

Order Decision

Site visit made on 21 January 2025

by **Laura Renaudon LLM LARTPI Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 25 June 2025

Order Ref: ROW/3331536

- 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) 2020 Byway Open to All Traffic No. 34 and Public Bridleway No. 20 (Parish of Harbottle).
- The Order is dated 27 November 2020 and proposes to modify the Definitive Map and Statement for the area by adding a byway open to all traffic and adding a public bridleway as shown in the Order plan and described in the Order Schedule.
- There were two objections outstanding when the 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 subject to the minor modifications set out below in the Formal Decision.

Procedural Matters

1. There are two minor typographical errors in the Order requiring modification. The Byway Open to All Traffic (hereafter 'BOAT') is described as proceeding from a point south of 'Garden Cottage' in Harbottle. The correct address is 'Gardener's Cottage'. It is then described as reaching a point 'north-east of number 1 Peels Cottages'. However it appears that the cottages have been the subject of some amalgamation and there is now no longer a no. 1 in existence. The easternmost cottage is no. 2. Again this requires a minor modification to identify a point 'north-east of Peels Cottages'. I am satisfied that no requirement arises to re-advertise the Order. Those familiar with the route who have partaken in the consultation to date are evidently in no doubt about what is proposed.
2. As well as adding the routes identified above, concomitant changes to the recording in the Definitive Statement of Bridleway no. 11 and Footpath no. 19 are proposed. Those changes merely reflect the description of the termini as a consequence of the substantive changes made by the Order.

The Main Issues

3. The County Council made the Order upon a review of historical documentary evidence and concluded, pursuant to section 53(3)(c)(i) of the 1981 Act, that rights of way which are not shown in the map and statement are reasonably alleged to subsist over land in the area to which the map relates, being rights of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a BOAT. The Order has been made under section 53(2)(b) of the 1981 Act in consequence of events under section 53(3)(c)(i) and section 53(3)(c)(iii) which requires me to consider if, applying the more stringent test of the balance of probabilities, the evidence shows that public rights of way which are not shown in the Definitive Map and Statement ('DMS') subsist, and that other particulars contained in the Map and Statement require modification.
4. The Order has been made on the basis of documentary evidence. Section 32 of the Highways Act 1980 ('the 1980 Act') requires me to take into consideration any map, plan or history of the locality, or other relevant document provided, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway. Whether those historical documents, taken together with the objections and other

documents in the case, prove the likelihood of the rights of way subsisting is therefore the main issue in the case.

5. The merits or otherwise of the use of the routes is not a relevant matter for my consideration. My task is to consider the evidence before me and to determine whether to confirm the Order on the basis of what user rights have historically been established, rather than on whether or not they are a good idea. As the Council point out, if any use is to be prohibited or managed, that would be the subject of traffic regulation orders which would require a merits-based consultation.
6. I shall examine the evidence as a whole to establish whether a public right of way for vehicles exists along the proposed BOAT. However, the Natural Environment and Rural Communities Act 2006 ('the 2006 Act') extinguished rights for mechanically propelled vehicles subject to certain exemptions set out in section 67 of that Act. In this case it is appropriate to examine the potential exemption set out in section 67(2)(b) and to ascertain whether, immediately before the commencement of the 2006 Act, the proposed BOAT was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the 1980 Act (list of highways maintainable at public expense; commonly known as the 'List of Streets').

Reasons

Bridleway No. 20

7. The Bridleway No. 20 element of the Order is uncontroversial. To the east of Peels Cottages and of the U4018 road (the subject of the BOAT) and to the west of Peels Farmhouse lies an open triangular parcel of land. An existing bridleway, No. 20, leads away from the south-eastern corner of that triangle. The modification here connects that south-eastern corner to the U4108 by recording a length of 40m between the two along the southern side of the triangle.
8. This is evidently commensurate with the existing use of the route, as referred to by the British Horse Society in their consultation response in 2018. The Definitive Statement describes the bridleway as running "from the Harbottle-Peels Road at Peels in a south-easterly direction", which is entirely consistent with the Order. The route has appeared on maps since 1769. Its omission from the existing Definitive Map appears plainly erroneous and I have no hesitation in confirming this aspect of the Order.

BOAT No. 34

9. The BOAT connects the small settlement at Peels with Harbottle by fording the River Coquet. A footbridge over the river lies to the west of the ford, having been recorded on the 1st Edition 6" Ordnance Survey Map of c. 1865 and since. There is some evidence of continuing use of the ford although physical evidence of it on the riverbed is limited to a single line of stone slabs and at the time of my visit the crossing was partly obstructed by fallen trees. The crossing is marked by telegraph poles and a connecting wire.
10. The route of the BOAT appears on the Council's List of Streets as the unclassified but publicly maintainable U4108 road, and appeared similarly in earlier County Road Schedules. The route appears on the Council's 1951 Highways map and is coloured red which appears to identify it as a publicly maintainable road.
11. The route has been depicted on County maps since 1769 and on Ordnance Survey maps since 1865. The ford is marked on the 1897 2nd Edition 25" Ordnance Survey Map, and the Finance Act 1910 plan shows the route as clearly enclosed. The separation of the route from the adjoining land parcels and its exclusion from any hereditament is generally a reasonable indication of public vehicular rights.

12. It then appears on the survey map, draft map and provisional map that I understand to relate to the earliest iterations of the Definitive Map and Statement prepared in the early 1950s following the National Parks and Access to the Countryside Act of 1949. On those maps, it appears as part of an existing road and was not marked for inclusion on the Definitive Map although other routes are depicted as linking into it. All of these documents together are highly persuasive evidence of the long existence of the route as a public road.

Objections

13. Objections come from two quarters: the Parish Council and from a neighbouring resident. The Parish Council's expressed concern is that the route would be downgraded and does not amount substantively to an objection to the Order in the terms made. They strongly object to the proposed downgrading of the U4018 road through the ford. There is however no such proposal to downgrade the route. Their objection reinforces my prior impression that the route is indeed a public road, because that is evidently their own view of the matter.
14. The neighbouring resident points out that the ford is dangerously impassable for most of the year to ordinary wheeled vehicles, and that it has not been maintained for vehicular access during the past 40 years. This is consistent with a 1968 Highways Committee report of the Council's, determining to replace the footbridge across the river but declining to repair or replace the adjoining unpaved ford for reasons of unjustifiable cost.
15. The neighbour acknowledges that there is some ongoing vehicular use of the ford crossing, by '4 wheel drive clubs', and, although making the point that it is unsuitable for such use, does not raise any factual matters to disturb my impression that long-standing vehicular rights to use the route have been established.

The 2006 Act

16. As I am satisfied that one of the Order routes has been shown, on the balance of probabilities, to carry public vehicular rights, I need to consider the impact of the 2006 Act on those rights.
17. The Order route of the proposed BOAT is not presently recorded in the DMS. The Council confirm that it is recorded on the List of Streets and it appears that this has historically been the case since well before the commencement of the 2006 Act. Therefore vehicular rights are saved from extinguishment by reason of the exemption arising under section 67(2)(b) of the 2006 Act.

Conclusions

18. For the above reasons I shall therefore confirm the Order, subject to the typographical corrections discussed above.

Formal Decision

19. I confirm the Order subject to the following minor modifications:

In relation to Byway Open to All Traffic No. 34:

In Part I, Map: the replacement of 'Garden Cottage' with 'Gardener's Cottage' and the deletion of 'number 1' (Peels Cottages); and

In Part II, Statement: the replacement of 'Garden Cottage' with 'Gardener's Cottage' and the deletion of 'number 1' (Peels Cottages).

Laura Renaudon

INSPECTOR

Order Map – Copy Not To Scale

