

Order Decision

Site Visit on 22 August 2016

by Sue Arnott FIPROW

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

Decision date: 04 May 2017

Order Ref: FPS/P2935/7/48M

- 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 13) 2013.
- The Order is dated 25 November 2013. It proposes to modify the definitive map and statement for the area by recording a restricted byway in the Parishes of Thirston and Longhorsley from the A1 north west of Helm, south east and southwards, crossing the U6004 road and re-joining the A1 near Eshott Burn, as shown on the Order map and described in the Order schedule.
- There were two objections outstanding when Northumberland County Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.
- In accordance with Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 I have given notice of my proposal to confirm the Order with modifications. In response one objection has been submitted together with one representation in support.

Summary of Decision: The Order is confirmed subject to the modifications previously proposed.

Procedural Matters

1. If confirmed with the modifications set out in paragraph 54 of my interim Order Decision issued on 7 September 2016, the Order would record on the definitive map and statement a restricted byway as originally proposed but with different widths.
2. An objection to my proposed modifications was submitted by Ms Summerhill (on behalf of Mr and Mrs Hogg). The basis of this objection is their rejection of the proposed width as being "totally inappropriate" for a restricted byway. In addition, a representation from Mr Kind supports the proposed modifications but takes issue with a number of points within the interim decision.

Reasons

3. Having examined all the evidence previously submitted I was left in no doubt that the Order route was once a carriageway that formed part of the 'Great North Road'. Although public use has diminished, there is no evidence to show it was ever formally stopped up and therefore its status remains a public carriageway. The effect of Section 67(1) of the Natural Environment and Rural Communities Act 2006 leaves this highway a 'restricted byway', as proposed by the Order.
 4. This conclusion has not been challenged and no further evidence has been submitted that might cause me to alter my previous decision on this matter.
-

5. It is the proposed alteration of the width of this highway that is now at issue. As I concluded in paragraphs 41-46 of my interim Order Decision, it seems to me that the Ordnance Survey (OS) map of 1865 at a scale 25" to one mile offers the most accurate representation of the highway when fully in use. Consequently, scaling from this map led me to propose recording the northernmost section (F-G) as varying between 8m and 15m, and the southern sections H-K as varying between 10m and 18m and K-J as 18m wide.
6. Mr Kind helpfully provides a calculation of the average width based on the area of the highway identified by the OS (as parcel 44) and the measured length; his figures accord well with the widths I have proposed.
7. Objectors Mr and Mrs Hogg accept that the width now proposed reflects that shown on the 1865 OS map but wish it to be noted that this will include the verges and hedges and is not the width of the actual track. This is a fair point, and is well illustrated by one of two photographs of the route¹ submitted by Mr Kind. Where walls or hedges still exist which tally with the 1865 map, the extent of the highway will extend from boundary to boundary although the full width may not have a hard surface. Where such boundaries have long since disappeared, the full extent of the highway may now be more difficult to discern on the ground but the public's rights will nonetheless continue beyond the limits of any old stone track.
8. Mr Kind draws attention to the 1910 Finance Act map and the significance of the better quality copy supplied to me by Northumberland County Council (NCC) at my request and copied to all interested parties prior to my interim decision. In his view this should have been regarded as 'new evidence' notwithstanding the fact that a poorer version had already been submitted. That is debateable but of no consequence now in terms of the outcome of this Order.
9. In fact it is the underlying detail on the OS 25" base map that was not discernible on the poor copy which is highlighted by Mr Kind as noteworthy, supporting the significance of the Order route as the main through-route at Helm at a date of survey later than 1865². Indeed this emphasises the value of examining the larger scale OS editions which often reveal some of the finer features that can indicate a highway but which are missing from the smaller scale versions.
10. Mr Kind queries my reasoning in paragraphs 13 and 14 and in footnote 5 relating to the route he described as 'the bottom road', this being referred to in the interim decision as 'the bypass'. However I am not entirely clear where we differ other than on the question of whether, by 1835, the Order route had been supplanted by the bypass or the two roads were then still of equal importance.
11. Mr Kind suggests the 1835 "*Plan of the Present Road showing also the Proposed New Lines of Improvement*" implied that the Order route was to be rendered 'the old road' by the improvements (which were never built) whereas at paragraph 14 I deduced that by 1835 the bypass had by then become the more important of the two. It is not a critical point, but to be clear, I have little doubt that the Order route can be described as an 'ancient highway' since it existed as a public carriageway before 1835 and, in the absence of evidence of stopping up, that it continued with that status until 2006.

¹ These are said to have been taken some time before 2008

² Mr Kind estimates this to be c1895

12. On a balance of probability, I conclude that the Order should be confirmed with the modifications I proposed so as to ensure the width recorded for the Order route reflects the extent of the highway shown on the 1865 OS map.

Conclusion

13. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed subject to the modifications that have been advertised.

Other Matters

14. In relation to Mr and Mrs Hogg's comment that the width(s) proposed are "inappropriate", I refer to my paragraph 47 of the interim Order Decision. Here I recognised that "these measurements may appear hugely discordant both with the site as it exists today and with the likely needs of the public in future" but that "these issues are not relevant in determining the width of the corridor over which people in the distant past once enjoyed a right of way". Neither the merits nor disadvantages of the route can be taken into consideration when determining an Order of this nature which rests on the premise that once a highway has been established at any time in the past, it will continue to exist to its full extent unless formally closed.

Formal Decision

15. I confirm the Order subject to the following modifications:

In the Order schedule: Part II

Thirston Restricted Byway No 22: Statement

- In lines 1 and 2, delete "a 9 metre wide restricted byway (incorporating a 2.5 metre wide metalled track)" and substitute "a restricted byway varying in width between 8 metres and 15 metres as shown in the 1:2500 1st Edition Ordnance Survey map of 1865";
- In line 3, delete "thereafter as an 8.5 to 9 metre wide restricted byway";
- In lines 5, 6 and 7, delete "thereafter as an 8.5 to 9 metre wide restricted byway (incorporating a 2.5 metre wide metalled track";

Thirston Restricted Byway No 23: Statement

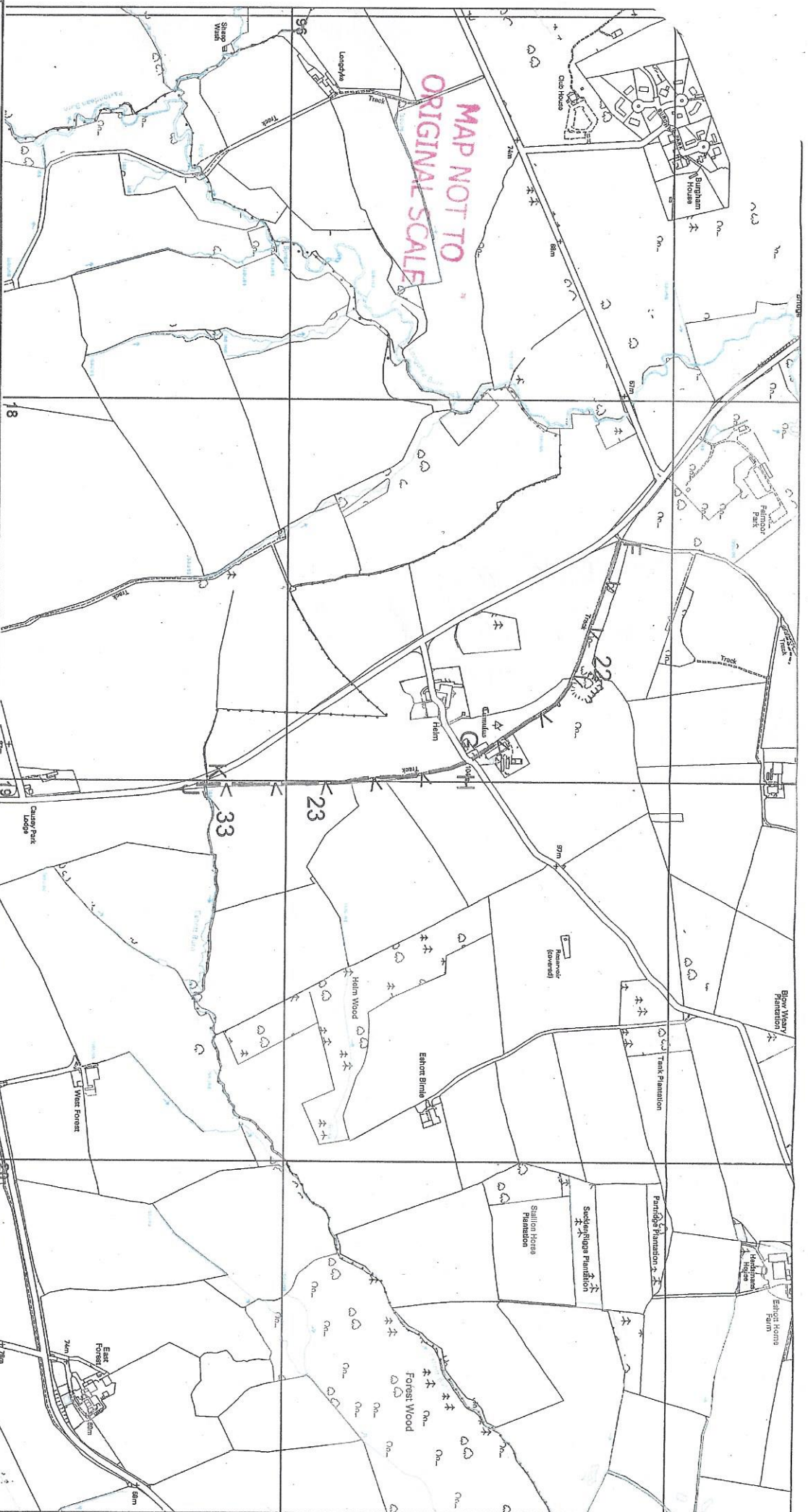
- In line 1, delete "a 5 metre wide restricted byway" and substitute "a restricted byway varying in width between 10 metres and 18 metres as shown in the 1:2500 1st Edition Ordnance Survey map of 1865";

Longhorsley Restricted Byway No 33: Statement

- In line 1, delete "a 5 metre wide restricted byway" and substitute "a restricted byway 18 metres in width as shown in the 1:2500 1st Edition Ordnance Survey map of 1865".

Sue Arnott

Inspector



Northumberland

Northumberland County Council

Sustainable Transport

Local Services

County Hall Morpeth Northumberland

Telephone 0845 600 6400 NE61 2EF

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office a Crown Copyright.
Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil Proceedings.
NORTHUMBERLAND COUNTY COUNCIL - OS Licence No. 100049048

Wildlife and Countryside Act, 1981

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

**The Northumberland
County Council**

Modification Order
(No.13) 2013

Public Right of Way closed

Public Footpath

Public Bridleway

Restricted Byway

Byway Open to All Traffic

O.S. Map NZ 19 NE

Former District(s) **Castle Morpeth**

Definitive Map No 111

| | |
|------------|--------------------------|
| Parish(es) | Thirston/ Longhorsley |
|------------|--------------------------|

Scale: 1/10,000

Date: November 2013