



## Order Decision

Site visit made on 26 July 2018

by **Helen Heward BSc Hons MRTPI**

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

Decision date: 25 September 2018

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### Order Ref: ROW/3193986

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Northumberland County Council Definitive Map Modification Order (No 10) 2016.
- The Order is dated 2 May 2016 and proposes to alter the Definitive Map and Statement for the area by adding byways open to all traffic as shown in the Order plan and described in the Order Schedule.
- There were two objections outstanding when Northumberland County Council (the Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision:** The Order is confirmed.

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### Procedural Matters

1. None of the parties requested an inquiry or hearing into the order. I have therefore considered the case on the basis of written representations and I carried out an unaccompanied site visit on 26 July 2018.
2. The Order route straddles two parishes. It starts from a point in the parish of Denwick on the B6346 north of Alnwick ("Z" on the Order plan) and runs northwest and west past The Lodge. It then turns before White House to run in a broadly northerly direction skirting the west side of White Hill and kinking to go through a farmyard at White House Folly. Then continues north to the boundary with the parish of Eglington ("Y" on the Order plan) and north again to join the B6347 south of Charlton House ("X" on the Order plan).
3. If confirmed, the Order would record section Z-Y as Denwick Byway Open to All Traffic No 17 and section Y-Z as Eglington Byway Open to All Traffic No 43. It would also be necessary to modify the Definitive Statement for Denwick Bridleway No 2. The Council has provided a form of words for this.

### Main Issues

4. The two outstanding objections are from occupiers of White House Folly and No 2 White House Folly Cottages. They are both based upon concerns about the maintenance, condition and suitability of the road, particularly for passing vehicles, and my attention is drawn to the lack of a phone signal should a vehicle get stuck. They are also concerned about health, safety and theft risks from gates being left open, the route running unbounded across fields in which livestock are kept, and on account of the route running through a working farm yard with livestock, tractors and heavy machinery operating at all times, and often requiring the gates to be closed for long periods whilst animals are moved. It is put to me that it is an unnecessary exercise as there is no need for public vehicular use of the route and it will incur the Council in costs making it suitable for use and greater maintenance.
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5. Section 53(3)(c)(i) of the 1981 Act provides that a modification order should be made on the discovery of evidence which, when considered with all other evidence available, shows that a public right of way for vehicles which is not shown on the definitive map and statement subsists, or is reasonably alleged to subsist over land in the area to which the map relates. The process does not provide for the recording, or not, of what might be considered by the parties to be desirable or preferable. Consequently, the concerns of the objectors are not ones that I can take into account in reaching my decision.
6. The Council made the Order having discovered from its records evidence to suggest that the route in question should be recorded on the Definitive Map and Statement as a public vehicular highway. Although the outstanding objectors do not agree with the Order they have not challenged the Council's interpretation of the evidence or the conclusions that have been drawn from it.
7. A Byway Open to All Traffic (BOAT) is "*a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purposes for which footpaths and bridleways are so used*"<sup>1</sup>. Sub section 67(1) of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) provides that upon commencement on 2 May 2006 any existing public right of way for mechanically propelled vehicles (MPVs) was extinguished if it was over a way which, immediately before that date, was not shown on the Definitive Map and Statement or was shown as either a footpath, bridleway or restricted byway, unless such rights were saved by virtue of falling into one of the categories for exemption.
8. Subsection 67(2)(b) of the 2006 Act provides that subsection 67(1) does not apply to an existing public right of way if "*immediately before commencement it was not shown in a Definitive Map and Statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980*"; that is a list of highways maintainable at the public expense.

### **Main Issues**

9. Therefore, the main issues in this case are firstly, whether there is evidence which, when considered with all other relevant evidence available, and on a balance of probabilities, shows that a public right of way for vehicles was once in existence along the Order route. Secondly, should I conclude that the Order route is subject to vehicular rights for the public, I will have to consider whether the character is such that it satisfies the definition of a BOAT and that any MPV rights have not been extinguished under S67(1) of the 2006 Act and should be recorded on the Definitive Map and Statement as BOATs.

### **Reasons**

#### *Evidence that public vehicular rights existed*

10. There is no evidence of a road along the Order route on Armstrong's County Map, 1769. On Fryer's County Map 1820 and Cary's Map 1820-1832 there is notation of a route following the general direction of the Order route, via Whitehill and skirting the west side of the hill. There is similar notation on Greenwood's County Map 1828 where Whitehouse Folly is also noted and the route can be seen and on the route can be seen to go by buildings there. Whilst there is some approximate evidence of a route in the vicinity, none of these documents offer clear evidence of a road along the Order route and cannot be used to presume a public right for vehicles.

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<sup>1</sup> Section 66 of the 1981 Act

11. The route is identified on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Edition 6" Ordnance Survey (OS) Maps of 1866-67, 1899 and 1926 respectively and then similarly shown on the 1:10,560 1957 OS Map and the 1:10,000 1974 OS Map. On all of these maps the route is variously shown demarked by two lines. Some solid, some broken and in some places the route is shown as a combination of both. There is no evidence to define the meaning of these various annotations, nor do these OS maps clarify the legal status of the route. I attach limited weight to them.
12. A map of the Haggerston to Alnwick Turnpike, 1826, indicates a way west off the turnpike to White House running round the west side of the hill. But there is no indication of the end point and it does not clearly identify the Order route.
13. Plans for the purposes of the 1910 Finance Act were produced as a baseline survey record from which present and future land values could be assessed for taxation. They were not intended as a record of public rights of way but as the presence of a public path could affect the value of land they were often recorded. In this case the words "*public cartway*" are recorded on the outside edge of two blocks of woodland and along the route of alleged BOAT No 17. However, the Council acknowledge that the Order route would have had to have been shown excluded from being part of the surrounding farmland to be evidence that it was a public vehicular highway over which the provisions of the 1910 Finance Act did not apply.
14. Under the Local Government Act 1894 new Urban and Rural District Councils took over all but "main roads" from the County Councils. In 1929, responsibility for maintenance was handed over to County Councils. In this case the Order route is road is shown on the Glendale District Council Handover Map of 1932. The route has been clearly marked in red. There is no key and all other red routes shown are numbered. Nonetheless the identification of the route on this map infers that it was considered a publicly maintainable road and I attach some weight to this evidence.
15. On the Council's Highway Map 1951 the whole of the Order route is coloured purple and labelled "U3069". The southern half of the Order route, from point Z to White House Folly Farm, is shown coloured brown on a Council Survey Map 1954. The northern section of the Order route is not coloured brown. There is no key for the colours but the Council advises that brown was used to indicate the extent of the public road network. The evidence indicates that the Order route was split between two maps. The brown colour extends to the edge of one map sheet, and not at all on the other. In which case the Council's suggestion that the absence of colour on the northern half of the 1954 map could have been no more than a mistake is not unreasonable.
16. U3069 (also called White House Folly Road) appears again in the County Road Schedules of 1958, 1964 and 1974. The whole of the Order route is shown blue on a 1964 Highway Map and in all three schedules the U3069 is described as extending from the B6347 south of Charlton House via White House Folly to the B6346 and 1.5 miles long. U3069 from the B6346 to the B6347 is also included in the most recent 2 May 2006 electronic record of the Council's List of Streets; which are highways maintainable at the public expense.
17. Evidence pertaining to maintenance liability is not definitive in identifying the legal status of the ways shown and referred to. However, the Council submits that in Northumberland there is no evidence to suggest that public paths and bridleways were deliberately shown on the 1958, 1964 and 1974 County Road Schedules. In the absence of evidence to the contrary I find this to be a

reasonable argument that raises the presumption that the Order route was a vehicular road. I attach weight to the highway maintenance records as evidence that the Order route was considered a publicly maintainable road.

18. A minute from the Bridges and Roads Committee, 21 December 1953, provides a public record of a request from the Alnwick Castle Estate for a contribution from the Council toward fencing approximately 200m of the unclassified road serving White House Folly Farm. The Estate also offered to relinquish rights to maintain two gates. The Committee, who were the Highway Authority at the time, approved a contribution. The evidence provides a strong inference that in applying the landowner believed the route to be an unclassified road and, that in agreeing to make a contribution, the Highway Authority agreed. However, it pertains to an unclearly specified section, and this moderates the weight I attach to this evidence.
19. The Restriction of Ribbon Development Act, 1935, required councils to record public roads (but not footpaths and bridleways) to which the Act applied. Records made for the purpose of this Act were public documents. The Order route is quite clearly shown in blue on a 1" map prepared by the Council circa 1939. It has the number '124' and is clearly specified as a road in the schedule. Although not substantive I attach weight to this evidence.
20. Finally the Council draw attention to the Definitive Map and Statement of Denwick Bridleway No 2 (BW2) which ends at a point on the Order route and is described as joining "*the public road southwest of White House Folly*". It is unlikely that BW2 would have ended at this point if it did not meet another highway, otherwise a cul-de-sac would have been formed and the Definitive Map and Statement do not identify any footpaths or bridleways along the Order route. I think it reasonable to infer from this that at the time the Definitive Map and Statement were prepared the Council considered at least some part of the Order route south of White House Folly to be a public road.
21. All in all I find that whilst the individual pieces of evidence have limitations, together they create an overall body of evidence which leads me to conclude that the probability is that a publicly maintainable vehicular highway existed along the Order route at, and over time, before 2 May 2006.

*The character of the Order route and the effect of the 2006 Act*

22. Having had the opportunity to view the Order route, I consider that the location, condition and appearance on the whole is such that, with the exemption of local residents and farmers using it as a right of way for vehicular and all other kinds of traffic, it is most likely to be used by the public mainly for the purposes for which footpaths and bridleways are so used. No evidence has been submitted to say that this is not the case. The descriptions of sections of the Order route and concerns regarding the width, surface and condition provided by the two objectors strengthen my conclusions in this regard. I find that the character of the route is such that it satisfies the statutory definition of a BOAT found in section 66(1) of the 1981 Act.
23. The Councils submits that there is no evidence to say that procedures to extinguish the vehicular rights were carried out by the Council and rely on the legal maxim "*once a highway always a highway*". I find no reason to disagree.
24. The submitted evidence supports that the exemption offered by subsection 67(2)(b) of the 2006 Act applies because the Order route is recorded on the

List of Streets and is not recorded on the Definitive Map and Statement at the relevant time.

### **Other Matters**

25. The specifications of the width of the proposed BOATs are not disputed. In the absence of legal documentary evidence otherwise, and from my site visit observations, I agree that where no defined corridor exists that 5m is a reasonable specification that would be broadly consistent with the overall route and sufficient to allow two vehicles to pass.
26. BW2 joins the Order route south of White House Folly. In confirming the Order for the creation of Denwick Byway Open to All Traffic No 17 along this section it will be necessary to modify the Definitive Statement description of the route of BW2. I am satisfied that the wording in the Order for this is appropriate.

### **Conclusions**

27. On a balance of probabilities the evidence collectively points toward a public right of way for vehicles having existed along the Order route. The character of the Order route satisfies the statutory definition of a BOAT. There is no evidence that MPV rights have been extinguished or that the Order Route was shown in a Definitive Map and Statement. There is evidence that it was shown on the Council's List of Streets prior to the 2006 Act.
28. I conclude that the Order route should be recorded on the Definitive Map and Statement as Denwick Byway Open to All Traffic No 17 and Eglington Byway Open to All Traffic No 43 and the Definitive Statement for Denwick Bridleway No 2 altered accordingly.
29. Therefore, and having considered all other matters raised, I conclude that the Order should be confirmed.

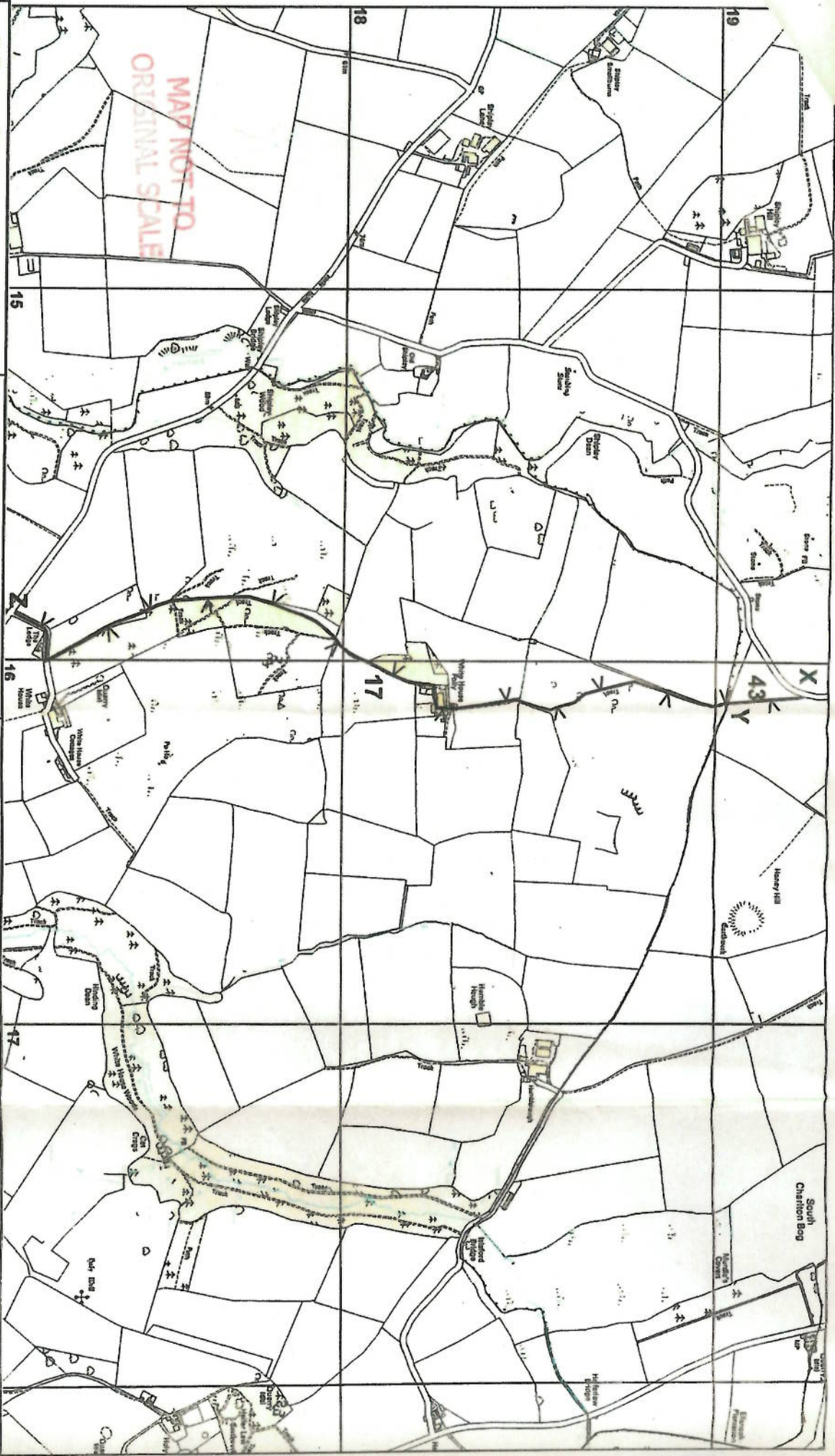
### **Formal Decision**

30. The Order is confirmed.

*Helen Heward*

INSPECTOR





# Northumberland

Northumberland County Council

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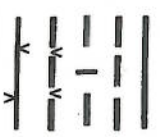
Wildlife and Countryside Act, 1981

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

**The Northumberland County Council**

**Modification Order (No. 10) 2016**

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



*MJM*

O.S. Map NU 11 NE	Definitive Map No. 58	Scale: 1/10,000
Former Districts Alnwick	Parishes Eglingham/ Derwick	Date: February 2016