

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE

25 FEBRUARY 2011

APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO ADD A FOOTPATH TO THE DEFINITIVE MAP FROM STRIKES LANE TO RAVENSTONES, SUTTON-IN-CRAVEN

1.0 PURPOSE OF THE REPORT

- 1.1 To advise Members of an application for a Definitive Map Modification Order to add a public footpath to the Definitive Map and Statement from Strikes Lane via the Ravenstones to Sutton Lane, Sutton-in-Craven. A location plan is attached to this report as **Plan 1**. The route is shown A–B–C–D on the plan attached to this report as **Plan 2**.
- 1.2 To request Members to authorise the Corporate Director of Business and Environmental 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 be 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 However, if there is objection to an Order, that is not subsequently withdrawn, only the Secretary of State would have the power to decide if it should be "confirmed".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 was received by the County Council in December 1985, for the route marked A–B–C–D on Plan 2 to be added to the Definitive Map and Statement as a public footpath.
- 3.2 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 on by the application.
- 3.3 The section of the route A–B, Strikes Lane, is recorded as an unclassified road on the List of Streets, and therefore it is accepted that the public already has a right of access to Point B.

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 in support of the application consists of evidence of use only; no documentary evidence has been submitted.
- 5.2 Fifteen Evidence of Use forms were received in 1985 in support of the application.
- 5.3 Following correspondence with the Parish Council in 2009, a further 20 Evidence of Use forms were submitted between 2009 and 2010 to support the application.

- 5.4 The forms submitted in 1985 were in the old format that requested limited information from the signatories and did not include plans for the signatory to show the route they had used. Therefore, when the application was being investigated in 2010, each of the original 15 signatories was contacted and requested to complete the modern format Evidence of Use form and plan. Four of the new format forms were returned to us from the original 15 signatories.
- 5.5 The application has been considered on the basis of 24 Evidence of Use forms, consisting of the 20 newly submitted forms, together with the four new format forms received from the original 15 signatories. The remaining 11 old forms were disregarded during the consideration of the application, as the information was limited.
- 5.6 Of the 24 signatories, three indicated that they had received permission to use the route, and as such use could be regarded as exercising a private right of access, these three forms have also been disregarded.
- 5.7 On the remaining 21 forms, 20 signatories showed on the plan that they had used the route A–B–C as a cul-de-sac route, but had not continued to Point D on Sutton Lane. The remaining signatory showed on his plan that he walked the route A–B–C, and continued down the slope from Point C to Sutton Lane, however he indicated that he walked via Salt Pie Farm, and not to Point D. The route is generally described by the signatories as a popular route going to the ‘Big Rock’, from where there are good panoramic views.
- 5.8 Therefore, despite the application having been made for the route A–B–C–D to be recorded on the Definitive Map, no evidence has been provided to support use of the section C–D of the route.
- 5.9 Where the signatories described the width of the route, it is variously given as being 2 metres, 12 feet, 2 yards, 3 feet, variable, 10 feet and 1 metre.
- 5.10 Evidence from the 21 forms demonstrates that the public claims to have used the route for the 20-year period prior to the application being made in 1985. Some use of the route dates back to the 1930s and 1940s. The individual signatories did not all use the route for a period of 20 years, nor did all continue to use the route until the date of the application, but taking all the evidence as a whole, it clearly shows that the public has used the route A–B–C reasonably frequently over a period much longer than 20 years.
- 5.11 The applicant noted in his letter submitted with his application in 1985 that part of the land had recently changed hands, and that the new owner was challenging people who were using the route. This would constitute the right of the public to use the way being brought into question.

- 5.12 In a later letter, dated December 1985, the applicant clarified that Strikes Quarry (disused) had been fenced off from Strikes Lane (at Point B) about 12 months previously, and that the landowner had told him this was to prevent people arriving by car and tipping rubbish, not to prevent walkers. However, the applicant also noted that, following a meeting about public footpaths in the late summer of that year, the landowner put up a sign reading 'Private No Trespassers'.
- 5.13 Some of the signatories, within the Evidence of Use forms, refer to the route becoming obstructed by a locked gate and piles of stones/rubble, although it is unclear from the forms precisely when this occurred. It appears to have been in either the late 1980s or in 1995. One person refers to a private sign at the gate to the woods erected about 1989.
- 5.14 There is no evidence that users were hindered from using the route prior to the challenges by the 'new' owner, triggering the application to be made.
- 5.15 A standard letter was signed by a number of people in 1996, concerned about a stile being blocked on a route described as leaving Ravenstone Gardens and proceeding up to the Ravenstones. Although these people were also accessing the area known as the Ravenstones, and were approaching it from the north, they did not describe the first part of their route as being the same as the section of the application route D–C. Therefore, the standard letters have not been taken into consideration within the investigation of this application, other than to note that further residents of Sutton-in-Craven were also visiting the Ravenstones, albeit by a different route.

6.0 REPRESENTATIONS RECEIVED IN RESPONSE TO THE APPLICATION

- 6.1 The two landowners, Mr Ingham and Mr Murphy, were served notice of the application in 1985 by the applicant, as required by the application process.
- 6.2 A letter dated 5 November 1985 was received from Wright and Wright Solicitors representing Mr Ingham. In the letter it was stated that their client wished to object on the grounds that:
- he believed the application was incomplete
 - the applicant had no authority to make the application
 - he does not believe that there are, or ever have been, footpaths over the proposed route
 - there would appear to be no necessity for such paths, as the area is infrequently used
 - any path would not enhance the countryside to any extent.

- 6.3 Following consultation with landowners in 2004, a letter dated 21 October 2004 was received from Mr Wood of ET Landnet Ltd, representing Mr Ingham. He stated that his client confirmed that the only access from the roadway (Sutton Lane) into his field over which the right of way has been claimed, was via the gate, and that in the 1970s and early 1980s the gate was always kept locked with a chain and padlock. He commented that his client had concerns for the safety of his stock and agricultural equipment, and he also confirmed that at no stage did his client see people walking along any of the claimed route, and that there was no evidence of such a route in existence. Mr Wood confirmed in August 2010 that Mr Ingham maintained his objection.
- 6.4 Willey Hargrave Solicitors, on behalf of Mr Murphy, requested further information in 1985 regarding the application, but no further correspondence has been received on Mr Murphy's behalf. However, when officers contacted Mr Murphy by telephone in 2006, he stated that there were no rights of way through his land. He has not provided any evidence to support his statement.
- 6.5 Statutory consultees were consulted on this application on 8 February 2010. No objections were received, and the proposal to add the footpath was supported by the Ramblers' Association.

7.0 COMMENT ON THE EVIDENCE

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

The 21 Evidence of Use forms considered relevant to the application route demonstrate that the majority of the signatories have used the route unhindered for a period of over 20 years prior to the date of the application.

The recorded challenges and obstructions to the route took place in the mid-1980s and in 1995. These challenges do not reduce the period of unhindered usage to less than 20 years, as they took place at the time of the application and subsequent to the application.

The route used by the public has been shown not to be the full application route A-B-C-D, but only A-B-C, along Strikes Lane to Ravenstones and returning to Strikes Lane.

Strikes Lane, to Point B on Plan 2, is already recorded as highway, and does not need to be recorded on the Definitive Map.

(b) Comment on the objections to the application

Whilst the landowners have opposed the application, no effective representation has been made to negate the application in relation to the section of the claimed route shown B-C.

In the letter sent from ET Landnet Ltd, dated 21 October 2004, it is stated that the gates off Sutton Lane, Point D on Plan 2, were locked, however this is not disputed, as it is now established from the evidence that the public has not commonly used the section of the route C–D.

(c) Summary

Whilst it is not common for cul-de-sac routes to be added to the Definitive Map, it is not unknown, routes are recorded as cul-de-sacs where they terminate at a point of interest. The Ravenstones would qualify as a point of interest. The evidence that has been provided to the County Council indicates that a substantial number of people have been walking part of the application route as claimed, unhindered, for in excess of 20 years. Whilst the landowners claim the public has not used the route, they have not provided any evidence of any actions taken by themselves to prevent use of the route by the public, nor of any challenge that would rebut the application. It is therefore reasonably alleged that the path subsists.

8.0 RECOMMENDATION

8.1 That the Committee authorise the Corporate Director of Business and Environmental Services to make a Definitive Map Modification Order for the section of the route shown as B–C on Plan 2, to be shown 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.

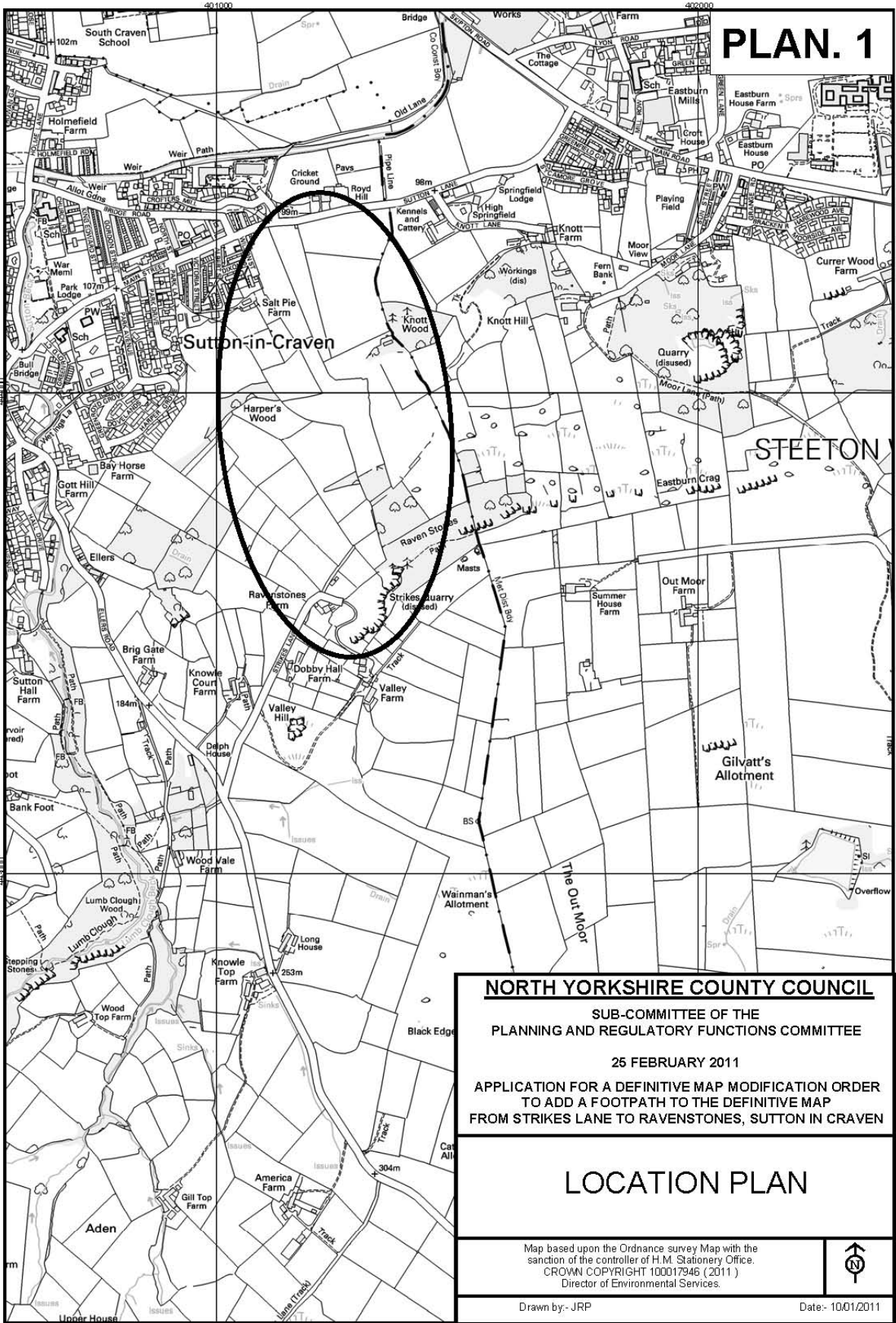
DAVID BOWE

Corporate Director, Business and Environmental Services

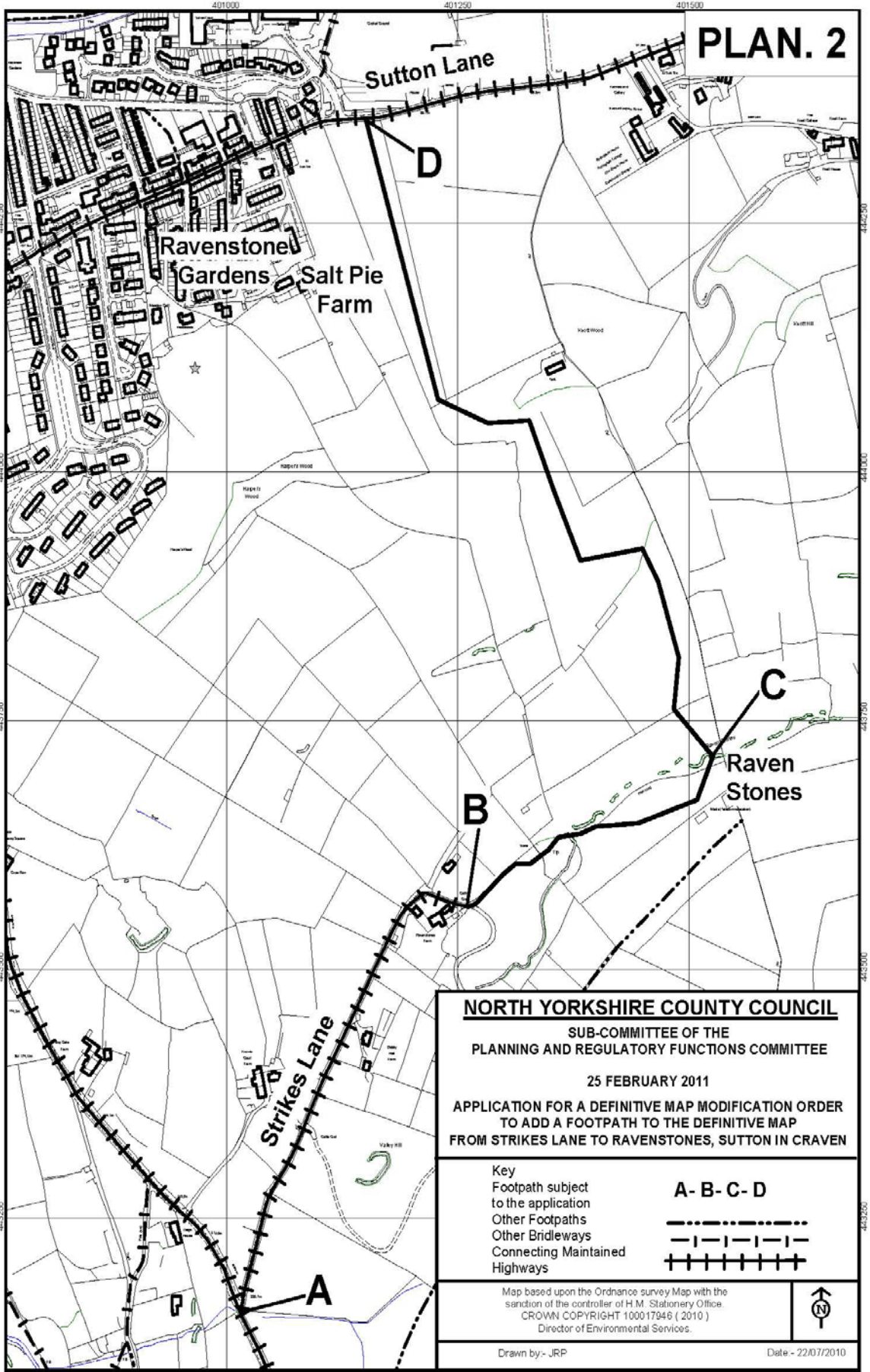
Background Papers:

The documents are held on file marked CRA/1985/02/DMMO, which will be made available to Members at the meeting.

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PLAN. 2

NORTH YORKSHIRE COUNTY COUNCIL
 SUB-COMMITTEE OF THE
 PLANNING AND REGULATORY FUNCTIONS COMMITTEE
 25 FEBRUARY 2011
 APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER
 TO ADD A FOOTPATH TO THE DEFINITIVE MAP
 FROM STRIKES LANE TO RAVENSTONES, SUTTON IN CRAVEN

Key	
Footpath subject to the application	A - B - C - D
Other Footpaths	-----
Other Bridleways	- - - - -
Connecting Maintained Highways	+ + + + +

Map based upon the Ordnance survey Map with the sanction of the controller of H.M. Stationery Office.
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 Director of Environmental Services.

Drawn by:- JRP Date - 22/07/2010