

NORTH YORKSHIRE COUNTY COUNCIL

**COUNTY COUNCIL'S PLANNING AND REGULATORY FUNCTIONS SUB
COMMITTEE**

13 JANUARY 2012

**REPORT CONCERNING AN APPLICATION FOR A DEFINITIVE MAP
MODIFICATION ORDER TO RECORD A PUBLIC FOOTPATH ON THE
DEFINITIVE MAP AND STATEMENT AT WRELTON, RYEDALE.**

Report of the Corporate Director – Business & Environmental Services

1.0	<u>PURPOSE OF THE REPORT</u>
1.1	To advise Members of an application for a Definitive Map Modification Order to record a public footpath from: Cropton Lane, Wrelton to Wrelton Cliff Road, Wrelton along Back Lane. A location plan is attached to this report as Plan 1 . The route referred to, is shown by a bold dashed black line and is marked A – B on the plan attached to this report as Plan 2 .
1.2	To request Members to authorise the Corporate Director of 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 law. The merits of a matter have no place in this process and 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 However, if there is objection to an Order, that is not subsequently withdrawn, only the Secretary of State would have the power to decide if it should be "confirmed".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 where a Highway Authority discovers evidence which (when considered with all the other relevant evidence available to them) shows that a right of way which is not shown in the Definitive Map and Statement “subsists or is reasonably alleged to subsist” then the Authority should make a Definitive Map Modification Order.
- 3.2 Further, under Section 31 of the Highways Act 1980 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. The period of 20 years is to be calculated retrospectively from the date when the claimed right of the public to use the way is brought into question.
- 3.3 At common law a route can be held to have been dedicated as a public right of way on the basis of evidence of use. There is no prescribed period over which it must be shown that use has occurred but an inference of dedication by a landowner must be capable of being drawn. The use relied on must have been exercised “as of right”, which is to say without force, without secrecy and without permission. The onus of proof lies with a claimant.

4.0 BACKGROUND TO THE ORDER

- 4.1 An application dated 22 October 2007 was made under the Wildlife and Countryside Act 1981 to add a footpath to the Definitive Map and Statement at Wrelton, Ryedale. The application was supported by user evidence forms from 9 people.
- 4.2 The claimed route lies along a well-defined track that runs behind several properties facing on to the High Street, Wrelton. The way is known locally as Back Lane.
- 4.3 Following the initial consultation with other local councils, user groups, and land owners five objections were received by the County Council.

5.0 EVIDENCE IN SUPPORT OF THE APPLICATION

5.1 User Evidence Forms

- 5.1.1 Evidence forms from a total of 77 people have been submitted in support of this application. Nine were submitted with the application and an additional 68 have been gathered since through the efforts of the Parish Council and other local residents.
- 5.1.2 Reasons given for the use of the route range from leisure walks to driving livestock between the fields around Wrelton.

- 5.1.3 The span of usage covered by the forms is from 1910 to 2007 when the application was submitted. Some witnesses state that they have used the path for over 90 years.
- 5.1.4 No user reports being challenged or seeing any evidence that the route was not a public right of way until 2007.
- 5.1.5 Of the 77 witnesses it is apparent that eleven people used the route under licence for at least part of their usage period. The use under licence was typically accessing agricultural fields either as the owner/tenant or on behalf of the owner/tenant. Such use under licence does not accrue public rights for the purpose of Section 31 of the Highways Act 1980.
- 5.1.6 Of the 77 witnesses seven did not give dates during which they used the route. This means that their evidence cannot be used for the purpose of Section 31 of the Highways Act 1980. One of the seven had also used the route under licence.
- 5.1.7 As a consequence of what is detailed above (see 5.1.5 and 5.1.6) 17 evidence of use forms are not relevant. However this still leaves 60 witness statements` supporting the application.

5.2 Historic Evidence

- 5.2.1 No historical documentary evidence was submitted with the application, however the route does appear on Ordnance Survey Maps from 1892 onward.

6.0 EVIDENCE AGAINST THE APPLICATION

- 6.1 Following the initial application and subsequent consultation five objections have been received by the County Council. They are from people who either own land adjacent to the track or have connections to the owners of land adjacent to the track.
- 6.2 The objections take four forms. First that some of the users of the way have been regularly challenged and informed that they had no right to be there. These challenges were made by the owners of properties adjacent to the route from at least 2002 and may date back even further.
- 6.3 Secondly that signage has been erected and maintained along the route stating that the route was not a public right of way.
- 6.4 Thirdly, that the route was not a through route until 2002 following some drainage work carried out along Back Lane.
- 6.5 Finally, many of the people who have completed evidence of use forms have in fact been given permission to use the track and therefore their usage does not accrue rights for the purpose of claiming a right of way under Section 31 of the Highways Act 1980. From the documentation provided it is evident that

at least three people who completed evidence of use forms claiming use “as of right” had in fact received permission from the land owner.

- 6.6 In addition to the reasons for objection above, one objector also states that the Parish Council have accepted that the route is not a public right of way when they were looking for suitable locations for a dog waste bin and that the track shows very little sign of use, not commensurate with that alleged within the evidence of use forms.

7.0 COMMENTS ON THE EVIDENCE IN SUPPORT OF THE APPLICATION

- 7.1 The evidence of use supplied to support the application presents a compelling case that the route has been used as a public right of way for many years. It appears from most of the forms that the route has been considered public for a long period.
- 7.2 Whilst some evidence has been discounted either because the use has been under licence or through the statements not giving sufficient information on the years over which the route has been used, there is still a substantial body of evidence supporting the view that the route is public.

8.0 COMMENTS ON THE EVIDENCE AGAINST THE APPLICATION

- 8.1 The evidence available to the County Council shows that the systematic challenging of users only began in 2007 and lead to the submission of the application to the County Council. Any alleged challenges made before 2007 are not corroborated by the current evidence available.
- 8.2 For an application to meet the statutory test under the Highways Act 1980 a period of 20 years uninterrupted use needs to be shown, calculated back from the date when the public’s right to use the route was called into question. If the public’s right to use the route was called into question in 2002 when the objectors report that signs were erected rather than 2007 when the application was submitted; then there would still be 34 witnesses that have used the route for in excess of the 20 years required by the 1980 Act.
- 8.3 There is evidence of signage having been present on the site however it is apparent that the wider public only became aware of these signs in 2007 and photographs provided do not give any indication of the date they were taken.
- 8.4 Some people may have indeed been given permission to use the route, but the evidence only clearly shows three people who had completed an evidence of use form had in fact been given permission. Removing their forms from the evidence supporting the application reduces the number of valid forms to 57.
- 8.5 The objectors state that the way was not a through route until 2002, however the evidence of use forms suggest that they way was being used as a through

route as far back as 1910. Examination of old Ordnance Survey maps show that there was some sort of barrier across the route to the north of what is now Holly Close which appears to confirm the objectors' position, however Ordnance Survey maps do not show structures such as gates or stiles which would allow the public to pass and re-pass along the way. Therefore it is not possible to determine which position is historically correct.

- 8.6 Finally, acceptance that the route is not public by the Parish Council appears to be contradicted by the actions of the Parish Council in collecting the significant number of evidence of use forms submitted in support of the application. It seems likely that their acceptance was only in terms of locations for dog waste bins rather than being a comment on the alleged status of the way. Also that the track shows little signs of use is unsurprising given that it is approximately five metres wide meaning that users are not constrained to the kind of narrow route that causes wear to appear.

9.0 CONCLUSION

- 9.1 In 2007 the land owners adjacent to the way systematically attempted to stop members of the public using Back Lane by erecting signs and challenging people. Those actions lead to an application for a Definitive Map Modification Order being made because the public's right to use the way was called into question.
- 9.2 Evidence indicating that the activities in 2007 were the continuation of a long running programme of prevention is not sufficiently compelling to prevent reaching a conclusion that a public right of way is reasonably alleged to subsist along Back Lane.
- 9.3 The Ryedale Area Committee Meeting held on the 9 November 2011 made the following comments on this matter.
- i) Councillor Linda Cowling had always considered the route to be a public footpath; she welcomed the report.
 - ii) Councillor Paul Andrews said that he appreciated the report being brought to Committee for their comments.

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 set out in the Application to be shown on the Definitive Map as a public footpath, 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 shall support confirmation of the Order in referring the matter to the Secretary of State.

DAVID BOWE

Corporate Director – Business and Environmental Services

Background Papers:

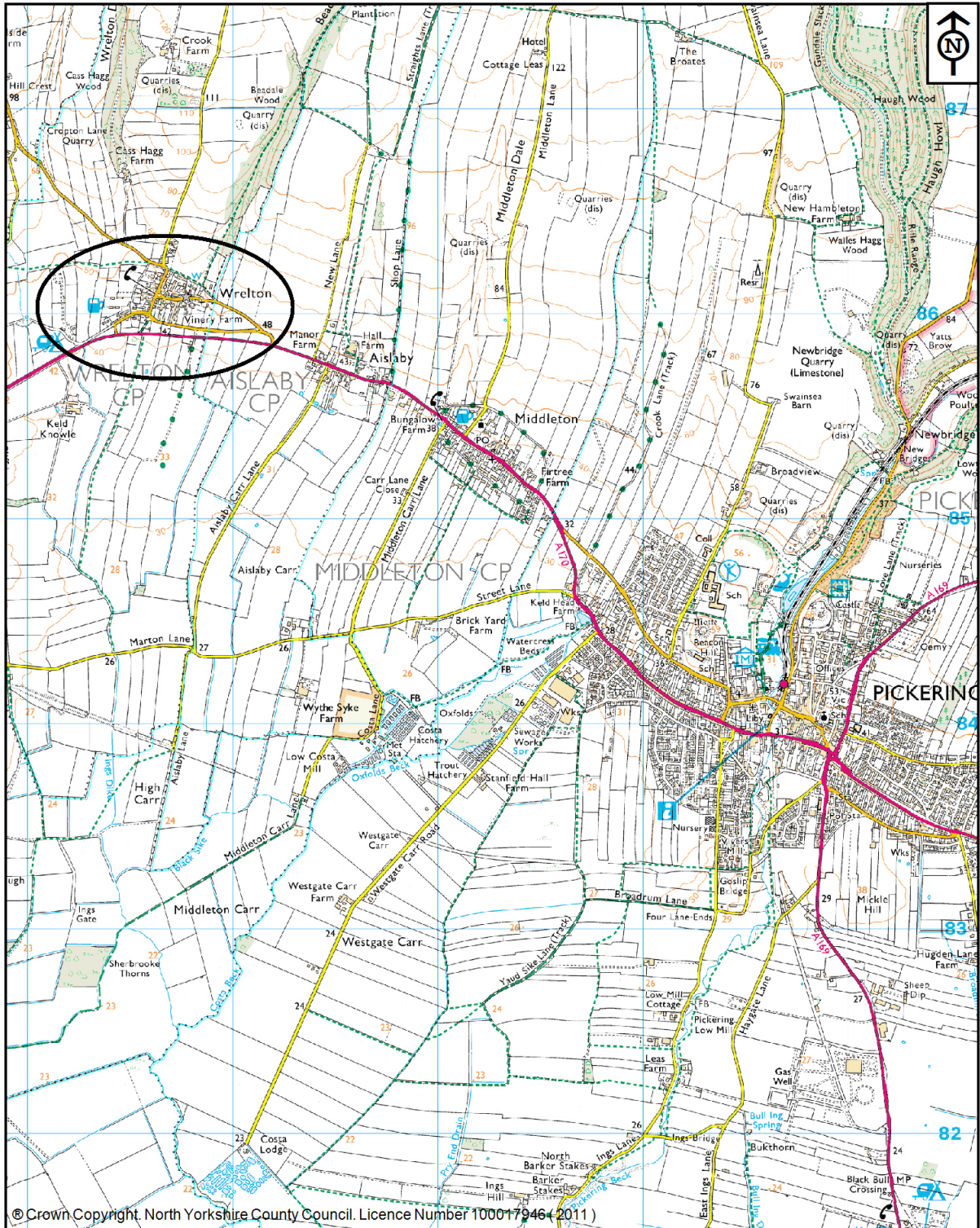
DMMO application dated 22 October 2007.

Evidence submitted in support of, and against the application.

The documents are held in a file marked:

“Back Lane, Wrelton. Report to the Planning and Regulatory Functions Sub Committee, 17 January 2012 – Background Papers” which will be available to the Members at the Meeting.

Author of Report: Russ Varley



Location Plan

North Yorkshire County Council
 Plan prepared for the Planning &
 Regulatory Functions Sub Committee
 25 November 2011

