
Order Decision

Hearing held on 16 May 2019

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 29 May 2019

Order Ref: ROW/3204661

- 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 3) 2015.
- The Order is dated 3 August 2015 and proposes to modify the Definitive Map and Statement for the area by adding a Byway Open to All Traffic (BOAT) and making consequential changes to the descriptions of linking rights of way, as shown on the Order Map and described in the Order Schedule.
- There was 1 objection outstanding at the commencement of the hearing.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I held a public hearing into this Order on 16 May 2019 at Northumberland County Hall, Morpeth. I made an unaccompanied site inspection on 15 May when I was able to view the whole of the Order route. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary
2. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.

The Main Issues

3. The requirement of Section 53(3)(c)(i) of the 1981 Act is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.
4. Section 53(3)(c)(iii) of the 1981 Act requires that the evidence should show that particulars contained in the map and statement require modification. In this case, if the Order route is added to the definitive map, the descriptions of other rights of way which link to it would need to be modified to reflect this.

Reasons

5. The Order route is already included in the list of streets which are highways maintainable at public expense which the county council is required to keep in accordance with the Highways Act 1980 (the List of Streets) as an Unclassified County Road (UCR). However, the inclusion of a route in the List of Streets does not necessarily mean that the route carries public vehicular rights.

6. In this case, the Order route was formerly part of a classified road, the B1340. This road was straightened between Points F and H almost 50 years ago and the Order route then ceased to be part of the classified road. There is however no record of any rights over the Order route having been extinguished at that time or since.
7. Historical evidence shows that the route has existed since at least the first half of the 19th century and it appears to have been accepted as a public vehicular highway since at least the early 20th century. There is no dispute that the route still carries public vehicular rights.
8. The only dispute relates to whether it is appropriate for it now to be recorded as a BOAT. The definition of a BOAT contained in the 1981 Act 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 purpose for which footpaths and bridleways are used"¹.
9. Unfortunately, no empirical evidence is available regarding the manner in which the Order route is mainly used. The northern section of the route, Points F to J is signed as leading to a farm access road and it seems likely that it is used by vehicular traffic to and from the farm. It is possible that some farm traffic may also use the southern part of the route although I have seen no evidence of this.
10. On behalf of the OMA it was stated that, as two footpaths and a bridleway join the Order route, it is likely that users of these rights of way will also use at least some of the Order route. It was also pointed out that it would be possible to use part of the Order route in conjunction with other rights of way to form circular routes. On my visit I noted that the two linking footpaths were not visible on the ground and presumably had not been much used in recent times. I also noted that the route joins the B1340 road at two points and could function as a sort of lay-by for vehicle users.
11. Government advice states that "*When deciding whether a way ought to be shown on the definitive map and statements as a BOAT, authorities should examine the characteristics of the way*"². The Planning Inspectorate has also issued advice stating that "*The test for a carriageway to be a BOAT relates to its character or type and in particular whether it is more suitable for use by walkers and horse riders than vehicles*"³. This advice was issued following analysis of various court judgements, notably that in the *Masters* case⁴.
12. In other cases, such as *Hood*⁵ and *Mason*⁶, opinions have been given to the effect that it was intended that metalled roads or 'ordinary roads' used by motor vehicles should be excluded from definitive maps.
13. The Order route has a sealed tarmac surface roughly 3-4m wide running between boundaries varying between 3.7m and 10.0m apart. On my visit the sealed surface was in good condition and not obstructed in any way. A white line was still partially visible in the centre. In my view the route was similar in character to other public roads in the area.

¹ Wildlife and Countryside Act 1981, Section 66 (1)

² Defra Circular 1/09 (Version 2), Para 4.38

³ Planning Inspectorate Advice Note 8, 1st Revision June 2013

⁴ *Masters v Secretary of State for the Environment, Transport and the Regions* [2000] EWCA Civ 249

⁵ *R v Secretary of State for the Environment ex parte Hood* [1975] 1 QB 891

⁶ *Suffolk CC v Mason* [1979] AC 705

Other Matters

14. On behalf of the OMA it was argued that recording of the Order route as a BOAT would ensure greater clarity for members of the public who might be uncertain as to whether they had a right to use the route. It was also suggested that confirmation of the Order would provide an opportunity for the width of the route to be recorded so as to avoid problems arising in the future. On behalf of the objector it was stated that the current situation had persisted for almost 50 years already without causing problems and that there was no reason why any potential user of the route should question their right to use the route as it is clearly a public road and therefore available for all types of traffic. It was also pointed out that the route is marked as a route with public access on Ordnance Survey maps and that it would be possible for the authority to record the width of the route in the List of Streets if they wished.

Conclusions

15. The question of when it is appropriate for a route to be recorded as a BOAT rather than simply being regarded as an 'ordinary' road is not always easily answered. The way routes are mainly used may not be known and is likely to vary over time and the character and suitability of routes is a matter of judgement. In this case, it is my view, taking account of these and all other matters raised, that the character of the Order route is more like that of an ordinary public road than a byway and I therefore conclude that the Order should not be confirmed.

Formal Decision

16. I do not confirm the Order.

Barney Grimshaw

Inspector

APPEARANCES

For the OMA

Alex Bell

Definitive Map Officer, Northumberland
County Council (NCC)

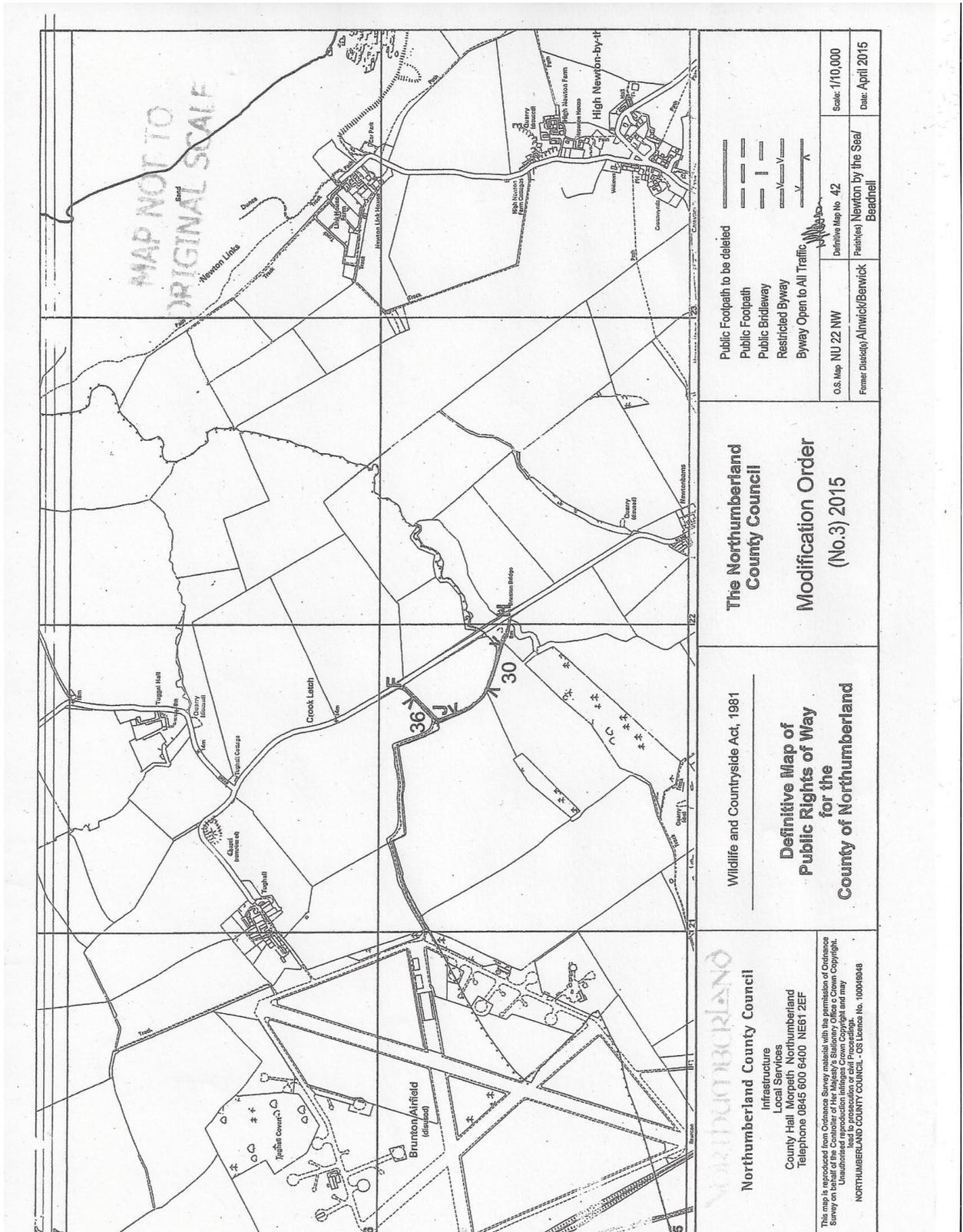
Objector

Alan Kind

Trail Riders Fellowship (TRF)

DOCUMENTS

1. Statement of Case of NCC with supporting documents.
2. Statement of Case of Alan Kind on behalf of TRF.
3. Copy of extract from OS map (revised 1895).
4. Additional submission and photographs, TRF.



Public Footpath to be deleted	———	O.S. Map NU 22 NW Former Districts Alnwick/Banwick	Definitive Map No. 42 Newton by the Sea/ Beadnell	Scale: 1/10,000 Date: April 2015
Public Footpath	———			
Public Bridleway	———			
Restricted Byway	———			
Byway Open to All Traffic	———			

**The Northumberland
County Council**

**Modification Order
(No.3) 2015**

Wildlife and Countryside Act, 1981

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

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

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