



Order Decision

On papers on file

by K R Saward Solicitor

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

Decision date: 30 September 2019

Order Ref: ROW/3220600

- 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) 2017.
- The Order is dated 20 November 2017 and proposes to modify the Definitive Map and Statement for the area by adding a restricted byway in part and upgrading a bridleway and footpaths to restricted byways in part as shown in the Order plans and described in the Order Schedule.
- There were two objections outstanding when Northumberland County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. There is no applicant. Instead, the Order is promoted by the County Council which is also the Order Making Authority ('OMA'). The two objections were both withdrawn after the Order was submitted to the Secretary of State for confirmation. I must nevertheless be satisfied that there are grounds to confirm the Order pursuant to the relevant provisions within the 1981 Act.
2. In the circumstances of this case I am satisfied that I can make the decision without the need for a site visit.
3. Most of the Order relates to parts of an existing bridleway and footpaths which would be upgraded and re-numbered as Restricted Byways Nos 21,22 and 58. In addition, a section of route between RB21 and RB22 would be added as a Restricted Byway No 44 ('RB44') to link the routes. Another section would be added between points B-C as part of RB58. Collectively, one continuous line would be formed with the status of a restricted byway.
4. The OMA has chosen to prepare the Order in a way that adds a new description to the Definitive Statement for the re-numbered paths and either deletes or amends the description for the existing path depending upon whether any part of it would remain unaffected. The OMA explains that it originally intended to modify all the Statements for linked paths, but it removed these elements from the Order for simplification. Among other provisions, the Order is expressed to be made pursuant to section 53(3)(c)(iii). This applies where there is no public right of way over land shown in the map and statement as a highway of any description, *or any other particulars contained in the map and statement require modification*. The reference to this section remains applicable to the extent that the Definitive Map and Statement ('DMS') requires alteration and the deletion of entries for those paths that are to be upgraded and renumbered.

5. As I have found it convenient to refer to points along the routes, a copy of the Order plans is attached for reference purposes.

Main Issues

6. The Order has been made under Section 53(3)(2)(b) of the 1981 Act in consequence of the occurrence of an event specified in section 53(3)(c)(i) and (ii). Thus, the main issues are whether the discovery by the County Council of evidence which (when considered with all other relevant evidence available) shows:
 - that a right of way which is not shown in the DMS subsists over land in the area to which the map relates (section 53(3)(c)(i));
 - that a highway shown in the DMS subsists as a highway of a particular description which ought to be there shown as a highway of a different description (section 53(3)(c)(ii).
7. The test of the evidence is the balance of probabilities.

Reasons

Background

8. The application for a restricted byway along the Order routes relies upon historical documentation. Section 32 of the Highways Act 1980 requires that documentary evidence is taken into consideration 'before determining whether a way has or has not been dedicated as a highway' – and that such weight is given to this evidence as 'justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it was produced.'
9. A restricted byway allows the public a right of way on foot, on horseback (or leading a horse) and in/on vehicles other than mechanically propelled vehicles. This includes cycles and horse-drawn vehicles, but not motorised vehicles.
10. Apart from the new additions of RB44 and RB58 (in part) as restricted byways, various other existing routes would be upgraded to restricted byway status. The section of route between points H-HH is currently recorded as Akeld Footpath No 6 in the DMS. Under the Order it would become Restricted Byway No 21. Akeld Footpath No 16 from E-F and Akeld Bridleway No 14 from E-F would be upgraded to Restricted Byway No 22. Kirknewton Footpaths No 28 and 42 between points C-D and A-B respectively would be deleted from the DMS in consequence of being upgraded to part of RB58.

Documentary evidence

11. The key pieces of evidence relied upon by the OMA are the Inclosure maps.
12. In particular, the Akeld and Humbleton Common Inclosure Award Map 1867 shows a long, tinted section of the route¹ from 'Gains Law' (roughly midway between points H and HH) and continuing off the map past point HH. At the other end where a track is shown to continue, the route is annotated "To

¹ Estimated by the OMA to be 1130m in length

Humbleton". The section of route shown is annotated "Yeavinger & Humbleton Road" and "Ancient Public Highway".

13. On the Wooler and Humbleton Common Inclosure Award Map 1869 a section of the route between points HH-YY of around 450m in length is tinted and marked as "Yeavinger & Humbleton" and "Ancient Public Road". On the same map there is an "Ancient Public Bridle Road" which demonstrates a differentiation between how public bridleways and public roads, carrying vehicular rights were shown.
14. Neither route was recorded in the accompanying Inclosure Awards, but their public status is evident from the description on the maps. The reference to "Ancient" acknowledges that these were regarded as pre-existing public routes.
15. The OMA confirms that less than 20% of the Order route is covered by the two Inclosure Award Maps, but it reasons that the highway known as "Yeavinger & Humbleton Road" must have continued further in each direction to connect those two parishes. That is a reasonable conclusion to draw. Some corroboration that the ancient public road proceeded westwards appears to be found in the Ordnance Survey Boundary Records c1859² where the road "to Woolner" is shown crossing the parish boundary at Point D not far from the public road identified in the Inclosure maps which is located further east.
16. Greenwood's County Map 1828 clearly shows the same section of route as appears in the two aforementioned Inclosure maps as a road or track which continues in an easterly direction to link with existing Restricted Byway No 19 to Humbleton.
17. Ordnance Survey mapping dating from the 1st, 2nd and 3rd editions of the 6" map in 1864-5, 1899 and 1924 respectively, all show a mostly unenclosed track over the route as a whole.
18. The OS map scale 1:10,560 (1957/1968) shows the currently unrecorded section of the route from B-C annotated in two places as a footpath. After a short distance once past point B heading north it then appears as a road through Kirknewton to point A and beyond. The rest of the route is shown as a track by double pecked lines except for a relatively short section between points HH-YY where the alignment does not wholly tally with that claimed.
19. The OMA acknowledges that the ancient Yeavinger to Wooler road recorded in the Inclosures might have turned in a different direction at point C towards Old Yeavinger and the evidence is "undeniably less strong" for the northern section of route between C-B-A.
20. However, Greenwood's map clearly indicates a continuation of the route reflecting that claimed. It is supported by the 1st OS edition map which pre-dates the Inclosure maps. This, along with the other OS maps, sought to depict physical features on the ground rather than the status of a route. Nonetheless, it reinforces that a track existed along the whole route, part of which is known from the Inclosure maps to be an historic public road. As the OMA suggests, Kirknewton (where point A terminates) seems to be a logical destination.
21. Taken as a whole, the evidence is sufficient to support the historical existence of a restricted byway over the entire route.

² Produced by The British Horse Society

The Natural Environment and Rural Communities Act 2006

22. 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 only shown as a footpath, bridleway or restricted byway. This was subject to certain exceptions none of which apply in this instance.
23. 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.

Conclusion

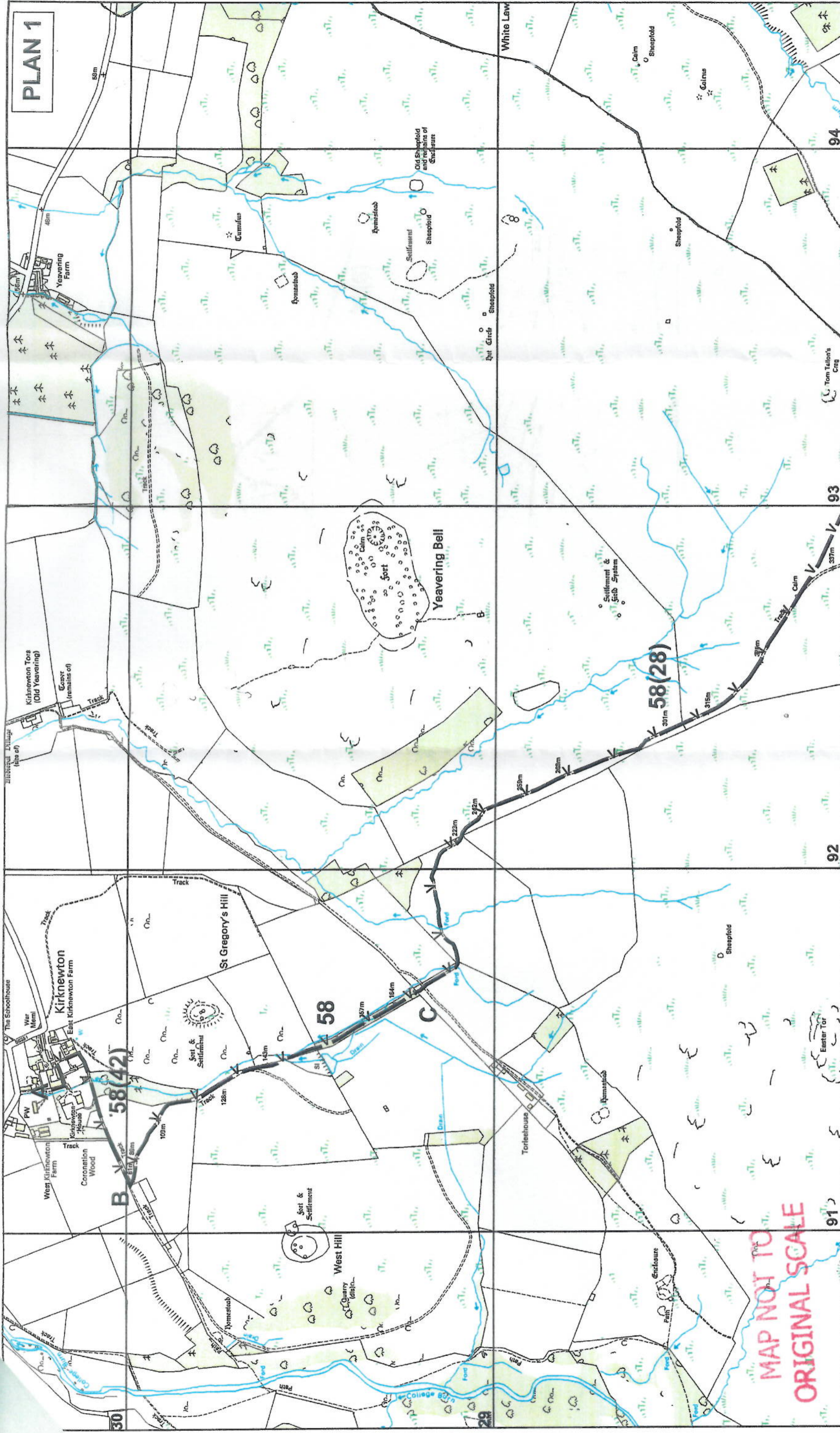
24. Based on the evidence before me I am satisfied on the balance of probabilities that a restricted byway subsists along the entirety of the route and that the DMS should be modified accordingly.

Formal Decision

25. I confirm the Order.

KR Seward

INSPECTOR



PLAN 1

Northumberland

Northumberland County Council

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Local Services
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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.14) 2017**

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

O.S. Map NT 92 NW

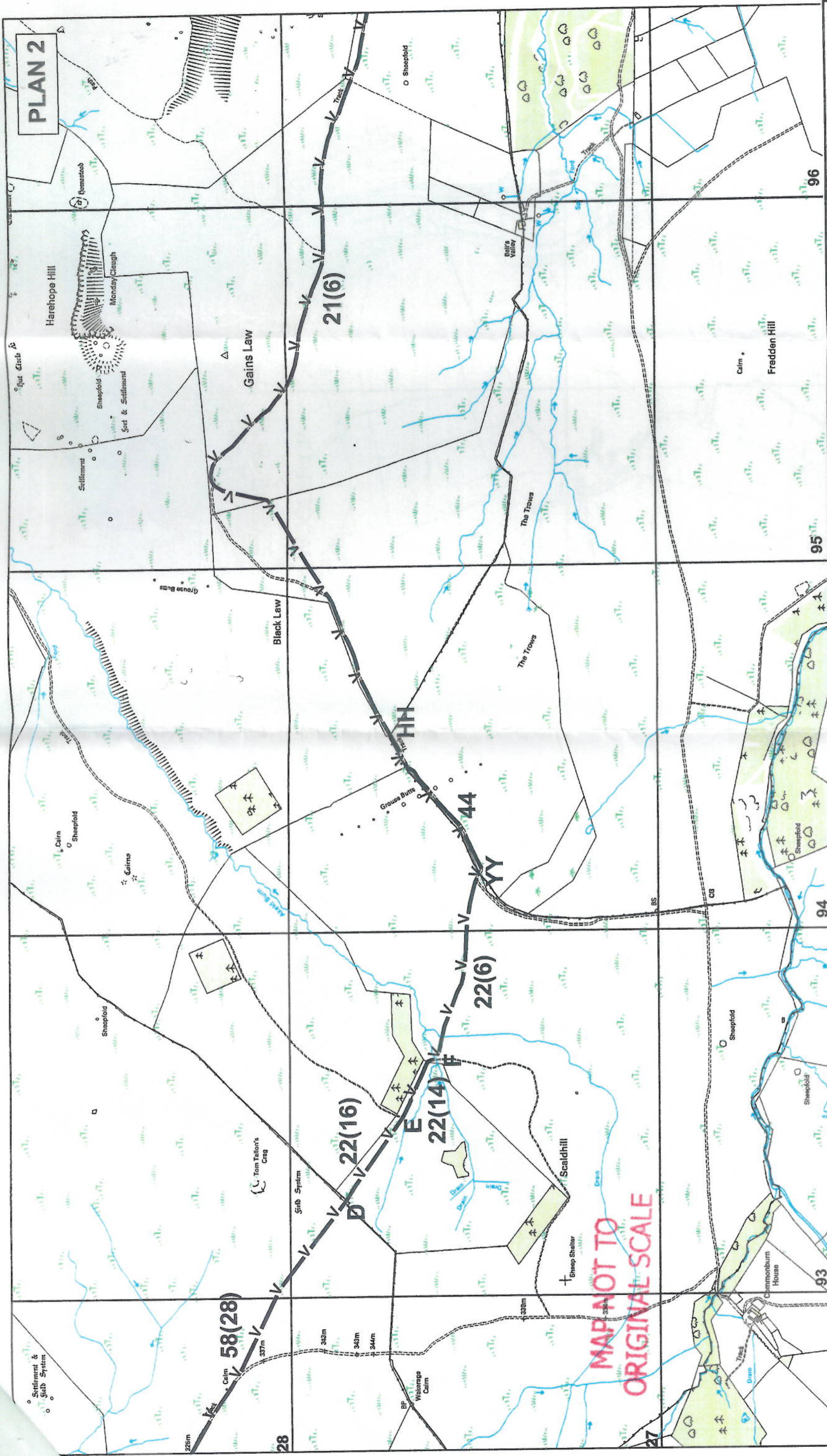
Definitive Map No 36

Scale: 1/10,000

Former District(s) Berwick

Parish(es) Kirknewton

Date: November 2017



PLAN 2

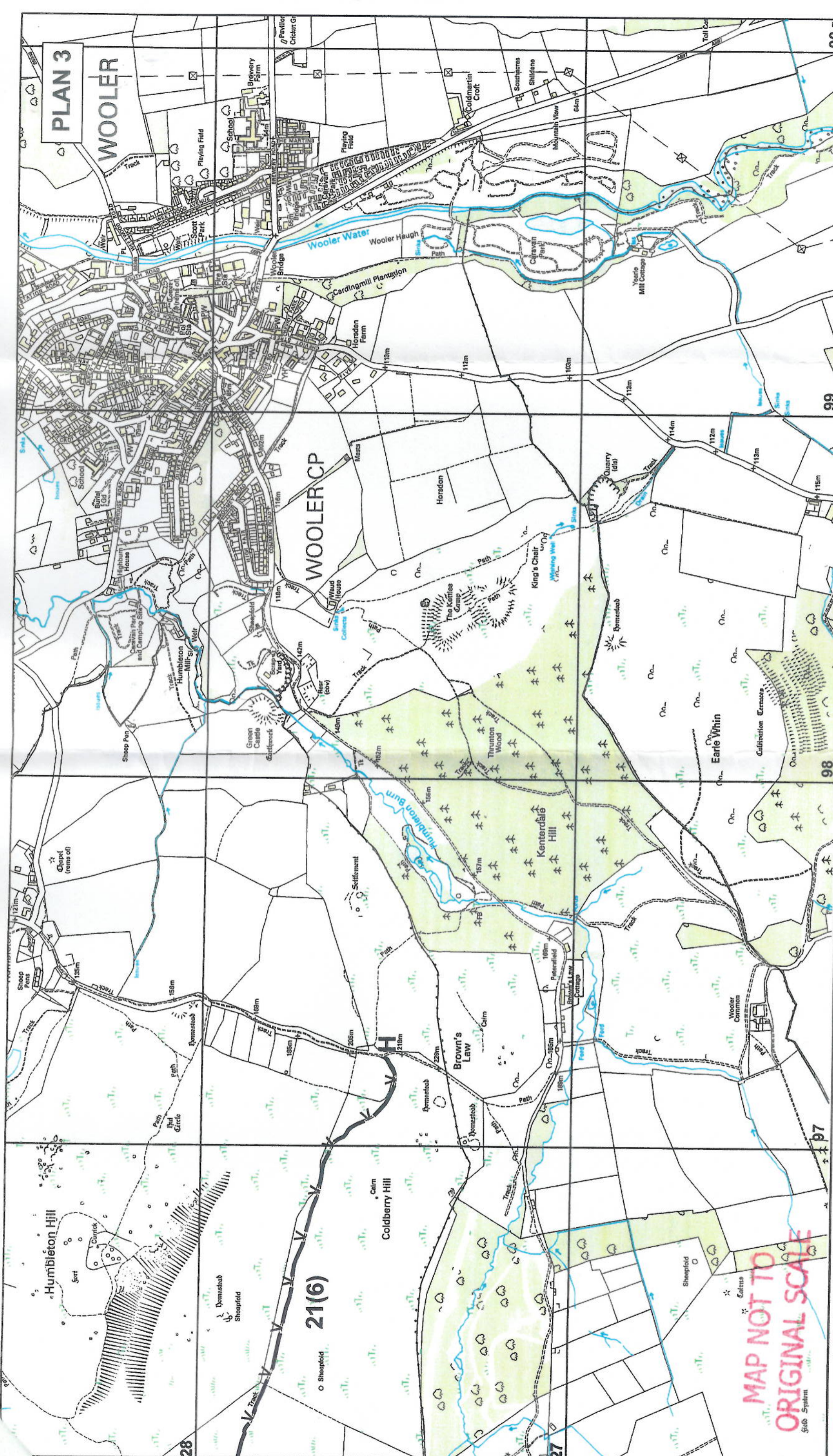
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Public Footpath to be deleted	Public Footpath	Public Bridleway	Restricted Byway	Byway Open to All Traffic
O.S. Map NT 92 NW/NE	Definitive Map No 36/37	Parish(es) Kirknewton/Wooler/Akeld	Scale: 1/10,000	Date: November 2017
Former District(s) Berwick				

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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.14) 2017

Public Footpath to be deleted	Public Footpath	Public Bridleway	Restricted Byway	Byway Open to All Traffic
O.S. Map NT 92 NE	Former District(s) Berwick	Definitive Map No 37	Parish(es) Akeld	Scale: 1/10,000
				Date: November 2017