



## 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: 20 January 2016**

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### **Order Ref: FPS/P2935/7/42**

- 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<sup>1</sup> outstanding when Northumberland County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

**Summary of Decision: Confirmation of the Order is proposed, subject to the modifications set out in the 'Formal Decision' below.**

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### **Procedural Matters**

1. I opened a public local inquiry into the Order at The Mechanic Institute in Haltwhistle on 31 March 2015 having walked the Order route the previous afternoon.
2. Following a serious car accident, Counsel for the objectors (Ms Stockley) was unable to be present. Her instructing Solicitor, Mr Orr, explained that Ms Stockley had been working with the objectors on this case since 2013 and thus it was entirely understandable that they wished her to continue to represent them. He submitted that, since Northumberland County Council (NCC) was to be represented by Counsel, it was only fair that the objectors should be entitled to do so also, and in particular Counsel familiar with the nuances of highway law. He argued that the objectors' human rights were at issue here.
3. Consequently Mr Orr requested that I adjourn the inquiry. He appreciated that there was a cost issue attached to this but it was no-one's fault that this situation had occurred. In fairness to the objectors', the proceedings should be postponed until Ms Stockley could attend the inquiry.
4. Responding for NCC, Mr Sauvain QC stated that the Council did not object to an adjournment given the unfortunate circumstances but were concerned about the consequences of delaying the matter and the additional costs.
5. One of the supporters present endorsed the point about delaying the inquiry, saying they had already waited a long time for this to be resolved; another

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<sup>1</sup> Two letters of objection were sent on behalf of the landowner, Mrs M Halbert.

- commented that it was to be hoped that all the witnesses would still be here when the inquiry resumed when many are elderly people.
6. Taking all these matters into account, I adjourned the inquiry until Tuesday 20 October 2015. When I re-opened the inquiry, NCC had been unable to retain the services of Counsel due to resource constraints within the Council. As a result, the case in support of the Order was presented by NCC Solicitor, Mr Bracken.
  7. I made a further inspection of the Order route in the late afternoon of 20 October after adjourning the proceedings in Haltwhistle for the day. On this occasion I was accompanied by Mr Bracken and Mr McErlane for NCC and several supporters of the Order together with Mr Lydiate and Mr Wilkie for the objectors. After having walked the majority of the route (the lower section having become quite overgrown and impassable), I accepted the invitation to view the route from the grounds of Melkridge Hall so as to put into context evidence provided by witnesses for the objectors. For this I was accompanied by Messrs Bracken and McErlane, Ms L Halbert and Mr Lydiate. At the close of the proceedings on 22 October, all parties present agreed there was no need for me to make a further visit to the site.
  8. The objectors criticised the decision-making process followed by NCC leading up to the making of the Order but these matters are not at issue here. The Order has been made and stands or falls on the basis of the evidence available, either in support or rebuttal. The argument centred on whether Melkridge Parish Council made a valid application to NCC for a definitive map modification order. However, it is acknowledged that the applicant did not serve notice on Mrs Halbert, the landowner, although NCC subsequently did so.
  9. Whilst NCC was nevertheless entitled to accept the application if it so chose, or to act upon the discovery of the evidence provided to it and make an order on its own initiative, the application was not compliant with the requirements of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act). This is the only aspect of this issue that is relevant here since the validity of the application could potentially affect the future status of the Order route<sup>2</sup>.

### **The Main Issues**

10. The case in support of the Order is based primarily on the presumed dedication of a public right of way under statute, the requirements of which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this to have occurred, there must have been use of the claimed route by the public, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated as a public right of way of the appropriate status depending on the type of user. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public; if not, a public right of way of the relevant status will be deemed to subsist.
11. The main issue here is whether the evidence shows that in the past the Order route has been used in such a way that a public highway for vehicles can be

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<sup>2</sup> Sub-section 67(3) provides for the rights of the public to drive mechanically propelled vehicles to be saved from extinguishment under sub-section 67(1) of the Natural Environment and Rural Communities Act 2006 where a valid application was made.

presumed to have been established. If so, it is not disputed that the rights of the public to use it with mechanically propelled vehicles (MPVs) has been extinguished as a result of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) so that the appropriate categorisation for the road now would be 'restricted byway'.

12. Since the Order was made under the 1981 Act on the basis of an event specified in Sections 53(3)(c)(i), if I am to confirm it I must be satisfied that evidence has been discovered which shows, on a balance of probability, that the public rights intended to be recorded do subsist. Whilst the evidence need only be sufficient to *reasonably allege* the existence of a public right of way to justify an order being made, the standard of proof required to warrant confirmation is higher. At this stage, evidence is required which shows, *on the balance of probability*, that a right of way subsists along the order route if the order is to be confirmed.
13. Although the case was not argued on the basis of common law, I explained at the inquiry that, if not satisfied the requirements for dedication under statute have been met, I may consider such an approach in the alternative. For this I will need to consider whether, during any relevant period, the owner(s) of the land in question had the capacity to dedicate a public right of way; whether there was express or implied dedication by the owner(s), and whether there is evidence of acceptance of the claimed right by the public.
14. I note also that Section 32 of the 1980 Act allows "*any map, plan or history of the locality or other relevant document*" to be taken into consideration when deciding whether or not a way has been dedicated as a highway.

### **Reasons**

15. Although the case in support of this Order rests primarily on the evidence of use by the several claimants, I shall start by considering the historical evidence that has been discovered in relation to the claimed right of way (referred to locally as 'the lonnen') so as to put that use into context.

### ***Historical documentary evidence***

#### *Early mapping records*

16. Firstly, it is important to note that the present A69 trunk road was not in place until the middle of the twentieth century and that the user evidence dates back (just) to before the village was split into two parts, the greater part of Melkridge now lying south of this busy road. The present U7070 previously formed the main road running east-west through the Tyne valley, once a part of the turnpike road between Newcastle, Haltwhistle and Carlisle.
17. The earliest document available was the Inclosure Award for Melkridge dated 1787. Although I have seen only an extract from the accompanying map, it was not disputed that the Order route formed part of the road shown leading to a collection of buildings (now High Town) and it was not suggested this was set out by the Inclosure Commissioners as having any public status.
18. This same road was shown leading to High Town by commercial mapmakers Fryer in 1820 and Greenwood in 1828 and, although the majority of the track lay outside the land of interest, the 1829 Carlisle to Newcastle Railway Plan showed a small building at the start of the track that led northwards to High Town.

19. This building is also shown on the 1846 Tithe Award map but no track to High Town is depicted. No schedule was submitted to accompany this map and its value is limited but I note that, whilst the colours have faded, it is clear that the land on which Melkridge Hall now stands and the High Town complex were in different ownership, broadly divided by the burn.
20. The 1865 Ordnance Survey (OS) 25":1 mile coloured map shows the road to High Town with the same sienna colouring as other roads in the village suggesting that it was of a similar character, yet this does not necessarily indicate it had the same legal status. In fact the accompanying OS Book of Reference notes the track as part of land parcel 253 and describes this as "Houses, yards, gardens, etc", unlike the road to the ford (leading south from the U7070 near point B) which is noted as "Public Road". On the map I note the building at the southern end of the Order route is clearly marked and linked with what is now the grounds of Melkridge Hall, and immediately on its west side is a line across the High Town track which I interpret as representing a gate.
21. On the 1898 revision, the OS showed a similar picture with the building at the end of the lane but this time with no gate across, and by 1925, according to the OS 6": 1 mile map<sup>3</sup>, little had changed in the vicinity of the Order route.
22. The potential of the records from the 1910 Finance Act has not been fully explored but an extract from the relevant Inland Revenue Valuation Plan<sup>4</sup> appears to exclude the Order route. However the copy is slightly blurred and the full extent of the road is not shown; neither have the corresponding written records been researched. Consequently I can give this relatively little weight.
23. Before moving on to consider other records from the twentieth century I will note here my conclusion so far is that this route originated as a road to High Town. There is the possibility that it extended beyond that (as submitted by Mrs Anson) but the evidence to support this is sketchy. Most importantly I have found little evidence of any substance to indicate the way was an early public road.

#### *Twentieth century records*

24. Extracts from the minutes of Melkridge Parish Council meetings show that on 7 Feb 1934 its members compiled a list of public rights of way that was to be forwarded to the Rural District Council. Although the record does not explicitly refer to the Rights of Way Act 1932, I presume this to be the reason for the record. Whilst the Parish Council noted a "Bridle Road – County Main Road (Hightown Lodge) to ford (Unthank)" (now Bridleway 532/032 leading to the ford) and several others, it did not record the Order route.
25. In fact when a similar schedule was compiled under the National Parks and Access to the Countryside Act of 1949 for inclusion in the first definitive map and statement, the minutes of the meeting on 20 June 1951 similarly list several public rights of way in Melkridge but not the route now at issue.
26. In the intervening period, plans for the improvement of the Carlisle-Sunderland Trunk Road (A69) had been published. The Compulsory Purchase Order of 1939 (the CPO) included a map which showed the proposed new road passing through the parish on its (now) present line, identifying the parcels of land to be

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<sup>3</sup> NCC provided extracts only from the 6" maps which are not as informative as the 25" series.

<sup>4</sup> Provided by the British Horse Society from its archive research

- acquired. Where the road cut across the Order route, this was described in the accompanying schedule as "Part of private road to High Town" and was noted to be in the ownership of Mr R A Teasdale.
27. According to the minutes, at its meeting on 29 March 1939, the Parish Council considered the proposed exchange of village green land (to be lost as a result of the new road) for "a plot of land west of Melkridge House". This became known as "the playing field" and later the "Millennium Field" and lies immediately to the west of the Order route.
28. These additional records are all consistent with my earlier finding that the route now in question most probably began as a private road<sup>5</sup> to High Town which appears to have been in single ownership at the time of the CPO in 1939. It is not until the new road altered the situation significantly<sup>6</sup> that things changed as far as private interests were concerned as well as for the public.
29. The objectors have provided details of two conveyances: one from 11 March 1946 and a second from 31 August 1959. In the first, land comprising the Order route between points A and B together with the building and garden plot at its southern end (named as Melkridge Cottage) was sold<sup>7</sup> to the then owners of Melkridge House (later Hall). In the second, both Melkridge Hall and the land transferred in 1946 were sold to Mr and Mrs Halbert<sup>8</sup>.
30. Moving on to more recent times, I have been provided with extracts from the minutes of three further Parish Council meetings, this time dating from the 1990s.
31. On 9 September 1992 the minutes recorded (under AOB): "A discussion followed on the Northumberland National Park Definitive Map and why the footpath between the A69 and U7070 (Playing Field-Melkridge Hall) had been removed." Although I understand Mr Stuart Halbert had retired from the Parish Council by this date, the minutes record a Mr R Halbert<sup>9</sup> being present.
32. For the objectors, Ms Stockley submitted that this was a reference to a path through the Millennium Field, exiting via a stile<sup>10</sup> in the fence onto the A69, and Mrs Reed did not disagree. However I do not read it in that way. If it had referred to a path through the playing field there would be no need to mention Melkridge Hall at all. I interpret it as meaning a footpath running *between* the playing field and Melkridge Hall, in other words the Order route.
33. However there is no other information before me to enable me to understand what became of the observation that this path was not shown on the definitive map. Although I might deduce that with Mr Stuart Halbert's nephew present,

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<sup>5</sup> I have noted that Mr Oliver said he first used it in 1938 when road works commenced. Also, claimant Mr Ward refers to this being a public path from High Town to the river and that he used it from 1942 onwards to walk to school. However there is no evidence from this period to support public use on foot before the time of the CPO.

<sup>6</sup> I heard from Mr Oliver that construction of the road began in 1938 but works were not completed until the end of the 1940s. Mr Bainbridge recalled this being 1949.

<sup>7</sup> It appears to have been sold to the vendors in June 1940 by Mr Teasdale's executors.

<sup>8</sup> A clause in this conveyance conditions the sale "Subject as to the property secondly heretofore described" (the lane and cottage) "to the exceptions and reservations contained or referred to in a Deed of Enfranchisement dated the Thirtieth day of September One thousand eight hundred and seventy nine and made between Sir Edward Blackett Baronet and Edward Blackett of the one part and Robert Elliott of the other part AND SUBJECT as to such proportion of the property secondly hereinbefore described as was formerly part of Melkridge Common to all such reservations and exceptions as were reserved and excepted on the division of the said common". At the inquiry none of the parties could provide any information about this deed or its implications (if any) for the Order route.

<sup>9</sup> I understand this was Mr Robin Halbert, nephew of Mr Stuart Halbert, who then lived at High Town.

<sup>10</sup> Ms L Halbert recalled this stile being in place until the 1990s when new fencing was erected around the field.

any dissent over the recording of the lonnen might have been voiced at the time and therefore would have been minuted, without evidence from Mr Robin Halbert himself, I hesitate to make any such assumption.

34. In summary I find little evidence amongst these records to support the existence of a public right of way along the Order route but nothing that is inconsistent with such a conclusion.

### ***The case for statutory dedication***

35. The Order was made primarily on the basis of statutory dedication. I will therefore next examine the evidence in relation to Section 31 of the 1980 Act. The first matter to be established is when the public's rights were brought into question.

#### *Bringing into question*

36. Although earlier events also need to be considered, it is not disputed that the status of the Order route was brought into question on 15 March 2013 when, on behalf of Mrs M Halbert, Mr Lydiate arranged for contractors to dig a trench across the lane in two places with high-visibility plastic mesh fencing and warning notices to prevent access, and soon afterwards (on 5 April) installed two gates across the way. These lie close to the points marked A and B on the Order map.
37. There is little doubt that this action came to the attention of users of the route since it is reported that a crowd of concerned onlookers gathered when the trenches were being dug. Indeed this appears to have provoked an immediate response from the Parish Council as on 19 March the Chairman wrote to NCC requesting it record the Order route on the definitive map as a byway, enclosing user evidence forms from 35 people together with a form intended to act as an application for a definitive map modification order<sup>11</sup>.
38. For the purposes of Section 31 of the 1980 Act I will therefore need to consider use by the public during the twenty year period March 1993 - March 2013.
39. For the objectors, Ms Stockley submitted that this was not the first time that passage along the route had been prevented. Direct evidence was offered to the inquiry by Louise Halbert, Gary Lydiate, Stuart Wilkie, Michelle Brown, Paul Robbie, Ernest Bainbridge and Gordon Dixon to the effect that all understood the late Mr Stuart Halbert was in the habit of engaging staff from his 'Kilfrost' factory in Haltwhistle to barricade the route in the summer on an annual basis so that no public right of way would be established.
40. Ms L Halbert recalled her father had initially put a chain across in the gateway near point A in the 1960s after the old gate had been stolen. Although she said she had seen the barriers, consisting of drums and planks<sup>12</sup>, "nearly every year" since the 1960s, there had been periods in the past where she had been either living or working away from Melkridge Hall. However in the 1990s she had been mostly in Melkridge.
41. When visiting Melkridge Hall in 1997, Mr Lydiate recalled having seen this barrier, constructed of blue 'Kilfrost' drums and scaffolding planks. Whilst using the

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<sup>11</sup> In fact the form used was that prescribed for the service of notice on landowners affected by the route, not the application form as detailed in Schedule 14 of the 1981 Act (Paragraph 9 above refers).

<sup>12</sup> I was shown the drums and planks stored in outbuildings during my site inspection on 20 October 2015.

bridleway from the U7070 to the ford, Mr Robbie saw the barrier once, sometime between 1996 and 2001 (although it is accepted that these annual closures probably last occurred in 1997<sup>13</sup>) and Ms Brown saw it once in 1996 or 1997.

42. In addressing the 'bringing into question' issue, I was directed by Mr Bracken (for NCC) to the summary by Dyson J in the case *R v SSETR ex parte Dorset County Council [1999]* where he said:

*"Whatever means are employed to bring a claimed right into question they must be sufficient at least to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway."*

43. In the more recent High Court case of *R (on the application of Godmanchester and Drain) v SSEFRA [2007] UKHL 28* (the *Godmanchester* case) at paragraph 19 Lord Hoffman repeated the words of Denning LJ in *Fairey v Southampton County Council [1956]*<sup>14</sup>:

*"I think that in order for the right of the public to have been 'brought into question', the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that they may be apprised of the challenge and have a reasonable opportunity of meeting it. The landowner can challenge their right, for instance, by putting a barrier across the path or putting up a notice forbidding the public to use the path. When he does so, the public may meet the challenge. Some village Hampden may push down the barrier or tear down the notice: the local council may bring an action in the name of the Attorney-General against the landowner in the courts claiming that there is a public right of way: or no one may do anything, in which case the acquiescence of the public tends to show that they have no right of way.*

*But whatever the public do, whether they oppose the landowner's action or not, their right is 'brought into question' as soon as the landowner puts up a notice or in some other way makes it clear to the public that he is challenging their right to use the way."*

44. I accept that Mr Halbert arranged for a barrier or barriers to be positioned temporarily across the lonnen on various occasions until 1997. It is not disputed that these were constructed of drums and planks by employees of his. I accept that it was Mr Halbert's practice to do this on an annual basis although there are no witnesses other than family members who can confirm having seen the barriers in place on any occasion other than in 1997 (or possibly 1996). I must conclude that his actions *could* have been sufficient to make clear to local users that he was challenging their right to use it by denying them access. However there is no evidence that this was actually the case.
45. None of the 44 claimants were ever aware of these blockages taking place. It is *possible* that other users came across the barriers but there is no evidence of that, or of their reaction to the obstructions if they did. I have before me no firm evidence of how long the drums and planks were left in place (although Ms L Halbert thought it was probably over a weekend). I have no evidence from anyone who actually constructed them or dismantled them, or of whether anyone 'pushed down the barrier' (as contemplated by Lord Denning). Further, the

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<sup>13</sup> I understand Mr S Halbert died in July 1998. Ms L Halbert recalled these closures normally took place around August time, during a quiet period at the factory when workers were available to construct the barricades. Ms J Halbert stated she thought it was in spring/summer.

<sup>14</sup> *Fairey v Southampton County Council (QBD)[1956] 1 All ER 419, (CA) [1956] 2 QB 439*

- evidence from those who witnessed them in place did not come from *users* of the lonnen. Indeed Mr Lydiate, Mr Robbie and Ms Brown all said they had to ask others what the purpose of the barrier was because they did not understand its significance. Indeed an obviously temporary blockage of this nature would not necessarily send a clear and unambiguous message to a regular user without further explanation. No evidence was presented of Mr Halbert attaching notices to these barriers which might have made clear his reasons for the closure.
46. Consequently I am led to the conclusion that Mr Halbert's actions in, and possibly prior to, 1997 could quite clearly have brought into question the public's rights along the lonnen in the exact same way as Mr Lydiate's trenches did in 2013, but whereas the latter provoked an immediate reaction, the drums and planks never did. On the basis of the facts before me I conclude that the Order route was not brought into question by the annual barriers instigated by the late Mr Halbert.
47. Ms L Halbert also recalled serious subsidence occurring in the early 1970s at the top of the lonnen in the area where High Town Burn flows through a long culvert beneath the A69 and under the garden of Melkridge Hall. Before this deep hole had been filled in with builders' rubble on the instructions of her father, she recalled the lonnen being closed off with drums and planks for several weeks. Although none of the other claimants recalled this event preventing use of the lonnen, Mrs Brooks did remember this subsidence and that the way had to be blocked until the problem was resolved. However, I am not inclined to find this had brought into question the status of the way since in such circumstances any users would naturally regard fencing around an obvious danger to be a temporary precaution rather than a challenge to their right to use the way.
48. Other evidence from users of the route refers to a much earlier occasion where passage was blocked. On his evidence form Mr Grant wrote: "My father told me Major Chandler<sup>15</sup> tried to close it in (the) 30s but failed. The Council sorted it out." Mr Teasdale recalled the same challenge but at different time, stating "Chandlers tried in (the) 1940s after A69 was completed when they owned the Hall. No-one took any notice." Mr Ward's parents had been tenants of the Challoners, living in the cottage next to the gate near point B; he recalled that "Major Chandler of Melkridge House locked the gate between 1948 and 1950" but "Constable Adam Gray informed (the) Major not to lock the gate".
49. Since ownership of the lonnen did not transfer to the Challoners until 1946, it seems to me that the period referred to by Mr Ward is probably the most accurate. However it is clear from all three statements that the Challoners' challenge was ignored by local people and that use continued thereafter. Although I cannot establish an exact date when the Major blocked the route, it seems clear that his action brought into question the extent of the public's rights over the lane and that I should examine use over the preceding twenty year period as a consequence. Yet it is equally plain that before the new A69 came into being, the Order route could not have been used in the same way. Therefore I do not propose to address the question of presumed dedication under statute during this early period.
50. There is one other possibility I note and that is on the evidence form completed by Mrs Smith. In 2013 she wrote that she had heard that some people had been challenged but could not give an exact date although she guessed it was in 2012.

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<sup>15</sup> [Sic] I take this to be a reference to Major Challoner.



With no other details of who, when or where this incident(s) took place, I cannot conclude this was sufficient to call into question the status of the Order route.

51. I have also noted the minutes of the Parish Council meeting on 10 December 2012 where it is recorded that, in response to notification from NCC that "the residents of Melkridge Hall wish to register an area of land south of Melkridge Hall with the Land Registry", the Clerk was requested to "seek clarification of (*whether*) the lane/lonnen adjacent to Melkridge Hall is a Public Right of Way".
52. From the papers provided it is apparent that the relationship between the Parish Council and the Halbert family deteriorated from here. It is not necessary for me to address the reasons the Halberts were seeking registration of the triangle of land immediately to the east of point B (although Mr Lydiate gave a full explanation to the inquiry), but it seems clear that once the Parish Council learnt that the lonnen was not recorded on the definitive map and statement, it began to gather statements from users. The exact date that occurred has not been established although an examination of the dates on the user evidence forms leads me to conclude this was probably around the beginning of March 2013. Whilst this might move the date of 'bringing into question' forward by a couple of weeks at most, I regard this as part of the same event: the proposal to register 'the triangle', the question over the recording of the lonnen, the discovery it was not on the definitive map, the collection of user evidence forms, the notices and high-viz mesh surrounding the trenches dug across the lonnen, followed by the installation and locking of two gates near points A and B.
53. In summary, I conclude that the status of the Order route was brought into question in March 2013 so will examine the claimed use by the public during the preceding twenty year period, 1993-2013.

*Evidence of use by the public 1993-2013*

54. If a presumption of dedication is to be raised, qualifying use by the public during the relevant period must be shown to have been actually enjoyed as of right, without interruption, and to have continued throughout the full twenty years. Use 'as of right' is interpreted as being use by the public that is not by force, does not take place in secret and is not on the basis of 'permission'.
55. The objectors criticised NCC's approach to the user evidence. Ms Stockley highlighted the fact that the Council had not undertaken any structured analysis of the statements provided by the claimants nor conducted interviews with anyone before it decided to make the Order. Consequently she submitted that only limited weight should be attributed to the conclusions on which NCC based its decision and that I should not rely too heavily on user evidence which has not been thoroughly investigated.
56. The point is noted. However in the process of determining the Order I myself have needed to examine, and in due course weigh, each piece of evidence and have therefore undertaken my own analysis of the information provided to me. Whilst that does include the reports considered by NCC in advance of its decision to make the Order, I also take full account of all the written material prepared for and submitted to the inquiry and to the evidence given verbally at the event.
57. In support of the claimed route I have before me evidence of use from a total of 44 people. Whilst all completed written user evidence forms, in some cases attaching additional letters, seven people prepared further statements for the

- inquiry and attended the event to give evidence in person. All submitted to cross-examination and answered all questions put to them.
58. The periods of use claimed vary greatly, the earliest dating back to 1938<sup>16</sup>. Whilst a great deal of the regular use recalled by some claimants relates to earlier times, it is important here to focus only on the relevant period.
59. Before considering the essential question as to whether the quantity of use demonstrated by the claimants is sufficient to raise a presumption of dedication, I shall address other aspects of the claimed use first.
60. I note that until 2013 there is no evidence of notices being erected along the Order route at any time to advise the public whether they could (or could not) use the lonnen, with or without permission. There had been a 'No Parking' type of notice attached to the wall beside the triangle<sup>17</sup> but it was not argued that this had at any time been intended to apply to the Order route.
61. There is no reference in any of the evidence before me to any barriers or other obstructions along the way, other than those I have already mentioned: the challenges tried (unsuccessfully) by Major Challoner in the late 1940s, the barricades initiated by Mr Halbert from the 1960s to 1997 (which I shall address further) and the temporary subsidence in the early 1970s (which may have prevented use of the lonnen for around 6 months).
62. Although many of the Halbert family members and visitors who have provided statements say they rarely saw people using the lonnen, it is not suggested that those who did so were in any way attempting to use it secretly.
63. Neither was it argued that any of those people claiming to have used the lonnen after the new A69 was constructed (and after Mr Challoner acquired the land in 1946) were doing so on the basis of any retained private right of way to or from High Town.

#### *Permission*

64. I have noted the evidence of Mr Dixon, a friend of the Halbert family who recalled a conversation with Mr Stuart Halbert, sometime between 1994 and 1998, in which the latter referred to his practice of blocking the lonnen at regular intervals. Mr Dixon recalled Mr Halbert explaining that when he bought the property, he had an agreement with a farmer to the north that he could come through, but other people used it so he needed to block it off occasionally to prevent the acquisition of any rights.
65. This sounds very plausible and I accept this probably summarises Mr Halbert's approach to the use he knew was being made of the route. However there is no evidence to confirm *which* farmer was being referred to here. The most likely candidate may be Mr Smith-Jackson who farms at High Town (or his predecessor), yet at the inquiry he confirmed that he had no private right of way along the lane nor any agreement to permit his usage.
66. In fact I have evidence before me from 16 people who say they used the lonnen either to move stock, for other agricultural purposes or to visit farms or farm land on both sides of the A69. Ms Stockley submitted that, on the basis of Mr Dixon's

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<sup>16</sup> Mr Oliver stated he first used the route in 1938 and in her written evidence Mrs Little claims use back to 1939.

<sup>17</sup> Mrs Drake recalled this was erected in 2009

- conversation with Mr Halbert, I should accept that express permission was given to a farmer and therefore I should regard all the claimed use that potentially falls into this category as being 'with permission'; consequently I should discount it. However I consider this would go far beyond matters that can reasonably be deduced from an exchange between friends recalled from twenty years distance. Without confirmation of which farmer had a verbal agreement with Mr Halbert, I am not prepared to dismiss the use claimed by people who *might* have relied on that agreement; indeed it may have been with none of them.
67. Ms Stockley also argued that other use should also be dismissed on the basis of being with express or implied permission and therefore not 'as of right'. This consists of all use of the Order route by claimants to access the Millennium Field (and previously the playing field) from the field gate off the lonnen.
68. The exact date on which a gate at this point was first installed is not known. I heard from Mr Oliver that at a Parish Council meeting in the late 1960s or early 1970s Mr Halbert had suggested that a gate be installed at this point to enable access for maintenance of the playing field, for hay cutting and also for an ice cream van on village fete days. It also allowed access for ponies to the jumps set out on the field. With both men being on the Parish Council at the time, Mr Oliver said he knew Mr Halbert quite well and that subsequently Mr Oliver had helped to install the gate suggested by Mr Halbert. The stone wall beside the lonnen had fallen down and so it was re-built with gate posts and a gate. Indeed a wooden gate is clearly visible on the aerial photograph of 1973. This is not the off-set gate that exists at present; it seems more likely that this was installed around 1998 as part of village improvements undertaken at that time, as noted in the Parish Council Minutes of 2 March and 7 September 1998.
69. Mrs Reed endorsed most of Mr Oliver's recollections in relation to the period after she joined the Parish Council in 1978 and his evidence was consistent with her understanding that the gate was instigated by Mr Halbert and put in to improve access to the field, essentially for Parish Council business.
70. Ms Stockley argued that this was tantamount to the giving of permission to all users who chose to enter the Millennium Field by that route. If Mr Halbert had indicated at a Parish Council meeting that the gate was specifically for the purpose of Parish Council business, she submitted that was effectively giving permission. There may be no evidence in writing but that is not necessary. If Mr Halbert gave permission for people to use the gate, then he was also giving permission for people to get to the gate.
71. Mrs Reed confirmed that no agreement had ever been drawn up in relation to access to the field gate. She said the assumption had been that it was always accessible and until 2013 it had been. Mr Oliver described the arrangement as 'a gentleman's agreement' which, again, Ms Stockley interpreted as akin to giving 'permission'. Consequently she submitted that all the claimed use from people who used the lonnen to enter the field through this gate should be discounted.
72. I agree with Ms Stockley that it is not necessary for permission to be given in writing but the difficulty in having no written record of Mr Halbert's intention is that the extent of any permission granted verbally by him is uncertain.
73. Having heard Mrs Reed and Mr Oliver's recollections of conversations at Parish Council meetings, I can accept the gate was suggested by Mr Halbert and that it was to facilitate access for management of the field. If it had been intended that

use be restricted only to 'official' Parish Council business, then it would have been easy to keep the gate locked, yet there is no evidence it ever was.

74. In the absence of any formal agreement or Council minute, I deduce that Mr Halbert had a relaxed attitude to the arrangement. Yet even if the 'gentleman's agreement' were to have taken the form of permission to use the gate for maintenance purposes, I do not accept that use of the gate by the public for recreation, inevitably using the Order route to reach it, is automatically covered by that same verbal permission. There is no evidence it was intended to and I therefore decline to discount use of the Order route where the claimant used it to gain access to the field via the gate off the lonnen.
75. Having found no other evidence to indicate that permission was expressly or impliedly given to any of the 44 claimants<sup>18</sup>, I conclude that use of the lonnen by the public was 'as of right'.

### *Interruption*

76. Turning to the question of whether the use was uninterrupted during the relevant twenty years, I obviously discount the temporary closure due to subsidence during the early 1970s and Mr Challoner's interventions in the 1940s. The issue is centred on the effect of Mr Halbert's temporary barricades.
77. In her evidence to the inquiry Ms L Halbert said she did not recall seeing the barrier every year but saw it "quite a lot in the 1970s and 1980s" and until her father died. She was more aware of the blockage at the northern end as she drove to work in Carlisle on a daily basis via the A69 in the 1980s. In the 1990s she was at Melkridge Hall "off and on" until she moved into the cottage beside the Hall in 1996.
78. It does not appear to be disputed that the last time the barrier would have been in place is the summer of 1997 when it was seen by Mr Lydiate. This may be the same barrier seen by Mr Robbie and Ms Brown in either 1996 or 1997, as described to Mr Bainbridge by Mrs M Halbert in 1997, and possibly the same as that described to Mr Dixon on his visit between 1994 and 1997.
79. I accept that the drums and planks were put in place in 1997. They may also have been there in 1993, 1994, 1995 and 1996 but there is insufficient evidence to support this for me to be confident the blockage appeared on more than one occasion during the relevant twenty year period. Further, there is no evidence of how long the barrier was left in situ before being dismantled other than Ms Halbert's vague recollection that it was probably left over a weekend. Neither is there any information about whether the barrier was taken down or pushed over by any member of the public trying to assert a right to use the lonnen.
80. The fact is that there is no evidence that use by the claimants was actually interrupted at any time during the relevant period; not even those few who used it on a reasonably regular basis came across this barrier. Therefore, whilst it was clearly capable of causing an interruption in the otherwise continuous use by local people, being present only for a relatively short period, there is no evidence is actually did so.

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<sup>18</sup> However I do discount the evidence of Mr Bell when he was using the lane to deliver milk to Melkridge Hall but this was long before the period relevant here.

### *Sufficiency*

81. The final question to be answered in order to establish whether a presumption of dedication arises is whether or not public enjoyment of the Order route continued to a sufficient degree throughout the twenty years between 1993 and 2013.
82. Of those who gave evidence in person, only two witnesses, Mr Smith-Jackson and Mrs Brooks, had used this route throughout the whole twenty years.
83. Mr Smith-Jackson used it on a very regular basis, on foot, with a tractor<sup>19</sup> and a quad bike. As a farmer he used the lonnen mostly during the summer months to reach his fields south of the A69 and to check on cattle, usually 2 to 3 times per week and sometimes daily. He spoke also of his wife's use and their two daughters who used the route to go to the bus stop in the early 1990s. He had never once known the lonnen to be blocked until 2013.
84. Ms Stockley sought to cast doubt on the reliability of Mr Smith-Jackson's evidence since he had not mentioned his family's use on foot on his initial evidence form, he thought the lonnen was of a similar width along its full length when it varies, and he recalled the fencing panels along the edge of the Melkridge Hall garden had appeared in 2013 when they were actually installed in stages from the late 1990s onwards. However I found him to be a very credible witness and consequently place significant weight on his evidence.
85. Like Mr Smith-Jackson, Mrs Brooks had been using the lonnen long before 1993 but during the relevant 20 years she rode it on horseback, at least 10-12 times per year. This was because, like many other people, she found crossing the A69 just north of point A far safer than using the staggered road junction to the east. She had also taken her pony through the gate into the playing field from the lonnen to make use of the jumps in there. In response to questioning, Mrs Brooks gave robust answers and I found her evidence very sound although the frequency of her use was not high.
86. For the purposes of my analysis here, I need to set aside the evidence of both Mr Oliver and Mr Bell since neither witness was using the Order route with any regularity during the relevant period.
87. Of the other three claimants giving evidence verbally, Mrs Reed's use was mostly on horseback, 6 or 7 times per year, but ceased in 1998 other than on foot for Parish Council business; Mrs Anson began using the route in 2002 on foot, at least 26 times a year, mostly for dog-walking, and this continued until 2013, and whilst Mrs Drake did use it occasionally during the early part of the period whilst she lived two miles away in Tow House, after moving back to High Town in 2002 she walked her dog very regularly along the lonnen, often daily until it was blocked in 2013. Although Ms Stockley again highlighted shortcomings in Mrs Drake's recollection of details of the route, I have little doubt that she did use the lonnen as stated.
88. For the objectors, Ms Stockley submitted that the evidence of these witnesses alone would fall well short of being sufficient to demonstrate use by the public so as to raise a presumption of dedication of a right of way. Whilst I do place

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<sup>19</sup> A question arose as to whether his tractor, a Massey Ferguson 35X, could have driven through the gateway near point B which was measured at 3.05 metres wide. When Mr Bracken produced a specification for this model which showed it to be 1.62m wide, Ms Stockley accepted that the vehicle could indeed have used the Order route.

- significant weight on the evidence of these five witnesses, I am inclined to agree that this alone would not be enough to tip the balance on the sufficiency scales.
89. However that is not the sum total of the user evidence. There are an additional 37 claimants offering written evidence that also needs to be considered.
90. Almost all these people have used the route on foot at some time or other. In addition to Mrs Anson and Mrs Drake, I have counted 16 people who claimed to have (only) walked along the lonnen; 8 did so during all twenty years and the remaining 8 for lesser periods but spread evenly throughout. Most of this use was for dog-walking or general recreational walks but some did use it to access the playing field/Millennium Field through the gate off the lonnen. Whilst the frequency of use for some amounted to only a handful of times a year (for example Rendall, Richardson, J Currie), several others used it at least fortnightly (G Curry, Batey, Burville), some averaging weekly visits (Hington, Hibbott, Wilson) and one (almost) daily (Hewitson).
91. Turning to those using the route on horseback, in addition to Mrs Brooks and Mrs Reed, I have noted five others who did so. Three of these people rode it throughout all twenty years and one ceased in 1995 (Rogers), the other in 1996 (Grisedale). The regularity of this use was generally low, amounting to around once a month. However one claimant indicates daily use (Heslop) although she also used the route on her bicycle. In fact cyclists appear to have been relatively few with evidence from only two other cyclists during this period.
92. There is no question that use for agricultural purposes has declined, with the movement of cattle along the lonnen becoming impractical as the A69 has become busier with fast traffic. Nevertheless, during the relevant twenty years, in addition to Mr and Mrs Smith-Jackson, there is evidence from 11 others who have driven vehicles (including tractors, 4x4s and quad bikes) along the lonnen throughout the whole period and two others whose use ceased in 1995 (Teasdale) and 1996 (Grisedale). As might be expected with farming use, the frequency of trips was seasonal depending on the activities being undertaken. Some claimants indicate journeys around once a week, fortnight or month whilst others visited as much as twice daily at certain times to check on stock.
93. It is true that the greatest weight must be attributed to evidence given in person and cross-examined at the inquiry and less to written evidence that has not been tested in the same way. The user evidence forms clearly provide more limited information and their value will be reduced further where the details given are inconsistent with other more reliable evidence.
94. Ms Stockley drew attention to several issues which she argued reduced the reliability of this written evidence and thus the weight I should place on the forms completed by claimants.
95. Firstly she questioned the extent to which each form was the true evidence of each individual claimant. Cross-examination at the inquiry revealed that certain details on many forms were inserted by Mrs Brooks before being handed over to the claimant for completion. These included the District (Tynedale) and Parish (Melkridge), the 'Believed status of path' to which the answer inserted was "Unknown – BOAT?" or variations thereon; the grid references for the start and end of the route together with the description "Vehicular track", and in answer to question 2 the width of the path is stated to be "15 feet".

96. Having examined all the user evidence forms, I can see that most have been completed in this way but not all. Each claimant would have had the opportunity to strike out these details had they not supported them yet none did so. It is not suggested that any of the information provided by Mrs Brooks was prejudicial although Ms Stockley queried the accuracy of the width given.
97. I accept that pre-populating user evidence forms with other than indisputable matters of fact (such as District, Parish and, in most circumstances, grid references) will not undermine the value of the evidence. I consider the 'believed status' as stated here does little to devalue the information given on each form, and in this particular case I see this more as a missed opportunity to test the recollection of the claimant than any attempt to falsify or suppress the truth. In fact the Order route follows an enclosed track with a width that has remained constant for well over a century and can easily be measured. I am told the standard response given ("15 feet" or 4.57m) reflects the measurement taken by Mrs Brooks at the southern end and is in fact the width recorded in the Order Schedule.
98. Ms Stockley pointed to 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, suggesting that this cast doubt on the accuracy of the information given and was in conflict with the evidence of Ms L Halbert.
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.
100. However, Ms Stockley pointed out that the evidence forms gathered by the Parish Council were only completed by people who claimed to have used the route and therefore do not represent the full picture. In her submission, I must balance against the claimant's evidence the statements from others who say that use was nowhere near the level claimed, or that in fact there was little or no use at all.
101. I fully recognise the point made, although I am only able to reach a conclusion on the evidence that is put before me, not on evidence that may be suspected to exist but has not been submitted. Nevertheless, I have examined carefully the evidence provided by the objectors, both by the 7 witnesses who spoke, and were cross-examined, at the inquiry and the additional 5 people who submitted written statements.
102. Ms L Halbert spoke of rarely seeing people using the Order route. She had resided at the cottage at Melkridge Hall since 1996 but during the early 1990s had been a regular visitor. As a keen gardener, she spent a great deal of time in the garden and would have known if there had been any material use of the lonnen. She had never seen dog-walkers, horse riders or cyclists but saw a quad bike once and was aware of tractor use (because one could hear vehicles) but even this use fell away and ceased before the gates were erected in 2013.
103. In her written statement, Ms Halbert explained that the duties of the family's gardener (which for the last 25 years or so has been Mr Elliott) included tidying the lonnen and removing brambles and rubbish. He did this 2 or 3 times per

- year. At the inquiry she confirmed that Mr Elliott had continued to tidy the lonnen after Mr Halbert's death in 1998 although she was not sure why her mother had this continue. The lonnen was not used by the Halberts themselves and Ms Halbert confirmed that no other private rights of access exist along it.
104. Ms Brown had in fact walked the Order route herself although no more than 3 times during the 11 years she lived in the village (1993-2004) and only out of curiosity. Between 1996 and 2001 she worked for the Halberts, her duties including dog-walking. One of the regular routes had been walking down towards the river on the bridleway that starts near point B and she had used this same route with her own dog from around 1995/6 onwards. She returned to work for the family in 2004/5.
105. Ms Brown had on one occasion in 1996 or 1997 seen Mr Halbert supervising the construction of the annual barricade although she had not understood what was happening there until told later by a friend who worked at Mr Halbert's company, Kilfrost. She had not seen this barrier again and had never been aware of any similar construction at the A69 end.
106. However she had seen "so little activity either in the playing field or the lonnen for the majority of the time she worked for the Halberts" that she was shocked by the claim that it should be registered as a public right of way. Her recollection was that no-one, other than a couple of farmers on quad bikes, ever used it with any regularity but thought the Halbert family had "allowed anyone who wanted to use it (to) use it". This comment was made on the basis of an informal chat with Mrs Halbert although she could not recall when that had happened. At the time when the family had been troubled by poachers<sup>20</sup>, Ms Brown understood that Mrs Halbert was reluctant to block the lonnen with a gate as she didn't want to upset anyone.
107. Ms Brown's partner, Mr Robbie<sup>21</sup>, lived in Melkridge from 1995 to 2004 but still owns property in the village and drives past the end of the lonnen at least three times a week. He also cycled to Haltwhistle most weekends to collect a paper. During the time he lived in Melkridge, he was a regular dog-walker, following the bridleway to the river which he described as a popular walk with dog owners, recreational walkers and occasional horse riders. Mr Robbie had walked up the lonnen about 3 times in his life, once as a child in the 1970s and a couple of times out of curiosity. However he could not recall ever seeing anyone use the lonnen. He had however seen the same barrier spotted by Ms Brown in 1996 or 1997 and had to enquire of his friend what it was about. At the inquiry, he expressed doubts over the veracity of some of the claimants' evidence.
108. Mr Wilkie has been an employee of Kilfrost since 1985 and lived locally all that time. In the 1980s he also used to cut the grass first at Melkridge Hall and later at Whitchester Hall (the home of Mr Halbert's sisters). He was aware of Mr Halbert's practice of closing the lonnen once a year although he never saw the barrier in place. During the many occasions when he drove past the ends of the Order route during the relevant 20 years Mr Wilkie had never seen anyone using it but had, at most, seen tractors in the lonnen perhaps 6 times between 1985 and 1988 whilst working in the garden at Melkridge Hall.

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<sup>20</sup> Other evidence provided suggests this was around 2011/2.

<sup>21</sup> As the partner of an employee of the Halbert family, I do not regard Mr Robbie as a wholly independent witness although he stated he had never met Mr S Halbert and did not meet Mr Lydiate until the day of the inquiry.



109. Mr Lydiate confirmed that he did not visit Melkridge Hall until 1995. Although it had been his home since 1997, he had not been in permanent residence in Melkridge until more recently due to work commitments which had varied over the years. During this time he had seen only one person walking the Order route and once heard a quad bike using it but he had never seen a horse along the lonnen. Other than on one occasion in January 2012 when the family was disturbed by three armed men in the garden adjacent to the lonnen, he had never seen anyone use the route until the matter came to a head in early 2013.
110. Mr Dixon gave evidence of his occasional visits to the Halbert family but had never seen the lonnen. He was not able to offer any personal recollections as to its use, only what he had been told in a conversation with Mr Halbert sometime between 1994 and 1998. As noted above (at paragraph 64) it appears Mr Halbert was aware that people (other than the farmer with whom he had an agreement) used it so he needed to block it off occasionally.
111. Mr Bainbridge has provided taxi services to the Halberts for many years and is a family friend. He has driven past the ends of the lonnen countless times over the years and never seen anyone using it; in fact he had not been aware that it was a lane but believed it to be part of the Halbert's garden.
112. Turning next to those who made written statements but were unable to attend the inquiry, I have evidence from Mrs M Halbert, Ms J Halbert, Mr M Halbert, Mr N Stanley and Mr N Bennett.
113. Mrs M Halbert is the present owner of Melkridge Hall where she has lived with her family and her late husband since 1959. Although she was aware her husband took action to close the lonnen once a year to prevent the establishment of a right of way, she states she "cannot remember ever having seen someone, other than my family members, gardeners and Kilfrost employees, on the lonnen until the question as to whether it was as public right of way was raised at a Parish Council meeting on 10 December 2012".
114. Ms J Halbert<sup>22</sup> stated that since 2001 or thereabouts she had spent around a third of the year in Melkridge although she lives in London. Whilst at Melkridge Hall, she works from a first floor room that looks out towards the old playing field and towards the U7070 road. Throughout this period she says "the lonnen has hardly ever been used" and that she did not see many people going past. She has never seen horses or cyclists but noted occasionally seeing farm vehicles, a 3-wheeler quad bike with dogs on the back, people sometimes going into the old playing field and people parking at the bottom of the track although nothing like the amount of usage that has been claimed. The dog-walkers she sees all tend to turn down to the river rather than along the Order route. Nevertheless, she comments that "Everyone who has in fact used the track has (done) so with my mother's (and father's) permission".
115. Mr N Stanley moved to Melkridge in 2005 and is an employee of Kilfrost. He has used the Order route only once, to look at floods on the A69 in the summer of 2012. He passes the end of the lonnen 6 times a day during the week, including taking his dog to the Millennium Field at lunchtime, but has rarely seen anyone using it. He has noticed "Farmer Hall" on a quad bike on a number of occasions and a man who walks a black Labrador in summer. He has never seen

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<sup>22</sup> I understand Ms J Halbert had intended to give evidence but was unable to be present on the second day of the inquiry because Mrs M Halbert had been ill.

horses use it but says one of the two women in the village who have horses often leaves two horses in the Millennium Field for a couple of hours. From his knowledge, the use of the lonnen since 2005 has been very infrequent and only from a handful of people. Since the way has been blocked off by the gates, there has been little increase in use of the Millennium Field as might be expected if those who claimed to use the lonnen needed an alternative.

116. Mr N Bennett is an electrical contractor who has worked in the area for many years and never saw anyone using the lonnen. In February and March 2012<sup>23</sup> he worked in the grounds of Melkridge Hall installing CCTV after the Halbert family had experienced problems with poachers throwing animal carcasses and other rubbish over the garden wall. For approximately one month, Mr Bennett had been in the western part of the garden during which time the weather was cold but not wet. At that time, the garden boundary consisted of a waist-high wall (the fence panels<sup>24</sup> had not then been erected) so he had a clear view of the southern end of the lonnen. Whilst he saw others using the U7070 (including Mr Stanley walking his dog) he saw no one use the lonnen.
117. Mr M Halbert now lives in London but lived at Melkridge Hall until the 1980s and is now a frequent visitor. In his statement he makes no comment about the extent of usage of the lonnen during the relevant period (although he recalls "a tractor from time to time" as a boy).
118. The final issue raised by Ms Stockley in respect of the user evidence forms was her submission that these should attract less weight, particularly where the information provided was inconsistent with the oral evidence given by the objectors' witnesses.
119. The only two aspects of the evidence where I find there to be any conflict is firstly in relation to the annual blockages and secondly as regards the frequency of use claimed. Yet in both cases the positions presented by both supporters and objectors are not mutually exclusive. It is possible that none of the claimants actually encountered Mr Halbert's drums and planks. It is also possible that the level of use claimed did occur but was not seen by the objectors' witnesses. Whilst I do accept that written statements are less reliable than the evidence given verbally at the inquiry, I do not propose to disregard any of the user evidence forms from the claimants (or the written statements from some of the objectors' witnesses) when both could be telling the truth without being in conflict.
120. Summarising the objectors' position, Ms Stockley accepted that there may have been sporadic and very occasional use by individuals over the years but not to such an extent as to raise a presumption of dedication. She argued that there is no logical reason why the public should want to use it given the other routes available for crossing the A69. She conceded that some use may have occurred whilst the family were otherwise occupied but it is not for a landowner to monitor activity 24 hours a day. In her submission the question is whether the evidence shows the use was of a quality and degree such as to alert the landowner to the fact that use was taking place.

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<sup>23</sup> Although his statement says 2011, his detailed invoice indicates this was 2012.

<sup>24</sup> Some were erected at the A69 end sometime after 1998 but the panels at the southern end were not put in place until April 2013.

121. For NCC, Mr Bracken agreed it is established in case law that where a right is being acquired by prescription, the use must be of such a nature that it indicates to the landowner or, in the case of an absentee owner, to a reasonable owner that a right is being asserted. In support of his submission Mr Bracken relied on the case of *R (on the application of Lewis) v Redcar and Cleveland Borough Council [2010] UKSC 11* and I have no difficulty in accepting that principle.
122. Further, he referred to the case of *Hollins v Verney [1884] 13 QB 304* from which I have noted in particular the judgement of Lindley L J who stated:  
*"No user can be sufficient which does not raise a reasonable inference of such continuous enjoyment. Moreover, as the enjoyment which is pointed out by the statute (Prescription Act 1832) is an enjoyment which is open as well as of right, it seems to follow that no actual user can be sufficient to satisfy the statute, unless during the whole of the statutory term (whether acts of user be proved in each year or not) the user is enough at any rate to carry to the mind of a reasonable person who is in possession of the servient tenement, the fact that a continuous right to enjoyment is being asserted, and ought to be resisted if such right is not recognised, and if resistance to it is intended."*
123. The issue is not whether or not the landowner actually did know of the use that was taking place (although if he did, that would tend to confirm that the use was probably sufficient). The question is whether the nature of the use was sufficient to have alerted a reasonable landowner to the possibility of a right being established. That requires me to carry out the detailed analysis of the evidence I have set out above, looking at the numbers of users, the frequency of their use, the spread of use throughout the twenty year period and the type of user, that is whether on foot, on horseback or with a vehicle.
124. However it seems to me that I also need to take into account two important findings. Firstly, that I have concluded the evidence shows that Mr Halbert arranged for the lane to be blocked on at least one occasion between March 1993 and his death in July 1998. The only logical conclusion is that he was aware it was being used; indeed he said as much to Mr Dixon.
125. Secondly, that after his death, Mrs Halbert continued with the instruction to her gardener to clear the lonnen of brambles 2-3 times a year. When the route was not used by the Halbert family themselves, and no other private rights of access along the lane have been revealed, it is hard to conclude other than that this was because Mrs Halbert was aware that people used it, even though the statement she has signed says she saw no-one actually do so. This 'maintenance' might conceivably have been to accommodate the anonymous farmer with whom Mr Halbert had said he had an agreement, but since none of the family appears to have known of this arrangement, I find this explanation unlikely. It could have been solely to provide access to the Millennium Field for Parish Council business but that would not have necessitated clearance of the whole lane. I regard Ms Halbert's suggestion that her mother simply wanted to keep it tidy as guesswork, and note the impression gained by Ms Brown that Mrs Halbert was reluctant to gate the lonnen because 'she didn't want to upset anyone'.
126. The photograph taken by Mrs Reed early in 2013 before the lonnen was gated does show it to have the character of a lane used with sufficient regularity to have established a recognisable vehicular-width worn surface. I find this to be much more supportive of the use asserted by the claimants, rather than the sporadic use seen by the Halberts, their employees and their visitors.

127. Although I accept that the evidence shows levels of use did reduce over the second decade, I find there was still sufficient activity on the claimed right of way on foot, on horseback and with vehicles to have alerted the landowner/s to the fact that it was being used by the public throughout the relevant period.

*Use by mechanically propelled vehicles (MPVs)*

128. Section 66 of the 2006 Act is concerned with the creation of public rights of way for MPVs after the date the Act commenced (2 May 2006). Government guidance<sup>[1]</sup> makes clear that as far as deemed dedication is concerned, in the context of this Act, creation means bringing a public right of way into existence at the end of a period of 20 years' use under Section 31 of the 1980 Act, or of any other period that would otherwise give rise to rights at common law.

129. Addressing the requirements of the 1980 Act, I have found the relevant period in this case to be the twenty years prior to the way being brought into question in March 2013; that is clearly after 2 May 2006.

130. Sub-section 66(1) restricts the creation of 'new' public rights of way for MPVs after 2 May 2006 to certain circumstances, none of which apply here. Therefore the claimed use with MPVs during the relevant period (1993-2013) cannot now establish a public carriageway since this class of highway encompasses a right of way for the public with MPVs<sup>25</sup>.

131. Sub-section 66(2) goes further: "For the purposes of the creation after commencement of any other public right of way, use (whenever occurring) of a way by mechanically-propelled vehicles is to be disregarded." Government guidance interprets this by advising that "driving over a way will not only never give rise to a right of way for mechanically propelled vehicles but will also never give rise to a right of way on foot, on horseback or any other lower right."

132. I must therefore disregard the claimed use with MPVs throughout the whole of the relevant period (1993-2013) since this would otherwise lead to "creation" of a right of way for vehicles in 2013.

133. Ms Stockley has submitted that once this vehicular use is stripped from the equation, the remaining use is extremely limited and wholly insufficient to have demonstrated to the landowner that public rights were being asserted, and that such use was sporadic, consisting of occasional use by a number of individuals.

134. I do not share that view. In a rural community such as here, it is not surprising to find the numbers of users and the frequency of use proportionally less than in an area with a larger residential base. Whilst I disregard the claimants' use with vehicles, I still take into account their use of the Order route on foot and in some cases on a horse or bicycle.

*Summary and conclusions*

135. Having heard the evidence of witnesses at the inquiry, and considered all the relevant written submissions, I am satisfied that this demonstrates regular, if not frequent, use of the Order route by the public on foot and with horses, as of right

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<sup>[1]</sup> Part 6 of the NERC Act 2006 and Restricted Byways: A guide for local authorities, enforcement agencies, rights of way users and practitioners; Version 5 – May 2008 (Paragraph 12)

<sup>25</sup> To record a restricted byway it is necessary first to establish that a public vehicular right of way subsists before going on to determine whether the rights of the public to use MPVs have been saved from extinguishment by sub-section 67(1) of the 2006 Act. As noted in paragraph 10 above, it is accepted that any such rights here would be lost.

and without interruption, throughout the twenty years between March 1993 and March 2013 (and before that) sufficient to raise a presumption that the route had been dedicated as a public bridleway.

136. Whilst I have found evidence of cycling use which, as provided by Section 31A of the 1980 Act, may contribute to the establishment of a restricted byway, I do not consider the levels of such use sufficient to raise a presumption of dedication and there is no evidence before me of use by any other non-motorised vehicles.
137. Whilst I have found that there was sufficient use by MPVs through the relevant period to raise a presumption of dedication, I am required by Section 66 of the 2006 Act to disregard this. Consequently no presumption of dedication of the Order route as a vehicular right of way arises.

*Intentions of the landowner(s) 1993-2013*

138. I turn next to consider whether there is evidence to show that during the relevant period, the owner(s) of the land demonstrated a lack of intention to dedicate a public right of way over the claimed route sufficient to rebut the presumption raised by usage throughout the relevant twenty years.
139. In this case I need to consider the evidence available to show the intentions of Mr and Mrs Halbert for the period between March 1993 and July 1998 and of Mrs Halbert alone until March 2013.
140. In the course of considering the point at which the public's rights were brought into question I concluded that in 1996 and/or 1997 a barrier was constructed across the Order route on the instructions of Mr Halbert. This was recalled by Mr Lydiate, Mr Robbie and Ms Brown, specifically because it was the only time they ever saw it. Ms L Halbert said she saw barriers on other occasions and at both ends of the lonnen but there is no one other than family members who saw them or who can confirm specifically the years in which they took place.
141. Whether there was one or more occasion during that early quarter may not be crucial, given that it has been accepted by the Courts that a lack of intention to dedicate need not be shown for the whole 20 year period, since the words 'during that period' do not mean continuously throughout that period.
142. However the question is whether Mr Halbert's actions were sufficient, bearing in mind that I have concluded his barriers did not actually interrupt the claimed use. On this point, *the Godmanchester case* offers helpful guidance.
143. Ms Stockley drew attention to the words of Patteson J quoted by Lord Hoffman (in *Godmanchester* at paragraph 13) from the case of *Trustees of the British Museum v Finnis [1833] 5 Car & P 460 (the Finnis case)* in which he recognises that the common way to demonstrate that there is no intention to dedicate a way is "to shut it up one day in every year". In her submission, this is exactly what Mr Halbert had done.
144. I accept the general principle highlighted by Ms Stockley, that annual closure is usually regarded as evidence of a lack of intention to dedicate a way. Indeed, I take full account of the words of Lord Denning<sup>26</sup>, quoted with approval by Lord Hoffman in the *Godmanchester* case at paragraph 20 (to which she referred):

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<sup>26</sup> In *Fairey v Southampton County Council [1956] 2 QB 439*

*"In order 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 such as to show the public at large - the public who used the path, in this case the villagers - that he had no intention to dedicate. He must, in Lord Blackburn's words, take steps to disabuse those persons of any belief that there was a public right: see Mann v Brodie (1885) 10 App Cas 378, 386. Such evidence may consist, as in the leading case of Poole v Huskinson (1843) 11 M & W 827, of notices or a barrier: or the common method of closing the way one day a year. That was not done here; but we must assume that the landowner turned off strangers **in so open and notorious a fashion that it was clear to everyone that he was asserting that the public had no right to use it.** On that footing there was sufficient evidence to show that there was no intention to dedicate."*

145. Here I have highlighted in bold the words which I consider to be key and the reasoning upon which the *Godmanchester* case was ultimately decided. I note this alongside the view of Lord Hoffman (at paragraph 33) that Section 31 requires "sufficient evidence" that there was no intention to dedicate. He states "The evidence must be inconsistent with an intention to dedicate" and will involve "objective acts (that) must be perceptible by the relevant audience".
146. I have little doubt that the construction of a barrier of the type described to me using drums and planks across the claimed route constitutes an overt act by the landowner, Mr Halbert, that was intended by him to demonstrate his lack of intention to dedicate a public right of way.
147. The evidence shows that in 1996/7 such a barrier did come to the attention of three people but none were users of the Order route and would therefore have no reason to challenge it. There is no evidence that this, or any other similar barrier, was seen by any of the 44 claimants during the relevant twenty year period. I have already concluded there is insufficient evidence to show that this barrier caused an interruption to the continuing use by local people.
148. Other evidence shows that Mr Halbert's practice of regularly barricading off the lonnen to prevent public access was made known to immediate family members, to employees (such as Mr Wilkie and factory workers who constructed the blockade), and to family friends (for example Mr Dixon and Mr Bainbridge). However this action and its intention can have little value in this context unless it is somehow communicated to people who used the way.
149. Mr Halbert did not opt for notices on site, advising the public of the basis on which they were using the lane. After the gate near point B disappeared in the 1960s, according to Ms L Halbert he chose not to replace it, even though a gate could easily have been locked on an annual basis to exclude the public. He did not take the more formal step of lodging with the highway authority a declaration under Section 31(6) of the 1980 Act acknowledging the existence (or not) of rights of way over his property.
150. Ms Stockley is quite right in saying that a landowner is not obliged to take any of these steps when simply closing the route once a year may suffice.
151. From all accounts, Mr Halbert was widely respected as a man who did things 'by the book' and got jobs done. Ms J Halbert refers to her father as "a cautious and law abiding man. He paid his bills on time, was very thorough and honest. He liked things being done properly." It is because of his reputation for

- thoroughness that I find it surprising that Mr Halbert appears to have taken the least formal action of all the options open to him, choosing what the Parish Council described as “a ‘cobbled up’ arrangement to block the lane”.
152. In a letter to NCC dated 14 June 2013, Melkridge Parish Council considered it “inconceivable that () Mr Halbert, in his capacity as Chair of the Parish Council would not have formalised this” (his position as regards the lonnen) “in the Council by publicising this to his fellow Councillors and Parishioners, with an accompanying notice on the Parish Council notice board. There is no reference at all in any of the Parish Council minutes.”
153. The evidence of Mr Dixon indicates that Mr Halbert was aware that people used the Order route. Both he, and later Mrs Halbert, made sure that the lane was maintained by their gardener several times a year, despite it being unused by the family. Mr Bracken submitted that, having invited the villagers to construct a gate in the wall from the lonnen into the playing field, Mr Halbert could not have been unaware that people were using it.
154. Prior to the judgement in *the Godmanchester case*, the Courts accepted that all that was necessary to rebut a presumption of dedication was for the absence of intention to be objectively established by the overt actions of the landowner. However in the decision of the House of Lords in 2007 on this case, Lord Hoffman made clear that it was also necessary that these overt acts “must be perceptible by the relevant audience”.
155. In a busy location (such as Lincolns Inn, London, as in *the Finnis case* referred to by Ms Stockley), the closing of a path one day a year may quickly become known to a great many users who may then decide whether or not to pursue a claim that their presumed right was being denied. In that situation the one-day closure was sufficient for the purpose of making clear the landowner’s intention.
156. In a rural location like Melkridge, where use of the route would have been a great deal less frequent (although still known to the landowner), reliance on a one day (or even week-end) closure would be far less certain to come to the attention of potential claimants. Ms Brown saw the barrier being put up one morning (she said probably a Thursday or Friday) and saw it again later that same day. Other than this, the only other indication of the length of time the barrier(s) were in situ was Ms L Halbert’s guess that they were in place for a weekend, broadly endorsed in the written statement of Ms J Halbert.
157. This leads me to conclude that Mr Halbert’s barrier(s) were probably not in place long enough to be noticed by users of the route or to be regarded as a clear statement by the landowner that he did not intend that the public should acquire a right of way. Had Mr Halbert been aware of the Court’s subsequent requirement that a lack of intention to dedicate must come to the attention of users, he may have chosen a more reliable method of making his position clearer.
158. Since no other relevant action was taken after 1997 to indicate the landowner’s rejection of a public right of way until 2013, I conclude there is insufficient evidence that during the period March 1993 – March 2013 the relevant landowners made clear to the public a lack of intention to dedicate a public right of way along the Order route. It follows from this that a public right of way on foot and with horses can be presumed to subsist.

159. As I have noted above, no statutory presumption of dedication as a vehicular road can arise during this twenty year period because of the effect of Section 66 of the 2006 Act. There is no evidence of express dedication at any time but I will next consider whether, under the common law approach, dedication of the route as a carriageway can be implied, either from the actions (or inaction) of the landowner(s) at any time in the past.

***Implied dedication at common law***

160. Firstly, I note that no submissions have been made to suggest that any of the owners of the Order route did not have the capacity to dedicate a public right of way over their land. In looking back as far as the period when the new A69 was under construction, I will include both the Halberts and their predecessors the Challoners but not Mr Teasdale<sup>27</sup>. However I note here that at common law the burden of proving dedication, and specifically the owners' intentions, rests with those who assert the right of way, namely the supporters of the Order.

*1946-1959*

161. I have very limited information about the occasion(s) when Major Challoner attempted to close the Order route in the late 1940s. In paragraphs 48 and 49 above I noted the recollections of Messrs Grant, Teasdale and Ward, all of whom recalled the challenge or had been told about it. It seems the Challoners locked the gate at the southern end of the lonnen but, one way or another, the outcome appears to have been that the public asserted a right of way and access was restored.

162. I do have before me evidence from claimants who say they used the route throughout the 1950s, after this challenge was rejected but before ownership changed to the Halberts; this includes Mr Bell and Mr Oliver who gave evidence to the inquiry, and Mr Teasdale, Mr Ward, Mrs Little, Mrs James and Mrs Bell all of whom provided evidence forms. Their use was on foot, on horseback, by bicycle, tractor and car as well as driving animals.

163. On the surface there seems to be a reasonably good case for finding that the public had begun using the route even before the new road was fully open, that Major Challoner's attempt to interrupt that use was met with firm resistance from the public who then continued to use it for another 10 years or so without further incident before ownership passed to the Halberts, thus leading to the conclusion that dedication as a vehicular highway by the Challoners should be implied.

164. That would be to conclude that a vehicular right of way was "created" (as defined in the 2006 Act) by 1959, before the Halberts came to Melkridge Hall, long before the commencement of that Act in May 2006 and thus the claimed use by MPVs would not be caught by the restrictions of Section 66 (explained above in paragraphs 128 to 132). However, at this distance in time and given the relatively limited evidence from users, I hesitate to reach that conclusion. On balance I find the evidence is just not strong enough.

*1959-1998*

165. During this period it is the actions of the landowners Mr and Mrs Halbert which need to be considered.

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<sup>27</sup> It is not clear to me exactly when and in what circumstances his estate was taken over by trustees before the sale to the Challoners in 1946.



166. Added to the list of people using route in 1950s are those who used it with vehicles in the 1960s (the Swallows, Grant, Mrs Oliver), in the 1970s (the Halls, Grisedale, T N Smith) and in the 1980s (Lewis, the Phillips). Overall I find this to amount to considerable vehicular use of the claimed route during the lifetime of Mr Stuart Halbert, and capable of demonstrating acceptance by the public if dedication were to be established.
167. However it is not the use itself that establishes dedication, but it is an important factor that may contribute to the conclusion that dedication of a public right is to be presumed. Where such use did occur openly and no steps were taken to prevent it, the public's use of the way may constitute evidence that the landowner was quite content it should continue and therefore contribute to the justifiable conclusion that dedication of the way can quite reasonably be inferred.
168. Looking at the overt actions of the landowner, I have already concluded that no notices were ever erected along the route, no gates were ever locked across it, no-one has come forward to indicate permission to use the way was ever expressly granted by the Halberts although the evidence of Mr Dixon suggested one farmer (who has not been identified) had an agreement with Mr Halbert to use it. There is no record of anyone being challenged by Mr or Mrs Halbert or their agents whilst using the route although it is clear that they were aware people did so in vehicles.
169. For NCC, Mr Bracken submitted that Mr Halbert's support for the installation of a gate from the lonnen into the playing field in the late 60s/early 70s without any evidence of an express contrary intention openly invited people to access the field via the Order route. Whether or not the arrangement was subject to a tacit 'gentleman's agreement' as suggested by Mr Oliver, he noted that nothing had been recorded in the minutes of any Parish Council meeting that implied Mr Halbert had any intention other than to allow the public to use the lonnen freely as well as enabling the Parish Council to maintain the playing field.
170. In his evidence to the inquiry, Mr Oliver spoke of assisting Mr Halbert to obtain a quantity of red ash locally from a pit heap which had then been used to maintain the surface of the lonnen. Indeed the objectors acknowledge that the Halberts' gardener had always been asked to keep vegetation along the lane cut back. Those actions are not inconsistent with the recognition of a public right of way, yet they are not directly evidence of dedication.
171. I was invited to view the dropped kerbs on the A69 where the Order route continues (as a tarmac track) from point A to the main carriageway, and also what was referred to as "the concrete road" on the north side of the trunk road. The evidence indicates that this road, constructed of 'grass-crete' type blocks, was installed in the 1980s to improve the surface of this link between the road north to Melkridge Common and the Order route. It was said to have been used particularly by local agricultural traffic to avoid the main road junction which was thought to be too dangerous by many, including by farmers who took their milk to the collection stand<sup>28</sup> that once stood on the triangle of land near point B and which was removed in the 1980s.
172. This evidence does invite the conclusion that use was being made of this crossing (and hence the Order route) by the public, and particularly by vehicles,

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<sup>28</sup> According to Mr Bell there had once been four farmers who brought their milk for daily collection to this stand.

- sufficient to involve the highway authority in providing a suitable surface. It further supports the widespread use that has been claimed, from the 1960s through to the 1980s until the milk collection point ceased to exist.
173. Thus the weight in the balance appears to swing towards a conclusion that the Halberts acted in such a way that was entirely consistent with dedication of the Order route as a vehicular lane and that this was accepted by many of the local population as a convenient and safer crossing of the A69.
174. However the mainstay of the objectors' case is Mr Halbert's annual blocking of the route which, it is submitted, continued throughout his lifetime at Melkridge Hall. I have already concluded that the arrangement of drums and planks were in place in 1997 and possibly 1996 when they were seen by Mr Lydiate, Ms Brown and Mr Robbie. Other than the Halbert family themselves, there are no other witnesses who saw the barrier at any other time.
175. Yet there is evidence to confirm that it was Mr Halbert's practice to close the route every year. Mr Wilkie was aware of this in the mid-1980s although he never witnessed it himself. Mr Bainbridge was told about it in 1997 by Mrs Halbert although he did not see it. Both Ms Brown and Mr Robbie were told by a friend who worked for Mr Halbert that the blockage was an annual event. And the witness to which I give the most weight, being independent of the Halbert family, is Mr Dixon who described to the inquiry his conversation with Mr Halbert in which the latter explained that the action was required so as to prevent a public right of way being established. Although Mr Halbert's actions (and the intention behind it) was not widely known in the community, Mr Dixon's evidence is entirely consistent with that given by Louise, Maureen, and Mark Halbert and by Josephine Halbert who described the blocking of the track each year by her father as "a fact of life here at Melkridge".
176. In reaching my conclusions I am conscious of the words spoken by Lord Parke in the case of *Poole v Huskinson* [1843] 11 M & W 827 which also concerned common law dedication: "A single act of interruption by the landowner is of much more weight, upon a question of intention, than many acts of enjoyment." Thus I find the limited evidence to endorse the temporary obstruction organised by Mr Halbert and engineered from planks and barrels, supported by the evidence from Mr Dixon who I found to be sincere in his recollection of events, is sufficient to show that Mr Halbert did not intend that the public should acquire a right of way although for the remainder of the year he allowed people to use freely.
177. In the absence of any other submissions from supporters of the Order in relation to the period 1959-1998 I conclude that the evidence does not support dedication of the Order route as a vehicular way at common law.
- 1998-2013*
178. Since 1998 ownership of the Order route has remained with Mrs Halbert. Other than the continued maintenance of vegetation along the lonnen, no other particular actions are attributed to Mrs Halbert as regards its use.
179. Mr Bracken drew attention to a statement by Mr Lydiate in a letter dated 5 March 2013 to Mrs Reed on behalf of Mrs Halbert. He wrote: "... the following are facts: The lonnen running up the west side of Melkridge Hall is part of Melkridge Hall and on the deeds of the house. There is a right of way along it and as a consequence we maintain it and have done so for over 50 years..."

180. Although Mr Lydiate did not expressly describe the right of way as 'public', that is the clear implication given that there are no private rights over it. When questioned at the inquiry, he stated that he was wrong on this.
181. Mr Bracken submitted that the 14 years of unchallenged use by the public, including use with motor vehicles (together with the acknowledgement of a right of way by Mr Lydiate on behalf of Mrs Halbert in 2013) should lead to the conclusion that the owner intended to dedicate the way for public use.
182. Whilst I do not place a great deal of weight on the letter, I would be inclined to accept that the lack of challenge to the use which was known to be taking place should indeed be sufficient to establish dedication and acceptance under the common law. However the restrictions now introduced by Section 66 of the 2006 Act require me to discount all use by MPVs throughout any period which would otherwise result in a public right of way being "created" after May 2006. It must follow from this that the case for a vehicular right of way along the Order route between 1998 and 2013 fails at common law.
183. Consequently I reach the conclusion that the evidence before me is sufficient to show that, on the balance of probability, a public bridleway has been shown to subsist over the Order route as provided by Section 31 of the Highways Act 1980 but that the case for this being a vehicular right of way has not been made out, either at common law or under the statutory scheme.

### **Summary**

184. Having examined all the available information, I have concluded that the evidence is sufficient to show use of the way in question by the public on foot and with horses throughout the 20 year period between March 1993 and March 2013 and therefore to raise an initial presumption that this had been dedicated as a public bridleway. I have also concluded the owners of the way did not demonstrate to the public a sufficient lack of intention to dedicate the route as a public bridleway during this period. The presumption of dedication was therefore not rebutted.
185. As regards the restricted byway proposed by the Order, despite finding evidence of use by the public with MPVs during this period, the effect of Section 66 of the 2006 Act means that this cannot give rise to a public vehicular highway.
186. Finally, given the subtle differences in the common law approach which shifts the burden of proof, and also taking account of the effect of Section 66 of the 2006 Act, I have concluded that the evidence is insufficient to support the dedication of a vehicular right of way between A and B at any time in the past.
187. I therefore reach my final conclusion that, on a balance of probability, the evidence before me is insufficient to support a restricted byway as proposed by the Order but sufficient to show that a public bridleway subsists over the Order route, that this should be added to the definitive map and statement and that the Order should be modified so as to record this.

### **Other matters**

188. The Order Schedule would record the width of this right of way as 4.5 metres. As I have already noted, the lonnen narrows to approximately 3 metres near to point B and varies along its length (as illustrated on the 1971 OS map), widening towards point A. At the inquiry it was agreed that the width was better described

as varying between these two measurements and I propose to modify the Order Schedule accordingly.

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.

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.

### **Conclusion**

191. 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 but with the modifications described in paragraphs 187 and 188 above.

### **Formal Decision**

192. I propose to 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".

193. Since the confirmed Order would not show a way as it is shown in the Order as made, 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.

*Sue Arnott*

**Inspector**

## **APPEARANCES**

### **In support of the Order**

When the inquiry opened:

Mr S Sauvain                      Queen's Counsel, instructed by Liam Henry, Legal Services  
Manager of Northumberland County Council,

When the inquiry resumed:

Mr P Bracken                      Solicitor, Northumberland County Council

*Who called:*

Mr J McErlane                      Definitive Map Officer; Northumberland CC

Mrs M P Reed                      Chair, Melkridge Parish Council;

Mrs C Anson

Mrs P Brooks

Mrs C A Drake

Mr M Oliver

Mr J Smith-Jackson

Mr A Bell

### **Opposing the Order**

When the inquiry opened:

Mr F Orr                              Solicitor, Bond Dickinson LLP, on behalf of Mrs M Halbert

When the inquiry resumed:

Miss R Stockley                      Of Counsel; instructed by Mr F Orr of Bond Dickinson LLP  
assisted by Ms K Ashworth; on behalf of Mrs M Halbert

*Who called:*

Mr P Robbie

Ms M Brown

Ms L Halbert                      Statutory Objector

Mr G Lydiate                      Statutory Objector

Mr E Bainbridge

Mr G Dixon

Mr S Wilkie                      Statutory Objector

## **DOCUMENTS**

1. Copies of statutory notices and certification
2. Copy of the 6 statutory letters of objection
3. Northumberland County Council's (a) statement of grounds for supporting the Order; (b) comments on the objections and (c) statement of case together with bundle of accompanying documents
4. Proof of evidence of case of Mr J McErlane
5. Witness statements of Arnold Bell, Christine A Drake, Christine Anson, John Smith-Jackson, Martin Oliver, Pamela Brooks and Margaret P Reed (signed copies provided at the inquiry)
6. Statement of case on behalf of Maureen Halbert with supporting documents
7. Witness statements of Maureen Halbert (with exhibits), Josephine Halbert, Louise Halbert, Mark Halbert, Gary Lydiate (with exhibit) and Ernest Bainbridge
8. Letter dated 30 March 2015 to the Planning Inspectorate from Bond Dickinson explaining the reasons for the request for adjournment
9. Bundle of documents (2 folders) submitted by Mr Orr at the inquiry opening
10. Witness statements of Mr G Dixon and Mr P Robbie
11. 2 photographs taken in March 2013 submitted by Mrs Reed
12. 7 aerial photographs taken at various dates submitted by Mr Lydiate

### *Submitted after the inquiry*

13. Responses to Inspector's query concerning Mr S Halbert's nephew from NCC (5 November 2015), Mrs P Reed of Melkridge PC (5 November 2015) and Bond Dickinson for the objectors (10 November 2015)
14. Responses to Inspector's query concerning the implications of Section 66(2) of the Natural Environment and Rural Communities Act 2006 from NCC (25 November 2015), Mrs P Reed of Melkridge PC (28 November 2015) and Bond Dickinson for the objectors (27 November 2015)
15. Letter to the Planning Inspectorate from Bond Dickinson dated 9 December 2015 reporting flood damage to the Order route