

NORTH YORKSHIRE COUNTY COUNCIL

**SUB-COMMITTEE OF
THE PLANNING AND REGULATORY FUNCTIONS COMMITTEE**

3rd AUGUST 2010

**APPLICATION TO ADD A PUBLIC FOOTPATH TO THE DEFINITIVE MAP
FROM QUAKER TERRACE TO BLACK BULL YARD
AT MASHAM.**

1.0 PURPOSE OF THE REPORT

1.1 To advise Members of an application for a Definitive Map Modification Order to add to the Definitive Map a Public Footpath from:-

- i) Quaker Terrace to Black Bull Yard.

A location plan is attached to this report as **Plan 1**. The route referred to, is shown by a solid black line and is marked A-B on the plan attached to this report as **Plan 2**.

1.2 To request Members to authorise the Assistant Chief Executive, Legal and Democratic Services to make a Definitive Map Modification Order.

2.0 THE COMMITTEE'S RESPONSIBILITIES

2.1 The Committee in considering the Modification Order Application acts in a quasi-judicial capacity. It is fundamental that consideration and determination of an issue is based on the evidence before the Committee and the application of law. The merits of a matter have no place in this process and the fact that a decision might benefit or prejudice owners, occupiers or members of the general public, or the Authority, has no relevance to the issues which members have to deal with and address.

2.2 The Committee's decision whether to "make" an Order is the first stage of the process. If Members authorise an Order being "made", and there are no objections to the Order, the County Council can "confirm" the Order. However, if there is objection to an Order, that is not subsequently withdrawn, only the Secretary of State would have the power to decide if it should be "confirmed". It would then be likely that a Public Inquiry would be held, and the decision whether or not to confirm the Order would rest with the Secretary of State.

3.0 BACKGROUND TO THE APPLICATION

- 3.1 The application being considered in this report is for the route marked A-B on Plan 2.
- 3.2 The application was received by the County Council in April 2006 for A-B to be added as a public footpath to the Definitive Map and Statement.
- 3.3 The evidence that was submitted in support of this application is entirely evidence of use of the route. No historical documentation as to the status of the route has been relied by the application.

4.0 LEGAL ISSUES

- 4.1 Under Section 53 of the Wildlife and Countryside Act 1981 the County Council has a duty to make a Modification Order to modify the Definitive Map and Statement where evidence is available, which when considered with all other evidence, indicates that “a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.
- 4.2 Under Section 31 of the Highways Act 1980 a statutory presumption arises that a way has been dedicated as a highway on proof that the way has actually been enjoyed by the public, as of right, and without interruption for a full period of 20 years, unless there is sufficient evidence that there was no intention during that period to dedicate it. That period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question.

5.0 EVIDENCE IN SUPPORT OF THE APPLICATION

5.1 Evidence of Use of the Route

- 5.1.1 The formal application dated 4th April 2006, was supported by evidence of use forms, but no historical documentation. It appears that the application was originally submitted on the understanding that 8 Quaker Terrace was to be developed and that the route could be possibly fenced off in the future.
- 5.1.2 Between 2003 and 2008 25 Evidence of Use forms were completed by local residents and were submitted to the County Council relating to the claimed route. The route was described as a footpath or walkway forming a through route between Quaker Terrace to Black Bull Yard.
- 5.1.3 6 witnesses either did not identify the route they had used on a plan or did not identify a route that connected to a publicly maintainable

highway. Consequently they were disregarded for the purpose of assessing the application. On the remaining 19 forms people stated that they had used the route unhindered for periods of time ranging from 1 to 85 years. Out of those 19 evidence of use forms 14 stated use of the route on foot and 5 on foot and bicycle.

- 5.1.4 The evidence of use forms submitted show that a number of restrictions to the use of the route have taken place in the years 1980, 2005 and 2007.
- 5.1.5 One stated that a gate was fitted in 1980 across the claimed route at the 21/21a Black Bull Yard between that property and Quaker Terrace. It is not clear if the gates were locked, and it is also not clear if the gates obstructed the use of the route. The witness states that the gates fell into disrepair, but does not indicate when this was. If the gate presented an effective challenge to use by the public, it would be the preceding 20 years that would need to be examined. Prior to the presence of this gate 4 out of the 19 people stated that they had used the route unhindered for 20 years. (i.e. between 1980-1960)
- 5.1.6 It is stated in four of the evidence of use forms that the route was temporarily obstructed in 2005 by wooden barriers, in the same location as the gates in 1980. These were installed to restrict the public use while building works were taking place at the property. This was stated in 4 of the evidence of use forms submitted. It appears to your officers to have been a temporary safety measure rather than an intention to prevent public access permanently.
- 5.1.7 Gates were installed in 2007, at the same location as the gates alleged to have been erected in 1980 and the barriers alleged to have been erected in 2005, and are these still in place.

5.2 Historical Evidence

- 5.2.1 No historical documentation was submitted in support of this application

6.0 REPRESENTATIONS RECEIVED IN RESPONSE TO THE APPLICATION

- 6.1 A letter in support of this application was received from Strutt and Parker land agents for local landowner Messrs Jameson dated 1st August 2008. This letter showed support towards the claimed right of way in that it would provide an excellent link between the site and Masham town centre.
- 6.2 Statutory requirements for public notification of the order were fulfilled and consultations were undertaken with the statutory consultees and landowners affected by the application. Arising from this three representations against the application were received.
- 6.3 A letter has been received from Geoffrey C Mochrie legal representative of Mr D S Hudspeth, the owner of the property 21 and 21a Black Bull Yard. He objected to the application on the grounds that the installation of gates at the property in 1982, 1992 and 2004 across the claimed route obstructed public use. He states that he fails to see in what timescale a right of way had been established given those obstructions prevented the claimed 20 years of unhindered usage (see 4.2). His objection was accompanied by planning applications showing the proposed siting for the installation of the gates he refers to.
- 6.4 An email objection was received from Gillian Fieldhouse concerned that the way would restrict the private usage for the owners of property No 21 and 21a due to the property having a small yard area and no garden. Concern were raised about the proposed redevelopment of the nearby Jameson Feed Merchants which could completely ruin the property in question.
- 6.5 An email was also received from Michael Fieldhouse expressing concern as to how an application can be made to add a footpath over privately owned property where no access is presently available.

7.0 COMMENT ON THE EVIDENCE

(a) Comment on the evidence in support of the application

The Evidence of Use forms provide evidence of use on foot and/or bicycle. The majority of people stated the route was used on foot.

The evidence of use forms submitted demonstrate that 4 people used the route unhindered for 20 years prior to the alleged gate obstruction in 1980. After 1980, and up until the erection of the gates in 2007 the submitted forms show that 11 people had over 20 years unhindered usage of the claimed route.

Whilst expressing support the letter from Strutt and Parker does not provide evidence that carries any weight when applying the legal tests set out under the Wildlife and Countryside Act 1981 (see 4.1).

(b) Comment on the objections to the application

Although Mr Mochrie's objection states the gates were granted planning permission, it is not clear from the documents provided by the objector if the gates were actually installed or not. This indicates an intention of the owner to take steps to prevent the public use of the route but it does not appear that any effective measure was taken until 2007.

The objectors in both of the emails received raise concerns about the effect a public right of way would have on the private use of the affected yard. However, only evidence pertinent to whether or not public right exists can be taken into consideration in determining applications for Modification Orders. The current condition and physical suitability of a route are not material to determining what rights may or may not exist over a route.

(c) Summary

The evidence suggests that the public have used the route for more than 20 years prior to the gates being put in place in 2007. Although one of the affected landowners has suggested that gates were put up in 1982 and 1992 but this is not reflected by evidence provided by the witnesses submissions in support of the application.

Clearly there are differences in the evidence submitted by witnesses in the Evidence of Use forms and the evidence submitted by the objectors.

On balance the evidence received by the County Council it appears that a right of way is reasonably alleged to subsist and on this basis an Order should be made. In the event that these evidential differences remain unresolved then before the Order can be confirmed it is likely that a Public Inquiry will be necessary to test the evidence.

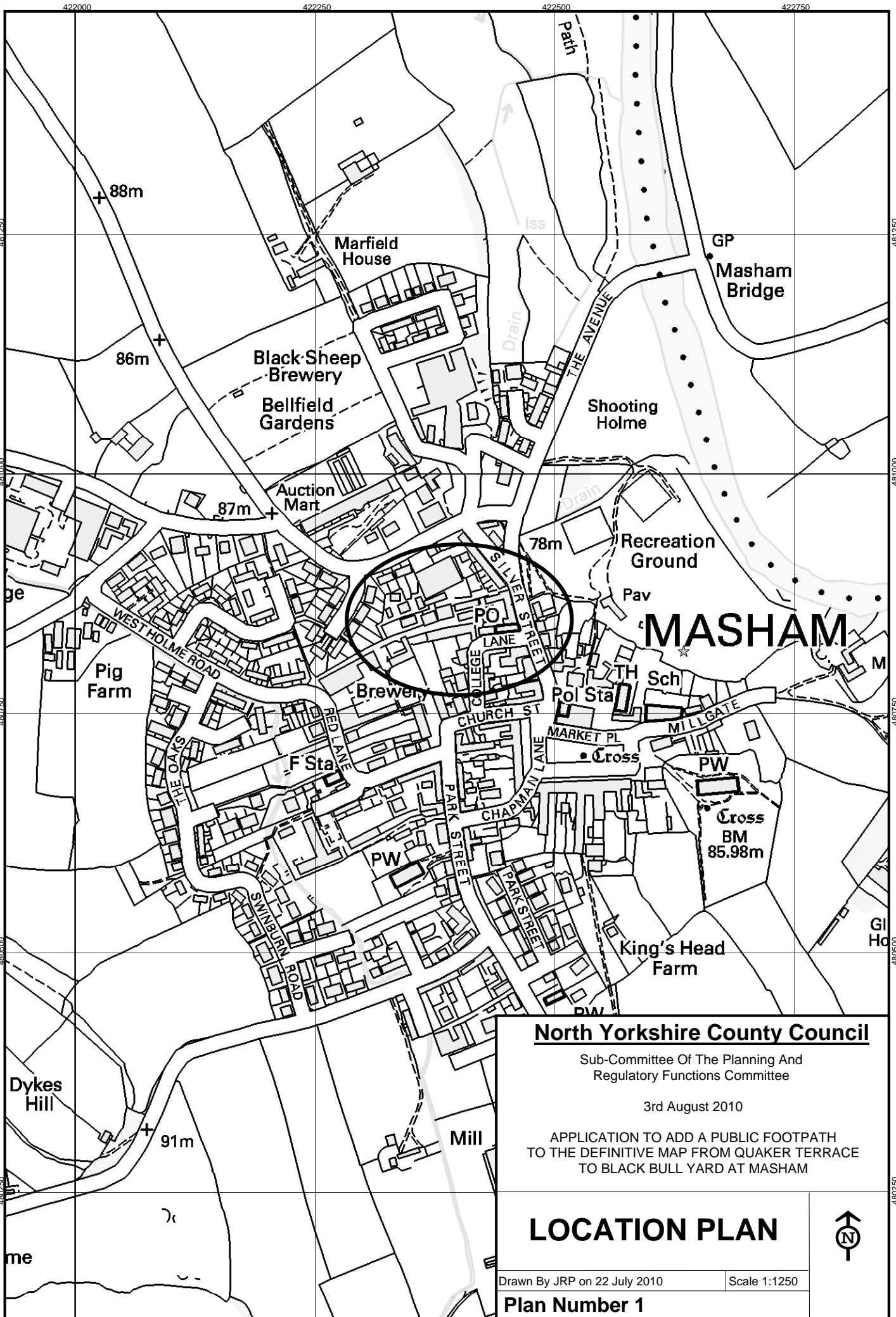
8.0 RECOMMENDATION

- 8.1 That the Committee authorise the Corporate Director Business and Environmental Services to make a Definitive Map Modification Order for the route concerned to be shown and described in the Definitive Map and Statement as a footpath, and in the event that formal objections to that Order are made, and are not subsequently withdrawn, to refer the Order to the Secretary of State for determination and in doing so to exercise powers delegated to him under the County Council's Constitution in deciding whether or not the County Council can support confirmation of the Order.

A HARPER
Assistant Director of Economic and Rural Services

Background Papers: -

The documents are held on file marked :- HAR/2005/13/DMMO
which will be made available to Members at the meeting.



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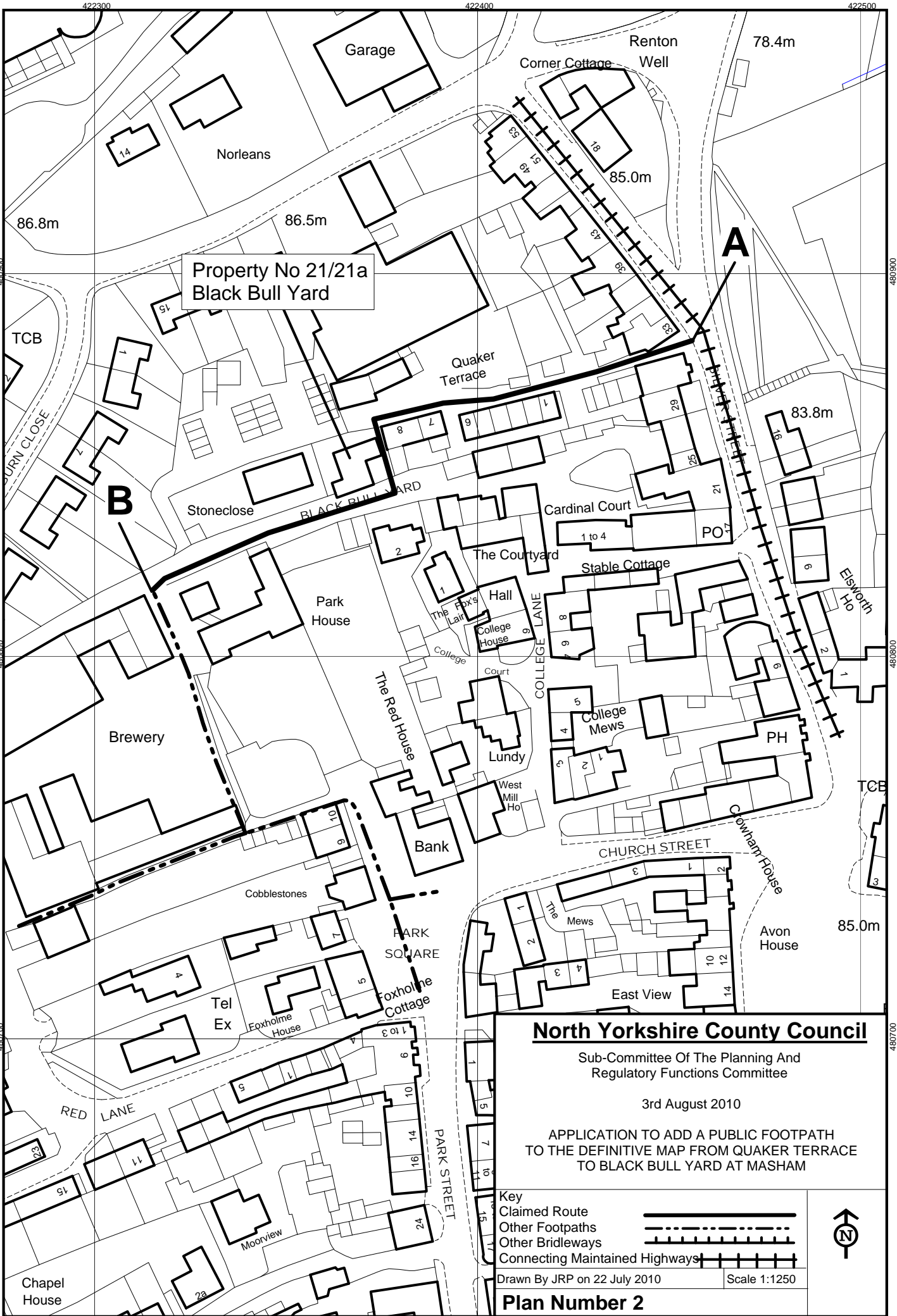
LOCATION PLAN

Drawn By JRP on 22 July 2010

Scale 1:1250

Plan Number 1





Property No 21/21a
Black Bull Yard

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- Key
- Claimed Route
 - Other Footpaths
 - Other Bridleways
 - Connecting Maintained Highways

Drawn By JRP on 22 July 2010 Scale 1:1250

Plan Number 2

