

North Yorkshire County Council

Corporate Director Business and Environmental Services

25 September 2020

Opposed Definitive Map Modification Orders Requiring Resolution by the Secretary of State

Report of the Assistant Director – Business and Environmental Services

1.0 Purpose of the Report

- 1.1 To advise the Corporate Director and BES Executive Members of opposed Definitive Map Modification Orders forwarded to the Secretary of State for resolution.
- 1.2 To request the Corporate Director, in consultation with BES Executive Members, to review the stances adopted in submitting certain cases to the Secretary of State.

2.0 Background

- 2.1 The County Council has a duty to consider applications for Definitive Map Modification Orders to be made where an individual or a group believe a right of way exists but is not recorded, or believe that the status recorded is incorrect and should be shown as being of a different status e.g. it is recorded as a footpath but the applicant believes that the route is a bridleway, or believes a route recorded should not be recorded as a public right of way at all. The process of recording any modifications to the Definitive Map and Statement is by making and confirming a Definitive Map Modification Order (DMMO).
- 2.2 It is common for an application to modify the definitive map to be opposed as the routes being alleged to be public rights of way cross private land, and landowners often dispute the evidence put forward in support of the applications.
- 2.3 It is delegated to officers to reject DMMO applications where it is clear that the application has not been duly made, or where the evidence is deemed to be insufficient to warrant the making of an Order. In these circumstances the applicant has a right of appeal to the Secretary of State (SoS). In these instances, the SoS may direct the authority to make an Order to allow the evidence to be tested through the usual processes.
- 2.4 Where a DMMO has been made and formally advertised, and objections to the Order are received, the County Council cannot confirm the Order, nor can it now abandon that Order. The opposed Order must be sent to the SoS for final determination, accompanied by the standard Statement of Grounds and other documentation, explaining why the Order was made and what stance the County Council will make in either supporting or opposing the confirmation of the Order, alternatively taking neither of these stances and remaining neutral within the SoS procedures.
- 2.5 Determination of the stance that the County Council will take in its submission to the SoS is a matter delegated to the Corporate Director (BES) in conjunction with Executive Members:

3.0 Current cases awaiting resolution by the SoS

3.1 The five cases highlighted in this report have been wrongly submitted to the Secretary of State with the County Council's stance being determined by officers rather than by the Corporate Director in consultation with Executive Members as required by the Constitution. These cases are currently held by the SoS as part of their backlog of cases awaiting resolution, and, with the exception of one case, are likely to be subject of a public inquiry.

3.2 These five cases are listed below, and the attached Appendices provide an outline of each case and an explanation of the stance arrived at:

- Appendix 1 CRA/2004/01/DMMO - Ingfield Lane to Lodge Road, Settle Upgrade a footpath to bridleway. Stance – Neutral.
- Appendix 2 HAM/2009/08/DMMO - Rosehill Drive to Levenside, Stokesley Upgrade a footpath to bridleway. Stance – Order should be confirmed.
- Appendix 3 HAR/2011/15/DMMO - Scagglethorpe Lane to Woodhouse Bridge, Moor Monkton – Re-align a footpath. Stance – Order should not be confirmed.
- Appendix 4 HAR/2018/04/DMMO - Arrowfield, Main Street, Kirkby Malzeard Add a footpath. Stance - Order should be confirmed.
- Appendix 5 RYE/2007/02/DMMO - Holly Close to Cropton Lane, Wrelton To add a footpath. Stance - Order should be confirmed.

3.3 The County Council's stance towards the confirmation, or otherwise, of these Orders have been decided by officers upon on the basis of the interpretation of the available evidence, and the implied evidential public status of the routes in question. Whilst these stances were not approved in accordance with the Constitution, they are of course the stances which would have been, and are now being recommended to CD-BES and Executive Members.

3.4 Formal support for the existing stances is now being sought retrospectively. In the event that the Corporate Director and the Executive Members disagree with the stance previously put to the SoS, and wish to decide upon an alternative stance, immediate representation will need to be made to the SoS to amend their records and an explanation of the reasons for the change in interpretation of the evidence provided.

3.5 Where it is considered that the Authority should not support the confirmation of any of the Orders contrary to the current position, the SoS will expect officers to approach another party, usually the applicant for the DMMO, to take the responsibility for supporting the confirmation of the Order. Officers will notify any interested parties of the change in circumstances.

- 3.6 Two of the five cases above, Brockhole Lane, Settle and Scagglethorpe Lane, Moor Monkton, were submitted to the SoS 19 months and 11 months ago respectively, and the process towards determination is very well advanced. Due to the Covid-19 situation the Public Inquiry for the Settle case which was intended to take place in June was cancelled, and the determination of the Order was to be resolved by the Inspector by written representations. The Inspectorate's Decision on this case is expected imminently. The Public inquiry for the Moor Monkton case is programmed for December and the various parties' legal cases, including the County Council's, have been exchanged. It is envisaged that it would now be very difficult to make any amendments to the stances relating to these two cases.
- 3.7 It was an oversight and failure of process that the cases listed above were not presented to CD-BES and Executive Members for determination of the Council's stance to be represented to the SoS before submission. However, procedures have been amended and all future cases will be processed in accordance with the constitution and authorisation properly sought.
- 3.8 For information, there are three further cases which are currently held by the SoS awaiting final resolution, but where the NYCC stance had been previously authorised by the Planning and Regulatory Functions Sub-Committee in accordance with the requirements of a previous version of the constitution. The Council's stance has been previously and properly determined for these cases.
- CRA/1999/01/DMMO - Nutgill Farm, Bridleway No.05.26/37, Ingleton – downgrade a bridleway to footpath. Stance - Order should not be confirmed.
 - HAR/2005/07/DMMO - FP 16, Via Horseman's Well Farm House to Swincliffe, Felliscliffe. Upgrade a footpath to bridleway. Stance - Neutral.
 - HAR/2010/14/DMMO - E of Corner House to Dyke Lane, Monk Ing Lane, Dacre. Downgrade a bridleway to footpath. Stance - Neutral.

4.0 Recommendation

- 4.1 To request the Corporate Director (BES) in conjunction with Executive Members, to review the stances previously adopted in the submissions of the five cases, referred to above, to the Secretary of State.
- 4.2 To request retrospective support from Corporate Director (BES) in conjunction with Executive Members for these stances,
1. CRA/2004/01/DMMO - Ingfield Lane to Lodge Road, Settle
Upgrade a footpath to bridleway. Proposed stance – Neutral.
 2. HAM/2009/08/DMMO - Rosehill Drive to Levenside, Stokesley
Upgrade a footpath to bridleway. Proposed stance – Order should be confirmed.
 3. HAR/2011/15/DMMO - Scagglethorpe Ln to Woodhouse Br, Moor Monkton
Re-align a footpath. Proposed stance – Order should not be confirmed.
 4. HAR/2018/04/DMMO - Arrowfield, Main Street, Kirkby Malzeard
Add a footpath. Proposed stance - Order should be confirmed.
 5. RYE/2007/02/DMMO - Holly Close to Cropton Lane, Wrelton
To add a footpath. Proposed stance - Order should be confirmed.

IAN FIELDING
Assistant Director, Transport, Waste and Countryside Services

Author of Report – Penny Noake

Background Documents to this Report: None

**Opposed Definitive Map Modification Order
Upgrade a Public Footpath to a Public Bridleway along Brockhole Lane, Settle
Report of the Assistant Director – Transport, Waste and Countryside Services**

1.0 Purpose of the report

- 1.1 To request the Corporate Director, in consultation with the Executive Members, to retrospectively authorise that North Yorkshire County Council (NYCC), in its submission of the opposed Definitive Map Modification Order to the SoS will adopt a neutral stance towards the confirmation of the Order.

2.0 Background

- 2.1 In 2004, a local horse rider applied to have the lane known as Brockhole Lane or Watery Lane, which lies between Ingfield Lane to Lodge Lane, in Settle to be upgraded from footpath to bridleway on the Definitive Map. The lane is enclosed by walls on either side, is in part passable by farm vehicles but in other parts is rather narrow. The route is shown on the attached plan at Appendix 1 Plan 1.
- 2.2 The application was supported by evidence of use by horse riders for in excess of the statutory period of 20 years. The application was investigated and a consultation was undertaken. Two objections were received in response to the consultation, one of which was subsequently withdrawn. The remaining objection was made by an agricultural landowner who owns land adjacent to the lane and approximately 1/3 of the length of the lane.
- 2.3 In accordance with normal procedure where objections are received, a report was placed before the Craven Area Committee in 2007. It was considered that the evidence supplied was sufficient to meet the low threshold test of being “reasonably alleged”, and therefore the recommendation to Members within the report was that a Definitive Map Modification Order should be made. However, Members decided to refuse the application.
- 2.4 The applicant was advised of the right of Appeal, exercised that right and the Authority was subsequently directed to make an Order.
- 2.5 The same objections were made to the Order. Although the objections are considered not to be valid in the context of deciding whether or not public rights exist, and whether or not an Order should be confirmed, the Authority cannot confirm an Order where there are outstanding objections and must forward it to the SoS for resolution.

3.0 Evidence in support of, and against the Order

- 3.1 The evidence supporting the application demonstrates unhindered use of the route by a number of horse riders for in excess of the statutory period of 20 years, prior to the erection of pedestrian gates in 2003 which in effect challenged the right of horse riders to use the route, one person had ridden the route since 1954.
- 3.2 A Town Councillor, apparently in his own right rather than on behalf of the Town Council, had initially opposed the upgrade of the footpath to bridleway but later withdrew his objection.

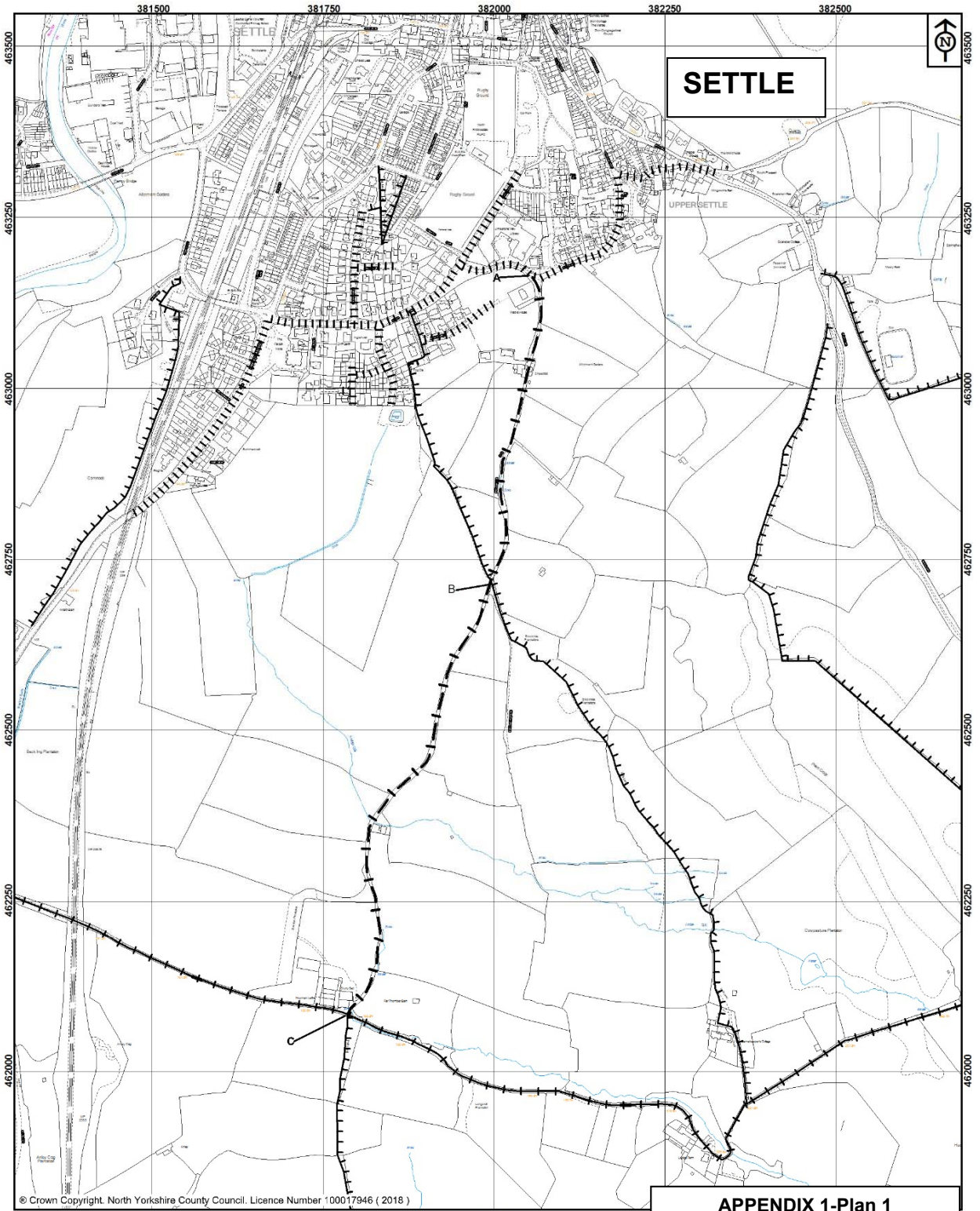
- 3.3 The only remaining objection to the Order was made by a gentleman who owns approximately 1/3 of the length of the lane (ownership of the remainder of the lane is unknown). He acknowledged that horse riders did use the lane and that he was happy for local horse riders whom he knew to use the route, but gave a number of reasons why he felt it would be impractical for the route to be upgraded to a bridleway including that it would be likely to interfere with the agricultural use of the lane and, due to the narrowness of the lane, there could be safety issues between users.
- 3.4 The user evidence demonstrates use of the route by horse riders “as of right” (i.e. without force, secrecy or permission), for over 20 years, before the use of the route on horseback was called into question in 2003.
- 3.5 There is no evidence of any actions showing an intention not to dedicate by any landowner, or other interested party, prior to 2003. No evidence has been presented to show that horse riders have not used the route freely, or have at any time been prevented from using the route prior to 2003.

4.0 Current Decision to be made

- 4.1 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,
 - believes the Order should not be confirmed, or
 - considers the evidence is either so finely balanced, or is particularly unclear and wishes to take a neutral stance.
- 4.2 The current decision to be made is which stance the County Council is to take within its submission of this opposed DMMO to the SoS.
- 4.3 Members of the Craven Area Committee in 2007 came to the conclusion that the weight of evidence did not support the implementation of the proposal to upgrade the footpath to bridleway, and therefore did not support the making of an Order.
- 4.4 No further evidence was subsequently submitted either in support of, or against, the application. As the evidence has not changed it may appear perverse of the Authority to now support the confirmation of the Order under the more stringent test that “on the balance of probabilities” bridleway rights exist.
- 4.5 However, as no *evidence* has been submitted to contradict the evidence that the public had made used of the route on horseback for in excess of 20 years prior, it would now be difficult to construct a persuasive case that the Order should not be confirmed.
- 4.6 Therefore it is considered that in this instance it would be appropriate for the Authority to take a neutral stance, and to allow the Planning Inspectorate to come to its own decision based on all of the available evidence, as to whether or not public bridleway rights now exist along the lane.

<h4>5.0 Recommendation</h4>

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| <p>5.1 It is recommended that the Authority, within its submission to the SoS, takes a neutral stance towards the confirmation of this DMMO.</p> |
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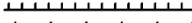

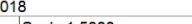


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**North Yorkshire
County Council**
Public Rights of Way
Waste and Countryside Services
County Hall
Northallerton
DL7 8AH

Key:

- Footpath to be upgraded 
- Other footpaths 
- Other bridleways 
- Maintainable Highways 

Map drawn on 28 August 2018
Drawn by RWA Scale 1:5000

APPENDIX 1-Plan 1

Opposed Definitive Map
Modification Orders Requiring
Resolution by the SoS

25 September 2020

**Opposed Definitive Map Modification Order
Bridleway No. 10.140/19, Levenside To Rosehill Drive, Stokesley**

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

1.0 Purpose of the report

- 1.1 To request the Corporate Director, in consultation with the Executive Members, to retrospectively authorise that North Yorkshire County Council (NYCC), in its submission of the opposed Definitive Map Modification Order to the SoS will adopt a stance to support the confirmation of the Order.

2.0 Background

- 2.1 In 2000, Stokesley Parish Council applied to have the route from Levenside to Rosehill Drive recorded on the Definitive Map as a Byway Open to All Traffic (BOAT). The Parish Council is the owner of most of the land affected. The first part of the route is a narrow tarmac-surfaced lane which narrows with grass verges before joining the end of Rosehill Drive.
- 2.2 The Parish Council later withdrew the application for a BOAT when it was clarified that those people who needed access to properties and to the allotments did not need the route to have a public status.
- 2.3 However, in order to protect the rights of the public who used the route as a through-route on foot, the Parish Council requested that a Footpath Creation Order be pursued instead. The Creation Order was confirmed in 2001, and the route A – B – C added to the Definitive Map as a public footpath as shown on the attached Appendix 2 – Plan 1.
- 2.4 Local riders then contacted the Parish Council and County Council stating that the route had been used by horse riders for many years, and therefore should have been designated a Public Bridleway.
- 2.5 In 2009 a local rider submitted a Definitive Map Modification Order (DMMO) application under the Wildlife and Countryside Act 1981 to upgrade the footpath to bridleway.

3.0 Evidence in support of, and against the Application

- 5.1 The evidence supporting the application consists of evidence of unhindered use of the route by a number of horse riders for a period of 20 years prior to the first challenge made by the Parish Council, as owners of the land, in 2006.
- 3.2 Whilst objections were submitted to the County Council by 4 objectors including the Parish Council, none of the objectors denied that use had been made of the route by horse riders, and the objections were largely based upon concerns about safety of pedestrians in close proximity to any horses, and the mess left by horses. Perceptions about safety of users cannot be taken into consideration when deciding whether or not the public have acquired public rights.
- 3.3 Officers are satisfied that the user evidence demonstrates use of the route by horse riders “as of right” (i.e. without force, secrecy or permission), for over 20 years, before the use of the route on horseback was called into question in 2006.

3.4 There is no evidence of actions showing an intention not to dedicate by any landowner, or other interested party, prior to 2006. No evidence has been presented to show that horse riders have not used the route freely, or have at any time been prevented from using the route prior to 2006.

4.0 Current Decision to be made

4.1 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,
- believes the Order should not be confirmed, or
- considers the evidence is either so finely balanced, or is particularly unclear and wishes to take a neutral stance.


4.2 The current decision to be made is which stance the County Council is to take within its submission of this opposed DMMO to the SoS.

4.3 No evidence has been submitted to contradict the evidence that the public have made used of the route on horseback for at least 20 years prior to 2006, at which time the Parish Council first took steps to endeavour to prevent use of the route by horse riders.

<p>5.0 Recommendation</p> <p>5.1 It is your officers' view that as there is sufficient and undisputed evidence that horse riders made use of the route for at least 20 years, and there is no compelling evidence that any steps were taken to prevent the acquisition of rights by horse riders.</p> <p>5.2 Therefore it is recommended that the Authority, within its submission to the SoS, supports the confirmation of this DMMO.</p>



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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>Key: Application route - - - - -</p>	<p>APPENDIX 2-Plan 1</p> <p>Opposed Definitive Map Modification Orders Requiring Resolution by the SoS</p> <p>25 September 2020</p>
	<p>File Ref No. HAM/2009/08/DMMO</p>	
	<p>Map drawn on 15 December 2011</p>	
	<p>Drawn by B Brown Scale 1:1250</p>	

**Opposed Definitive Map Modification Order
Public Footpaths 15.95/6 (Part) and 15.95/11, Moor Monkton**

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

1.0 Purpose of the report

- 1.1 To request the Corporate Director, in consultation with the Executive Members, to retrospectively authorise that North Yorkshire County Council (NYCC), in its submission of the opposed Definitive Map Modification Order to the SoS will adopt a stance towards the Order not being confirmed.

2.0 Background

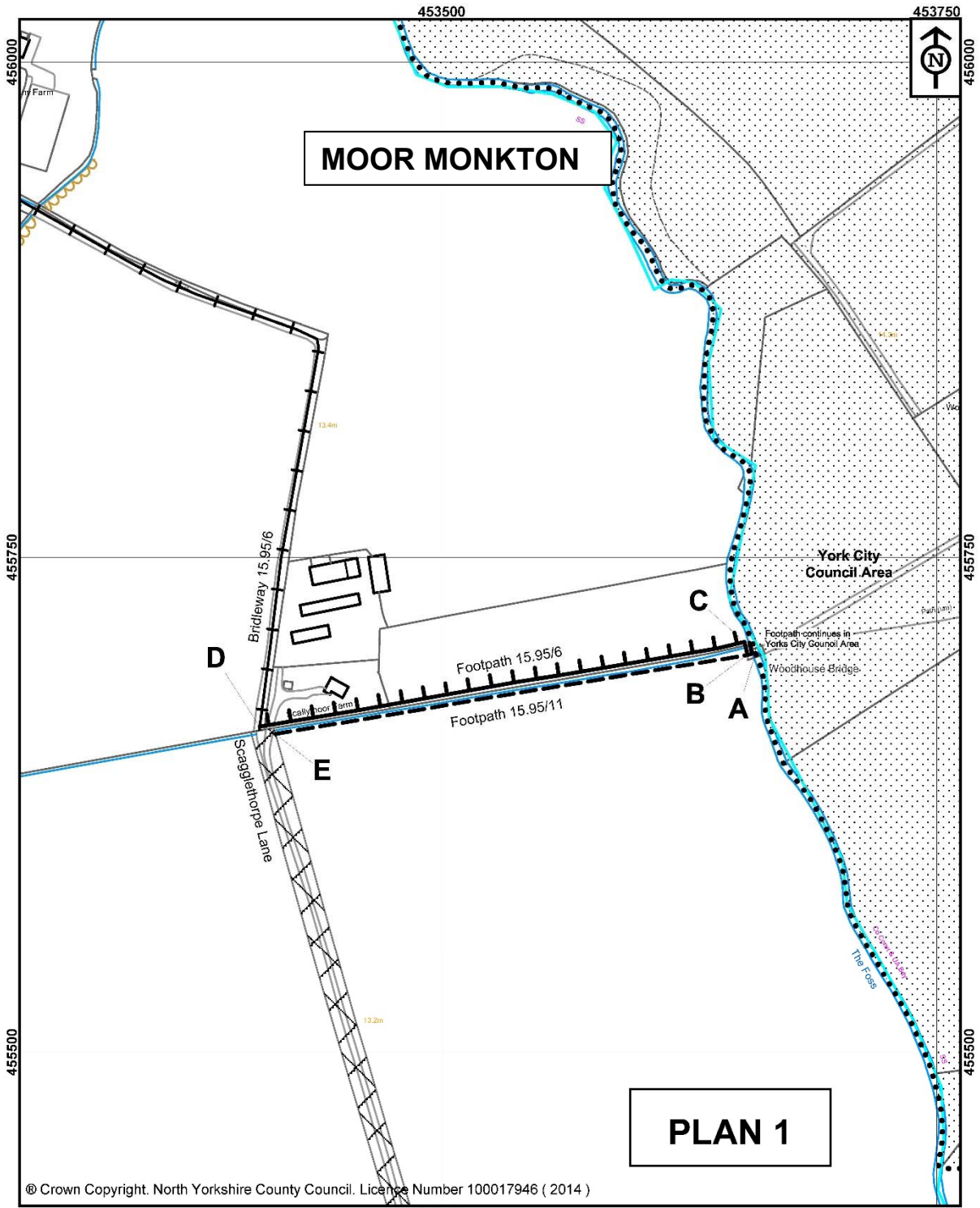
- 2.1 Footpath no.15.95/6 lies generally east-west and commences at the northern end of the cul de sac road, Scagglethorpe Lane, and proceeds east to the Nether Poppleton parish boundary continuing into York City Council's area. The footpath which lies on the northern side of the east-west field boundary had been obstructed for many years and the public had begun to walk along the southern side of the boundary.
- 2.2 A new landowner on the southern side began to challenge walkers. Complaints were made to the County Council because the legal line of the footpath was obstructed and the landowner of the alternative route was preventing access.
- 2.3 The landowner on the northern side of the boundary believed the footpath had been wrongly recorded on his land, so in 2011, made an application for a DMMO to delete the footpath on the northern side of the boundary, and to record it on the southern side of the boundary.
- 2.4 Processing the application commenced in 2013. An informal consultation was undertaken and objections were made to the proposal.
- 2.5 After consideration of the minimal evidence and the responses to the informal consultation it was considered that no evidence had been submitted that sufficiently suggested that the existing footpath had been recorded in error on the Definitive Map. In addition, it was considered that as users of the proposed route were merely deviating around obstructions to the definitive alignment then the public use of the alternative route did not give rise to the establishment of additional rights.
- 2.6 The County Council declined to make an DMMO to either delete the existing footpath, or to add a further footpath to the Definitive Map. The applicant was advised of their right of appeal.
- 2.7 The applicant made a formal appeal to the Planning Inspectorate against the refusal to make an Order. After the due exchange of correspondence, the Planning Inspectorate's formal decision was that an Order should be made to test the available evidence. The intention of the order was to delete the footpath A – B - C – D and add the footpath A – E as shown on Appendix 3 – Plan 1 attached.
- 2.8 The Order was duly made and was opposed, and no further evidence was submitted that succeeded in changing officers' views that either the original footpath had been recorded in error, or that the public had acquired additional rights meriting a further footpath to be added to the Definitive Map.

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,
 - believes the Order should not be confirmed, or
 - considers the evidence is either so finely balanced, or is particularly unclear and wishes to take a neutral stance.
- 3.2 The current decision to be made is which stance the County Council is to take within its submission of this opposed DMMO to the SoS.
- 3.3 No convincing or compelling evidence has been submitted to adequately support the applicant's view that footpath no. 15.95/6 was recorded on the incorrect alignment on the Definitive Map produced by the former West Riding County Council in 1972. Further, that whilst the public have made use of an alternative route for in excess of 20 years, it is considered that they were not acquiring the right to do so as they were simply deviating around the obstruction of the definitive alignment by making use of the nearest suitable alternative alignment.

4.0 Recommendation

- 4.1 It is your officers' view that this is not a situation where the evidence is in the balance, it is deemed that there is insufficient evidence to support the confirmation of either element of this DMMO.
- 4.2 Therefore it is recommended that the Authority remains consistent in its approach by maintaining within its submission to the SoS that the DMMO should not be confirmed.



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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>Key:</p> <p>Footpath to be recorded </p> <p>Footpath to be deleted </p> <p>Other bridleways </p> <p>Maintainable Highways </p>	<p>APPENDIX 3-Plan 1</p> <p>Opposed Definitive Map Modification Orders Requiring Resolution by the SoS</p> <p>25 September 2020</p>
	<p>Map drawn on 23 June 2014</p> <p>Drawn by RJV Scale 1:2500</p>	

**Opposed Definitive Map Modification Order
Footpath No. 15.70/54 Arrowfield, Kirkby Malzeard**

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

1.0 Purpose of the report

- 1.1 To request the Corporate Director, in consultation with the Executive Members, to retrospectively authorise that North Yorkshire County Council (NYCC), in its submission of the opposed Definitive Map Modification Order (DMMO) to the SoS will adopt a stance to support the confirmation of the Order.

2.0 Background

- 2.1 In 2017 Kirkby Malzeard Parish Council was concerned that when the property known as Arrowfield was to be sold that the next owner may attempt to prevent access across the land which provides a link in the centre of the village between Main Street and Back Lane. The route lies along one side of the garden of the property.
- 2.2 In 2018 The Parish Council had approached the new owner of the property with a view to the path being dedicated as a public footpath, however the new owner declined to dedicate the path. The Parish Council then made the application to have the route recorded on the Definitive Map as a public footpath, as shown A – B – C – D – E on the attached Appendix 4 – Plan 1.
- 2.3 The application was supported by relatively substantial evidence of use of the route by a number of local people for a period in excess of the statutory period of 20 years, and by C19th mapping showing the route. The evidence was considered sufficient to 'reasonably allege' that rights had been acquired by the public.
- 2.4 Whilst the application was opposed by the property owner, the evidence put forward against the application was not considered sufficient to counter the evidence in support, and a DMMO was made in 2019 attracting the same objections.

3.0 Evidence in support of, and against the Application

- 3.1 The evidence supporting the Order consists of evidence from 24 people of their unhindered use of the route on foot for in excess of 30 years, and the depiction of the route on some C19th mapping, sometimes annotating the route as 'FP' for footpath.
- 3.2 The single objection to the Order from the property owner includes matters such as the adverse impact the path would have on the property, people have not used the path in the last couple of years and that old maps hold no evidential evidence of the existence of a public right of way. The objector has also raised that under the Human Rights Act their human rights would be breached with regards to their right of respect for private and family life, and their right of peaceful enjoyment to property and possessions.
- 3.3 Officers are satisfied that the user evidence demonstrates use of the route by pedestrians "as of right" (i.e. without force, secrecy or permission), for over 20 years, before the use of the route was called into question in 2018.
- 3.4 There is no evidence of actions showing an intention not to dedicate by any previous landowner, or other interested party, prior to 2018. No evidence has been presented

to show that pedestrians have not used the route freely, or have at any time been prevented from using the route.

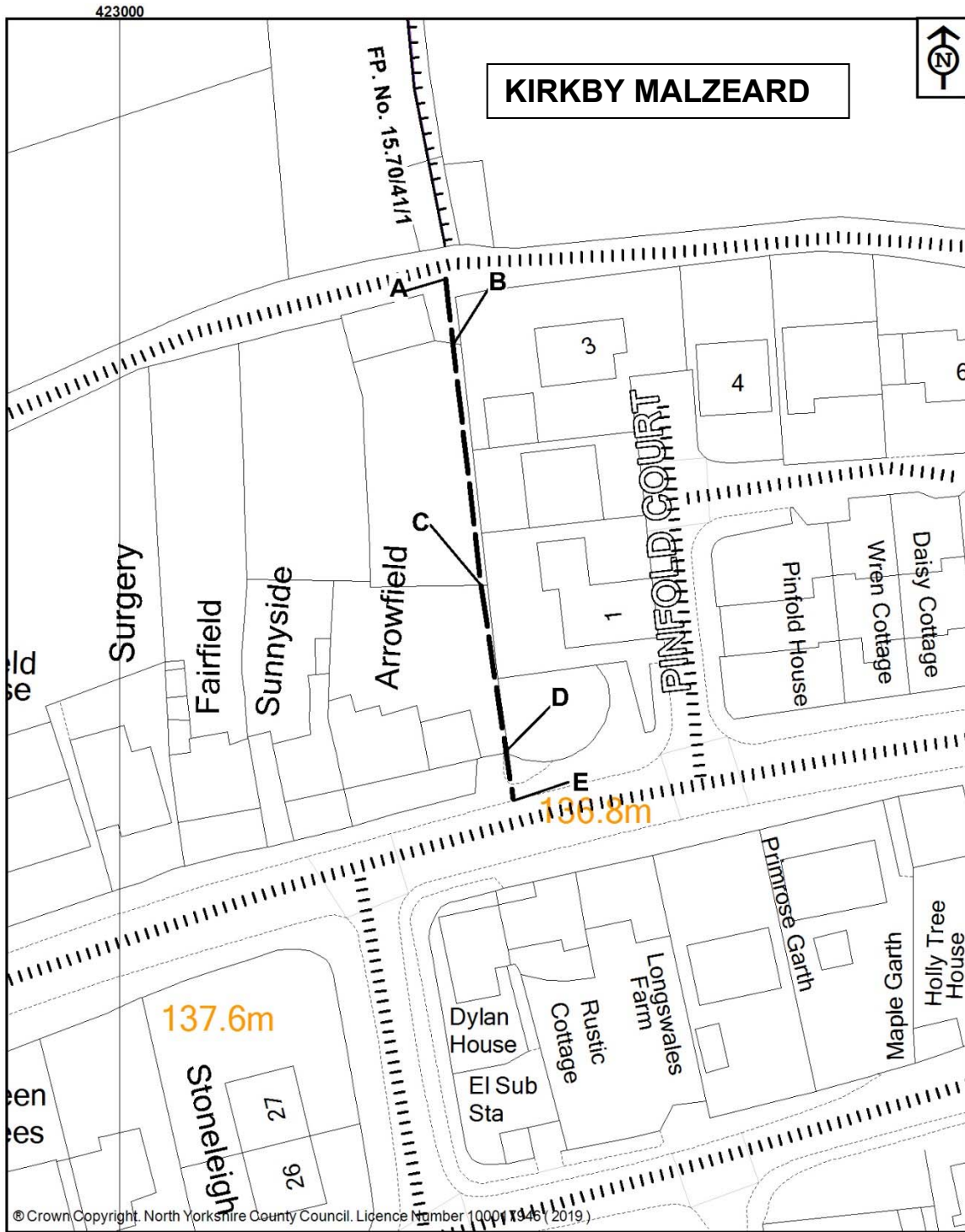
- 3.5 Matters such as inconvenience to either the owner of the land, or to users of a route cannot be taken into consideration when deciding whether or not the public have acquired public rights.
- 3.6 With regard to the depiction of the route on old OS mapping, whilst no single piece of evidence might be considered conclusive, officers are satisfied that taken as a whole the several maps involved demonstrates evidence of the historic existence of a path.
- 3.7 With regards the Human Rights Act 1998 the Authority has acted lawfully in determining that an Order should be made, and that it is now for the SoS to decide whether any provisions within the Act prevent them from confirming the Order.



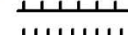
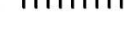
4.0 Current Decision to be made

- 4.1 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,
 - believes the Order should not be confirmed, or
 - considers the evidence is either so finely balanced, or is particularly unclear and wishes to take a neutral stance.
- 4.2 The current decision to be made is which stance the County Council is to take within its submission of this opposed DMMO to the SoS.
- 4.3 No evidence has been submitted to contradict the evidence that the public have made unhindered use of the route on foot for at least 20 years prior to the date of the application.

5.0 Recommendation

- 5.1 It is your officers' view that as there is sufficient and undisputed evidence that pedestrians have made use of the route for at least 20 years, and there is no compelling evidence that any steps were taken to prevent the acquisition of rights by the public.
- 5.2 Therefore it is recommended that the Authority, within its submission to the SoS, supports the confirmation of this DMMO.



 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p> <p>Footpath to be recorded </p> <p>Other footpaths </p> <p>Maintainable Highways </p>	<p>APPENDIX 4-Plan 1</p> <p>Opposed Definitive Map Modification Orders Requiring Resolution by the SoS</p> <p>25 September 2020</p>
	<p>Map drawn on 31 July 2019</p> <p>Drawn by RWA Scale 1:625</p>	

Opposed Definitive Map Modification Order Public Footpath 25.114/9 Back Lane, Wrelton

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

1.0 Purpose of the report

- 1.1 To request the Corporate Director, in consultation with the Executive Members, to retrospectively authorise that North Yorkshire County Council (NYCC), in its submission of the opposed Definitive Map Modification Order (DMMO) to the SoS will adopt a stance to support the confirmation of the Order.

2.0 Background

- 2.1 The application for the DMMO was made by a member of the public to record the route known as Back Lane as a public footpath, as shown on the attached Appendix 5 – Plan 1. The application was made in response to notices appearing on the route stating that the way was private.
- 2.2 The application was initially supported by 9 completed Evidence of Use forms but a further 68 forms were eventually submitted, overall evidencing public use of the route since approximately 1910.
- 2.3 No historical documentary evidence was submitted with the application; however, the route does appear as an enclosed lane for most of its length on Ordnance Survey Maps from 1892 onwards.
- 2.4 The application was investigated in 2011 and although objections to the application were received, sufficient evidence had been submitted to ‘reasonably allege’ that a public right had been established.
- 2.5 A DMMO was made in 2012 and there are 2 outstanding objections to the Order.

3.0 Evidence in support of, and against the Application

- 3.1 The evidence supporting the Order consists of evidence from 77 people of their unhindered use of the route on foot between the 1930s to the early 2000s when challenges were made to some users of the route.
- 3.2 Whilst some of the forms provided inconclusive evidence of use of the whole route, there is nevertheless still a body of 24 forms clearly showing use of the route as a through route from Cropton Lane to Wrelton Cliff Road.
- 3.3 The objectors state that :
- they have stopped unauthorised people using the track since 1999 and told people it is not a public footpath
 - they have displayed notices saying the track is a private access track not a public footpath
 - they have ‘restricted access to the track’
 - they have ‘ensured all relevant maps and publications show the track as private, not as a public footpath’
 - there is no requirement for another public footpath at this point,
 - Public access to the track would cause them major problems’,

- Making the track a public right of way would have serious disadvantages to the residents who live along the track in terms of security, privacy, hygiene

3.4 The objectors only began to prevent access from about 1999 and by this point the public had apparently already been using the route for in excess of 20 years. In addition, as the objectors do not apparently own the lane it is probable that they had no authority to prevent access along the lane by the public.

3.5 There is no evidence of actions showing an intention not to dedicate by any previous landowner, or other interested party, prior to 1999. No evidence has been presented to show that pedestrians had not used the route freely, or have at any time been prevented from using the route prior to that date.

3.6 Matters such as inconvenience to either the owner of the land, or to users of a route cannot be taken into consideration when deciding whether or not the public have acquired public rights.

4.0 Current Decision to be made

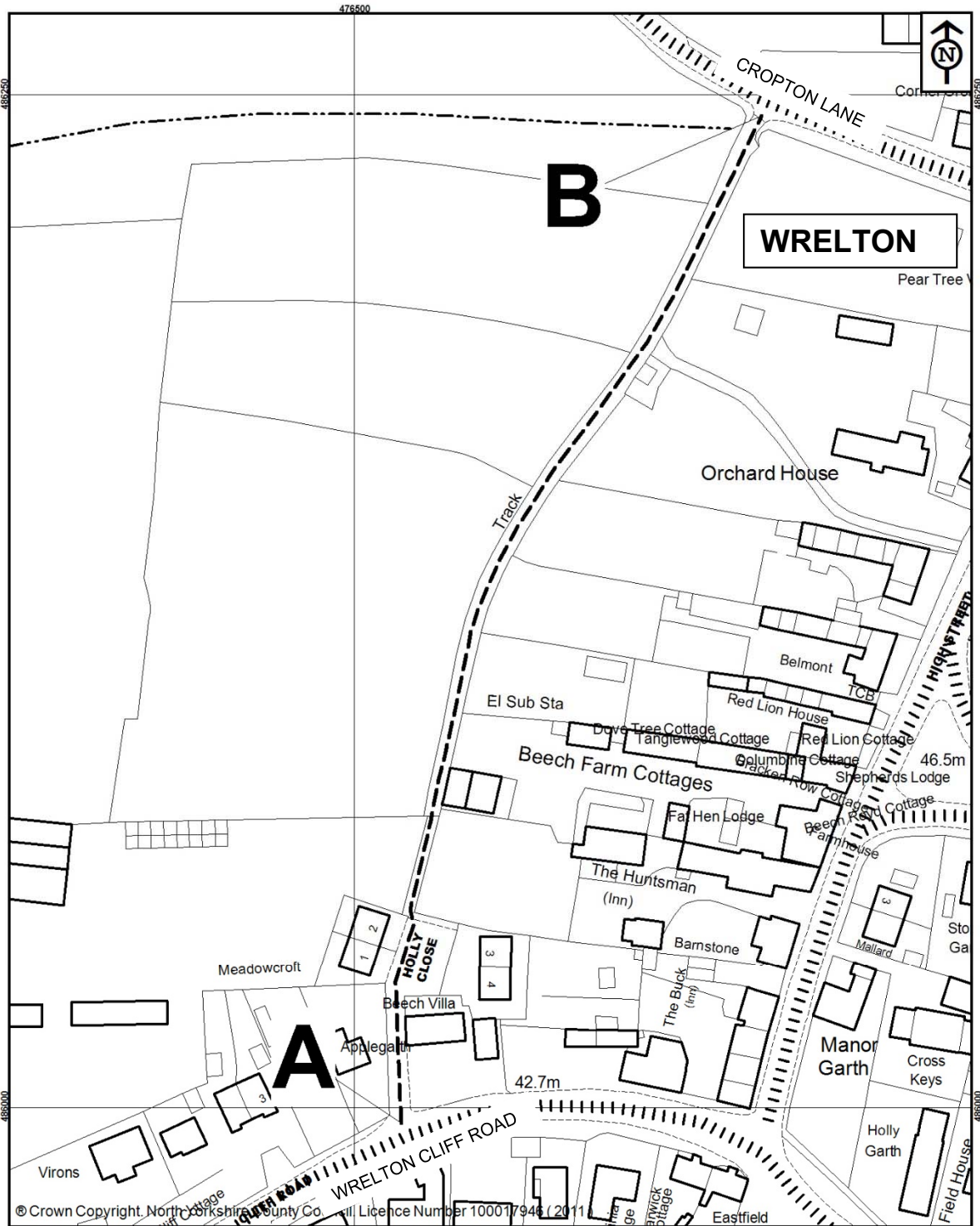
4.1 In submitting an opposed Order to the SoS the County Council needs to express whether, on the basis of the available evidence, it;


- supports confirmation of the Order,
- believes the Order should not be confirmed, or
- considers the evidence is either so finely balanced, or is particularly unclear and wishes to take a neutral stance.

4.2 The current decision to be made is which stance the County Council is to take within its submission of this opposed DMMO to the SoS.

4.3 No compelling evidence has been submitted to contradict the evidence that the public had made unhindered use of the route on foot for at least 20 years prior to 1999, the time at which the objectors apparently began to prevent access by verbal challenge and by the erection of notices.

<p>5.0 Recommendation</p> <p>5.1 It is considered that as there is sufficient and undisputed evidence that pedestrians have made use of the route for a period well in excess of 20 years. Therefore, on the 'balance of probabilities' it is more likely than not that the public have acquired the right to use this route.</p> <p>5.2 Therefore it is recommended that the Authority, within its submission to the SoS, supports the confirmation of this DMMO.</p>



 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p> <ul style="list-style-type: none"> Claimed Route Other footpaths Other bridleways Maintained Highways <p>Map drawn on 23 September 2011 Drawn by RJV Scale 1:1250</p>	<p align="center">APPENDIX 5-Plan 1</p> <p align="center">Opposed Definitive Map Modification Orders Requiring Resolution by the SoS</p> <p align="center">25 September 2020</p>
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North Yorkshire County Council

Corporate Director Business and Environmental Services

25 September 2020

**Opposed Definitive Map Modification Orders Requiring
Resolution by the Secretary of State**

Report of the Assistant Director – Business and Environmental Services

AUTHORISATION

1. CRA/2004/01/DMMO - Ingfield Lane to Lodge Road, Settle
Upgrade a footpath to bridleway. Proposed stance – Neutral.
I approve / do not approve the recommendation set out above
2. HAM/2009/08/DMMO - Rosehill Drive to Levenside, Stokesley
Upgrade a footpath to bridleway. Proposed stance – Order should be confirmed.
I approve / do not approve the recommendation set out above
3. HAR/2011/15/DMMO - Scagglethorpe Ln to Woodhouse Br, Moor Monkton
Re-align a footpath. Proposed stance – Order should not be confirmed.
I approve / do not approve the recommendation set out above
4. HAR/2018/04/DMMO - Arrowfield, Main Street, Kirkby Malzeard
Add a footpath. Proposed stance - Order should be confirmed.
I approve / do not approve the recommendation set out above
5. RYE/2007/02/DMMO - Holly Close to Cropton Lane, Wrelton
To add a footpath. Proposed stance - Order should be confirmed.
I approve / do not approve the recommendation set out above

ANY ADDITIONAL RECOMMENDATION or COMMENT:

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David Bowe
Corporate Director - BES

Signed:Date: