

# Application for a Modification Order

## Wildlife and Countryside Act 1981

### The Definitive Map and Statement of Public Rights of Way for the County of Cumbria

To: Cumbria County Council  
Of: Countryside Access, Cumbria County Council, The Parkhouse Building, Kingmoor Business Park, Carlisle, CA6 4SJ

I: D Brooksbank, for and on behalf of The British Horse Society  
Of: C/O Access and Rights of Way Department, The British Horse Society, Abbey Park, Stareton, Kenilworth, Warwickshire, CV8 2XZ

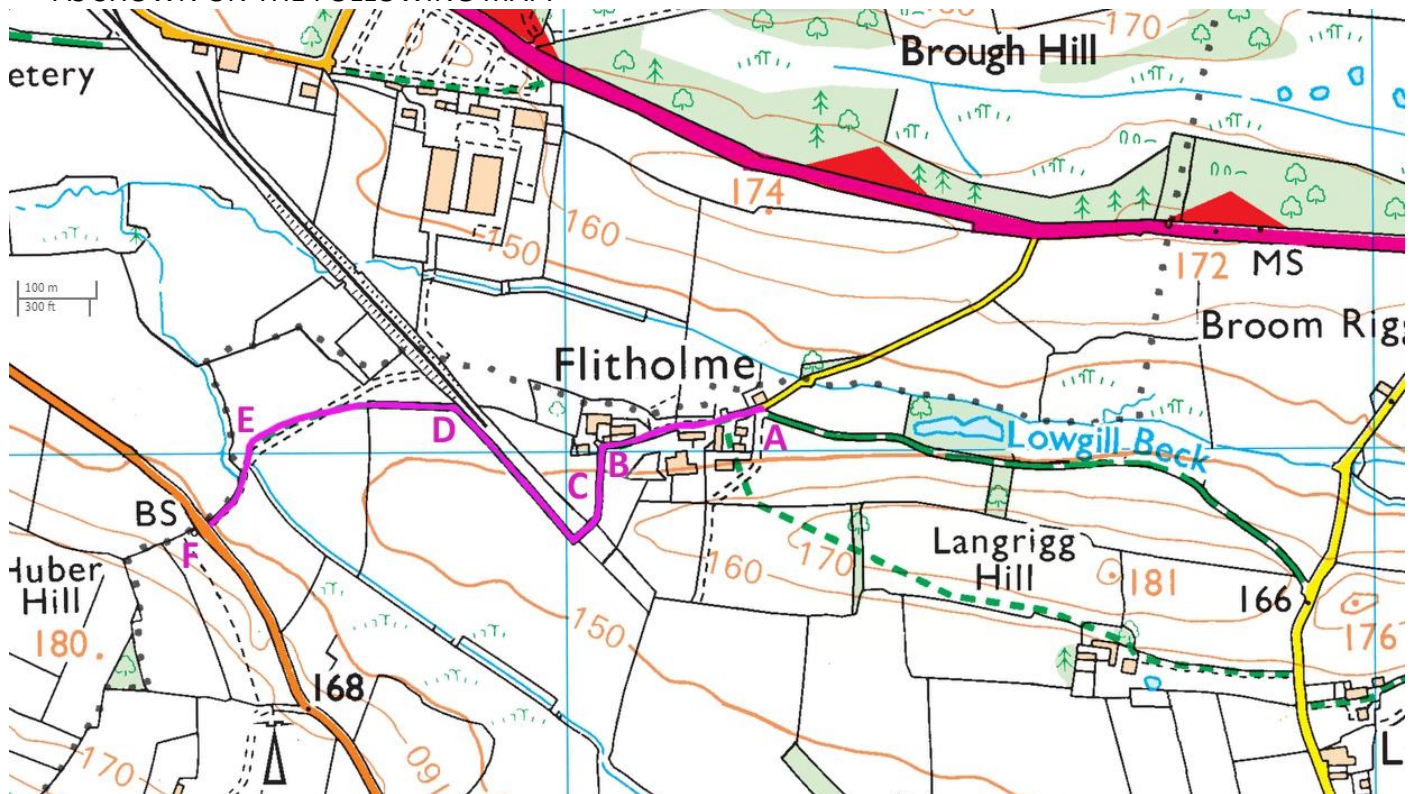
Hereby apply for an order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the Definitive Map and statements for the area by:

#### 3. Upgrading to BRIDLEWAY the footpath 350018 – FLITHOLME LANE, Parish: Musgrave, District: Eden

**FROM:** End of Unclassified Road U3311 Flitholme Lane, Parish: Musgrave, Grid Ref: NY 7624 1505 (A)

**TO:** Junction with Classified Road B6259, Parish Musgrave, Grid Ref: NY 7556 1491 (F)

AS SHOWN ON THE FOLLOWING MAP:



Application Route:  Identified by: **A, B, C, D, E, F**

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This map should print at 1:12,500 scale when printed on A4 paper. See Appendix D for an unmarked copy of this map.

Note: Points X and Y do not form part of the application route but are referenced in the evidence.

### **Description of Application Route:**

The Application Route is approximately 950m long.

At Point A the route continues southwest through the hamlet of Flitholme on a tarmac road. There is no distinction between this “footpath” and Unclassified Road U3311. At Point B the route turns left and heads up an unsurfaced lane, bounded by hedges and fences, then crosses a bridge over the old railway cutting. The route then immediately turns right as the lane continues parallel to the railway cutting to Point D.

At Point D the application route turns left to head east along a lane bounded by hedges. It then heads across the next field, crossing the current track before swinging left to rejoin it at the stream crossing. It then follows the current track to reach the Classified Road B6259 at Point F.

There is a marker post at Point A which indicates BW350017 to the east and FP350016 to the south (note: CCC RoW map shows the path in a different location), and there is a separate indication of the FP350018 40m further along the application route.

There is also a footpath marker post at Point F.

### **Current Recorded Status:**

The route is recorded on the Definitive Map as the footpath 350018.

The route is not recorded on the List of Streets.

### **Notes:**

It has not been possible to exactly ascertain the Grid Reference of Point A, as the end of Unclassified Road U3311 is shown in different places on various maps and records. The intention of this application is for the Application Route to be contiguous with Unclassified Road U3311.

Evidence dated before the railway shows the application route taking a direct line between Point B and Point D. The hedged lane west of Point D is part of this original route.

### **Summary and Statement of Reasons:**

This route is supported by a sufficient body of evidence to be recorded as a **BRIDLEWAY**.

The evidence presented, dating back almost 200 years, points to this route being considered a public highway of status at least equal to Bridleway, even though it is only recorded on the Definitive Map and Statement as a footpath.

1. The application route is clearly shown on Greenwood’s Map of Westmorland dated 1824 and Hodgson’s Westmorland Map of 1828. These maps were developed for sale to horse riders and coach drivers by some of the most respected mapmakers and so could be expected to accurately

show publicly-usable routes. It is additionally shown on Greenwood's much smaller scale map of 1834, which showed fewer routes, which is good evidence this was considered a public thoroughfare at that time.

2. The application route is clearly shown as a through road on all historic Ordnance Survey Maps inspected, from the earliest 25 inch map of 1861 up to the 1in map of 1961. After 1861, the alignment changes due to the railway being built, but it continues to be shown as a through route.
3. The Ordnance Survey 25in First Edition Map of 1861 shows the route in its own plot, coloured sienna. Plot number 65 in Great Musgrave Parish is listed as "Public road" in the Book of Reference. Plot 65 extends from the parish boundary past Point A to at least Point E, with E to F listed as cart road, which infers that the application route was considered a through public road at that time.
4. The Ordnance Survey maps 25in and 6in editions from 1899 to 1956 show footpaths terminating on the route at Point C and Point E. A public footpath would always have a destination and there is no discernible Point of Interest at these locations. It can be reasonably inferred, therefore, that the Application Route is a public highway too, as there is no continuation shown of the footpath to join any other public highway from this point. Foot Paths and Bridle Roads were labelled on these editions to indicate they could not be used by wheeled vehicles. The application route is not labelled, which is a good indication the route could be used by wheeled vehicles at that time.
5. It is shown as a public road on Bartholomew's Maps. As a commercial Map maker, Bartholomew's would aim to show only highways that their customers (largely motorists and cyclists) could use, so would not knowingly include private roads.
6. The Ministry of Transport Half-inch Maps of 1922-3 were based on the Ordnance Survey maps and showed the new road classifications prominently. Developed specifically for sale to motorists, the maps aimed to show only public roads and the application route is shown as a road which is a good indication this route was considered a public highway.
7. The primary purpose of Tithe Plans was to record ownership of the land parcels in a parish, so that tithes could be levied. Roads are not always shown on tithe plans, but were usually identified where they were enclosed and separate to the titheable lands. The Musgrave Tithe Plan of 1840 pre-dates the Eden Valley Railway and shows the route from Point B to Point D taking a direct line. The entire route is shown as a through road, coloured sienna, as a continuation of current Unclassified Road U3311 from the parish boundary.
8. On the Eden Valley Railway (EVR) Plans sheet 10, the central section of the application route is shown as crossing the line of the proposed railway. Plan sheet 9 shows the continuation of application route towards Point E. Number 3 is written on the lane on both plan sheets and the Book of Reference accompanying the plans, lists Great Musgrave plot no. 3 as "Highway" owned by "Thomas Lancaster, Surveyor". In comparison, the lanes numbered 9 and 11 are listed as "Occupation Road". This is strong evidence the route was considered a public highway at that time. The subsequent building of a bridge to carry the diverted route over the railway supports the case for this continuing to be used a public highway.
9. A small area around the hamlet of Flitholme was included in the Inclosure Award for Great Musgrave Common 1859. The eastern section of Application route from Point A towards Point B is clearly shown as a road through the hamlet, in the same manner as current Unclassified Road U3311. It is not numbered or denoted by letters nor detailed in the award, from which it can be reasonably inferred that this section of the Application route was considered an ancient public highway at that time.

10. Land Registry currently holds no record of land ownership along the eastern part of the application route - from the parish boundary northeast of Point A through to, and including the bridge over the disused railway, south of Point C. This is further evidence of its reputation as a public highway.
11. There are no stopping up orders found.

I attach copies of the following documentary evidence in support of this application:

#### **Appendix A: EVIDENCE FROM MAPS**

**A1 Greenwood Map 1824**

**A2: Hodgson Map 1828**

**A3: Greenwood Map 1834**

**A4: Ordnance Survey Maps - 25 inch England and Wales (Drawn scale 1:2,500)**

1<sup>st</sup> Edition 1861, 2<sup>nd</sup> Edition 1898, 3<sup>rd</sup> Edition 1915

**A5: Ordnance Survey Maps – 6 inch England and Wales (Drawn scale 1:10,560)**

1863, 1899, 1920, 1956

**A6: Ordnance Survey Maps - One-inch England and Wales (Drawn scale 1:63,360)**

1898, 1918, 1947, 1955, 1964

**A7: Ordnance Survey, 1:25,000 maps of Great Britain**

1947, 1953

**A8: Bartholomew's Half Inch to the Mile Maps England and Wales (Drawn Scale 1:126,720)**

1903, 1924, 1941

**A9: Ministry of Transport ½ inch Road Map of Great Britain 1922-23 (Drawn scale 1:126,720)**

#### **Appendix B: PRIMARY EVIDENCE**

**B1: Tithe Records – Musgrave Parish 1840**

**B2: Eden Valley Railway Plans 1857**

**B3: Inclosure Award – Great Musgrave Common 1859**

#### **Appendix C: OTHER EVIDENCE**

**C1: Land Registry Records**

**C2: The Gazette - Stopping Up search**

#### **Appendix D: MAP AND PHOTOGRAPHS OF THE APPLICATION ROUTE**

**D1: Current OS 1:25,000 map of Applicant Route**

**D2: Photographs of the route**

Photos 1 – 4

DATED: 25<sup>th</sup> May 2022

SIGNATURE

