

---

## Order Decision

Inquiry held on 6 December 2016

Site visit made on 5 December 2016

**by Martin Elliott BSc FIPROW**

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

**Decision date: 18 January 2017**

---

### **Order Ref: FPS/P2935/7/51**

- 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 14) 2014.
- The Order is dated 18 August 2014 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were two objections outstanding at the commencement of the inquiry.

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

---

### **Procedural Matters**

1. I held a public local inquiry at Warkworth Memorial Hall on 6 December 2016. I carried out an unaccompanied site inspection of the Order route on the afternoon of 5 December 2016. I did not carry out a further site visit following the close of the inquiry as there were no issues which required me to do so.
2. At the commencement of the inquiry Counsel for the objector was not present although I had previously been informed that the objector<sup>1</sup> would be represented. An adjournment was taken to establish their whereabouts during which time Counsel arrived at the inquiry having been delayed by traffic. The objector did not call any evidence but cross examined witnesses giving evidence in support of the Order. I was asked to have regard to the written submissions of the objector and a number of written statements which had been submitted. In reaching my decision I have had regard to all the written submissions and statements made in support and in opposition to the Order.
3. Following the inquiry I received correspondence from Mr D Ferguson. This had been received by the Planning Inspectorate shortly before the inquiry and had been accepted and circulated to the parties. I have had regard to the correspondence in reaching my decision although the information contained within is consistent with the evidence which Mr Ferguson gave to the inquiry.
4. On considering the evidence further the Council reached a conclusion that public footpath rights had been proven on the section of Order route from point A on the Order map to a point approximately 85 metres from point B. However, the Council also concluded that in respect of the remaining 85 metres

---

<sup>1</sup> Although two objections were received they were from the owners of Coquet Lodge and the solicitors acting on their behalf. When I refer to the objector I include both the owners and their solicitor.

public rights had not been proven and adopted a neutral stance at the inquiry in respect of this section. The applicant, Mr Farrall took the view that public rights extended over the entire length of the Order route. I have had regard to all of the evidence in reaching my decision.

5. The Order plan dated June 2014 identifies the Order route as between point A at its junction with public footpath 7 leading to point B at the gate at the entrance to Coquet Lodge. However, at the inquiry reference was made to points shown on a plan dated September 2013, points T and U corresponding with points A and B on the Order plan and a point A the location of which corresponds with the location of a bench some 240 metres from point T. Unless otherwise indicated any reference to point A in this decision relates to point A shown on the 2013 plan.

### **The Main Issue**

6. 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). The main issue is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show that a right of way which is not shown in the map and statement subsists over land in the area to which the map relates.
7. The test to be applied to the evidence is on the balance of probabilities.
8. Noting the position as indicated above (paragraph 4) the Council contend that a statutory dedication under section 31 of the Highways Act 1980 has arisen in consequence of use of the way on foot. Section 31 of the Highways Act 1980 provides that where a way, other than a way of such a character that use of it could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public, as of right and without interruption, for a period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that the landowner demonstrated a lack of any intention during this period to dedicate the route.
9. Should the case for a statutory dedication fail then it may be appropriate to consider dedication at common law. This requires consideration of three issues: whether any current or previous owners of the land in question had the capacity to dedicate a highway, whether there was express or implied dedication by the landowners and whether there is acceptance of the highway by the public. There is no evidence of any express dedication. Evidence of the use of a path by the public as of right may support an inference of dedication and may also show acceptance by the public. In a claim for dedication at common law, the burden of proving the owner's intentions remains with the claimant.

### **Reasons**

#### ***Background issue***

10. It is noted that in 2008 part of the river bank crossed by the Order route was eroded in consequence of severe flooding in the area. As noted by the Council the circumstances are different to those identified in the case of *R (on the application of Gloucester County Council) v Secretary of State for the*

*Environment, Transport and the Regions and another (2000) All ER (D) 2081* where the footpath had been washed away. The erosion of the Order route is not a matter for my consideration. In respect of any statutory dedication I am required to consider the use of the route during the relevant twenty year period which in this case is prior to 2008.

### **Statutory dedication – Section 31 of the Highways Act 1980**

*When the right to use the way was brought into question*

11. Before considering the evidence of use it is necessary to establish the relevant twenty year period. The 20 year period applies retrospectively from the date on which the right of the public to use the way was brought into question.
12. In January 1998 Northumberland Estates, the landowner at that time, submitted a declaration under section 31(6) of the Highways Act 1980. This has been followed up by further statutory declarations in May 2003 and May 2013. The declaration in 1998 would have brought the right to use the way into question and would set a relevant twenty year period of 1978 to 1998. The initial declaration and the subsequent declarations also demonstrate a lack of intention to dedicate the way from the date of the declaration. No other evidence has been put before me of any other event which would have brought the right to use the way into question.

*Evidence of use 1978 to 1998*

13. In June 2013 the applicant submitted 102 user evidence forms (UEFs) from those who have used the Order route. The forms indicate regular use of the Order route by the public on foot and without interruption for the full twenty year period.
14. The objector made the point that the majority of the UEFs were submitted without a plan, a blank plan or a plan showing a different route; this was in the context of determining where the various users turned around. I accept that some of the UEFs do not include a marked up plan of the route. However it is clear that the UEFs relate to a route which corresponds with the Order route. I consider below the issue in relation to the cul-de-sac nature of the path.
15. It is also noted that a number of UEFs have been partially completed in another hand. Mrs Cuthbert, who gathered some of the UEFs, explained that she assisted in respect of the wording of the notice erected in October 2012. In respect of these forms she said that the witness could remember the presence of the notices but could not remember the exact wording. She explained that she completed the forms in the presence of the witness. Mrs Lillico explained that in respect of the UEFs gathered by her she only completed the initial section of the form relating to the Borough/District, Parish and status. Mr Farrall stated that he provided blank UEFs to those he approached. Mrs Burns said that she had been given a UEF by Mrs Lillico. She outlined that she did not complete the factual information but advised that the form represented her own opinion.
16. Although some of the UEFs have been partially completed in a separate hand I do not consider that this lessens the weight which can be given to the forms. There is no evidence of collusion and although many UEFs have had the details

of notices added this has no bearing on the use of the way during the relevant period. Whilst less weight should be given to evidence which has not been subject to cross examination some weight should be given to signed and dated UEFs which consistently show regular use of the Order route on foot.

17. A number of individuals, both on behalf of the Council and on their own volition, gave evidence as to their use of the Order route. That evidence also demonstrated use on a regular basis without challenge during the twenty year period. Many referred to frequent use by others, residents of Warkworth and visitors alike. Mrs Doyle referred to 'loads of people on the bank, especially on a Sunday'. Mr Hogg said that the route was constantly used by locals and others. He said that those who did not know the walk continued to the gate of Coquet Lodge and turned back. Mrs Burke referred to hundreds of people. Mr Cuthbert who was a water bailiff from 1965 to 1995 said that many people used the Order route.
18. In my view the live evidence to the inquiry is consistent with the evidence contained in the UEFs and demonstrates open and regular use of the Order route to the gate at Coquet Lodge. It is noted however that some did not walk as far as the gate. The use was in my view quite substantial and also uninterrupted. I consider the issue of whether use was as of right below (paragraphs 21 to 26).
19. A number of the statements submitted on behalf of the objector suggest that they did not see use of the Order route as a public footpath. Both Fiona Caragher, born in 1974 and (Sarah) Megan Forsyth, born in 1978, describe helping their grandfather to deliver milk to Coquet Lodge as a child and helping their father as a child and teenager to deliver dog food to the boarding kennels at Coquet Lodge. Neither remembers seeing people using the route as a public footpath during these visits but remembered people using the route to access the business. Judith Anderson recalls her aunt running the boarding kennels and people using the route to access the business until it closed in the 1990s. Marian Forsyth helped her husband deliver dog food to the boarding kennels. She did not remember people using the route as a public footpath but recalled people using the route to access the business. The statements indicate that the kennels closed in the 1990s. It should be noted that this evidence has not been subject to cross examination but nevertheless some weight should be attributed thereto.
20. Whilst the statements might suggest that the route was not used this is in stark contrast to the evidence contained in the UEFs and the live evidence to the inquiry. It is accepted that some use identified in the UEFs was in connection with visiting Coquet Lodge however, other use was not. A number of those giving evidence to the inquiry recalled passing the time of day with members of the Carr family which suggests that the Carr family were aware of the use of the way. These individuals were not visiting the premises in connection with the boarding kennels or the sale of produce which also took place. It may well have been the case that those identified at paragraph 19 above did not see use at the times they were on the land but when the evidence is considered as a whole it is more likely than not that there was use by the public.

### *Use as of Right*

21. Use as of right is use without force, secrecy or permission. There is no evidence that use was with force or in secret. It is contended by the objector that some of the use was with permission and when such use is excluded there is insufficient use to give rise to a presumption of dedication. The Council accept that some use identified in the evidence of use forms is with permission.
22. I have examined the UEFs in respect of those identified by the objector as using the Order route by permission. I agree that those visiting Coquet Lodge, for whatever purpose, would have done so with the inferred permission of the landowner. However, it is of note that those who did visit Coquet Lodge identify the Order route as public and that use was without permission. Use of the route for fishing or carrying out repairs on behalf of Northumberland Estates would also be with permission although in respect of these individuals they also used the Order route for other purposes. There is nothing to indicate that this other use was with permission.
23. I note that a John and Janice Wilson were tenants of the land although there is no indication as to when they held the tenancy. Use in connection with their tenancy would be by right although both of these individuals used the route for recreational purposes; in the absence of any dates it is difficult to give this use any weight.
24. The objector identifies the use by Mr Cuthbert and his family as being permissive in consequence of him being the water bailiff. At the inquiry Mr Cuthbert accepted that he was entitled to be on the Mill Walk as part of his duties. He was the water bailiff from 1965 to 1995 and use in connection with his duties would be permissive. However, Mr Cuthbert also used the route for pleasure and, outside his employment, use would be as of right. There is nothing to suggest that his family would have used the route in consequence of Mr Cuthbert's entitlement; use by the family was for leisure purposes.
25. None of those who gave evidence in support of the Order, with the exception of Mr Cuthbert, indicated that their use was with permission. Some were aware of the sale of produce and the running of the kennels at Coquet Lodge but none visited Coquet lodge for these purposes. A number referred to meeting Miss Carr but there is nothing from these encounters to infer the grant of any permission.
26. Looking at the evidence as a whole I accept that some use was with permission. However, the granting of permission to some does not prevent use by others from being without permission and therefore as of right. There remain a significant number of individuals whose use was as of right. There is nothing to indicate that this use was with express or implied permission.

### *Point of termination*

27. As noted above the Council only support the confirmation of the Order in respect of the section of route T to A (September 2013 plan). The Council refers to *Moser v Ambleside UDC* 23 LGR 533 540 where Atkin LJ said '*I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to*

*return on your tracks by the same highway, and you can get no further either by reason of physical obstacles or otherwise.'*

28. It is the Council's case that if there is some kind of attraction which might cause the public to use the way then it is sufficient to justify the conclusion that a public highway had been created. The Council contend that in respect of the Order route T to A the attraction is to walk alongside the River Coquet. In respect of the section T to U the Council do not consider this section to be a place of popular support or attraction to justify the existence of a highway. It was pointed out that this section leads away from the river and has no public interest, serving only as pedestrian access to Coquet Lodge.
29. It is recognised that in certain circumstances culs-de-sac in rural areas can be highways. However, before recognising a cul-de-sac as a highway, special circumstances must exist such as where the route is to or from a place of public interest or popular resort.
30. In respect of the section T to A the route provides a route along the River Coquet which the public might wish to enjoy. Evidence to the inquiry is that people walked to point A where there was a shingle beach, from which people swam, and a large sycamore which had a rope swing, people also sat on the river bank. A memorial bench has been erected at this location although the evidence before me suggests that the bench was only in-situ towards the end or after the twenty year period. Mrs Burns said that when using the route she turned back near to or just beyond the bench as beyond that point you came away from the river. More often than not Mr Hogg only went as far as point A as this was an open area and good for spotting kingfishers. He said that there was nothing to see beyond point A, only Coquet Lodge and the garden. Mrs Lillico's primary use of the Order route was up to point A. Mrs McQuillen used the Order route particularly from point T to point A and often sat under the tree at point A or on the grass or the bench.
31. In my view the Order route to point A not only provides a route from which the public can enjoy the river but the land in the vicinity of point A has been used for a variety of purposes and can reasonably be seen as a place of popular resort. I conclude therefore that the section of Order route T to A is capable of being recorded as a public highway.
32. As regards the point of termination at point U, Mrs Cuthbert walked to the end of the Order route and turned back. She referred to the 'Kings Head' in the boundary wall of Coquet Lodge where her grandfather used to tap the ash from his pipe. Mrs Jones, used the route frequently for leisure and walked the full length of the Order route; she went past the lodge a couple of times. Mr Allen explained that he only went as far as the gateway because this was as far as you could go. Mr Downes pointed out that the route was a cul-de-sac because it was not possible to go further. Mr Atkinson and his wife walked to the boundary wall of Coquet Lodge from 1999 when they came to Warkworth. He said that people were happy to walk to a point and back and referred to walking to the beach and back. Mr Farrall referred to a notice at the gateway to Coquet Lodge and said that the inference was that access to that point was open to the public. Point U was the end of the path and provided a different view. Nevertheless, there were times when Mr Farrall turned around before or on reaching point A. Mr Ferguson always used the full route making a point of

going to the gateway; he just enjoyed the route and liked to look at Coquet Lodge which he considered was a unique spot.

33. It is clear that users of the path continued to point U at the gateway to Coquet Lodge although, given the live evidence to the inquiry, it is likely that fewer people continued to that point. However, the issue to be considered is whether point U can be seen as a place of popular resort. I accept that some may have walked to the gateway so as to view Coquet Lodge and others walked to point U because it was not possible to walk any further. However, this does not mean that point U is a place of popular resort. In my view there is insufficient evidence from which I can conclude that there are special circumstances to justify point U as being the termination point of the highway. I note the point made by Mr Atkinson in respect of the cul-de-sac path to the beach. However, the beach is clearly a place of public and popular resort. In my view the circumstances in respect of point U are different.
34. In view of my conclusions, subject to other criteria being met, the Order should be confirmed subject to a modification to show the point of termination at point A.

#### *Conclusions as to use*

35. Having regard to the above, noting my conclusion at paragraph 34 above, the evidence shows use of the Order route T to A on foot by the public, as of right and without interruption for the full twenty year period. Although there has been some use of the route with permission I am of the view that the use as of right is sufficient and distinguishable from use with permission such that a reasonable landowner would have been aware that a right is being asserted. Consequently I conclude that the use is sufficient to raise a presumption that the way has been dedicated as a public footpath.
36. I am aware of the point made by the objector that the UEFs had not been provided to anyone not in support of the claim. However, the issue to be considered is whether there is use which is sufficient to raise a presumption of dedication. Having reached that conclusion the burden shifts to the landowner, or in this case the person asserting that no presumption of dedication has arisen, to demonstrate whether any landowner demonstrated a lack of intention to dedicate a way.

#### ***Whether any landowner demonstrated a lack of intention to dedicate***

37. In view of my findings it is necessary to consider whether any landowner demonstrated a lack of intention to dedicate the way. For there to be sufficient evidence that there was no intention to dedicate the way there must be evidence of some overt acts on the part of the landowner, during the relevant period, such as to show the public at large, the public who used the path, that they had no intention to dedicate. The test is whether a reasonable user would have understood that the landowner, that is the owner of the land over which the route passes, was intending to disabuse the user of the notion that the way was public.
38. During the relevant period the land was owned by Northumberland Estates. The objector drew my attention to correspondence from the Estate,

25 November 2013, which refers to the former tenant of Coquet Lodge. It states that Derek Easton 'will be known to many for preventing access and redirecting people on the public right of way back up to Watershaugh Road at the landing stage site'. The correspondence also refers to use of the way at the Carr family's permission and that over the last 34 years, until 2000, the Forsyths, who sub-tenanted the land from Miss Carr, did stop people, other than fisherman, from using the route.

39. As regards the actions of Mr Easton and the challenges by the Forsyths, there is no evidence of any challenges to the use of the way during the relevant period other than the assertions in the correspondence from Northumberland Estates. Use of the route continued throughout and after the relevant twenty year period which suggests that the public using the way were not disabused of the notion that the way is a public footpath.
40. In respect of the use of the way with permission demonstrating a lack of intention to dedicate it is accepted that those visiting Coquet Lodge for visiting, deliveries and other such purposes would be with inferred permission. However, there remains a significant amount of use which was without permission. I do not consider that use by some with implied permission to access Coquet Lodge could reasonably be understood by those using the Order route without permission as demonstrating a lack of intention to dedicate the way. Again, users would not have been disabused of the notion that the way was a public footpath.
41. In view of the above the statutory dedication in respect of the section of the Order route from point T to point A on the 2013 plan is made out.

### ***Dedication at common law***

42. In view of my conclusions at paragraph 41 it is appropriate to consider the dedication at common law of the section of Order route A to U. However, given the characteristics of this section, namely the absence of a suitable terminus (paragraph 33), the way is not of a character of a highway, in this case a public footpath. As such any inference of dedication at common law must fail.

### **Other Matters**

43. The original objection makes the point that the Order route serves no useful purpose and is unsafe due to erosion. Issues relating to suitability, desirability and need are not matters which I can take into account in reaching my decision. I also note the correspondence from Ms Forsyth (inquiry document 1) however the correspondence does not raise any matters which I can take into account.

### **Conclusions**

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

### **Formal Decision**

45. The Order is proposed for confirmation subject to the following modifications:



- At Part 1 of the Schedule to the Order delete from line three the words 'then south-westerly', delete '320' and insert '240' and at line four delete ', 30 metres south-east of Coquet Lodge'.
  - At Part II of the Schedule delete from line four '250' and insert in its place '240' and also from line four delete 'then continuing as a grass surfaced path in a south-westerly direction for a distance of 70 metres to join the access road to Coquet Lodge 30 metres south-east of Coquet Lodge'.
  - On the Order map delete point 'B' and insert a new point 'B' 85 metres from the existing point B and delete the section of dashed line between these two points.
46. Since the confirmed Order would not show a way shown 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

## APPEARANCES

### **For the Northumberland County Council:**

Miss U Filby	Solicitor, Northumberland County Council
who called	
Mr J McErlane	
Mrs A Jones	
Mrs B Cuthbert	
Mrs C Burns	
Mr J Allen	
Mr R Hogg	
Mrs S Lillico	

### **Also in support of the Order:**

Mr P McMeekin	
Ms A Burke	
Mr P Downes	
Mr B A Cuthbert	
Mr P Atkinson	
Mr R Farrall	Applicant
Mr D Ferguson	
Mrs C Doyle	
Mrs S Jenkinson	
Mrs E McQuillen	

### **For the Objector:**

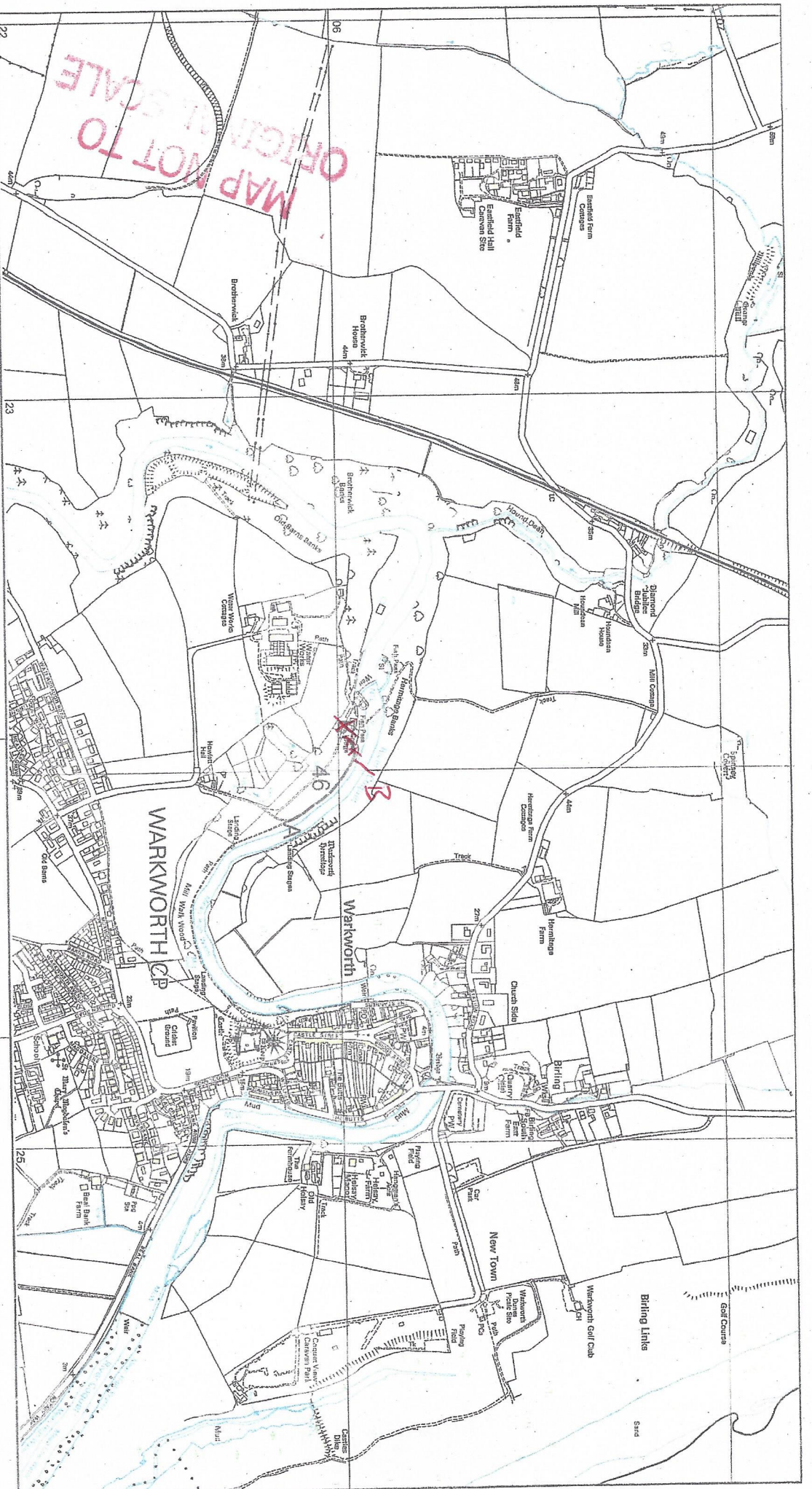
Miss R Stockley	Of Counsel
-----------------	------------

### **In support of the Objector:**

Mr R Pike

Documents handed in at the inquiry

- 1 Correspondence from Ms M Forsyth to those completing UEFs
- 2 Paginated Statement of Case for Northumberland County Council
- 3 Closing Submissions of the Council
- 4 Order map and draft schedule for modified route supported by the Council
- 5 1:2500 scale plan (September 2013) showing extent of Order route supported by the Council.



**Northumberland**

Northumberland County Council

Sustainable Transport

Local Services

County Hall Morpeth Northumberland

Telephone 0845 600 6400 NE61 2EF

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.  
NORTHUMBERLAND COUNTY COUNCIL - OS Licence No. 1000469/48

Wildlife and Countryside Act, 1981

**Definitive Map of  
Public Rights of Way**

for the

**County of Northumberland**

**The Northumberland  
County Council**

**Modification Order**

(No. 14) 2014

Public Footpath to be deleted

Public Footpath

Public Bridleway

Restricted Byway

Byway Open to All Traffic



O.S. Map NU 20 NW

Definitive Map No 83

Scale: 1/10,000

Former District(s) Alnwick

Parish(es) Warkworth

Date June 2014

W14-6