

Order Decision

Site visit made on 21 January 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 03 June 2025

Order Ref: ROW/3330113

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The County Council of Durham Public Rights of Way (Public Footpath No.167 Wolsingham Parish) Modification Order No 4 2022.
- The Order is dated 16 September 2022 and proposes to modify the Definitive Map and Statement for the area by the addition of a footpath as shown in the Order plan and described in the Order Schedule.
- There were two objections outstanding when Durham 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 with a modification as set out in the Formal Decision below

Procedural matters

1. On 11 March 2025, the High Court handed down its judgment in *The King on the application of the Ramblers' Association v Secretary of State for Environment, Food and Rural Affairs v Roxlena Limited, Cumberland Council* [2025] EWHC 537 (Admin), 2025 WL 00757743. It was part of the landowner's case that the Foot & Mouth outbreak in 2001 prevented access to the land over which the Order Route passes, such that it constituted an interruption to the use of the Order Route. Accordingly, on 18 March 2025 I wrote the parties offering them the opportunity to comment on the *Roxlena* judgment insofar as relevant to this case. I have taken any comments received into account.

Main Issue

2. The main issue here is whether the evidence is sufficient to show a footpath can be presumed to have been established.
3. The Order was made under the Wildlife and Countryside Act 1981(the 1981 Act) on the basis of events specified in sub-sections 53(3)(c)(i). If I am to confirm it, I must be satisfied that, on a balance of probability, the evidence shows a footpath subsists along the route described in the Order and that other particulars contained in the map and statement require modification.

Preliminary matters

4. The landowner initially raised the issue of prejudice which, it was claimed, was caused by the user evidence forms (UEFs) and witness statements provided to him by the Council being redacted. Less heavily redacted versions of the UEFs were subsequently provided to the landowner.
5. However, the substance of the procedural concern of the landowner still remains. This concern is that the Order Making Authority (OMA) have failed to objectively investigate and evaluate the user evidence. In particular, the landowner contends that the OMA has failed to ascertain whether any of the user witnesses are or were members of the Parish Council and/or members of the Wolsingham Wayfarers.
6. The landowner considers this to be essential because, in his view, the Order Route is known to be a permissive footpath and members of those organisations would have been aware of that as a result of the published information (including in the parish magazine). If users were members of either organisation, or residents of the parish, the landowner considers that there is a legitimate expectation that they would be aware of the permission to use the Order Route.
7. The landowner considers that the failure to provide fully unredacted evidence means that he is denied the opportunity to produce counter evidence etc. The landowner maintains that this is especially the case given that any person has a statutory right to view all evidence taken into account following the making and advertising of an Order. The landowner contends that the failure of the OMA to properly address this fundamental point would be contrary to natural justice.
8. The concerns of the landowner in this respect are to a large extent predicated on his belief that the Order Route is a permissive footpath, the use of which is therefore by right as opposed to as of right. Two documents are put forward in support of his case, namely the minutes of the Wolsingham Parish Council's meeting of 14 June 2016, and an extract from the Wolsingham Wayfarers' website relating to maintenance of footpaths from January 2015.
9. The minutes of the Parish Council simply record that it was asked to write to a Mr Ken Steel (the landowner at that time) on "the permissive footpath which crosses the Thornhope beck" and to "place on record the sterling work that had been undertaken over the years". The previous landowner referred to in the Parish Council minutes, Mr Ken Steel, submitted a UEF and witness statement in response to the consultation on the Order Route.
10. In that witness statement, Mr Steel states in terms that "I never stopped people using the path, and on one ever came and asked me for permission to use it". He goes on to state that "The public have been using the path for probably longer than 70 years and I accepted that the public had used it for longer than I had". It is evident from his witness statement that Mr Steel (a) regarded the path as a public path and (b) never gave anyone permission to use it. I consider on the balance of probability that the reference to a permissive footpath in the Parish Council Minutes is misplaced and erroneous.
11. The extract from the Wolsingham Wayfarers' website refers to a broken handpost being repaired on the 'permissive path leading to Ladley burn'. I note that this entry is under the heading of 'Maintenance of *Public Rights of Way*' (emphasis added) and that one of the landowners thanked for carrying out repairs is the same Mr Ken

Steel referred to above. As the applicant concedes, such works could only have been undertaken with the express consent of the landowner. It is therefore reasonable to conclude that it was Mr Steel who repaired, or allowed the repair of, the handpost mentioned in the website. It is evident from the above that Mr Steel did not regard the footpath that crossed his land as being a permissive footpath.

12. The landowner also alleges that some of those individuals who completed UEFs are members of Mr Steel's family, and therefore used the Order Route by right. However, the applicant has provided no evidence to substantiate his claim and this has been refuted by or on behalf of the individuals concerned. I will return to this matter in more detail below.
13. Looked at in the round and on the balance of probability, I consider that the evidence put forward by the current landowner falls short of showing that the Order Route was a permissive footpath at any time. Moreover, the landowner has presented no documentary evidence to show that any previous landowner gave permission to use the route.
14. I therefore conclude that it matters not that some of those who completed UEFs may have been members of the Parish Council, are resident in the parish or are members of the Wolsingham Wayfarers. All of those who completed UEFs indicated that they did not have permission to use the Order Route. . Accordingly, it appears that the public were using the route as of right rather than by right.
15. I also note that the current landowner has in fact commented on the evidence in the UEFs, and has therefore not been denied the opportunity to produce counter evidence. Accordingly, having regard to the all the above, I am satisfied that the current landowner has not been prejudiced by the OMA not providing fully unredacted evidence.

Reasons

16. Durham County Council (DCC) made this Order in response to an application from Wolsingham Parish Council. The case in support is based entirely on user evidence.

Bringing into question

17. It is common ground between the parties that the existence of the Order Route was brought into question when the path was closed off by the landowner in or around April 2020. I see no reason to take a different view. Consequently, I need to examine use by the public during the period between April 2000 and April 2020.

User Evidence

18. A total of 31 individuals submitted UEFs, of which 16 have 20 years or more use of the Order Route. Of those 16 individuals, 11 provided witness statements. Frequency of use varies from just occasionally to over 100 times in any one year, with several users reporting using the route around 20 or 25 times a year. Purpose is typically stated as for recreation, particularly dog walking or jogging, and sometimes as part of longer walks using the surrounding network of footpaths.

19. I am struck by the consistency of this user evidence, including the descriptions of the Order Route and features along it. For example, more than one respondent refers to the steepness of the ladder stile over a stone wall. This level of detail speaks to a familiarity with the route gained by frequent use. This evidence is in some cases supported by photographs, including a photograph taken in 2017 of the stile that was removed in or around March/April 2020.
20. These photographs show that the ground conditions were very different then (2017) to those at the time of my site visit, consistent with that described in the UEFs, and show evidence of the grass being trodden to form a path. This is consistent with the path being well used, as described in the UEFs.
21. These photographs also show the yellow waymarkers that I understand were installed by the Wolsingham Wayfarers and which are referred to in many of the UEFs. The presence of these waymarkers indicates two things. Firstly, that the route was sufficiently important in the local context to warrant being waymarked by the local walking group, possibly as forming part of the wider network of public footpaths in the area. Secondly, it is reasonable to conclude that these waymarkers were installed with the permission of the then landowner, or at the very least were tolerated by him. This is further evidence that the then landowner considered the footpath to be a public right of way.
22. None of those who completed UEFs used the route with the permission of the landowner. None report seeing any signs indicating that they could not use the route. None reported being stopped or challenged when using the route. Indeed, several report meeting with the landowner or tenant farmer when using the path. None report being advised that they had permission to use the path, although some gained the impression from these meetings that the landowner/tenant farmer welcomed members of the public walking on the route so as to report and deter poachers.
23. The former landowner, Mr Steel, and the wife of a former tenant farmer also submitted user evidence forms and a witness statements, which the OMA accepts must be discounted. However, I note that Mr Steel used the route for some 13 years before his family purchased the land in 1960 and continued to use the route for recreational purposes after they sold the land in 2016. Whilst the earlier dates are outside of the relevant period and therefore cannot be taken into account, it nonetheless points to a long-standing public use of the Order Route. In that respect, Mr Steel's evidence is entirely consistent with the user evidence of others, some of whom record using the route regularly since the 1950's or 1960's.
24. The current landowner has analysed the UEFs and points out that on some occasions the respondents actually say that the previous owner allowed the public to use this path. In his view, this indicates that they were aware that they could walk the path with the landowner's permission.
25. However, this does not necessarily equate with permission from the landowner. This could simply mean that the public were tolerated in their use of the footpath in the sense that Mr Steel did not take any steps to prevent such use. Such an interpretation would be entirely consistent with Mr Steel's witness statement, in particular his expressed understanding and acceptance there that the route has always been used by the public.

26. I also go back to my earlier finding that there is no documentary evidence that the previous landowner gave anyone permission to use the route. Furthermore, the respondents referred to by the landowner indicated in their UEFs that they did not seek or get permission to use the route. Accordingly, it is reasonable to conclude that the actions of the landowner did not bring it home to the public that permission had been given.
27. In analysing the UEFs, the current landowner notes that (in his view) a significant proportion of the respondents are related to the previous landowner or tenant farmer. This leads the current owner to the conclusion that a significant proportion of the respondents were using the Order Route by permission of a family member, and therefore by right. A number of points arise from this.
28. Firstly, these relationships are not expressly stated in the respective UEFs. For example, I note that in her UEF Ms Kirsty Robeson states that she “regularly saw the previous landlord Mr Ken Steel” when on the path but makes no reference to her relationship to him and refers to Mr Steel in somewhat distant terms. I therefore have no evidence before me that the relationships referred to by the current landowner accurately stated.
29. Moreover, specifically in respect to the UEF provided by Ms Robeson, nowhere is it stated that she had permission from Mr Steel to walk the route, related to him or not. Indeed, I note that she specifically indicated in her UEF that she did not ever seek or get permission to use the route. It might be reasonably expected that someone related to the landowner would have answered that question differently. I have not been provided with an explanation for the response given.
30. Furthermore, even if these relationships are accurately stated, this does not necessarily mean that such users did so with permission of the landowner or that the nature of their use was anything other than public and as of right. For example, Mr Alfie Barraclough states in his UEF that he used the path to “go and see my great uncle and aunt” but also states in the same paragraph that he had “walked the path my entire life and it has always been open to anyone to use”. There is no indication in his UEF that he had permission to do so from his relatives.
31. Finally in this respect, even if all the UEFs cited by the current landowner as being submitted by relatives of the previous landowner were discounted, this still leaves a substantial body of evidence from those who had no relationship to Mr Steel or tenant farmers whatsoever. This includes several UEFs and witness statements provided by respondents that the current landowner does not contend are related to Mr Steel. Those witness statements in particular provide a good deal of detail in respect of the historical use of the Order route.

Interruptions

32. At paragraph 126 of the *Roxlena* judgment, Mrs Justice Lang held that in the light of the Inspector's findings in that case, no reasonable landowner would conclude from the absence of public use in the period of restrictions that the public assertion of the right (as demonstrated by public use in the rest of the period) had been withdrawn.

33. Applying that principle to the facts of this case, the notices that were erected in relation to the Foot & Mouth outbreak in 2001 made it clear that the legal restrictions being put in place temporarily and were for public health reasons. It would have been clear from these notices that there was no intention on the part of the landowner to prevent the public from using the way after the temporary restrictions caused by the Foot & Mouth outbreak had been lifted.
34. Accordingly, I consider that the closure of the route as a result of the Foot & Mouth outbreak did not constitute an interruption of the use of the Order Route. I am not aware of any other interruptions to the use of the Order Route.

Intention to dedicate

35. There is no evidence before me that the landowner during the relevant period did not intend to dedicate the Order route as public right of way. No signs were put up and no gates were locked. The landowner did not make a deposit under section 31(6) of the Highways act 1980. None of the UEFs refer to being stopped or challenged when on the Order Route: indeed, several UEFs mention encountering the landowner when on the Order Route and chatting amiably with him. There is no evidence that they were asked not to use the Order Route.
36. The applicant's case in this regard is predicated on his view that the use of the route was permissive. For the reasons set out above, I am not satisfied that this was the case. It is settled case law that the landowner's acts or declarations must be sufficient for a reasonable user to understand that the owner did not intend to dedicate it. Those acts or declarations must be perceptible by the relevant audience and readily capable of disabusing users of the notion that the route was public. I am not satisfied, on the balance of probability, that this was the case in relation to the Order route.

Limitations

37. Two stiles are mentioned in the UEFs. The first is a ladder stile over a stone wall located towards the eastern end of the route which, on the basis of information contained in the UEFs, appears to have been installed by DCC around twenty years ago. Although this stile is mentioned and clearly described in the UEFs, most users recount using the nearby field gate in preference because of the steepness of the stile. Consequently, on balance, I do not consider that this stile constitutes a limitation on the route, although I will modify the Order to make reference to the field gate.
38. The second stile was relocated approximately halfway along the route. This is the stile that was removed in or around April 2020. This is described in many of the UEFs and was clearly a limitation on the route. Part II of the Order refers under 'Details & Fixtures' to "1 x stile" which, I am satisfied, is this one stile. So as to avoid any confusion with the ladder stile referred to above, I have modified the Order to make reference to the position of this stile. This modification is uncontentious and I am satisfied that this modification can be made without the need to re-advertise.

Conclusion

39. Having regard to the above and all other matters raised in the written representations, I confirm the Order with modifications.

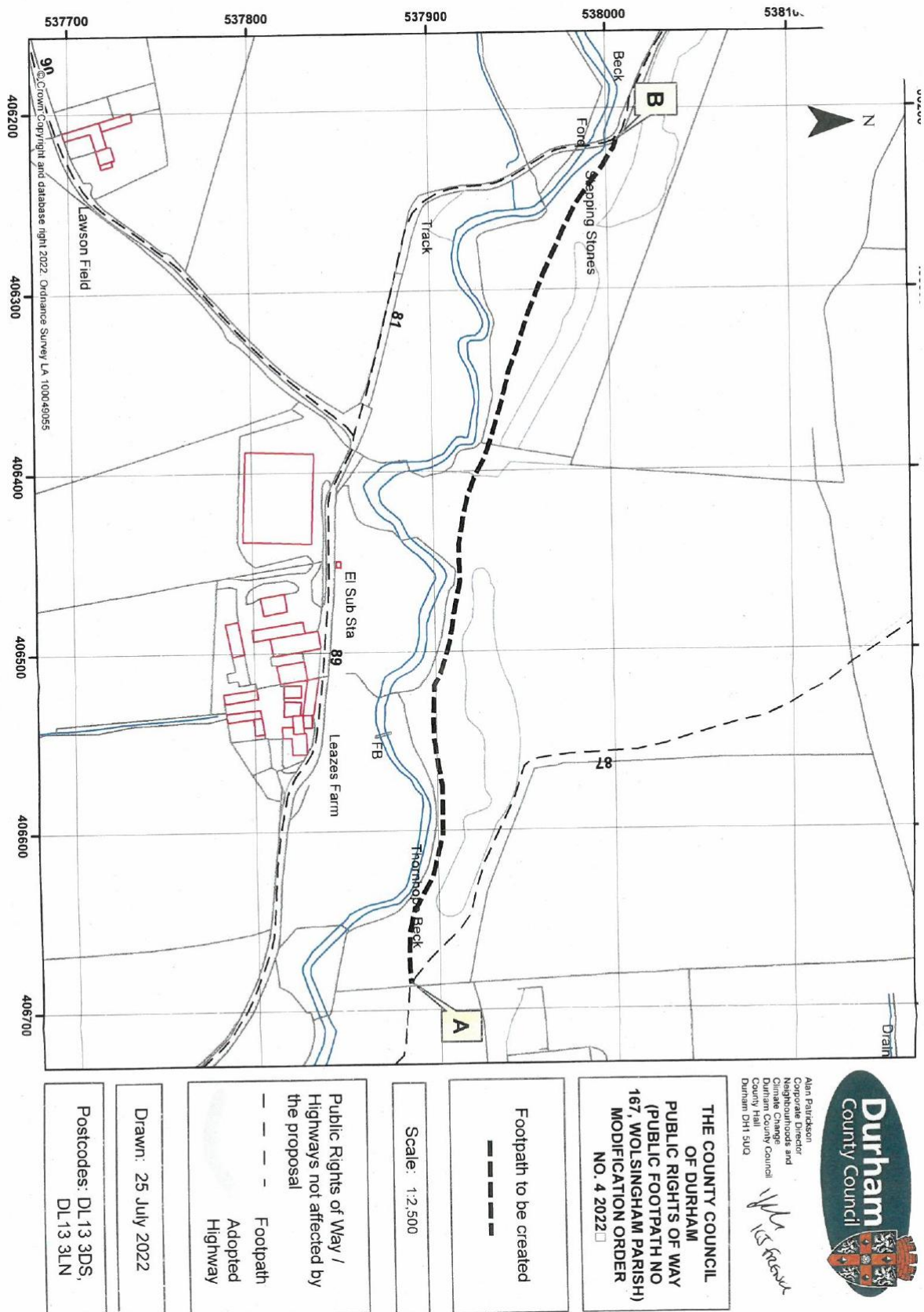
Formal Decision

40. The Order is confirmed with the following modifications, that do not require advertising :

In Part II of the Order, under the heading 'Details & Fixtures', add after the words "1 x stile at position 406386 537935, and a Field Gate at position 406687 537883"

Paul Freer
INSPECTOR

Order Map – Not to Scale



For Information Only- Map showing locations of stile and field gate

