that a highway shown in the map and

statement as a highway of a particular description (namely Footpath No. 26 West Allen) ought to be there shown as a highway of a different description (namely as a BOAT).

Reasons

- 8. Mr Kind submitted that the Order route was part of a mediaeval high-level road between Corbridge, Alston and Penrith, which passed a settlement called Corby Gates Farm located approximately 2.8Km south-west of the Order route. Corby Gates Farm was recorded in 1314 as a farmstead by the name of Corbriggate. Mr Kind called this route the Corbrigg Gate, and located his mediaeval road in this area by suggesting that the fourteenth century farm name was taken from its proximity to the road to Corbridge. In Mr Kind's submission, the most direct route from Corby Gates Farm to the north-east in the direction of Corbridge was over Mohope Moor along the Order route via Blakelaw Cross. It was Mr Kind's case that such a route had fallen into disuse with the advent of other routes on more suitable gradients and terrain such as the road via Long Cross.
- 9. In support of his case Mr Kind drew on a number of authorities, namely Commissions for New Towns v Gallagher [2002] EWHC 2668; Eyre v New Forest Highways Board 56 JP 517; Trafford v St. Faiths RDC (1910) JP 297 and Vyner v Wirral RDC [1909] JP 202. Where appropriate, I have made reference to these cases.
- 10. Lead mining and processing was a significant local industry in the Northumberland Cumberland border areas for many centuries. The transportation of ore from mine to smelt mills required the organisation of not only labour and capital but a network of suitable roads and trackways on which the raw material and refined product could be transported. I heard that the development of the lead trade in the eighteenth century was one of the principal driving forces behind the development of the local road network around Mohope. I have no reason to question that view.
- 11. The County maps of Northumberland by Kitchin (1750-1785), Horsley (1753) and Armstrong (1769) do not show the Order route, but do show the Long Cross Ninebanks road which is now the U8039, to which the Order route connects at Knights Cleugh Head (point B). Similarly, the Hodgkinson and Donald (1770-71) map of Cumberland shows the road via Long Cross but not the Order route.
- 12. An estate map drawn in 1757 to show the boundaries of the Whitfield estate owned by the Greenwich Hospital annotates the Long Cross route as the "road from Alston to Hexham". This plan was drawn to show the boundaries and features within the Whitfield estate. As the Order route ran over the neighbouring Hexham estate, the cartographer would not necessarily have been concerned with roads or tracks outside the Whitfield boundary. However, the Alston Hexham road via Long Cross is shown as crossing the estate boundary at Knights Cleugh Head. At this point there is no indication of a route running to the south over Mohope. From the County maps and from estate plans of the Greenwich Hospital it is clear that the only acknowledged road that led between Alston and Hexham until the construction of the Alston Turnpike in 1778 was the route via Long Cross and Knight's Cleugh Head.
- 13. The Alston Turnpike Act of 1778 provided for the construction of a new section of road between Alston and Hexham bypassing the Long Cross route. The Turnpike was promoted by the local lead mining and carrying interests as a means of improving the transportation of the lead ore from mine to smelt mill. The enabling Act provided for the old road to cease to

be maintained at the expense of the parish, although the Act did not enable to the route to be extinguished. The Long Cross route therefore remained as a public road. The objectors submitted that the bulk of the important lead trade traffic would have transferred to the new turnpike, leading to a reduction in traffic on the old Alston road via Long Cross. If the traffic along the old road fell, it is therefore probable that any traffic using the claimed route over Mohope as a through route, if the alleged route existed, would similarly have dwindled.

- 14. The Hexhamshire and Allendale Inclosure Act of 1792 gave the commissioners who drew up the award in 1799 extensive powers to award and set out roads and other highways and to stop up existing roads and highways over the moors and waste affected by the award. Under the Act, those parcels of land which were deemed to be suitable for improvement were to be enclosed, with the remainder of the moors and waste ground being stinted amongst the commoners. Part of the old Alston road bypassed by the 1778 turnpike was awarded as a public road from Powstile Gate to Knights Clough Head.
- 15. The Order route is not shown on the inclosure award plan, nor is it mentioned in the award. Under the terms of the enabling Act, all former roads and ways not set out and appointed through the lands which were to be divided and allotted were to become part of those lands, and that use of such former ways was to be unlawful. A number of roads through other stinted pastures in the area covered by the Award were awarded and in the objector's view as the Order route was not awarded any such route that would have existed was stopped up under the terms of the enabling Act. Mr Kind was of the view that as the land crossed by the Order route was not divided and allotted, the Act and the Award had no impact upon any pre-existing way running over the stinted pasture.
- 16. The enclosure of individual parts of the moor and the award of those allotments to named individuals clearly involves the division of the land, and its physical separation from other parts of the moor by fences. I consider that these are the parts of the moor which are referred to in the enabling Act as the land to be "divided and allotted". This is supported to some extent by the terms of section 66 of the Act which grants to the owners of the allotments the right to dig for peat, slate and other materials on the stinted, unenclosed (and therefore unallotted) land. To my mind, the allocation to the commoners of the right to stint a given number of animals on the unenclosed part of the moor does not involve any such physical division. There would therefore have been no impact upon any pre-existing way over the stinted pasture, with only pre-existing ways through the divided and allotted lands being extinguished. Consequently, I find Mr Kind's argument on the interpretation of the Act to be the more persuasive.
- 17. However, there is no indication of a through route over Mohope Moor shown on the Award plan, and the Alston Road is awarded "to the stinted pasture" and not "into the stinted pasture" as other roads were. Unlike the Coalcleugh Road which extended over the stinted pastures and was privately maintained by the lead mining companies, the Commissioners did not extend the Alston Road into the stinted pasture to cross Mohope; in all probability because there was no recognised route over the stinted pasture at the time. From the available documentary evidence which pre-dates the 1799 award the only acknowledged route over the moors was that via Long Cross.
- 18. Fryer's map of Northumberland of 1820 shows the extent of the land around Mohope that had been brought into cultivation following the Inclosure Award of 1799. It also shows the

line of the 1778 turnpike and the continued existence and importance of the route over the moors by Long Cross. Blakelaw Cross is shown on the county boundary but there is no indication of a route running over Mohope Moor to it from the Long Cross road.

- 19. The Alston Moor Inclosure award of 1820 set out a public carriage road from the Weardale Turnpike at Nenthead to the County boundary near Blakelaw Cross. It was Mr Kind's case that the Commissioners would not have awarded a public road, with the burden of maintenance and repair falling to the Alston parishioners, if there was no onward access beyond the County boundary. The objector suggested that the road was likely to have been laid out as a means of accessing the local quarries. Neither party to the inquiry provided a full copy of the award, or the enabling Act and I am therefore unable to comment or draw any conclusion upon the ability of the commissioners to award this road, the purpose for which it was awarded or the reasoning behind the Commissioner's award.
- 20. Greenwood's map of Northumberland of 1827 shows a route crossing the county boundary at a point marked Blakelaw Cross. Mr Kind considered this to be evidence of the existence of the claimed route, although the objector's view was that Greenwood's map was unreliable with noticeable and obvious errors contained within it.
- 21. Greenwood depicts the 1823 route of the Alston tumpike where it had been diverted from the 1778 alignment between Whitfield and Alston. The road network depicted in the vicinity of Knights Cleugh and Keirsleywell Bank is accurate and equates with the depiction on modern Ordnance Survey mapping and is comparable with Fryer's 1820 map. The road leading to Mohope Head (Mob Head on Greenwood's map, Upper Mohope on Fryer's map) is also an accurate representation. However, Greenwood places Blakelaw Cross to the north-west of Mohope Head when it is quite clearly to the south-west, and Greenwood fails to mark Long Cross as a feature. A road shown leading out of the route to Blakelaw Cross and crossing the county boundary further to the north which Mr Kind claimed to be the Long Cross route is not shown on any map produced before or after Greenwood's.
- 22. When the route shown by Greenwood as crossing the county boundary at the point marked Blakelaw Cross is compared to other roads and features in the immediate area on Fryer's map and on modern Ordnance Survey mapping, the route shown is clearly the Long Cross route depicted by previous cartographers. The inaccurate positioning of Blakelaw Cross and the marking of an unidentifiable route to the north appear to be clear errors on Greenwood's part. In the light of these errors from an otherwise reputable cartographer, I do not attach much weight on this map as evidence of the existence of the claimed road over the moor.
- 23. As part of the initial consultation on the application, the agent for the owners of the moor submitted a copy of the plan attached to the Allendale Tithe Award of 1847. No apportionment detail was provided. The plan shows the extent of the enclosures awarded in 1799 with the stinted pasture marked. There is no indication of a track on the alignment of Order route running through the stinted pasture on the tithe map.
- 24. However, running along the Allendale side of the parish boundary, is a double peck line track that crosses the County boundary near Hard Rigg. This track is annotated "from Alston". Mr Kind suggested that this was the Long Cross route. I disagree. The tithe map is of land within Allendale, and from Knights Cleugh Head the Alston road via Long Cross

runs in the neighbouring parish. The route shown in the Tithe map, whatever it purports to be, is not the Alston road.

- 25. An estate plan of the Whitfield Manor of 1856 shows the line of the Long Cross road annotated "Old road from Alston to Allendale". No route leading over Mohope is shown at Knight's Cleugh Head, although the 1799 Inclosure Award road at Kiersleywell Bank is shown annotated "From Mohope".
- 26. Ordnance Survey mapping from the mid-nineteenth century shows the Order route as a double peck line feature annotated "Carriers Way", which in the Book of Reference is described by Ordnance Survey as a "cart road". A feature has clearly been observed by the surveyor, and whilst the maps are evidence of the physical existence of the route at the time of the survey the instructions to surveyors make quite clear that rights of way are not within Ordnance Survey's remit and that surveyors are not required to enquire into them. No evidence was presented to assist with the determination as to why Ordnance Survey considered this feature to be a cart-road, or from whom authority for the description had been sought.
- 27. The evidence from the Whitfield estate papers suggests that the transportation of goods through the West Allen valley, particularly the transportation of lead ore was by packhorse as opposed to horse and cart due to the founderous nature of the ground and the poor state of repair of those roads and tracks in existence. The available evidence suggests that cart traffic in the area, particularly for the lead ore trade, would only have utilised formalised roads following the tumpiking of the Alston Road in 1779 or further improvements made by Macadam in 1823. On the evidence before me it does not seem probable that the feature running over Mohope recorded as a cart road by Ordnance Survey was used as such.
- 28. The Finance Act 1910 information is of little assistance as the land through which the Order route passed was part of a parcel some 18,000 acres in extent. A reduction of duty of £450 was claimed due to the existence of public rights of way over the land, but over such a large area no conclusion can be drawn as to whether the Order route was one for which a reduction was claimed. I was not provided with a copy of the Finance Act working plan.
- 29. Mr Kind submitted that the Order route may have had a hard surface which has progressively sunken into the ground over time. Mr Kind claimed that photographic images captured by satellite showed a physical feature that could not have been created solely by pedestrian use. Whilst I accept that a definable route can be seen on these photographs, no evidence from on-site investigations was submitted to substantiate the assertion regarding a sunken surface. Consequently, I do not attach significant weight to the photographic evidence.

Conclusions on the evidence

30. Mr Kind contended that the claimed route over Mohope forms part of a long distance mediaeval trade route linking Corbridge and Penrith via Alston and Corby Gates Farm. Whilst I acknowledge that reference is made to a property called Corbriggate in the county histories submitted, and whilst it is more likely than not that this property equates with the modern Corby Gates Farm, such references do not indicate either the existence of a trade route or the direction any such route may have taken. Whilst the concept of such a trade route is plausible, there is no evidence to suggest that the Order route formed part of it. Indeed, there is very little evidence of the existence of any route over Mohope Moor which

would equate with the Order route prior to that recorded in the Ordnance Survey 1st edition 6" map.

- 31. I accept the submission that the Allendale and Hexhamshire Enclosure Act would have had no effect upon a route running over the stinted pastures of Mohope Moor. However, there is no evidence of the existence of a route over Mohope in 1799 that would have been affected by the Act and the award. That section of the Alston road awarded did not lead into the stinted pasture on Mohope and there is no evidence within the award or plan that suggests the existence of a continuation route over the open moor at that date. It is clear that the awarded road did not form a cul-de-sac at Knight's Cleugh Head as the Alston road continued westward to Long Cross. The award of the Alston Road was for the retention of an already existing public right, which performed the dual function of allowing stint holders access to the stinted pasture as well as retaining the long-established public through route to Alston. The available evidence suggests that there was no public route over Mohope for the Commissioners to stop up.
- 32. Mr Kind submitted that the road set out by the Alston Inclosure Award would have served no purpose without an onward continuation at the same status over Mohope, and cited Eyre v New Forest Highways Board in support. The presumption against a cul-de-sac such as is found at the southern end of the Order route is a presumption that can be added into the balance when weighing all the available evidence. In my view, the evidence in favour of the existence of an all-purpose highway over Mohope is so meagre that the presumption does not weigh heavily in the balance.
- 33. With the exception of Ordnance Survey mapping, the through route contended for by Mr Kind is not shown on any of the submitted maps, whether produced by commercial cartographers, in relation to estate management or the lead mining industry, or through statutory process. I do not consider that the "cartographic convention" of not marking unmade roads over heaths and commons advanced in Gallagher is applicable in this case, as there is no supporting evidence from any other contemporaneous source for the existence of an all-purpose highway over the moor.
- 34. Mr Kind's theory as to the existence of a long-distance trade route as described in his paper "Tracing the Corbrigg Gate: The mediaeval road from Corbridge to Penrith" is plausible but the documentary evidence submitted in this case does not support the contention that the Order route was an all-purpose highway, or that it formed part of the alleged mediaeval road.
- 35. Under Section 53 (3) (c) (ii) of the 1981 Act the evidence offered in support must demonstrate, on the balance of probabilities, the existence of the higher rights claimed. I conclude the evidence before to me is insufficient to show the existence of public carriageway rights over the Order route.

Other matters

36. A number of the objections outstanding at the commencement of the inquiry related to the potential impact a Byway Open to All Traffic would have upon the environment of the moor, which forms part of the Allendale Moor Site of Special Scientific Interest ("SSSI") and Whitfield Moor, Plenmeller and Asholmes Common SSSI. At the inquiry, 70 letters supporting the objection to the order on environmental grounds were submitted. As

ORDER DECISION: FPS/R2900/7/30

environmental concerns are not within my remit I have not taken these representations into account when reaching my decision.

Overall conclusion-

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

Formal Decision

38. The Order is not confirmed.

INSPECTOR

ORDER DECISION: FPS/R2900/7/30

APPEARANCES

For Northumberland County Council

Mrs B Bailey

Assistant Solicitor, Northumberland County Council, County Hall,

Morpeth, NE61 2EF

In Support of the Order:

Mr A D Kind

45 The Fairway, Gosforth, Newcastle upon Tyne, NE3 5AQ

Mrs S Rogers,

British Horse Society, West Turnpike, Ganton, Alnwick, NE66

4AN

For the Objectors

Mr D Warner,

of Counsel, instructed by Oglethorpe, Sturton & Gillibrand,

Solicitors, 16 Castle Park, Lancaster, LA1 1YG

who called

Mrs E Sobell

Turf House, Steel, Hexhamshire NE47 0HP

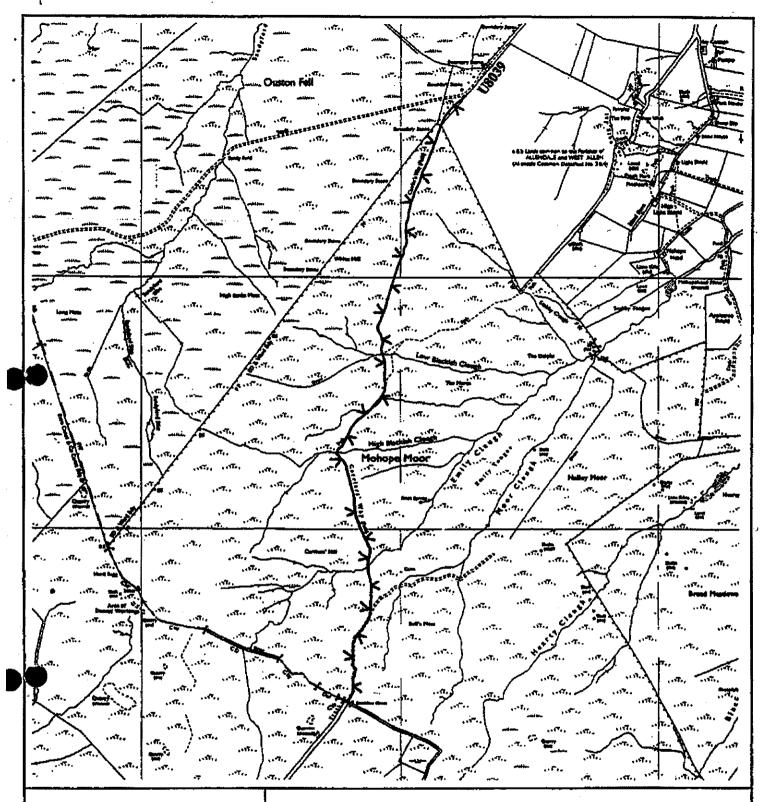
Interested Party

Mr J Lindsay,

Redheugh Cottage, Mohope, NE47 8DH

INQUIRY DOCUMENTS

- 1. Attendance list 6 April 2004.
- 2. Attendance list 7 April 2004.
- 3. Letter from Mr K Lord.
- 4. Certificate of completion of procedural requirements.
- 5. Satellite photographs of Mohope Moor.
- 6. Letter from Ms Atkins & Ms Morris
- 7. Letter from Ms Elliott and Mr Wenham.
- 8. Standard letter completed by 68 individuals.
- 9. Appendices to the statement of evidence of Mrs Sobell.
- 10. Copy extract from Hodginson & Donald's map of Cumberland 1770.
- 11. Copy extract from A History of Northumberland volume 4.
- 12. Bundle of evidence submitted by Mr Kind.



Northumberland

County Environment Manager Environment Department County Half Morpeth Northumberland Telephone (01670) 533000 NE61 2EF

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Date: 1999 Scale; 1:15,000

Wildlife and Countryside Act, 1981 Public Rights of Way

Claimed upgrading to Byway Open to All Traffic

District(s) Tyneciale	Parish(es) West Alien	Scale	1:15,000
Def. Map No. 227/237~	O.S. Map NY74NE/75SE	Dete	March 1999

Appeal Decision

by Rory Cridland LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs Decision date: 19 December 2018

Appeal Ref: FPS/P2935/14A/5

- This appeal is made by Mr Alan Kind ("the Appellant") under section 53(5) and
 Paragraph 4 (1) of Schedule 14 of the Wildlife and Countryside Act 1981 ("the Act")
 against the decision of Northumberland County Council ("the Council") not to make an
 Order under section 53(2) of the Act.
- The application is dated 22 November 2016 and was refused by the Council by letter dated 16 November 2017.
- The Appellant claims that the definitive map and statement of public rights of way should be modified by upgrading to a restricted byway Footpath No 26, West Allen from the Cumbria County boundary at Blacklaw Cross to where it joins Byway Open to all Traffic No 37 at Kiersleywell Bank.

Summary of decision: The appeal is dismissed.

Preliminary Matters

- 1. This appeal has been determined on the basis of the papers submitted.
- 2. A Definitive Map Modification Order dated 12 May 2003 and known as the Northumberland County Council (Public Rights of Way) Modification Order (No.10) 2003 was made by the Council to upgrade this part of Footpath No 26 to a Byway Open to All Traffic (BOAT). Following a number of objections to that order, a public inquiry was held ("the 2004 Inquiry") after which a decision was issued not to confirm the order. I have been provided with a copy of the Order Decision¹ and have had regard to it in my determination of this appeal.
- 3. My attention has been drawn to the fact that the Appellant may not have served notice of the application on all of the occupiers of the land affected as required by Schedule 14(2) of the Act. However, Schedule 14(2) does not require strict compliance and I consider the publicity requirements in respect of any order subsequently made would be sufficient to remedy any deficiency in this respect. I do not therefore consider any party would be materially prejudiced.

Main Issues

4. With regard to section 53(3)(c)(ii) of the Act, the main issue is whether the evidence discovered, when considered with all other relevant evidence available, shows that Footpath No 26 ought to be shown as a restricted byway.

¹ Order Ref: FPS/R2900/7/30.

Reasons

- 5. The appeal route is currently shown recorded in the Definitive Map and Statement as forming part of Footpath No 26, West Allen and runs from Blacklaw Cross in a generally northerly direction to the U8039 at Kiersleywell Bank. The application seeks to upgrade this section of Footpath No 26 to a restricted byway.
- 6. Most of the evidence upon which application is based was considered in detail as part of the 2004 Inquiry. While I note the Appellant has challenged some of the conclusions reached by the Inspector in that case, these were arrived at following detailed consideration of the evidence and with the Inspector having had the benefit of hearing oral arguments. I have seen nothing which would lead me to reach a different conclusion on that evidence. However, the Appellant has identified two additional pieces of evidence the Alstone Moor Inclosure Act 1803 and a copy of the Ordnance Survey (OS) Boundary Sketch Map of 1858 which, when taken with the 2004 evidence, he claims shows that Footpath 26 ought to be recorded as a restricted byway.
- 7. The relevant trigger for section 53(3)(c)(ii) is the 'discovery of evidence' and while I note that the 2004 Inquiry considered the OS evidence available at the time, additional information has been discovered which, for whatever reason, was not available in 2004. Similarly, while I note that the Alstone Moor Inclosure Award was considered as part of the 2004 Inquiry, the 1803 Alstone Moor Inclosure Act itself, now provided by the Appellant, was not. I accept the Appellant's argument that the discovery of evidence in this context should be given its ordinary or literal meaning. As such, I am satisfied that the additional evidence provided is sufficient to constitute the 'discovery of evidence' for the purposes of section 53(3)(c)(ii).
- 8. Nevertheless, the 2004 Inquiry established that the evidence available at that time was insufficient to show that Footpath No 26 was incorrectly recorded. Indeed, the Inspector commented² that the evidence in favour of an all-purpose highway at this location was 'meagre'. I agree with that assessment and as such, consider the central question to be whether the additional or 'newly discovered' evidence, when taken with all the other relevant evidence available, is sufficient to show that Footpath 26 ought to be recorded as a restricted byway. I consider this new evidence further below.

The OS evidence

- 9. OS mapping from the nineteenth century shows the claimed route as a double pecked line feature annotated as Carrier's Way. It is described in the OS Book of Reference as a 'cart road' and this evidence was available at the 2004 Inquiry. At that time, the Inspector considered that, while it provided evidence of the physical existence of a route at the time of the survey, no evidence was presented to assist in the determination of why this feature was considered to be a cart road or from whom authority for such a description was sought.
- 10. As part of the present application, the Appellant has produced additional evidence in the form of the OS Boundary Sketch Book dated 1858 which shows the claimed route as a continuation of Blacklaws Road and annotates it as Carrier's Way. I agree with the Appellant that it supports the proposition that

² At paragraph 32.

- there was a continuation of some sort of route over the county boundary. However, it provides no detail as to its status or use.
- 11. Furthermore, while I note that the Appellant has produced some useful articles including one which indicates field recording was not a chance or casual process but rather one which was carried out by an independent specialist whose main task was to verify the accuracy of the detail of the survey, the accuracy of the work depended very much on the skill of the examiners and their classification of land use was not subject to close scrutiny. While I accept it adds some further weight to this evidence and the suggestion that a highway of some sort has been in long-standing existence on the ground, it does not shed any additional light on its status and provides very little support for upgrading the route to a restricted byway.

The Alstone Moor Inclosure Act 1803.

- 12. The Appellant has also submitted a copy of the Alstone Moor Inclosure Act 1803 and extracts from the 1820 award which establishes Blacklaws Road as a highway which runs to the county boundary. Although the 1803 Act itself was not available at the 2004 Inquiry, it is clear from the decision letter that the argument put forward by the Appellant is essentially the same, i.e. that the Commissioners would not have awarded a public road in this location, with the maintenance and repair falling to the Alstone Parishioners, if there was no onward access beyond the county boundary. He refers to the 'through route presumption3' which can be summarised as being that where two highways are linked by a short section of uncertain status, it can be presumed that its status is that of the two highways linked by it.
- 13. However, this argument was considered by the Inspector at the 2004 Inquiry and the decision letter makes clear⁴ that, while the presumption is something that can be added into the balance, it does not weigh heavily in favour. I have seen no evidence as part of this appeal that would lead me to reach a different conclusion. As such, I do not consider this additional evidence provides any meaningful support for the Appellant's case or alters the assessment carried out in 2004. As with the OS evidence above, it provides little information as to the status of the route and does not provide any additional support in favour of upgrading it to a restricted byway.

Summary

- 14. I have found above that the additional, or 'newly discovered', evidence submitted by the Appellant provides some support for the claim that a route of some sort has been in long-standing existence on the ground. However, I have also found that it sheds little light on its status and provides very little support for upgrading the route to a restricted byway. Furthermore, while I accept that it links two other vehicular ways and as such, benefits from the 'through route presumption', I agree with the conclusions of the Inspector in 2004 that the evidence in support is so meagre that this presumption does not weigh heavily in favour.
- 15. Accordingly, I do not consider that it has been demonstrated on the balance of probabilities that Footpath 26 ought to be shown as a restricted byway. As such, the appeal must fail.

³ See Eyre v. New Forest Highway Board [1892] 56 JP 517.

⁴ at paragraph 32 of the decision.

Conclusion

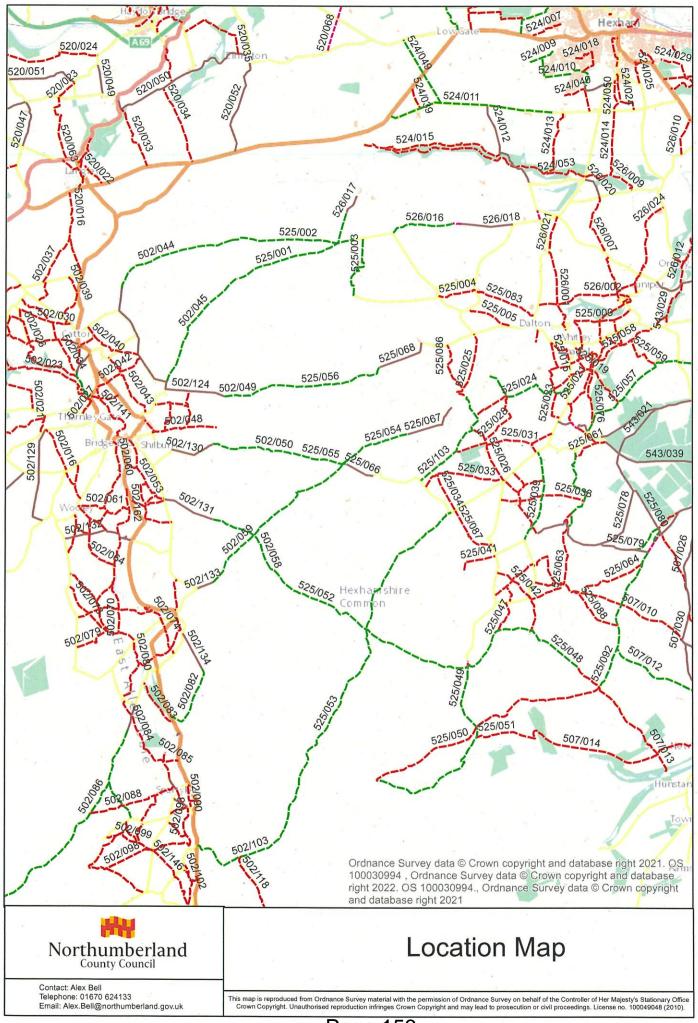
16. Having regard to these, and to all other relevant matters raised in the written representations, I conclude that the appeal should be dismissed.

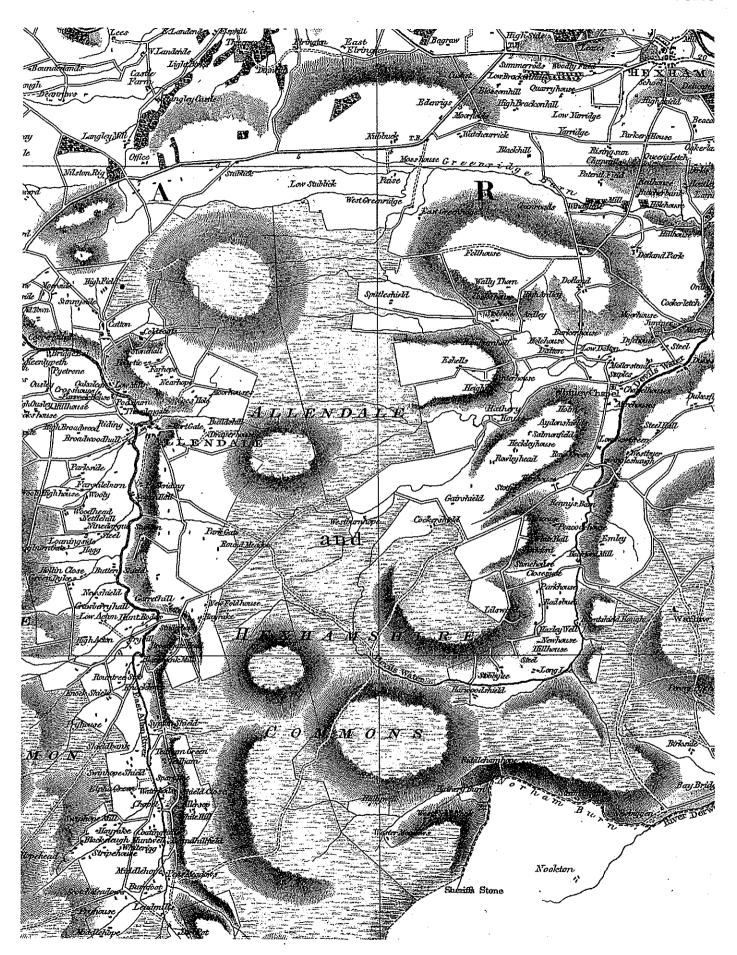
Formal Decision

17. The appeal is dismissed.

Rory Cridland

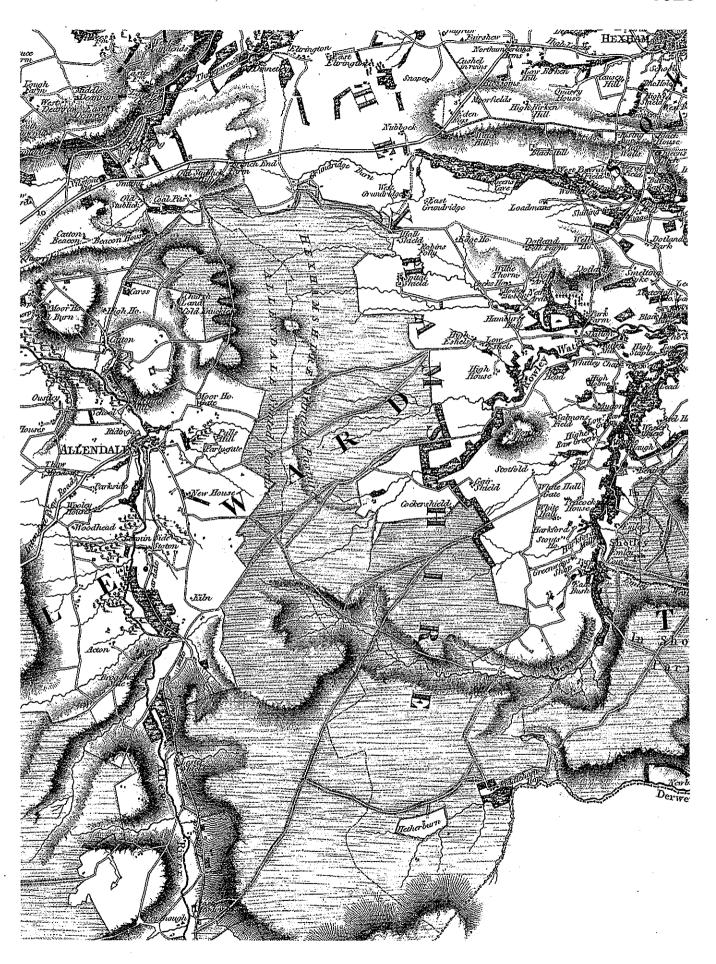
INSPECTOR





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Greenwood's County Map 1828



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