



Order Decision

Site visit made on 13 August 2019

by Martin Elliott BSc FIPROW

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

Decision date: 23 September 2020

Order Ref: ROW/3207757

- 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 7) 2017.
- The Order is dated 3 July 2017 and proposes to modify the Definitive Map and Statement for the area by adding a restricted byway as shown in the Order plan and described in the Order Schedule.
- There were two representations 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 not confirmed.

Procedural Matters

1. The Order arises from an application made under section 53(5) and Schedule 14 of the 1981 Act. The Council takes a neutral stance and the case in support of the Order is made by the British Horse Society on behalf of the Original applicant. Further representations have been made by a new interested party.

Jurisdiction

2. Representations have been made by another interested party that the Secretary of State does not have jurisdiction to determine the Order on the basis that no objections were raised to the making of the Order.
3. Following the making of the Order no objections were raised to the Order. However, two representations were received by the Council one during the period for objections and representations to be made to the making of the Order. The second representation, although dated within the relevant period, was received by the Council outside the relevant period.
4. Paragraph 7(1) of Schedule 15 to the 1981 Act states that if any representation or objection duly made is not withdrawn then the authority shall submit the Order to the Secretary of State for confirmation. In this case one of the representations has been duly made and consequently the Council was obliged to submit the Order to the Secretary of State for confirmation. As the appointed Inspector I therefore have jurisdiction to determine the Order.

The Main Issues

5. The Order has been made under section 53(2)(b) of the 1981 Act in consequence of an event specified in section 53(3)(c)(i). The main issue is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show that a right of way which is not

shown in the map and statement subsists over the land in the area to which the map relates. The test to be applied to the evidence is on the balance of probabilities.

6. For the Order to be confirmed, as made, it is necessary for the evidence to show that, on the balance of probabilities, a public vehicular highway subsists. There is nothing to suggest that rights for mechanically propelled vehicles have been saved in accordance with section 67 of the Natural Environment and Rural Communities Act 2006 (NEREC). Accordingly if a public vehicular highway is shown to subsist then rights for mechanically propelled vehicles will have been extinguished and it is appropriate for the Order to be confirmed to record a restricted byway.

Reasons

Hexham and Allendale Inclosure Award 1800 (authorising Act 1792)

7. I have not been provided with a copy of the enabling Act, or a full copy of the award or plan. The applicant has submitted extracts of the award and map and my determination can only be based on those extracts.
8. The walled section of the Order route is shown on the extract of the map and is named as Gaterley Road and opens onto the stinted pasture. A pinfold is shown on the plan at the eastern end of the walled section and a quarry is shown adjacent to this section in land allotted to John Hammerton. It is contended that the quarry is public and although the extract of the award describes a public quarry on land allotted to John Hammerton this is on Houstie Carrs. It is not clear from the evidence before me that the quarry referred to in the award is the quarry shown on the extract of the plan. In any event, if the quarry was public it does not necessarily follow that the access would be via a public highway; access could be via other means. The same is applicable in respect of the pinfold.
9. The award, although not naming Gaterley Road describes a private carriage road 60 ft in breadth beginning from Houstie Carr Road opposite the end of Coldcoates Road leading eastwards to the stinted pasture. The description fits the walled section of the Order route. The road is for the use of owners and occupiers, for the time being, of lands and allotments in the township of Catton Grieveship.
10. The applicant suggests that Gaterley Road was actually a public carriageway given that other walled lanes are shown as public carriageways with a width of 60ft. Other private carriage roads were awarded at a lesser width of 20 to 30ft. It is contended that the identification of the road as private is in error or that the width of 60ft is in error.
11. Whilst there seems to be an anomaly as to the width of the road in relation to its status the award clearly sets out a private carriage road for use by owners and occupiers of allotments in the township of Catton Grieveship. The facts set out in the award and plan are binding and the route was clearly not set out as a public carriage road. I noted on my site visit that, whilst the award identifies the route as being 60ft wide, the width, in my estimation, falls short of this along a considerable length of the awarded route.
12. It may be the case that it was only the walled lanes that were awarded as public routes. However, it does not follow, in the absence of evidence, that any

rights should extend across the common. It should also be noted that the walled section of the Order route was awarded as a private carriage road and not a public carriageway.

13. Having regard to the above, the inclosure award sets out the walled section of the Order route as a private carriage road for the use of those owners and occupiers in the Catton Grieveship. Whilst the awarded route was for the use of a wider part of the population the user is still limited to owners and occupiers of allotments. That does not suggest to me a route which was intended to be the public; those entitled to use the route were a limited class of individuals. However, although the route was set out as a private road that does not preclude public rights from being subsequently acquired. The inclosure award evidence needs to be considered with all other evidence.
14. I note the extensive submissions by the interested party in respect of the term private carriage road, the decision in *Dunlop*¹, the Definitive Map Orders: Consistency Guidelines and Advice Note 11 these latter two documents being published by the Planning Inspectorate. However, in respect of the meaning of the term private carriage road I am guided by the decision in *Dunlop* until a Court holds otherwise. In the context of the Hexham and Allendale Inclosure Award the evidence states that the route was a private carriage road for use by a limited number of individuals and not the public.

County Maps

15. Armstrong's map of 1769 does not show the Order route and therefore the map does not assist. Fryer's map of 1820 shows the walled section of the Order route but does not show any continuation over the common. Greenwood's map of 1828 shows the Order route in its entirety. Whilst other public roads are shown in a similar fashion along with routes now recorded as public bridleways it does not necessarily follow that the route is also a public carriageway or a bridleway. Greenwood's map shows the existence of a route and the evidence needs to be considered with all other evidence.

Tithe Award for Allendale 1849

16. The tithe map shows the Order route leading to the common. The land was free of tithes but there is nothing to indicate that the route was regarded as a public highway of any description. It is noted that the walled section of the Order route is shown in a similar fashion to other existing minor county roads. However, the primary purpose of tithe awards was to identify titheable land. In the absence of any reference in the apportionment to the route being a public vehicular highway, or other right of way, it is not possible to reach any conclusions as to the status of the walled section. The award provides no evidence as to the existence of a route beyond the walled section. Nevertheless the award does not preclude the existence of a public right of way.

Ordnance Survey mapping

17. The 1865 map shows the walled section of the Order route and is coloured brown. This section of the Order route is identified in the book of reference as a public road. The neighbouring roads, Coldcoats Road and Houstie Carrs Road, are also coloured brown. I have not been provided with the parcel numbers for

¹ *Dunlop v SSE and Cambridgeshire County Council* [1995] 70 P & CR 307, 94 LGR 427

these latter roads and it is therefore not possible to know whether they were recorded in the book of reference as a public road or a route of any other description.

18. It is noted that the walled section on the 1899 map is not annotated '*f.p.*' or '*b.r.*' However, whilst this section of route is not so annotated it does not necessarily follow that the route was recognised as a public vehicular highway. It nevertheless might suggest that the route was suitable for use by wheeled vehicles either public or private.
19. Ordnance Survey maps were not produced to record the status of the routes shown thereon. They were produced to record topographical features. The maps therefore show part of the Order route as a walled lane but do not record the physical existence of a route beyond that section. The book of reference suggests that the walled section was considered to be a public road but given my comments above this evidence needs to be considered with all other evidence.

1910 Finance Act

20. The walled section of the Order route is excluded from the adjacent hereditaments. The exclusion of the route from the adjacent hereditaments is an indication that the route was regarded as a public highway although not necessarily a vehicular highway. However, there may be other reasons why the route might have been excluded for example where the route was set out as a private road in an inclosure award. The exclusion of the route therefore needs to be considered with all other available evidence.
21. The applicant states that the stinted pasture on Allendale Common falls within the hereditament numbered 1055 and that the field book identifies a deduction of £450 for 'ROW or user' and £18,920 for 'rights of common'. It is also stated that the stinted pasture on Hexhamshire Common is shown as hereditaments numbered 380 to 382. In respect of these hereditaments there is a deduction of £123 for 'ROW or user' and £3,945 for 'rights of common'.
22. I have not been provided with the relevant extracts of the map and field books and it is therefore not clear how the various hereditaments relate to the Order route. The field books suggest the existence of public rights over the stinted pasture. However, in the absence of further information as to the routes for which deductions are made it is not possible to reach any conclusions as to whether the deductions relate to the Order route; the applicant accepts that it is not possible to identify the routes for which deductions are made.

Conclusions on evidence

23. The inclosure award evidence does not support the status of public carriageway along the walled section of the Order route and provides no evidence as to the continuation over the common. However, as noted above, the inclosure award evidence does not preclude public rights from being subsequently acquired.
24. The County maps provide limited evidence as to the existence of the Order route with only Greenwood's map showing the Order route in its entirety. On its own Greenwood's map does not show the existence of a public route and this map needs to be seen in the context of other evidence. The Ordnance Survey maps show the physical attributes of the Order route but provide no evidence as to status. The book of reference does suggest that the surveyor considered

the walled section of the route to be a public road but again on its own is insufficient to demonstrate the existence of a public carriageway along any part of the route. The book of reference provides no information as to the status of the remainder of the route.

25. The 1910 Finance Act map might suggest that the walled section of the Order route was regarded as a public highway of some description. However, the exclusion is also consistent with the route being a private carriage road. It is not possible to ascertain whether any of the deductions for public rights of way related to the remainder of the route and in the absence of such evidence no conclusions can be reached.
26. Having regard to all the evidence, when considered as a whole, it is insufficient to show that a public carriageway, or any other public right, subsists on the Order route.
27. I am aware that Allendale Parish Council have not made any representations against the Order. However, I do not consider that this suggests that the people of Allendale Parish recognised that public rights have developed since the awarding of the route as a private carriageway. For such a conclusion I would need evidence of the same.
28. I also note the recollections of an elderly farmer that in his younger days there were many more paths in the area. Furthermore, the assertion that many walled lanes, apart from the Order route and Catton Beacon Road, are now recorded on the definitive map and that, in the main, the status changes from byway to bridleway. However, for the Order to be confirmed I need to be satisfied, on the balance of probabilities, that public rights subsist. As concluded above there is insufficient evidence from which I can reach such a conclusion.
29. I acknowledge that bridleway 45 to which the Order route links is an important route as recognised in its signage. However, it does not follow that the Order route was part of a through route and I revert to my previous comments in respect of evidence.
30. The applicant suggests that the Order could be modified so as to record the walled section as a restricted byway and for the section over the Common to be recorded as a bridleway. However, given my conclusions as to the existence of public rights I do not propose to modify the Order.

Other Matters

31. The representations support the confirmation of the Order but provide no additional evidence which I can take into account. The representations identify the need for more off road routes for equestrians and raise concerns as to road safety. Whilst I note these issues they are not matters which can be taken into account in respect of an order made under the 1981 Act. The relevant criteria are those set out at paragraphs 5 and 6 above.

Conclusions

32. Having regard to these and all other matters raised in the written representations I conclude that the Order should not be confirmed.

Formal Decision

33. I do not confirm the Order.

Martin Elliott

Inspector



Northumberland

Northumberland County Council

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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.7) 2017**

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

O.S. Map NY 85 NW/NE

Former District(s) Tyndale

Definitive Map No 217/218

Parish(es) Allendale

Scale: 1/10,000

Date: March 2017

MAP NOT TO ORIGINAL SCALE