

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS SUB- COMMITTEE

5 AUGUST 2011

REPORT CONCERNING AN OPPOSED DEFINITIVE MAP MODIFICATION ORDER TO RECORD TWO PUBLIC FOOTPATHS ON THE DEFINITIVE MAP AND STATEMENT AT CHURCH FENTON, SELBY

1.0 PURPOSE OF THE REPORT

- 1.1 To advise Members of an opposed Definitive Map Modification Order, the effect of which if confirmed would be to add two footpaths to the Definitive Map and Statement at Church Fenton, Selby. The first footpath known as footpath number 35.22/19, the Cinder Path is shown on **Plan 2** attached to this report running via points A – B – C. The second footpath known as footpath number 35.22/20, Parson's Garth is also shown on **Plan 2** attached to this report running via points B – D. Both routes are shown on **Plan 2** as solid black lines. A location plan showing the general location of both paths is attached to this report as **Plan 1**.
- 1.2 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 Members to decide what stance North Yorkshire County Council should take in making the referral.

2.0 BACKGROUND TO THE ORDER

- 2.1 In September 2000 an application dated 16 September 2000 was made under the Wildlife and Countryside Act 1981 to add two routes, the Cinder Path and Parson's Garth, to the Definitive Map and Statement. The application was supported by user evidence forms submitted by 17 people. In addition the application was also supported by Ordnance Survey maps dated 1849, and 1906, a 1939 Home Guard plan, 1846 Tithe map and evidence from the 1910 Finance Act records at the Public Records Office.
- 2.2 The claimed routes affect land in the ownership of three different landowners, specifically, Mr Bentley, Mr Boddy, and Mrs MacQuarrie.
- 2.3 Objections to the application were received by the County Council from a number of people including Mr Nicolai Bentley, the land owner most directly affected by the application. An analysis of all the evidence presented to support or refute this application is set out in this report.
- 2.4 As a result of the application being contested the matter was put before the Selby Area Committee on 19 April 2004. A copy of the report presented to the

committee is attached as Appendix 1 to this report. The Area Committee resolved that the County Council would not make a Definitive Map Modification Order.

- 2.5 Exercising his right under Schedule 14 para.4 of the Wildlife and Countryside Act 1981 the applicant appealed this decision to the Secretary of State. On 23 October 2008 the County Council received notification from the Secretary of State that the applicant's appeal was being allowed and that the Secretary of State was instructing the County Council to make a Definitive Map Modification Order to record these two routes on the Definitive Map and Statement. The notification included with it an Inspectors report setting out the reasons for the decision.
- 2.6 Following the direction of the Secretary of State the Order was sealed by the County Council on 8 September 2010 and was subsequently the subject of public notification for a period of six weeks.
- 2.7 During the period the Order was advertised a further eight letters of objection were received. As two of those objections were from people who had previously objected to the application, the County Council is now currently aware of 20 objectors in total to this Order.

3.0 EVIDENCE IN SUPPORT OF THE APPLICATION

3.1 User Evidence Forms

- 3.1.1 Evidence forms from 20 people have been submitted in support of this application. Seventeen submitted with the application and an additional three following the Order publicity period.
- 3.1.2 Reasons for the use of the route ranged from leisure walks and short cut between the station and Little Fenton to visiting friends at Rose Farm and delivering the mail
- 3.1.3 The span of usage covered by the forms is from 1918 to 1989. Thirteen people record their usage as being for a period of twenty years or more. Most of the use ceased in the mid 1960's with only one witness maintaining that their usage continued to 1989.

3.2 Historic Evidence

- 3.2.1 A number of historical documents were also submitted in support of the application. These were Ordnance Survey maps of various dates, a Home Guard map from 1939, Tithe map from around 1840, an extract of a deed from 1903, and some records from the 1910 Finance Act. In addition the applicant alleges that the development of the railway caused Cinder Path to be diverted on to the claimed route. The applicant also wrote to the County Council with recollections that the

presence of cinders and ashes along the path made the erection of a fence difficult.

4.0 EVIDENCE AGAINST THE APPLICATION

- 4.1 Following the initial application three objections were received from each of the three land owners affected by the application.
- 4.2 In addition to the responses from the land owners a number of other people, including business associates and friends of the land owners, wrote to the County Council objecting to the order.
- 4.3 Whilst those submissions expressed a wide variety of views regarding aspects of the application, little substantive evidence to refute the claim was provided. The most commonly asserted reason of any relevance given by those objectors was that they had never seen anybody using the routes.
- 4.4 Following the publicising of the Order in 2010 a number of additional objectors came forward and some of the previous objectors restated their objections. The objections again centred on nobody having been seen using the route.

5.0 COMMENTS ON THE EVIDENCE

- 5.1 The evidence submitted comprises a combination of user evidence and documentary evidence.
- 5.2 User evidence can be relied on to try and demonstrate that the statutory test set out in section 31 of the Highways Act 1980 has been met. This requires demonstration of 20 years uninterrupted use by the public as of right from a date of challenge to that alleged right. Most commonly a challenge is in the form of a physical obstruction being erected by the landowner such as a locked gate across the way, or it could be a verbal challenge by the landowner. However, in some cases applications are submitted when there has been no actual challenge to the public's use of the way. In these circumstances, the date of 'challenge' is the date at which the application for the DMMO is made. This application falls into the latter category, therefore the date of challenge of this case is 16 September 2000.
- 5.3 Alternatively user evidence can be relied on to try and demonstrate dedication at common law. This requires an assessment of evidence of a landowner's intention and capacity to dedicate and acceptance of that dedication by the public. The further back in time the evidence of use that is relied on the more difficult to make an assessment of dedication at common law becomes.
- 5.4 Documentary evidence can be relied on to demonstrate that irrespective of use (or lack of use) a legal process had historically created a public right of way.

- 5.5 Virtually all the evidence of use in this case relates to a period which ended in the mid 1960's. Consequently there is no user evidence of any substance to meet the statutory test under section 31 of the Highways Act. The only evidence of use relating to the 20 year period prior to the application was that of one person (Mr Holdsworth) whose period of use covered only 9 years ending in 1989.
- 5.6 As the user evidence relates to a period pre dating the 20 years prior to the date of the application, it is a question of whether or not dedication has occurred at common law through that use.
- 5.7 With respect to dedication of the route at common law, it is Officers' view that the evidence supplied does not meet the "on the balance of probabilities" test needed to confirm the Order. It is noteworthy that in paragraph 51 of the Inspectors report, he states that the evidence is "finely balanced" when assessed against the much less demanding "reasonably alleged to subsist" test.
- 5.8 The documentary evidence submitted demonstrates that routes existed on the ground but has no value in determining the status of the route (e.g. whether the route was public or private). The Ordnance Survey maps submitted with the application show that the routes did exist on the ground at various times since the middle of the nineteenth century, however whilst Ordnance Survey maps provide a record of physical features case law has established that they do not carry weight in determining what legal rights (e.g. public or private) existed over those routes.
- 5.9 The Home Guard map carries a similar weight to the Ordnance Survey maps, again it records physical features but again does not provide an authoritative record of rights.
- 5.10 The Tithe map submitted again allows no conclusions to be drawn as to whether the routes shown on it are public because it was designed to show titheable lands only.
- 5.11 The applicant also submitted part of a deed dated 1903 but does not refer to it in his written submission and it does not appear to have any bearing on the application.
- 5.12 Only one of the Finance Act records shows a deduction made in favour of public rights of way across the land, but the land referred to does not appear to be that which is crossed by either of the claimed routes.
- 5.13 The applicant has alleged that the route of the Cinder Path was the subject of a formal diversion by the railway company during the development of Church Fenton station and its associated goods facilities. However no documentation has been submitted that supports this assertion.
- 5.14 Finally the applicant has asserted that, during maintenance works on the Cinder Path, cinders and ashes were found making the erection of a fence

more difficult. However, as neither party disputes the physical existence of the path this has no bearing on the application.

6.0 CONCLUSIONS

- 6.1 In determining whether or not to first “make” an Order following an application that has been made to add a route to the Definitive Map, a Highway Authority has to be satisfied merely that the public right concerned is “reasonably alleged” to exist.

In this case, following appeal of the County Council’s decision not to “make” an Order, the Secretary of State’s Inspector was satisfied that the test had been met, hence his recommendation that the Order should be made.

For an Order to be confirmed it is necessary to demonstrate that the alleged public right exists “on the balance of probabilities” given the evidence available. This requires an assessment of the evidence of opposing sides, involving careful assessment of the relative values of the individual pieces of evidence and as a whole.

- 6.2 After considering all the evidence available Officers believe there is insufficient evidence to meet the test for confirmation of the Order. User evidence does not meet the statutory test set out in section 31 of the Highways Act 1980. Evidence of past use is insubstantial and in officers’ view is insufficient to evidence dedication under common law. The documentary evidence available whilst indicating that historically routes existed on the ground provides no evidence of the status of those routes.

- 6.3 The matter must be referred to the Secretary of State as there are objections to the Order, and only the Secretary of State has the power to determine whether or not the Order should be confirmed. The County Council needs to decide what stance it will take in making its submission to the Secretary of State. The options are:

- a) to oppose the confirmation of the Order,
- b) to take a neutral stance (the stance most commonly taken by order making authorities in the event that they do not support confirmation)
- c) to support the confirmation of the Order

- 6.4 In spite of the stance taken by the County Council at the previous Area Committee Meeting to reject the application, officers believe that the County Council should take a neutral stance towards the confirmation of this order. The reasons for this are:

- a) Officers do not dispute that some sort of route existed on the ground, only that there is insufficient evidence to establish that it was public in the balance of probabilities.

- b) Officers think this Order should not be confirmed because the evidence presented in support of the application does not meet the statutory tests to bring a right of way into being rather than any significant evidence being presented to refute the claim. Therefore the neutral stance is more appropriate in this case.
- c) The neutral stance is not available to the County Council when deciding whether or not to produce an Order.

7.0 RECOMMENDATION

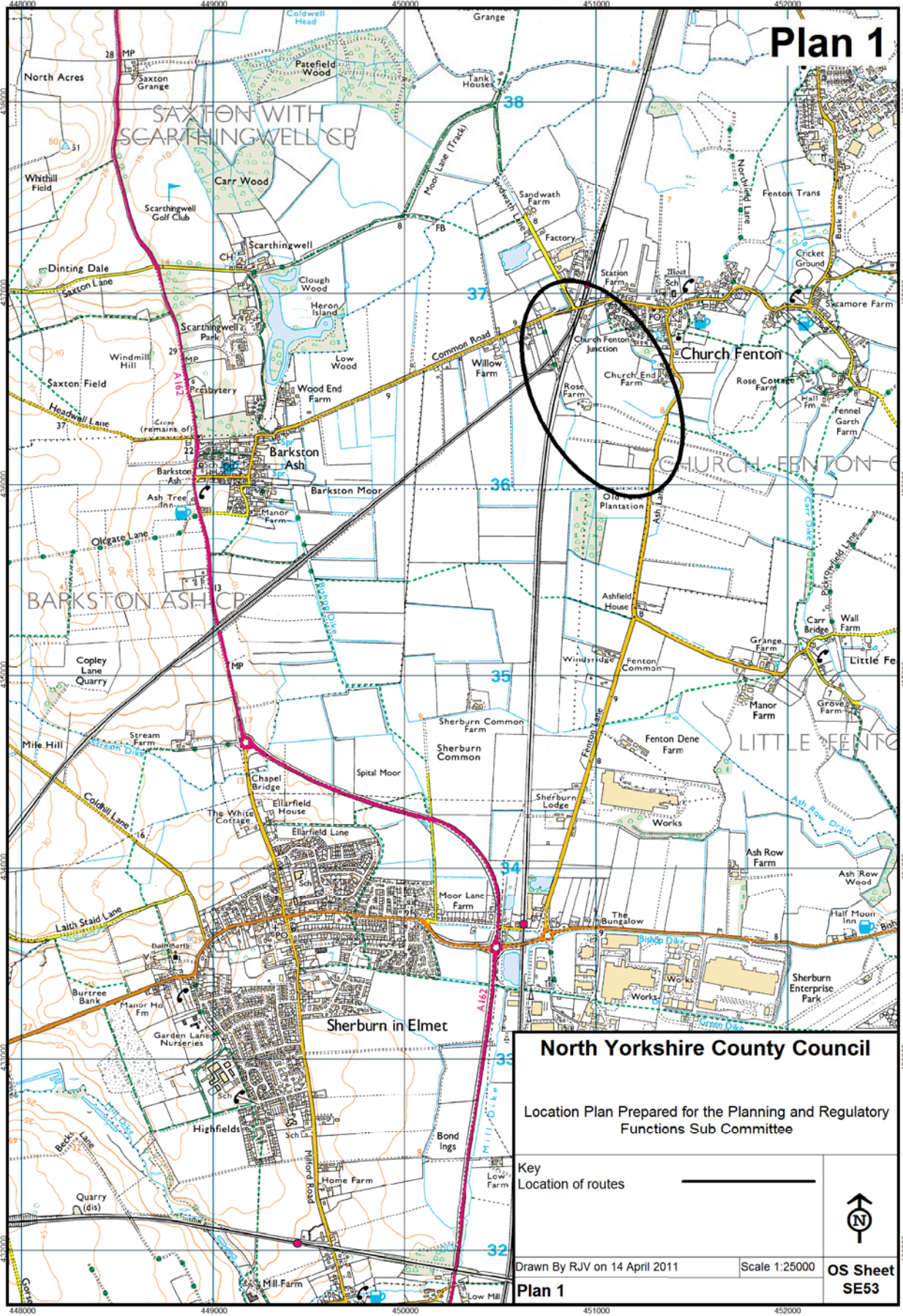
- 7.1 Given your Officers' views set out at paragraph 6.2 of this report, it is therefore recommended that the Committee authorise Officers from the County Council's Definitive Map Team to take a neutral stance when the Order is referred to the Secretary of State for decision and at any public inquiry that the Secretary of State may hold to assist in determining the matter.

DAVID BOWE
Corporate Director Business and Environmental Services

Background Papers:

DMMO application dated 16 September 2000.
Evidence submitted in support of, and against the application.
Copy of the letter from the Secretary of State directing North Yorkshire County Council to make the Order

Author of Report: Russ Varley



NORTH YORKSHIRE COUNTY COUNCIL

SELBY AREA COMMITTEE

19 April 2004

Application to add to the Definitive Map two Footpaths (The Cinder Path and Parsons Garth), Church Fenton

1.0 Purpose of the Report

- 1.1 To advise Members of an application for a Definitive Map Modification Order adding to the Definitive Map two footpaths at Church Fenton. The application is based on user forms submitted by 17 people. The claim is supported by Ordnance Survey maps dated 1849, and 1906, a 1939 Home Guard plan, 1846 Tithe map and evidence from the 1910 Finance Act records at the Public Records Office. The routes referred to are shown by solid black lines on the attached plan and marked as A - B - C (Cinder Path) and B - D (Parsons Garth)

2.0 Background

- 2.1 This application was received in September 2000. The evidence was not entirely convincing but officers felt it was worthy of further consideration. Essentially the application was only going to succeed with the landowners co-operation. That has not been forthcoming for reasons which will become apparent later in this report.

3.0 The Committee's Responsibilities

- 3.1 The Committee in considering the Modification Order Application acts in a quasi-judicial capacity. It is absolutely fundamental that consideration and determination of an issue is based on the evidence before the Committee and the application of law. In other words, the merits of a matter have no place in this process and the fact that a decision would benefit or prejudice owners, occupiers or members of the general public, or the Authority, has absolutely no connection with the issues which members have to deal with and address.
- 3.2 This report has been prepared by officers and summarises the evidence submitted both for and against the application. Based on that evidence officers have recommended to the Area Committee whether or not the application for a Definitive Map Modification Order should be supported.
- 3.3 The Committee's decision whether to make an Order is the first stage of the process. If there are objections to an Order which is made, it is likely an Inquiry would be held and the decision to confirm the Order would rest with the Secretary of State.
- 3.4 Whichever way Members decide, a right of appeal by the party aggrieved is available via the Secretary of State.

4.0 Evidence in Support of the Application

- 4.1 A total of 17 user evidence forms have been completed. 12 of those contain evidence to the effect that the signatories have been using this route in excess of the statutory period of 20 years.
- 4.2 The 20 year period traditionally covers the period immediately preceding the Modification Order application. In this instance the application was dated 2000. The latest user evidence is 1965; thirty five years before the application was submitted. This in legal terms indicates that on user evidence alone, this application cannot succeed. There is case law to support this (De Rothschild -v- Buckinghamshire County Council 1957).

4.3 The claimants make some or all of the following points. The dates of use have also been included: -

- To go to school as a shortcut (1947 – 1964).
- Fetching milk from Rose Farm (1915 – 1952).
- Walking (1930 – 1960).
- Delivering to Rose Farm (1925 – 1965).
- Delivery purposes to Rose Farm (1920 – 1965).
- Walking (1920 – 1960).
- Shortcut (1931 – 1964).
- Shortcut (1927 – 1964).
- Visiting sister and friends (1918 – 1950).
- To go to Rose Farm (1949 – 1964).
- Walking (1952 – 1960).
- Visiting friends (1940 – 1965).
- Going to work (1939 – 1946).
- School, Work and public houses (1927 – 1964).
- Walking (1934 – 1950).
- Shortcut (1948 – 1965).

5.0 **Comments on the Application**

5.1 None of the four landowners can provide evidence to rebut the application, principally because most of them were not involved with the management of the land at the time it was alleged to be used. All but one of the four landowners object to the proposal.

5.2 One former landowner has come forward with information which indicates when the public rights to use this route were first challenged. That was probably in the 1980's. The challenge was by Dross Refining who occupied some of the land affected by the application since 1968/69. However, there is still no evidence of use for a full period of 20 years preceding 1980. There is clearly a gap between 1965 and 1980. The then owner states that the path was not used after about 1967. That tends to accord with the Evidence of Use forms.

6.0 **Documentary Evidence**

6.1 **OS Maps**

Little or no weight can be given to old Ordnance Survey maps. Until recent years all Ordnance Survey maps contained a disclaimer to the effect that showing of a "track" was not evidence of a public right of way.

Tithe Maps

Without more (an explanation) Tithe maps say very little other than a route existed at the time (circa 1840). Both private and public roads were not tithable.

Finance (1909- 1910) Act

These records, whilst not conclusive, carry considerable weight. Public highways shown on such plans attracted a tax benefit. The extract that has been provided in support of this application does not make it clear which routes are referred to.

7.0 **Legal Issues**

7.1 In order to take this matter forward there needs to be evidence which when considered with all other evidence indicates, on the balance of probabilities, that the claimed route subsists or is reasonably alleged to subsist.

Evidence in support of the application

The evidence forms indicate quite clearly that a substantial body of people have used the claimed route for in excess of 20 years. On the face of it the evidence is quite convincing. However, case law indicates quite clearly that the minimum 20 year period required under statute terminates at the time the rights of the public to use the particular route were challenged. Traditionally that has usually been the date when the application for a Modification Order is submitted. In this instance the application does not make it clear when the right to use the route was first challenged. However, investigations made by officers has revealed information which would tend to suggest the public's right to use this route was first challenged in 1980. That still leaves a gap of 15 years.

As regards the documentary evidence, little or no weight can be attached to the old Ordnance Survey map submitted. The Tithe map is less than convincing in terms of a pictorial representation. It is also the case that no written document has been produced to explain what the various features on the Tithe map actually mean. As regards the Finance (1909 - 1910) Act, again whilst these documents under normal circumstances carry considerable weight. However, officers cannot relate the documentation that we've been provided with to the claimed routes.

Comments on the application

No evidence of any real merit has been provided by the landowners affected. Primarily, it is suspected, because of the fact that nearly 40 years has passed since the last member of the public claimed to have used this route. One former landowner has come forward and his evidence would suggest that the route was probably never used very much after the mid 1960's, and that around about 1980 the owner of that piece of land actively discouraged anybody, other than a few people they knew, from using the route.

Summary of the legal issues

In summary, in order for this application to succeed, the applicants must establish on balance of probabilities that the claimed route subsists or is reasonably alleged to subsist. Only when that hurdle has been crossed do Members need to concern themselves with evidence submitted by those opposed to the application.

In this instance based on case law referred to above, this application does not cross the first hurdle. On that basis Members do not need to concern themselves with the lack of evidence submitted by landowners opposing this application.

It is also worth mentioning one further point concerning the Human Rights Act. Article 6(1) confers upon a person the right "to a fair and public hearing" in the determination of his civil rights and obligations

The current landowners would be seriously disadvantaged for trying to resist what is essentially a stale application which is 40 years out of date.

8.0 Some Practical Points

- 8.1 What seems highly likely is that any future claim to establish these routes as public footpaths based purely on user evidence will fail. It is entirely a matter for the applicant as to whether or not they wish to carry out more detailed historical research to see if this application could be made more robust. This will be mentioned to the claimant if Members accept the Officers recommendation.

9.0 **Recommendation**

9.1 That: -

Members do not pursue the Definitive Map Modification Order applications submitted to add to the Definitive Map two public rights of way (Cinder Path and Parsons Garth) at Church Fenton as shown on the attached plan and the applicant be advised of his right to appeal.

MIKE MOORE
Director of Environmental Services

CATHERINE WHITEHEAD
Head of Legal Services

Report prepared by Geoff Fell

23 February 2004

Background Papers: -

DMMO application
Exchange of correspondence with the applicant, landowners and their agents

DRAFT

Annex A



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

by Martin Elliott BSc FIPROW

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

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Date: 11 March 2008

WILDLIFE AND COUNTRYSIDE ACT 1981
REPORT INTO AN APPEAL BY
MR K SMITH
AGAINST THE DECISION OF
NORTH YORKSHIRE COUNTY COUNCIL
NOT TO MAKE AN ORDER UNDER SECTION 53(2)
IN RESPECT OF TWO CLAIMED PUBLIC FOOTPATHS
AT
CHURCH FENTON

File Ref: NATROW/P2745/529A/06/6S

Case Details

- This appeal is made by Mr K Smith under Schedule 14 Paragraph 4(1) of 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 16 September 2000 was refused by notice dated 20 April 2004.
- The appellant claims that a modification order should be made under section 53 of the Wildlife and Countryside Act 1981 for the addition of two public footpaths at Church Fenton North Yorkshire.

Recommendation: I recommend that the appeal is allowed.

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 evidence in this case is documentary and user. I have not visited the site but am satisfied that I can make a recommendation without the need to do so.
3. This report consists of the material points made in the submissions, an assessment of the evidence against the relevant criteria and my conclusions and recommendation.

Description of the Routes

4. There are two routes subject to this appeal, for ease I shall refer to the routes as the Cinder Path and Parsons Garth. The Cinder Path commences from Station Road, Church Fenton, opposite what is shown on the location map as a public house, and proceeds in a general south-westerly direction for 340 metres. The path then turns in a south easterly direction for a further 240 metres to Rose Farm from where the path continues in an east-south-easterly direction for a further 420 metres to its junction with Ash Lane. The Parsons Garth route commences from an existing public footpath identified as 35.22/2 and proceeds in a west-south-westerly direction for 195 metres where it joins the Cinder Path.

The Case for the Appellant

The material points are:

5. The two paths, prior to the Cinder Path being diverted, appear on numerous maps dating back to 1849. In the early 1900s the sidings were built and the path which used to run parallel to the railway line, up to a level crossing, had to be diverted. Evidence of this has yet to be found as it took two Justices of the Peace to sanction a diversion. The diversion in its own right is extremely good evidence of the way being a highway since it was sufficiently important to be diverted.

6. A further indication that the way was a highway was the fact that it had a fence running at either side of it. An 1845 Rail Consolidation clause states that a public right of way approach crossing had to be double fenced. There was a level crossing west of Rose Farm at that time and prior to the construction of a bridge; a level crossing served the road north of the bridge. A further indication is that a set of steps, up the Sandwath Lane embankment, were erected to access the bridge. Steps were also erected in the sidings on the alignment with the original path. The appellant considers that the railway company would not have incurred such expense if this was not required.
7. In relation to the disclaimer relating to rights of way on Ordnance Survey maps the appellant states that the remarks by the Council at 6.1 of the report to the Selby Area Committee are incorrect. The appellant is of the opinion that the remark about the disclaimer is the wrong way round and the statement 'Until recent years' means that it was included on ancient maps. The appellant states that the disclaimer is on modern maps and was added when rights of way were first added to Ordnance Survey maps. The statement would lead the committee to think that all evidence supplied by ancient maps was worthless. If that were true then there would be no public rights of way.
8. The appellant provides extracts from the field books of the 1910 Finance Act records which are considered to show that the paths were public rights of way. The tithe map further supports the existence of the claimed paths. A map drawn by a local draughtsman, believed to be for the home guard, showed both paths at the time; the map is assumed to have been drawn in 1939. The person drafting the map was a local man who knew the paths in his own area and deemed them used sufficiently for inclusion on the map.
9. Although not in bold type the definitive map clearly shows the route of the Cinder Path heading towards Rose Farm and then to Ash Lane. The question arises as to why, if the path had been put on the map in the first place, was the route not a public right of way.
10. To claim a path through user evidence a period of twenty years use must be shown, this can be accrued years. The cinder path has a total of 470 years by seventeen users from 1912 to 1965 twelve of which have used the path for more than twenty years. Parson Garth totals 257 years for 10 users dating back to 1920. Despite all this accrued time the Council, quoting *DE Rothschild v Buckinghamshire County Council 1957* decided that it was of no value to the Selby Area Committee. This was in contradiction with their own statement that 'the scale of use is such to raise the presumption that the claimed route is a right of way'. The Council also stated that 'where a presumption arises, as in this case, the onus is on the landowner or person denying the existence of the right of way to prove on balance of probabilities, that there was no intention to dedicate'. The Council adds that none of the landowners could provide evidence to rebut the claim principally because they were not involved in the management of the land at the time of the alleged use. The appellant thought that there were individuals still alive who could have provided information.
11. It is claimed, although no evidence has been produced, that the paths legality near the sidings was challenged and that Dross Refining actively discouraged use of the route. The Council had stated that 'We do not appear to have any

information relating to Dross Refining's challenge to the public route in the 1980s.' The appellant notes that in a letter from Mr J Judge the challenge did not relate to any path but the property. The letter states that the path ran outside the perimeter fence; he was in no position to challenge use since it was not on his land. As regards the company erecting notices there is no evidence of a sign dating back more than twenty years. The appellant notes that there is a notice placed near the northern entrance to deter members of the public from using the site, not the path. If the sign was intended to relate to the path it should be noted that the path is currently impassable being obstructed by an elder tree. Whilst the Council's report states that notices were put up, none of the evidence of use forms refer to notices and use was not prevented. Everyone from the early 1900s to the 1960s that used the paths believed that both paths were public rights of way. The appellant considers that the erection of a gate post some 1480m from the existing 'Cinder Path' fence is too much of a coincidence bearing in mind the width of a field edge path is 1500mm.

12. The Council had failed to mention two items of case law. *R v Secretary of State for the Environment, ex parte Bagshaw and Norton (1994. 68 P & CR402)* in which the court examined the two tests in section 53(3)(c)(i). Whether a right of way subsisted and whether it was reasonable to allege that a right of way subsisted. The Other case, *R v Secretary of State for Wales, ex parte Emery (1998)(4AER 367) (Emery)* based on section 31 of the Highways Act 1980 and user evidence simply stated that an order should be made.
13. There was an important legal maxim 'once a highway always a highway'. This meant that unless officially extinguished a highway would remain as such. There was no requirement for the claimed paths to be walked to remain a highway. Use was not possible because the way was overgrown and the letter from Mr Judge stated that the route was impassable in 1971. The maxim overrides the statements regarding the paths not being used for a number of years. Evidence from the Council states that 'there have been no extinguishments in the vicinity of the former Vicarage...' this was the relevant area crossed by the cinder path.

The Case for North Yorkshire County Council

14. The Council considers that there is insufficient documentary evidence to support the claim. There has been an interruption to the public's apparent use of the route and there is no evidence of twenty years use immediately prior to the first apparent challenge in 1980.
15. In relation to the evidence of use four witnesses state that they used the path to deliver to, or access, Rose Farm. Four witnesses state that they were employed by the owner of Rose farm for part of the time that they used the path. Three of these used the route during childhood and for a short time after their employment by the landowner. One witness only used the path for the period he worked at Rose Farm. This evidence did not support the route being public. Four of the remaining nine witnesses and two of those who were employed at Rose Farm describe their use as to go to school or as a short cut; it was difficult to see how the route could be on, the route to school or a short cut to the village. The other five witnesses describe their use as for visiting friends although it is not clear whether the friends were at Rose Farm or

beyond the farm for a valid journey. The other reason given was for walking which would be a valid journey.

16. Ten of the witnesses used the route until 1964 or 1965 with others ceasing to use the route by this time. No reason is given as to why the route was no longer used. Whilst the evidence of use forms suggested that the paths had been used for a period greater than twenty years by 1965 there was no challenge to the use of the route identified in the application; it was difficult to fix a time from which to calculate twenty years use.
17. Thirteen witnesses imply that they were using the two routes in 1951/52 when the Parish Council became involved in the recording of public rights of way under the National Parks and Access to the Countryside Act 1949. The Council comments it is curious that routes, apparently so well known, failed to be recorded. It was possible that the routes were not to be considered public at that time.
18. None of the landowners can provide evidence to rebut the claimed paths. One former landowner has provided information which indicates when the public's right to use the path was first challenged; this was probably in the 1980s. The challenge was by Dross Refining who occupied the land affected since 1968/69. However there is still no evidence of a full period of use for twenty years prior to 1980, there is a gap from 1965 to 1980. The owner at that time states that the path was not used after about 1967; this accords with the evidence of use forms.
19. The Council refers to the case of *De Rothschild v Buckinghamshire County Council (1957)* where a statutory claim failed when the way had been enjoyed without interruption from 1914 to 1940. However, the public right had not been called into question until 1948 and the way had been used between 1940 and 1947. There was no evidence of user for the twenty years immediately before 1948. In that case the finding 'that the appellant at no time intended to allow the public to enjoy a right of way... was evidence that there was no intention during the relevant period, and that, therefore, the presumption of dedication never arose under s.1 (1).'
20. At Church Fenton it appears that the path may have been used between the early 1950s and the mid 1960s although even this is unclear whether use was as a public right of way. There was an interruption for a number of years where there is limited evidence of use. There is some evidence of use during the early 1980s which was then apparently challenged.
21. The title map, apparently dated 1846, with modifications dating from the end of the C19th or the beginning of the C20th showing the alterations being made to the station and the road, shows the Parsons Garth footpath. Part of the route is presently recorded on the definitive map as public footpath 35.22/2. Without supporting evidence from the award it is not clear how important the representation of the path really is. The path may have existed on the ground but was not necessarily considered to be public. There are two other paths on the map one currently recorded as a public right of way the other not. The Council notes the appellant's view that the dashed line alongside the goods station has been shown as a later addition. Whilst it is possible that the path

was put in as part of the redevelopment there can be no certainty that the path was for public use.

22. The 1849 Ordnance Survey map shows the Parsons Garth footpath from Church Street heading west over the York and North Midland railway then turning north to the station. A track leads from Rose Farm crossing the railway at the same point. The depiction of these routes does not necessarily mean that they were available to the public. Ordnance Survey maps contained a disclaimer to the effect that the showing of a 'track' was not evidence of a public right of way. The 1889 edition shows the Parsons Garth footpath no longer extending beyond the vicarage with a path through the vicarage now recorded as footpath 35.22/2. The Cinder Path no longer crosses the railway as the new line had been constructed and the path lies along the eastern side of the railway.
23. The 1906 and 1908 Ordnance Survey maps show the access from Rose Farm lying to the east of the railway line. The 1965 edition repeats the information from the 1908 edition with the path alongside the railway annotated 'path'.
24. Whilst the Finance Act (1909–1910) records normally hold considerable weight the extract provided is not clear as to the routes being referred to and the Council cannot relate the documentation with the claimed route.
25. The Council did not make any comments on the evidence relating to the depiction of the route on the definitive map or on the home guard map (paragraphs 8 & 9). Further, the Council did not comment on the cases of *R v Secretary of State for the Environment, ex parte Bagshaw and Norton (1994, 68 P & CR402)* and *R v Secretary of State for Wales, ex parte Emery (1998)(4 AER 367)*. No response was made in relation to the legal maxim identified at paragraph 13.

Conclusions

26. In considering the evidence and the submissions, I take account of the relevant part of the 1981 Act and a number of court judgements, the gist of which I set out below, reference being given (in square brackets) to earlier paragraphs where appropriate.
27. The Council, in making their decision not to make an Order, have not specifically referred to the section of the Wildlife and Countryside Act 1981 upon which they are relying. However, the report refers to whether on the balance of probabilities the evidence shows that the claimed footpaths subsist or are reasonably alleged to subsist. This in my view is a reference to section 53(3)(c)(i) and I consider that it is appropriate to consider the appeal under this section.
28. Section 53(3)(c)(i) provides that an order should be made if the Authority discovers evidence which, when considered with all other relevant evidence available to them, shows that a right of way subsists or is reasonably alleged to subsist over land in the area to which the map relates. In considering the evidence under this section there are two tests which need to be applied, as set out in the case of *R v SSE ex parte Mrs J Norton and Mr R Bagshaw*:

Test A: Does a right of way subsist on the balance of probabilities? This requires me to be satisfied that there is clear evidence in favour of public rights and no credible evidence to the contrary.

Test B: Is it reasonable to allege that on the balance of probabilities a right of way subsists? If the evidence in support of the claimed paths is finely balanced but there is no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then I should find that a public right of way has been reasonably alleged.

29. The appellant refers to *Emery* [12]; this approved the approach as outlined above.
30. Section 31 of the Highways Act 1980 Act provides that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
31. Although the Council have not considered dedication under common law it is appropriate, in the event of the statutory dedication failing, to have regard to a dedication at common law. The Secretary of State may wish to consider this option. Dedication at common law requires consideration of three issues: whether the owners of the land in question had the capacity to dedicate a public right of way, whether there was express or implied dedication by the landowners and whether there is acceptance of the route by the public. Evidence of the use of a path by the public as of right may support an inference of dedication, and may also evidence the acceptance of a dedication by the public.
32. I have had regard to *R v Oxfordshire County Council ex parte Sunningwell PC* [1999] 3 All ER 385 in relation to the definition of use as of right and the fact that it is not necessary to show that users believed that they had a right to use a way. Use as of right is use without force, stealth or permission.

Documentary Evidence

Railway development

33. The appellant says that the cinder path was diverted as a consequence of the development of the railway sidings [5]. There is nothing before me in the form of any deposited railway documents to indicate that any diversion took place. However, I note that the 1849 Ordnance Survey plan shows a route marked by double pecked lines leading from Common Road crossing the railway line and leading eastwards towards Church Street. To the east of the railway line the route follows to some extent the Parsons Garth path. By 1906 no route is shown to the west of the railway line but a route corresponding with the Cinder Path is shown on the Ordnance Survey of that date annotated 'f.p.'. This suggests that the Cinder Path might have been provided to accommodate the route to the west of the railway line. However, in the absence of any deposited

documents no conclusions can be drawn as to whether this was a diverted route or whether the route was public or private. I consider the Ordnance Survey map evidence below at paragraphs 36 and 37. The appellant has submitted a document which refers to the diversion of Sandwath Lane and the closure of Common Road level crossing but these routes are not those claimed and no reference is made to any other route.

34. The appellant acknowledges that a certificate from the Justices of the Peace is required to sanction a diversion but says that evidence of this has yet to be found [5]. Again in the absence of any documents no conclusions can be reached.
35. In respect of an 1845 consolidation clause [6] it is presumed that the appellant is referring to the Railway Clauses Consolidation Act 1845; no copies of the clause have been provided. Section 61 of the 1845 Act refers to the making of sufficient approaches and fences to bridleways and footways crossing on the level. No reference is made to the type of fence to be erected and the clause only relates to provision at each side of the railway. It is not clear from the submissions of the appellant if the reference to a double fence is being made to the provision of any crossing or to the fencing of the Cinder Path. The evidence suggests that the Cinder Path has in the past been fenced on either side. If the appellant is referring to the crossing of the line the Secretary of State should note that the claimed route does not cross the railway line. If the appellant is arguing that the fencing demonstrates that the original crossings [6] were public rights of way there is nothing to indicate that the crossings were public with the exception of Common Road. If it is being suggested that because the Cinder Path was double fenced this indicates that the way is public then there is no evidence from the 1845 Act to support this, noting that section 61 is specifically referring to crossings rather than any path leading to one. As regards the provision of steps [6], in the absence of any railway documents, no conclusions can be reached that the steps were public. In any case, the Secretary of State should note that neither of the flights of steps link directly with the Cinder Path.

Ordnance Survey maps

36. As outlined in paragraph 33 above the 1849 map shows a path leading from Common Road across the railway line and continuing in an easterly direction. The map also shows a track leading to Rose Farm from Ash Lane and a further section of track to the north of Rose Farm. The Council says that the 1889 map shows part of the Parsons Garth footpath [22] and in my view part of the Cinder Path is annotated '*f.p.*'. The 1906 and 1908 maps show a route which follows the alignment of the Cinder Path and is annotated '*f.p.*'. The 1965 map annotates the Cinder Path with the words '*path*'. None of the last three mentioned maps show the Parsons Garth route extending to link with the Cinder Path.
37. In my view the Ordnance Survey maps show to varying degrees the physical existence of the claimed routes. However, the maps were not prepared with a view to recording public rights, hence the disclaimer [7], and cannot provide evidence of public rights. The 1889, 1906 and 1908 maps show that the Cinder Path was a discernible route suitable for pedestrian traffic. The 1965

edition shows the physical existence of the path but does not indicate the type of use public or private. As regards the comments made by the appellant in respect of the definitive map [9] the information on public rights of way is overlaid on to an Ordnance Survey map. For the reasons given above the Ordnance Survey map does not demonstrate the existence of public rights only that a path physically existed. The path is not recorded on the definitive map.

Tithe Map

38. The extract of the tithe map appears to have been modified after the alterations to the road network; the extent of those modifications are unclear. As such it is difficult to attach any significant weight to this document. The Parsons Garth route is annotated 'footpath' and the cinder path, as far as the extract extends, is shown by a single pecked line. Whilst the tithe map, subject to my comments relating to the modifications, may show the routes no conclusions can be drawn as to whether the routes are public. The tithe process was not intended to record highways only titheable lands. The tithe map should be considered along with the tithe records [21].

1910 Finance Act

39. Extracts of the original records have not been supplied but notes, from the field books and maps, have been taken from the records and these have been submitted. However, I have some difficulty in interpreting the notes, which do appear to refer to the various hereditaments, in terms of how they relate to the original documents. The Council also consider the extracts to be unclear [24]. The hereditaments numbered 121, 120, 7 and 177, relate to land crossed by the claimed routes, but do not appear to have any deductions made for any right of way; this does not support the existence of public rights. Reference is made, in relation to 121 and 7, to rights of way or footpaths as marked on the Ordnance Survey plan; I have already commented on the evidential value of such maps on which the Finance Act information was drawn. The representation of any paths on the map does not evidence public rights. In respect of hereditament 22 this refers to a deduction of £15 for public rights of way. This hereditament covers a number of plots of land including land crossed by the claimed routes and others which are crossed by public rights of way currently recorded on the definitive map. As such it is difficult to ascertain which routes have given rise to any deductions. The notes refer to four pieces of land and refers to 'footpath'. However the plots appear to be identified by the Ordnance Survey parcel number and land area and I am unable to equate any of these plots to land crossed by the claimed routes. As such I do not think that the four references to footpath relate to the claimed routes. In the absence of the original documents I do not consider that the extracts provide evidence that the claimed routes are public. In my view no conclusions can be safely drawn.

Home Guard Map

40. The appellant has submitted a map which is thought to have been prepared by the home guard in 1939 [8]. No evidence has been provided to support the provenance of this map and no details are submitted as to how and why the map was prepared. The map records the cinder footpath as a footpath and the

eastern section of Parsons Garth path now recorded as a public right of way is similarly identified. The map in my view recognises the physical existence of the route but in the absence of more detail no conclusions can be reached as to the status of the way.

Other evidence

41. The appellant has submitted an extract of a deed dated 1903 but no reference has been made to this document in the submissions. Having read the extract there is no reference to the claimed routes and no conclusions can be reached. A letter 6 February 2001 refers to the erection of fencing and the recollection of cinders and ashes making the driving in of fence posts difficult. In my view the letter does not evidence public rights but reflects the existence of a cinder path; there does not appear to be a dispute between the parties as to the existence of a cinder path.

Evidence of Use – Statutory Dedication section 31 of the Highways Act 1980

When the right to use the way was brought into question

42. For the statutory dedication of rights of way under section 31 to apply there must be a bringing into question of the right of the public to use the way preceded immediately by a period of qualifying use of twenty years, as of right and without interruption. Such use raises a presumption of dedication. The period of qualifying use is confirmed by the case of *De Rothschild v Buckinghamshire County Council* (1957) [19]. If a presumption of dedication arises then the evidence of the landowner's intention must be considered. The consideration of accrued years is not applicable as outlined by the appellant [10]. However, it is not necessary to demonstrate use by specific individuals for a full twenty years but it must be shown that the public have used the way in sufficient numbers during the period to raise a presumption of dedication.
43. If the right of the public to use a particular route is to be effectively brought into question there must be some act that is sufficient to bring to the attention of at least some of those people using the way that the right to do so is being challenged so that they may be apprised of the challenge and have a reasonable opportunity of meeting it.
44. The Council considers that the right to use the way was brought into question probably in the 1980s [18]. There is no evidence before me to support this contention although reference is made to a letter from a Mr Judge of Dross Refining; this letter has not been provided. Email correspondence submitted with the appeal appears to indicate that Dross Refining did not own the land over which the claimed routes pass and that it was use of their premises which was stopped. In my opinion there is no evidence that the public was challenged in the 1980s. Further, recent correspondence between an adjacent landowner and the Council is not evidence of a past act which is sufficient to challenge the right to use the way; there should be evidence of an actual challenge. In any event no specific date has been provided; challenges 'in the 1980s' are not sufficiently specific for the application of section 31 of the 1980 Act. No other dates have been put before me of any other challenge to the use of the ways.

45. In view of the fact that there is no evidence of a challenge to the use of the ways the provisions of section 31 of the 1980 Act do not apply. If a date in the 1980s is to be taken as a date of challenge, which for the reasons given above I do not accept, then there is no evidence of use immediately prior to this period. It might be said that the formal application under the Wildlife and Countryside Act 1981 would have brought the right to use the way into question but again there is no evidence of use for twenty years prior to 2000 when the application was made.
46. In conclusion the absence of an effective challenge precludes the application of section 31 of the Highways Act 1980.

Dedication at Common law

47. In the light of my findings that section 31 of the 1980 Act does not apply it is appropriate to consider the dedication of the way at common law; I have outlined the requirements at paragraph 31 above.
48. In my view the evidence indicates use of the Cinder Path from 1918, 1927 in respect of Parsons Garth, up to 1965. The Council indicates that the Cinder Path was not used after 1967 [18]. Use was without force or secrecy and was unchallenged, for example by the erection of notices or by any person. The appellant contends that a notice saying 'no public right of way' was not in place more than twenty years ago [11], the Council do not make reference to any such sign. From the evidence before me it does not appear that the notice shown on photographs submitted by the appellant relates to either route. The way was described as previously well defined with reference to the Cinder Path being double fenced. The forms indicate the presence of stiles along the Cinder Path one of which, near to Rose Farm, replaced a gate; reference is also made to hand gates on both routes. I note the appellants comments in relation to the fencing of the way [11] but it should be noted that there are no statutory widths for public rights of way other than those identified in the Rights of Way Act 1990 relating to disturbance and cropping or those identified in any definitive statement. In this case neither is applicable and in my opinion no conclusions can be inferred from the width provided.
49. Whilst there is no evidence of express permission a number of individuals used the way to access Rose Farm [15]. However with the exception of Mr and Mrs Burrows, Mrs Blackey, Mr Natriss and Mr Hey, who may have had permission to access Rose Farm, there is no evidence that use by others was with permission. Others worked for the landowner [15] although the evidence of use forms indicate that they did not work for the landowner for the full period of their use. Their use may therefore have been with permission but the question has not been asked in the evidence of use forms and therefore no conclusions can be drawn. In respect of Messers Eastwood and Lister there is a period of use prior to working for any landowner. Mr Eastwood used the way for some seventeen years prior to working for the landowner.
50. The Council questions whether use of the way was to school, as a short cut or to visit friends at Rose Farm [15] and therefore a valid journey. In my view it is not necessary to demonstrate that the way was actually to school or a short cut, the essential requirement is that there was use of the way as of right; this

is indicated by the forms. In respect of the visiting of friends there is no evidence that those friends lived at Rose Farm. The Council say that none of the landowners have provided evidence to rebut the claim [18]. The appellant notes that the Council have previously concluded that the evidence was sufficient to raise a presumption of dedication [10]. The Secretary of State may note that at common law use does not raise a presumption of an intention to dedicate but evidences such an intention. The appellant also refers to the belief of those using the route that the way was public. As outlined in paragraph 32 above there is no requirement for those using any way to do so in the belief that they had a right of way; the requirement is that use should be as of right.

51. Having regard to the above, although the evidence of use is not substantial, there has been use for a significant period between 1918 and 1965. Use was without interruption, without force or secrecy but some of that use might have been with permission. There is evidence that stiles were provided along the cinder route which was defined by fencing and access along Parsons Garth was by hand gates. This suggests to me that access was facilitated by the landowner. There is nothing before me to indicate that the landowner did not have the capacity to dedicate the routes and from the use by the public it may be inferred that the landowner intended to dedicate the ways and that was accepted by the public. As such, although finely balanced, dedication at common law may be inferred. If the Secretary of State considers that use of those who have been employed by the landowner, at any time, have used the way with permission then in my view there is insufficient evidence to infer dedication at common law.
52. The appellant notes the legal maxim relating to highways [13] in response to the Council's comments that the way had been interrupted for a number of years [20]. In my view, whilst not suggested by the Council, the absence of use after 1965 would not extinguish any rights which might have been acquired and there is no evidence of any orders to extinguish the ways [13]. I also note the Council's comments in respect of the production of the definitive map [17]. Whilst it may be unusual that well used routes were not included this does not disprove the existence of public rights. The definitive map and statement is conclusive of the particulars contained therein but does not preclude other rights from being shown to exist at a later date.

Conclusions - Section 53(3)(c)(i)

53. The documentary evidence submitted with the claim is in my view incomplete and as such it is difficult to reach any conclusions. However, there is nothing to suggest that public rights could not subsist on the claimed routes. In relation to the statutory dedication under section 31 of the 1980 Act, since there has been no bringing into question of the routes these provisions do not apply. The evidence of use does suggest use for some considerable period as of right and without interruption and therefore sufficient to infer dedication at common law. There is no incontrovertible evidence to suggest that dedication at common law could not have arisen. As such, although finely balanced, the evidence indicates that public rights can be reasonably alleged to subsist and test B, as outlined in paragraph 28, is satisfied. An Order should be made and if any objections are raised then the evidence may be more thoroughly tested.

Other Matters

54. The appellant made the point that the claimed routes have not been maintained for 40 years despite the National Parks and Access to the Countryside Act 1949. It was not necessary for the routes to be on the definitive map for them to be maintained. The appellant refers to the removal of the fencing along the route in the 1960s and the ploughing, cropping and obstruction of the paths and the ploughing and cropping of other paths in the area without any enforcement action. The point was also made that it is illegal to erect signs deterring the use of a highway. In respect of these points it should be noted that the claimed routes are not recorded as public rights of way and before any enforcement action can be taken it would be necessary to ascertain their status. Similarly in the absence of the routes being recorded as public rights of way the obligation to maintain would not be apparent however the absence from the definitive map would not preclude rights from being shown to exist at a later date. Concerns were also raised in respect of the Council's process of the investigations leading up to the Council's decision. This includes access to information and giving preferential treatment to landowners. The appellant questions whether this led to a fair and public hearing.
55. The appellant refers to the potential development of the area and the obliteration of the Cinder Path if development were to proceed. The paths in his view are an asset to the village and provide safe walking for the benefit of all. Reference is made to the acceptance of the paths by the Selby District Investment Prospectus and the implementation of a community project. In my opinion the desirability of the route is not something I can consider.
56. Whilst the Secretary of State may wish to note all the above points they are not in my view material considerations which can be taken into account in considering the evidence and when making my recommendation.

Overall Conclusion

57. For the reasons given above, I conclude that North Yorkshire County Council was not justified in its decision.

Recommendation

58. I recommend that the appeal be allowed and that North Yorkshire County Council be directed to make a modification order, or orders, to add the two routes identified in paragraph 4 above to the definitive map and statement for North Yorkshire County Council as public footpaths.

Martin Elliott

Inspector

NORTH YORKSHIRE COUNTY COUNCIL

WILDLIFE AND COUNTRYSIDE ACT 1981

**THE FORMER WEST RIDING OF YORKSHIRE (AREA NO 2)
DEFINITIVE MAP AND STATEMENT**

**PUBLIC FOOTPATH NO 35.22/19 CINDER PATH AND NO 35.22/20 PARSONS GARTH,
CHURCH FENTON
MODIFICATION ORDER 2010**

This Order is made by North Yorkshire County Council under Section 53(2)(a) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that The Former West Riding of Yorkshire (Area No 2) Definitive Map and Statement require modification in consequence of the occurrence of an event specified in Section 53(3)(c)(i) of the Act, namely, the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows 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.

The authority have consulted with every local authority whose area includes the land to which the Order relates. North Yorkshire County Council hereby order that:-

1. For the purposes of this Order the relevant date is 25 August 2010.
2. The Former West Riding of Yorkshire (Area No 2) Definitive Map and Statement shall be modified as described in Part 1 and Part 2 of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as "Public Footpath No 35.22/19 Cinder Path and No 35.22/20 Parsons Garth, Church Fenton Modification Order 2010".

SCHEDULE

PART 1

MODIFICATION OF DEFINITIVE MAP

DESCRIPTION OF PATH OR WAY TO BE ADDED

<u>Section of Footpath as shown on the attached map</u>	<u>Description</u>
<u>35.22/19</u> Marked by a bold broken black line and shown as A – B – C – D – E – F – G – H.	Starting at its junction with Ash Lane at Grid Reference 45134 43626 (Point A), the path runs generally west-north-west for approximately 420 metres to Grid Reference 45095 43642 (Point B), where it turns north and runs for approximately 30 metres to Grid Reference 45095 43644 (Point C), from where it runs west for approximately 38 metres to Grid Reference 45091 43645 (Point D), from where it runs generally north-north-west for approximately 240 metres to Grid Reference 45087 43668 (Point E), where it turns north east and runs for approximately 93 metres to Grid Reference 45093 43675 (Point F), from where it runs north-north-east for approximately 182 metres to Grid Reference 45099 43692 (Point G), from where it runs east-north-east for approximately 57 metres to Grid Reference 45104 43695 (Point H) at its junction with Common Lane.

<u>Section of Footpath as shown on the attached map</u>	<u>Description</u>
<u>35.22/20</u> Marked by a bold broken black line and shown as F – I.	From its junction with Footpath 35.22/19 at Grid Reference 45093 43675 (Point F), the path runs east-north-east for approximately 200 metres to Grid Reference 45112 43680 (Point I) at its junction with Public Footpath 35.22/2.

PART 2

MODIFICATION OF DEFINITIVE STATEMENT

PARTICULARS OF PATH OR WAY TO BE ADDED

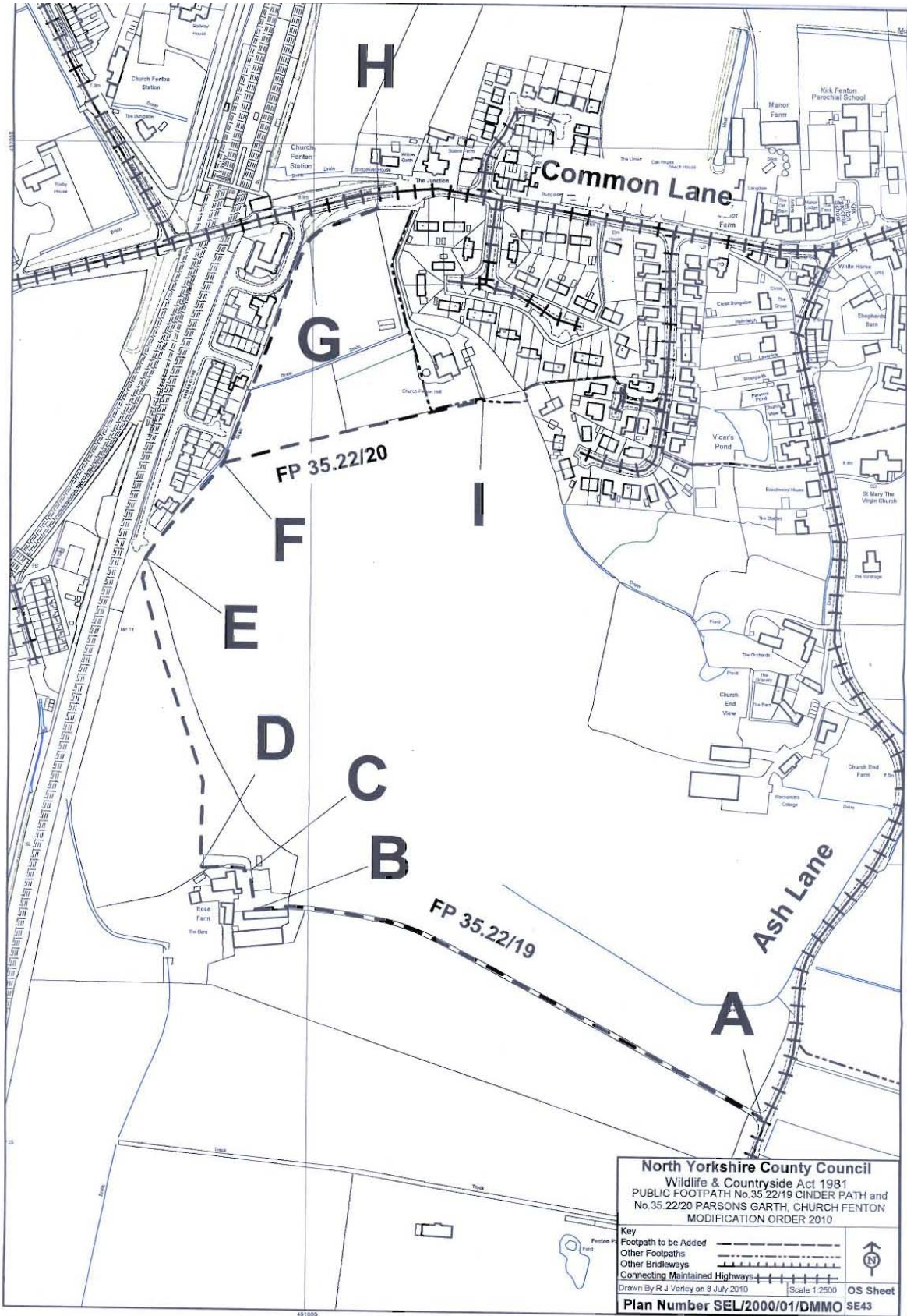
<u>Path Number</u>	<u>Grid Reference End Points</u>	<u>Description</u>	<u>Nature of Surface</u>	<u>Length (km)</u>	<u>Width (m)</u>	<u>Lawful Obstructions and Conditions</u>
35.22/19	45134 43626 (Start) to 45104 43695 (Finish)	Starting at its junction with Ash Lane at Grid Reference 45134 43626, the path runs generally west-north-west for approximately 420 metres to Grid Reference 45095 43642, where it turns north and runs for approximately 30 metres to Grid Reference 45095 43644, from where it runs west for approximately 38 metres to Grid Reference 45091 43645, from where it runs generally north-north-west for approximately 240 metres to Grid Reference 45087 43668, where it turns north east and runs for approximately 93 metres to Grid Reference 45093 43675, from where it runs north-north-east for approximately 182 metres to Grid Reference 45099 43692, from where it runs east-north-east for approximately 57 metres to Grid Reference 45104 43695 at its junction with Common Lane.	Metalled	0.488	3.1 metres	
			Grass	0.572	1.5 metres	
					2.4 metres	Hand Gate
			Total	1.06		

<u>Path Number</u>	<u>Grid Reference End Points</u>	<u>Description</u>	<u>Nature of Surface</u>	<u>Length (km)</u>	<u>Width (m)</u>	<u>Lawful Obstructions and Conditions</u>
35.22/20	45093 43675 (Start) to 45112 43680 (Finish)	From its junction with Footpath 35.22/19 at Grid Reference 45093 43675, the path runs east-north-east for approximately 200 metres to Grid Reference 45112 43680 at its junction with Public Footpath 35.22/2.	Arable	0.200 Total 0.200	1.5 metres	Field Gate

THE COMMON SEAL of NORTH)
 YORKSHIRE COUNTY COUNCIL)
 was hereunto affixed this 8th day)
 of September 2010 in the presence)
 of:-)



[Handwritten signature]
 AUTHORISED
 SIGNATORY



NORTH YORKSHIRE COUNTY COUNCIL

WILDLIFE AND COUNTRYSIDE ACT 1981

**THE FORMER WEST RIDING OF YORKSHIRE (AREA NO 2)
DEFINITIVE MAP AND STATEMENT**

**PUBLIC FOOTPATH NO 35.22/19 CINDER PATH AND NO 35.22/20 PARSONS GARTH,
CHURCH FENTON
MODIFICATION ORDER 2010**

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