

## NORTH YORKSHIRE COUNTY COUNCIL

### PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE

5 AUGUST 2011

#### PUBLIC BRIDLEWAY N<sup>o</sup> 35.5/21 BARLBY – LOCATED ON THE NORTHERN BANK OF THE RIVER OUSE, CREATION ORDER 2009

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

- 1.1 To advise Members of an opposed Creation Order, the effect of which if confirmed would be to upgrade the existing public footpath 35.5/1 to bridleway as part of the Trans Pennine Trail in Barlby with Osgodby Parish, Selby. The route that is the subject of the Creation Order is marked as A – B – C and is shown on **Plan 2**. A location plan showing the general location of the path 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 recommend to Members what stance North Yorkshire County Council should take in making the referral.

#### **2.0 THE COMMITTEE'S RESPONSIBILITIES**

- 2.1 The Committee in considering the Creation Order proposal need to be satisfied that it is expedient that the bridleway should be created after having regard to:
- i) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
  - ii) the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation.

#### **3.0 LEGAL ISSUES**

- 3.1 Section 26 of the Highways Act 1980 confers on the County Council the power to create by order a footpath, bridleway or a restricted byway where the authority considers that there is a need for one, with regard to the extent to which the route would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of residents of the area. This means that an authority may choose to provide a route by means of a creation order if it is convinced of the need of either local people or the general public,

and that such a route may be provided for reasons of convenience, utility or as a recreational facility. On the same basis, a creation order may also be used to 'upgrade' a footpath to bridleway. There is no requirement for the Authority to gain the permission from the landowners over whose land a proposed route lies.

#### **4.0 FINANCIAL IMPLICATIONS**

- 4.1 Compensation can be payable in respect of a Creation Order if a claim shows that the value of a person's interest in the land over which the route concerned crosses is depreciated, or that the person has suffered damage by being disturbed in his enjoyment of that land as a consequence of the order. The compensation payable by the County Council would be equal to the amount of the depreciation or damage.
- 4.2 The area of land concerned in this case is currently a public footpath and the majority of the land on which the route lies is owned by the Environment Agency, who are not opposed to the Creation Order. Therefore it is felt to be unlikely that a compensation claim of any significance would be forthcoming following the confirmation of the Order.

#### **5.0 BACKGROUND TO THE ORDER**

- 5.1 The County Council was approached by the Trans Pennine Trail (TPT) office to help complete a traffic free link between Selby and Hull primarily for cyclists, but also for the use of walkers and equestrians. This part of the Trans Pennine Trail links the towns and cities of North, West and South Yorkshire with Hull and the east coast. Many sections of the route are on easy gradients and are surfaced, making them suitable for use by families, perhaps with pushchairs, and for people using wheelchairs. A generalised plan of the TPT in the area around Selby is attached as Appendix 1.
- 5.2 The TPT consists of approximately 560 kilometres (350 miles) of trails linking York, Hornsea, Chesterfield, and Southport, and is a key part of the National Cycle Network in the north of England. The National Cycle Network is a network of 16,000 kilometres (10,000 miles) of walking and cycle routes across the country developed by Sustrans.
- 5.3 When the approach was originally made to the County Council by the TPT office, the missing link in the network was as shown A – B – C – D – E on Plan 2. Successful negotiations with the landowner at the eastern end of the route have recently resulted in the recording of the section C – D – E as a bridleway via a Creation Agreement made between the landowner and the County Council.

- 5.4 Therefore, the remaining link required, to complete the TPT in this area, is the section shown A – B – C on Plan 2. This section is currently recorded on the Definitive Map as footpath N<sup>o</sup>. 35.5/1 in Barlby with Osgodby Parish and is required to be upgraded to bridleway by means of a Creation Order to allow additional use particularly by cyclists, whilst also offering a quiet off road route for horse riders.
- 5.5 The section shown A – B – C on Plan 2 is the subject of this Creation Order. The section is currently recorded as a public footpath, and lies across land owned by several land owners, some sections of which are not recorded with the Land Registry and ownership details are unknown. Consequently, it was considered that a Creation Order would be the most expedient way of effecting the required upgrade to bridleway of the remaining section of footpath. Plan 3 attached to this report shows more detail of the western section of the route.
- 5.6 A Creation Order was therefore made on 31 March 2010 to record this section as a bridleway. Following the advertising of this Order three objections were received by the County Council. One was from Barlby with Osgodby Parish Council, and the remaining two are from residents of Ousebank who live adjacent to the route set out in the Order.

## **6.0 OBJECTIONS TO THE ORDER**

- 6.1 The objections from the Parish Council are summarised below:
- 6.1.1 The proposed route goes in front of the residential properties at Ousebank.
- 6.1.2 The path is not sufficiently wide to accommodate all the users, and the route ends at the busy Toll Bridge into Selby, bringing users into conflict with vehicles.
- 6.1.3 The path is already extensively fouled by dogs, and horse fouling will only add to the problems.
- 6.1.4 The path surface is unsuitable for horse use, and the ensuing deterioration in condition will cause walkers to trespass onto the private road in front of the houses at Ousebank.
- 6.1.5 The existing subway underneath the railway is already rendered impassable after rain because of the muddy conditions.
- 6.1.6 The nature of the construction of the subway beneath the railway means that passing trains causes noises liable to startle horses and could lead to the injury of riders and other users of the route.

- 6.2 The objections from the two residents are summarised below:
- 6.2.1 Making this route into a bridleway along the Northern Ousebank would create dangers to the general public, riders and horses.
  - 6.2.2 A section of the path is a steep descent into a dark tunnel under a railway bridge with a surface of compressed hardcore which is slippery, and compounded earth which is slippery when wet.
  - 6.2.3 The level of noise near to the railway bridge poses the threat of a horse panicking and stampeding along a narrow pathway to the danger of walkers, cyclists and horseriders, and the parents and children walking to and from the primary school on this pathway.
  - 6.2.4 There is insufficient room for pedestrians, cyclists and equestrians between Elmtree Cottage and the Toll Bridge.
  - 6.2.5 Horses will damage the footpath and make it impassable to walkers, and who will they turn to for repairs.
  - 6.2.6 Horse manure being deposited on the path.
  - 6.2.7 Liability for residents if there is an accident on the path outside Ousebank.

## **7.0 COMMENTS ON THE OBJECTIONS**

- 7.1 Comments on the objections:
- 7.1.1 The proposed route in front of the residential properties is already recorded as a public footpath and is already used by pedestrians. Although there is no recorded right for cyclists to use it at the moment, cyclists have been able to make use of the route under licensed agreement. Whilst the recording of the route as a bridleway will open the availability of the route to both horseriders and cyclists, it is not envisaged that there would be a great increase in the use of the route by horseriders.
  - 7.1.2 If the Order is confirmed, the recorded width of the route will increase to 3 metres, and, as the route is part of a nationally promoted route, works will be scheduled to be undertaken as a priority, to improve and widen the useable surface of the route. There will however be some narrow points on the route such as under the railway bridge. It is accepted that Barlby Road is busy, but it is necessarily the case that any users of the route wishing to go into Selby would have to cross the Toll Bridge and would need to negotiate Barlby Road. Owing to the busy nature of Barlby Road at the Toll Bridge it is unlikely that a significant number of equestrians will use this end of the route.

- 7.1.3 The route is already legitimately used by walkers accompanied by their dogs, and any problems relating to the fouling of the land by dogs is a matter for the District Council to address. It is not envisaged that there would be a significant number of horses using the route, and therefore fouling by them is unlikely to represent any serious hazard.
- 7.1.4 As referred to in 7.1.2 above, if the Order is confirmed, works would be undertaken to provide a more suitable surface, to minimise the future maintenance by the County Council. There would be no liability for maintenance on the landowners.
- 7.1.5 Any problems with the nature of the surface of the route under the railway will need investigation, and possible drainage works would be considered.
- 7.1.6 It is possible that the noise caused by passing trains could startle horses, but it is not believed that there will be any significant equestrian use of the route.

## **8.0 CONCLUSIONS**

- 8.1 The TPT and the National Cycle Network are nationally important routes, and it is desirable for the County Council to liaise with these organisations to complete the network. Whilst the focus was initially on the provision of a national network for cyclists, the TPT is also very supportive of their sections of the route being made available as multi user routes for pedestrians, horseriders and people with wheelchairs, in addition to the cyclists. This is also an objective of the County Council, to take the opportunity to create higher status routes available to a wider range of non-motorised users, as identified with the Rights of Way Improvement Plan. .
- 8.2 It is acknowledged that the route certainly needs some improvement works, which would be programmed to be undertaken as a priority following confirmation of the Order.
- 8.3 Consideration has been given to the effect which the creation of the bridleway would have on the rights of the adjacent landowners, and it is perceived that there will not be a significant impact on the landowners and adjacent residents, as the route is already recorded as a public right of way, and is already being used by pedestrians and cyclists. There will be some increase in the use of the way, as the route would be part of a nationally promoted recreational facility.
- 8.4 The majority of the objectors' concerns, relating to the suitability of the route, will be addressed by the works that will be undertaken if the Order is confirmed.

- 8.5 In summary, the confirmation of the Order would complete a missing link within a prestigious national cycle network, and would be beneficial to a substantial section of the public for leisure purposes. The County Council was satisfied that the criterion was met when making the Order, and whilst there is some sympathy with the points raised it is not believed that the objections raised present sufficient weight to argue that the Order should not be confirmed.
- 8.6 As there are unresolved objections to the Order, the County Council cannot confirm the Order. The matter needs to be referred to the Secretary of State who has the power to determine whether or not the Order should be confirmed.
- 8.7 The Selby Area Committee meeting, held on Monday 25 July 2011, ask that the Planning and Regulatory Functions Sub-Committee note their comment - "That in respect of the section of the route between the bypass and toll-bridge future development will urbanise the area. The Area Committee is supportive of the scheme but has concerns that if horse riding is made permissible this could lead to a conflict with pedestrians in what is predominantly an urban area."

## **9.0 RECOMMENDATION**

- 9.1 The required legal criteria are found to be satisfied for the confirmation of the Order, and it is recommended that the Committee authorise officers to support the confirmation of the Order within the County Council's referral of the matter to the Secretary of State, and, in the event of any Public Inquiry that may be held, that officers retain that stance.

DAVID BOWE  
Corporate Director – Business and Environmental Services

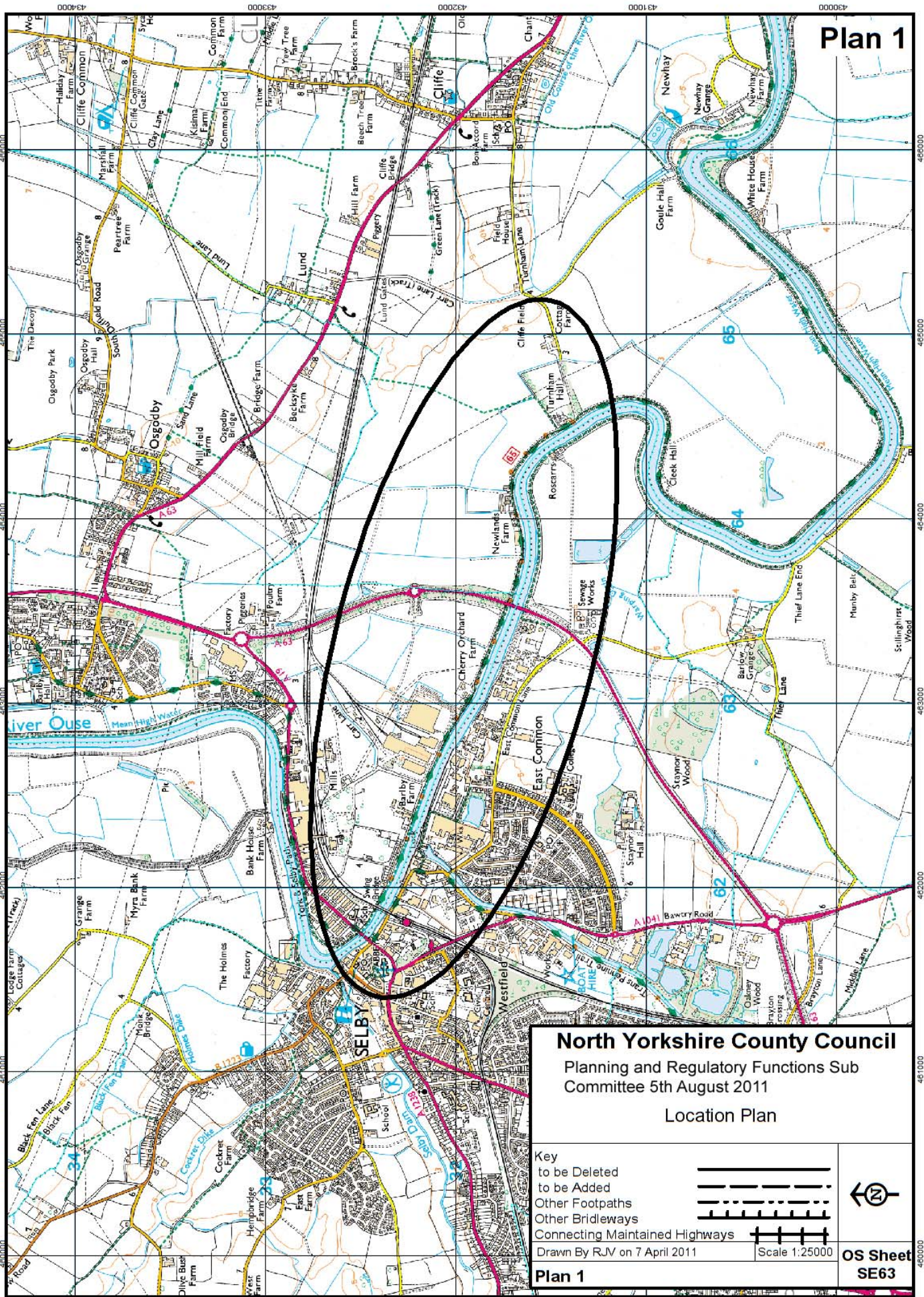
### Background Papers:

Correspondence relating to the proposed Creation Order.

The documents are held on file marked:

“Report to the Planning and Regulatory Functions Sub-Committee, 5 August 2011. Proposed Creation Order to record a Bridleway as part of the Trans Pennine Trail in Barlby with Osgodby Parish, Selby – Background Papers,” which will be available to the Members at the Meeting.

Author of Report: Russ Varley



Plan 1

### North Yorkshire County Council

Planning and Regulatory Functions Sub Committee 5th August 2011

#### Location Plan

to be Deleted	
to be Added	
Other Footpaths	
Other Bridleways	
Connecting Maintained Highways	

Drawn By RJV on 7 April 2011

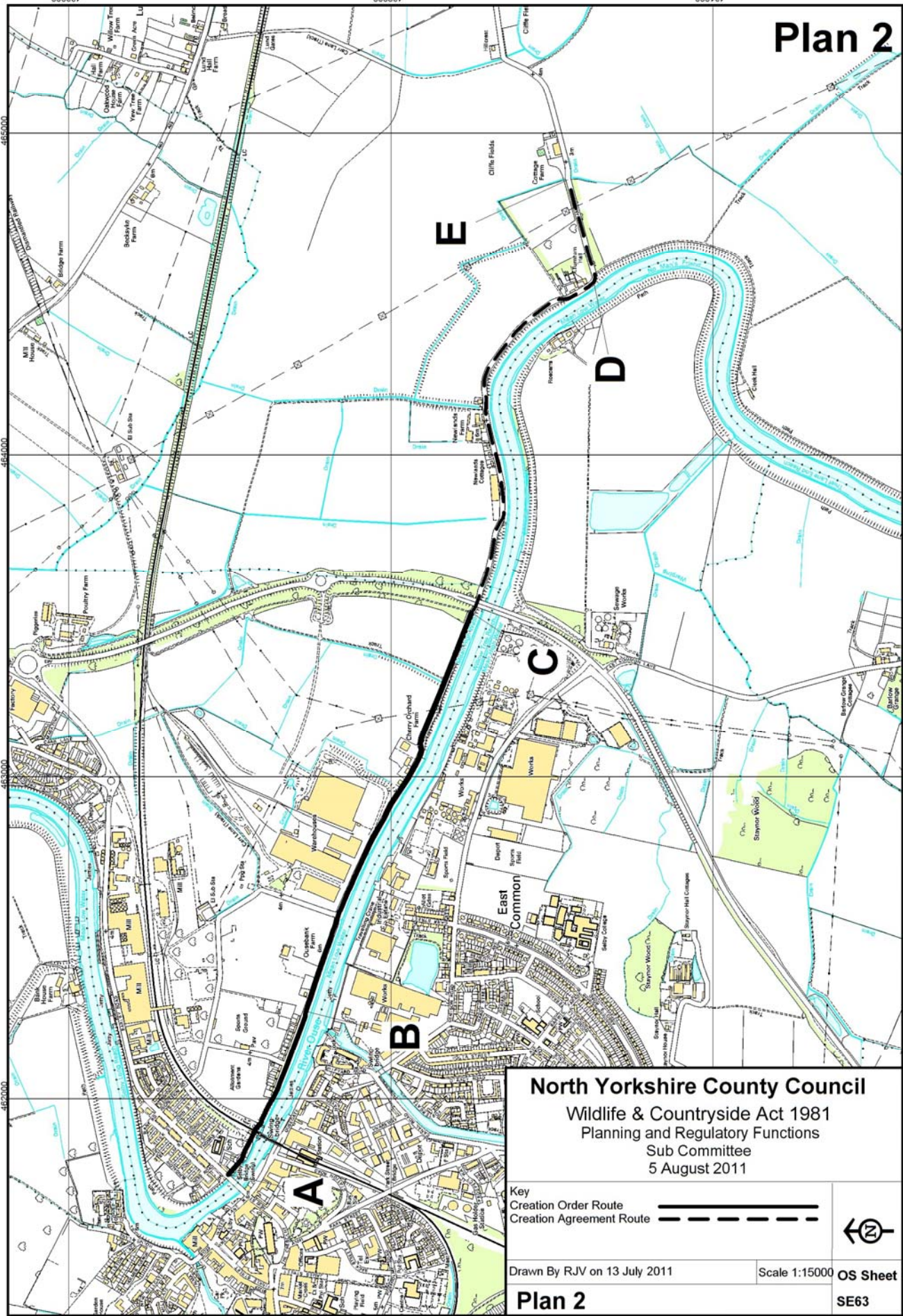
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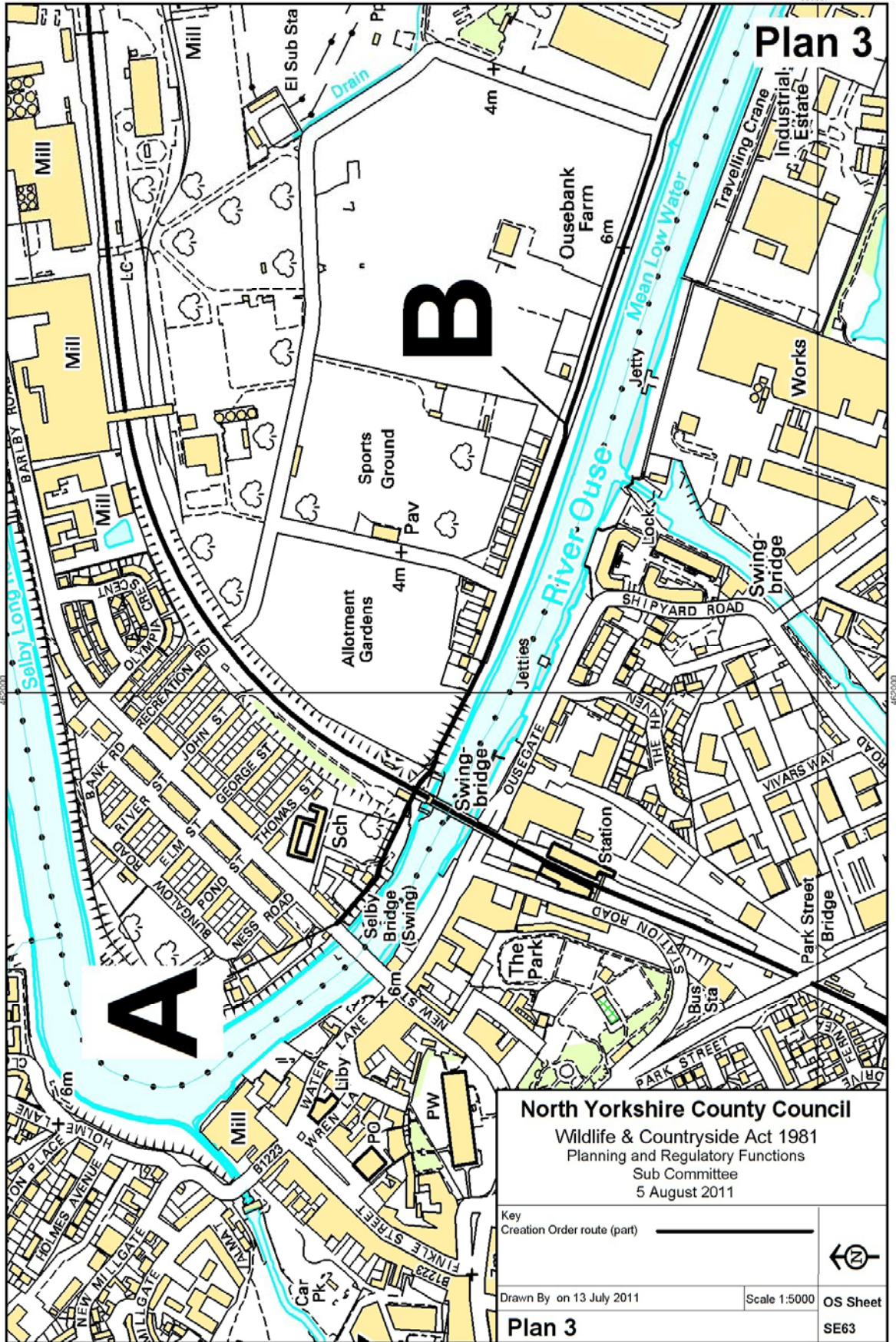
Plan 1

OS Sheet SE63

# Plan 2







**Plan 3**

**B**

**A**

**North Yorkshire County Council**  
 Wildlife & Countryside Act 1981  
 Planning and Regulatory Functions  
 Sub Committee  
 5 August 2011

Key  
 Creation Order route (part) ————



Drawn By on 13 July 2011

Scale 1:5000

OS Sheet

**Plan 3**

SE63

