



Order Decision

Site visit made on 26 August 2016

by Michael R Lowe BSc (Hons)

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

Decision date: 27 February 2017

Order Ref: FPS/P2935/7/49

- This Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Northumberland County Council Definitive Map Modification Order (No 19) 2014 Byways Open to All Traffic Nos 41 & 27 (Parishes of Chollerton and Bavington).
 - The Order is dated 29 September 2014 and proposes to modify the Definitive Map and Statement by adding a byway open to all traffic from the junction of roads C209 & C210, 1320m west of Thockrington, to Little Swinburne as detailed in the Order map and schedule.
 - There was 1 objection outstanding when Northumberland County Council (the Council) submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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Decision

1. I confirm the Order.

Main Issue

2. The Order has been made under section 53(2)(b) of the 1981 Act relying on the occurrence of events specified in section 53(3)(c)(i) and (iii). The main issue is therefore whether the discovery of evidence by the Council is sufficient to show, on the balance of probabilities, that a byway which is not shown in the map and statement subsist on the route in question such that the definitive map and statement require modification, and that other particulars contained in the map and statement require modification.
3. Section 32 of the Highways Act 1980 requires me to take into account any map, plan or history of the locality or other relevant document and to give such weight to it as is justified by the circumstances.

Reasons

4. The Order route is recorded on the Council's list of streets under section 36(6) of the Highways Act 1980 as a 'highway maintainable at public expense' and is part of the classified road C210 on the Council's records. The 'handover' maps prepared for roads transferred under the Local Government Act 1929 show the Order route on the maps prepared by Hexhamshire RDC for Chollerton Parish and Bellingham RDC for Bavington Parish. The Order route is described as a road under the 1939 schedule prepared under the Restriction of Ribbon Development Act 1935, and is shown on various internal maps and records of the Council in 1951, 1964 and 1974.

5. The Order route is clearly of some antiquity, being shown on Armstrong's, Fryer's, Cary's and Greenwood's County maps between 1769 and 1828. It is shown on Ordnance Survey maps since 1866. I am satisfied that the Council has discovered evidence, which when considered with all other relevant evidence, shows that the Order route is a public road for vehicular and all other traffic and is maintainable at public expense.
6. That conclusion is not disputed. The objection concerns the future maintenance of the way. The Council has stated that the Order, establishing the way as a byway, will not affect the status of the way as being maintainable at public expense. Indeed, the records of highways maintainable at public expense under section 36(6) of the Highways Act 1980 are not mutually exclusive to ways shown on the Council's Definitive Map and Statement of public rights of way. Upon confirmation of the Order, the way will remain as a 'highway maintainable at public expense' and the Council will remain responsible for that maintenance. The standard of maintenance is a matter for the Council, subject to any Order of the Crown Court under section 56 of the Highways Act 1980.
7. The Courts¹ have held that, in defining a byway open to all traffic in the terms set out in section 66(1) of the 1981 Act, Parliament was setting out a description of ways which should be shown in the maps and statements. What was being defined was the concept or character of such a way. Parliament did not intend that highways over which the public have rights for vehicular and other types of traffic, should be omitted from definitive maps and statements if their character made them more likely to be used by walkers and horse riders than vehicular traffic because they were more suitable for use by walkers and horse riders than by vehicles. In my view it is useful to ask if there is a benefit to ramblers and horse riders so that ramblers and horse riders have a simple means of ascertaining the existence and location of such ways, and thereby have access to the countryside. The character of the Order route, as a grassy lane between or alongside stonewalls, suggests it is more likely to be used by and be more suitable for use by walkers and horse riders than vehicular traffic, consistent with the status of a byway.

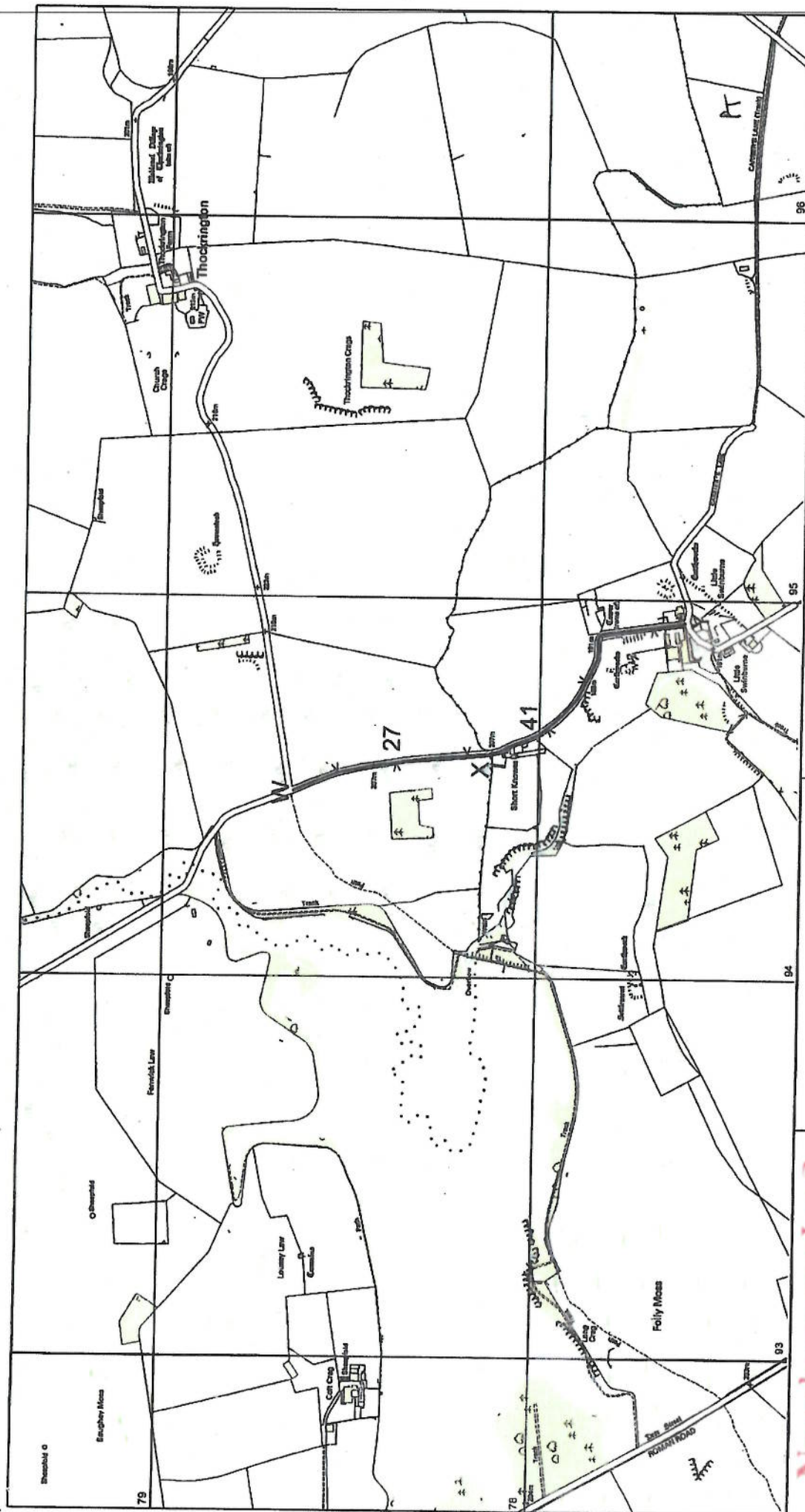
Conclusion

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

Michael R. Lowe

INSPECTOR

¹ Masters v Secretary of State for the Environment, Transport and the Regions [2000] EWCA Civ 249



Northumberland

Northumberland County Council

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Wildlife and Countryside Act, 1981

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

**The Northumberland
County Council**

**Modification Order
(No.19) 2014**

Public Footpath to be deleted

Public Footpath

Public Bridleway

Restricted Byway

Byway Open to All Traffic

O.S. Map NY 97 NW

Definitive Map No. 167

Scale: 1/10,000

Former Districts: Tyneside

Parishes: Bavington/
Chollerton

Date: July 2014