
Order Decision

Site visit made on 27 April 2016

by Martin Elliott BSc FIPROW

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

Decision date: 06 June 2017

Order Ref: FPS/P2935/7/46M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Northumberland County Council Definitive Map Modification Order (No 15) 2014.
- The Order is dated 18 August 2014 and proposes to modify the Definitive Map and Statement for the area by upgrading part of public footpath 5 Tosson to a bridleway and adding a public bridleway as shown in the Order plan and described in the Order Schedule.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act notice of the proposal to confirm the Order subject to modifications has been given.

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

Procedural Matters

1. In my interim decision dated 25 May 2016 I proposed to confirm the Order subject to modifications in respect of the location of the Order route and to address a discrepancy in the total length of public bridleway 39 as specified in Part I of the Schedule to the Order. One objection was received to the proposal to modify the Order.
2. Following the 'Notice of Order' correspondence was received from a new party. The correspondence raises concerns as to the need to carry out works to bring the modified order route into a useable condition. The correspondence also notes the availability, and existing use by walkers and cyclists, of the unmodified Order route along the forest track. The correspondent does not dispute the existence of the Order route along its proposed modified alignment or its unmodified alignment. Subsequent correspondence states that the modified route A to A1 (as marked on additional maps submitted by the Council) is impassable for anyone on a horse and a struggle on foot. The point is again made that, although requiring clearance works, there is an obvious route marked A to D on a forest track. Whilst I note these matters I am unable to take them into consideration in determining the Order. The purpose of the Order is to record existing public rights of way on the definitive map and statement. The issue is whether public rights subsist along the Order route.
3. I was due to hold a hearing on 15 March 2017 in connection with the objection to the proposed modifications and the determination of the Order. However, following discussions between the Council and the objector, the objector

withdrew his request to be heard and for an accompanied site visit. Following the withdrawal the parties to the Order were asked if they were agreeable to the hearing being cancelled. None of the parties asked to be heard and the hearing was cancelled. The objection to the Order and the proposed modifications has therefore been considered by way of written representations.

4. I carried out an unaccompanied site visit on 27 April 2016. I did not carry out a further site visit in consideration of the objection to the proposed modifications. The objection makes the point that I did not follow the route shown on the inclosure award¹ plan. Whilst, in the main, I did not follow the route of the bridle road shown on the inclosure award plan I carried out, as far as possible, an inspection of the Order route and the surrounding area; this was subject to constraints of environmental factors such as existing and felled plantations and boggy terrain. My original site visit also involved walking the route of footpath 40 between points D² and F from which I was able to observe part of the route of the inclosure awarded bridleway. On the basis of my initial site visit I did not consider it necessary to revisit the site. I am satisfied that I can make my decision based on my initial site visit and the evidence before me.
5. Correspondence between the objector and the Council indicates that the Council does not disagree with the objector in respect of points ii and iii (paragraph 6 below). The letter 30 January 2017 states that the Council would be prepared to draft an amendment to the statement to satisfy any modification to the Order route in respect of point ii and assist in preparing a modified Order plan in respect of point iii. In the light of this I asked the Council to provide an amended Order, with suggested wording, and Order plan. This was circulated to the parties and I have had regard to the additional comments in reaching my decision. If I propose to confirm the Order with further modifications I will use the location points identified by the Council in the amended statement and plan.

The Main Issues

6. The objection is made on three heads:
 - i) That 'point A' on the award plan is 80 metres away from point A on the Order plan. In essence the commencement of the Cambo Bridle Road is some 80 metres to the southwest of Point A and the first 80 metres should be recorded as a restricted byway.
 - ii) The Order still seeks to modify the status of the existing footpath south of point D2 whereas this should be a bridleway addition.
 - iii) Much of the Order route (not proposed to be modified) is considerably off the route shown in the award plan.
7. The main issue is whether the proposed modifications should be pursued or whether the Order should be modified further. The test to be applied to the evidence is 'on the balance of probabilities'.

¹ Tosson and Hepple Commons Inclosure Award 1806

² Letters A to F including D1 and D2 refer to points on the Order map as proposed to be modified in my interim decision.

Reasons

The commencement point of the Cambo Bridle Road (point i)

8. The objector cites section 7 of the local Act of 1805 which indicates that any tribunal determining what the inclosure award provides must look to the plan for clarification if the words in the award do not of themselves provide a sufficiently clear answer. Further, it should be presumed that what is on the plan is 'truly delineated' and that delineation must be 'distinct'. What the plan plainly and distinctly shows is the information that can properly be used to assist in the interpretation of the words in the award. The objector makes the point that the award sets out Cambo Bridle Road as starting at the 'southend of Great Tosson Lane' and that this lane is not identified on the plan. It is suggested that it is hard to see that the road at point A identified as 'to Morpeth' would, as a whole, be Great Tosson Lane.
9. The objector considers that the interpretation which makes the plan sit comfortably with the award is a road feature shown on the plan which heads largely south and then southwest from Great Tosson ending at the 'Glebe' allotment; this is considered to be Great Tosson Lane. It is thought likely that this lane is as ancient as the road 'to Morpeth' but the shape suggests that it had a character distinct from this road.
10. As regards the south end of Great Tosson Lane it is contended that this is at the northernmost corner of the 'Glebe' land on the plan. This, it is argued, sits comfortably with the distinct delineation of the Cambo Bridle Road on the plan.
11. In consequence the objector submits that the Cambo Bridle Road is as shown on the award plan and that between that point and point A the 'lane' is most probably a vehicular road because it connected with the Morpeth Road. It is suggested that as the lane is caught by section 67(2) of the Natural Environment and Rural Communities Act 2006 the lane should be recorded as a restricted byway. In the alternative, although not the option preferred by the objector, the lane is part of the Morpeth Road, is not caught by section 67(2) and the termination point of the Order route needs to be moved accordingly.
12. Great Tosson Lane is not specifically identified on the award map but the award sets out the Cambo Bridle Road as starting at the south end of this lane. The Order identifies the bridle road as commencing at point A which is the tarmac surfaced road leading from Great Tosson. The award plan shows the initial section of the Order route as 'open' to the road network at the junction with the route identified 'to Morpeth'. It is possible that the initial section of the Order route could form part of Great Tosson Lane and I note that this section is distinctly different from the route 'to Morpeth'. However, the Cambo Bridle Road is described as leading from the southern end of Great Tosson Lane which in my view could equally describe the location of point A where the route continues as the road 'to Morpeth'.
13. As regards the depiction of the Cambo Bridle Road on the inclosure award map the route clearly runs to the 'angle' in the boundary line as marked on the copy of the plan at paragraph 2.3.3.9 of the objector's final comments. This is to the east of the point which the objector contends is the end of Great Tosson Lane. Although the enlarged copy of the award plan submitted by the Council appears to show 'dashes' continuing beyond that point it is not clear that this

amounts to a depiction of the Cambo Bridle Road; the 'dashes' are clearly less distinct than the dashes depicting the remainder of the route. It should be noted that the interpretation of the award plan should properly be considered at the scale at which it has been produced and not as an enlarged image. In any event these 'dashes' do not continue to point A.

14. Although the inclosure plan may assist in the interpretation of the award I am not persuaded that the evidence as a whole is sufficient, on the balance of probabilities, to show that the end of Great Tosson Lane, and the beginning of the Cambo Bridle Road, is as asserted by the objector. Nevertheless, the evidence supports the existence of a route from point A which on the balance of probabilities is a public bridleway. As such I do not propose to modify the Order in respect of the 80 metre section of the Order route from point A

Route to the south of point D2 (point ii)

15. In my interim decision I proposed to modify the Order to show the bridleway to be added between D2 and D as running to the east of the existing footpath. Having re-examined the inclosure award plan I take the view that the Order should be further modified to the south of point D to show Cambo Bridle Road continuing to the east of the existing footpath to the point identified by the objector as D3 (D1 on the Council's amended Order plan). This is how the route is depicted on the award plan.

Alignment of the Order route (not proposed to be modified) (point iii)

16. The objector suggests that much of the Order route (not proposed to be modified) is considerably off the alignment shown in the award plan. The Council do not disagree on this point and have provided an amended Order plan. No adverse comments have been made in respect of the amended plan.
17. I have not been provided with the methodology used to plot the amended route but there is nothing to indicate that the route shown does not correspond with that shown on the award plan. From my visual inspection of the award plan the route does appear to correspond with the modified Order plan.
18. I sought comments on the route between points B and C. It is noted that the section of Order route south of Browns Cross is outwith the inclosed land. However, as noted by the objector, whilst the commissioners had no remit or powers to alter the existing route in Spylaw Grounds, it is reasonable to conclude that the Cambo Bridle Road matched up with any continuation. Other map evidence suggests that the route continued southwards to Coquet Cairn and beyond. On balance, it is more likely than not, that the route from point B continued in the curve mapped on the award plan to point C.

Other Matters

19. The objector suggests that the holloway leading to Great Tosson from the proposed point D may well on the evidence be a public bridle road but acknowledges that this is a matter for a separate Order. This is not a matter for my consideration but it should be noted that the route between D and D1 on the interim modified Order map is identified as a bridleway to be added.

Conclusion

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

Formal Decision

21. The Order is proposed for confirmation subject to modifications previously proposed and further modifications:

- In the Index to the Order under the column 'Modification', in respect of Bridleway 39 and Footpath 40, insert the letter 's' after the word '*part*' so as to read '*parts*'
- At Part I of the Schedule to the Order, in respect of Bridleway 39 at line 3 delete '*4220*' and insert '*4210*' and at Part II from line 4 delete '*as a woodland track for a distance of 460 metres then southerly for a distance of 450 metres to join*' and insert '*alongside the field boundary for a distance of 390 metres to its junction with Public Footpath No 5 then on the north-west and west side of the field boundary in a south-westerly and southerly direction for 800 metres to re-join*'. At line 8 delete '*3230*' and insert '*2850*'.
- At Parts I and II of the Schedule to the Order in respect of Bridleway 37 at line 4 delete '*480*' and insert '*500*'.
- At Part I of the Schedule to the Order, in respect of Footpath 5, at line 1 of the first paragraph after '*the footpath from*' delete '*a point marked D on alleged Public Bridleway No 39, 210 metres west of Willy's Cairn to a point marked E on Public Footpath No 40, 670 metres north of Selby's Cove*' and insert '*points A1 to A2 and points D1 to D2*' and at line 4 delete '*this section*' and insert '*these sections*'. At paragraph 2 from line 2 delete '*D on alleged Public Bridleway No 39, 210 metres west of Willy's Cairn*' and insert '*A1, 150 metres east of Burgh Hill Fort and from a point marked A2, 250 metres south of Burgh Hill Fort to a point marked D1, 260 metres south-west of Willy's Cairn*'.
- At Part II of the Schedule to the Order, in respect of Footpath 5, at line 1 delete '*670 metres north of Selby's Cove*' and insert '*380 metres south-west of Willy's Cairn*'. At line 2 delete '*1800*' and insert '*3300*'.
- At Part I of the Schedule to the Order, in respect of Footpath 40, delete '*part*' and insert '*parts*'.
- At Part II of the Schedule to the Order, in respect of Footpath 40, delete from line 3 '*and Windy Craggs for a distance of 970 metres*' and insert '*for a distance of 380 metres to join Public Bridleway No 39 north-east of Windy Craggs then leaving the Public Bridleway No 39 to the south of Windy Craggs in a southerly direction for a distance of 510 metres*'. At line 4 delete '*210 metres west*' and insert '*270 metres south-west*'.
- On the Order map insert points A1, A2, D1, D2 and B1 and between the point 170 metres southwest of point A, where the schedule for bridleway 39 identifies a field gate, and point D delete the bridleway to be added. Further, between the point 170 metres southwest of point A, through A1 and A2, to

point D1 insert a line to denote a public bridleway. Between D and D1 delete the cross hatchings so as to denote a public footpath.

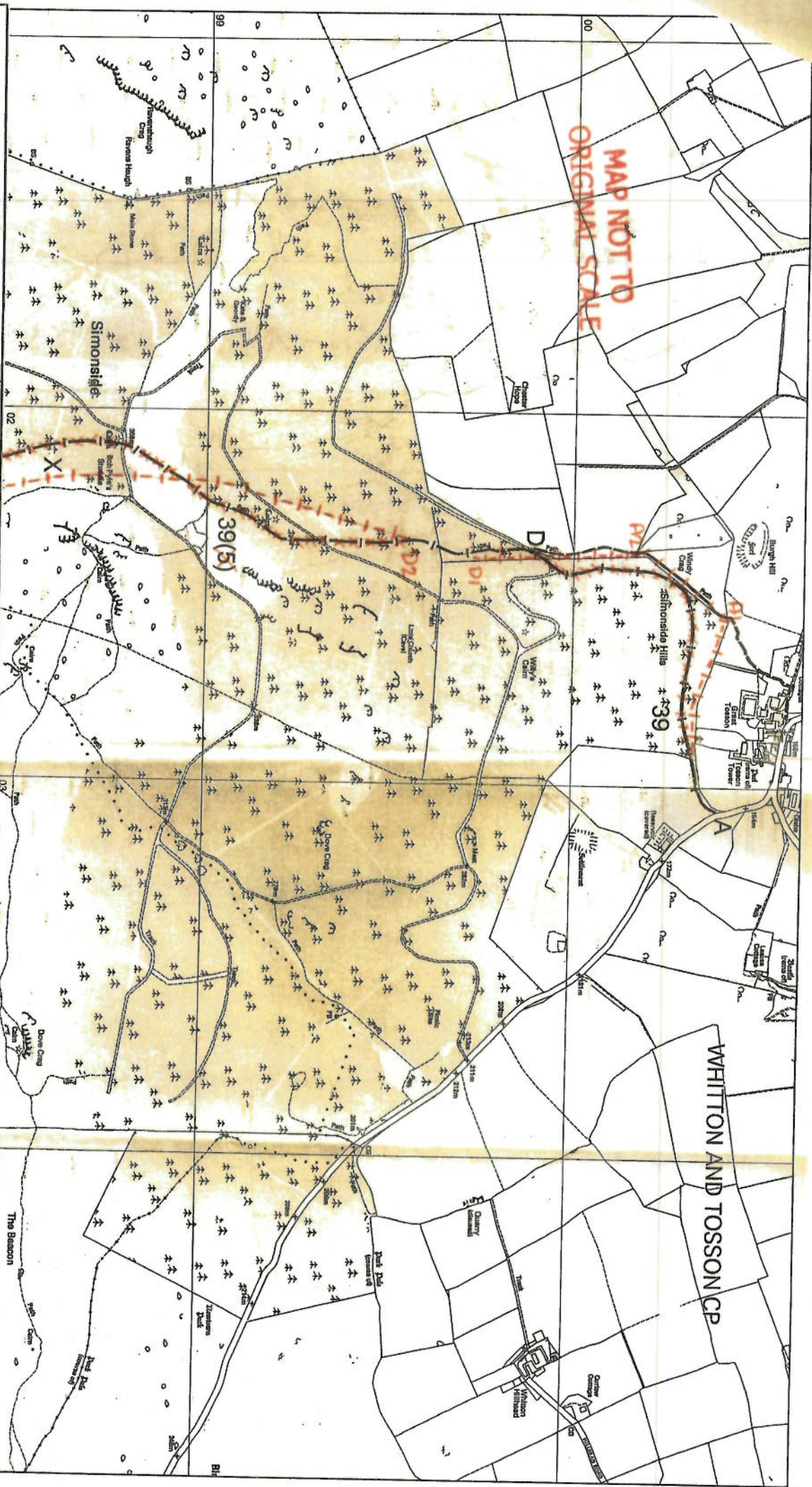
- On the Order map from point D2 to point B1 delete the section of Order route identified as a bridleway and insert a new line to show the route of the bridleway and delete '(5)'.

22. Since the confirmed Order would affect land not affected by the Order and not show a way in the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Martin Elliott

Inspector

MAP NOT TO
ORIGINAL SCALE



Northumberland
Northumberland County Council

Sustainable Transport
Local Services
County Hall Morpeth Northumberland
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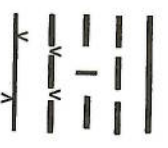
Wildlife and Countryside Act, 1981

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

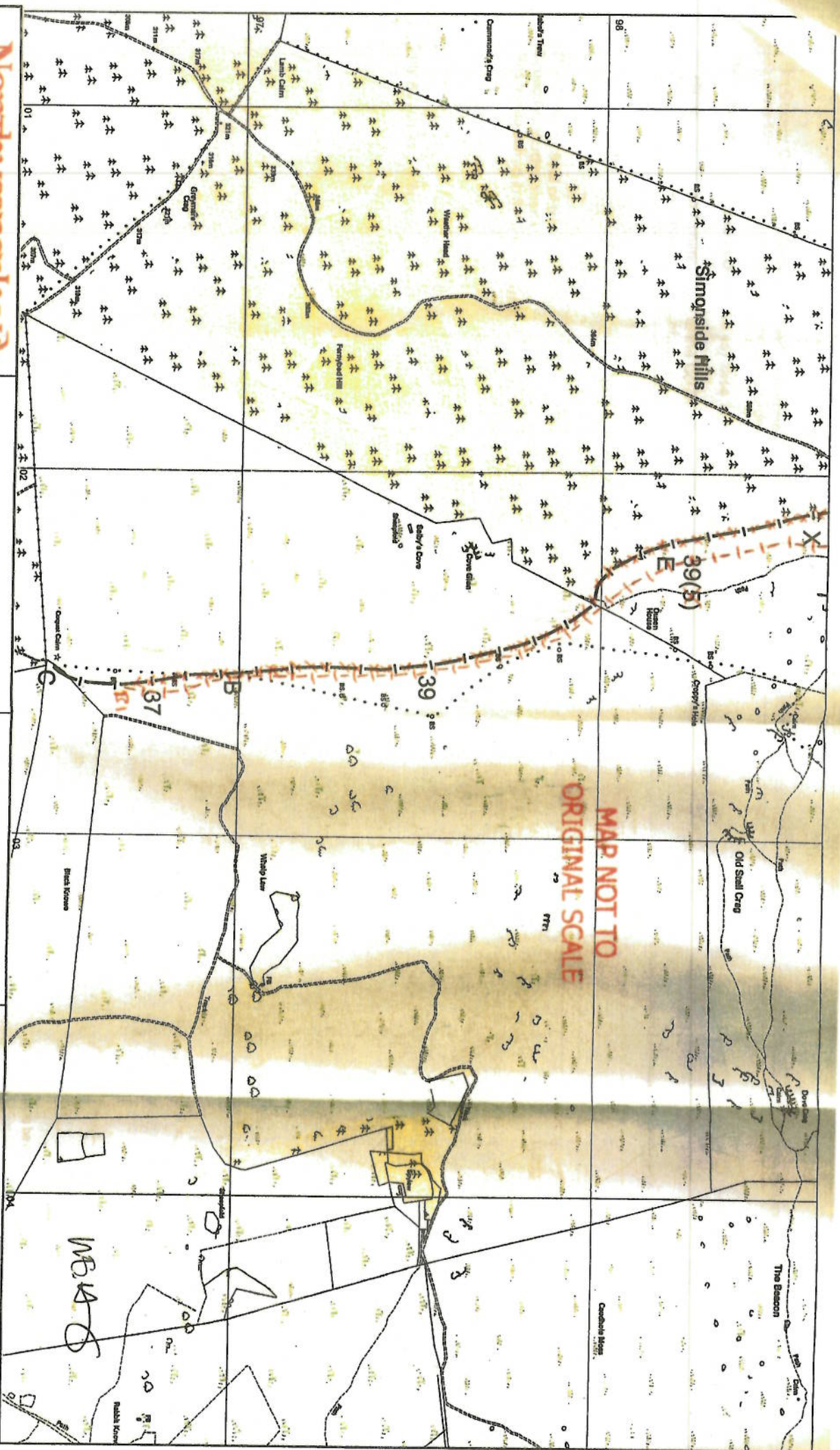
**The Northumberland
County Council**

**Modification Order
(No.15) 2014**

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



O.S. Map NU 00 SW	Definitive Map No. 93/108/	Scale: 1/10,000
NZ 09 NW		
Former District(s) Alnwick	Parish(es) Tosson	Date: June 2014



MAP NOT TO
ORIGINAL SCALE

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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.15) 2014**

Public Footpath to be deleted

Public Footpath

Public Bridleway

Restricted Byway

Byway Open to All Traffic



O.S. Map NZ 09 NW

Definitive Map No. 108

Scale: 1/10,000

Former District(s) Alnwick

Parish(es) Hollinghill/Tosson

Date: June 2014