

NORTH YORKSHIRE COUNTY COUNCIL  
NORTH YORKSHIRE LOCAL ACCESS FORUM

17 February 2005

Access available to the public in North Yorkshire

1. Purpose of report

To report all the different types of access available to the public in North Yorkshire including public rights of way.

2. Introduction

During the last Local Access Forum meeting, there was discussion about different kinds of access available to the public. This followed on from a discussion about how Parish Councils may enter agreements with landowners to create access for the benefit of their Parishioners.

2.1. It was agreed that it would be useful for LAF members to have details about the different kinds of access available to the public.

2.2. Details regarding type of public rights of way and the means that they come into being have been taken from "Rights of Way – A guide to law and practice" 3<sup>rd</sup> edition (J Riddall & J Trevelyan) 2001. The details provided by this book are only as up to date as this book. It must be noted that various legal challenges have occurred which may have been subsequent to this publication or may not have been included in this book. If further details are required it is recommended that detailed research be carried out in order to account for developments in rights of way law.

3. Public rights of way recorded in the Definitive Map and Statement

3.1. Footpaths – means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road (these are called footways) - these are waymarked with yellow waymark arrows.

3.2. Bridleways – means a highway over which the public have the following, but no other rights of way, that is to say a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highways. Section 30 of the Countryside Act 1968 also gives authority for any person to ride a bicycle, not being a motor vehicle on any bridleway – these routes are waymarked with blue waymark arrows.

3.3. Byways open to all traffic (BOATs) – means a highway over which the public have a right of way for vehicular and other kinds of traffic, but which is used mainly for the purpose for which footpaths and bridleways are so used (i.e. by walkers and horse riders) – these routes are waymarked with red arrows.

3.4. Restricted Byway (known currently as a RUPP – Road Used as a Public Path) – this category will come into being as a result of the implementation of the relevant section of the [Countryside and Rights of Way Act 2000](#) and when implemented will carry rights for all traffic except motorised vehicles, including horse and carts.

3.5. The above are all public rights of way; however a new categorisation has come about with the statutory guidance provided for Rights of Way Improvement Plans, which is the term “local rights of way”. This term applies to public rights of way and in addition to cycle tracks.

3.6. Cycle tracks – for cyclists and possibly also pedestrians – not recorded on the definitive map and statement.

4. The ways which the book lists of creating local rights of way are:

4.1. Express dedication – a landowner gives a right of way over the land by dedication. The landowner dedicating the route can specify restrictions to which the dedication is subject. To become a public right of way, the following criteria have to be satisfied.

- It must be shown that the landowner intended to dedicate a public right of way.

- The public must have used the route to show that it has been accepted by the public.

(In accordance with an agreement made by the highway authority, the agreement is held to constitute acceptance on behalf of the public without actual use).

- The route must be dedicated for all of the public at large.
- The route must be dedicated for all time, in perpetuity.
- The landowner must have the legal capacity to dedicate the route.

4.2. Inference of dedication at common law – the law assumes that at some time in the past the landowner dedicated a right of way to the public.

4.3. Statutory inference of dedication (Section 31 (1) of the Highways Act 1980) - where a way had been used by the public for a minimum period for 20 years it was deemed to be dedicated as a public right of way. The 20 years referred to is calculated retrospectively from the date of challenge. The onus of proof being on the landowner to show that there had been no intention to dedicate during the 20 years

period. If this cannot be proven, the way is deemed to have been dedicated as a highway. . The section applies to any highway including land covered by water (fords or causeways) but apart from areas where its use could not give rise to a presumption of dedication e.g. along a railway line.

- 4.4. Acquisition of additional rights over an existing highway - presumed dedication can give rise to a higher right than that previously existing, the use must have been of the nature that it could have been acquired from long usage at common law (note it is still an offence to drive a motor vehicle without lawful authority on a footpath, bridleway or cycle track), only if 20 year previous use shows vehicular rights – (The Bakewell case has cast some doubt on the acquisition of higher rights in relation to vehicular rights to access property using common land, where prescriptive rights exist an application for a statutory easement under s68 of the Countryside & Rights of Way Act 2000 and associated regulations would not be necessary. It should be noted that implications relating to the Bakewell case still remain unclear even from a recent Defra advice note.
- 4.5. Cycle Tracks Act 1984– The highway authority has power to convert a footpath to cycle track. This was not envisaged to be extensive when the above Act came into being.
- 4.6. Re-dedication free from limitations or conditions – if a way was originally dedicated with conditions and is subsequently used free of that condition it is presumed to have been re dedicated without the original limitation.
- 4.7. Ancient ways – If there is documentary evidence that a way was accepted as a public highway it is always a highway. The maxim once a highway always a highway applies. Also, the public cannot forfeit their rights by lack of use.
- 4.8. Crown Land – Duchies of Lancaster/Cornwall, Government, Forestry Commission. – A claim can be made at common law depending on the facts of the case.
- 4.9. S31 of the Highways Act 1980 - if a user is prevented from using a way and there is evidence of use of the route in excess of 20 years, the user can apply for a definitive map modification order to amend the definitive map and statement to add that way. It will be for claimant to supply the evidence to prove a right of way has come into being and if the landowner objects, for the landowner to disprove that a right of way has come into being.
- 4.10. By creation order – S26 of the Highways Act 1980 – a highway authority may make a public path creation order where it can be demonstrated that there is a need for that path. It may result in a claim for compensation for loss of interest in the land and there may be limitations or conditions affecting the new route. It automatically becomes maintainable at public expense.

4.11. By creation agreement – S25 Highways Act 1980 – this is an agreement between a highway authority and person having the capacity to dedicate a right of way in its area having regard to the needs of agriculture and forestry. It may result in a claim for compensation for loss of interest in the land and there may be limitations or conditions affecting the new route. It automatically becomes maintainable at public expense.

4.12 Creation agreement by local councils – S30 1980 Highways Act, local councils can enter agreements to create a highway, if satisfied that it would benefit all or part of the parish or community, only on land in the councils own parish or community or adjoining one and:-

- There is no provision to place limitations/conditions
- The local council is not obliged to create it physically
- The local council is not obliged to publicise it
- The local council does not have to have regard to agriculture or forestry.
- The way does not automatically become maintainable at public expense.
- There is no power to pay compensation.

(It should be noted that the legal case of Fairey vs Southampton viewed inhabitants of a parish as “the public at large” which has implications for access which is created under the above legislation).

It is understood that there is a lot of confusion about what public rights of way are by many people including Parish Councils, this has been picked up in all of the consultation results analysed for the Rights of Way Improvement Plan. It may be the case that many Parish Councils have created permissive access rather than public rights of way based on this feedback.

4.13. Other creations – in connection with: -

- Civil Aviation Act 1982
- Water Industry Act 1991
- Water Resource Act 1991
- Transport & Works Act 1992
- Church Property Measure 1960
- Private Act of Parliament

4.14. Can public rights of way be dedicated without the public being made aware of their existence?

Yes. It is one of the duties of the surveying authority to amend the definitive map & statement by promoting a ‘legal event order’ to reflect any legal event that has occurred. The legal event is any legal process that has had the effect of altering the information contained

in the definitive map & statement to add to or change a public right of way.

Reasons why the public may not know of rights of way are:-

- A local council or district council enters a creation agreement it is required to notify either Ordnance Survey or the highway authority.
- A landowner expressly dedicates with the provision that he is required to notify no one.

## 5. Other kinds of permanent public access

Such access, apart from open access land is not looked after by North Yorkshire County Council but by a range of public and private agencies

5.1. National Trails - The maintenance of these routes is funded by the Countryside Agency and managed nationally.

5.2. Access Land is - open country (mountain, moor, heath and downland) – the Countryside Agency site gives detailed definitions of what land these categories include. Registered common land; land dedicated as access land by its owner  
<http://www.countryside.gov.uk/access/mapping/FAQ/secns/secn1.htm#1d>

5.3. “Commons” rights.

5.4. Open space, public parks and green space areas owned by public bodies e.g. National Park Authorities, District Councils, and County Council etc.

6.0. Other public routes to which there is public access where use is not as of right.

6.1. Permissive Access

- Access is not “as of right” so can be withdrawn at any time.
- Notices are usually displayed so that the public do not acquire a right of way.
- An agreement may be informal or formal.

6.2. Formal access agreements/licensed paths – parties can enter into formal permissive access agreements with landowners where there is no public right of access. The term 'agreement' refers to the terms under which permission to walk, cycle or ride on horseback is granted. The agreements cover permission for those members of the parties who want the access if those parties have arranged it, but are not exclusive in that non-members of the parties who have arranged that access are not precluded from making their own arrangements with owners. Where there is a formal agreement, members need not seek any further permission from the owners except where the terms

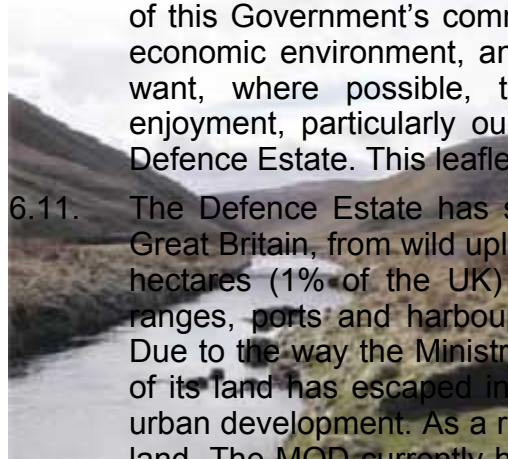
of the agreement require specific permission. Some agreements have printed instructions available which outline specific requirements. North Yorkshire County Council has one known permissive access agreement whereby the landowner locks the gates on Friday and Saturday nights.

- 6.3. Informal access agreements - informal permissive agreements can be used by members of group/parties under ad hoc arrangements. While there are no formal agreements the arrangements can in some cases be long-standing. In general, access permission is obtained from specific owners or is implied as there are no objections. In some cases this is all year round but in general the access permission is only granted during a certain period of time.
- 6.4. De facto access  
Same as informal access agreement, actual if rightful access, where there is access which occurs but there is no formal agreement between any parties.
- 5.5 Fee paying access
- usually private land where an entry charge is made.
- 6.6. Defra – permissive schemes include the ‘Countryside Stewardship Scheme’ and ‘Environmentally Sensitive Area Scheme’. Both provided an element of public access which could be incorporated as part of an overall environmental improvement scheme. Agreements usually run for 10 years. The last 10 year agreements will be signed in 2005 and the schemes will cease when the new ‘Single Farm Payment Scheme’ and tier entry arrangements come into force. The new environmental scheme which includes an access element will start in 2005. The two schemes will therefore run side by side until 2015, when the last of the old schemes completes.
- 6.7. The new scheme includes cross compliance measures. These are designed to keep rights of way free from obstruction and in a good state of usability on land which is owned by a landowner who enters the new scheme.
- 6.8. British Waterways various opportunities to enjoy river side access  
Permissive there is a register of such access at: -  
<http://www.waterscape.com/walking/>  
<http://www.waterscape.com/cycling/>

6.9. Ministry of Defence (direct from Ministry web site)

Access to the Defence Estate

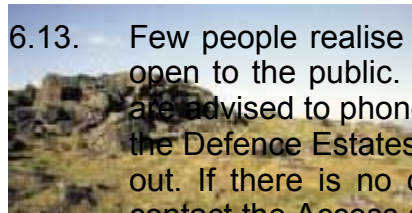
6.10. To be the best in the world our Armed Forces need extensive and varied land on which to live, train and base their equipment. As part of this Government's commitment to look after Britain's wider socio-economic environment, and play our full role in the community, we want, where possible, to make our land available for public enjoyment, particularly our rural estate. We hope you will visit the Defence Estate. This leaflet explains how to do just that.



6.11. The Defence Estate has some of the most stunning landscapes in Great Britain, from wild uplands to wetlands. It covers almost 240,000 hectares (1% of the UK) and includes historic buildings, bombing ranges, ports and harbours, garrisons, airfields and training areas. Due to the way the Ministry of Defence (MOD) uses its estate, much of its land has escaped intensive farming, agrochemical sprays and urban development. As a result, habitats and wildlife flourish on MOD land. The MOD currently has an interest in over 260 Sites of Special Scientific Interest (SSSI), with a direct management responsibility for approximately 200 of these. Additional, higher status, European designations apply to 140 of these sites. This represents probably the greatest number of protected sites in a single ownership.

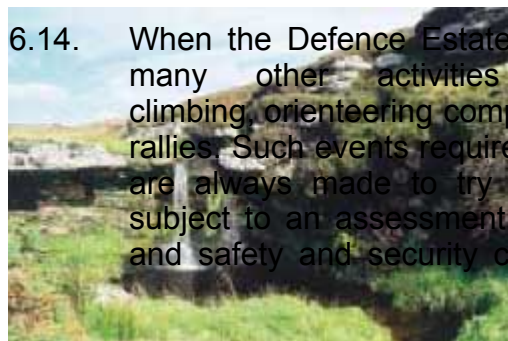
6.12. The MOD is committed, where possible, to improve and promote public access in line with the Countryside and Rights of Way Act 2000. Much of the Defence Estate is open to the public, except where there is overriding operational and military training uses or risks to public safety, national security, conservation, or other considerations. The MOD is working closely with the Countryside Agency/Countryside Council for Wales as they map areas for open access.

6.13. Few people realise that so much of the defence estate is potentially open to the public. Members of the public wishing to use the estate are advised to phone the local contact numbers listed overleaf and on the Defence Estates website ([www.defence-estates.mod.uk](http://www.defence-estates.mod.uk)) before setting out. If there is no contact numbers listed for the area then please contact the Access and Recreation Officer who will be able to provide you with a number. Information may also be displayed in local literature and on notice boards erected at key points around the Estate complexes. Where restrictions on access are in place, across certain areas of the estate, these are for the protection of the public. Warning notices should be noted when accessing Defence Estate land.



'Tors'

6.14. When the Defence Estate is not being used for military purposes many other activities can take place including rock climbing, orienteering competitions, sponsored walks and even motor rallies. Such events require licensing and insurance cover, but efforts are always made to try to accommodate these and other uses, subject to an assessment of their environmental and other impacts and safety and security considerations. It is also often possible to

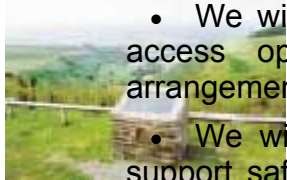


Featherwood Farm, Otterburn

arrange for groups, schools and university field courses to visit designated conservation sites, and we also seek, where possible, to maximise the availability of access for local communities.

6.15. The MOD's Estate Strategy was published in June 2000 and can be seen on the Defence Estates website. It sets out objectives for improving access, including that:

- We will publicise recreational access opportunities in an effective, clear and co-ordinated manner.



- We will ensure that maximum advance notice is given both of access opportunities and unavoidable changes to publicised arrangements.

- We will seek to provide sensitive and appropriate facilities to support safe and enjoyable access, such as adequate car parking, signs or information boards

Interpretation

We will work with relevant stakeholders to understand the Training Area's wishes for access to the rural estate.

Anna's List  
Payne, Defence  
Estates)

A booklet, 'Walks on MOD Lands', describes walks on some of the most beautiful areas of the defence estate, such as Lulworth in Dorset and Otterburn in Northumbria. The fourth edition was published in 2001 and is available free of charge from the address shown at the end of this leaflet. The booklet also appears in the Access section of the Defence Estates website along with information on general access opportunities.

6.17. We want people to be aware of the access opportunities on our land. Many training areas have their own leaflets and information detailing when the land is open to the public. Visitor centres are open on a number of training areas and we are working to improve paths, signage, car parking and access for the disabled. A dedicated Access and Recreation Officer has now been appointed to deal with access issues across the MOD estate. Information on firing times and closures for most training areas is often published in local newspapers and displayed in public libraries, hotels, public houses and on parish notice boards near to MOD land.



Public access is an important issue for MOD in managing its rural estate as at Catterick North Yorkshire

6.18. However, a word of warning! The timings of training exercises and live firing can be subject to change. So before setting out, it is advisable to phone the local contact number. These contact numbers are listed below and are also available on the Defence Estates website. Firing times may also be displayed on notice boards erected at key points around the range complexes.

6.19. Inland Revenue - (direct from Inland Revenue website)  
You have the right to see and enjoy the privately owned heritage items that have received a tax exemption. Owners undertake to provide such access in return for the tax exemption.

How can I arrange to see or visit the listed assets?

6.20. Tax exempt buildings and collections within them are normally open on a set number of days. We specify the opening times and how to



get there. (see [land/ buildings](#) and [collections](#) ) It is not necessary to make an appointment to view these buildings and collections. But if you are making a long journey it may be sensible to telephone beforehand to check the opening times or, where admission numbers are limited, to guarantee entry by pre-booking tickets.

- 6.21. Access to tax exempt land is generally available all year round, although it may be restricted at certain times for land management purposes. Our website gives an O.S. Grid reference for the main point of entry and other relevant information. A contact name and number is also usually provided for further information. (see [land/ buildings](#)) Access to land is not unlimited and is in accordance with the terms of the undertaking negotiated with the owner, the terms of which are also available to you. [See information on undertakings](#). Under these terms, access to special areas such as those for the conservation of wild life or plants, may be greatly restricted or even prohibited.
- 6.22. The majority of exempt works of art are displayed in historic houses open to the public or in museums and galleries and can be visited without the need to make an appointment. But there are still items which were exempted some years ago and which can only be seen by appointment. Such items may be of more limited interest on their own or are similar to items already available in public collections. These items are also available for loan to special exhibitions so that they can be seen, from time to time, alongside other fine works.
- 6.23. In some cases, the individual items that make up a collection are listed individually under the works of arts part of the website. If they are not, a list of items in the collection can be obtained from the contact point, or a list is shown where the items are on display. Unless access to a collection is by appointment, the collection entry on the website will show where and when the items can be seen.
- 6.24. The entry for each individual work of art includes how and, if appropriate, when they are available to be seen. For security reasons, the precise location is not always shown; the contact will advise where the items can be seen and, if appropriate, arrange an appointment to see it. The link from individual entries will reveal other exempt items which, if they are in the same location, may also be available for viewing at the time of your visit. You can ask to see individual items, a range of linked items or all of them.
- 6.25. Where viewing remains by appointment, we normally expect owners to allow you to visit on the day of your choice, or you can be given a choice of viewing, between 10am and 4pm in any one of at least 3 weekdays and 2 Saturdays or Sundays in the following 4 weeks. Of course, a preferred alternative viewing arrangement can be agreed with the contact.
- 6.26. Please bear in mind that whilst we regularly monitor the access details on our database, things can go wrong. A painting might have been loaned to a public collection or be with conservators and hence unavailable. Or it might have been moved to another part of the country before our website is amended. It is always advisable to

check that the item(s) or building etc you want to view is in fact available at the time you want to visit. But the website is not necessarily incorrect if the entry for a work of art shows it to be in one county and the contact address in another. The county shown is where the item is available for viewing but an agent elsewhere may arrange the visit.

6.27. Can I be charged to view/visit something?

For exempt works of art displayed in museums, galleries and historic houses, the normal admission terms for these attractions apply. For exempt buildings, their grounds, and other works of art, a reasonable charge may be made. Some land is available to the public all year round by public footpaths etc.

6.28. What is the Conditional Exemption incentive?

The aim of the scheme is to preserve the country's heritage for your enjoyment. It encourages private owners to retain and care for our heritage. It also gives you the opportunity of seeing art and of visiting historic houses and historic furnishings as well as outstanding scenic, historic or scientific land that might not otherwise be available to the public. It is just one of a number of Government measures which enable items to be saved or preserved for the nation.

6.29. How does it work?

Inheritance tax and/or capital gains tax is not paid when an item which qualifies for exemption passes to a new owner on death or is gifted. However in order to obtain the exemption the new owner must agree to look after the item, allow public access to it and, if it is moveable, keep it in the UK. But it is only a conditional exemption. If the owner fails to fulfil their side of the bargain, the exemption is withdrawn and tax is payable. Tax is also payable if the item is sold. For more information on the undertakings that owners provide in return for the exemption see [information on undertakings](#).

6.30 What items qualify for exemption?

A wide range of the country's heritage has qualified for the exemption:-

- Outstanding historical buildings, estates and parklands and works of art, furnishings, sculptures etc. linked to these or to other historical buildings.
- Buildings of outstanding architectural interest.
- Land of outstanding historic interest or of outstanding natural beauty and spectacular views including woodlands, heath land etc.
- Land of outstanding scientific interest including special areas for the conservation of wildlife, plants and trees.
- Paintings, portraits, drawings, watercolours, furniture, sculptures, books, manuscripts, ceramics etc of artistic, historic or scientific interest in their own right.

- 6.31. All the above are available for all to enjoy. For more details on access see [Rights of access](#). And many of the works of art are also available for loans to public collections for special exhibitions-see [Works of Art:Search](#). <http://www.inlandrevenue.gov.uk/heritage/rights.htm>
- 6.32. English Nature Sites/Reserves. (see relevant web site)  
Some of these sites will have public access.
- 6.33. Forestry Commission. (see relevant web site)  
Some of these sites will have public access.
- 6.34. English Heritage. (see relevant web site)  
Some of these sites will have public access.
- 6.35. National Trust opportunities to enjoy the Trusts land on estates such as Fountains Abbey and any farm land where the Trust has Created routes. Taken from the National Trust website: -
- 6.36. There are three Principles for Access which govern the National Trust's management in the countryside:
- 6.37. Principle 1: The duty and primary purpose of the National Trust in the countryside is to promote permanent preservation for the benefit of the nation. It will regard access as a fundamental way of providing this benefit and as a principal purpose.
- Principle 2: The National Trust Acts establish its responsibilities for conservation. If serious conflict arises, conservation will take precedence over access.
- Principle 3: The National Trust will ensure that the countryside retains characteristics which afford the widest range of experiences and will enable people to enjoy access to its properties.
- 6.38. The Trust gives benefit to the nation, principally, by encouraging public access to its properties wherever possible. This does not mean that the Trust aims to give public access to every acre of agricultural land - it understands the constraints of agricultural production as do most visitors to the countryside. Farmers, nonetheless, are generally concerned about the prospect of increased access to enclosed farmland, in particular the problems caused by dogs.
- 6.39. The Trust recognises these problems and believes that public access needs good management in order to minimise conflicts. The Trust accepts that public paths need to be sensibly and practically routed. Where possible it will continue to help to modify the routes of awkwardly placed paths and support legislation to improve the management of public rights of way and to streamline the process for modification of routes.
- 6.40. Opportunities for access will be discussed with farm tenants and might include: farm-based tourism, improved rights of way, permitted paths (where necessary) and open access as appropriate, as well as

organised access such as guided walks, access for specialist groups or open days.

- 6.41. The Trust has a seat on the National Access Forum and is in a position to influence the development of the government's proposed Access to Open Countryside legislation. The Trust will be keen to offer its practical experience to help this process and will be particularly concerned to emphasise the need for the management of access and to highlight the implications of access on the management and conservation interests of unenclosed land which is farmed.
- 6.42. The Trust's Rural Policy Review (1999) highlighted the fact that 80% of the Trust's membership is urban or sub-urban based whilst the majority of its land holding is rural. Most of the population has no contact with farming at all. This places the Trust in a strong position to form a bridge between urban and rural communities, to make farming more accessible and understandable to town dwellers and to help farming communities better appreciate the needs and expectations of those who live in urban areas. Many of the Trust's large estates are close to towns and cities where this relationship could be developed in a positive way.
- 6.43. Intellectual access, through the provision of information, can be as important as the provision of physical access. The Trust's farms and tenants represent an enormous resource which has great potential to help people better understand the workings of the countryside and the contribution that farming makes, and can make, to the wellbeing of the nation and the conservation of our rural landscapes.
- 6.44. The educational use of the Trust's properties is an important element of the National Strategic Plan. This has tended to concentrate upon the historic properties and open countryside. There are only a few examples of our farms being used for educational purposes such as Wimpole Home Farm. This is something that the Trust should encourage more widely to help demonstrate the dynamic nature of conservation and countryside management.
- 6.45. In all forms of information it will be valuable to interpret farming as an integral part of the Trust's conservation work, emphasising its historic links with our great houses, parks and gardens and the contribution it can make to wider aspects of conservation and cultural diversity, linking with, and complementing, the more specialist habitats and landscapes.

## POLICY: ACCESS AND INFORMATION

- The Trust will seek to negotiate with its tenants public access routes over its agricultural properties and open access over suitable areas of farmed land wherever it can be sensibly accommodated
- The Trust will, in partnership with its tenants, seek to provide information to visitors about farming and its contribution to the management and conservation of the countryside
- The Trust will explore, with its tenants, opportunities for leaflets, self guided and guided farm walks, open days and demonstration farms
- The Trust will seek to promote the educational use of its farms by school groups, academic institutions and the general public
- Where appropriate, interpretation will emphasise the role of farming as an integral part of our great estates, its links with historic houses and landscapes and its contribution to our environment

### 6.46. Woodland Trust (from the website)

#### Are Woodland Trust woods open to the public?

The majority of Woodland Trust woods are open free of charge for the public to enjoy. There are a small number of woods where we do not encourage access for safety reasons

### 6.47. Yorkshire Water

Some of these sites will have public access.

### 6.48. Mineral restoration/brown field sites.

Depends on ownership situation, goes back to original landowner, if acquired by mineral co can be access.

E.g. Coal Board Scotton Wood Sherburn in Elmet.

Power stations e.g. Drax, can be permissive or RoW.

### 6.49. Local nature reserves

Some of these sites will have public access.

### 6.50. Yorkshire wildlife trust sites

Some of these may have public access or access for members only

### 6.51. Local special interest trusts e.g. small scale of Woodland Trust

Some of these may have public access or access for members only

### 6.52. Fee paying private access e.g. Castle Howard

## 7.0 Recommendation

That this report be received for information and that any LAF member interested in finding out more refers to the relevant book or website or contacts the definitive map team at North Yorkshire County Council for clarification.

M O Moore  
Director of Environmental Services

Author of Report: - A Flowers Public Rights of Way Improvement Plan Officer with excerpts from relevant books and web sites).