



Order Decision

Hearing held on 7 July 2015

by Sue Arnott FIPROW

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

Decision date: 3 November 2015

Order Ref: FPS/P2935/7/43

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Northumberland County Council Definitive Map Modification Order (No 14) 2012.
- The Order is dated 19 December 2012. It proposes to modify the definitive map and statement for the area by recording a public footpath over Blanchland Moor to the east of War Law Pike in the Parish of Blanchland as shown on the Order map and described in the Order schedule.
- There was one objection outstanding when Northumberland County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I held a public hearing into the Order at County Hall in Morpeth on 7 July 2015 having walked the route in question the previous afternoon. For this inspection I was accompanied by Mr J McErlane of Northumberland County Council (NCC); Mr A Kind (a statutory objector) and Mr K Lord; Mr G Owen on behalf of Lord Crewe's Charity (landowners); Mr M Orde and Ms K Rankine of Savilles-Smiths Gore (managing agents for the landowners); Mr P Scott-Priestley (managing agent for the shooting interests), and Mr S Graham of Blanchland Parish Council. All parties present at the hearing agreed there was no need for a further visit after the close of the proceedings.
2. In his original objection to the Order Mr Kind raised a procedural point: the notice printed in the local press advertising the making of the Order failed to state the cost to the public of being provided with a copy. Mr McErlane confirmed the error had been noted by NCC and advertisements do now include the price. Mr Kind did not pursue the point at the hearing and I am quite sure that the likelihood of anyone being disadvantaged in any way as a result of the error is negligible.
3. A further minor issue was raised at the hearing concerning the northern termination of the Order route, shown on the Order map as point A. Mr Kind questioned whether this does in fact link with the southern end of Byway Open to All Traffic (BOAT) 80 in the adjoining Parish of Hexhamshire at the parish boundary. Whilst I agree that dashes intending to depict the Order route stop just short of the boundary (by the width of a gap between dashes), the description of the way in the Order Schedule makes quite clear that the Order route commences at the end of Hexhamshire BOAT 80. Taking the two parts of the Order together, I consider the likelihood of misunderstanding or prejudice arising to be remote.

The Main Issues

4. The Order was made under the Wildlife and Countryside Act 1981 on the basis of events specified in Sections 53(3)(c)(i). The main issue here is therefore whether, on a balance of probability, the evidence shows that in the past a public highway existed along the Order route and, if so, whether this was a public right of way on foot or, as asserted by the objector, a right of way with vehicles.
5. It is not disputed that, if the way is shown to have once been a public carriageway, the right of the public to use it with mechanically propelled vehicles (MPVs) will have been extinguished as a result of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) so that the appropriate categorisation for the road would now be 'restricted byway'¹.

Reasons

Background

6. This is not the first time the status of this route has been at issue. It was included in an order made in 1996² as one of several proposed byways open to all traffic (BOATs) to be added to the definitive map and statement in the Slaley area. In January 1985 the Ramblers' Association submitted an application to NCC to record it as a public footpath, supported by user evidence from 8 people. That application was initially considered by NCC's Definitive Map Panel on 16 November 1990 at which it was agreed the route should be recorded as a public footpath. This was eventually included in the 1996 Order, but as a BOAT, following the submission of another application based on historical evidence and centred on the Bulbeck Common Inclosure Award of 1771. Objections were submitted to this Order and, following its submission to the Secretary of State, the route now at issue (then identified as Blanchland BOAT 32) was deleted from the Order although its continuation in Hexhamshire was confirmed as BOAT 80³. However, the Ramblers' Association's user evidence was not presented during the lengthy proceedings which included two public inquiries.
7. In May 2011 NCC again considered the status of this route. It focussed this time on the evidence of use by the public and decided to make the present Order, basing its case primarily on the presumed dedication of a public right of way under statute, the requirements of which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this, there must firstly have been use of the claimed route by the public on foot, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route has been dedicated as a public path. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner during this period to dedicate the way; if not, a public footpath will be deemed to subsist.
8. Alternatively, dedication of a public footpath may also be demonstrated under the common law. In this case the issues that need to be considered are whether,

¹ I note that in his interim Order Decision in connection with a previous Order (referred to below) Inspector Mr J Wilson noted that NCC made the Order in 1996 "after consideration of an application made under S.53 of the Wildlife and Countryside Act 1981". It is theoretically possible that this application *may* be such as to fall into one of the categories for exemption from the extinguishing effects of Section 67(1) of the 2006 Act. However no application has presented to me in connection with this (2012) Order other than that made by the Ramblers' Association in 1985 as referred to in paragraph 6. This application does not preserve rights for MPVs on the route now at issue.

² The Northumberland County Council (Public Rights of Way) Modification Order (No. 1) 1996

³ In the final Order Decision for FPS/R2900/7/18 issued on 18 October 2004

during any relevant period, the owner(s) of the land in question had the capacity to dedicate a public right of way; whether there was express or implied dedication by the owner(s), and whether there is evidence of acceptance of the claimed right by the public.

9. Although the Council's case does not now rely on historical evidence to show the existence of a public right of way, Ordnance Survey maps and other old records in its possession have been submitted and need to be taken into account. I note that Section 32 of the 1980 Act provides as follows:

"A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers 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."

10. It is the contention of Mr Kind in his objection that the Order route is an old highway that carried all manner of traffic and that the evidence shows it to have once been a public carriageway. Indeed he submits it is no coincidence that the footpath claimed by the Ramblers' Association follows the exact same route.
11. In his submissions Mr Kind makes the point that advances in "our cumulative understanding of facts and law in documentary evidence cases (will) inevitably lead to evidence which has been considered previously now being reconsidered from a different 'angle'." He referred to the case of *R v Secretary of State for the Environment ex parte Riley [1989]*⁴ where the issue of re-opening the question of the status of a way previously subject to a definitive map reclassification order was addressed. It was held that there was no bar to preclude the further consideration of status when there is new evidence to be weighed in the balance together with that previously considered.
12. On this I accept Mr Kind is right yet there is an important distinction to be made here. In strict terms this is not a re-opening of the previous case. It is a new Order following an application which relies on evidence that has not been tested. However, as Mr Kind acknowledges, this has effectively "opened the door" for his own evidence (including that from the previous order) to be considered again.
13. As Mr Kind points out, it is established practice, and approved by the courts, that an Inspector in a 'second case on similar facts' ought to have regard to the earlier case in coming to a decision on the second.
14. At the hearing I explained that I could not be sure that all the earlier evidence was before me. This is a fresh order; the evidence in the previous case has not been automatically brought forward. However the previous final and two interim Order Decisions have been submitted, all of which list the documents considered at that time. Of particular note was a survey plan dating from 1808, the purpose of which related to a boundary dispute between the Manors of Bulbeck and Blanchland. This had not been submitted in evidence in relation to the present Order although it had been mentioned in the earlier decisions. I therefore invited

⁴ *R v Secretary of State for the Environment ex parte Riley [1989] CO/153/88*

all the parties present to submit this document if it could be located, along with any other evidence that may have been missed.

15. Subsequently NCC discovered a copy of the plan, this was circulated to all interested parties for comment and I have taken into account the further submissions received in response.

Presumed dedication

16. I shall firstly address the case for presumed dedication of a public right of way since that is the basis on which the Order was made.

Bringing into question

17. The first matter to be established is when the public's rights were brought into question. Amongst the written evidence from the eight (now deceased) claimants, the latest of which is dated in 1990, there is no evidence of any direct challenge to public use of the route. Most refer to gates on the route but none reveal any obstruction, any notice or verbal instruction not to walk there. Not until a letter to NCC from the landowner, Lord Crewe's Charity Estates ('the Estate'), in September 1989 expressed an intention to object to any definitive map modification order to record the route is there evidence to indicate any opposition to public use of the way.
18. Whilst it was clear to me from visiting the site in 2015 that passage along the route is made difficult by the two fences across the way (one being set in a gateway with old stone gate posts), the situation in the 1980s appears to have been different.
19. The application submitted by the Ramblers' Association in January 1985 sought the recording of a longer route than is now the subject of this Order, extending from Viewley, along the western edge of Slaley Forest crossing the parish boundary via the present point A then across Blanchland Moor to point B. The section claimed in Hexhamshire is now recorded as BOAT 80.
20. When initially notified of the application, the Agent for the Estate (Mr Woodward) responded by letter in February 1985 by saying that it did not object in principle "to a further footway across the fell" but suggested a diversion to avoid a rough and steep section. Although he later adjusted his position in September 1989, having consulted the two farm tenants and the gamekeeper for the sporting rights, the fact that the Estate addressed the question of the status of the path leads me towards the conclusion that the beginning of 1985 should be taken as the point at which the status of the route was first called into question.
21. The 2006 Act enables the date of an application to be taken as the point at which the status of a way is brought into question where there are no earlier challenges. In this case the submission of the application in January followed swiftly by the equivocal statement on behalf of the landowner in February together brought the matter to a head in 1985.
22. However it seems it was not until September 1989 that the Estate made its opposition to the claimed public footpath clear. Thus a question was again raised over its status at that point too. I am therefore prepared to examine the evidence for both twenty year periods, one ending with January/February 1985 and another ending with September 1989.

Evidence of use by the public

23. If a presumption of dedication is to be raised, qualifying use by the public during the relevant period must be shown to have been actually enjoyed 'as of right', without interruption, and to have continued throughout the full twenty years before the claimed right was challenged. Use 'as of right' is interpreted as being use by the public that is not by force, does not take place in secret and is not on the basis of permission.
24. I have examined the eight user evidence forms and, given the dates they were completed and the ages of the claimants, it is not surprising to find that none are available now for cross-examination. At the hearing, the RA's representative, Mrs Harris, reported that these eight individuals had been well respected within the group and known to be reliable.
25. During the earliest relevant period, 1965-1985, three of the claimants used this route throughout the whole period, one for 18 years, three for 15 years and one for 7 years. Whilst 7 of the 8 people were still using the route in 1985, only 4 were using it at the start in 1965.
26. For the second period, 1969-1989, the figures are slightly different: none provide evidence of using the route for the whole twenty years (although it may be reasonable to assume that the three who provided statements in 1986 continued to use it over the following four years, thus covering the full period). For this period there are three people who used the route for 19 years, three for 17 years one for 14 and one for 11 years so that overall the twenty year period is covered. Four people were using the route at the start in 1969 although another 3 commenced in 1970 and 4 were still using it in 1989 (with another three claimants possibly continuing beyond their statement dates).
27. I accept these are not large numbers of walkers and their frequency of use amounts to 'several times a year' at most. Yet I recognise that in determining the level that is sufficient to raise a presumption of dedication of a public path, the location and nature of the terrain has to be a factor. Mr Kind submitted that fewer people walked in the area until the 1980s saw a gradual increase in numbers. He also pointed out that some claimants say there were challenged by the farmer at Penny Pie House (south of point B) but had clearly believed they had a right to continue.
28. I take into account the comment in Mr Woodward's letter of September 1989 that the farm tenants and gamekeeper were not aware of anyone walking the Order route and that people were usually seen instead on what is now BOAT 26 (Blanchland), most probably because the heather was "at least 3' high" along the Order route. Yet claimants state that in places the path was single-file width but (according to Mr G Bogie) it "had "every appearance of being walked frequently by others".
29. In fact it is not disputed the use claimed by these individuals did actually take place throughout the relevant twenty years or that this was 'as of right'. Indeed, there is no objection from the Estate to the public right of way on foot proposed by the Order. Whilst I find the evidence slightly stronger for the later period, the quantity of evidence is not great in either case, yet in this context and given the lack of challenge, I conclude there is sufficient to raise a presumption that the route in question had been dedicated as a public footpath both between 1965-1985 and 1969-1989.

30. There is before me no direct evidence of horse riding, cycling or vehicular use and I have not considered the case for presumed dedication of any other right of way.

Intentions of the landowner during the relevant periods

31. No evidence has been submitted of actions taken by or on behalf of the landowner that might demonstrate a lack of intention to dedicate a public right of way over the Order route until Mr Woodward's letter to NCC in September 1989 which indicated the Estate's intention to object to any attempt to record it on the definitive map and statement. It appears the fences across the way post-date this letter. It therefore follows that the presumption of dedication is not rebutted.

Conclusions on presumed dedication

32. I find the case for dedication to be slightly stronger for the second period (1969-1989), partly because the user evidence is more consistently spread throughout the relevant twenty years but also on account of the Estate's equivocal position prior to the letter in September 1989. Although it may be unfair to place much weight on Mr Woodward's 1985 letter which implied no objection to a footpath in principle, this has to be taken as leaning more towards acceptance of a public right of way than denying it.
33. Having reached this conclusion on a balance of probability, I am satisfied that the evidence supports the recording on the definitive map and statement of a public footpath between points A and B as shown on the Order map and that therefore I can confirm the Order as made.
34. However, the objector has made submissions on the basis of the historical evidence now before me, seeking the modification of the Order so as to instead record a public vehicular highway over A-B rather than the right of way on foot I have concluded does, on balance, subsist. I shall therefore next consider whether such a modification to the status of the Order route could be supported by this evidence.

Historical evidence

35. Before assessing the historical mapping evidence I shall start by noting the main points raised by the objection which were said to be 'new' in the sense that they had not been addressed during examination(s) at the time of the inquiries into the previous Order.
36. The first of these is Mr Kind's submission that the wording of the 1771 Inclosure Award for Bulbeck Common, where the Commissioners set out the adjoining Blanchland Road (now BOAT 80), implies that the Order route was already in existence prior to the division of the common. The award describes the route thus: "...and thence south eastwards until it enters Blanchland Common, as the same is now by stakes and landmarks staked and set out...". Mr Kind submits that the use of the word "enters" in the present tense is significant, implying that the road already entered into the common. It did not reach the boundary and then simply stop.
37. The Commissioners would have had no jurisdiction over Blanchland Common and therefore could not have set out Blanchland Road beyond the boundary but Mr Kind argues that there was no sense in the Commissioners setting out a cul-de-sac public carriageway here. They could not anticipate what may happen in

future beyond the boundary. Indeed there would have been no reason for a gate at point A in later years if the road stopped there. Had it linked with a private 'carriers way', there would have been no need to set out Blanchland Road as a public way. Further, it would have been unlikely for commoners with rights on Blanchland Common to take access from the north, outside the Manor of Blanchland.

38. The second point raised by Mr Kind was the physical character of Order route, it comprising of a deep 'holloway' for much of its length and coinciding with the line of a track appearing on maps by Fryer in 1820, Cary in 1828 and the Ordnance Survey (OS) in 1860. (I am not convinced this is a 'new' issue but I will address it nonetheless.)
39. The third point concerns "Baybridge Road" (BOAT 26) and the assumption that it has always been the better of the two routes heading north from point B. On the site visit Mr Kind pointed to another track, broadly parallel to the present made-up road that is BOAT 26, which appears in part to be little more than a mossy bog. Mr Kind submits that this evidence shows BOAT 26 was significantly improved (and slightly realigned) at some stage in the past and that this (like the Order route) was not always a 'made track'.

Assessment of the evidence

40. On his county map of 1769 Armstrong showed only one road across the area now referred to as Blanchland Common: an east-west road that also appears on a similar map in 1794 by John Cary but not on any other of the maps submitted. An earlier estate map referred to as Marshall's Blanchland Royalty Map dated 1758 is of poor quality and difficult to read although it is possible to identify what is now BOAT 26 shown as the road leading from Baybridge "To Hexham".
41. None of these maps include the Order route. However Mr Kind made the point that the Marshall map shows three established roads but omits two others which were shown to exist in 1794 by Cary⁵. (Since the latter shows more routes than Armstrong in 1769, he submits this is likely to be from an original survey.) I would agree with Mr Kind that these early maps are good evidence of what they do show but not evidence that other roads were not in existence at that time. Consequently I attribute little weight to these maps. They do not rule out the possible existence of the Order route as a public road in the late eighteenth century although they clearly provide no evidence of it.
42. Turning next to the submissions made in relation to the Bulbeck Common Inclosure Award of 1771, I firstly note that the setting out of the public carriageway 'Blanchland Road', north of point A on the Hexhamshire side of the boundary, is not at issue here. Its status as a BOAT was confirmed by the 1996 Order. The question is what further, if anything, can be deduced from the Award about the status of the Order route.
43. Before considering Mr Kind's submissions in relation to the Award, I should first consider the 1808 survey plan prepared in connection with a boundary dispute between the Manors of Bulbeck and Blanchland. When submitted⁶ to the second inquiry into the 1996 Order (held on 16 September 2003) this document was

⁵ The extract provided to me does not include the area covering the northern half of the Order route.

⁶ It was submitted by Mr H J J Williams the (then) Land Agent for the Trustees of Lord Crewe's Charity, the owners of the Blanchland Estate.

identified as a "Copy of a copy made by John Bell from the Bulbeck Division Award dated July 1808" and was treated as originating from this date.

44. It is clear that the base information from which the 1808 copy was taken was the 1771 Award Plan which itself had identified the disputed land, including "The Bounder Line as Awarded by the (Arbitrator)⁷ ..." as well as "The Boundary that was claimed for Bulbeck". The issue was not previously debated but it is perhaps now obvious that the dispute over the boundary between the Manors of Bulbeck and Blanchland was settled *before* the 1771 Award. Indeed I have noted that the description in the Award of the Long Edge Road⁸ referred to the area which lay outside the Bulbeck Common inclosure land as "Blanchland Limits" (in the vicinity of Acton Cleugh Head) and "Blanchland Disputed Land" (close to point A) but the Award plan is clear in that nothing is set out beyond the 'Arbitrator's Bounder Line'. The Inclosure Commissioners were clearly careful not to set out anything within the area to which Bulbeck had laid a claim but which it had lost to Blanchland.
45. There is no obvious answer as to why the disputed land allocated to Blanchland should be shown at all on the 1771 Award Plan for Bulbeck. None of the awarded roads were shown as continuing across it yet the descriptions of the highways set out by the Commissioners infer that they did continue beyond the Bulbeck Common boundary. Not only was Blanchland Road said to "enter" Blanchland Common (as Mr Kind has pointed out), Embley Upper Road led "into Blanchland Common"⁹, and Long Edge Road (which diverged twice out of Bulbeck into Blanchland) was positively described as "entering and passing about seven chains through Blanchland Limits" before re-entering Bulbeck¹⁰.
46. I deduce from this that no weight should be attributed to the absence from the Award Plan of a continuation through the previously disputed land allocated to Blanchland as none were shown even when they clearly did so.
47. On both the 1771 Award Plan and the 1808 copy, Baybridge Road is annotated "Road from Blanchland to Hexham" which is broadly consistent with the 1758 Marshall map insofar at its northern destination is concerned, although the earlier map showed the road continuing towards Baybridge, not Blanchland.
48. However, the 1808 copy adds an important detail: the dashed lines in what had been described as the Blanchland Limits area depicting (a) the continuation of Baybridge Road and (b) the "seven chains" (140 metres) long linking section of Long Edge Road. Extensions of Embley Upper Road, the western end of Long Edge Road and the Order route are noticeably absent.
49. This is not new information but what has not previously been highlighted is that the boundary dispute appears still to have been a live issue over 37 years after it was resolved by "The Arbitrator" although the exact purpose of the 1808 copy has not been established.
50. At this stage in my assessment, I take on board Mr Kind's submissions about the inferences from the 1771 Award as regards the continuation of routes including Blanchland Road. I shall move next to examine the map produced by Greenwood

⁷ Sections of the plan are missing here.

⁸ Quoted in full at paragraph 62 of the second Interim Order Decision issued on 15 January 2004

⁹ As referenced at paragraph 38 of the second Interim Order Decision

¹⁰ Indeed it is hard to imagine that the Commissioners would choose such a complicated arrangement unless the road was already in that position.

in 1828 before returning to Fryer's map of 1820 and Cary's 1827 map. I do so because I have noted a curious similarity between what Greenwood showed as the parish boundary (depicted as following "Emley West Burn") and "The Boundary that was claimed for Bulbeck" as shown on the 1771 and 1808 plans. Further, Greenwood shows a line which is not dissimilar to the boundary that was claimed by Blanchland (before the dispute was settled with a new boundary drawn down the middle). It is conjecture on my part to suppose that what Greenwood was showing, apparently following an original survey in or around 1827/8, was the layout of the roads in this area before issues still to be resolved in 1808 had finally been settled.

51. If there were to be any truth in this theory, what would be the implications? It would be that before the new boundary was implemented, Long Edge Road extended westwards to meet the south eastern end of Embley Upper Road (but that junction lay in Blanchland after the Arbitrator's boundary was settled); it would also mean that the awarded Blanchland Road continued to a point, again beyond the final boundary line, where it met another route approaching from the south west. (This may have been the long-distance route known as "the Carriers Way" or an earlier alignment of this.)
52. In his submissions, Mr Kind accepts that Greenwood did not simply copy the maps by Fryer or Cary because the information he shows is significantly different. He also points to other inconsistencies between what was shown by Greenwood and the awarded roads, suggesting that "this 'consistent inconsistency' is apparent across his map of Northumberland, and it is improbable that he is simply wrong in so many places."
53. If Greenwood's parish boundary correlates with the 'claimed' Bulbeck boundary, rather than the Arbitrator's line, then he is not inconsistent with the 1771 inclosure plan at all, at least not in the area at issue here. He shows the awarded Blanchland Road did continue beyond the Bulbeck boundary but not to either Blanchland village or to Baybridge although it did enter Blanchland Common before turning south west.
54. Yet the date of Greenwood's survey (1827-1828) places his map at odds with the information shown by Fryer in 1820 which closely follows the inclosure layout within Bulbeck and depicts connecting tracks in Blanchland (including the Order route in its entirety) that must have been from original survey. If Greenwood showed the picture 'before' roads were re-aligned in the disputed area and Fryer 'after', then the dates of the two maps are out of sequence and the theory fails.
55. Cary's map published on 1 February 1827 is remarkably similar to Fryer in this area but has the addition of brown colouring on a long distance route shown between Edmundbyers Cross and Hexham via Baybridge which includes the Order route. The map's key indicates the brown colouring represents "Carriage Roads which are Parochial Roads". No other map identifies the Order route in this way but, as Mr Kind submits, "why should he have invented it?" Indeed John Cary was a highly reputable surveyor in that period.
56. Again, this is not 'new' evidence. Attempts to reconcile the information during determination of the 1996 Order found no logical conclusion as to why these maps, all published within a decade, should present such differing pictures of the Order route, from being part of a regionally significant vehicular highway (in 1827) to virtual omission (in 1828). To use Mr Kind's phrase, why would

Greenwood have invented the information he depicted? There is no rational explanation if his survey was carried out in 1827/ 8.

57. Looking ahead to 1860 and the next available map in the sequence, the accuracy of the OS is illuminating yet this is over 3 decades after the three commercial map makers published the results of their surveys and approaching a century after the inclosure award and the Arbitrator's decision in the boundary dispute.
58. By 1860 the Steel Hall allotment (north east of point A) had been defined by a series of boundary stones yet, even at this distance in time since the award, the track surveyed by the OS did not follow the straight line of awarded road. Neither did Embley Upper Road or Long Edge Road conform exactly to their awarded lines. However, there is little doubt that, whatever its precise alignment north of point A, Blanchland Road continued along the line of the Order route as a track recognised by the OS on its maps of 1860, 1898/9 and 1923/4. The fence across the route at point A and that closer to War Law Pike (in which the stone gate posts are now visible) do not appear until the 1898/9 edition.
59. Although the evidence was not presented to me at this hearing (and I therefore give it less weight), the decision on the 1996 Order had noted that the OS Books of Reference associated with the 1860 map recorded BOAT 26 as a 'public road' but not the Order route. Whilst I accept Mr Kind's argument that it would be wrong to simply assume that because the present BOAT 26 looks the more defined and better maintained option for crossing the common, that this would necessarily have always been the case. Cary's map suggests that in 1827 the Order route was a way of greater significance yet by 1860 the OS records suggest the opposite. There is nothing further to be gained from Fryer or later OS maps to resolve this issue.

Conclusions on the historical evidence

60. In the final decision on the 1996 Order the evidence was summarised at paragraph 32. Whilst the documentary evidence presented was largely the same as here with the 2012 Order, there are subtly different arguments in this case.
61. It remains the case that the main evidence in support of a public carriageway along the Order route post-dates the 1771 Inclosure Award. This includes the maps by Fryer in 1820 and Cary in 1827, the latter carrying slightly more weight on account of its key identifying the route as a carriage road and parochial road. Whilst the OS maps show a track was in existence from 1860 through to 1923 at least, its written records in 1860 cast a degree of doubt over any presumption it was a 'public road' that may be raised by Cary's map.
62. Judged on its own, I would not consider this sufficient to tip the balance in favour of a public vehicular highway along the Order route.
63. I accept that the 1771 Inclosure Award lends some weight to the proposition that the "Blanchland Road" continued into and across Blanchland Common¹¹. Yet I find the Greenwood map difficult to dismiss. Although it cannot easily be reconciled with its two contemporaries, it does raise some doubt over the eventual destination pre-inclosure of the subsequently awarded Blanchland Road.

¹¹ Since no evidence has come to light to show this road ever led to Blanchland village as opposed to joining the road to Baybridge, I conclude the name must have been referring in general terms to Blanchland Common or Blanchland Manor.

64. The purpose of the 1808 copy of the plan illustrating the disputed boundary remains unexplained given the Arbitrator's line was determined long before that date. The addition of dashed lines representing the extension of Baybridge Road (and part of Long Edge Road) but not Blanchland Road is one more difference between the two where BOAT 26 is recognised but not the Order route.
65. As a result, I am not convinced that the evidence is sufficient to show that the awarded Blanchland Road continued along the length of Order route either at the time of the award or prior to it. I think it likely that it did extend southwards beyond point A and was therefore not a cul-de-sac. I consider it possible that the curious arrangement shown by Greenwood may represent the earlier network but there is no other evidence to support that. In short, this is not enough to lead to a finding that the Order route A-B was a public carriageway at or before 1771.
66. The evidence in support of the whole route begins in 1820 and continues into the twentieth century although there remains just the Cary map (and to a lesser extent, Fryer) that identifies the Order route as a vehicular road. I accept the physical characteristics of the route could be consistent with wheeled traffic but equally with horse use. The fact that it is not a 'made up' road does not preclude use by any manner of traffic in the past but its exposed moorland location does tend to suggest that without a degree of maintenance, the passage of vehicles may not have been sustainable for long. I accept there would have been no reason for a gate (or gates) to be installed on this line in the late eighteenth century if there were not a usable way and I do recognise that there was a defined track recorded by the OS from 1860 onwards but that is no proof of use by the public. No other evidence has been discovered to support the status recorded by Cary, or to confirm that this was indeed "a parochial road" maintained by the Parishioners of Blanchland at any time.
67. In reaching my final decision I have noted Mr Kind's advice, based on the Judge's conclusions in the *Fortune*¹² case, that whilst each item of evidence needs to be weighed, ultimately the decision-maker needs to stand back and take in the whole picture.
68. Having considered all the submissions and examined all the evidence in great detail, on a balance of probability, I conclude that the case for modifying the Order to record this route as having a status greater than public footpath is not made out.

Other matters

69. Both the Agents for the landowner and Blanchland Parish Council questioned the need for a public footpath across land over which the public now enjoy unrestricted access on foot. However the need for this path is not at issue here and I have not considered it. The purpose of an order of this type is to determine whether a public right of way has already been established in law.
70. Both parties also queried the 2m width to be recorded on the definitive statement for this footpath. Given the physical attributes of parts of the Order route, I am satisfied that 2m is a conservative estimate of the extent of the path over which the public has enjoyed passage over many years, particularly the relevant twenty.

¹² *Fortune (and others) v Wiltshire Council & Taylor Wimpey [2010]*

71. The landowner lets the sporting interests over the land to a long term tenant. Representations argue that the Order route will be close to shooting butts and that increased use of the area, even by people on foot, will disturb the grouse and therefore effect on the local economy. Whilst I recognise the basis of their concerns, these are not matters which can affect determination of the Order.
72. The land agents and the Parish Council also express concern over the implications of use of the Order route by vehicles as it connects two BOATs (80 and 26) forming a circuit. There is already damage to protected heather moorland from mis-use of the area by motor vehicles and this also has an impact on local residents, walkers and visitors. Again, these are clearly matters of concern locally but not ones relevant to the issues before me.

Conclusion

73. Having regard to the above and all other matters raised at the hearing and in the written representations, I conclude that the Order should be confirmed as made.

Formal Decision

74. I confirm the Order.

Sue Arnott

Inspector

APPEARANCES

In support of the Order

Mr J McErlane	Definitive Map Officer; Northumberland CC
Mrs M Harris	On behalf of the Ramblers' Association (applicant); Footpath Secretary for Hexham Group

Opposing the Order

Mr A Kind	Objector
Ms K Rankine	Of Savills / Smiths Gore; Managing Agent for Lord Crewe's Charity (landowner)

DOCUMENTS

1. Copies of statutory notices and certification
2. Copy of the statutory objection
3. Northumberland County Council's statement of case together with appendices A-D
4. Mr Kind's statement of case dated 2 May 2015
5. Statement of case for Blanchland Parish Council: letter from Clerk dated 9 March 2015
6. Statement of Case for Lord Crewe's Charity: letter from Agents Smiths Gore dated 14 April 2015
7. Map showing existing definitive (and claimed) public right of way
8. Extract from plan dated c1808 (a copy of a copy made by John Bell from the Bulbeck Division Award dated July 1808 prepared in connection with a boundary dispute)
9. Extract from map by Cary dated 1794 submitted by Mr Kind
10. Addendum to statement of case submitted by Mr Kind dated 23 July 2015
11. Responses to circulation of additional (post-hearing) documents from Northumberland County Council (13 August 2015), Ms K Rankine of Savills-Smiths Gore (14 August 2015) and Mr Kind (18 August 2015)