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| **Appeal Decision** |
| Papers on File |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 17 September 2024** |

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| **Appeal Ref: ROW/3341416** |
| * This 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 (2) of that Act. * The application dated 14 March 2022 was refused by the Council on 28 February 2024. |
| * The appellant claims that parts of Morpeth Footpath Nos. 4 and 5 shown on the plan appended to this decision should be deleted from the Definitive Map and Statement.   **Summary of Decision: The Appeal is dismissed.** |
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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).
2. Morpeth Footpath Nos. 4 and 5 run between Stobsford Bridge and Parkhouse Banks, and Whorral Bank and Coppie’s Lane at Park House. The appeal concerns an application to delete parts of these footpaths over the appellant's land between Waddle Bank and the Railway viaduct, and the River Wansbeck to Parkhouse Banks. I have appended a map of the appeal routes to the end of my decision.
3. The appeal has been determined on the papers submitted. I have not visited the site, but I am satisfied I can make my decision without the need to do so.

Main Issues

1. Section 53(2) of the 1981 Act requires surveying authorities to keep their Definitive Map and Statement (DMS) under continuous review and to modify them upon the occurrence of specific events set out in Section 53(3).
2. Section 53 (3)(c)(iii) of the 1981 Act provides a modification order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows that there is no public right of way over land shown in the map and statement as a highway of any description. This needs to be determined on the balance of probabilities.
3. The DMS is conclusive evidence as to the existence of a public right of way, unless and until it is modified by an Order.
4. In considering the evidence, I must have regard to the judgement in *Trevelyan v Secretary of State for the Environment, Transport, and the Regions* [2001] ECWA Civ 266. Lord Phillips states *‘where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put into the balance, if it is to outweigh the initial presumption that the right of way exists’.*
5. Paragraph 4.33 of Defra’s Rights of Way Circular (1/09) Guidance for Local Authorities states *‘the evidence needed to remove what is shown as a public right of way from such an authoritative record as the definitive map and statement… will need to fulfil certain stringent requirements. These are that:*

* *The evidence must be new- an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.*
* *The evidence must be of sufficient substance to displace the presumption that the definitive map is correct.*
* *The evidence must be cogent.’*

1. Paragraph 4.34 states that where an application is made *‘it will be for those who contend that there is no right of way, or that a right of way is of a lower status than shown, to prove that the map requires amendment due to the discovery of evidence, which when considered with all other relevant evidence clearly shows that the right of way should be downgraded or deleted’*.

**Reasons**

***Discovery of Evidence***

1. Paragraph 26 of the judgment from the case of *Mervyn Darrell Burrows v Secretary of State for Environment, Food and Rural Affairs* (QBD) [2004] EWHC 132 (Admin) states, in respect of the discovery of evidence, that: *‘It is plain that the section intends that a definitive map can be corrected, but the correction… is dependent**on the ‘discovery of evidence’.**An Inquiry cannot simply re-examine the same evidence that had previously been considered when the definitive map was previously drawn up. The new evidence has to be considered in the context of the evidence previously given, but there must be some new evidence which in combination with the previous evidence justifies a modification’.*
2. Morpeth Public Footpath Nos. 4 and 5 were added to the DMS in the 1950s under the process set out in the National Parks and Access to the Countryside Act 1949 (the 1949 Act). The appellant has identified discrepancies in the alignment of these footpaths between the draft and provisional map stages that should have been advertised locally and in the London Gazette. These changes do not appear to have been advertised and the appellant considers this invalidates the DMS.
3. Northumberland County Council (the Council) accepts there are transcription errors that should not have occurred. However, they do not consider this invalidates the DMS and does not mean that public rights do not exist. The Council accepts further investigation will be required to determine the correct alignment of these footpaths.
4. The appellant also refers to the presence of signs on Footpath No. 5 stating *‘PRIVATE J.R. TEMPLE AND SONS LIMITED’* which were erected in 1941 and were still in place when he visited the land in 1986. The Survey Schedule prepared in 1952 referred to these signs. Therefore, the signs were considered when the Definitive Map and Statement was produced and both paths were recorded, and I do not consider this new evidence.
5. Other maps and plans are provided including colliery plans, deposited railway plans, Indentures, Ordnance Survey (OS) maps, The Telford Bridge Act, and newspaper notices. Some of these documents do not appear to have been taken into consideration when the DMS was produced.
6. Therefore, it would appear there has been a discovery of evidence, and some of this evidence is ‘new’. Therefore, I shall consider all the evidence before me to determine whether or not the appeal should be granted, having regard to the relevant tests set out above.

***Consideration of the Evidence***

*Commercial Maps*

1. The appeal routes are not shown on Armstrong’s 1796 County map, Fryer’s 1820 County map and Cary’s 1827 map. Greenwood’s 1828 map shows Footpath No. 5 where it crosses the river and its southern end from Park House to the woods. These are small scale maps that are unlikely to have shown public footpaths or bridleways. Public rights may also have come into existence at a later date.

*Telford Bridge Act 1829*

1. Materials for Telford Bridge are stated to have been taken from quarries in Morpeth. The Telford Bridge Act 1829 (the 1829 Act) required pits or holes where materials were taken from to be sufficiently fenced off to prevent accidents to persons or cattle. Failure to do so could result in forfeits.
2. Once the intended bridge was built, the 1829 Act required the present bridge and all fords within 750 yards of east side and 700 yards of west side of the bridge to be stopped up, except Low Stanners Ford. This was to prevent carriages, horses, or cattle from passing over or through them until the tolls on the intended bridge ceased. There were also penalties for using any other bridge or ford with horses, livestock, and carriages, or creating a new one within 750 or 700 yards of the intended bridge. There is no mention of penalties for use on foot. Furthermore, the bridge for Footpath No. 5 is more than 750 yards east of the intended bridge. Tolls are claimed to have ceased on 4 September 1848.
3. Only tenants of the Earl of Carlisle, those occupying the land on both sides of the river, their agents, workers, and servants could use Low Stanners Ford on foot or with horses, beasts, cattle, and carriages to get to those lands under the 1829 Act. The Earl of Carlisle could also erect a bridge for the sole purpose of bringing coal or stones in coal waggons from the estate. This bridge could not be used for taking horses, livestock, or other carriages but there was no mention use on foot.
4. I do not consider the 1829 Act would have affected public footpath rights and the appeal routes are outside of the area where additional crossings had to be closed or could not be provided. There is no indication the 1829 Act applied to the appeal routes if they existed at this time. The requirement to fence pits and holes in the interests of safety would suggest people were present near quarries and pits.

*1832 Map*

1. An 1832 map does not show a river crossing for Footpath No. 5. The western end of Footpath No. 4 and Footpath No. 5 between Coppie’s Lane and Parkhouse Bank are shown with double solid edges. There is no indication as to who produced this map or its purpose.

*Leases for Job’s Well Close*

1. In 1823 and 1837 Morpeth Borough Council leased Job’s Well Close (the land west of the footbridge) to John King for access to his quarry via a ford and stepping stones over the River Wansbeck. The appellant claims this shows no public rights of way existed. The copies before me are not legible and a transcript has not been provided. Therefore, I am unable to determine if it provides any evidence in relation to public rights.
2. A lease between the Mayor Alderman and Burgesses of the Borough of Morpeth (the Landlord) and John Caisley Coal Merchant (the Tenant) dated 20 February 1873 states the Tenant has erected a bridge over the River Wansbeck at Morpeth at Job’s Well Close which belongs to the Landlord. The Tenant has applied to make a road or cartway from the bridge to the Queens Highway. This was agreed providing *‘the Tenant allows all foot passengers to cross and recross the said bridge and also the said road or cartway at all times free of expense’*. It is stated that the bridge was washed away six years later. I consider this suggests the Landlord intended for the public to use the bridge and occupation road over their land and suggests public rights existed on the east side of the river.
3. Job’s Well Close was leased to several Colliery owners on 19 November 1879 subject to such right of way over the occupation road leading from the public highway to the Ford as is now vested. They had full and free liberty to sink a pit and to work lead, sell and carry away coals for 15 years. The lessees had *‘to prevent the public from acquiring any other right of way over the same save and except the occupation road over the premises shown upon the said plan leading from the public highway to the ford through the River Wansbeck’*. I consider this suggests the Landlord intended for the public to use the occupation road to the ford as the tenant did not have to prevent public use of the occupation road. This would suggest public rights existed over the ford and the land on the east side of the river.
4. The map accompanying the 1879 lease shows the ford is slightly further north than the Footpath No. 5 bridge. No path is shown directly alongside the river south of the ford. The appeal routes, public road, and occupation road are all coloured yellow.

*Deposited Railway Plans*

1. The southern end of Footpath No. 5 is shown on the deposited Newcastle and Berwick Railway Plan 1844 with double solid edges labelled 63. Parcel 63 is described in the Book of Reference as an ‘occupation road’ owned by the Earl of Carlisle and occupied by Thomas King. Footpath No. 4 passes through parcel 68 which is described as ‘plantations’.
2. In the deposited Northumberland Railway Plan 1844 part of Footpath No. 5 is shown with double solid edges labelled 17. In the Book of Reference, parcel 17 is described as a an ‘occupation road’. Footpath No. 4 runs through parcel 24 which is described as ‘Plantation and Whinstone Quarry’.
3. If public rights had existed over the appeal routes at this time, they are likely to have been acknowledged in the Deposited Railway plans. The Council suggests they may have been overlooked or were not considered to be significant, but there is nothing to support this. If public rights did not exist at this time, there is nothing to prevent them from being dedicated at a later date.

*Ordnance Survey Maps*

1. Various Ordnance Survey (OS) maps show the appeal routes largely on the same line as shown on the Definitive Map (DM). On all the OS maps, another route is shown parallel to Footpath No. 4 alongside the river between Borehole Lane at Waddle Bank and the bridge for Footpath No. 5 which is on the same line shown on the Schedule and Draft Maps. The western end of Footpath No. 4 is labelled Borehole Lane on most maps.
2. On the 1866 6 inch to 1 mile OS map, the alignment of Footpath No. 4 is slightly different at the north-eastern end of the bend in the river by the mill race for Low Mill. At Waddle Bank it appears to join Borehole Lane slightly further north than shown on the DM. There is no bridge over the river at its western end of Footpath No. 5. Instead, the river is crossed by a ford and stepping stones just north of the current footbridge. There are lines across Footpath No. 5 north of Park House and at Parkhouse Bank which are likely to indicate gates.
3. On an 1896 6 inch to 1 mile OS map, the alignment of Footpath No. 4 at Waddle Bank is slightly different and appears to join Borehole Lane slightly further north than shown on the DM and a path also continues south to Green Lane. Footpath No. 5 now crosses the river on a bridge in the same location as today.
4. On the 1897 25 inch to 1 mile OS map, Footpath No. 4 is labelled *‘F.P.’* near Jubilee Well and Footpath No. 5 is labelled *‘F.P.’* near Quarry Colliery. The alignment of Footpath No. 4 at Waddle Bank is slightly different and appears to join Borehole Lane slightly further north with another path labelled *‘F.P.’* continuing south to Green Lane. The other route by the river is also labelled *‘F.P.’*
5. On a 1921 6 inch to the mile OS map, a short section of Footpath No. 4 is not shown at Waddle Bank and does not appear to connect to Borehole Lane. It is labelled *F.P.* just west of Waddle Bank.
6. On the 1922 25 inch to the mile OS map, Footpath No. 4 is labelled *‘F.P.’* in Waddle Bank and just west of the railway and Footpath No. 5 is labelled *‘F.P.’* near an old shaft. The other route by the river is also labelled *‘F.P.’* A short section of Footpath No. 4 at Waddle Bank just before Borehole Lane is not shown.
7. An extract of a 1923 OS map shows the bridge over the river labelled *‘F.B.’* Footpath No. 4 is labelled *‘F.P.’* in Waddle Bank and alongside the river as is Footpath No. 5 just north of a disused shaft.
8. On a 1950 OS map, a short section of Footpath No. 4 at Waddle Bank to join Borehole Lane is not shown. Footpath No. 4 is labelled *‘F.P.’* south of Waddle Bank and east of the railway viaduct as is Footpath No. 5 just east of an old shaft. Several quarries (some old) are shown in this area, but they do not cross the appeal routes.
9. The 1958 OS map shows the section of Footpath No. 4 at Waddle Bank that is missing from some of the earlier maps. It is labelled *‘F.P.’* at three points including in Waddle Bank. The bridge over the river is labelled *‘F.B.’* and Footpath No. 5 is labelled *F.P.* in two places. Several quarries (some disused) and shafts are shown in this area, but they do not cross the appeal routes.
10. On the 1969 1:10,560 scale OS map, the appeal routes are shown with a single dashed line on the same line shown on the DM, including the section at Waddle Bank omitted from earlier maps. Both routes are labelled *‘Path’*. The bridge on Footpath No. 5 is shown with double solid lines and labelled *‘FB’*. Disused shafts are shown but they do not affect the appeal routes. The appeal routes are shown in the same way on the 1984 OS map, but the bridge is no longer labelled.
11. The OS maps show the physical existence of most of the appeal routes since at least 1866. A short section of Footpath No. 4 is not shown at Waddle Bank on some of the maps, but other maps show it joining the boundary at Borehole Lane slightly further north than shown on the DM. The point Footpath No. 5 crosses the river appears to have changed slightly following the erection of a bridge. Some of the maps have lines which are likely to indicate gates or fences. However, the presence of gates or stiles does not prevent the existence of public rights of way. Another route is also shown on the OS maps alongside the river on a line that was shown on the Schedule and Draft Maps. Overall, I consider the OS maps are suggestive of public footpath rights.

*Coal Mining Records*

1. A 1903 plan of Park House Colliery Bandy Seams shows an area of coal extraction south of the appeal routes. Seams are shown on the line of Footpath No. 5, but the extraction of coal from these seams would not affect it unless it was extracted using surface mining methods. Footpath No. 4 does not appear to be affected by any of the coal workings or seams. There is no bridge shown over the river. Access to the coal working is shown crossing the railway on the line of Footpath No. 5.
2. The Coal Authority records show several shafts in the vicinity of the appeal routes. The presence of shafts would indicate coal was extracted using underground mining methods. Coal mining is believed to have been in operation here until at least 1930. I do not consider the presence of shafts would indicate footpaths did not exist.

*Finance Act Map 1910*

1. The appeal routes are largely shown within parcels 1792 and 1849, which is usually the case for public footpaths, but the western half of the bridge appears to be excluded from surrounding parcels. The applicant stated no deductions were made for 1792. However, extracts of the Field Books or Valuation Books are not provided so I am unable to determine if deductions for public rights of way were made for parcel 1849.

*Rights of Way Act 1932*

1. Footpath Nos. 4 and 5 are described in the list of reputed rights of way produced by Morpeth Borough Council under the Rights of Way Act 1932 (the 1932 Act) as *‘5 starts from the main road at Job’s Well Close crossing the river by wood bridge then proceeding alongside the river to the new borough boundary on the south side of the river. 6 starting from the bridge on No.5, the path proceeds in southerly direction crossing the LNER Bridge terminating at Park House Farm. No. 7 from Gas House Lane across the footbridge at Ford to Borehole Lane to Wood Bridge where it joins Nos. 5 & 6.’*

*Adopted Highway Query*

1. The road on the west side of the footbridge to the public road was partially recorded as an adopted highway in the 1970s following the realignment of the public road. The appellant asked the Council if this section should be recorded on the List of Streets. Following investigations, The Council took a report to the Rights of Way Committee on 28 February 2024. The report considered this section was erroneously recorded on the list of streets and recommended it be removed. However, it also considered public footpath rights could be reasonably alleged to exist between the B1337 and Footpath No. 5. The report recommended a Definitive Map Modification Order should be made to record two footpaths on the DMS. This road is not part of the appeal route.

*Definitive Map Records*

1. The Survey Schedule for Footpath Nos. 4 and 5 state they are *‘FP'* that were shown on the *‘Map prepared for Rights of Way Survey 1932’*. They were public paths due to *‘prescriptive right’* and the public had not been prevented from using them.
2. The Schedule for path 4 states it runs between Ashington Road A197 and Parkhouse Banks. Apart from the first 100 yards which is metalled, the rest is not well defined and *‘has a tendency to be covered over with fallen rock’*. The *‘footbridge is in unsafe condition’*. It refers to signs erected in 1941 stating ‘*Private J.R. Temple & Sons Ltd.’* on either side of the footbridge over the River Wansbeck. Other signs stated, ‘*NO CAMPING ALLOWED’* and *‘ANY PERSON FOUND DAMAGING TRESS ETC. WILL BE PROCECUTED.’* The Survey stated the *‘old footbridge was washed away and present one was erected by J.R. Temple and the notices boards are to safeguard himself against accidents’*. Part 4 is now Footpath No. 5 where is crosses the river and Footpath No. 4 north of the bridge.
3. The Survey Schedule for path 5, states it runs from Stobsford to Footbridge in No. 4, is well defined and *‘has been ashed at beginning and is in good condition.’* Path 5 is now Footpath No. 4 south of the footbridge.
4. The Schedule for path 6, states it starts at *‘Footpath in No. 4 to Dunces Houses’.* It is well defined and *‘ashed and in good condition’*. It stated there is a *‘direction sign 200 ft from footbridge where path splits into two was erected 1941 and marks other path “NO ROAD THIS WAY”’*. Path 6 is now Footpath No. 5 east of the bridge to Coppie’s Lane and includes another path further south.
5. The appeal routes are shown on the Survey Plan (1952), Draft Map, Provisional and Definitive Maps (1962) produced in the 1950s and 1960s. Footpath No. 4 was shown alongside the river between the bridge and Borehole Lane on the Survey Plan and Draft Plan. However, the Provisional and Definitive Maps show it further away from the river passing through Waddle Bank. The southern end of Footpath No. 5 also appears to change from one side of the hedge to the other between the Draft and Provisional maps, but this section is not part of the appeal before me. These changes were not advertised in the press as required by the 1949 Act.
6. The 1950s Definitive Statement (DS) for Footpath No. 4 records it as running *‘from the west bank of the River Wansbeck crossing the river by footbridge, in an easterly direction along Borehole Lane, the north side of Borehole Cottage and Waddle Bank to follow the south bank of the River Wansbeck under the L.N.E. Railway viaduct to Parkhouse Banks.’* It is stated to be *‘scheduled as a Public Right of Way by Morpeth Borough Council’*.
7. The 1950s DS for Footpath No. 5 records it as running *‘from the Morpeth-Ashington Road about 300 yards north-east of East Mill in a south-easterly direction, crossing the River Wansbeck by the footbridge and the L.N.E Railway, past the west side of Park House to the Borough boundary at Coppie’s Lane’*. It was also stated to be ‘*scheduled as a Public Right of Way by Morpeth Borough Council’*. The DS states Footpath No. 5 commences at the road but the section between the bridge and road is not shown on the DM.
8. No representations or objections from any landowners or members of the public were received during the production of the DMS for either the original line shown on the Draft map, or the line shown on the DMS.

*Newspaper Extracts and Notices*

1. Newspaper reports from September 1839 and 1878 report bridges being washed away at Morpeth Quarry by floods. These reports do not indicate the location of the bridges, if they were public or private, or the status of any rights over them. A report of flooding at Job’s Well Close in 1898 reported shafts, carts, traps, animals, and buildings being washed away but not bridges. However, this does not mean that no bridges existed.
2. On 25 August 1855, the Morpeth Herald reported the Bore Hole had been repaired and inhabitants could now bathe there for the charge of one penny. A newspaper article dated 19 July 1884 states the public have for many years had a right of fishing in the Wainsbeck between Grange House Bridge and Bothal Wier Head until 12 months before when part of it was taken from them and advertised as preserved water. The Trustees agreed to allow the public of Morpeth to continue fishing there and an angling club was formed. The appellant considers this means that Borehole Lane and the riverbank were not public rights of way. However, I do not consider a fee to use a public bath or fishing rights indicate public rights did not exist.
3. On 30 May 1857, the Morpeth Herald reported the Morpeth Board of Health would take charge of and keep in repair a bridge over the River Wansbeck at Low Stanners Ford about to be erected at the expense of the Earl of Carlisle. This bridge is at the western end of Footpath No. 4 and resolution of a public body to keep it in repair indicates public rights were considered to exist.
4. A notice in the Morpeth Herald on 8 August 1857 states the game of farms belonging to the Earl of Carlisle had been let and all persons found trespassing in pursuit of game would be prosecuted. A similar notice appeared on 20 August 1864 and on 24 June 1882 another notice concerned gathering mushrooms and trespassing at Park House Farm. The appellant considers this indicated the landowner did not intend to dedicate a right of way. However, I consider these notices only apply to persons poaching or foraging. Furthermore, anyone walking along any existing public rights of way would not have been trespassing.
5. The 17 July 1869 Morpeth Herald reported the perambulation of the Boundaries of Morpeth. The appellant considers there was no right of way across a bridge at this time because the river was crossed using the weir at East Mill. During perambulations of parish boundaries, the bounds are walked regardless of the existence of public rights. I do not consider this indicates the appeal routes did not exist or were not public rights of way.
6. A press advert from 1923 indicates a quarry was in operation in the vicinity of the appeal routes. A report of an accident in 1930 states J.E. Waterstone was fatally injured in a quarry after being struck by a large rock. I do not consider the existence of working quarries means public rights did not exist.
7. A 1974 newspaper extract advertised the sale of a large tip in Morpeth with planning permission by private treaty. It had ‘excellent access from the Highway’. It is claimed shortly after this the owners J.R. Temple & Sons were awarded damages after legal action found there were no public vehicular rights across Job’s Well Close. I do not consider the newspaper extract or legal action provide any evidence in relation to public footpath rights over the appeal route, only vehicular rights over Job’s Well Close. I have not seen any documents relating to this legal action.
8. A newspaper notice dated 15 December 1994 stated Footpath Nos. 4 and 5 were temporarily closed in the interests of public safety because of mining subsidence. This was due to the collapse of a cap covering the Park House Colliery mineshaft. The failure of the cap over the shaft does not indicate public rights did not exist.
9. Other newspaper extracts advertised the availability of the lease for Job’s Well Close, notices to potential creditors, obituaries, and details of local families. They provided no information in relation to the appeal routes or evidence concerning the existence or status of public rights.

***Whether the evidence is of sufficient substance to displace the presumption the Definitive Map and Statement is correct, and whether it is cogent***

1. The appellant considers coal mining, quarrying, and timber extraction mean the appeal routes were not public rights of way. As these operations are dangerous activities, they believe the landowners and occupiers would not have allowed the public to cross their land and access by the public would have been for a sufficient time to allow presumed dedication to occur. They also consider dedication could not have occurred under common law because safety must be considered. However, there is no evidence to support these statements and various maps show the appeal routes physically existed at the same time as quarries and coal shafts.
2. Newspaper notices, articles and leases relating to fishing and hunting rights, bathing facilities, trespassers, mineral rights, and prosecution for poaching do not deny the existence of public footpath rights. Furthermore, anyone walking on a public right of way would not be trespassing.
3. Two leases relating to Job’s Well Close suggest the Landowner intended for the public to walk across their land to reach the river which they could cross using the bridge or ford. This would suggest public access was needed over Job’s Well Close to gain access to public rights over the river and the land to the east, with the most likely route for any public rights being along at least one of the appeal routes.
4. The Council are unlikely to have undertaken to maintain a new bridge at the western end of Footpath No. 4 using public funding unless they believed public rights existed. The OS maps are suggestive of public rights on the routes shown on the DM. Morpeth Borough Council identified routes starting and finishing at the same points as Footpath Nos. 4 and 5 and running in the same direction in a list of reputed rights of way under the 1932 Act. They also claimed the appeal routes as footpaths in the Survey made for the production of the Definitive Map and Statement, although one section of Footpath No. 4 was claimed on a different alignment between Borehole Lane and Footpath No. 5. This would indicate they were considered to be public footpaths at these times.
5. The Schedule Surveys refer to notices telling the public not to camp or damage trees, a direction sign on Footpath No. 5, and a notice indicating another route off it was not the correct route. This suggests the landowner was aware of public access over their land.
6. There are discrepancies in the lines shown on the Draft Map and the Provisional Map and DM. The changes between the maps should have been advertised and should not have been shown on the DM without being advertised. However, this does not mean public rights did not exist and should not have been recorded. The Council intend to undertake further investigations to establish the correct alignment, but they do not consider this justifies the removal of the full length of the appeal routes from the DMS. I consider that, if the alignment is found to be incorrect, it would require an order to modify the line of that section rather than an order to remove the appeal routes.
7. It would appear the process of recording the appeal routes on the DMS was largely undertaken in accordance with 1949 Act, despite the failure to advertise some changes between the Draft and Provisional map, or a drafting error when producing later maps.
8. However, no one objected to the original or amended lines of Footpath Nos. 4 and 5 shown on these maps. The production of the DMS was based on evidence available at the time which may have included evidence from older inhabitants of Morpeth. Some of this evidence may well have been lost or forgotten today.
9. On balance and having regard to all the evidence, I do not find it is of sufficient substance to displace the presumption that the DMS is correct. Neither do I find the evidence cogent in this regard.

**Other Matters**

1. The appellant has raised concerns about the availability of the DMS, the conduct of Council officers, a complaint regarding enforcement action in 2018, the theft of gates, illegal parking, and fires on their land. These matters have no bearing on the existence of the appeal route.

###### Conclusions

1. Having regard to these and all other matters raised in the written representations, I conclude the appeal should be dismissed.

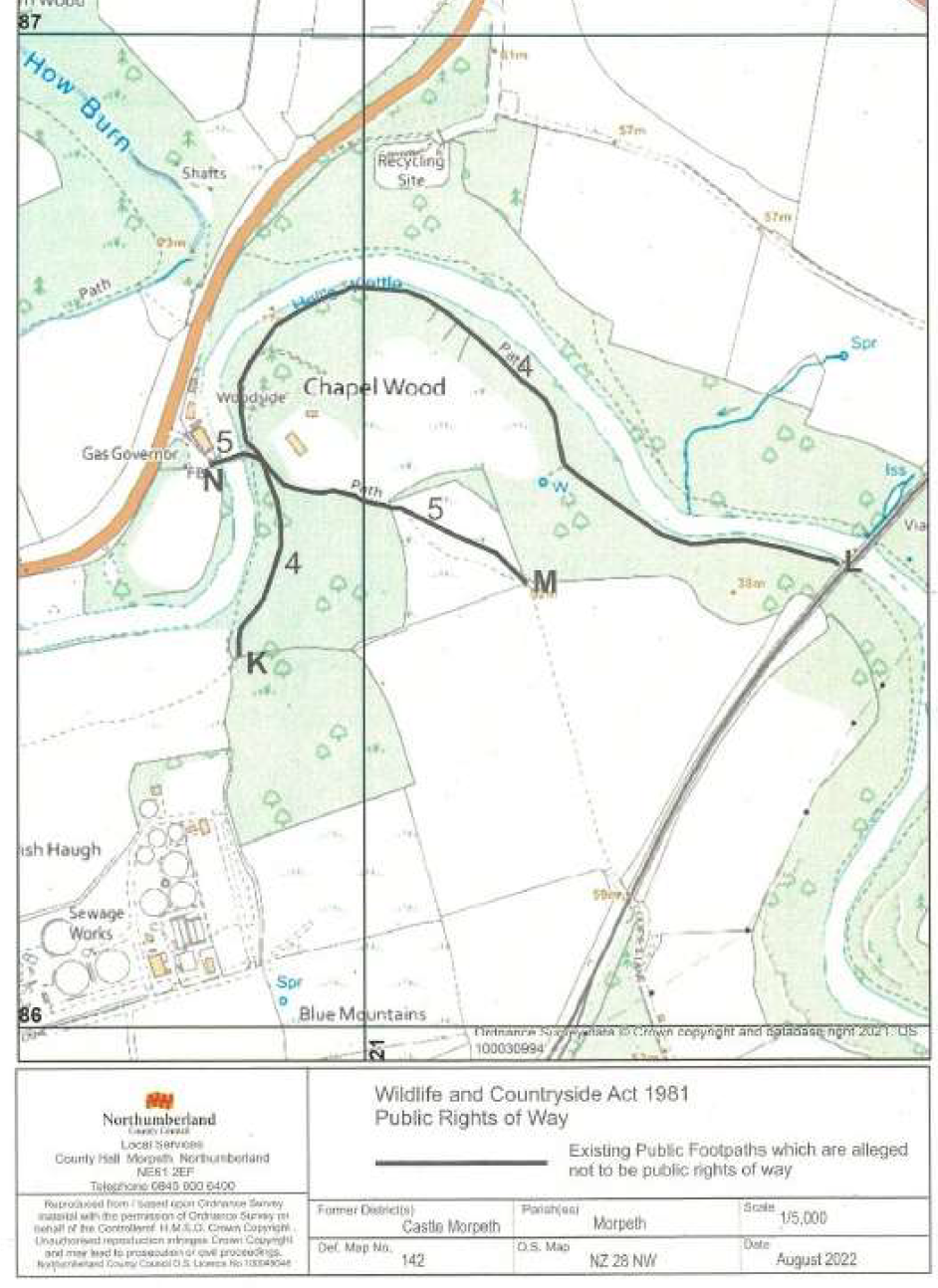
###### Formal Decision

1. I dismiss the appeal.

Claire Tregembo

INSPECTOR

**Appeal Routes**

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