

DURHAM COUNTY COUNCIL

HIGHWAYS COMMITTEE

At a meeting of the **Highways Committee** held in the **Council Chamber, County Hall, Durham** on **Friday 19 December 2025 at 9.30 am**

Present:

Councillor A Schulman (Chair)

Members of the Committee:

Councillors J Campbell (substitute), N Craggs, G Hutchinson, J McGlenen, E Mavin, E Pears, S Sims-Brydon, T Smith and J Stephenson.

1 Apologies

Apologies for absence were noted from Councillors P Mountford, B Quirey and S Woodhouse.

2 Substitute Members

Councillor J Campbell attended as substitute for Councillor B Quirey.

3 Minutes

The minutes of the meeting held on 10 November 2025 were confirmed as a correct record and were signed by the Chair.

4 Declarations of Interest

There were no declarations of interest.

5 Alleged Public Footpath from PRoW (FP) 2 The Dene to PRoW (FP) 21 The Red Track, West Rainton Definitive Map Modification Order Application

The Committee considered a report of the Corporate Director of Neighbourhoods and Environment which presented evidence gathered in support of a formal application to modify the Definitive Map and Statement of Public Rights of Way (PRoW) by adding a public footpath from FP 2 (The Dene), heading north through woodland, to FP 21 (The Red Track) in the Parish of West Rainton and Leamside (for copy of report, see file of minutes).

The Definitive Map Officer, J. Upchurch, presented a summary of the report. The Committee noted that Durham County Council received the application from West Rainton and Leamside Parish Council in April 2023. The application was supported by 33 user evidence forms and witness statements, indicating uninterrupted public use for leisure and recreation for a period of 20 or more years.

Following two consultation periods, objections were raised by the landowner and their legal representative, claiming that the path was permissive. After reviewing all evidence and interviewing witnesses, officers concluded that the legal tests under the Highways Act 1980 and Wildlife and Countryside Act 1981 were met and therefore recommended the making of a Definitive Map Modification Order to add the footpath, confirming it if unopposed, or, referring it to the Secretary of State, if objections remained.

The Committee was addressed by registered speaker, the landowner and objector, Mrs Sally Green of Penshaw Nursery. Mrs Green thanked the Committee for the opportunity to speak, adding that more people would have attended the meeting to speak in objection to the application, were it not for the fact that Christmas was an extremely busy time on the farm.

Mrs Green drew the Committee's attention to paragraph 3 of the report which referred to user evidence forms and witness statements which claimed that use was for a period of 20 or more years, without interruption or obstruction. Mrs Green disputed that claim, saying that no person had used the path for 365 days per year and that farm records evidenced that the path had been subject to closures throughout the time period. She added that the woodland was actively managed and agricultural activities required the closure of the woodland to move livestock and to allow contractors to work safely. She highlighted that photographs provided evidence of closures and that notices and signs had been put in place to inform the public of the closures.

Mrs Green then referred to paragraph 11 of the report which stated that the Parish Council contacted the Access and Rights of Way Team to establish whether the path was an existing public right of way, as they believed it was. Mrs Green commented that conversations had taken place between herself and the Parish Council in which she had attempted to explain that the path was permissive; however, this had been met with anger and abuse from members of the Parish Council.

Mrs Green added that Google Earth satellite images included in the map extracts showed that the path took a different route in 2005 which, in her view, demonstrated that there had not been uninterrupted use for 20 years. In addition, action had been taken to erect signs, to bring the permissive status of the land to public attention, including that a sign existed, which had been in place for over 20 years stating that the path was permissive. Many of the signs had been defaced or vandalised.

Mrs Green also referred to stiles which were constructed in 2006 to create a different route, to enable farm work to be carried out, without restricting access to the public.

Mrs Green gave her view that there were discrepancies in the user evidence forms and witness statements, for example, some mentioned that livestock grazed in the woodland and others failed to mention the grazing of livestock.

She reiterated that the woodland was an important route for livestock and agricultural machinery and, as responsible landowners they respected the environmental sensitivity of the woodland and they worked hard to protect and promote biodiversity through their activities, including managed grazing. Mrs Green also pointed out that an alternative path existed in close proximity to the path under consideration.

Mrs Green stated that she felt bullied by the Parish Council and she did not accept that the path had been used as of right and without interruption for a period of 20 years. She explained that emails had been sent to the Access and Rights of Way Team over the years, to report closures and the action taken to bring the permissive nature of the path to the attention of users included that, on various occasions, when the path was closed, the landowner had challenged members of the public who were walking on the path. Mrs Green commented that the number of user evidence statements and witness statements was relatively low and that they were contradictory. In conclusion, she stated that the addition of the public footpath to the Definitive Map would restrict the ability of the landowner to manage the farm and it may hinder urgent work tree safety work and the movement of livestock.

The Definitive Map Officer responded that the objection to the application and the evidence previously submitted had been assessed and it was not considered sufficient to undermine the witness statements, therefore, the recommendation remained that a Definitive Map Modification Order should be made.

The Council's Lawyer (Planning and Highways), N. Carter, clarified that it was not necessary to demonstrate use of the path for 365 days per year as the relevant case law applied an objective test, which required the frequency of use to be sufficient for a landowner to understand that public rights were being asserted. Notwithstanding the conflicting user evidence forms and witness statements, the Council's position was that, on balance, adequate evidence existed to satisfy the legal test that the alleged path was reasonably alleged to subsist. Referring to comments regarding alternative routes and the impact on woodland management, those were not matters for the Committee to consider in their determination. The Council's Lawyer added, that should the Committee agree the recommendation, subsequent objections would lead to a referral to the Secretary of State, who would convene a Planning Inquiry to cross-examine the evidence.

Councillor Mavin noted the discrepancies in the user evidence forms and witness statements; however, he accepted that the legal tests had been satisfied and he **moved** that the recommendation be agreed.

Councillor Stephenson stated that, in his view, the key issue was not whether there had been 20 years of uninterrupted use, but whether the public's use of the land had been with the landowner's permission and in his view, use had been with the landowner's permission. On that basis, he did not support the recommendation. Councillor Sims-Brydon questioned whether there was a need to make a change to the current arrangement i.e. whether the making of a Modification Order was necessary.

Councillor Campbell stated that she would have liked the opportunity to examine in more detail, the user evidence forms and witness statements; however, based on the information placed before the Committee, she **seconded** the recommendation.

In response to a question from Councillor Mavin who asked whether referring the matter to the Secretary of State would lead to costs for the Council, the Council's Lawyer confirmed that holding a Public Inquiry would incur costs for the Council, including the cost of legal representation and venue hire.

Mrs A Wallage, Parish Councillor for West Rainton and Leamside Parish Council (the Applicant), stated that the Parish Council was of the view that it was important that the path should be become a public right of way and she questioned whether closures of the path over the years had, in fact, been necessary. The Chair advised Mrs Wallage that, as she had not registered in advance to speak at the meeting, she was not permitted to give a speech. Mrs Wallage responded that the Chair of the Parish Council, Mr Wallage, had intended to register to attend and speak at the meeting; however, he was unable to do so due to illness.

Councillor Sims-Brydon then asked whether, if the path were designated as a public right of way, it could be closed to allow urgent safety work to take place. The Access and Rights of Way Team Leader, M. Ogden, confirmed that there were procedures in place for temporary closures of public rights of way for both emergency and planned works. He also noted that landowners generally did not close a public right of way for routine agricultural activity. Where long-term issues arose, landowners could apply for a footpath diversion.

Councillor Sims-Brydon referred to the alleged changes to the path over the years and she asked whether the path under consideration was the optimum route or whether it was simply the route put forward by the Applicant. The Council's Lawyer confirmed that the route under consideration was the route presented by the Applicant; however, the Committee's role was to consider whether the legal tests were met and that considerations such as the need for, or desirability of the path, were not relevant to the determination.

Councillor Stephenson observed that the photographs suggested the permissive signage had been in place for a considerable period of time and he asked whether landowners were obliged to carry out regular checks to ensure such signs remained legible. The Council's Lawyer responded that he was not aware of any definitive guidance on that specific issue; however, in the case of a permissive path, the action taken by a landowner was required to be reasonably sufficient to make it clear to users of the path that use was by permission.

In this case, the balance of the user evidence suggested that the signage was insufficient for users to be aware of the permissive nature of the path.

Councillor Stephenson queried whether members of the public would have considered themselves to be trespassing when using the path. He expressed the view that this was unlikely, as he believed users would have assumed they were permitted to access the path. The Council's Lawyer advised that the relevant legal test was set out in Section 31 of the Highways Act 1980 and use 'as of right' was based on acquiescence by the landowner. This occurred in circumstances when the public used a path without permission for a number of years and such use was sufficient to make the landowner aware that public rights were being asserted. In addition, the landowner had not taken effective steps to prevent that use, or, bring it to the attention of the public that use was other than as of right.

Councillor Stephenson reiterated his view that members of the public did not believe they were trespassing and they would have assumed that they had permission to use the path, therefore he did not support the officers' recommendation. The Council's Lawyer noted that the vast majority of users reported having used the route without permission.

Councillor Campbell noted that the relevant timeframe was 2003–2023 and she commented that it had been suggested that the path was rerouted during that period. She asked whether this would constitute a break in the required 20 years' uninterrupted use. The Definitive Map Officer responded that the annotated map extracts within the user evidence statements did not indicate a diversion of the route and that the route shown remained the same throughout the 20 year period.

Councillor Sims-Brydon asked Mrs Wallage, Parish Councillor, whether she believed she was trespassing when using the path, or whether she considered that she had permission to do so. Mrs Wallage responded that the Parish Council, as the Applicant, represented the residents, the Parish Councillors did not walk the path. Mrs Wallage stated that she was one of the people who had submitted evidence. She added that the Parish Council did not define the path and that the Parish Council was representative of the residents and that it had collated the evidence to support the application.

Councillor G Hutchinson left the meeting at approximately 10.15 am

In answer to Councillor Sims-Brydon's question, Mrs Wallage stated that, to her knowledge, none of the residents believed they were trespassing as they believed that the path was recognised as a public right of way.

Mrs Green commented that satellite images showed that a different route had been taken, therefore, in her opinion, there had not been uninterrupted use of the path over the 20 year period.

Prior to a vote being taken, the Council's Solicitor asked Councillor McGlenen, who had left the room for a short period during the landowner's representation, whether he was satisfied that he had heard sufficient information to take part in a vote and Councillor McGlenen confirmed that was the case.

Upon a show of hands, it was **Resolved** that a Definitive Map Modification Order be made under the Wildlife and Countryside Act 1981 to add a public footpath, along the line shown in blue in Document B, to the Definitive Map and Statement and; to thereafter confirm the Order as unopposed, or in the event of relevant objection(s), to refer the Order to the Secretary of State for determination.