



Appeal Decision

by K R Seward Solicitor

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

Decision date: 19 September 2019

Appeal Ref: FPS/P2935/14A/7

- The appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of Northumberland County Council not to make an Order under Section 53 of that Act.
- The application dated 4 September 2017 was refused by Northumberland County Council on 13 February 2019.
- The appellant claims that the definitive map and statement for the area should be modified by upgrading the footpaths known as Parish of Doddington Public Footpath No 6 and Parish of Chatton Public Footpath No 29 to a bridleway/restricted byway from Byway Open to All Traffic No 21 north-east of Doddington Quarry in a general southerly direction crossing the Doddington/Chatton parish boundary to join the C38 road north-west of Weetwood Hall.

Summary of Decision: The appeal is allowed.

Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine this appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 ('the 1981 Act'). I have not visited the site, but I am satisfied that I can make my decision without doing so.
2. For clarity I have taken the broad description of the route used in the Council's decision whilst noting that the application form describes the route as being 'from GR NU 016 333 on BOAT 214/021 to GR NU 015 298 on the road C38'.
3. The route is currently recorded in the Definitive Map and Statement ('DMS') as two linked public footpaths known as FP 216/006, in the parish of Doddington ('FP6') and FP211/029, in the parish of Chatton ('FP29'). The application seeks to 'upgrade' the public footpaths to either a bridleway or a restricted byway. The application identifies that FP6 connects to the north with a byway open to all traffic (BOAT 214/021) which is also recorded on the List of Streets.
4. A bridleway includes the rights of a footpath as well as the right to ride or lead a horse and to ride a bicycle. A restricted byway includes those same rights plus a right to use non-mechanically propelled vehicles e.g. horse and carriage. A byway open to all traffic gives a right for all traffic, including vehicles, but is mainly used by the public as a footpath or bridleway.
5. A copy of the map accompanying the application showing the claimed route is attached for reference purposes.
6. The Appeal Form was submitted in the name of Susan Rogers of the British Horse Society whereas the original application was made by Sally Booth.

Written confirmation was subsequently provided by Sally Booth that Susan Rogers had prepared the appeal on her behalf.

Legal Framework

7. In order for a footpath to be 'upgraded', section 53(3)(c)(ii) provides that an order to modify the DMS shall be made where evidence is discovered which (when considered with other relevant evidence available) shows that a highway shown in the map and statement subsists as a highway of a particular description ought to be there shown as a highway of a different description.

Main Issues

8. The main issue is whether the evidence is sufficient to show, on the balance of probabilities, that the existing public footpaths should be recorded as a public bridleway or restricted byway.

Reasons

9. The application relies on documentary evidence. Section 32 of the Highways Act 1980 requires a court or other tribunal to take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, giving it such weight as is justified by the circumstances.
10. Doddington Parish Council identifies the length of the path in question as about 2.3 miles of which 1.7 miles lies within Doddington parish. The remainder will be within Chatton parish.

County maps

11. The entire length of the claimed route is shown on Greenwood's map of Northumberland 1828. The southernmost end (FP29) appears as solid double lines as though a continuation of the road from the south. It changes to double dashed lines of equal width over the remainder (FP6). The Council acknowledges that if the purpose of the map was to depict commercial travel routes throughout the County then it is reasonable to assume that the route carried higher rights than a public footpath.
12. These maps were available for public purchase and are likely to focus on routes that were publicly accessible. They were expensive to buy and would serve no purpose if the public were unable to rely upon the map to show routes that were available to use. In this case the route is shown as though it started as a road becoming a track. It could indicate that the route was suitable for traffic besides on foot. It is some evidence to be considered alongside other findings.
13. There is no evidence of the route on Armstrong's county map 1769, Fryer's county map 1820 or Cary's county map 1820-32.

Tithe records

14. The Council states that the tithe map of 1847 for Weetwood township in the parish of Chatton "shows a track over the entire length of the claimed route" with no clear indication as to its status. It transpires that it shows only the part within Westwood township. The extract provided shows the southern end of the route by solid parallel lines narrowing abruptly to coincide with the field boundaries on either side which bear different hereditament numbers. The route appears in the same manner as the road to Horton to which the route is

connected. Both routes are numbered 68. There is no copy of the tithe apportionment. The applicant believes that the same plot number was used for other current public roads nearby to suggest they are all the same status. Apart from the road to Horton no others of that number appear on the extract.

15. The remainder of the route is not shown on the 1849 tithe map for Doddington.
16. The purpose of tithe maps was not to identify public highways, but the depiction of the southern part of the route in the same way as a known public carriageway to which it connects provides evidence of some weight that it was considered by the tithe commissioners to be a public carriageway in 1847.

Bartholomew's cycling map

17. The entire route is shown on Bartholomew's half-inch cycling map of 1903. However, the Council points out that the same extract shows other routes currently recorded as public footpaths and some routes with no public recorded status at all. As evidence, the map is unreliable given those considerations.

Finance Act 1910 records

18. Under the 1910 Act all land was required to be valued unless exempted. Routes shown on the base plans which correspond with known public highways, usually vehicular, are not normally shown as included in the hereditaments. Instead, they are uncoloured and unnumbered.
19. Where the northern section of the route crosses open moorland it forms part of a large hereditament identified as Plot 1. In the accompanying Field Book there is no deduction made for any public rights of way or any public rights of user. This could be because there were no public vehicular rights. Another explanation is that the landowner chose not to claim deductions. It is suggested by the appellant that this is often found to be the case in Northumberland where the poor quality of the moorland meant that any deduction was likely to be very small. Essentially, there is no evidence either way within the Finance Act records of public rights over the northern section.
20. The southern part of the route is shown uncoloured and unnumbered up to the point that it narrows so as to be excluded from the adjacent hereditaments and not liable for tax. It is not conclusive, but this raises a strong possibility that this part of the route was regarded at the time as a public highway carrying vehicular rights. The other explanation is that it was an occupation road used by a number of people without the land being assigned to one individual.

Ordnance survey mapping

21. The Council acknowledges that all the Ordnance Survey ('OS') maps from circa 1860 to 1952 depict a track over the full length of the claimed route.
22. On the 1st edition 25" OS map c1860 the number 26 has been inserted along the southern part the route which is referred to by the appellant as a hedged lane. It is described in the accompanying 'Book of Reference' as a 'Private road'. The middle and northern sections of the route are unnumbered and cross field parcels described as 'arable, rough pasture, roads & streams' and 'arable, rough pasture, and road'.
23. The 'private road' led to a single property but it is also shown to carry on past it with fields either side. The appellant argues that the existence of the route as

a road as it proceeds north through the moor is acknowledged by reference to the word 'road' in the description of the surrounding parcels. That may be so, but a reference to 'road' does not necessarily signify a public road.

24. Both the 1925¹ and 1957² 6" OS maps show the entire route annotated 'F.P'. From this it can be deduced that the surveyor at the time considered the route to have the physical characteristics on the ground of a footpath.
25. The route is shown but not annotated on the 2nd edition 1899 6" OS map. As three other footpaths and a bridleway joining or crossing it are annotated, the appellant believes this must mean that the claimed route had higher status. I do not think that conclusion can readily be drawn. The route is shown by double dashed lines in the same way as the bridleway and footpaths. This could more easily suggest the route was similarly regarded as a footpath, as presently recorded, or possibly a bridleway.
26. The OS maps support the presence of a footpath which in or around 1860 appears to have ran over what the surveyor regarded as part of a private road. There appears to have been a road/track which continued northwards, but its status is unclear from the OS maps.

Other submissions

27. The appellant suggests that the current footpath over Doddington Moor is the remnant of the route used by part of the English Army to engage with the Scots at the battle of Flodden Field over 500 years ago. Reference is made to the theory of a military historian that military leaders would move their army via the firmest going to prevent soldiers on horseback and artillery from becoming bogged down. It is suggested that the claimed route would have offered a suitable surface.
28. Whilst pointing out that there is no historical information to support or negate these assertions the Council suggests that it is more likely that the old Roman road (known as the Devil's Causeway) was used as the more sustainable route for an army.
29. Ultimately, whether or not the claimed route is of such historical note is of little significance in determining the status of the route in this appeal. Most likely an army would take whichever route suited without establishing the use to which it was put by the public.
30. The Council highlights that during the preparation of the current DMS, an adjoining proposed bridleway which links to the claimed route was changed to public footpath status. At that time, there were no apparent representations to change the status of the current footpaths to bridleways. I draw no inferences from this when the current claim is based upon the discovery of historical evidence.

Conclusions on the evidence

31. The weight attaching to the evidence as a whole must be assessed. Historical evidence does not need to be supported by public user evidence in order to demonstrate higher public rights. Those rights could exist even though the

¹ 3rd edition

² Provisional edition

- landowners have not witnessed any bicycle or equestrian use by the public. Such use would not be allowed whilst they are recorded as public footpaths.
32. As the Council acknowledges, the cumulative evidence suggests that historically a track existed over the claimed route. The issue is whether it carried any public rights higher than as public footpaths.
 33. Greenwood's map from 1828 indicates that the entire route was a road becoming a track of similar width over which the public enjoyed rights. It demonstrates the physical presence of a route capable of accommodating public vehicular traffic. The Finance Act records of 1910 support the southern part of the route being a road or track used by the public. This corresponds with the Tithe Map for Weetwood 1847 on which the southern end of the route is shown and annotated in the same way as the public road to Horton.
 34. The OS map evidence of 1860 indicates that the southern part of the route was thought to be a private road. Other OS maps show a track but provide no evidence of anything more than a public footpath.
 35. No single piece of evidence is conclusive, but the documentary evidence from the Tithe Map and the Finance Act combined provide reasonably good evidence that the southern part of the route as shown therein was considered to be a public road when those maps were drawn. There is no documentary evidence to indicate it was an occupation road. The case is more finely balanced for the remainder of the route. The evidence indicates that a track continued to the north. To my mind it is unlikely that the public would reach a certain point on horseback or with horse and cart only to turn back. There was no apparent focal point at the end of the road before it changed to track. It raises the question why would people turn around at the end of the 'road' when the continuation 'track' led towards another public carriageway (now a BOAT)? The most logical explanation is that users of the 'road' continued along the track.
 36. There is enough historical evidence to show on the balance of probabilities that the whole route has the status of a public carriageway.

The Natural Environment and Rural Communities Act 2006

37. With effect from 2 May 2006, section 67 (1) of the 2006 Act extinguished any right the public had to use mechanically propelled vehicles (MPVs) over a route that was not shown in the DMS or over a route that was shown in the map and statement but only as a footpath, bridleway or restricted byway. This was subject to certain exceptions none of which are argued to apply here.
38. If any rights for MPV's had been established along the route, then they would have been extinguished as a result of the 2006 Act. As the public's right to use the route with non-mechanically propelled vehicles is unaffected by the provisions of section 67, it can be recorded as a restricted byway.

Other Matters

39. I note the concerns raised by Doddington Parish Council over how the definitive line does not accommodate current farming practices with the public footpaths crossing fields under cultivation. If upgraded, it is suggested that the route be varied to reflect the line taken by users to avoid growing crops. However, the legal definitive line is that shown in the DMS. It is not possible to vary the line

without a formal application for a diversion via the statutory process provided by the Highways Act 1980.

Conclusion

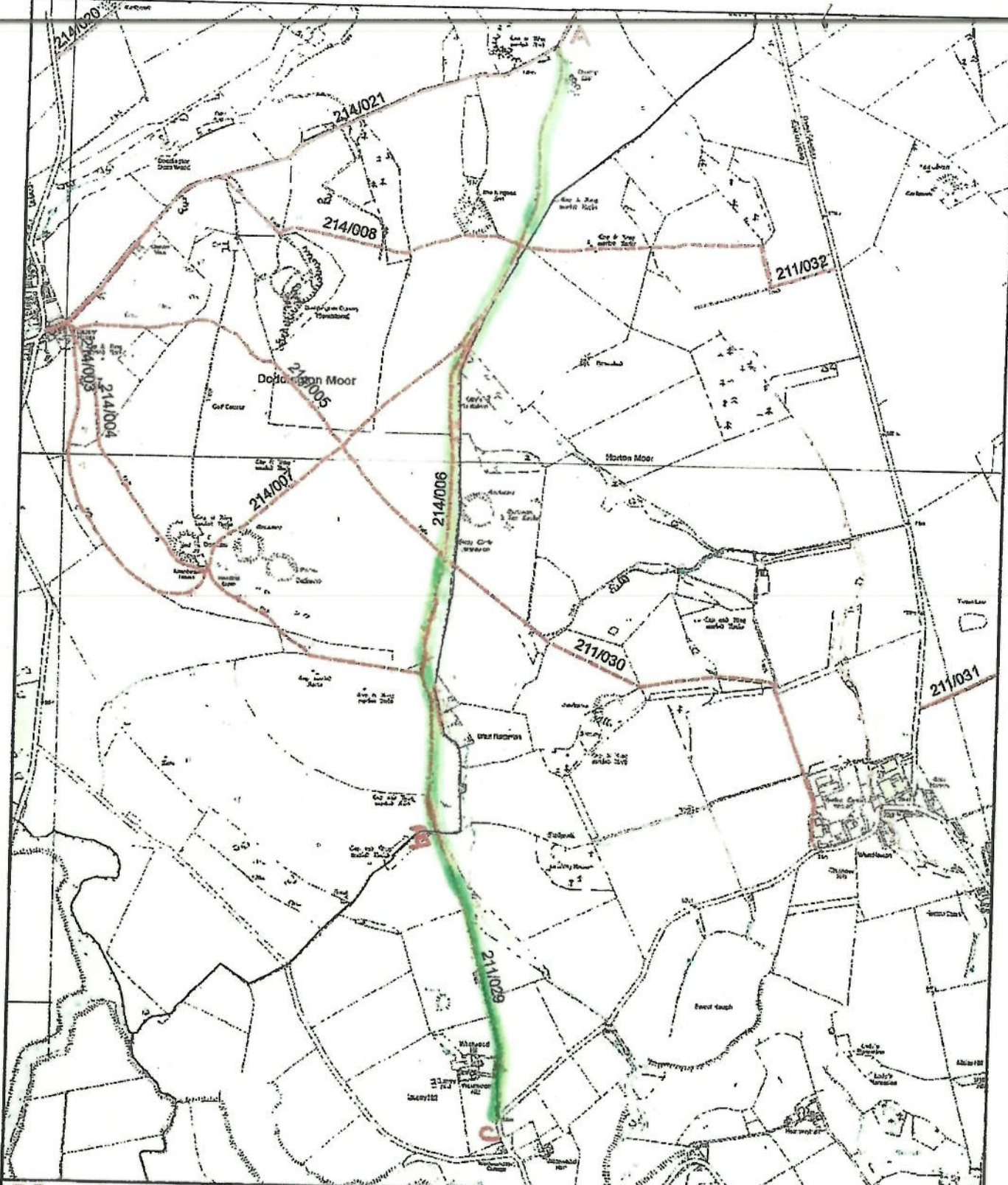
40. Having regard to the above and all other matters raised in the written representations, I conclude that the evidence available does show that on the balance of probabilities the existing public footpaths should be recorded as restricted byways.

Formal Decision

41. I allow the appeal. In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act, Northumberland County Council is directed to make an order under section 53(2) and Schedule 15 of the 1981 Act to modify the definitive map and statement to upgrade the footpaths to restricted byways as set out in the application dated 4 September 2017. This decision is made without prejudice to any decision that may be given by the Secretary of State in accordance with powers under Schedule 15 of the 1981 Act.

KR Seward

INSPECTOR



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Wildlife & Countryside Act, 1981



Claimed Public Right of Way

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Former District	Berwick	Parish	Doddington / Chatton	Scale	1:18,000
Def. Map. No.	29 / 38	O.S. Map	NU03SW / 02NW	Date	August 2017