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| **Order Decision** |
| Inquiry held on 3 June 2025 |
| **by J Ingram LLB (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 17 June 2025** |

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| **Order Ref: ROW/3340398** |
| * This Order is made under Section 53(2) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Borough Council of Gateshead Footpath 100 Blaydon Definitive Map Modification Order 2010. |
| * The Order is dated 26 May 2010 and proposes to modify the Definitive Map and Statement (DMS) for the area by adding a footpath as shown in the Order plan and described in the Order Schedule. |
| * There were 18 objections outstanding when Gateshead Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed.** |
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Preliminary Matters

1. I held a public inquiry into the Order at the Civic Centre in Gateshead on 3 June 2025, having inspected the route in question the previous afternoon, unaccompanied.
2. The Order was advertised in 2010, and 14 objections were submitted, it was re-advertised in 2023, and 8 further objections were received. However, 4 objectors had repeated their earlier submission.
3. Gateshead Council, as the Order making authority (OMA), had previously supported the making of the Order, however, due to the amount of time since the Order was made, they decided to take a neutral stance at the inquiry with regard to the confirmation of the Order.
4. Some of the objections submitted do raise matters that I cannot consider in reaching my decision, I refer to them below.
5. In writing this decision I have found it convenient to refer to points marked on the Order Plan. I therefore attach a copy of this plan.

**Background**

1. The Order route begins at point A where it leaves the adopted highway known as Bute Road North, adjacent to the entrance to the allotments. It follows a southerly and then south westerly direction to the front of the houses on North View. At point C the route turns south easterly and runs along the side of the end property, it then joins the adopted highway at point D.
2. The properties on North View were built in the 1920’s for the National Coal Board. It appears to be common ground between the parties that the Order route has been in existence as long as the houses, and its purpose was to serve the houses on North View. The route was, and still is, required to enable residents to access the front of their properties. The land over which the Order route runs is owned by the owners of the various properties and in part by the OMA. The route has never been recorded on the DMS nor has it been adopted as publicly maintainable, although the OMA have in the past maintained it.
3. In November 2004 the OMA received a request for the diversion of the Order route from some of the residents of North View. This was due to them experiencing anti-social behaviour from some individuals using the route, and there was an issue with dog fouling. In addition, some residents had recently purchased the allotment gardens adjacent to their properties and wanted to link the gardens to their properties by fencing across the route. Following a consultation exercise and a path use survey in 2005, in 2006 the OMA decided that the route should not be closed or diverted as the evidence suggested it was a public right of way. The OMA’s property services department were not in agreement to a diversion through the allotment site. It was also noted by the OMA that in addition to any public rights that may exist, every property on North View would be likely to have a private right of access along the path, which they would retain.
4. As concerns were raised regarding the evidence on which the 2006 decision was made, the OMA carried out a further consultation in 2009. This was in relation to the Order route and also another path that runs through the middle of the allotment site, for which an application had been submitted for it to be recorded as a public footpath. Subsequently the OMA determined that a public right of way was reasonably alleged to subsist on the Order route.

The Main Issues

1. The OMA made the Order under Section 53(2)(b) of the 1981 Act on the basis of an event specified in Section 53(3)(c)(i), namely the discovery of evidence which shows a right of way which is not recorded in the definitive map and statement subsists over land in the area to which the map relates.
2. Whilst the evidence need only be sufficient to reasonably allege the existence of a public right of way to justify an Order being made, the standard of proof required to warrant confirmation of an Order is higher. In this case, evidence is required which shows, on the balance of probability, that a right of way subsists along the Order route.
3. The evidence in support of the Order is composed of claimed use by the public as a footpath. Accordingly, I need to determine whether presumed dedication has arisen under the tests set out in section 31 of the Highways Act 1980 (the 1980 Act). This sets out that where a way has been enjoyed by the public as of right and without interruption for a full period of twenty years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of twenty years referred to is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
4. Although the case in support of this footpath rests primarily on the user evidence, some documents have been submitted. With regards to documentary evidence, Section 32 of the 1980 Act requires that I 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 appropriate.

Reasons

*Documentary Evidence*

1. I have before me 6 aerial images of the area in question. The images dated between 1974 and 2005, show a visible enclosed path on the alignment of the Order route. There are also GIS map images from Durham County Council dated between 1951 and 2009 which clearly show an enclosed route. As stated above there is no dispute on the existence of a route on the ground, the issue is whether it has been in use by the public as well as the residents of North View.
2. The Order route is also shown on an Ordnance Survey (OS) map dated 1939. It is shown as an enclosed route between solid boundaries, and it is annotated ‘FP’ which may indicate the surveyor believed it to be a public footpath at the time. From 1888 OS maps carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way. Therefore, as this OS map is after this date, taken in isolation it is of limited assistance regarding the status of the route. Although it could still be useful evidence in determining the status, particularly when considered in conjunction with the other evidence.
3. A conveyance dated 1968 has been submitted, this forms part of the deeds of one property on North View. The conveyance is between the National Coal Board and the purchaser of the property. As well as a private easement, reference is made to the rights of the public over a part of the land which is coloured green. The conveyance plan clearly shows the part of the Order route immediately adjacent to the property as coloured green. I consider this is good evidence of the intention of the landowner, this section of the Order route was clearly considered public at the time. However, although I consider this intention was likely to apply to the whole of the route, the evidence does only relate to one small section.
4. Further documents including a statutory declaration and an insurance policy relating to the easement have been submitted by an objector/landowner. I consider that these documents relate to the conveyancing of the property, the private easement for residents and the legal title to the land. They do not preclude the possibility of the existence of public rights on the route.
5. In conclusion the documentary evidence as a whole in this case is limited. Some weight can be given to the images and OS map submitted; the conveyance does refer to part of the route having public access. However, I consider that they do not show on the balance of probability that a right of way subsists along the whole of the Order route. The case therefore rests on the user evidence.

*Date of bringing into question*

1. A bringing into question arises when at least some of the users are made aware that their right to use a way is being questioned. The matter of diverting the route was first raised with the OMA in 2004. A public consultation was carried out in 2005 which involved approximately 100 letters and questionnaires being sent out to residents, local user groups and organisations. In addition, a path survey was carried out over two days to record the number of individuals using the Order route. It is not clear whether or not notices were erected on the route at this time.
2. It was in 2006 that some residents decided to erect gates on the Order route to enclose their gardens. There is no evidence that the gates were locked, at the inquiry the objectors confirmed that they were not locked. The gates were removed after a few days at the request of the OMA. The objectors made it clear that by removing the gates it was not an admission that the route was a public footpath. The objector also stated it was at this time that a notice was put up indicating that the route was not a public right of way, however, it was very swiftly removed.
3. In January 2009 a further consultation was carried out, on this occasion 750 user evidence forms were distributed, a further path survey was carried out and notices were erected on the route. Later that year, in October 2009, the OMA presented a report to the Rights of Way Committee to determine the status of the Order route.
4. I consider the ‘bringing into question’ to be 2009. No definitive map modification order application was made to add the route to the DMS. However, the OMA acted on the request of the residents to divert the path, although the user evidence forms refer to the path closure. I consider the more extensive consultation in 2009, along with the path survey and site notices would have made at least some of the users aware that their right to use the route was being questioned. It follows that I will examine use during the 20-year period prior to the consultation 1989 to 2009.

*Evidence of use by the public 1989-2009*

1. If a presumption of dedication is to be raised, use by the public during the relevant period must be shown to have been enjoyed as of right, without interruption, and to have continued throughout the full 20 years. Use ‘as of right’ is use by the public that is not by force, does not take place in secret and is not by permission.
2. Evidence in support of the claimed route is provided in user evidence forms, these were submitted in 2005 and during the further consultation period in 2009. The overall period of claimed use is from 1935 to 2009, all the witnesses claim use on foot.
3. There was no one in support of the Order in attendance at the inquiry, therefore no witnesses who have used the route were called to give evidence verbally. I will give some weight to the signed user evidence forms submitted; however, greater weight could have been given had the evidence been given in person and tested through cross examination.
4. From examining the user evidence forms and other responses to the OMA’s consultations, there are a wide variety of comments both in favour of the route remaining open and available to both residents and the wider public, as well as those supportive of closure due to anti-social behaviour and security issues. Most witnesses have given evidence of their use of the route; however, some have used it in a private capacity for example to access their property or allotment, or to visit friends/relatives. Some witnesses who have, or previously had, a private right of access also state they used the route for recreational purposes; however, I am unable to consider this as use ‘as of right’.
5. When considering all the user evidence forms as a whole there are a number of witnesses who have used the route ‘as of right’ for significant periods of time. As the 2005 witnesses have indicated their use up to that date, their periods of use can be combined with some of the 2009 witnesses. In total there are 20 individuals who claim use of the route for all or part of the 20-year relevant period. The combined use equates to 11 periods of use for the full 20 years, with 3 periods of use of less than 20 years but within the relevant period. All the witnesses stated they had not been challenged when using the route nor did they mention any notices denying access along the path. There is no suggestion the use was conducted in secret and none of the witnesses’ state permission to use the route was given.
6. These witnesses claim to have used the route regularly for recreation, pleasure, dog walking, some stated they used it as part of a longer walk to the nearby footpath no.29 and onto Chopwell Woods.
7. In addition to the above there are 2 witnesses who claim to have used the route prior to the relevant period. In both cases the use began in 1939, one ended in 1945 and the other in the 1950’s. Furthermore, a letter is provided from one witness who states they moved to a nearby street in 1927, and this is when the bungalows were built. They describe how the front doors to the bungalows had letter boxes, the path was used by the postman. They claim that the path was ‘definitely’ a public right of way and was used by many people to access the fields to Chopwell Woods.
8. At the inquiry when asked about this letter one of the objectors stated that at that time the alternative route through the allotments may not have been there or may have been unusable. They stated that people now use the preferred alternatives.
9. In addition, at the inquiry the objector’s representative agreed that members of the public undoubtedly used the route. They stated that the route served three purposes as a route for, dog walkers, allotment owners and residents.
10. My conclusion of the user evidence is that the use can be considered to be by the public at large and ‘as of right’. The claimed route has been used regularly and not solely by residents of North View or allotment owners.
11. In my view the Order route is a way the character and use of which can give rise to a presumption of dedication. I conclude that the evidence of use is sufficient to raise a presumption of dedication. However, this presumption can be rebutted if there is sufficient evidence on behalf of the landowners to demonstrate they had no intention to dedicate the way as a footpath.

*Whether there is sufficient evidence of a lack of intention to dedicate by the landowners*

1. At the inquiry I heard from two landowners/objectors that have been residents on North View throughout the 20-year relevant period. Both stated they have not stopped or challenged people walking the route unless they were causing an issue, for example, anti-social behaviour or invading their privacy by not following the path and coming too close to the house. It was stated at the inquiry by the objector’s representative that any members of the public walking through and not causing problems were allowed to and were not stopped or challenged.
2. The objectors believe the route to be an easement for the benefit of the residents of North View, however, there is no evidence that this intention was communicated to the public. There is evidence that the route has been open and available to both residents, allotment holders and the public throughout the relevant 20-year period. Both objectors confirmed that the gates that were erected in 2006 were not locked. As they were only in place for a few days before being removed and they were unlocked, I do not consider this action to be sufficient evidence of a lack of intention to dedicate by the landowners.
3. In addition, the evidence provided by the other landowners during the relevant period does not provide any evidence of preventing the use by the public. No notices or challenges are referred to.
4. Furthermore, the supporter of the Order believes the route to be an easement for the residents and also a public right of way, as this is referred to in their deeds. A letter dated 2 September 2008, therefore within the relevant period, from the OMA to the residents of North View refers to the OMA carrying out maintenance on the route.

**Other Matters**

1. The objectors have raised many concerns including issues of crime, anti-social behaviour and dog fouling. The fact that the route is unlit, health and safety concerns, and a desire to secure their property and enjoy their private gardens are all legitimate concerns. Although I appreciate these are genuine concerns they are not based on the evidence and are therefore not relevant matters for my consideration under the 1981 Act. I must only consider the Order before me and the evidence under the relevant legislation.
2. Furthermore, there were comments and suggestions on alternative routes that may be available to the public. Once again this is not a relevant matter for my consideration under the 1981 Act.
3. The complaints made by the objectors regarding the OMA’s conduct and decision-making process are not matters which fall within my remit.

Conclusions

1. I have concluded above that I consider the documentary evidence is supportive of public rights. It is clear that the route has in the past been used by the public as well as those residents with a private easement. I consider that the user evidence meets the tests set out in the 1980 Act and is sufficient to raise a presumption of dedication as a public footpath.
2. The evidence shows that the use of the route on foot has not been sufficiently challenged. There is no mention from the users of any challenges by any landowner or occupier during the relevant period. I consider that the steps taken by some landowners to install unlocked gates did not amount to sufficient evidence of a lack of intention to dedicate.
3. I conclude that the user evidence is sufficient to show, on the balance of probabilities, that the route between Bute Road North and North View, as shown between points A-B-C-D on the Order plan, is a public footpath.
4. Having regard to these and all other matters raised at the inquiry and in the written representations, I conclude that the Order should be confirmed.

Formal Decision

1. I confirm the Order.

J Ingram

INSPECTOR

**APPEARANCES**

**Remaining neutral**

Ms Y Sharp Solicitor, Gateshead Council

Ms S McCool Legal Services, Gateshead Council

Mr N Frier Network Manager, Gateshead Council

**In support of the Order**

There were no appearances at the inquiry in support of the Order. Written submissions in support were received from Ms M Wallace.

**Opposing the Order**

Mr P Gibson (representing the objectors)

Mr T Malone

Mr R Storey

Ms C Castling

Ms J Healey (attended online)

Ms H Dawson (attended online)

**DOCUMENTS**

1. Statement of Case submitted by The Borough Council of Gateshead
2. Statement of Case and Proof of Evidence of Ms M Wallace
3. Statement of Case of and Proof of Evidence of Mr T Malone
4. Statement of Case of Councillor J Simpson
5. Statement of Case of Ms C Castling
6. Statement of Case of Mr R Storey
7. Statement of Case of Ms H Dawson
8. Statement of Case of Ms J Healey

*Submitted at the inquiry*

1. Copy of the Definitive Map for the High Spen area
2. Copy of a map showing the adopted highways in the area of the Order route

Order Map
