

Order Decision

Inquiry opened on 31 March 2015

by Sue Arnott FIPROW

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

Decision date: 26 July 2016

Order Ref: FPS/P2935/7/42M

- 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 20) 2013.
- The Order is dated 2 September 2013. It proposes to modify the definitive map and statement for the area by recording a restricted byway between the A69 and U7070 public road at Melkridge, near Haltwhistle, as shown on the Order map and described in the Order schedule.
- There were six letters of objection outstanding when Northumberland County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- In accordance with Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 I have given notice of my proposal to confirm the Order with modifications.
- In response to advertisement of these proposed modifications, one representation has been submitted.

Summary of Decision: The Order is confirmed subject to the modifications previously proposed.

Preliminary Matters

1. If confirmed with the modifications set out in paragraph 192 of my interim Order Decision issued on 20 January 2016, the Order would record on the definitive map and statement a public bridleway along the Order route, not a restricted byway as originally proposed. Also, the width of the way would be amended.

Reasons

2. In response to advertisement of my proposal to modify the Order, one representation was submitted on behalf of one of the statutory objectors. With this letter were submitted further photographs showing the condition of the Order route taken in February 2016 including the concrete bollards placed at the southern end of the route by Northumberland County Council.
3. This stems from an event reported at paragraph 189 of my interim Order Decision:

"189. Over the weekend of 5 and 6 December 2015 severe flooding in the area caused serious damage to the surface of the Order route. Solicitors for the objectors, Bond Dickinson reported that rubble used to fill in the hole caused by subsidence in the 1970s at the north end of the lonnen had been washed out leaving a crater approximately 3 metres wide and 2 metres deep. As the rubble was washed down the lonnen by the torrent of fast moving water, severe erosion was caused along the entire length of the Order route with much of the original stone surface being lifted and deposited on the U7070 at the bottom of the hill."

4. In the present representation, Solicitors Bond Dickinson submit that the current state of the Order route "supports the fact there was historical subsidence on the alleged route". It highlights the evidence given to the inquiry by Ms Louise Halbert who confirmed that the route had been closed for several weeks whilst repairs were carried out by her father following similar subsidence in the 1970s.
5. I addressed this issue at paragraph 190 of my interim Order Decision, stating:
"190. The point was made that this recent event confirms that the subsidence near to point A reported at the inquiry had indeed taken place. Since I have fully accepted that this incident did occur in the 1970s, I did not consider it necessary to return to the site to inspect the crater, or to view the ruinous condition of the lonnen suggested by the photographs provided of the flood in full force."
6. Bond Dickinson again draws attention to the fact that, when questioned at the inquiry, only one of the supporting witnesses recalled the earlier event. It submits that, given the dramatic effect of the subsidence, it would be unlikely that a regular user of the way would fail to notice or to remember the episode. It is therefore argued this "demonstrates that there has been insufficient use of the alleged route for a presumption (of dedication) under either section 31 of the Highways Act 1880 or common law to arise."
7. At paragraph 47 of my interim Order Decision I acknowledged that only witness Mrs Brooks recalled the subsidence in the 1970s (which had been some twenty years before the relevant period 1993-2013), and at paragraph 98 similarly noted the objectors' submission that *"the lack of any mention in any of the forms of the subsidence that caused the temporary closure of the lonnen in the early 1970s"* should *"cast doubt on the accuracy of the information given and was in conflict with the evidence of Ms L Halbert."*
8. In the subsequent paragraph I addressed the point:
"99. I take a different view on this. I find it unsurprising that a relatively short-lived event such as occurred around 40 years ago (and which was not designed to challenge the rights of the public) was not at the forefront of the minds of those people completing forms whose experience dated that far back in time. Consequently I do not consider such forms to be devalued by their failure to mention this incident."
9. No new information has been submitted that might cause me to alter the conclusions I previously reached.

Conclusion

10. Having regard to the above and all other matters raised at the inquiry and in the written representations, I conclude that the Order should be confirmed subject to the modifications that have been advertised.

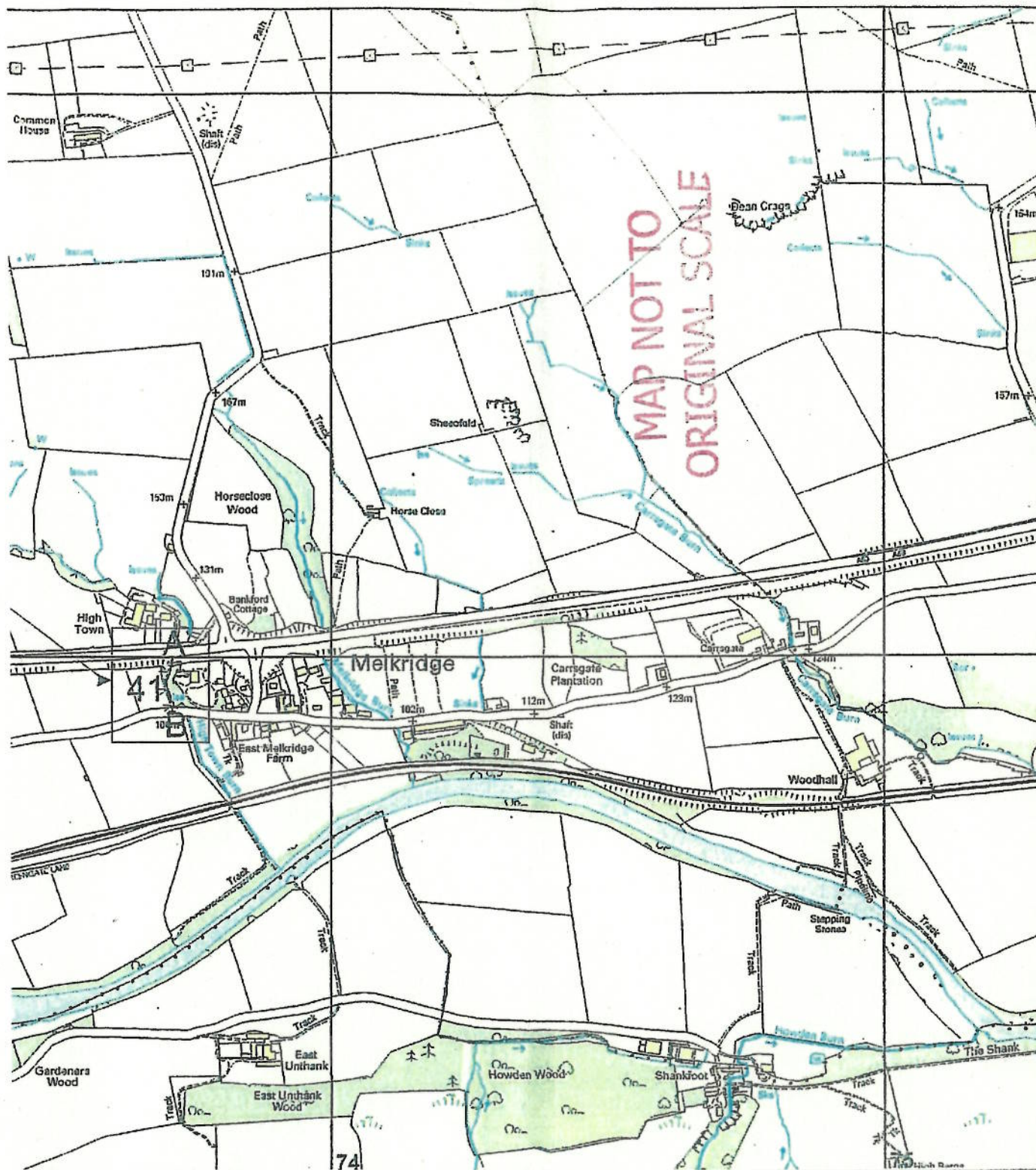
Formal Decision

11. I confirm the Order subject to the following modifications:
 - In the title to the Order, delete "Restricted Byway" and substitute "Bridleway";
 - In the index to the Order, delete "Restricted Byway" and substitute "Bridleway";
 - In the Order Schedule: Description of Modification to Definitive Map and Statement:

- In the heading, delete "Restricted Byway" and substitute "Bridleway";
- In Part I: Map, delete "restricted byway" and substitute "bridleway";
- In Part II: Statement, delete "4.5 metre wide restricted byway" and substitute "bridleway varying in width between 4.5 metres and 3 metres"
- On the Order map, amend the notation used so as to show the Order route between points A and B as "Public Bridleway".

Sue Arnott

Inspector



the Northumberland
County Council

Modification Order
(No.20) 2013

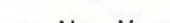
Public Right of Way closed

Public Footpath

Public Bridleway

Restricted Byway

Byway Open to All Traffic



O S Map NY 76 SW

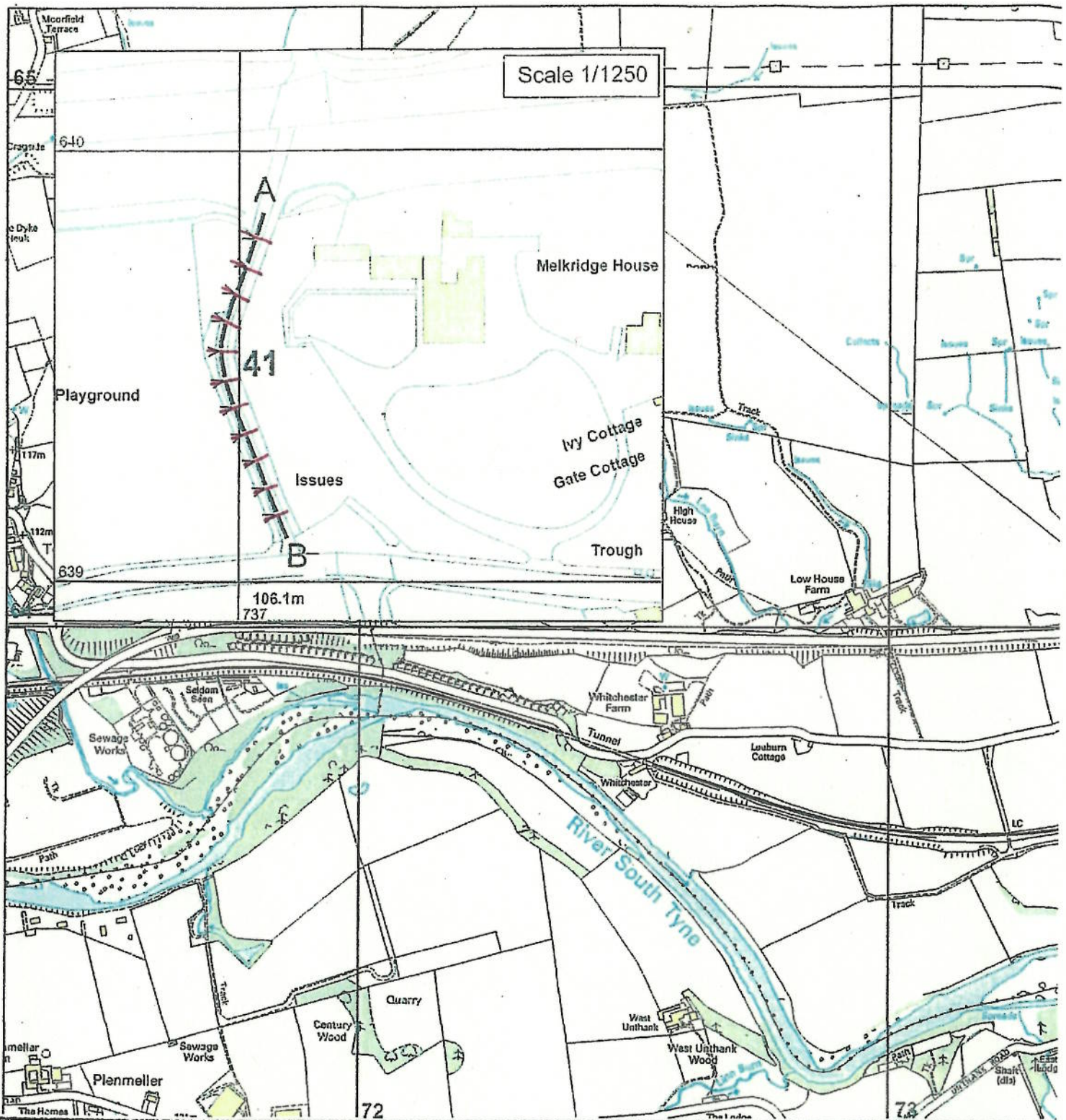
Definitive Map No: 204

Scale: 1/10,000

Former District(s): Tynedale

Fishery(s): Melkridge

Date: August 2013



NORTHUMBERLAND

Northumberland County Council

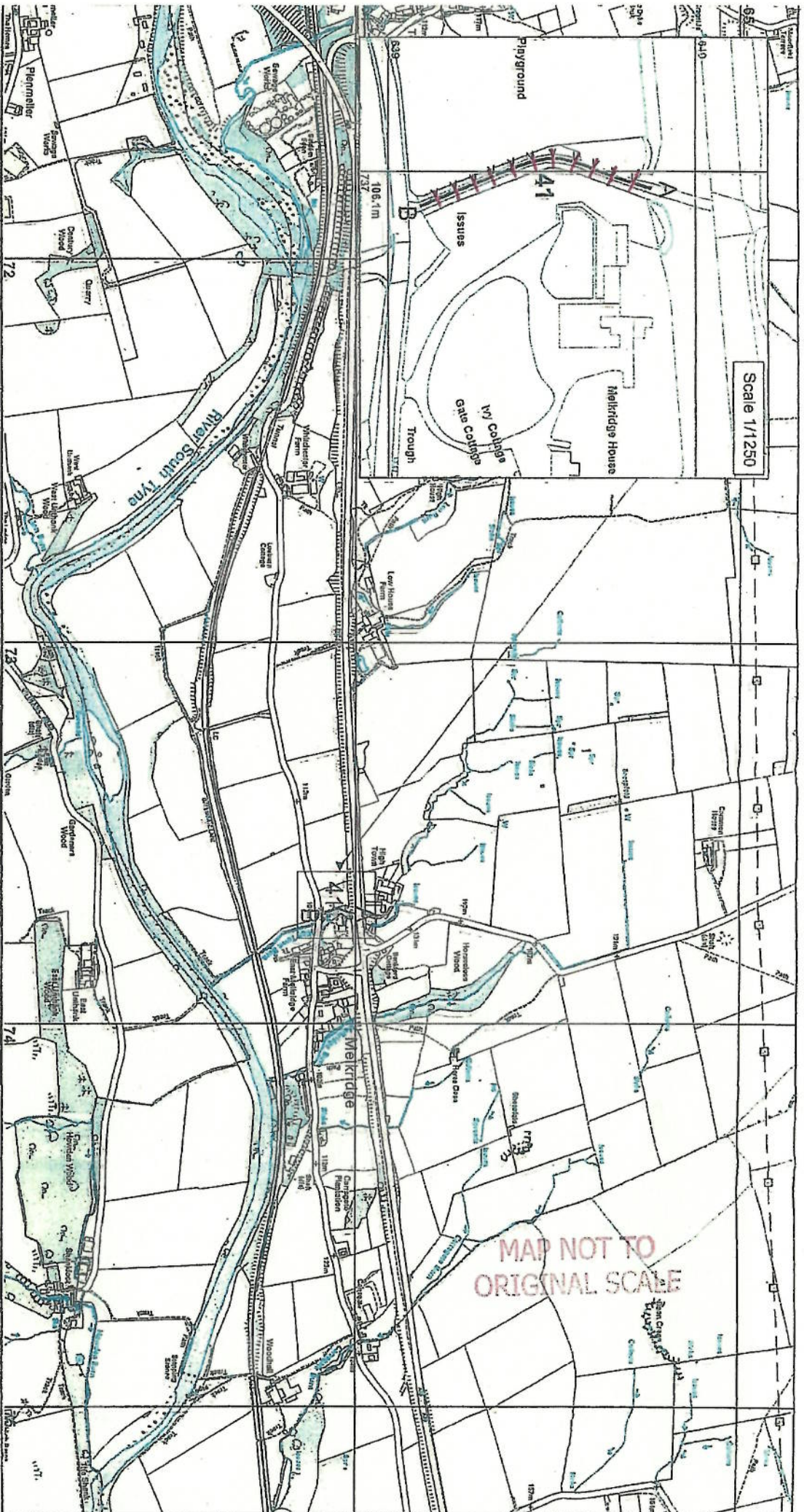
Sustainable Transport
Local Services

County Hall Morpeth Northumberland
Telephone 0845 600 6400 NE61 2EF

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Wildlife and Countryside Act, 1981

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



Scale 1/1250

Northumberland
Northumberland County Council

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Local Services
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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.20) 2013**

Public Right of Way closed
Public Footpath
Public Bridleway
Restricted Byway
Byway Open to All Traffic



OS Map NY 76 SW, Definitive Map No. 204, Scale 1/10,000
Former Districts Tynedale, Prudhoe, Melkridge, Date: August 2013