
Order Decision

Inquiry held on 6 December 2016

Site visit made on 5 December 2016

by Martin Elliott BSc FIPROW

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

Decision date: 06 December 2017

Order Ref: FPS/P2935/7/51M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Northumberland County Council Definitive Map Modification Order (No 14) 2014.
- The Order is dated 18 August 2014 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- 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 confirmed subject to modifications previously proposed and set out below in the Formal Decision.

Procedural Matters

1. In my interim decision dated 18 January 2017 I proposed confirmation of the Order subject to the removal of the section of Order route from point B¹ on the modified Order map to the gateway to Coquet Lodge. The section to be removed from the Order equates to the section shown A to U on the plan produced by the Council dated September 2013 which was referred to at the inquiry. Point A on this map is the same as point B on the modified Order map. Following the notice of the proposal to modify the Order four objections were received.
2. One of the objectors to the proposed modifications, Mr Ferguson, asked to be heard by way of a further inquiry. However, correspondence on behalf of the original objector indicated that they did not intend to be represented at any subsequent inquiry. Furthermore, the Council were to maintain a neutral stance in respect of the section of the Order route from point B to Coquet Lodge and were supportive of the written representations procedure; the Council agrees with the proposed modifications. In view of this I considered that it was appropriate to adopt the written representations procedure and the objector was asked to reconsider his position. The objector maintained his preference for a public inquiry although subsequently withdrew his objection to the proposed modifications; this was after arrangements for an inquiry had been made. Bearing in mind the above and the fact that no other party had requested to be heard by way of an inquiry I deemed it appropriate to cancel

¹ References to points A and B in this decision relate to points shown on the modified Order plan unless specified otherwise. Point A on this map is at the commencement of the Order route almost opposite Warkworth Hermitage

the inquiry. I have therefore considered the objections and representations by way of the written representations procedure.

3. I note representations by Mr Atkinson that the late withdrawal of the objection has denied the opportunity for others to present a case at an inquiry. However, as noted above, no other party had requested to be heard and in the circumstances the written representations procedure is appropriate. There is nothing contained in the objections and additional representations which requires the evidence to be tested at an inquiry. It should be noted that notice of the cancellation of the inquiry was sent to all of those who have expressed an interest in the Order. That notice invited further comments and I have had regard to all additional representations in reaching my decision.
4. Mr Atkinson makes the suggestion that at the end of the inquiry held on 6 December 2016 I colluded privately, with the 'agent' for the landowner and the solicitor for the Council, to arrive at a proposal to which none of those who attended the inquiry were a party.
5. As I made clear at the inquiry my decision must be made on the evidence before me measured against the relevant criteria under the 1981 Act. I also made it clear at the opening of the inquiry that the Council were not supporting the confirmation of the Order in respect of the section B to the entrance of Coquet Lodge. The Council also made their position clear in opening and closing submissions. Further, Counsel for the objector did not seek confirmation of the Order although stated in closing submissions that if I was minded to confirm the Order this would be to the exclusion of the section from point B to Coquet Lodge. The extent of the Order route, on which I sought evidence, was therefore a live issue throughout the inquiry.
6. At the inquiry I asked the Council to provide a form of words and modified map to assist in the modification of the Order if I was minded to confirm it subject to a modification to exclude the section B to Coquet Lodge. The Council presented this information in closing and the content was explained to the inquiry. I heard evidence at the inquiry in respect of the whole of the Order route and on the basis of this and other submissions to the inquiry I was minded to modify the Order. My decision is therefore based on the evidence before me measured against the relevant criteria. As I indicated at the inquiry if I was minded to confirm the Order with the modification requested by the Council then this would be subject to further consultation which arose in consequence of the notice dated 23 February 2017. This notice gave rise to four objections.
7. A number of objections raise concerns as to the clarity of the mapping in respect of the proposed modifications. Whilst I note these concerns there is nothing to suggest that the proposed modifications are not understood. The objections to the modifications and subsequent representations indicate that the parties understood the proposed modification.
8. Objectors also make the point that given that access to the Order route is currently prevented it has not been possible to check the proposed modifications and measurements. The proposed modification is to record the Order route as terminating at point B (point A on the September 2013 plan). This point was identified at the inquiry as the location of a shingle beach,

sycamore tree and memorial bench. There is no evidence before me to suggest that point B is incorrectly marked, the location was not disputed at the inquiry. The distance of 240 metres from point A to point B identified in the modified Order was provided by the Council at the inquiry. Given that the Council will take on a number of responsibilities if the Order is confirmed it is expected that care would be taken in the measurements. I have also checked the measurements on the map, an option which would be available to others, and I am satisfied that the distance of 240 metres is correct. There is nothing to suggest that anyone will have been prejudiced by an inability to check the measurements on the ground.

9. I have not carried out a further site visit of the Order route and surrounding area as there were no issues which made it necessary to revisit the site.
10. Following the closing date for written representations additional correspondence was received by the Planning Inspectorate. The correspondence did not raise any new evidence and was circulated to the parties for information only. Although I did not invite comment further observations were received. Where relevant I have had regard to the additional observations although in the main they did not raise any issues which I can take into account.

The Main Issue

11. The issue to be considered is whether there is any new evidence which, when considered with all other evidence, suggests that the proposed modifications should not be pursued. The test to be applied to the evidence is on the balance of probabilities.
12. In my interim decision I concluded that the Order in respect of the route from point A to point B should be confirmed. However, in respect of the section between point B and the entrance to Coquet Lodge, I concluded that there was insufficient evidence from which I could conclude that there were special circumstances to justify the entrance to Coquet Lodge as being a place of popular resort. Consequently this did not support the entrance to Coquet Lodge as being the termination point of a highway. This matter is dealt with in paragraphs 27 to 34 of my interim decision.
13. In their written representations the original objectors to the Order have referred to the case of *Moser v Ambleside UDC* 919250 89 J.P. 118 (*Moser v Ambleside*) a case previously cited by the Council and identified in my interim decision (paragraph 27). In that case it was established that a rural cul-de-sac highway could be established in some circumstances such as where the highway led to a place of popular resort. Atkin L.J. states that '*One of the first questions that one always has to enquire into in such a case as this is from whence does the highway come and whither does it lead? It has been suggested that you cannot have a highway except in so far as it connects to other highways. That seems to me to be too large a proposition. I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway...*'.

14. The original objectors also note that applying the principle in *Moser v Ambleside* rural highways have been found to exist which lead to a river (*Attorney General and Newton Abbot v. Dyer* [1947] Ch. 67), to the sea (*Williams Ellis v. Cobb* [1935] 1 Q.B. 310), to a church or local beauty spot (*Moser v. Ambleside*).
15. It is therefore recognised that in certain circumstances culs-de-sac in rural areas can be highways. However, before recognising a cul-de-sac as a highway, special circumstances must exist such as where the route is to or from a place of popular resort.
16. If I am to confirm the Order as made I need to be satisfied, on the balance of probabilities, that the entrance to Coquet Lodge is a place of popular resort such as to justify the existence of a highway between point B and this location.

Reasons

17. Mr Atkinson and Mr Farrall assert that the public must have walked the whole length of the Order route to Coquet Lodge for many years; Mr Atkinson suggests that this has possibly been for two hundred years. Mr Ferguson describes his use of a route through Coquet Lodge. Mrs Atkinson also makes the point that the historic Mill Walk went to the wall by the gateway to the Mill as evidenced in Tomlinson's guide to Northumberland 1835. My interim decision acknowledges (paragraph 18) that the Order route as a whole has been used by the public however, there is no documentary evidence before me of historic highway rights on a route leading to Coquet Lodge. Whilst the extract from Tomlinson refers to a walk to the mill this is insufficient on its own to demonstrate public rights. However, the issue to be considered is whether the entrance to Coquet Lodge is a place of popular resort such as to constitute the termination point of a cul-de-sac highway.
18. Evidence from Mr Farndale, the head bailiff for Northumberland Anglers Federation is that there was never a continuation of a path from point B and it was only those with business at Coquet Lodge who were allowed to continue to Coquet Lodge. Mr Farndale makes the point that the rights to fish are granted by Northumberland Estates.
19. Mr and Mrs Cuthbert indicate that Mr Cuthbert was the head bailiff for the National Rivers/Environment Agencies from 1965 to 1996 and that during this period anglers used the gates into Coquet Lodge to fish on the Coquet. They also state, following discussions with anglers, that access to the river bank was through the gates to Coquet Lodge.
20. I note the point of Mr and Mrs Cuthbert that during the period 1965 to 1996 Mr Farndale was not the head bailiff for the Northumberland Anglers Association. However, his evidence indicates that fishing took place in consequence of rights granted by Northumberland Estates. Although anglers may have passed through Coquet Lodge to fish on the Coquet such access would be in consequence of the private fishing rights and not public access. Mr Farndale's evidence does not support a public route beyond point B or a place of popular resort at the entrance to Coquet Lodge. I do however note the additional comments from Mrs Cuthbert who suggests that Mr Farndale was rarely at Warkworth and unable to comment on a daily basis as to the use of the route

to the gates of Coquet Lodge. My interim decision does acknowledge use by the public up to the gates of the Lodge and therefore conflicts with the evidence of Mr Farndale. Nevertheless, the issue is whether the entrance to Coquet Lodge is a place of popular resort.

21. Mr and Mrs Cuthbert also state that whilst there was a notice on the gates to Coquet Lodge, to the effect that there was no public access and access only to anglers, there was no such notice on the sycamore tree (point B). However, this does not demonstrate that the gates were a public terminus to any route or that the gates provided a location for a place of popular resort. The notices only serve to indicate that public access through the Lodge was restricted. It is acknowledged that the public used a route to the gates of the Lodge but that alone does not demonstrate the existence of a place of popular resort.
22. Mr and Mrs Cuthbert have provided maps dated 1860 and 1959 which appear to be editions of Ordnance Survey mapping. However, the maps, although showing a route adjacent to the river and in respect of the 1860 map a route to Coquet Lodge, do not provide any evidence as to the status of the route. Ordnance Survey maps were produced to record topographical features and not public rights of way. The maps also provide no information as to whether the termination point of the Order route is a place of popular resort and therefore do not assist.
23. The original objectors submit that as is apparent on the ground there is nothing which supports a finding that the entrance to Coquet Lodge is a place of popular resort within the meaning of *Moser v Ambleside*. It is submitted that there is nothing to indicate the existence of a public facility, any particular valued view or anything to suggest a recognised beauty spot. In applying established legal principles it is contended that the route cannot terminate at that point.
24. In my interim decision I concluded (paragraph 33) that there was insufficient evidence from which I could conclude that there are special circumstances to justify the entrance to Coquet Lodge as being the termination point of the highway. There is no new evidence before me so as to set aside this conclusion and enable me to confirm the Order as made. Mr and Mrs Cuthbert and Mr Farrall acknowledge that they have no new evidence to submit. I accept that the public walked to the entrance of Coquet Lodge and I note references to the 'Kings Head' in the boundary wall of Coquet Lodge. I also note the points made by Lesley Bootiman Byrne, that there is an expectation of many to be able to walk as far as the Coquet Lodge gates and those of Mr Farrell, that the gate to the Lodge or the boundary wall are more obvious points at which to turn around. However, this does not evidence a place of popular resort such as those identified in paragraph 14 above. I therefore conclude that the Order should be confirmed with the modifications previously proposed in my interim decision.
25. I do not accept the assertion of Mr and Mrs Cuthbert that the description of the sycamore tree and the bench have been made up. Mr Farrell also makes the point that the proposed point of termination is not a physically identifiable point. In this respect I heard evidence at the inquiry that this location (point B) was used by the public for a variety of purposes (interim decision 30) and that the route up to this point was used to enjoy the river. Such evidence

enabled me to reach a conclusion that point B was a place of popular resort such as to satisfy the existence of a cul-de-sac highway.

Other Matters

26. Representations are made in respect of the access road to Coquet Lodge, the erection of a barn on land adjacent to the Order route, various actions by the landowner including the fencing of the route and the desirability of the route to allow the public to sit by the bank side and enjoy the wildlife. The point is also made that the route provides access for able and disabled anglers. Further, reference is made to the landscape value of the area, the protection of a red squirrel colony and the effect on fencing on the public and wildlife. It is also suggested that the Mill Walk is an established right of way and there is no justification for changing the route. The point is also made that to record a route to the gates of Coquet Lodge would not result in any maintenance liability and neither would it affect the privacy of the property. Whilst I note these issues they are not matters which can be considered under the 1981 Act. My final decision must be based on the evidence before me measured against the relevant criteria (paragraphs 11 to 16 above).
27. Lesley Bootiman Byrne refers to the erection of the gate at Coquet Lodge even though the route through Coquet Lodge had been 'a right of way for centuries'. Whilst I note this suggestion any route through Coquet Lodge does not form part of the Order route and is outside my consideration which is limited to the modifications proposed in my interim decision.

Conclusion

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

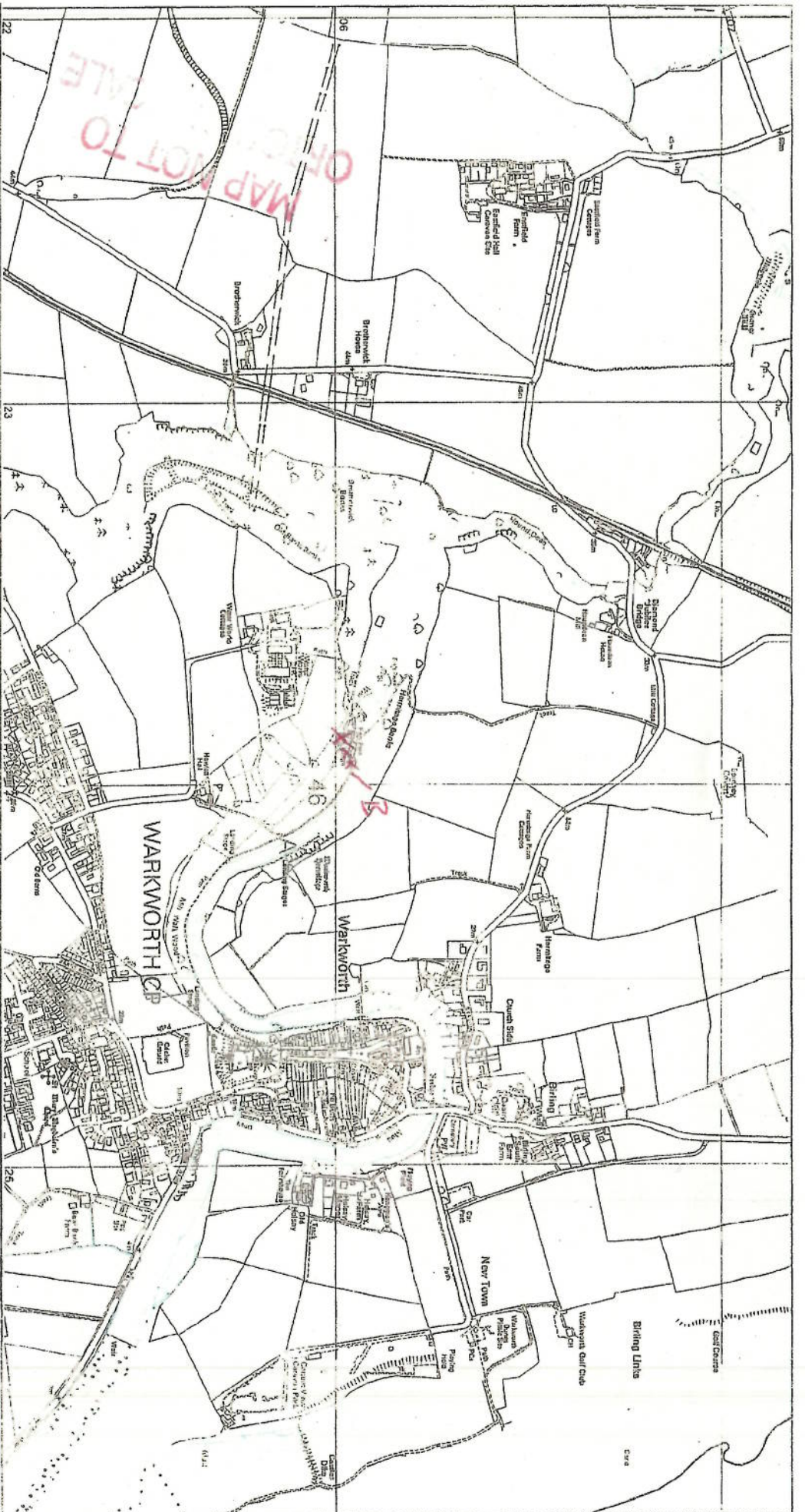
Formal Decision

29. The Order is confirmed subject to the following modifications:

- At Part 1 of the Schedule to the Order delete from line three the words 'then south-westerly', delete '320' and insert '240' and at line four delete ', 30 metres south-east of Coquet Lodge'.
- At Part II of the Schedule delete from line four '250' and insert in its place '240' and also from line four delete 'then continuing as a grass surfaced path in a south-westerly direction for a distance of 70 metres to join the access road to Coquet Lodge 30 metres south-east of Coquet Lodge'.
- On the Order map delete point 'B' and insert a new point 'B' 85 metres from the existing point B and delete the section of dashed line between these two points.

Martin Elliott

Inspector



Northumberland
 Northumberland County Council
 Sustainable Transport
 Local Services
 County Hall Morepeth Northumberland
 Telephone 0845 600 6400 NE61 2EF

Wildlife and Countryside Act, 1981
**Definitive Map of
 Public Rights of Way
 for the
 County of Northumberland**

**The Northumberland
 County Council**
**Modification Order
 (No.14) 2014**

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

O.S. Map NU 20 NW
 Former District(s) Alnwick

Definitive Map No 83
 Parish(es) Warkworth

Scale: 1/10,000
 Date June 2014

15-1-14