

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE

5 AUGUST 2011

RESTRICTED BYWAY, N^o 15.50/24 BILLY LANE, TIMBLE MODIFICATION ORDER 2010

1.0 PURPOSE OF THE REPORT

- 1.1 To advise Members of an opposed Definitive Map Modification Order to add a restricted byway to the Definitive Map and Statement along the route known as Billy Lane, which runs from Back Lane to Main Street, Timble.
- 1.2 A location plan is attached to this report as Plan 1. The route referred to is shown by a solid black line and is marked A-B on the plan attached to this report as Plan 2.
- 1.3 To inform Members that the matter will be referred to the Secretary of State for a decision on whether or not to confirm the Order, and to request Members to decide what stance North Yorkshire County Council should take within its submission to the Secretary of State.

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.

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 TO THE ORDER

- 4.1 On 18 August 2005, Washburn Parish Council submitted an application under Section 53 of the Wildlife and Countryside Act 1981 for a Definitive Map Modification Order for Billy Lane to be recorded as a byway open to all traffic (BOAT) on the Definitive Map and Statement. No owner of the lane has been identified.
- 4.2 The evidence that was originally submitted in support of this application consisted of 15 evidence of use forms from 18 signatories. Three of the signatories indicated that they had private rights along the order route to access their properties, and one signatory indicated that he was given permission to use the route by the owner of Timble Inn. Discounting these four signatories, this left fourteen signatories who had used the route as of right.
- 4.3 The signatories show uninterrupted use of the route in excess of the required 20-year period from 1947 to 2005. Twelve of the signatories who have completed the forms state they have used the route for 20 years or more, with the remaining two signatories having used the route for eight and four years respectively.
- 4.4 All fourteen signatories had used the route on foot, ten of the fourteen had also used the route in a motor vehicle, nine signatories had also used the route on a pedal cycle, and one on horseback.
- 4.5 The signatories recorded that they have observed other members of the public using the route. All of the signatories stated that they saw walkers using the route, and the majority had also witnessed use by motor vehicle and bicycles, with one person having seen horseriders using the route.
- 4.6 One signatory commented that the route was occasionally temporarily blocked by parked cars in 2004.
- 4.7 Investigations into the application commenced in August 2009. The adjacent landowners affected by the application, and the parish and district councils, and user groups were contacted and invited to submit any evidence relevant to the application. During the consultation no objections were received to the application.

5.0 THE MAKING OF THE ORDER

- 5.1 Although the original application was for a BOAT, significant changes have since been made to relevant legislation, which affect this application.

5.2 Under Section 67 of the Natural Environment and Rural Communities Act 2006 (NERC Act 2006), Parliament legislated to extinguish certain unrecorded rights of way for mechanically propelled vehicles (motor vehicles) by a blanket provision, with a commencement date for the Act of 2 May 2006, subject to certain exceptions referred to below. The effect of this was that any rights which may have existed for motor vehicles, which were not already recorded on either the Definitive Map or the List of Streets, were extinguished at that date, and therefore the rights no longer existed and cannot now be recorded.

5.3 The NERC Act 2006 acknowledged that there were inevitably applications for BOATs waiting to be investigated by highway authorities. Therefore, Section 67(3) allowed that any motor vehicular rights had not been extinguished by the blanket provision if:

“(a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic”.

The “relevant date” given within the Act was 20 January 2005. This, in effect, provided a backdated cut-off date for existing applications for BOATs. Any applications made before that date could still be considered with a possible outcome of a BOAT being recorded on the Definitive Map. Any applications made after that date could only achieve the highest status of a restricted byway (unless one of the exceptions in Section 2 of the Act applied).

5.4 This application for Billy Lane was submitted after the relevant date of 20 January 2005 and so could only be considered as an application for a restricted byway (which excludes motor vehicle rights), unless it could be demonstrated that one of the exceptions as set out under Section 67(2) of the NERC Act 2006 was applicable.

5.5 The exceptions under which mechanically propelled vehicular rights had not been extinguished are listed in the extract from the Act in Appendix 1 attached to this report.

5.6 The only exception that was considered as potentially relevant to the circumstances at Billy Lane was Section 67(2)(a). This provides that any motor vehicular right had not been extinguished by the Act if:

“(a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles”.

“Commencement” is the date at which the Act became effective, that is, 2 May 2006.

5.7 Although Billy Lane links the main village street to a cul-de-sac narrow back lane, it does not provide a direct link out of the village, nor does it provide a

short cut. Signatories of the evidence of use forms commented that Billy Lane was used by motor vehicles on occasions when Back Lane was temporarily obstructed, for example by delivery vehicles.

- 5.8 After consideration of the evidence provided to the County Council, and consideration of the physical nature of the route, it was considered unlikely that public use of Billy Lane was predominantly by motor vehicle. Private rights of access by motor vehicle (that is, to access properties along the lane) are not extinguished by the Act and are not relevant to the consideration of what public rights exist.
- 5.9 Officers concluded therefore, that the only rights that could exist on Billy Lane were those of restricted byway.
- 5.10 Consequently, North Yorkshire County Council made a Definitive Map Modification Order for a restricted byway on 2 February 2010, which was advertised from 19 February 2010 to 2 April 2010. A copy of the Order is attached as Appendix. 2.

6.0 REPRESENTATIONS MADE TO THE ORDER

- 6.1 Two representations were received in support of the order.
- 6.1.1 British Driving Society commented that the order is welcomed for their members as it avoids the road junction at the Garth (Main Street and Back Lane).
- 6.1.2 An owner of a property on Billy Lane sent a letter in support of the order being confirmed as a restricted byway.
- 6.2 Eight representations of objection to the order were received from Washburn Parish Council and seven local residents of Timble.
- 6.2.1 The comments made by Washburn Parish Council are summarised below:
- Formal submission for a BOAT was made after the cut-off date, but multiple representations to NYCC concerning the highway were made well before the cut-off date.
 - Exception can be made where the main lawful use of the highway during the period five years ending with commencement was for mechanically propelled vehicles. It is the Parish Council's contention that the main lawful use of this highway has indeed been by mechanically propelled vehicles which use the lane on a daily basis.
 - Billy Lane is quite distinct from that of a green lane. It is an important thoroughfare wholly within the village. For the last 30 years at least, its importance has been as:
 - An escape route when Back Lane is blocked by traffic, eg, delivery vehicles and builders' vehicles.

- Alternative route out of the village during bad weather, top section of Back Lane is easily blocked by snow or ice.
- Provides a direct route for moving stock between landholdings in the village and foddering stock.
- If use of Billy Lane by mechanised vehicles is made illegal through its designation as a restricted byway, this would lead to great inconvenience and inevitable difficulties for many residents in the village.

6.2.2 The seven local residents made basically the same comments in their letters, but also added:

- Billy Lane provides the sole pivotal access route between Main Street and Back Lane.
- Historically Billy Lane was a significant through route – a street marked on maps with pavements and a clear thoroughfare from Main Street to Back Lane.
- Livestock is moved regularly from the north to the south side of the village and back via Billy Lane. If the restricted byway is imposed, farmers will be extremely disadvantaged.
- Billy Lane is required by farm vehicles.
- The proposed designation would restrict access for service delivery vehicles.
- Billy Lane has been used by motor vehicles by the villagers for many years, and, under the 2006 legislation, this can be designated as a BOAT under such circumstances.

6.3 Washburn Parish Council have stated that, although the application was not submitted until after the relevant date of the NERC Act 2006, correspondence had been taking place between the parish council and NYCC prior to the cut-off date, and therefore they feel that officers should allow an exception to be made to the legislation in this case. There is, however, no facility within the legislation for an exception to be made, other than by the submission of a duly made application under Schedule 14 of the Wildlife and Countryside Act 1981 (prior to the relevant date,) or by the demonstration that the main use of the route, during the five years prior to the commencement date of the Act, was by motor vehicle. Neither circumstance has been found to be applicable to Billy Lane.

7.0 **SUMMARY**

7.1 No evidence has been provided of any overt action that has been taken to prevent use of the route on foot, by horseriders, by cyclists or by persons in a motor car, nor is it denied that the route is freely used by the public.

7.2 The parish council and local residents' concerns of suitability and convenience or inconvenience are not issues that can be taken into consideration as part of this process in determining what public rights exist.

- 7.3 After consideration of the evidence of use forms, and the physical nature of the route and its relationship to the road network in the village, it is considered that the evidence does not support that the main lawful use of Billy Lane for the five years prior to 2 May 2006 was made by mechanically propelled vehicles, and therefore that the exception as set out in Section 67 2(a) of the NERC Act 2006, which would have allowed for the legal status of the route to be recorded as a BOAT, is not met. Officers do not dispute that there has been free use of the route by motor vehicles when the need has arisen within the village, but consider that the evidence submitted demonstrates that the main public use of the route, during the period of five years prior to the commencement date of the NERC Act 2006 (2 May 2006), was made by the public on foot and on bicycles.
- 7.4 On balance, the evidence suggests that any motor vehicle rights that may have existed along Billy Lane have been extinguished by the NERC Act 2006.
- 7.5 As there is an outstanding objection to the Order, only the Secretary of State can determine whether or not the Order should be confirmed. However, the County Council needs to decide what stance it wishes to take in its submission to the Secretary of State.
- 7.6 Given the strength of the evidence of use of the route, and the absence of any evidence that any of the landowners took any steps to prevent access by the public, it is considered that the County Council should support the confirmation of the order to add a restricted byway to the Definitive Map.

8.0 RECOMMENDATION

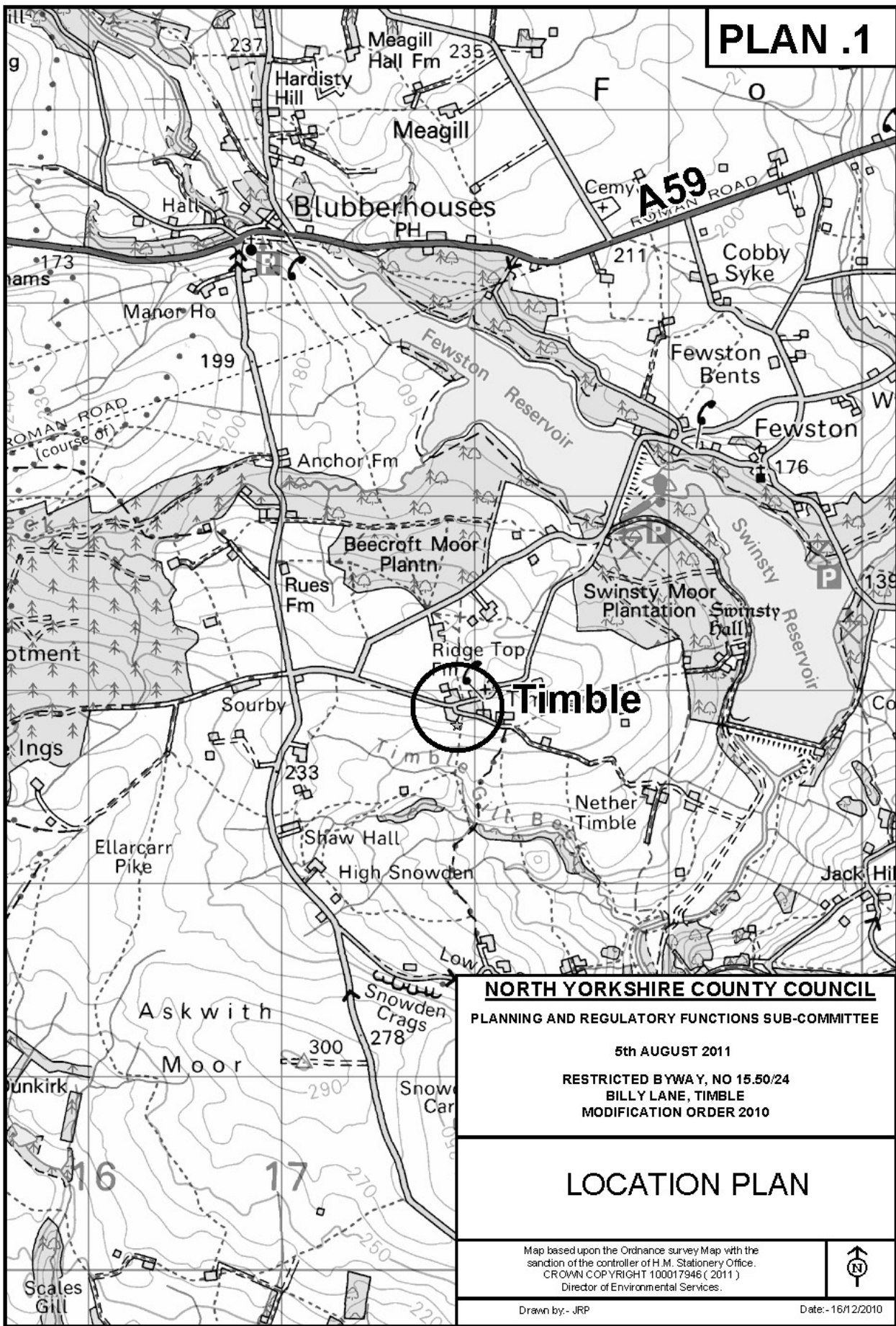
- 8.1 It is therefore recommended that the Committee authorise officers to support the confirmation of the Order within the County Council's submission to be made to the Secretary of State, and, in the event of any Public Inquiry that may be held, that officers retain that stance.

DAVID BOWE
Corporate Director Business & Environmental Services

Background papers: The documents are held on file marked HAR/2005/08/DMMO which will be made available to Members at the meeting.

Author of report: James Perkins, Definitive Map Officer

PLAN .1

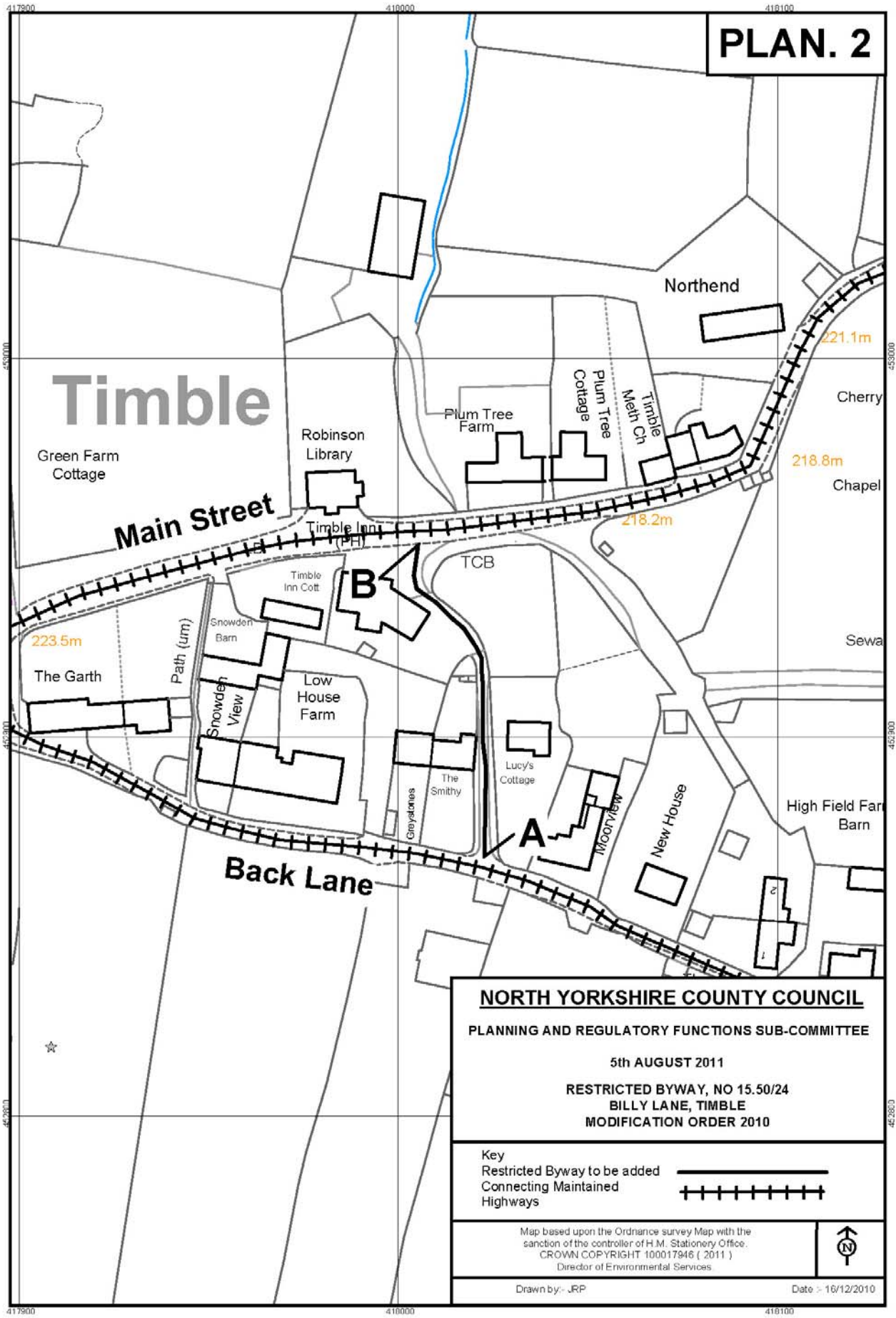


NORTH YORKSHIRE COUNTY COUNCIL
PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE
5th AUGUST 2011
RESTRICTED BYWAY, NO 15.50/24
BILLY LANE, TIMBLE
MODIFICATION ORDER 2010

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:- 16/12/2010



Extract from the Natural Environment and Rural Communities Act 2006, Section 67

Natural Environment and Rural Communities Act 2006 (c. 16)
Part 5 – National Parks and the Broads

27

- (2) After paragraph (h) insert –
 - “(i) a National Park authority; or
 - (j) the Broads Authority.”
- (3) Omit “or” preceding paragraph (h).

PART 6

RIGHTS OF WAY

Rights of way and mechanically propelled vehicles

66 Restriction on creation of new public rights of way

- (1) No public right of way for mechanically propelled vehicles is created after commencement unless it is –
 - (a) created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for such vehicles, or
 - (b) created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.
- (2) For the purposes of the creation after commencement of any other public right of way, use (whenever occurring) of a way by mechanically propelled vehicles is to be disregarded.

67 Ending of certain existing unrecorded public rights of way

- (1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement –
 - (a) was not shown in a definitive map and statement, or
 - (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.
 But this is subject to subsections (2) to (8).
- (2) Subsection (1) does not apply to an existing public right of way if –
 - (a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,
 - (b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense),
 - (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,
 - (d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or
 - (e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.
- (3) Subsection (1) does not apply to an existing public right of way over a way if –

- (a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,
 - (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or
 - (c) before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles –
 - (i) was reasonably necessary to enable that person to obtain access to the land, or
 - (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.
- (4) “The relevant date” means –
- (a) in relation to England, 20th January 2005;
 - (b) in relation to Wales, 19th May 2005.
- (5) Where, immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies –
- (a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or
 - (b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only,
- the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.
- (6) For the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act.
- (7) For the purposes of subsections (3)(c)(i) and (5)(a), it is irrelevant whether the person was, immediately before commencement, in fact –
- (a) exercising the existing public right of way, or
 - (b) able to exercise it.
- (8) Nothing in this section applies in relation to an area in London to which Part 3 of the Wildlife and Countryside Act 1981 (c. 69) does not apply.
- (9) Any provision made by virtue of section 48(9) of the Countryside and Rights of Way Act 2000 (c. 37) has effect subject to this section.

68 Presumed dedication of restricted byways and use by pedal cycles etc.

- (1) Amend section 31 of the Highways Act 1980 (c. 66) (dedication of highway presumed after public use for 20 years) as follows.
- (2) After subsection (1) insert –
 - “(1A) Subsection (1) –
 - (a) is subject to section 66 of the Natural Environment and Rural Communities Act 2006 (dedication by virtue of use for mechanically propelled vehicles no longer possible), but

NORTH YORKSHIRE COUNTY COUNCIL

WILDLIFE AND COUNTRYSIDE ACT 1981

**THE FORMER WEST RIDING OF YORKSHIRE AREA NO 1 (OUTSIDE DALES)
DEFINITIVE MAP AND STATEMENT**

**RESTRICTED BYWAY NO 15.50/24 BILLY LANE, GREAT TIMBLE
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 1 (Outside Dales) 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 19 January 2010.
2. The Former West Riding of Yorkshire Area No 1 (Outside Dales) 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 "Restricted Byway No 15.50/24 Billy Lane, Great Timble Modification Order 2010".

SCHEDULE

PART 1

MODIFICATION OF DEFINITIVE MAP

DESCRIPTION OF PATH OR WAY TO BE ADDED

<u>Section of Restricted Byway as shown on the attached map</u>	<u>Description</u>
Marked by a bold broken black line and small arrowheads and shown as A – B – C – D – E.	Commences at the junction with Back Lane, east of Moorview at Grid Reference 41802 45286 (Point A) and proceeds north for approximately 23 metres to Grid Reference 41802 45289 (Point B), then proceeds in a northerly direction for approximately 30 metres to Grid Reference 41802 45289 (Point C), then proceeds in a north westerly direction for approximately 25 metres to Grid Reference 41800 45293 (Point D), then proceeds in a northerly direction for approximately 11 metres to Grid Reference 41800 45295 (Point E) at the junction with Main Street.

PART 2

MODIFICATION OF DEFINITIVE STATEMENT

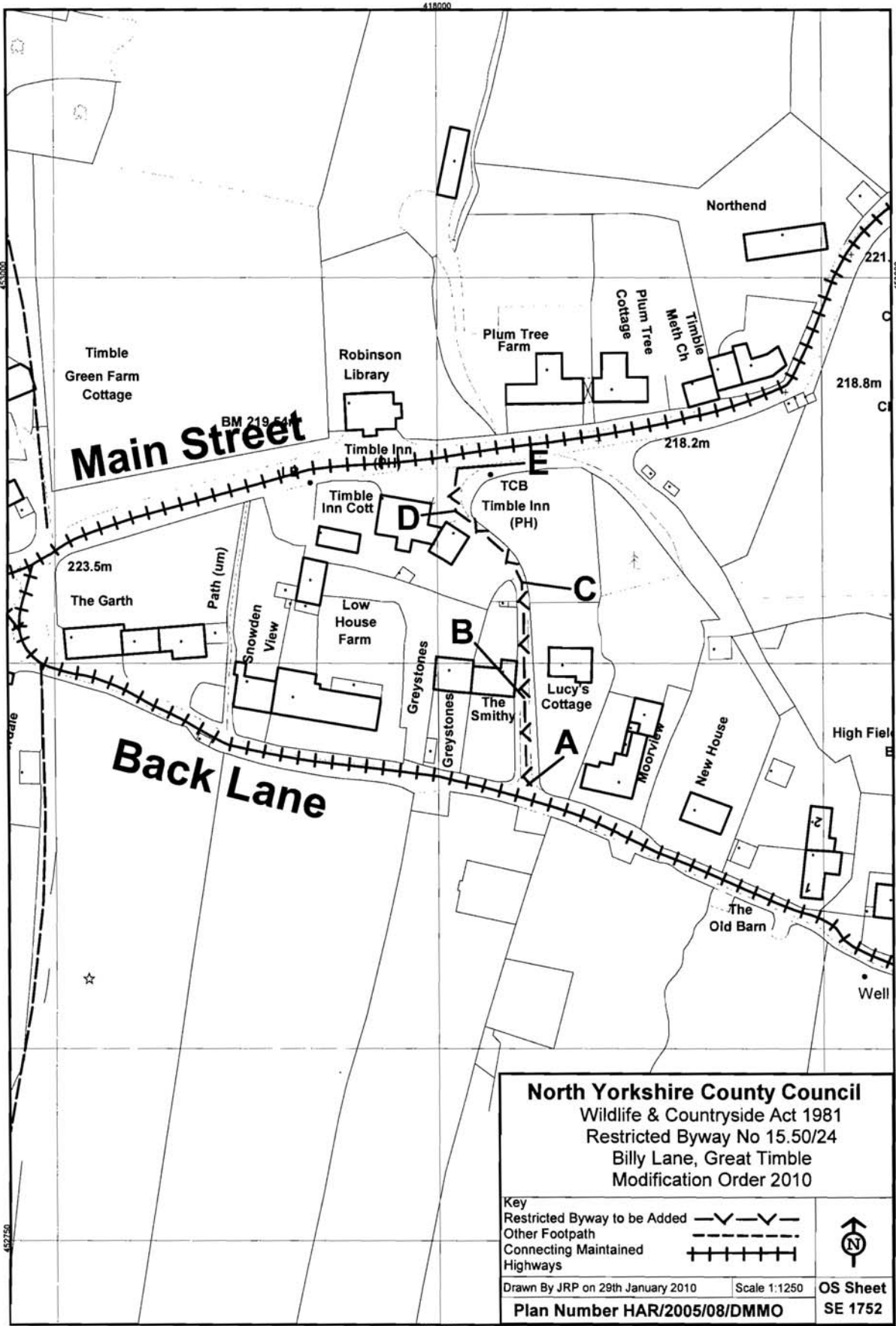
PARTICULARS OF PATH OR WAY TO BE ADDED

<u>Path No</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>
15.50/24	41802 45286 (start point) to 41800 45295 (end point)	Commences at the junction with Back Lane, east of Moorview and proceeds north for approximately 23 metres, then proceeds in a northerly direction for approximately 30 metres, then proceeds in a north westerly direction for approximately 25 metres, then proceeds in a northerly direction for approximately 11 metres to the junction with Main Street.	Gravel Track	0.023 km 0.030 km 0.025 km 0.011 km Total 0.089 km	5.4 m 3.8 m 3.5 m 3.5 m	-

THE COMMON SEAL of NORTH)
YORKSHIRE COUNTY COUNCIL)
was hereunto affixed this 2nd day)
of February 2010 in the presence)
of:-)




**AUTHORISED
SIGNATORY**



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NORTH YORKSHIRE COUNTY COUNCIL
WILDLIFE AND COUNTRYSIDE ACT 1981
THE FORMER WEST RIDING OF YORKSHIRE AREA NO 1 (OUTSIDE DALES)
DEFINITIVE MAP AND STATEMENT
RESTRICTED BYWAY NO 15.50/24 BILLY LANE, GREAT TIMBLE
MODIFICATION ORDER 2010

RICHARD FLINTON
CORPORATE DIRECTOR
BUSINESS AND ENVIRONMENTAL SERVICES
COUNTY HALL
NORTHALLERTON
NORTH YORKSHIRE
DL7 8AH