

Order Decision

Site visit made on 27 April 2016

by Martin Elliott BSc FIPROW

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

Decision date: 25 May 2016

Order Ref: FPS/P2935/7/46

- 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 15) 2014.
- The Order is dated 18 August 2014 and proposes to modify the Definitive Map and Statement for the area by upgrading part of public footpath 5 Tosson to a bridleway and adding a public bridleway as shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when Northumberland County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision.

Procedural Matters

1. I carried out an unaccompanied site visit on 27 April 2016. Between points E and C on the Order map there is no discernible route on the ground. Given this and the terrain it was difficult to follow the precise line of the Order route. Nevertheless I am satisfied that I can make my decision on the basis of my site visit and the evidence before me.
2. The objector (Northumberland Estates) notes that the Order route is different to the route applied for in an application under section 53(5) of the 1981 Act. The decision of the Council in respect of the making of an order and the route shown in the original application are not matters for my consideration. I have been appointed to determine the Order before me.
3. I note that in Part 1 of the Schedule to the Order, in respect of Bridleway 39, the total length does not accord with the sum totals of the route given in Part II of the Schedule. There is nothing to indicate that anyone will have been misled or prejudiced by this discrepancy. The Order, if confirmed, will be modified accordingly.

The Main Issues

4. The Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of an event specified in section 53(3)(c)(i), (ii) and (iii) of the 1981 Act.
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5. The main issue is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show on the balance of probability that:
 - (i) a right of way which is not shown in the map and statement subsists over the land in the area to which the map relates; and
 - (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; and
 - (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.
6. In effect the Order proposes to add a public bridleway along a route which is unrecorded and to upgrade part of a public footpath to a public bridleway forming part of a longer route. The Order provides for consequential amendments to the definitive map and statement.
7. A new interested party (Mr Kind) made representations following the Notice of Order. As well as making observations on the evidence he raises issues as to the alignment of the Order route. I consider this latter issue further at paragraphs 29 to 33 below.

Reasons

Armstrong's County map 1769

8. The map does not show any route over land crossed by the Order route.

Tosson Common and Hepple Common Inclosure Award

9. The award sets out and appoints a 'Public Bridle Road 6 feet in breadth' (1.83 metres) leading from the south end of Great Tosson Lane to Browns Cross where the bridleway enters the ancient lands of Spylaw. The route is called Cambo Bridle Road and the award states that the route is staked and set out. The award map identifies the route with a double pecked line marked 'Cambo Bridle Road'.
10. The local Act¹, under which the award was made, imports the provisions of the General Inclosure Act of 1801 as such the setting out of the route was within the scope and powers of the inclosure commissioners.
11. In my view the inclosure award provides conclusive evidence as to the existence of a bridleway along the route described and shown on the award plan.
12. The objector makes the point that the award does not identify the route beyond Browns Cross, with no clarity as to whether or not the route was via Coquet Cairn. Whilst the award refers to Browns Cross the route is described as entering into the adjacent lands of Spylaw. This suggests to me that the route continued past Browns Cross; this is as shown on the inclosure plan although it is accepted that the route is not shown linking to Coquet Cairn.

¹ An Act for inclosing Lands in the Parishes of Rothbury and Elsdon, in the County of Northumberland (12 March 1805) a copy of which was provided by Mr Kind.

However, it should be noted that from Browns Cross the route crosses land not subject to the award and therefore the absence of the route is not unsurprising. It is also of note that the route is called 'Cambo Bridle Road'. Given that Cambo is a settlement some 10 km to the south it is clear that the route continued southwards although the route is not identified. I consider this issue further at paragraph * below.

Commercial maps 1820 to 1832

13. Fryer's county map of 1820² shows a road leading from the western side of Great Tosson village over the land crossed by the Order route. Whilst the mapping is not particularly detailed the route to the south of Simonside Hill is to the east of Selbys Cove, Black Cock Hall and corresponds with the Order route.
14. Greenwood's map of 1828 shows a crossroad leading from the road leading south eastward from Great Tosson proceeding southwards to the east of Selbys Cove and Black Cock Hall and again corresponds with the Order route.
15. Cary's map of 1827 shows a route to the east of Selbys Cove and Black Cock Hall and identifies the route as a parochial road. As with Fryer and Greenwood the route corresponds with the Order route. From the extracts provided it is not possible to ascertain the route at its northern end at Great Tosson. The 1832 edition shows the route in an identical fashion. No extract is provided of the 1832 map covering Great Tosson. In *Commission for New Towns v J J Gallagher Ltd [2003] 2 P&CR* it is indicated that in the case of Beoley Lane, a route under consideration in that case, the identification of the route as a parochial road suggested that the route was a public carriageway. Nevertheless Neuberger J. adds that it is by no means clear what the expression means. Whilst the term parochial road may be suggestive of a public carriageway this evidence needs to be considered in the context of all other evidence.

Ryehill and Great Tosson Tithe Award 1840

16. The tithe map shows a route leading from point A on the Order map to and beyond Browns Cross and is marked Bridle Road to Cambo. The depiction on the map is highly suggestive that the route was public and is consistent with the inclosure award evidence. The map does show the route continuing beyond Browns Cross although the extent of the route is not clear, the extract provided does not extend as far as Coquet Cairn although I note the assertion of the objector that this location is shown on the map.

Ordnance Survey mapping

17. The 1866 edition shows a route leading from Great Tosson which corresponds with the route of what is now recorded as public footpath 5 and therefore part of the Order route. The map does not show the Order route between points A and D or to the south of point E near to Ousen House. The 1898/9 and 1925/6 maps are similar to the 1866 map although public footpath 5 is annotated 'B.R.' The 1957 map shows a route as on the earlier maps although the route of footpath 5 is now annotated 'F.P.' The 1978 map shows parts of the Order route although there is no indication of a route to the south of Ousen House.

² I note that the Fryer's and Greenwood's map have been incorrectly identified in the original application

18. Ordnance Survey maps were produced to record topographical features and were not intended to record public rights. The maps show the existence of a route which corresponds with the route of public footpath 5 which in parts is concurrent with the Order route. The 1898/9 and 1925/6 maps show that the route of public footpath 5 was a route which could be traversed by horses. However, by 1957 the route was identified as a route which could not be mistaken for a route traversable by horses or wheeled traffic.

Thomas Bell survey 1850

19. Whilst the map does not show the Order route or the application route it must be noted that the survey is of Northumberland Estates. The map appears to have been produced to identify land holdings of the estate. There is nothing to indicate that the survey was required to record public rights of way. The absence of the Order route from the map does not preclude the existence of public rights but nevertheless the map does not provide any information in support of public rights.

Survey, draft, provisional and definitive maps

20. The objector has submitted extracts from the various maps which it is suggested do not show the Order route but show a route which corresponds with the application route.
21. It is accepted that the maps do not show the Order route however, the maps are Ordnance Survey plans with additional markings placed thereon showing routes regarded to be public. I revert to my previous comments on Ordnance Survey maps which are equally applicable. Whilst the route was not recorded under the survey carried out under the National Parks and Access to the Countryside Act 1949 this would not preclude the existence of public rights. Nevertheless it would appear that the route was not considered to be public at the time of the survey otherwise it would have been marked on the maps as was public footpath 5.

Deposit under section 31(6) of the Highways Act 1980

22. The objector refers to a deposit made by the Estate which the Council identify was made in October 1997. Whilst this deposit may demonstrate a lack of intention to dedicate a public right of way along the Order route the deposit has no effect on pre-existing rights.

Other evidence

23. The objector refers to the indications of a Mr Harrison, a tenant of the Estate. It is stated that the land between E and C is exceptionally wet and boggy and exceptionally difficult to traverse over. Whilst, as I noted on my site visit, the land is wet and boggy this does not mean that a public right of way cannot subsist; the route of public footpath 5 over this land also passes through some wet and boggy terrain. It is also noted that Mr Harrison has not seen people using the Order route between points E and C save for gamekeepers/farmers and tenants. Again this does not preclude the existence of public rights and bearing in mind that the route is not recorded as a public right of way the absence of use is not unexpected.
24. Mr Kind provides a copy of a chapter 'Roads, Tracks and Railways' from a commercial book the title and author of which is unknown. The chapter

includes a photograph of a 'Grooved track for packhorses in the Simonside Hills'. Mr Kind also provides a photograph of the same and I noted the feature on my site visit on part of the Order route currently recorded as public footpath 5. It is suggested that the bedrock has been tooled, probably to improve the grip for horses. This is quite possible but, in the absence of details as to its origins, it is difficult to give this any weight.

25. Mr Kind suggests that the topography of the land should be considered. Whilst I note the contention that the mapped old road is a pass this does not necessarily mean that the route is public, the status needs to be determined on the evidence before me.

Conclusions on the evidence

26. Having regard to the above, the inclosure award provides conclusive evidence as to the existence of a public bridleway. The route is shown to varying degrees on the commercial mapping although the route is not shown on the Ordnance Survey mapping, with the exception of the part of public footpath 5 to be upgraded and a section recorded on the 1978 map. The tithe map is highly supportive of the existence of a public bridleway. Looking at the evidence as a whole it is sufficient to show that, on the balance of probabilities, a public bridleway subsists.
27. I am aware that the inclosure award does not show a route extending to Coquet Cairn (point C). However, the inclosure award and tithe map evidence indicates that the route shown is part of a longer route. Further, Fryer, Carey and Greenwood all show a route continuing to the south beyond the limits of the route shown on the inclosure and tithe maps. Given the existence of a continuation of the route it is, on the balance of probabilities, more likely than not that the route continued to Coquet Cairn.
28. Mr Kind raises the issue that the width identified in the Order is not sufficient for two unladen horses to meet and pass let alone laden pack horses. It is contended that a bridleroad in use by packhorses would need to be 10 feet wide (3.05 metres). Whilst I note this point, the inclosure award sets out a bridleway 6 feet wide (1.83 metres). There is nothing to indicate a greater width has been dedicated, for me to reach such a conclusion I would need evidence of the same.

Alignment issues

29. Mr Kind contends that the route shown on the Order plan does not match the awarded route.
- i) At point B it is suggested that there is a distinct kink in the Cambo Bridle Road. From my examination of the map I do not agree.
 - ii) To the north of point D it is contended that the award plan shows the route to the west of the boundary of Donkin & Pott's Allotment just inside the Rev'd Andrew Boulton's Allotment whereas the Order route is on a curvaceous route on what appears to be a modern forestry road. I concur with this view and the Order should be amended to follow the awarded route.
 - iii) From near to Windy Crag to the northern terminus of the Order route the inclosure awarded route is inside the northern boundary of Donkin & Pott's Allotment. Again I concur with this view.

30. The Council suggest that between points A and D the route follows a forest track which physically appears to have some antiquity and has the appearance of an old 'Lonnen'. Although I note this contention there is nothing to support the antiquity of this section of route marked on the Order map. The route shown on the award map is consistent with the route shown on Greenwood's map. None of the Ordnance Survey maps submitted provide any evidence as to the existence of a track through the forested area which corresponds with the Order route until the 1978 edition. The Ordnance Survey mapping indicates that the track along which the Order route is marked between A and D is a more recent feature.
31. Notwithstanding the issues raised by Mr Kind as to the alignment of the Order route he suggests that in any event the northern termination point of the Order route is not at point A but that the route continues along the route of public footpath 5 into Great Tosson. I note the arguments raised but in my view the award plan is clear in that the northern termination point is at point A.
32. Mr Kind also raises an issue as to the true route of the bridleway. It is suggested that the route shown on the Ordnance Survey mapping, annotated 'B.R.' is near enough to the current public footpath and as close as scale permits to the line shown on Fryer and Cary. Although I note this point, from my examination of the maps, I do not consider that the route shown on Fryer and Cary represents the route shown on the Ordnance Survey maps. The route shown on Fryer and Carey is some distance to the east of Selbys Cove whereas the Ordnance Survey maps depict a route which runs immediately adjacent to Selbys Cove. Whilst the Ordnance Survey maps show the existence of another route from Great Tosson the inclosure award and commercial maps depict a route to the east which is the route set out in the inclosure award as the Cambo Bridle Road and, subject to my comments at paragraph 29 above, the Order route.
33. In view of my conclusions as to the evidence I conclude that the Order should be confirmed subject to modifications in respect of the route.

Conclusions

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

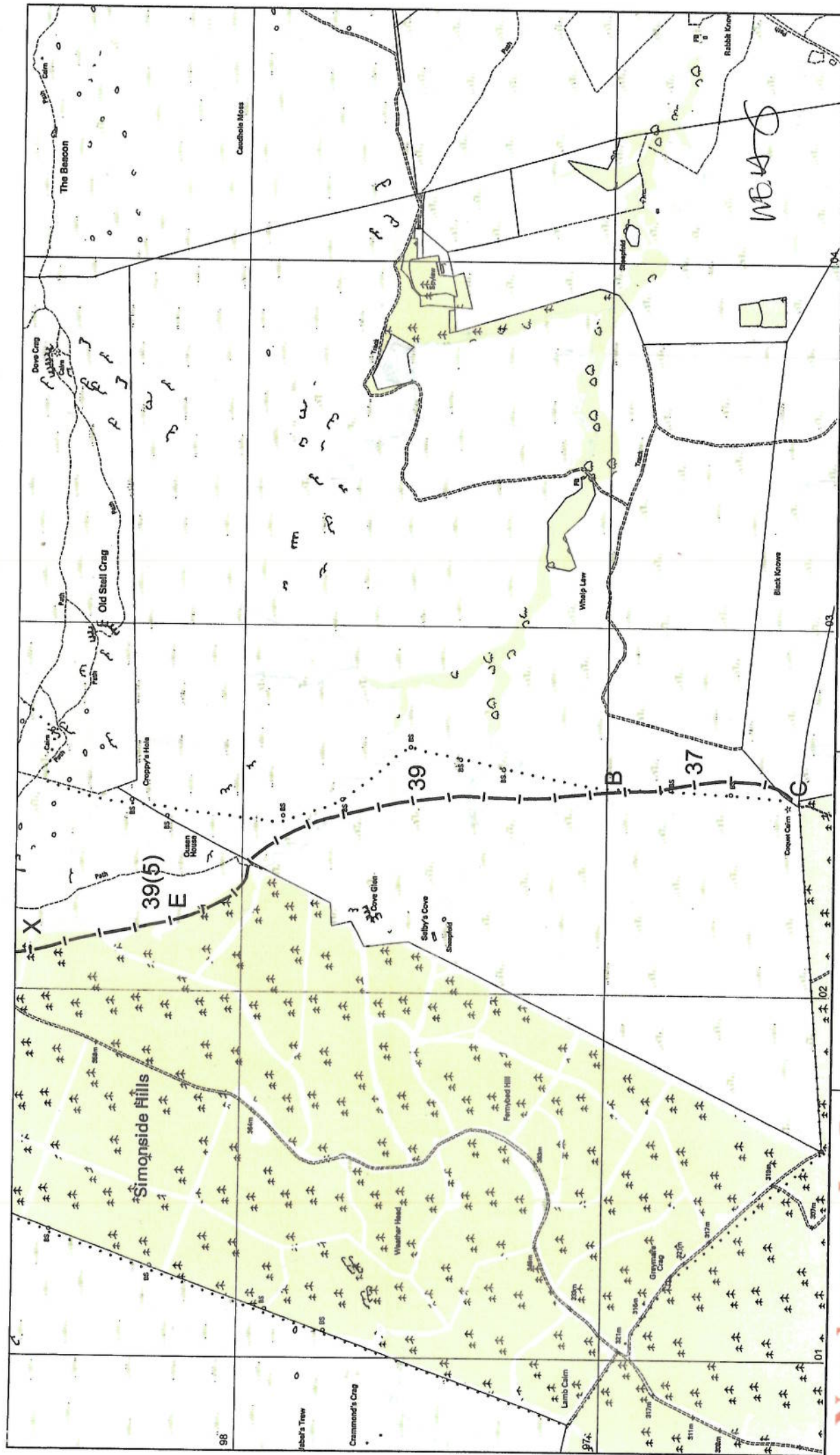
Formal Decision

35. The Order is proposed for confirmation subject to the following modifications:
- At Part I of the Schedule to the Order, in respect of Bridleway 39 at line 3 delete '4220' and insert '4350' and at Part II from line 4 delete 'as a woodland track for a distance of 460 metres then southerly for a distance of 450 metres' and insert '*alongside the field boundary for a distance of 380 metres to its junction with Public Footpath No 5 then on the north west and west side of the field boundary in a south westerly and southerly direction for 570 metres*'.
 - At Part I of the Schedule to the Order, in respect of Footpath 5, at line 1 of the first paragraph after '*the footpath from*' insert '*points D1 and D2 and*' and at line 2 of the second paragraph after '*to a point marked*' insert '*D1 and between D2 and*'.

- At Part II of the Schedule to the Order, in respect of Footpath 40, delete from line 3 *'and Windy Craggs for a distance of 970 metres'* and insert *'for a distance of 400 metres to join public bridleway No 39, leaving the public bridleway to the south of Windy Craggs and continuing in a southerly direction for a distance of 290 metres'*.
 - On the Order map insert points D1 and D2 and between these points insert cross hatchings along the route shown as a public footpath so as to identify a public bridleway. Further, from a point 170 metres southwest of point A, where the Schedule describes a field gate, to point D1 and between points D2 and D insert a route to identify a public bridleway. Between the point 170 metres southwest of point A to point D delete the public bridleway.
36. Since the confirmed Order would affect land not affected by the Order and not show a way in the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Martin Elliott

Inspector



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

The Northumberland
County Council
Modification Order
(No.15) 2014

Wildlife and Countryside Act, 1981
Definitive Map of
Public Rights of Way
for the
County of Northumberland

Northumberland
Northumberland County Council
Sustainable Transport
Local Services
County Hall Morpeth Northumberland
Telephone 0845 600 6400 NE61 2EF

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O.S. Map NZ 09 NW
Former District(s) Alnwick
Definitive Map No 108
Parish(es) Hollinghill/Tosson
Scale 1/10,000
Date: June 2014

