

NORTH YORKSHIRE COUNTY COUNCIL

COUNTY COUNCIL'S PLANNING AND REGULATORY FUNCTIONS
SUB-COMMITTEE

13 JANUARY 2012

BRIDLEWAY NO.25.28/18, LINGY PLANTATION, GIVENDALE HEAD,
EBBERSTON AND YEDINGHAM CREATION ORDER 2008

**Report of the Corporate Director – Business and Environmental
Services**

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 add public bridleway 25.28/18 to the Definitive Map and Statement at Ebberston, Ryedale. A location plan showing the general location of the path is attached to this report as **Plan 1**. The route that is the subject of the Creation Order is marked as A – B and is shown on **Plan 2**.
- 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. Officers recommend the Authority supports the confirmation of the Order when it is sent to the Secretary of State for determination.

2.0 BACKGROUND

- 2.1 The County Council was approached by the North York Moors National Park Authority in respect of a short section of the Moor to Sea Cycle Route that lies outside the National Park. This section is shown on **Plan 2** attached to this report as A – B – C.
- 2.2 That part of the route marked B - C is recorded on the List of Streets. The remaining section (marked A – B) through Lingy Plantation is not currently recorded either on the List of Streets or the Definitive Map, and the County Council was asked by the National Park to try and establish a public bridleway over this route through the Lingy Plantation to enable funds to be spent on improving the route and to protect it from damage from unlawful use by motor vehicles.

- 2.3 Notices were erected on site giving details of the proposal and showing the contact information for the officer responsible in the hope that an owner might come forward. No response was forthcoming. As the owner of the lane could not be identified the route could not be added by a Creation Agreement therefore it was considered that the most appropriate means of achieving the desired outcome would be by a Public Path Creation Order.
- 2.4 Consultations with Ryedale District Council, Ebberston Parish Council and the Forestry Commission were undertaken. .
- 2.5 The Creation Order was sealed on 8 February 2008 and was subsequently advertised to the general public in accordance with due procedure. A copy of the Order is attached as an appendix to this report.
- 2.6 One objection was received from the British Horse Society.

3.0 LEGAL ISSUES

- 3.1 In exercising powers delegated to him to make the Order concerned the Corporate Director Business and Environmental Services was satisfied that it is expedient that the bridleway should be created after having regard to the relevant criteria set out in section 26 of the Highways Act 1980, namely :
- 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 in section 28 of the Highways Act 1980.
- 3.2 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 subject to the provisions set out in 3.1 of this report (above). Although it is generally our practice to do so where possible, there is no requirement for the Authority to gain permission from the landowners over whose land a proposed route lies to make a Creation Order, although as stated in 3.1(ii) above, account should be taken of the effect on landowners.

4.0 FINANCIAL IMPLICATIONS

- 4.1 Compensation is payable, on application, if in consequence of the coming into operation of a Creation Order it is demonstrated 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.
- 4.2 In this particular this case the route is not currently recorded as a public right of way, however it does form part of the Moor to Sea Cycle Route and is in regular use by walkers, cyclists and equestrians without complaints being addressed to the Authority by any land owner. In the light of this, and that, to date, it has not been possible to trace an owner, it is felt to be unlikely that a compensation claim of any significance would be forthcoming following the confirmation of the Order.

5.0 OBJECTION TO THE ORDER

- 5.1 The objection received from the British Horse Society centred on the Society's belief that the route should not be recorded as a bridleway, but rather with the higher status of restricted byway.
- 5.2 The British Horse Society have supplied numerous documents to support their objection including various maps showing the route and North Yorkshire County Council Highway maps that apparently show the route having previously been recorded as a highway.

6.0 COMMENTS ON THE OBJECTION

- 6.1 The relevant criteria to be considered when determining whether or not a Creation Order should be confirmed does not include an assessment of what (if any) public rights may already exist.
- 6.2 The evidence supplied by the British Horse would be relevant if an application for a Definitive Map Modification Order was under consideration, but is not relevant to considering whether or not the Creation Order, subject of this report, should be confirmed.

7.0 OTHER CONSIDERATIONS

- 7.1 There are other courses of action open to the County Council that need to be considered.
- 7.2 The Authority could consider abandoning the existing Creation Order and remake it as a Creation Order for a restricted byway, however in order for a Creation Order to be made; the Highway Authority must identify a need for the route to be created. It is considered that a need for a restricted byway has not been identified, but that the need for a bridleway has been identified, particularly as this route has been promoted as the Moor to Sea Cycle Route to be used by pedestrians, horses and cycles. Therefore the County Council could not satisfy the relevant criteria set out in Section 26 of the Highways Act 1980 to create a restricted byway, but it can satisfy the relevant criteria to create a bridleway.
- 7.3 The Authority could abandon the existing Creation Order and pursue the application for a Definitive Map Modification Order (DMMO) that has recently been submitted by the objector, to record the route on the Definitive Map as a restricted byway. The Objector has submitted a great deal of evidence as part of the objection to the Creation Order for the bridleway, and in support of the DMMO application. It consists of a number of maps and the Allerston Inclosure Award.
- 7.4 The DMMO process and the Creation Order are two separate and independent processes. The Council are obliged to consider the DMMO application on its merits and cannot pre judge the outcome of that process however, a preliminary review of the evidence provided by the applicant suggests that the criteria have not been met and that it is therefore unlikely that the County Council will make the Order unless instructed to do so following any appeal
- 7.5 The County Council could abandon the Order and record the route on the List of Streets (which appears to be the objector's preferred option). Whilst the procedure for recording routes on the List of Streets is beyond the scope of this report, it is understood that a similar level of evidence is required to change this record as is required to undertake the Definitive Map Modification Order process. Therefore the points set out in 7.6 above also apply to this option and mean that such a request is unlikely to be successful.
- 7.6 Although there are alternative options, it is suggested that the most practical and responsible approach is to now confirm the existing Creation Order for the bridleway. This will establish a minimum status for the route and allow it to be properly maintained and protected. This would not preclude the possibility that higher rights could exist, which could be established from the investigation of the recently received DMMO in due course.

8.0 CONCLUSIONS

- 8.1 The Scarborough to Whitby Railway Cycle Path, the Moor to Sea Cycle route and the extensive range of cycling facilities within the nearby Forestry Commission's estate have all led to an increase in the amount of cycling within this area. This in turn has led to the growth of businesses serving the large number of visitors to the area who make the most of the excellent range of cycling experiences in the locality.
- 8.2 The work needed to bring the surface of the route which is the subject of this report up to the standard required has already been carried out by the National Park Authority who will, as the promoter of the Moor to Sea Cycle route, continue to monitor the route's condition and undertake necessary remedial works.
- 8.3 The confirmation of the Order would complete a missing link within an important cycling route that is popular with both residents and visitors to the area. The County Council was satisfied that the criteria were met when making the Order, and whilst the material submitted by the British Horse Society in objecting to the Order is of interest, it is not relevant to determining whether or not the Creation Order should be confirmed.
- 8.6 As there is an unresolved objection 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 Ryedale Area Committee Meeting held on the 9 November 2011 made the following comments on this matter.
- i) County Councillor Janet Sanderson advised caution when horses and cyclist use the same bridleway.
 - ii) A member of the public, who supported the Order, did not consider there to be any conflict between horse riders and cyclists; cyclists are required to give way to horses.

9.0 RECOMMENDATION

It would appear that the required legal criteria are satisfied for the confirmation of Bridleway No.25.28/18, Lingy Plantation, Givendale Head, Ebberston and Yedingham Creation Order 2008

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, Hearing or Written Representation procedure that may occur, that officers retain that stance.

D. BOWE

Corporate Director – Business and Environmental Services

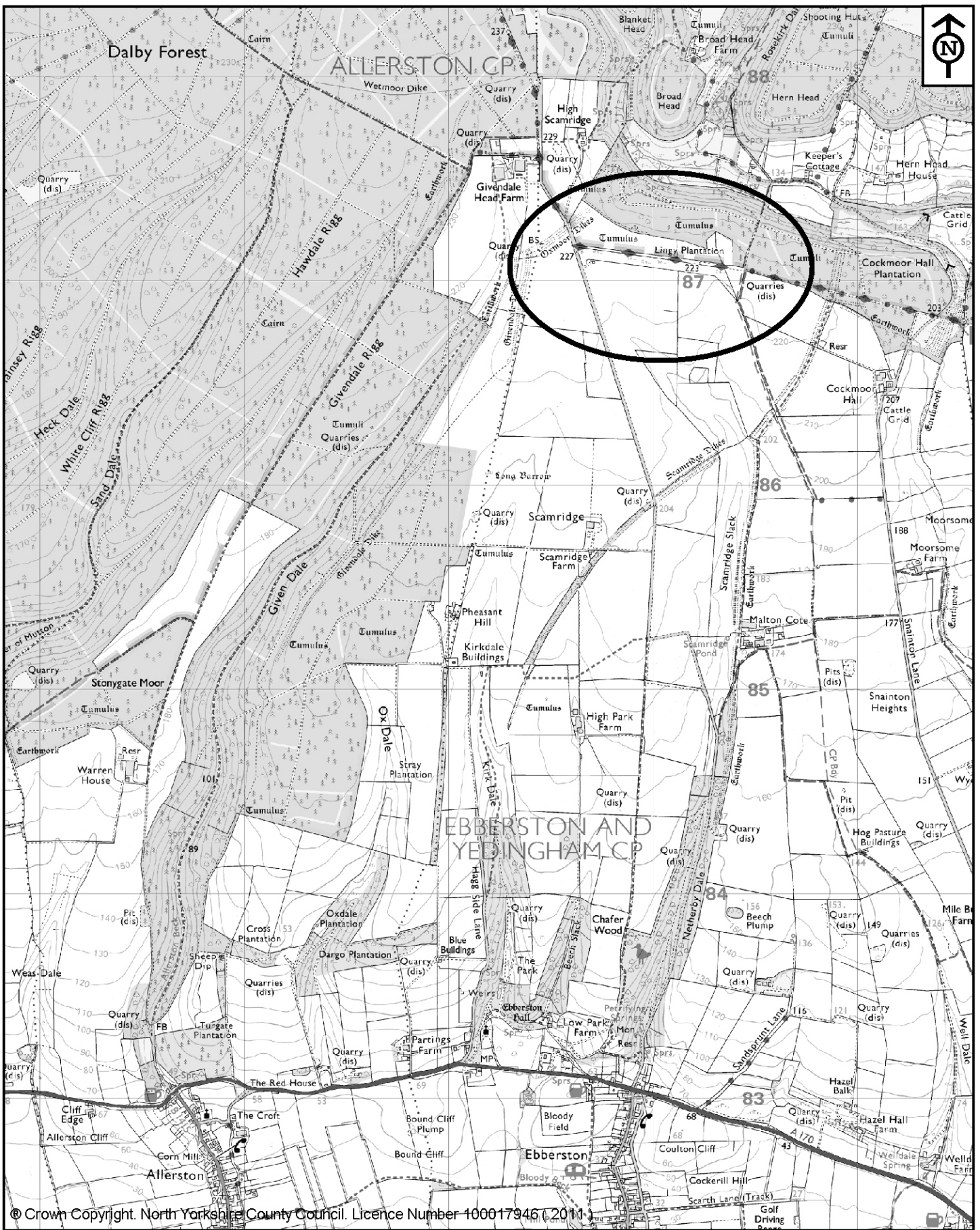
Background Papers: -

Correspondence relating to the proposed Creation Order.

The documents are held on file marked :-

“Report to the Planning and Regulatory Functions Sub Committee, 13 January 2012. Creation Order to record a Bridleway at Lingy Plantation in Ebberston Parish, Ryedale – Background Papers” which will be available to the Members at the Meeting.

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**North
Yorkshire County Council**

Public Rights of Way
Waste and Countryside Services
County Hall
Northallerton
DL7 8AH

Location Plan

Map drawn on 20 September 2011
Drawn by RJV

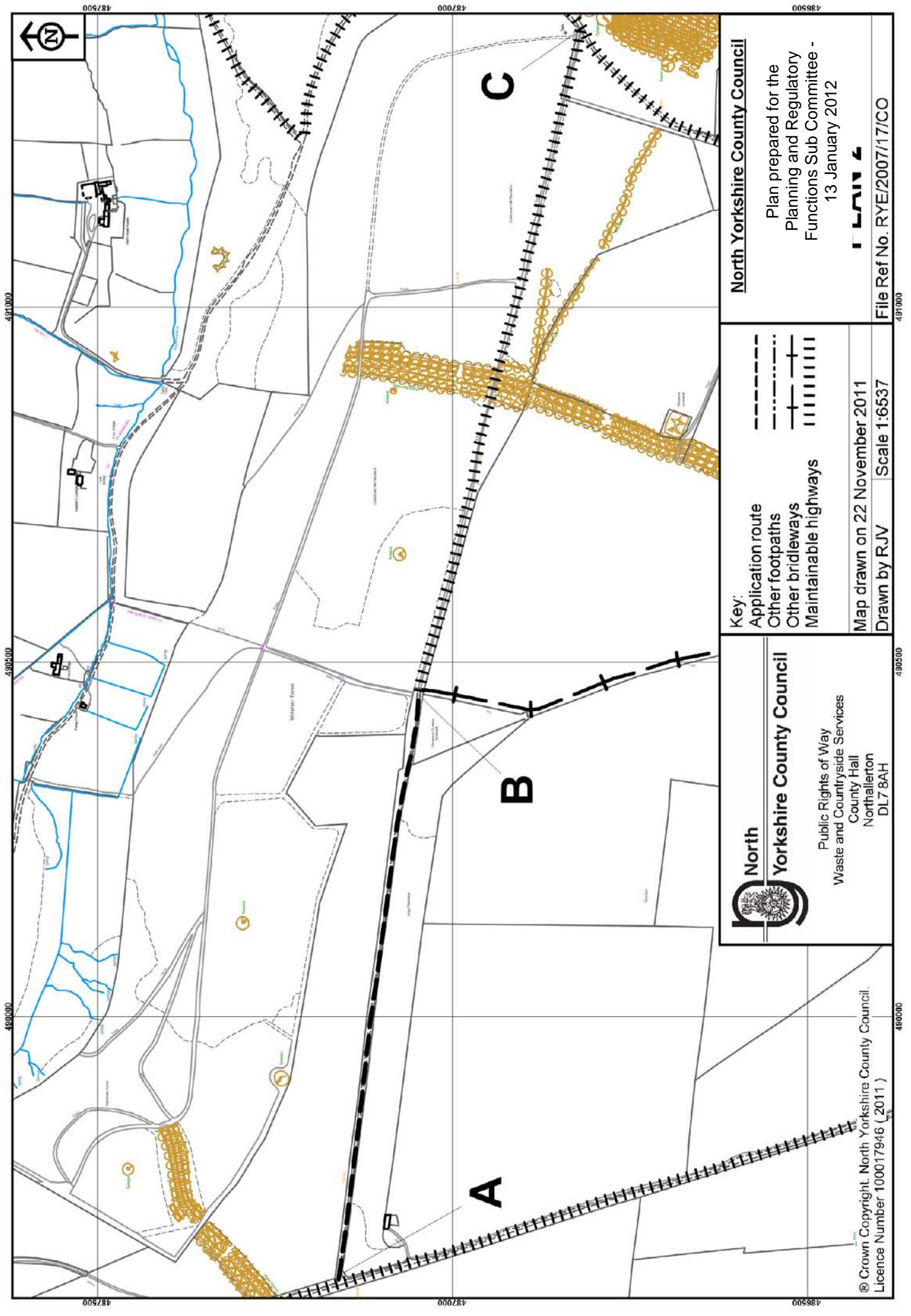
Scale 1:25000

North Yorkshire County Council

Plan Prepared for the Ryedale Area
Plan prepared for the Planning
and Regulatory Functions Sub
Committee - 13 January 2012

PLAN 1

File Ref No.



North Yorkshire County Council
 Public Rights of Way
 Waste and Countryside Services
 County Hall
 Northallerton
 DL7 8AH

Key:
 Application route (thick dashed line)
 Other footpaths (thin dashed line)
 Other bridleways (line with cross-ticks)
 Maintainable highways (line with vertical ticks)

Map drawn on 22 November 2011
 Drawn by RJV | Scale 1:6537

North Yorkshire County Council
 Plan prepared for the
 Planning and Regulatory
 Functions Sub Committee -
 13 January 2012

LAV

File Ref No. RYE/2007/17/CO

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