

## NORTH YORKSHIRE COUNTY COUNCIL

### PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE

5 AUGUST 2011

#### APPLICATION TO UPGRADE FOOTPATH N° 15.122/12 TO A BRIDLEWAY ON THE DEFINITIVE MAP AND STATEMENT, AT LONG FIELD, SPOFFORTH WITH STOCKELD

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

- 1.1 To advise Members of an application for a Definitive Map Modification Order, the effect of which if confirmed would be to add a bridleway along the route known as Long Field, which runs from Stockeld Park to Holins Quarry at Spofforth with Stockeld.
- 1.2 A location plan is attached to this report as Plan 1. The claimed bridleway is shown as A-B on Plan 2.
- 1.3 To request Members to authorise the Corporate Director, Business and Environmental Services, to make a Definitive Map Modification Order.

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

- 2.1 The Committee in considering the Modification Order application acts in a quasi-judicial capacity. It is fundamental that consideration and determination of an issue is based on the evidence before the Committee and the application of the law. The merits of a matter have no place in this process, and so the fact that a decision might benefit or prejudice owners, occupiers or members of the general public, or the Authority, has no relevance to the issues which Members have to deal with and address.
- 2.2 The Committee's decision whether to "make" an Order is the first stage of the process. If Members authorise an Order being "made", and there are no objections to the Order, the County Council can "confirm" the Order. However, if there is objection to an Order that is not subsequently withdrawn, only the Secretary of State would have the power to decide if it should be "confirmed". It would then be likely that a Public Inquiry would be held, and the decision whether or not to confirm the Order would rest with the Secretary of State.

##### **3.0 LEGAL ISSUES**

- 3.1 Under Section 53 of the Wildlife and Countryside Act 1981, the County Council has a duty to make a Modification Order to modify the Definitive Map

and Statement where evidence is available indicating that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist.

- 3.2 Under Section 31 of the Highways Act 1981, a statutory presumption arises that a way has been dedicated as a highway on proof that the way has actually been enjoyed by the public, as of right and without interruption, for a full period of 20 years, unless there is sufficient evidence that there was no intention during that period to dedicate it. That period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question.

#### **4.0 BACKGROUND**

- 4.1 A formal application under Section 53 of the Wildlife and Countryside Act 1981 was submitted on 1 September 2005 by Harrogate Bridleways Association, to upgrade the footpath shown as A-B on Plan 2 to the Definitive Map and Statement as a bridleway.
- 4.2 The application was supported by 23 evidence of use forms, together with old OS maps and 1910 Beans and Son Touring Map. A further 12 evidence of use forms have subsequently been submitted in 2010 and 2011.
- 4.3 The landowner of Stockeld Park Estate deposited a statutory declaration under Section 31(6) of the Highways Act 1980 with the County Council in 1999, which was renewed in 2004. The submission of Section 31 depositions is the formal process that allows landowners to make their intentions clear that they do not want to dedicate any additional public rights of way to those that already exist, over their land. Since 2001 it has been our practice, on receipt of statutory declarations, to notify the relevant statutory consultees of the deposition.
- 4.4 A response to the notification of the renewal of the Stockeld Park Estate deposition in 2004 was received from Harrogate Bridleways Association (HBA) stating that they believed that a section of footpath included within the deposition was being used as a bridleway and should be recorded as a bridleway. This prompted their making of the application in 2005 for the route to be recorded as a bridleway. It is viewed that the original declaration made in 1999 is a challenge to the public's alleged right to use the route as a bridleway, as this is the point at which the public's alleged right to use the route was called into question.
- 4.5 Initially there was liaison between HBA, the landowner and officers, with a view to the route being dedicated by the landowner as a bridleway via a Creation Agreement. Although there was agreement with all parties that this was an option to resolve the matter swiftly, the landowner eventually decided not to sign the prepared Agreement.

- 4.6 When investigations into the application commenced in July 2010, landowners affected by the application, local parish and district councils, and user groups were contacted and invited to submit any evidence relevant to the application.
- 4.7 Objections to the application were received from ET Landnet on behalf of the landowner, who provided details of the actions the landowner and tenants had taken, to prevent the public acquiring the higher rights on the footpath. Copies of the evidence in support of the application had been provided to the landowner on request, and ET Landnet challenged the validity and the vagueness of the evidence of use forms submitted with the application.
- 4.8 The evidence of use forms that had been used at that time were in the old style format that was limited in its request for information. The form had been redesigned in 2006 with a more extensive set of questions and included a plan. Officers wrote to each of the 23 signatories who had completed the original evidence of use forms, asking them to complete a new form in the modern format to provide more specific detail of usage of the route.

## **5.0 USER EVIDENCE IN SUPPORT OF THE APPLICATION**

- 5.1 Twenty-three evidence of use forms were originally submitted in 2005 in the old format. Twenty of the original 23 signatories returned a completed new format evidence of use form. A further 12 new signatories completed evidence of use forms.
- 5.2 The application has therefore been considered on the basis of the 32 newly completed evidence of use forms. The remaining three old forms were disregarded during the consideration of the application, as the information was limited.
- 5.3 Thirty-one of the 32 signatories state they have used the route on horseback and on foot (however, the route is already recorded as a footpath, therefore use of the route on foot is not relevant to this application).
- 5.4 One person had only used the route on foot and bicycle.
- 5.5 One person stated that they had used the route with permission of the landowner.
- 5.6 All of the signatories believe the route to be a bridleway and have seen other horseriders using the route.
- 5.7 Discounting the person who had not used the route on horseback, and the person who had used the route with permission, 30 signatories had used the route as a bridleway apparently “as of right” (i.e. without force, without secrecy and without permission).
- 5.8 These 30 signatories together show use of the route as a bridleway for in excess of the required 20-year period prior to the status of the route being

called into question in 1999, following the submission of the Section 31 deposition. One of the 30 signatories stated that she had used the route on horseback for 37 years and that she was shown the route by older riders when she was a child. The other 29 riders had used the route for periods of between three and 47 years prior to the submission of the Section 31 deposition in 1999.

- 5.9 None of the witnesses state that they had been stopped or challenged when using the route. Two of the signatories state that they have met the landowner and tenant whilst using the route on horseback and were never challenged.
- 5.10 Twenty-nine of the 30 signatories record the route that they used, on the evidence of use plan, as matching the application route as shown on Plan 2. The one remaining signatory has not marked the plan to show the route used but has described it as Long Field, which is the name of the application route on the maps, therefore indicating that it is the application route that they were using.

## **6.0 HISTORICAL EVIDENCE IN SUPPORT OF THE APPLICATION**

- 6.1 The applicant submitted copies of the following old maps to support the claim that the route is a bridleway:
- 6.1.1 1851 OS map Sheet 171, showing the route marked as “B.R” (Bridle Road)
  - 6.1.2 1882 OS map ‘Around Halifax’
  - 6.1.3 1896 OS map Sheet 172, showing the route marked as “B.R”
  - 6.1.4 Bean & Sons Cycling Touring and Driving Map of 60 Miles about Leeds
- 6.2 The OS maps dated 1851 and 1896 show the application route as a well defined track with annotation of “Bridle Road” on the 1851 Edition and annotated as “BR” on the 1896 Edition; this is the common annotation used by Ordnance Survey at this time to demonstrate the existence of a Bridle Road.
- 6.3 The 1882 map and Bean & Sons Cycling Touring and Driving Map do not provide an indication of the status on the route on the map. The maps are at a small scale and indicate routes of a higher status than footpath.

## **7.0 EVIDENCE AGAINST THE APPLICATION**

- 7.1 The trustees of Stockeld Park Estate submitted an objection to the application via their representative ET Landnet Ltd. The points stated in the objection letter are listed below.

- 7.1.1 A map and statement demonstrating the landowner's intention not to dedicate under Highways Act 1980 Section 31(6) was deposited in 1999 and a further deposit was made in 2004.
- 7.1.2 That the signatories acknowledge that tenants occupy the land over which the application route crosses and that the tenant was known locally to challenge anyone found riding the application route, or on any of the land where public rights were not recorded.
- 7.1.3 That the tenants have occupied the land since 1962 and challenges were made from that date onwards, whenever riders have been seen to ride on the application route.
- 7.1.4 Two signatories referred to the presence of bridleway signs on the route. The route has never been signed as a bridleway and such usage would suggest that the users did not use the route to the extent that they claimed they did.
- 7.1.5 In the mid 1980's and 1990's there were a number of liveries on the Estate in the stable yard, and users of the liveries were allowed to hack out on the Estate paths. This was personal to them and did not confer any rights.
- 7.1.6 The tenants would erect an electronic fence on either side of the track and put a temporary gate up across it, to manage their grazing.
- 7.1.7 No weight attaches to the OS plans as evidence of public use, undoubtedly the path was ridden by the family and those employed on the Estate in the 19<sup>th</sup> Century but that did not confer rights on anybody else.
- 7.1.8 The OS plans pre-date the preparation of the Definitive Map where it was determined that only public footpath rights existed. They add nothing to an argument for the existence of public rights on horseback on the application route.

## **8.0 COMMENTS ON THE EVIDENCE**

- 8.1 The user evidence submitted with the application is strong. It does demonstrate that the public have used the route as a bridleway since 1952, although the majority of the public's usage took place between 1980 and 2010 and fulfils the requirement that the route has been used for a period of 20 years on horseback prior to the status of the route being called into question by the deposit of statutory declaration in 1999 by the landowner of Stockeld Park Estate.
- 8.2 It is difficult to draw conclusions from the conflicting evidence, wherein none of the 30 signatories have provided any indication that they were ever challenged or stopped from using the route, but the letter submitted by

ET Landnet Ltd, on behalf of the landowner, states that the tenants of the land challenged equestrian users of the route from 1962 onwards.

- 8.3 The user evidence demonstrates that 80% of the signatories used the route more than ten times a year. This presents strong evidence that the public have frequently been using the route. With the apparent frequency of use by the public of the route it makes it difficult to understand how the apparent challenge by the tenants went unnoticed by the signatories.
- 8.4 Two of the signatories in their evidence of use forms acknowledge that temporary gates were installed across the route on a temporary basis for livestock management. They did not infer that this was a challenge to them using the route on horseback, as it did not prevent their use of the route. In the letter from ET Landnet Ltd, the landowner acknowledges that the gates were there to manage livestock grazing, and does not imply that the intention was to restrict users on the public right of way.
- 8.5 Whilst the historic OS maps dated 1851, 1882 and 1896 do show the application route, and annotate it as "BR" indicating bridle road, this is not actual proof that public bridle rights existed. However, by 1884 Ordnance Survey had ordered that bridle roads should be shown with the initials BR written alongside them, with the object that the public may not mistake them for roads traversable by wheeled traffic. The inference therefore is that by 1896 the route was considered by the OS surveyors to be a bridle road used by the public. This can only be an inference as it should be noted that OS may have copied earlier editions of their maps without undertaking complete re-surveys.
- 8.6 The old undated Bean & Sons Cycling Touring and Driving Map does not provide strong evidence to indicate that the route should be recorded as a bridleway, however it is indicative that the route was of substantial a nature to be shown on this small scale map, the intention of which was to shown routes that were available to the public to use.
- 8.7 Whilst it is correct that the claimed bridleway was recorded as a footpath by the parish council in the 1950s during the preparation of the Definitive Map, this does not preclude the possibility that higher rights may have existed at that time, or have been subsequently acquired.

## **9.0 CONCLUSIONS**

- 9.1 In determining whether or not to "make" an Order following an application that has been made under Section 53 of the Wildlife and Countryside Act 1981, the County Council needs to be satisfied that the claimed public right **subsists or is reasonably alleged to subsist.**
- 9.2 For an Order to be "confirmed", a more stringent test needs to be met. An Order will only be confirmed when either the Secretary of State (in the case of an opposed Order) or the County Council (in the case of an unopposed

Order) is satisfied that the right of way has been shown to exist **on the balance of probabilities**. If the Order is made and then opposed, the process will allow the evidence to be fully tested to determine whether or not public rights do exist.

- 9.3 Officers are satisfied that the evidence in support of this application, in particular the Evidence of Use forms, is sufficient to show that the claimed bridleway is reasonably alleged to subsist, and that a Definitive Map Modification Order should be made.

## **10.0 RECOMMENDATION**

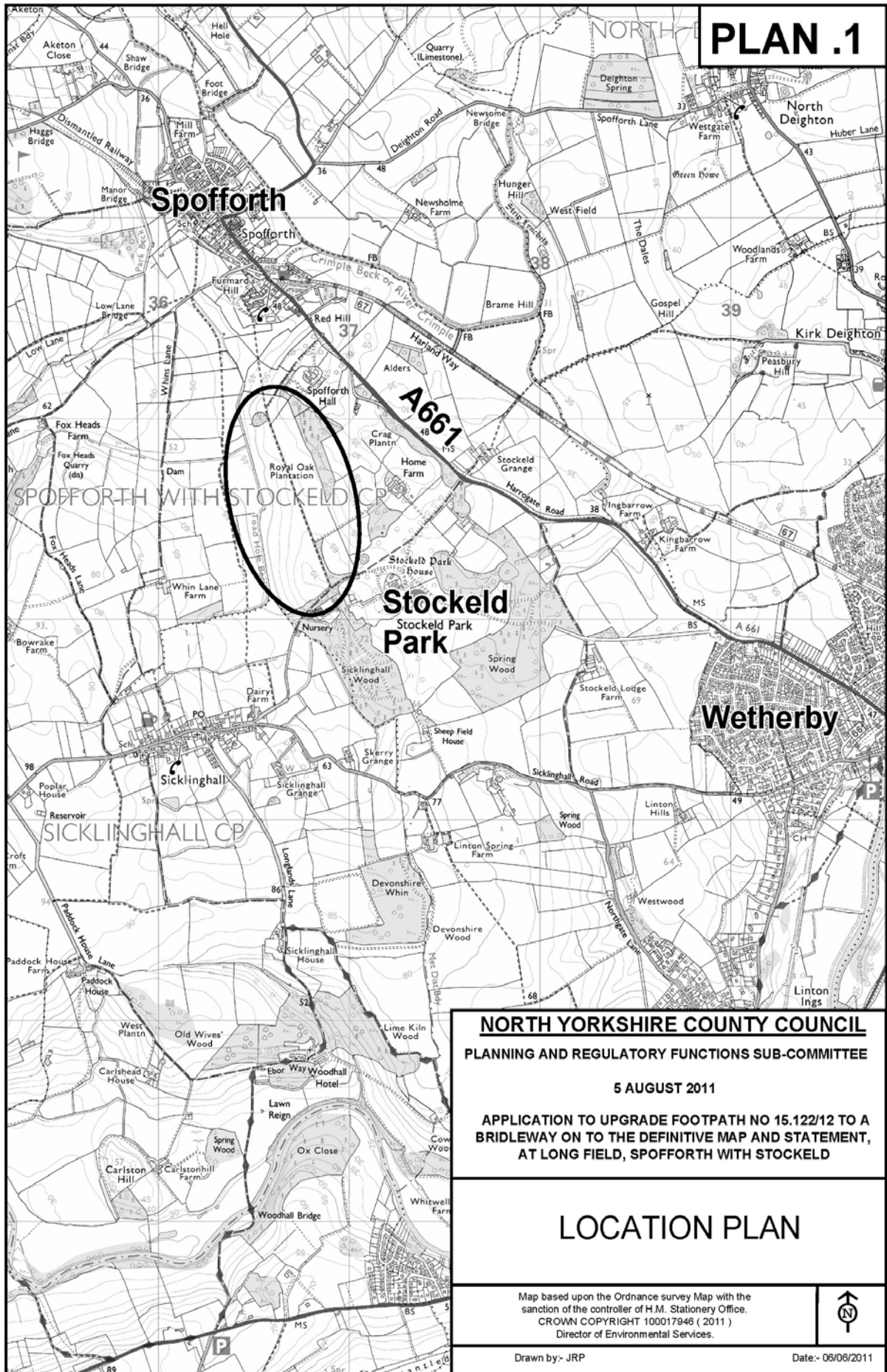
- 10.1 That the Committee authorise the Corporate Director, Business and Environmental Services, to make a Definitive Map Modification Order for the route concerned to be shown on the Definitive Map as a public bridleway, and, in the event that formal objections to that Order are made, and are not subsequently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

DAVID BOWE  
Corporate Director Business & Environmental Services

Background papers:  
DMMO application dated 1 September 2005  
Evidence submitted in support of and against the application.

The documents are held on a file marked:  
County Council's Planning and Regulatory Functions Sub-Committee, 5 August 2011  
Application to upgrade Footpath No 15.122/12 to a bridleway at Long Field, Spofforth with Stockeld, will be made available to members at the meeting.

Author of report: James Perkins, Definitive Map Officer



**PLAN 1**

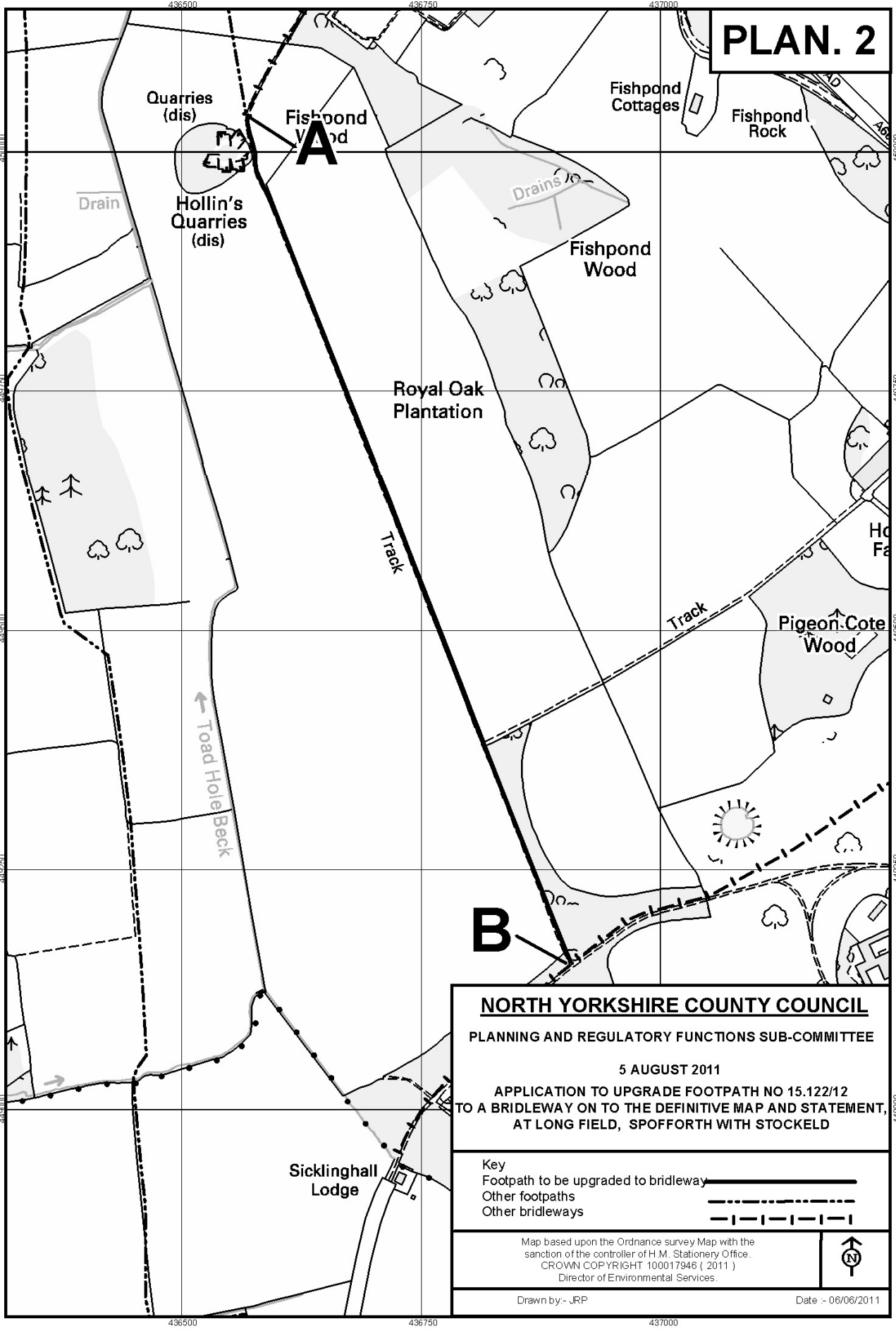
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**LOCATION PLAN**

Map based upon the Ordnance survey Map with the  
 sanction of the controller of H.M. Stationery Office.  
 CROWN COPYRIGHT 100017946 ( 2011 )  
 Director of Environmental Services.

Drawn by:- JRP Date:- 05/06/2011








**PLAN. 2**

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

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APPLICATION TO UPGRADE FOOTPATH NO 15.122/12  
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Key  
 Footpath to be upgraded to bridleway   
 Other footpaths   
 Other bridleways 

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

Drawn by:- JRP Date - 06/06/2011