

North Yorkshire County Council
Business and Environmental Services

Executive Members

26 June 2020

Opposed Definitive Map Modification Order, Oriel Close and Weaponness Valley Close, Scarborough

Report of the Assistant Director – Transport, Waste and Countryside Services

1.0 Purpose of the Report

- 1.1 To advise the Corporate Director of the proposed submission to the Secretary of State (SoS) of an opposed Definitive Map Modification Order (DMMO). A location plan is attached to this report as **Plan 1**. The route is shown on **Plan 2**.
- 1.2 To request the Corporate Director, in consultation with BES Executive Members, to confirm that North Yorkshire County Council (NYCC) will support the confirmation of the Order

2.0 Background

- 2.1 Making of the DMMO in 2019:
Attached to this report as Appendix A is a copy of the report submitted to the Assistant Director dated 17 September 2019 which outlined the case for making a DMMO to record footpaths on the Definitive Map and Statement, running from Oriel Close and Weaponness Valley Close to Queen Margaret's Road and Seamer Road, Scarborough.
- 2.2 The Assistant Director approved the making of a DMMO which was subsequently advertised, attracting two objections from residents on Weaponness Valley Close. The objections relate specifically to the path running from Weaponness Valley Close. No other objections were received. The County Council cannot confirm a DMMO where there are outstanding objections, and therefore the Order must be forwarded to the Secretary of State (SoS) for determination.

3.0 Current Decision to be Made

- 3.1 In submitting an opposed Order to the SoS, the County Council needs to express whether, on the basis of the available evidence, it:
 - Supports confirmation of the Order,
 - Contends that the Order should not be confirmed, or
 - Takes the view that the evidence is so finely balanced that it wishes to take a neutral stance.
- 3.2 The current decision to be made is on what stance the County Council is to take within the submission to be made to the SoS.

4.0 Consideration of the relevant issues

- 4.1 Officers consider this to be a reasonably strong application, based on the evidence of use submitted by the applicant. The claim was made on the basis that the public have used the paths for a period exceeding 20 years and that the use was without force, permission or secrecy.
- 4.2 The objectors raised a number of issues, the majority of which have little or no relevance for the purposes of determining whether or not public rights exist. However, two issues stand out as being relevant to the Order, these are:
- i) that the walked route across the field now follows a different alignment to that of the Order, and
 - ii) that in or around 2007 the owner blocked access to the field for a short period of time.

These issues are considered below.

- 4.3 For a public right of way to be established, it has to be demonstrated that the public have used a specific route. If people are wandering at will across an open area, a public right of way cannot be established.
- 4.4 This particular path runs through a rough grass field between two fixed access points, and is clearly defined on the ground as a worn path. Whilst some minor variations in alignment are bound to occur as ground conditions vary during the season, this factor would not be sufficient to prevent a right of way from being established along the route between clearly defined end points.
- 4.5 The objectors claim that the route at the end of Weaponness Valley Close was temporarily closed for a short period in or around 2007 and therefore the public have not been able to establish 20 years uninterrupted use. However, the evidence within several of the evidence of use forms that indicate that the public had been using the route for in excess of 20 years prior to this apparent temporary closure of the route.

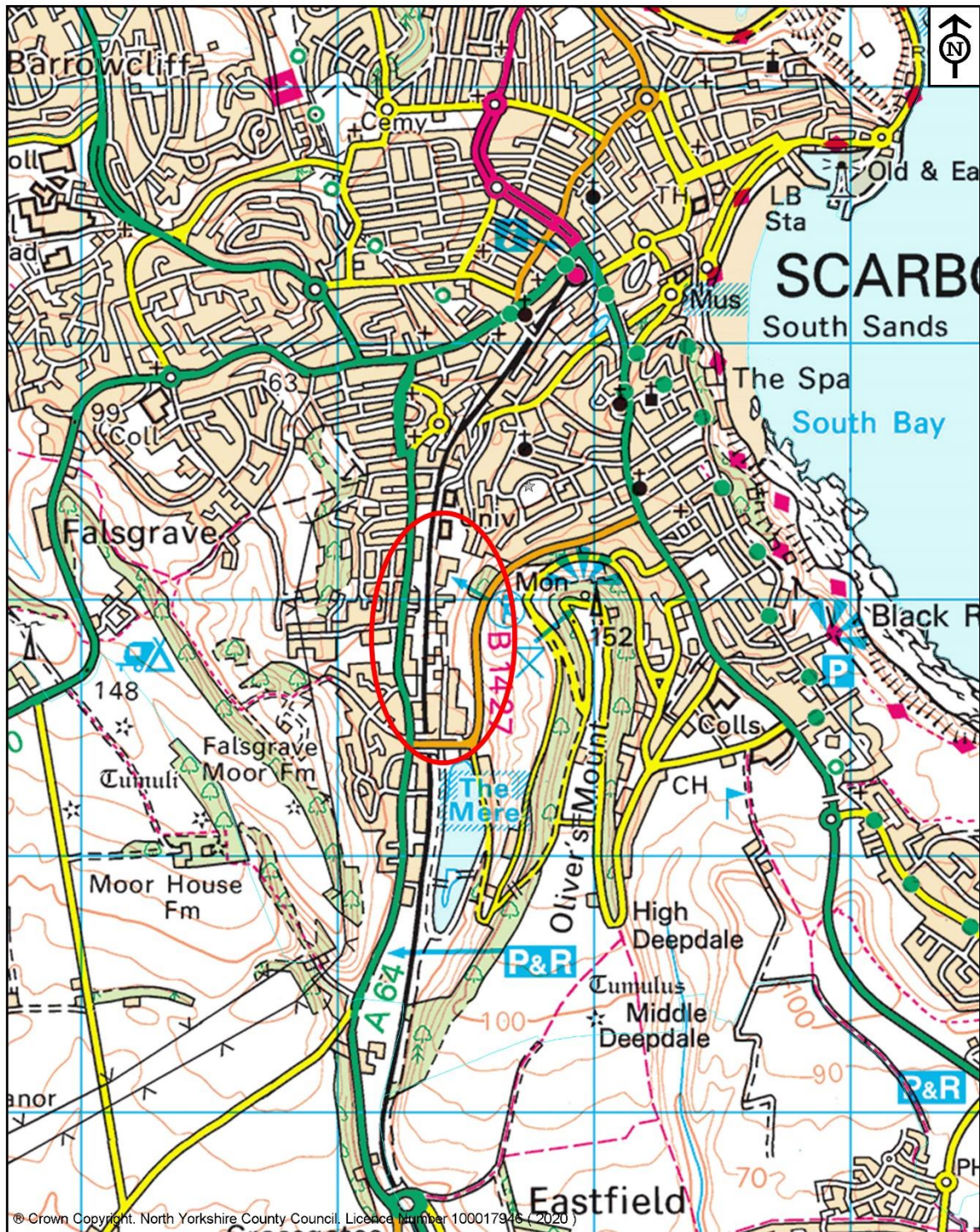
5.0 Recommendation

- 5.1 To request the Corporate Director, in consultation with BES Executive Members, authorise that North Yorkshire County Council will support confirmation of the Order in its referral of the matter to the Secretary of State.


IAN FIELDING
Assistant Director
Transport, Waste and Countryside Services

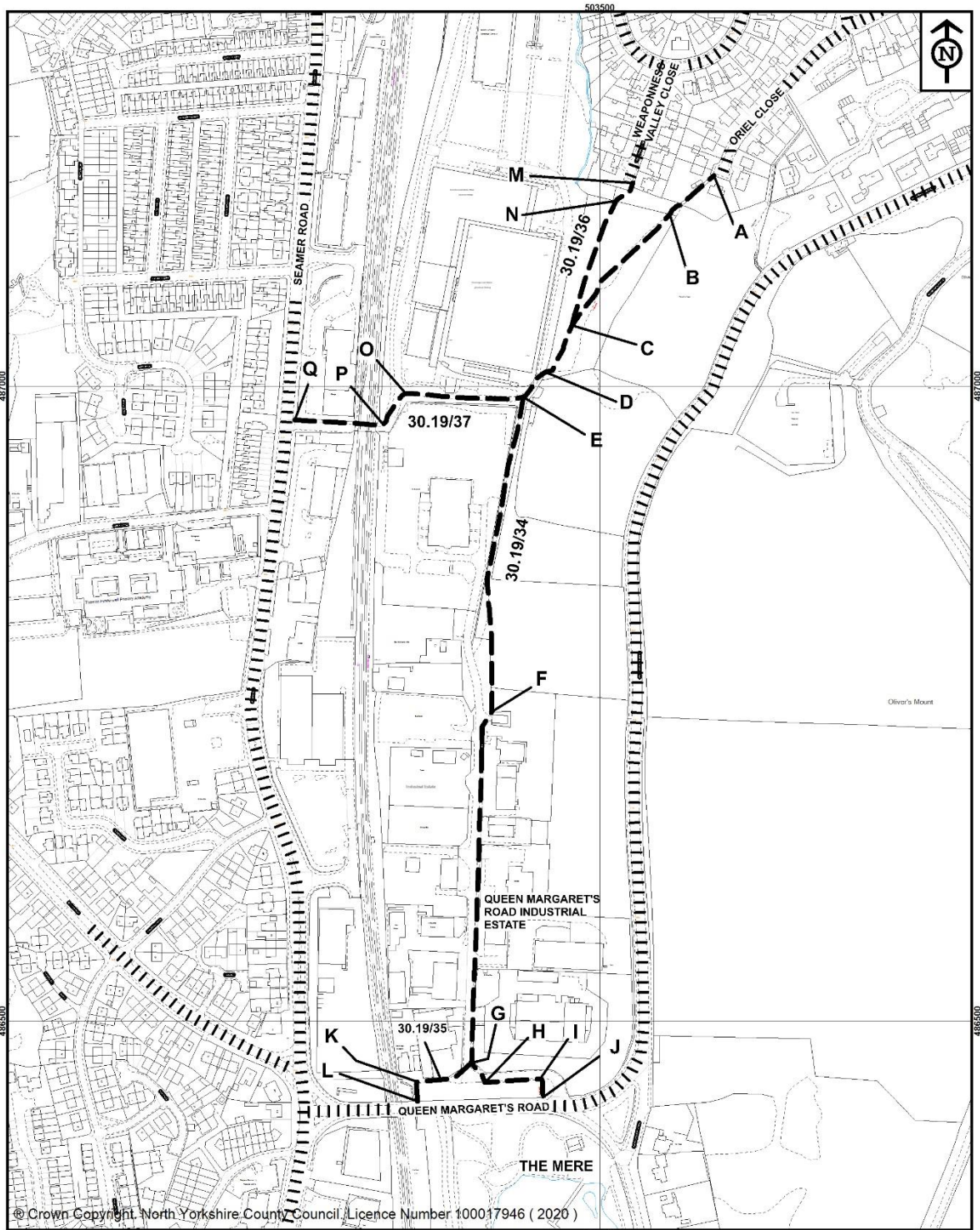
Author of Report - Andrew Hunter

Background Documents to this Report: File Ref SCAR/2017/04/DMMO




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 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>PLAN 1</p> <p>LOCATION PLAN</p>		<p>Report to the Corporate Director 20 May 2020</p> <p>Opposed Definitive Map Modification Order, Oriel Close and Weaponness Valley Close, Scarborough</p>
	<p>Map drawn on 18 May 2020</p> <p>Drawn by AWH</p>	<p>Scale 1:20000</p>	



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**North Yorkshire
County Council**

Public Rights of Way
Waste and Countryside Services
County Hall
Northallerton
DL7 8AH

PLAN 2

Key:
Footpath to be recorded - - - - -

Map drawn on 18 May 2020
Drawn by AWH Scale 1:4000

Report to the Corporate Director
20 May 2020
Opposed Definitive Map Modification
Order, Oriel Close and Weaponness
Valley Close, Scarborough

File Ref SCAR/2017/04/DMMO

**North Yorkshire County Council
Business and Environmental Services**

Executive Members

26 June 2020

**Opposed Definitive Map Modification Order, Oriel Close and Weaponness Valley
Close, Scarborough**

Report of the Assistant Director – Transport, Waste and Countryside Services

AUTHORISATION

I approve / do not approve the recommendation set out above

ANY ADDITIONAL RECOMMENDATION or COMMENT:

.....
.....

David Bowe
Corporate Director - BES

Signed:Date:

North Yorkshire County Council

Report to the Assistant Director – Transport, Waste and Countryside Services

22nd October 2019

**DEFINITIVE MAP MODIFICATION ORDER APPLICATION TO ADD FOOTPATHS TO
THE DEFINITIVE MAP, OFF ORIEL CLOSE AND WEAPONNESS VALLEY CLOSE,
SCARBOROUGH**

1.0 Purpose of the report

- 1.1 To advise the Assistant Director of an opposed Definitive Map Modification Order (DMMO) application to add two public footpaths to the Definitive Map off Oriel Close and Weaponness Valley Close to Seamer Road and Queen Margaret's Road in Scarborough. A location plan is attached to this report as **Plan 1**. The routes are shown as bold dashed lines on **Plan 2**.
- 1.2 To request the Assistant Director to authorise the making of a Definitive Map Modification Order to add a public footpath along the application routes, on the basis of evidence of user and historic evidence..

2.0 Scheme of Delegation

- 2.1 Within the County Council's scheme of delegation, it is delegated to the Assistant Director – Transport, Waste and Countryside Services to exercise the functions of the Council under Part III of the Wildlife and Countryside Act 1981 in relation to the power to make and advertise Definitive Map Modification Orders, including where an objection has been received from any person or body.

3.0 The Application

Applicant:	Sheila Vickers
Date of application:	13 th October 2017
Type of Application	Definitive Map Modification Order
Parish:	Scarborough
Local Member:	Councillor Callam Walsh
Application supported by:	Evidence of use forms 28 users
List of documentary evidence:	1926 OS 25 Inch 1938 newspaper article 1974 Architects road and drainage layout 1994 Planning approval for No 10 Weaponness Valley Close with a condition relating to Scarborough Council access to the Donkey Field 2010 Scarborough Evening News local walk
Applicant's grounds for making the application	Prompted by the locking of a gate

4.0 Relevant legal criteria

- 4.1 In deciding whether to make a Modification Order, the County Council must be satisfied that, in accordance with Section 53 of the Wildlife and Countryside Act 1981, the evidence discovered by the County Council, when taken into consideration with all other relevant evidence, is sufficient to show that a public right of way subsists or is reasonably alleged to subsist along the claimed route.
- 4.2 In the context of Section 53 of the Act, where there is evidence of use by the public of a claimed route, the requirements of Section 31 of the Highways Act 1980 are relevant and these are:
- a) a required date on which the status/use of the claimed route was brought into question; and
 - b) whether the claimed route was used by the public as of right (without secrecy, force or permission) and without interruption for a period of not less than 20 years ending on the date on which the route was brought into question; and
 - c) whether there is sufficient evidence that during the 20-year period there was no intention to dedicate the claimed route as public by the landowner or anyone with an interest in the land e.g. trustees

5.0 Background

- 5.1 In 2006 the Definitive Map Team was contacted by a local resident Miss Tasker, concerned that development at No 10 Weaponness Valley Close had encroached on a strip of land that was being used by the public to access the adjacent field known locally as the donkey field, owned by Scarborough Borough Council (SBC). New fencing had reduced the available width of the access into the field, creating a narrow snicket between Nos 10 and 15 Weaponness Valley Close.
- 5.2 SBC own the donkey field but the connecting strip of land at the end of Weaponness Valley Close is owned by No.10 and SBC enjoys a private access right over the connecting strip of land.
- 5.3 As public use of the route was first brought into question in 2006 that year would appear to be the challenge date.
- 5.2 Miss Tasker submitted a DMMO application in 2007 to record the access from Weaponness Valley Close to the donkey field as a public right of way. The application was supported by a small amount of historical evidence and some user evidence. The route as claimed at that time was effectively a cul-de-sac as it merely linked Weaponness Valley Close to the donkey field and therefore did not connect highway to highway. As such, the application had little chance of being progressed.
- 5.3 In 2016, Willmott Dixon, in partnership with Scarborough Borough Council, began construction of Scarborough Leisure Village on land immediately below the donkey field. This included construction a new stadium for Scarborough Athletic Football Club. Before the stadium opened, two residents from the end of Weaponness Valley Close approached the Club Chairman to see if access to the donkey field could be blocked on match days, in order to prevent parking on Weaponness Valley Close. Willmott Dixon subsequently erected a gate across the snicket in early 2017.

5.4 The stadium opened in July 2017 and during matches, the gate across the snicket was, and still is, locked by the owner of No.10 and Club Stewards are deployed on behalf of the Football Club to prevent public access to the football ground.

6.0 The DMMO Application:

6.1 The locking of the gate and erection of signs by SBC triggered the current application, which was submitted by Mrs Vickers in October 2017. The application was supported by 32 user evidence statements, and the evidence from the 2007 application was incorporated within the 2017 application. Unlike the 2007 application, the 2017 application links to highways at each of the ends.

6.2 Two routes are the subject of the application. The first runs from Oriel Close across the donkey field and continues south, through the industrial estate and terminates at its junction with Queen Margaret's Road opposite The Mere. The second path runs from Weaponness Valley Close across the donkey field and merges briefly with the first path before heading westwards to join Seamer Road.

6.3 Of the 32 user evidence forms submitted with the application, 4 were disregarded as providing insufficient evidence. However, the remaining 28 show periods of use ranging from 4 to 67 years. Around 6 individuals have used parts or all of the paths for 20 years or more.

6.4 Historical documents submitted as supporting evidence include old Ordnance Survey maps which show the Oriel Close path (before the housing estate was built) but not the Weaponness Valley Close path. Also submitted was a newspaper cutting from 1938 relating to public use of the path being perceived as being threatened at that time, and an architect's drawing from 1974 relating to the development of the Oriel Close estate at that time. The plan acknowledges the existence of the path, and shows the 'original path' and the 'new path line' to incorporate the path from Oriel Close, between proposed houses, to allow continued access across the fields .

7.0 Applicant Schedule 14 request for direction by Secretary of State

7.1 In October 2018 the applicant applied to the Secretary of State for a direction to determine the DMMO. In May 2019 the County Council was directed by the Secretary of State to determine the application within 6 months.

8.0 Pre-Order Consultation

8.1 The standard pre-order consultation was carried out in June 2019.

8.2 Objections were received from Scarborough Borough Council and residents at Nos 12, 13, 14 & 15 Oriel Close and No.10 Weaponness Valley Close.

8.3 An email in support of the proposal was received from Scarborough District Council Cllr. Steve Siddons.

9.0 Authority comments on the objections:

9.1 **Scarborough Borough Council** state that lockable gates have long been erected at Oriel Close and Weaponness Valley Close as part of the grazing agreement with licencees to keep livestock secure.

- NYCC does not dispute this, but would add that stiles were present alongside the locked gates during this time.
- 9.2 SBC is concerned that a public right of way will prevent the land from being let.
- This is not a valid objection, but this concern would appear to be unfounded as evidence indicates that public use of this field has co-existed with grazing for decades.
- 9.3 SBC claim there is anecdotal evidence that the field was closed annually on Bonfire Night.
- This evidence is unproven, but suggests that public use of the field was known at that time. The establishment of public rights would not have been challenged by the closure as it was relating to activity on adjacent land.
- 9.4 SBC has granted Scarborough Athletic Football Club permission to prevent any public access to the donkey field (which overlooks the pitch) on match days, which the club enforces with Stewards. Football Association (FA) regulations for a Category C Ground prescribe measures to prevent overlooking during a game, including enclosure by a permanent barrier with a minimum height of 1.83 metres intended to prevent individuals from viewing the game from outside the ground. SBC are concerned that the creation of a public right of way will prevent Stewards from preventing access and that the club may then be in breach of FA rules.
- These are issues relating to land adjacent to the claimed route and are therefore not relevant to the DMMO.
- 9.5 SBC is concerned that a public right of way across the donkey field will lead to anti-social behaviour which will spill out to the streets of Weaponness Valley Close and Oriel Close.
- Whilst this may be a concern for SBC this is not a matter that can be taken into account in investigating this application.
- 9.6 The residents of Oriel Close variously raise concerns about the increased use of Oriel Close for parking and the misuse of the path on football match days, and the slippery nature of the path in the winter. They state that they have not prevented anyone using the path in the last 25 years, but that notices had been put up stating it was not a Public Right of Way and that they sometimes closed the path at Christmas time. The path had been closed during match days in response to spectators dropping rubbish at the bottom of the path by the end of his garden. Comment was also made that the alignment of route as shown on old maps was changed in the 1970s when the Oriel Close houses were built.
- Whilst the local residents' concerns are understood, these concerns about possible misuse of the path on match days are not relevant to the consideration of whether or not public rights have been acquired. No evidence has been provided to support any hindrance to the public's use of the path during the 20 years leading up to 2007 when the challenge to the public's right to use the route at the Weaponness Valley Close end was initially made.
- 9.7 The resident at No 10 Weaponness Valley Close expressed concerns over potential parking problems caused by people attempting to access the football ground, that the path would devalue his property and that the route had been closed at times since 2008.
- These issues are not relevant to the consideration of whether or not public rights have been acquired prior to 2007.

10.0 Financial implications

- 10.1 In the event that an Order were to be made and was then opposed, there may be financial implications for the authority in covering any cost associated with any subsequent public inquiry. Such costs cannot be avoided where the Planning Inspectorate decides that a public inquiry should be held to resolve an application. If an Inquiry were to be held the Authority may appoint external advocacy.
- 10.2 If an Order is made and is ultimately confirmed, the routes would be added to the Definitive Map as public footpaths, recording the public's right to use the routes on foot. Some works may be undertaken to improve accessibility of the route. The future maintenance burden would be low. It should be noted that approximately 640 metres of the paths, particularly to the south and the west will run along access roads and footways privately maintained by landowners and therefore will be maintained to a reasonable standard by the owners for their own use.

11.0 Legal implications

- 11.1 There is a statutory requirement to investigate applications for Definitive Map Modification Orders, regardless as to whether the outcome would benefit or prejudice owners, occupiers or members of the general public, and as such it is considered that equality and diversity issues are not relevant to the outcome of the process. In any event it is considered that the outcome would have no impact on the protected characteristics identified in the Equalities Act 2010.

12.0 Conclusions

- 12.1 The evidence of use of the routes subject of the application together with the evidence within certain historical documents, and the lack of any contradictory valid evidence to suggest that steps had been taken by landowners to prevent public access, or to bring to the attention of the public that there was no public right of access along any of the routes during the relevant period lead to a conclusion that , it has been reasonably alleged that public rights on foot have been established over the routes.

13.0 Recommendation

- 13.1 It is therefore recommended that: the Assistant Director, Transport, Waste and Countryside Services, authorises the making of a Definitive Map Modification Order for the routes shown as on Plan 2 of this report to be recorded on the Definitive Map and Statement as public footpaths.

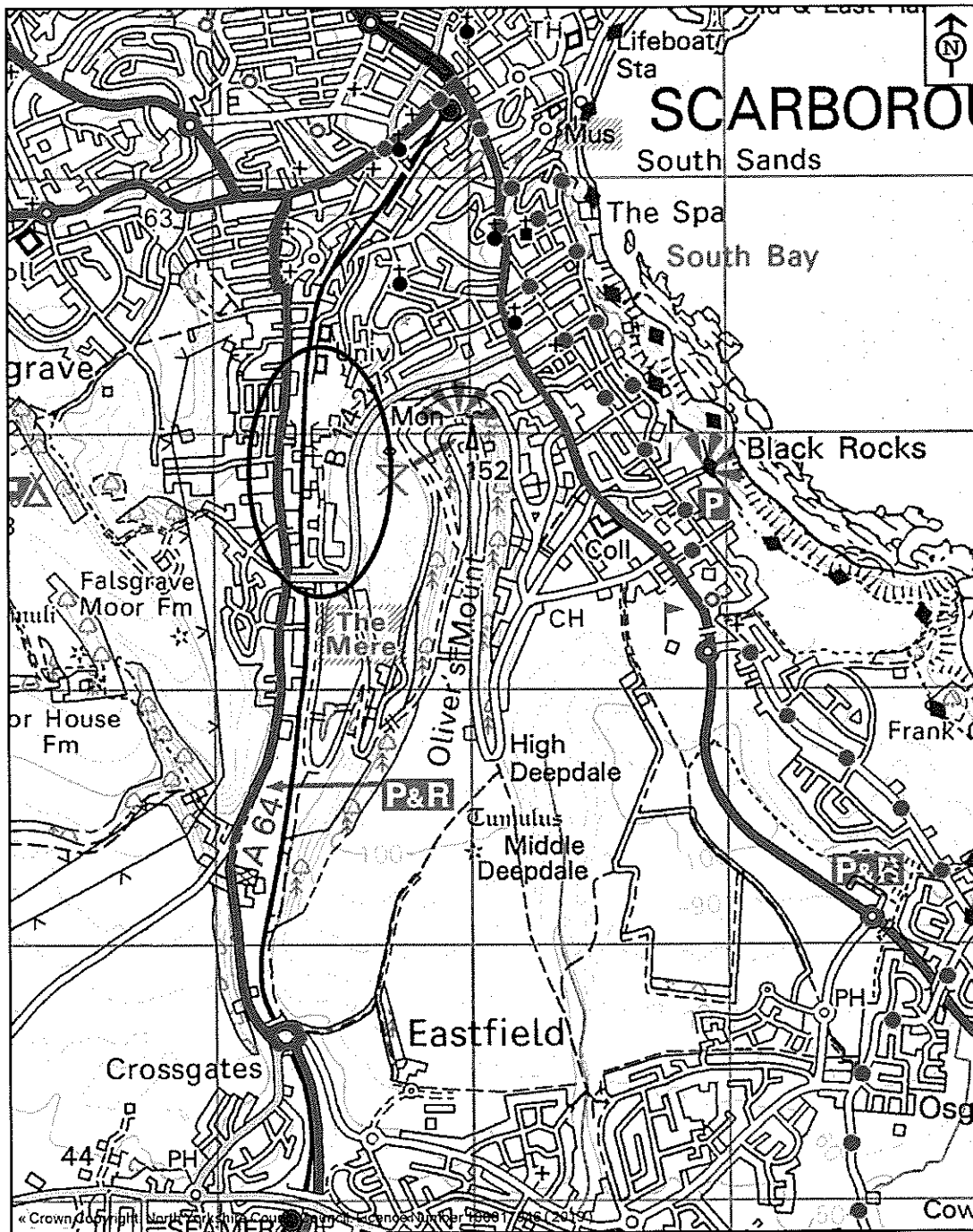
IAN FIELDING

Assistant Director Transport, Waste and Countryside Services

Author of report: Andrew Hunter

Background papers: File Ref SCAR/2017/04/DMMO

Plan 1: Location Plan



North Yorkshire
County Council

Public Rights of Way
Waste and Countryside Services
County Hall
Northallerton
DL7 8AH

Location Plan

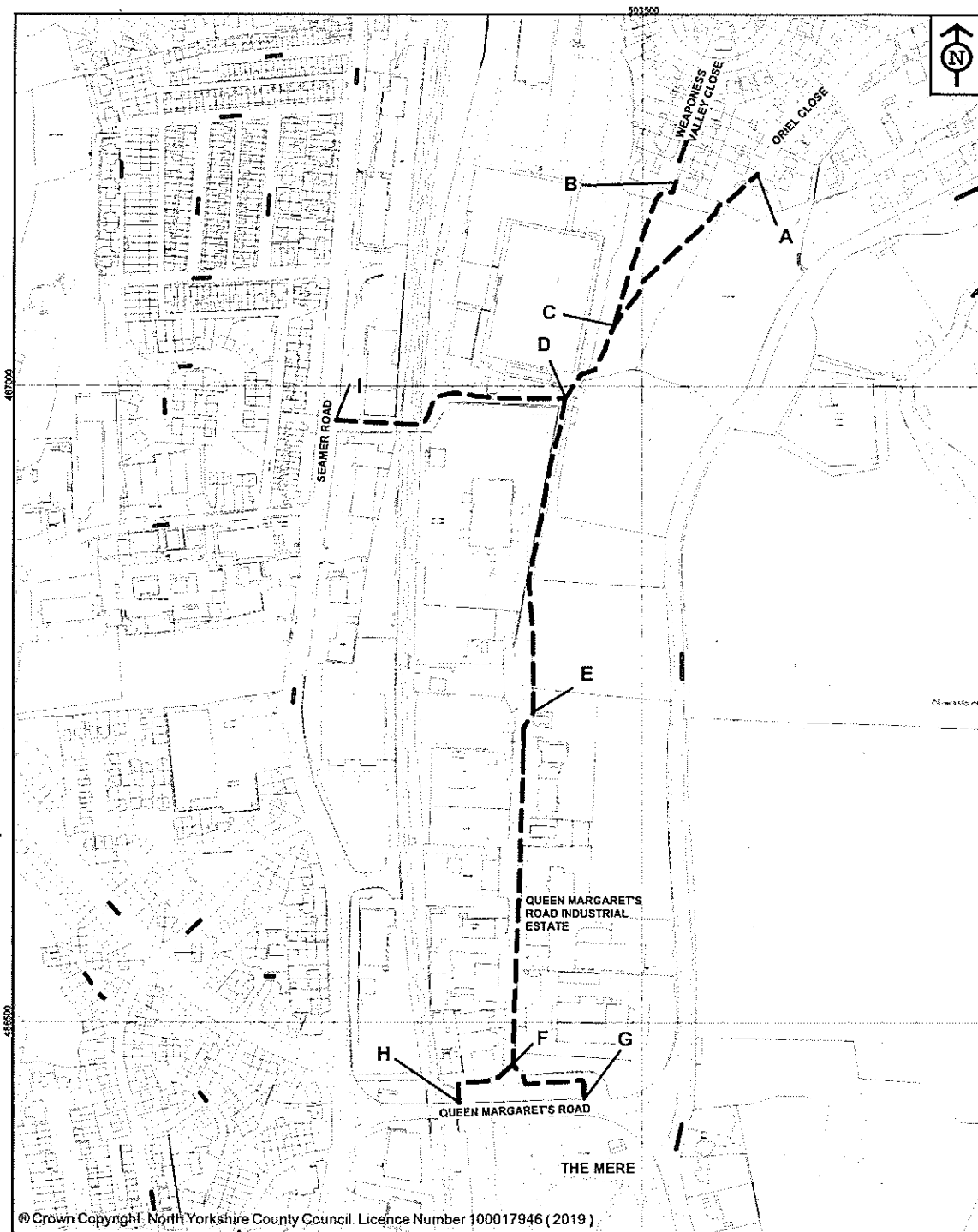
Map drawn on 31 May 2019
Drawn by AWH Scale 1:20000

**PROPOSED DEFINITIVE MAP
MODIFICATION ORDER**


Oriel Close & Weaponness Valley
Close, to Seamer Road and
Queen Margaret's Road,
Scarborough

File Ref No. SCAR/2017/04/DMMO

Plan 2: Report Plan



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 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>PLAN 2</p> <p>Key: Footpath to be recorded </p>	<p>PROPOSED DEFINITIVE MAP MODIFICATION ORDER</p> <p>Oriel Close & Weaponness Valley Close to Seamer Road and Queen Margaret's Road Scarborough</p>
	<p>Map drawn on 12 September 2019 Drawn by AWH Scale 1:4000</p>	<p>File Ref No. SCAR/2017/04/DMMO</p>

Report to the Assistant Director, Waste and Countryside Services

22 October 2019

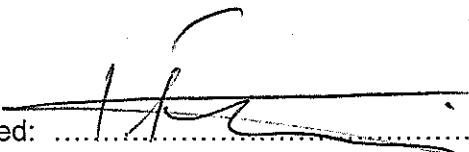
**DEFINITIVE MAP MODIFICATION ORDER APPLICATION TO ADD FOOTPATHS TO
THE DEFINITIVE MAP, ORIEL CLOSE AND WEAPONNESS VALLEY CLOSE,
SCARBOROUGH**

AUTHORISATION

I approve ~~I do not approve~~ the recommendation set out in the report.

ANY ADDITIONAL RECOMMENDATION or COMMENT:

.....
.....
.....
.....

Signed: 

Ian Fielding
Assistant Director of Waste and Countryside Services

Date: 25/10/19