

## NORTH YORKSHIRE COUNTY COUNCIL

### PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE

25 FEBRUARY 2011

#### DOWNGRADING OF PUBLIC BRIDLEWAY N° 05.26/37 TO FOOTPATH, NUTGILL FARM, INGLETON

#### MODIFICATION ORDER 2009

##### **1.0 PURPOSE OF THE REPORT**

- 1.1 To advise Members of an opposed Definitive Map Modification Order to downgrade Public Bridleway N° 05.26/37 to a Public Footpath at Nutgill Farm, Ingleton.
- 1.2 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**.
- 1.3 To inform Members that the matter will be referred to the Secretary of State for a decision on whether or not to confirm the Order, and to request that Members decide what stance North Yorkshire County council should take within its submission to the Secretary of State.

##### **2.0 BACKGROUND TO THE ORDER**

- 2.1 On 18 May 1999, Mr J Brass of Nutgill Farm, Ingleton, submitted an application under Section 53 of the Wildlife and Countryside Act 1981 for a Definitive Map Modification Order to downgrade Bridleway N° 05.26/37 to a footpath, and to re-align a section of the route. The applicant believed that these two errors were made by the former West Riding County Council when they produced the Definitive Map for this area in 1969.
- 2.2 The evidence that was submitted in support of this application was a single map showing the alignment of the route as the applicant believed it should be shown.

2.3 Officers undertook further research of records in their possession, and of records held by the North Yorkshire Archive Service. The records examined included:

- Parish Schedule, dated 15 August 1951, completed by the Parish Council. The route was described as a footpath south of Langber End Lane to Nutgill. It also refers to two stiles and a footbridge, which it says were washed away.
- Draft Map and Statement produced by the West Riding County Council shows a bridleway.
- Old Ordnance Survey Maps between 1925 and the 1950s do not show the route at all. Other old maps show a route, but on a different alignment.
- 1910 Finance Act documents indicate that an allowance was claimed in respect of a footpath.
- 1768 Bentham Inclosure Award plan shows a route on a slightly different alignment from that shown on the Definitive Map. The written apportionment describes a 'lane way or road' and therefore does not help to prove whether it was a footpath or a bridleway.
- 1839 Tithe Plan shows a route similar to that shown on the Inclosure Plan, but there is no identification of its status.

2.4 Despite the further research, officers were not satisfied that there was sufficient evidence to rebut the presumption that the original recording of the route as a bridleway, on its original route, was correct. Therefore, on 4 January 2008, the application was formally rejected.

2.5 On 23 February 2008, Mr J Brass lodged an appeal against this decision with the Secretary of State, who appointed an Inspector to review the evidence. The Inspector recommended that the appeal should be allowed in part, concluding that an Order should be made to downgrade the bridleway to a footpath; but dismissing the part of the appeal in relation to showing a short section of the route on a different alignment. A copy of the Inspector's Report is attached as Appendix. 1.

2.6 The Secretary of State therefore directed the County Council to make a Definitive Map Modification Order, which was sealed on 29 December 2009, and was advertised from 11 February 2010 to 25 March 2010.

### **3.0 REPRESENTATIONS MADE TO THE ORDER**

3.1 Representations made in support of, and against, the Order are listed below followed in each case by officer's comment on the representation.

### 3.1 Correspondence received in support of the order

- 3.1.1 The Ramblers' Association states that there was never a bridleway on the Definitive Map on this alignment and believes that this is confirmed by Ingleton Parish Council's original route description when they recorded the routes. The representative considers that the present line even if diverted at Nutgill would not be a suitable route for horse riders.

The Ramblers' representative is aware of the original description of the route made by the Parish Council in 1951 when information relating to public rights of way was first being collected by West Riding County Council. Despite the original description provided by the Parish Council, the route was recorded by the former West Riding County Council as a bridleway on the Draft Map in 1953, on the Provisional Map in 1967, and finally on the Definitive Map in 1969. No representation was made to the authority during those consultation stages alleging that the status was wrongly recorded. The physical suitability of the route for use by horses cannot be taken into account when determining an application, only actual evidence relating to the route's legal status can be considered.

- 3.1.2 Messrs J Brass and S Brass of Nutgill Farm support the modification order to downgrade the bridleway, also would like to bring to our attention the alignment of the route as they feel that on the balance of probabilities this is incorrectly applied to the Definitive Map.

It has been explained to Messrs Brass that the Modification Order was made following a direction made by the Secretary of State, and it was the Secretary of State's view that the alignment of the route did not require amendment.

### 3.2 Correspondence received against the order

- 3.2.1 British Horse Society, Mrs S Midgley and Mrs C Cook, in their objections, state that there is no new, cogent evidence that a mistake was made. The stiles were known about and recorded on the draft map.

It is agreed that there is little new evidence that is sufficient to counter the presumption that the original recording of the route was correct.

- 3.2.2 Byways and Bridleways, Mrs Lady E Kirk, sent a letter of objection, but provided no further comment.

- 3.2.3 A letter from Mrs M Ellis stated that the bridleway is part of an ancient route from the Forest of Menwith through Ingleton and onwards along Oddy's Lane at the foot of Twisleton Scars above Ingleton.

This is supposition and is not clearly supported by the documentary evidence.

3.2.4 Six further letters of objection were received from members of the public stating that:

- the bridleway provides a valuable link for equestrians in the Ingleton area, and
- the bridleway should be made available for use by the public and not downgraded to a footpath.

The perceived need or convenience that a route may or may not have cannot be taken into account when investigating applications of this type. Evidence must relate specifically to what rights do, or do not, exist.

#### **4.0 SUMMARY**

- 4.1 As there are outstanding objections to the Order, only the Secretary of State can determine whether or not the Order should be confirmed. The County Council needs to decide what stance it wishes to take regarding its view on the confirmation of the Order within its submission to the Secretary of State.
- 4.2 Officers are of the opinion that the historical evidence is inconclusive in demonstrating that the route was a footpath rather than a bridleway at the time when public rights of way were being recorded in the 1950s. Although the Parish Council does appear to have recorded the route as a footpath during the earliest stages of the preparation of the Definitive Map, the route was recorded as a bridleway on the subsequent Maps that were part of the process for the production of the Definitive Map, and there is no evidence within the old files that any representation was made during the consultation processes questioning the route being shown as a bridleway.
- 4.3 Representations made by members of the public in response to the making of the Order have not provided any further evidence to support that an error was made in the original recording of the route. .
- 4.4 Despite that Inspector's view, officers are of the opinion that there is insufficient new evidence of a robust enough nature, to satisfactorily show that an error was made in the recording of this route as a bridleway when the Definitive Map was originally prepared, and that the County Council should uphold its original view that the status of the route should not be amended.

## **5.0 RECOMMENDATION**

5.1 It is therefore recommended that

The Committee authorise officers to submit that the Order should not be confirmed within the County Council's submission to be made to the Secretary of State, and in the event of any Public Inquiry that may be held, that officers defend that stance.

DAVID BOWE

Corporate Director, Business and Environmental Services

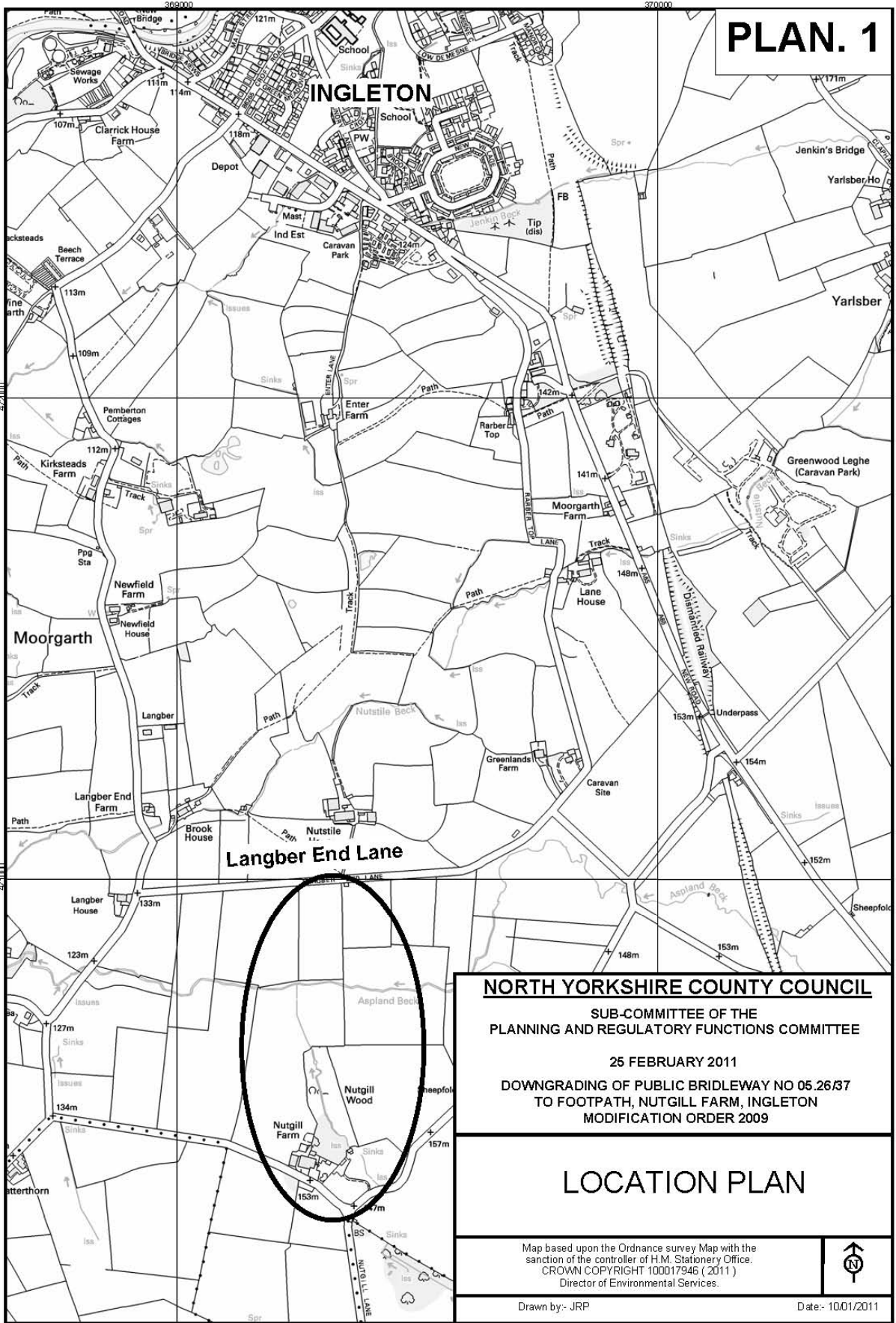
### Appendix 1:

Secretary of State Inspector's report into the Appeal by Mr J Brass against the decision of North Yorkshire County Council not to make an Order.

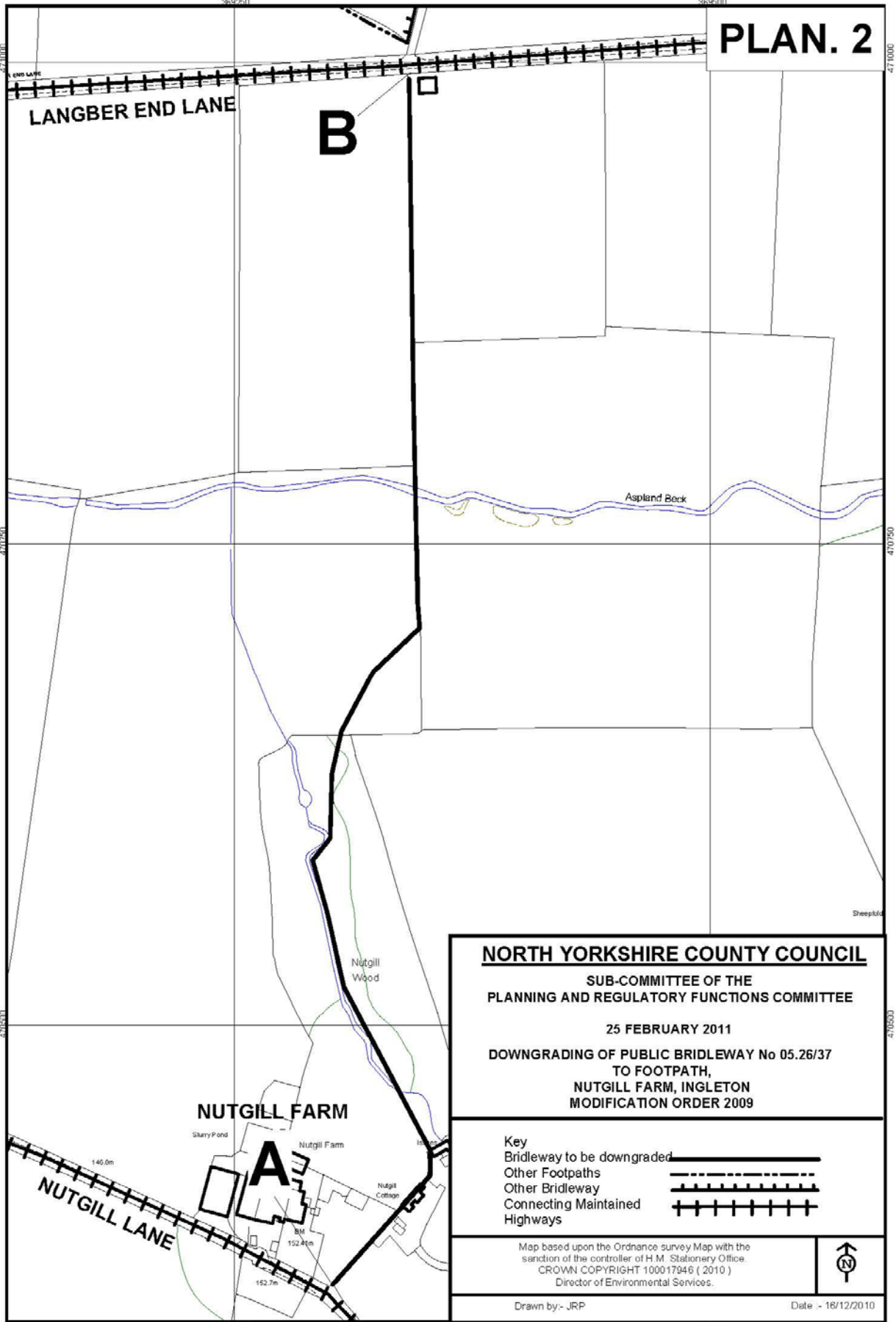
### Background documents:

The documents are held on file marked CRA/1999/01/DMMO which will be made available to Members at the meeting.

Author of report: James Perkins, Definitive Map Officer



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**NORTH YORKSHIRE COUNTY COUNCIL**  
**SUB-COMMITTEE OF THE**  
**PLANNING AND REGULATORY FUNCTIONS COMMITTEE**

25 FEBRUARY 2011

**DOWNGRADING OF PUBLIC BRIDLEWAY No 05.26/37**  
**TO FOOTPATH,**  
**NUTGILL FARM, INGLETON**  
**MODIFICATION ORDER 2009**

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**Key**

- Bridleway to be downgraded
- Other Footpaths
- Other Bridleway
- Connecting Maintained Highways

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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.

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Drawn by:- JRP
Date - 16/12/2010

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**APPENDIX 1**



**Report to the  
Secretary of State for  
Environment, Food  
and Rural Affairs**

by Helen Slade MA FIPROW

an Inspector appointed by the Secretary of State  
for Environment, Food and Rural Affairs

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Date:  
18 September 2008

WILDLIFE AND COUNTRYSIDE ACT 1981

REPORT INTO AN APPEAL BY

MR JOHN BRASS

AGAINST THE DECISION OF

NORTH YORKSHIRE COUNTY COUNCIL

NOT TO MAKE AN ORDER UNDER SECTION 53(2)

IN RESPECT OF AN APPLICATION TO DOWNGRADE AND RE-ALIGN A PUBLIC

BRIDLEWAY

AT

NUTGILL FARM, INGLETON

File Ref: NATROW/P2745/529A/08/08



### Case Details

- This appeal is made by Mr John Brass under Paragraph 4(1) of Schedule 14 to the Wildlife and Countryside Act 1981 against the decision of North Yorkshire County Council not to make a modification order under Section 53(2) of that Act.
- The application dated 18 May 1999 was refused by notice dated 4 January 2008.
- The appeal is dated 21 January 2008.
- The appellant claims that the Definitive Map and Statement should be modified to show as a public footpath a route currently shown as part of a public bridleway and, in addition, to re-align a short section of it.

**Recommendation: I recommend that the appeal is allowed in part.**

### Preliminary Matters

1. I have been appointed to report to the Secretary of State for Environment, Food and Rural Affairs on the above mentioned appeal made in accordance with Paragraph 4 of Schedule 14 to the Wildlife and Countryside Act 1981 ('the 1981 Act').
2. The appellant's evidence consists of documentary evidence and letters of support, and I am satisfied that, despite some lack of clarity with regard to the location of the route, I can make a recommendation without the need to visit the site.
3. The report consists of the relevant points made in the submissions of the parties, an assessment of the evidence against the relevant criteria and my conclusions and recommendation.

### Description of the Route

4. The appeal route is shown on the current definitive map, but I have not been provided with a copy of any definitive statement. The definitive map shows the route commencing at a wicket gate on the unclassified road at Nutgill Farm in the south, and running in a generally northerly direction to a field gate on Langber End Lane in the north. Leaving the farm complex the route enters Nutgill Wood which it leaves via a stile. It then passes diagonally across the corner of a field to a field gate. Keeping along the field boundary, the path then runs due north, crossing a stream along the way.
5. The hand-written Ingleton Parish Map Schedule, dated 15 August 1951, describes the surface of the appeal route (which is part of a longer route originally given the number 4 and later changed to 37) as being grass. It also indicates that, at that time, two stiles and a footbridge needed either attention or renewal. A subsequent note on the schedule indicates that the footbridge was washed away in October 1951. The path was originally surveyed on 19 July 1950.
6. An undated type-written description of the route in tabular form indicates that the appeal route, forming the most southerly section of the route numbered 37, crossed pasture land, before meeting Nutgill Lane at Nutgill Farm. It describes the width of the whole route in three sections: the two northerly

sections as 9 feet (2.7 metres) wide and the southerly appeal route section as 4 feet (1.2 metres) wide. It gives the length of that section as being 0.41 miles (0.66 kilometres). The furniture described for the whole route is given as 2 footbridges; 7 field gates; 1 wicket gate; and 1 stile. The locations of these items are not given.

7. This latter document (the table of descriptions) covers several paths in Ingleton parish and appears to be part of a longer document. It is subject to many alterations, deletions and substitutions in respect of some of the routes described on it, and its provenance has not been identified by either party to this appeal.

### **The Case for the Appellant**

The material points are:

8. The form completed in 1951 regarding the ascertainment of rights of way described the route as a footpath south of Langber End Lane to Nutgill. It also refers specifically to two stiles and a footbridge, which is says was washed away.
9. There is insufficient evidence to show it was ever a bridleway. Four stone stiles have been there for over 50 years and there is no sign of any use by horses. This is confirmed by the testimony of other long-standing local residents and horse riders, who consider the appeal route to be too steep and dangerous.
10. When the definitive map was being prepared in the 1950s, the owner and occupier of the farm (Mr D Brass) was a very ill man, spending much time in hospital. That is likely to be why no appeal or objection was made to the route being shown as a bridleway throughout its length. There is no evidence of the existence of a bridleway on the deeds of the property which go back to 1900. The applicant's uncle, who was born on Nutgill Farm in 1910, confirms that the route has never been a bridleway. Another local farmer (Tom Morphet of Stubbs Farm) has lived there for almost 60 years and also knows the appeal route to be only a footpath.
11. Some old Ordnance Survey ('OS') maps between 1925 and the 1950s do not show the route at all, even as a footpath. Other old maps show a route but on a different alignment. On all the maps which show the route it is marked as a footpath. The definitive map shows the route as going over a stile into the garden of the adjoining cottage. The Parish Council has no definitive record of the appeal route as a bridleway; only as a footpath.
12. North Yorkshire County Council ('the County Council') states that a route is shown on the Inclosure Award map, but there is no indication of a route at all on the map supplied. The County Council acknowledged that the 1910 Finance Act documents indicate that an allowance was claimed in respect of a footpath and also acknowledged (in a letter dated 6 March 1996) that the appeal route has a stile and does not follow the line shown on the definitive line. The County Council refers to two stone stiles, but there are in fact four.
13. The matter has been under discussion since 1989 when the question of the status of the route was raised with the Parish Council. The Parish Council

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minutes show that at that time Mr Hulme (an officer from the County Council) walked the path and considered it to be a footpath.

14. The Local Government Ombudsman letter dated 28 November 2006 states that the local authority officers who walked the route in that year were satisfied that the evidence on the ground was not consistent with the route being a bridleway. The letter also states that the officers would prepare a report for their committee recommending that the route ought to be downgraded. The Ombudsman indicates that the committee would be highly unlikely to disagree.
15. The 'definitive map' is not definitive. It is full of errors. It is possible that Nutgill Farm was confused with Nutstile Farm, as still happens today. There is no user evidence and therefore it cannot have enjoyed uninterrupted use. On the balance of probabilities an error was made and the appeal route is a footpath. This long-running fiasco needs to be resolved. Contrary to the assertions of the County Council the application was supported by two maps and not just one. The map was a copy of one sent to the appellant by the County Council over 9 years ago.

***Comments from third parties in support of appellant***

16. Mrs Swales has ridden the area for almost 50 years and has never seen the appeal route being ridden nor ridden it herself. She has walked it with her dogs and considers it is not suitable or safe for horses.
17. Mrs Unsworth has ridden in the area for 30 years and has never seen or heard of anyone trying to ride the appeal route. She considers it would be unwise and inadvisable as the route is awkward, even as a footpath.
18. Mrs Bridgewood, who owns Nutgill Cottage, states that no path at all is shown on her deeds. She specifically checked when she bought the property, and was told that the path was in a different location, on the far side of the barn. She met an officer of the County Council on the path one day who assured her that he knew about the mistake and said that it would be rectified. She has seen no attempt by riders use the path, only three or four mountain bikers, who regretted their efforts.
19. Mr Dugdale owns land opposite Nutstile Farm. He also states that there is no mention of a bridleway on his deeds, and says that he would not have bought the land if it had since he runs mares, foals and stallions on it. It would have been too dangerous to have a bridleway running through it.

**The Case for North Yorkshire County Council**

The material points are:

20. The application was made under the provisions of Section 53(3)(c)(iii) of the 1981 Act to downgrade and to re-align the route. Evidence for a deletion must be clear and cogent, and demonstrate that an error was made in drawing up the definitive map, and during the stages prior to its production.
21. The application was supported by a single map showing the current and claimed alignments. No further evidence was submitted, but the local authority has discovered other evidence which has been taken into consideration.

22. The 1768 Bentham Inclosure Award plan shows a route on a slightly different alignment from that shown on the definitive map. The written apportionment describes a 'lane way or road' which does not help to prove whether it was a footpath or a bridleway. In any case, a bridleway may have come into existence on the current alignment at some point subsequent to the date of the Inclosure Award.
23. The 1839 Tithe Plan shows a route similar to that shown on the Inclosure plan but there is no identification of its status. It is acknowledged that the schedule is only a copy provided by the Parish Council and not the original document.
24. The 1851 OS 6" map shows a route which is different from that on the definitive map. Neither does it correspond to the route in use on the ground by pedestrians using two stiles. As before, a bridleway may have come into existence on the definitive line subsequent to 1851 and prior to the publication of the definitive map in 1973.
25. The 1910 Finance Act documentation indicates that a deduction was claimed in respect of a footpath, but does not identify its location. It may refer to a different path.
26. The 1950 Parish Survey maps are generally missing but it is acknowledged that the schedule which survives does describe the appeal route as a footpath. There is no explanation as to why it was over-ruled and a bridleway was recorded. The Draft Map and Statement that was produced by the Parish Council shows a bridleway and that is supported by the draft statement.
27. The evidence is insufficient to show that a mistake was made and therefore the application was rejected.

## **Conclusions**

### **Introduction**

28. In considering the evidence and the submissions, I take account of the relevant parts of the 1981 Act; the Highways Act 1980 ('the 1980 Act'); of Department of Environment Circular 1/08; and of relevant court judgments, the gist of which I set out below. References in square brackets refer to paragraph numbers in the cases of the parties set out above.
29. Section 53(3)(c)(ii) of the 1981 Act states that an order should be made on the discovery of evidence which when considered with all other available evidence shows that a highway shown in the map and statement as a highway of a particular description ought to be shown there as a highway of a different description.
30. Section 53(3)(c)(iii) of the 1981 Act states that an order should be made when the evidence which has been discovered, together with all other relevant evidence available shows that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.
31. Section 32 of the 1980 Act requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant

document which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.

32. In the judgement in the case of *Trevelyan v Secretary of State for the Environment, Transport and the Regions* [2001] ('*Trevelyan*'), Lord Phillips MR stated:

*'Where the Secretary of State or an inspector appointed by him has to consider whether or not a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put into the balance, if it is to outweigh the initial presumption that the right of way exists.'*

33. The test which must be applied is the balance of probabilities.

### **Reasoning**

34. I have not been supplied with the relevant date of the original definitive map and statement for North Yorkshire County Council; only with the date of publication [24]. However, I presume from the date of the parish survey [8][26] that the relevant date must be 1950 or 1951 or thereabouts. What the appellant is therefore claiming is that the appeal route was shown on the original definitive map and statement at the wrong status, and also partially in the wrong location [20]. It therefore seems to me that the application is made by virtue of two different sub-sections of the 1981 Act (see paragraphs 29 and 30 above) and not merely the one section as indicated by the County Council [20].
35. Nevertheless I agree that the effect of claiming that a route ought to be recorded as being of a status lower than that shown on the definitive map and statement is similar to the effect of a deletion, and that the quality of the evidence must consequently be clear and cogent [20]. The judgement in *Trevelyan* supports that approach. The onus of proving the error is on the person claiming that a mistake has been made. It is not for the County Council to have to prove that the definitive map is correct; the assumption must be at the outset that the definitive map is conclusive proof of the existence of the rights indicated on it. Evidence of considerable weight is needed to overturn that assumption.
36. The appellant has clearly spent a long time in pressing his case [13] and the reactions of several officers of the County Council over the years must have led him to believe that he good reason to understand that he had been successful [13][14][18]. The Ombudsman had also given him that impression [14]. I am a little surprised that the refusal notice from the County Council makes no mention of the extensive correspondence and visits that must have been

conducted over the years since 1989, nor of the involvement of the Ombudsman. Nor does the County Council make reference to this in its officer's response to the appeal. I therefore only have the evidence of the appellant with regard to this, none of which has been contradicted by the County Council.

37. The quality and extent of the evidence submitted in connection with the 1768 Inclosure Award is very poor. Whilst I accept that there are several dotted or dashed lines on the plan, and none of them follow the definitive line of the appeal route, there is no key to assist in its interpretation. Without a clear transcription of the Award<sup>1</sup> it is difficult to interpret which path is being referred to in the descriptive text. Nevertheless I agree that none of them appears to correspond with the appeal route, and it is therefore of little assistance [22].
38. Similarly, the quality of the extract of the 1839 Tithe Apportionment plan is so poor that it is difficult to make out the path. The route that can be seen appears to correspond with the route shown on the 1851 OS 6" map [24] as far as it is possible to make it out. Nevertheless, there is no information in the extracts from the apportionment that have been provided which sheds any light on the status of the route, and thus I agree that it is of little assistance [23].
39. The information contained in the Finance Act 1910 documentation is of limited assistance [25] since it does not identify the location of the footpath for which a deduction is claimed. However, the hereditament is relatively small, and there does not appear to be any other public footpath or other public right of way across the equivalent land on the current definitive map. This evidence therefore provides some support for the evidence of the 1950 parish survey.
40. Dealing firstly with the status of the route, the 1950 parish survey clearly describes the section of public right of way from Langber End Lane to Nutgill Farm as a footpath [8] [26]. The description is unequivocal. The County Council accepts that there is no explanation of how the draft definitive map or the final definitive map came to show a bridleway [26]. The County Council implies that the Parish Council prepared the draft definitive map and statement [26] but that would not be in line with normal practice. It is my understanding that the County Council will have prepared the draft definitive map and statement, and that it will then have been subject to consultation.
41. I have assumed that the tabulated description to which I have referred in paragraph 6 above is what the County Council mean by the draft statement. The draft statement has no conclusive evidential weight; the copy provided has many alterations to it, although none relating to the route which now forms the appeal route. The draft statement, if that is what it is, refers to a '*bridle road known as Rid Ash Lane and Enter Lane*' and gives the width of the entire route in three different amounts, as I have described in that same paragraph above. Since the southern section (forming the present appeal route) is not known as either Ash Lane or Enter Lane, and since the width of that section is given as being substantially narrower than the '*bridle road*' section, I can see that the Parish Council may not have realised that the whole route was being recorded

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<sup>1</sup> Incorrectly referred to by the County Council as the 'apportionment'

- as a bridle road. Furthermore, the draft map clearly shows a stile at one point along the route being claimed by the parish council, suggesting that it was not a bridle road.
42. I have not been provided with a copy of the definitive statement; only a copy of the definitive map. It is not clear to me whether any statement actually exists. With respect to the status of the route, the evidence is contradictory. The description of the route provided by the parish council in 1950 clearly supports its status as a footpath. The definitive map indicates at least one stile along its route, also suggestive of a footpath. The draft statement gives quite a different width for the appeal route section of the path, suggesting a lower status than the remainder of the route, and the appeal route does not appear to have a name, contrary to the remainder of the route. There is no definitive statement on which to rely for clarification. A number of County Council officers appear to have acknowledged that the route was a footpath and that a mistake has been made.
43. I therefore consider that in terms of the status of the way, the evidence is sufficient to suggest that, on the balance of probability, a mistake was made in recording the appeal route section of path 37 as a bridleway.
44. The question of the line of the route is more difficult to assess. The evidence which has been alluded to in the cases of the parties suggests that the route in use on the ground is not the same as the route recorded on the definitive map. However, I have been provided with no evidence to show what that difference might amount to, other than the line shown on the 1851 OS 6" map [24] and the line drawn by the appellant on his application map [21]. In addition there is the discrepancy between the number of stiles referred to by the County Council and the appellant [12], and the implication that a different route is in use on the ground [24]. In contrast, the parish survey map, the draft definitive map and the definitive map all show the route in the same location and all mark a stile along its route at the same place.
45. In the absence of any evidence about the route actually in use, there is insufficient information available to suggest that the line of the path shown on the definitive map is not the line of the public right of way.

#### **Overall Conclusion**

46. I conclude that the evidence is sufficient to show, on the balance of probabilities, that the appeal route ought to be shown as a footpath and not as a bridleway; but that there is insufficient evidence to show that the line of the appeal route is incorrectly shown on the definitive map. An order should be made under Section 53(3)(c)(ii) to record a footpath instead of a bridleway.

#### **Recommendation**

47. I recommend that the appeal should be allowed in part.

*Helen Slade*

**Inspector**