



## Order Decision

Site visit made on 27 February 2019

by **Helen Heward BSc Hons MRTPI**

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

Decision date: 21 May 2019

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### Order Ref: ROW/3207751

- 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 23) 2016.
- The Order is dated 1 December 2016 and proposes to alter the Definitive Map and Statement for the area by adding a public bridleway and byway open to all traffic as shown in the Order plan and described in the Order Schedule.
- There were two objections outstanding when Northumberland County Council (the Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is not confirmed.**

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### Procedural Matters

1. I carried out an unaccompanied site visit. I considered the case based on written representations as none of the parties requested an inquiry or hearing.
2. The route described in the Order and shown on the accompanying plan is in two parts, A-B and B-C. The claimed public right of way in the application was for a restricted byway along the entire route A-C. The Council supports the application for the recording of a public right of way along the route, but not as a Byway Open to All Traffic (BOAT) in its entirety. The Order supported by the Council, and which I am considering, would record section A-B as BOAT No 161 and section B-C as Public Bridleway No 159, in the Parish of Allendale.
3. An objection by the Trail Riders Fellowship was withdrawn. The outstanding objection by Stublick Estates Ltd objects to a lack of evidence but does not submit any evidence or statement to support their objection.

### Main Issues

4. Whether there is evidence which, when considered with all other relevant evidence available, and on a balance of probabilities, shows that a public right of way for vehicles was once in existence along the Order route A-B, and for use as a bridleway along section B-C.
5. In respect of section A-B I shall consider two additional issues. Firstly, whether mechanically propelled vehicular (MPV) rights have been extinguished under the Natural Environment and Rural Communities Act 2006 (2006 Act). Secondly, if the character of section A-B is such that it satisfies the definition of a BOAT.

### Reasons

#### *Evidence of a BOAT - Section A-B*

6. Section 53(3)(c)(i) of the 1981 Act provides that a modification order should be made on the discovery of evidence which, when considered with all other
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- evidence available, shows that a public right of way for vehicles which is not shown on the Definitive Map and Statement subsists, or is reasonably alleged to subsist over land in the area to which the map relates.
7. The Council submit that an 1826 Act gave authority to extinguish the former Inclosure Award roads and create a new Turnpike Road (now the B6295) running broadly north south through the area. But there is no evidence before me to show that procedures to extinguish the vehicular rights over Section A-B were carried out.
  8. A plan of the Turnpike Road route shows it to cross Catton Beacon Road, a 'Public Carriage Road', to the west of a broadly northwest to southeast route. The latter is also shown on an extract of the Hexham & Allendale Inclosure Award plan 1820. On my site visit I could see some evidence of the alignment of this route in the landscape. It is reasonable to infer that section A-B is the eastern end of Catton Beacon Road.
  9. As part of Catton Beacon Road, this plan depicts section A-B in a similar manner to other recognised public highways. The situation is correspondingly depicted on Fryer's County Map 1820 and gives an impression that section A-B is a continuation of the road to the east. The same can be said of Greenwood's County Map 1828, although not so of Cary's Map 1820-1832.
  10. Section A-B, east of the Turnpike Road can be more clearly seen on Ordnance Survey (OS) map extracts from 1865 and 1898/9. Solid lines mark the outer edges and it appears like other roads shown. An extract from a Book of Reference for the 1865 1<sup>st</sup> Edition 25" series describes the western section as 'public road'.
  11. These documents provided some evidence of a route but cannot be used to presume a public right for vehicles. 1923/4 and 1951/2 OS map extracts add confusion with the use of both solid lines and broken lines, more akin to the depiction of tracks on Catton Moss Moor to the east.
  12. Plans for the purposes of the 1910 Finance Act were produced as a baseline survey record from which present and future land values could be assessed for taxation. They were not intended as a record of public rights of way but as the presence of a public path could affect the value of land they were often recorded. In this case plans accompanying the 1910 Finance Act exclude section A-B from the coloured land, adding to the inference of a public right of way existing.
  13. The Restriction of Ribbon Development Act, 1935, required councils to record public roads (but not footpaths and bridleways) to which the Act applied. Section A-B appears in a 1937 schedule and map of roads produced in relation to the Ribbon Development Act 1935. Records made were public documents. Although not substantive I attach some weight to this evidence.
  14. Under the Local Government Act 1894 new Urban and Rural District Councils took over all but "main roads" from the County Councils. In 1929, responsibility for maintenance was handed over to County Councils. In this case section A-B is identified on the 1932 Hexham Rural District Council Handover Map by thick hand drawn lines, in a similar manner to other roads. It appears on the County Council Highways Maps of 1951 and 1964 as the [U]8026, annotated in pink/red like the [U]8025 to the west. The 1964 and 1974 list description of "*From B6295 at Green Meadows eastwards to gateway*

*leading to Catton Moss on Allendale Stinted Pastures*" is consistent with my observations.

15. The U8026 is recorded in the County Council List of Streets which are maintainable at the public expense as "*B6295 R/Meadows to on A/dal, total length 232m*". This description from the network management information system map corresponds with section A-B.
16. Evidence pertaining to maintenance liability is not definitive in identifying the legal status of the ways shown and referred to. The Council submit that in Northumberland there is no evidence to suggest that public paths and bridleways were deliberately shown in the List of Streets. In the absence of evidence to the contrary I find this to be a reasonable argument that raises the presumption that the Order route was considered a publicly maintainable vehicular road.
17. Subsection 67(2)(b) of the 2006 Act provides that subsection 67(1), for extinguishment of MPV rights, does not apply to an existing public right of way if "*immediately before commencement it was not shown in a Definitive Map and Statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980*"; that is a list of highways maintainable at the public expense. Section A-B was recorded on the List of Streets and not recorded on the Definitive Map and Statement at the relevant time.
18. In all I find that whilst the individual pieces of evidence have limitations, together they create an overall body of evidence that leads me to conclude that the probability is that a publicly maintainable vehicular highway existed along Order route section A-B at, and over time before, 2 May 2006.

*The character and appearance of section A-B*

19. On my site visit I observed that the alignment, width and layout of the carriageway of section A-B appeared very much like the road to the west, albeit on the east side of the B6295. On approaching the crossroads from the west, section A-B appeared as a continuation of that road beyond the junction. The character and appearance of section A-B were very much as a part of, and not dissimilar from, the normal publicly maintainable vehicular highway network in the locality.
20. The surface of section A-B did not appear to have been maintained to the same specification as other roads. Members of the public might use section A-B to access the Moor to the east. But I did not find the character and appearance of Section A-B to be that of a "*right of way for vehicular and all other kinds of traffic, used by the public mainly for the purposes for which footpaths and bridleways are so used*".
21. I am not satisfied that section A-B meets the statutory definition of a BOAT found in section 66(1) of the 1981 Act.

*Evidence of a bridleway - section B-C*

22. A general indication of a route appears on Fryer's Map of 1820. However, the annotation changes from solid to broken lines at point "B" and there is nothing to explain the significance. The scale and vagueness are such that it does not provide a clear indication of the alignment of section B-C. Greenwood's Map of 1828 indicates two tracks across the Moor in the vicinity. The northerly one most closely compares with section B-C but the alignment does not correlate with that shown for section B-C on the Order plan.

23. OS map extracts provide clearer evidence of two tracks across the Moor in this area and the letters "F.P" appear on several. Collectively the maps create a picture of "B" as a point of access but the cartographical evidence of a route along the exact alignment of section B-C is far from, and these documents cannot be used to presume public rights.
24. A Finance Act 1910 plan shows a track running east from "B" and then splitting in two, but there is little to say where either goes next. A submission of the route and its status because of the absence of other routes is no more than assertion. Nor is the recording of other bridleways over the Moor evidence of the omission of this route in error.
25. User evidence is scant, with only one direct report that it has been used before. Nor did I find clear evidence on the ground of a definite route along the alignment of section B-C on the Order plan. The Council agree that evidence in respect of section B-C is not as compelling as for A-B.
26. I conclude that there is insufficient evidence to support that a bridleway exists along the alignment of section B-C.

### **Conclusions**

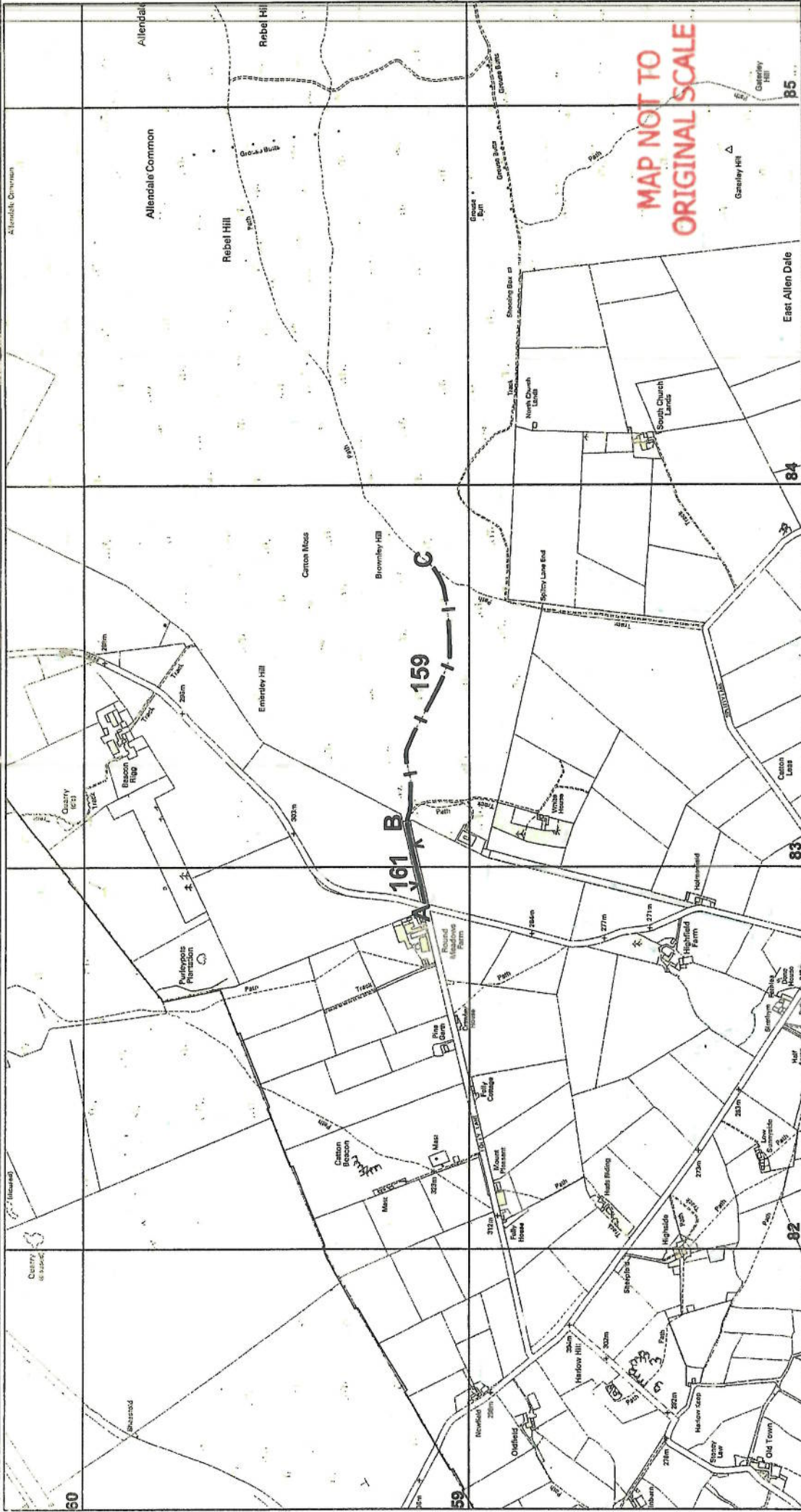
27. Having considered all other matters raised, and for the reasons set out above, I conclude that the Order should not be confirmed.

### **Formal Decision**

28. The Order is not confirmed.

*Helen Heward*

INSPECTOR



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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.23) 2016**

Public Footpath to be deleted	O.S. Map NY 85 NW	Scale: 1/10,000
Public Footpath		
Public Bridleway		
Restricted Byway		
Byway Open to All Traffic		
Definitive Map No 217		Parish(es) Allendale
Former District(s) Tynedale		Date: November 2016

11 November

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