
Order Decision

Site visit made on 17 January 2017

by Alan Beckett BA MSc MIPROW

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

Decision date: 01 February 2017

Order Ref: FPS/P2935/7/55

- 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. 16) 2015.
- The Order is dated 9 November 2015 and proposes to modify the Definitive Map and Statement for the area by adding Byways Open to All Traffic (BOATs) as shown in the Order plan and described in the Order Schedule and by modifying the written particulars for Public Footpath No. 8 Ingram.
- There were 2 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.

Procedural Matters

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me and the observations I made during an unaccompanied site visit which I carried out on Tuesday 17 January 2016.

The Main Issues

2. The Order was made in consequence of events specified in section 53 (3) (c) (i) and (iii) of the 1981 Act on the basis that evidence had been discovered which showed that BOATs not currently shown in the map and statement subsisted over the Order route and that in consequence, the written particulars found in the Definitive Statement for footpath 8 Ingram required modification.
3. I consider the main issues in this case to be the status of the Order route. If I conclude that the route is subject to public vehicular rights, I will additionally have to have regard to whether the character of the route is such that it satisfies the definition of a BOAT, and whether the public's rights to use mechanically propelled vehicles (MPVs) over the route are subject to the provisions of section 67 (1) of the Natural Environment and Rural Communities Act 2006 ('the 2006 Act').

Reasons

Status of the Order route

4. The Order route is shown as part of a north-south through route on Fryer's map of 1820, on Cary's map published between 1820 and 1832, and on Greenwood's map of 1828. There is some discrepancy between the alignments of the routes shown on each of these maps however at small scales the
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depiction of any route is likely to be somewhat schematic. Nonetheless, a comparison between the routes shown on the maps and what is represented on a modern Ordnance Survey map demonstrates that the route most likely to be being depicted by these early map makers is the Order route. Whilst these early small-scale maps do not indicate the status of the route, they demonstrate the continued physical existence through time of a route capable of accommodating public vehicular traffic.

5. The Order route is also shown as a substantial track or road on the Brandon Tithe map of 1849 leading northward from the Brandon – Ingram road to the parish boundary. At the boundary, the route is annotated “*To Wooperton*” which suggests that the route was recognised as being part of a through route between settlements. What are known to be current public carriageways are shown on the tithe map coloured ochre and the Order route is coloured in the same way. Although the use of colour is not conclusive as to the status of the Order route, the depiction of the Order route in this way suggests that the map maker considered the route to be of a similar status to other public roads in the area.
6. Extracts from the first edition 25-inch to 1-mile Ordnance Survey map of 1864 show the Order route between points U and T. An extract from this edition of the map showing the Order route between points T and S has not been submitted.
7. The route is shown coloured in the same way as the Brandon to Ingram road to which it connects at point U and carries the parcel number 36 in Brandon and 49 in Wooperton. The book of reference for the first edition map describes parcels 36 and 49 as “*public roads*”. On the map extracts a route to the north-east of the Order route is also coloured ochre and numbered 17; the book of reference describes this track as a “*private road*”.
8. Although in general terms Ordnance Survey maps do not provide evidence of the status of any route shown, there is a clear distinction drawn between parcels 36 and 49 and parcel 17; some weight can therefore be given to the description of the Order route in the book of reference as supporting evidence of the reputation of the Order route as a public road during the mid-nineteenth century.
9. Ordnance Survey 6-inch to 1-mile maps published between 1866 and 1899 and subsequent maps at all scales show the Order route as a through route between Brandon and Wooperton. That part of the order route between points U and T is shown fully enclosed by hedges or fences whereas the section between points T and S is open to the east. I saw from my site visit that little has changed regarding the physical boundaries of the Order route in the intervening 118 years, as what is present on site today appears to be little changed from what Ordnance Survey recorded as being present in 1899.
10. The Finance Act 1910 records show the Order route to cross two hereditaments, numbered 65 and 231. A reduction in site value of £363 was allowed by the revenue assessor on account of the existence of public rights of way over hereditament 65 and a reduction in site value of £50 was allowed in relation to hereditament 231. Given that hereditament 65 comprised 471 acres in total and hereditament 231 extended to 851 acres, it is by no means certain that the reductions were granted because the Order route was considered to be a public right of way. However, I consider that the pencil annotation which

reads "Council Road" and the arrow pointing to the Order route found on the valuation sheet provides further evidence in support of the reputation of the Order route as a public through route.

11. The Order route is shown as a publicly maintainable road on the 1932 'handover' map. The handover map was created by the Glendale Rural District Council under the provisions of the Local Government Act 1929 by which the responsibility for maintenance of rural roads was transferred to the County Council. The handover of responsibilities from one authority to another was not therefore a purely internal exercise performed by the Council as claimed by the objector, but a statement by the RDC of those roads which were maintainable at public expense.
12. The Order route is also recorded as road number 138 in the schedule of roads prepared by Northumberland County Council under the provisions of the Restriction of Ribbon Development Act 1935 ('RRDA35'). This Act was, as its title suggests, a means by which linear development adjacent to public roads could be regulated. Although a map has not been submitted to which the schedule relates it is quite clear that the description of road 138 as "*Road from a point on the Roddamrigg House – Wooperton road 540 yards east of the entrance to Roddamrigg House southwards to the Brandon- Ingram Road*" is a description of the Order route.
13. Both the 1932 handover map and the RRDA35 schedule provide evidence of some weight that the Order route was considered to be a publicly maintainable carriageway in the 1930s.
14. The maps and schedules of publicly maintainable roads within the county prepared by the Council in 1951, 1964 and 1974 all show the Order route as the U.1090. The 1964 schedule describes the Order route as "*U1090 Roddamrigg-Brandon-Branton From U1089 near Roddamrigg House (NU 034 193) southwards crossing C54 at Brandon to join U1092 at Branton (NU 046 163)*". The 1974 schedule describes the Order route as "*U1090 Roddamrigg – Brandon-Branton From U1089 near Roddamrigg House crossing C54 at Brandon to U1092 at Branton*".
15. The Council accept that it would have been possible for footpaths and bridleways to have been included in the schedules as such routes are publicly maintainable highways. However, the Council submit that there is no evidence that footpaths and bridleways were deliberately included in the list of streets for Northumberland. The Order route is also shown in the Council's list of streets which was current at 2 May 2006.
16. I consider that the inclusion of the Order route in successive public documents produced to indicate those carriageways which were publicly maintainable or those carriageways along which ribbon development was restricted to be good evidence that the whole of the Order route was considered to carry public vehicular rights at the time those documents were prepared.
17. Under the provisions of the National Parks and Access to the Countryside Act 1949 a survey was carried out with those routes considered to carry public rights being recorded in the definitive map and statement. The Order route was not recorded in the parish survey or on the draft, provisional or definitive maps; however a public footpath (numbered 2 in the survey, draft and provisional maps and numbered 8 on the definitive map) was shown to

terminate on the Order route. The description of footpath 8 reads "*From FP1 at the Roddam Parish boundary in an easterly direction to the Public road north-west of Brandon*". It is highly likely that the Order route was omitted from the survey of public rights of way as it was considered to be a public road which was not required to be shown in the definitive map and statement.

18. None of the documents described above show conclusively that the Order route is a public carriageway, but when considered collectively they are highly persuasive that the Order is subject to public vehicular rights. It follows that I conclude that the Order route is a public carriageway.

Whether the Order route can be recorded on the Definitive Map and Statement as a BOAT

19. The Council submits that the location, condition and appearance of the Order route is such that it is more likely to be used for the purposes for which footpaths and bridleways are so used. I have received submissions from the British Horse Society, from the Ramblers' Association, from the Cycle Touring Club and from a Mr Poppleton which describe regular use of the Order route on horseback, on foot and by pedal cycle. I noted at my site visit that the Order route is signposted as being part of the Sandstone Way, which is a long-distance cycleway between Hexham and Berwick on Tweed.
20. In the light of the submissions received and on my observations of the Order route, I conclude 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.

The impact of Section 67 of the 2006 Act

21. Section 67 (1) of the 2006 Act extinguished, as of 2 May 2006, any right the public had to use mechanically propelled vehicles (MPVs) over a route that was not shown in the definitive map and statement or over a route that was shown in the map and statement but only as a footpath, bridleway or restricted byway.
22. The general extinguishment provision of section 67 (1) is however subject to a number of exceptions which are set out in section 67 (2) to (8). Subsection (2) (b) preserves public MPV rights over a route which, immediately before 2 May 2006, "*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 (c.66) (list of highways maintainable at public expense)*".
23. The Order route is not shown in the definitive map and statement but is shown on the list of streets which was current in May 2006; consequently the exception found in section 67 (2) (b) of the 2006 Act is engaged and public MPV rights over the Order route were not extinguished on 2 May 2006. It follows that the Order route can be recorded on the Definitive Map and Statement as a BOAT.

Conclusions

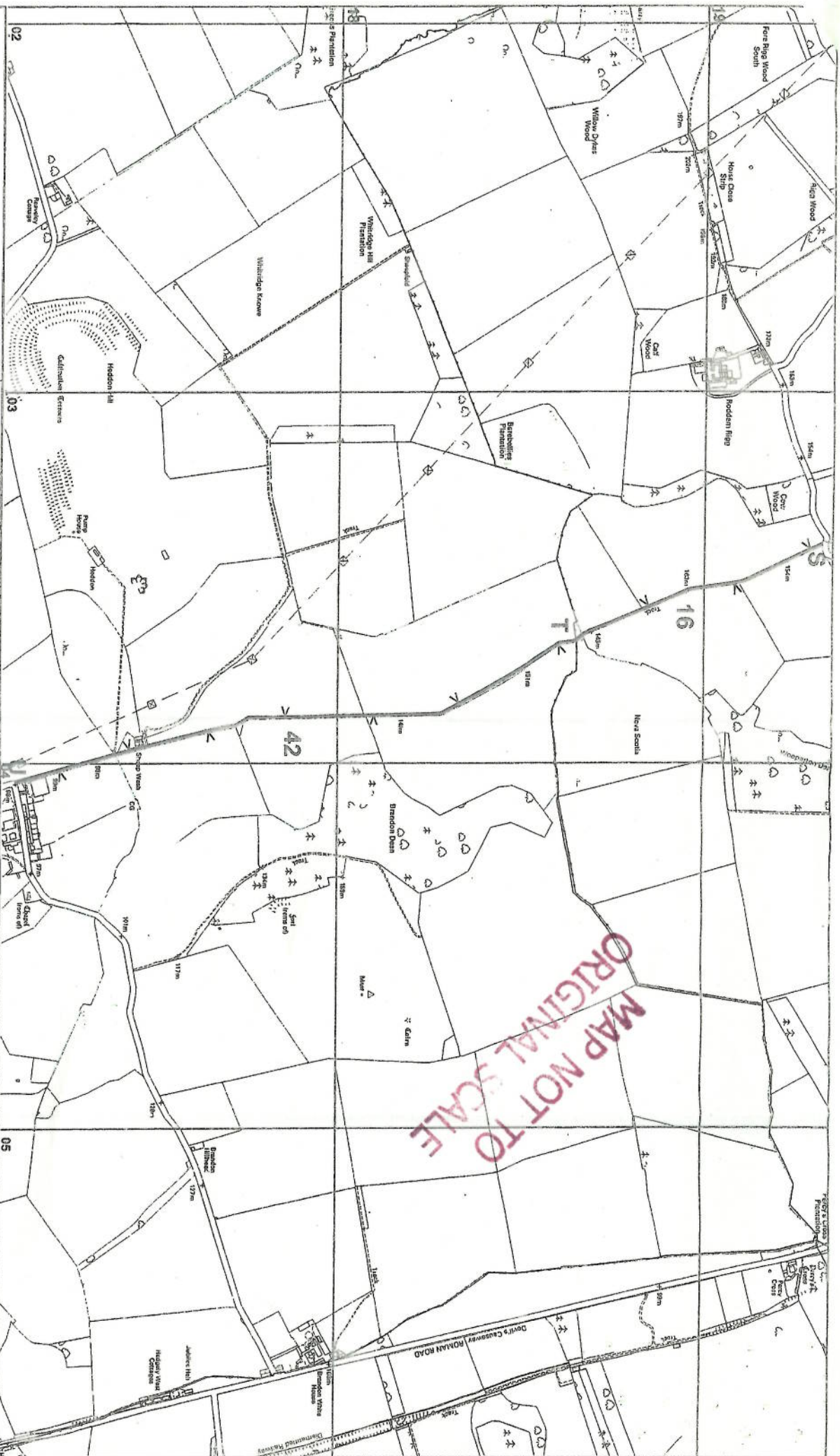
24. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed.

Formal Decision

25. I confirm the Order

Alan Beckett

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.16) 2015

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



OS Map NU 01 NW

Definitive Map No. 55

Scale: 1/10,000

Former District(s) Berwick

Parish(es) Roddam/Ingram

Date September 2015