

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE

2 MARCH 2012

APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RECORD A PUBLIC FOOTPATH ON THE DEFINITIVE MAP AND STATEMENT BETWEEN SOUTH DUFFIELD ROAD AND BENNYMOOR LANE, OSGODBY, SELBY.

Report of the Corporate Director – Business and Environmental Services

1.0 PURPOSE OF REPORT

- 1.1 To advise Members of an application for a Definitive Map Modification Order to record a public footpath from:

South Duffield Road to Bennymoor Lane, Osgodby, Selby.

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 However, if there is objection to an Order, that is not subsequently withdrawn, only the Secretary of State would have the power to decide if it should be "confirmed".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

- 4.1 An application dated 29 March 2007 was made under the Wildlife and Countryside Act 1981 to add a footpath to the Definitive Map and Statement at Osgodby, Selby by Barlby and Osgodby Parish Council. The application was supported by eleven evidence of use forms giving the evidence of twelve people.
- 4.2 The claimed route lies along a reasonably well-defined track that runs across the field between the two roads. The majority of the route crosses land held by North Yorkshire County Council, with the exception of a small section of approximately 28 metres at the western end of the route, between the houses, where the route is separated from the gardens by a fence and hedge.
- 4.3 Following the initial consultation with other local councils, user groups, and land owners; one objection was received.

5.0 EVIDENCE IN SUPPORT OF THE APPLICATION

5.1 Evidence of Use Forms

- 5.1.1 Evidence of Use forms from a total of twelve people have been submitted in support of this application indicating regular use of the route on foot only.

- 5.1.2 Reasons given for the use of the route are leisure walks, dog walking and as a short cut.
- 5.1.3 The span of usage covered within the forms is from 1940 to 2006, the application being submitted early in 2007.
- 5.1.4 There is no mention within the Evidence of Use forms of any of the users being challenged whilst using the route, or of any actions having been undertaken to suggest to users that the route was not a public right of way.
- 5.1.5 Of the twelve witnesses one 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. Evidence from eleven witnesses has been considered as valid evidence in support of 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 1938 onward, demonstrating that the route was in existence prior to the building of the houses at the western end, and was accommodated within the development.

6.0 EVIDENCE AGAINST THE APPLICATION

- 6.1 No evidence has been provided against the application to suggest that the public have not used the route, or to support that public rights have not been acquired. However, following the initial application and subsequent consultation one objection has been received. This is from a resident adjacent to the western end of the application route.
- 6.2 The objection centres on the anti-social behaviour they have suffered living next to a way used by the public.

7.0 COMMENTS ON THE EVIDENCE IN SUPPORT OF THE APPLICATION

- 7.1 The evidence of use supplied to support the application shows that the way has been in use for a period of twenty years and more, meeting the test set down under the Highways Act 1980.
- 7.2 One person completing a form did not provide dates during which they used the route and their evidence has been discounted.
- 7.3 From the evidence supplied it appears that there have been no challenges to the public's use of the route, therefore the date of application is being taken as the date on which the public's right to use the way was called into question. This means that the twenty year period under consideration is 1987 - 2007.

8.0 COMMENT ON THE EVIDENCE AGAINST THE APPLICATION

8.1 No evidence contradicting the material supplied with the application has been submitted to the County Council. Whilst there is sympathy for the adjacent land owner having been subjected to anti-social behaviour from persons making use of the route, inconvenience to any party is not a matter that is relevant when considering an application for a Definitive Map Modification Order, and it cannot therefore constitute evidence against the application.

9.0 CONCLUSION

9.1 The information supplied with the application is sufficient to reasonably allege the existence of a right of way across the land.

9.2 The owner of the land over which part of the route runs has objected to the application but has supplied no evidence that indicates there was no intention to dedicate the route as a public right of way. Indeed the alleged right of way is separated from the objector's garden by a fence and hedge.

9.3 The owner of the remainder of the land over which the majority of the route runs is North Yorkshire County Council whose property management section has indicated that there are no objections to the establishment of a right of way.

9.4 This application was reported, for information only, to the Selby Area Committee meeting held on the 9 January 2012, the Committee had no comments that it wanted forwarding to the Planning and Regulatory Sub Committee.

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 shown A – B on Plan 2 to be recorded on the Definitive Map as a public footpath,

and,

10.2 In the event that formal objections are made to that Order, and are not subsequently withdrawn, the Committee authorise the referral of the Order to the Secretary of State for determination, and permit the Corporate Director, under power delegated to him within the County Council's Constitution, to decide whether or not the County Council can support confirmation of the Order.

DAVID BOWE

Corporate Director – Business and Environmental Services

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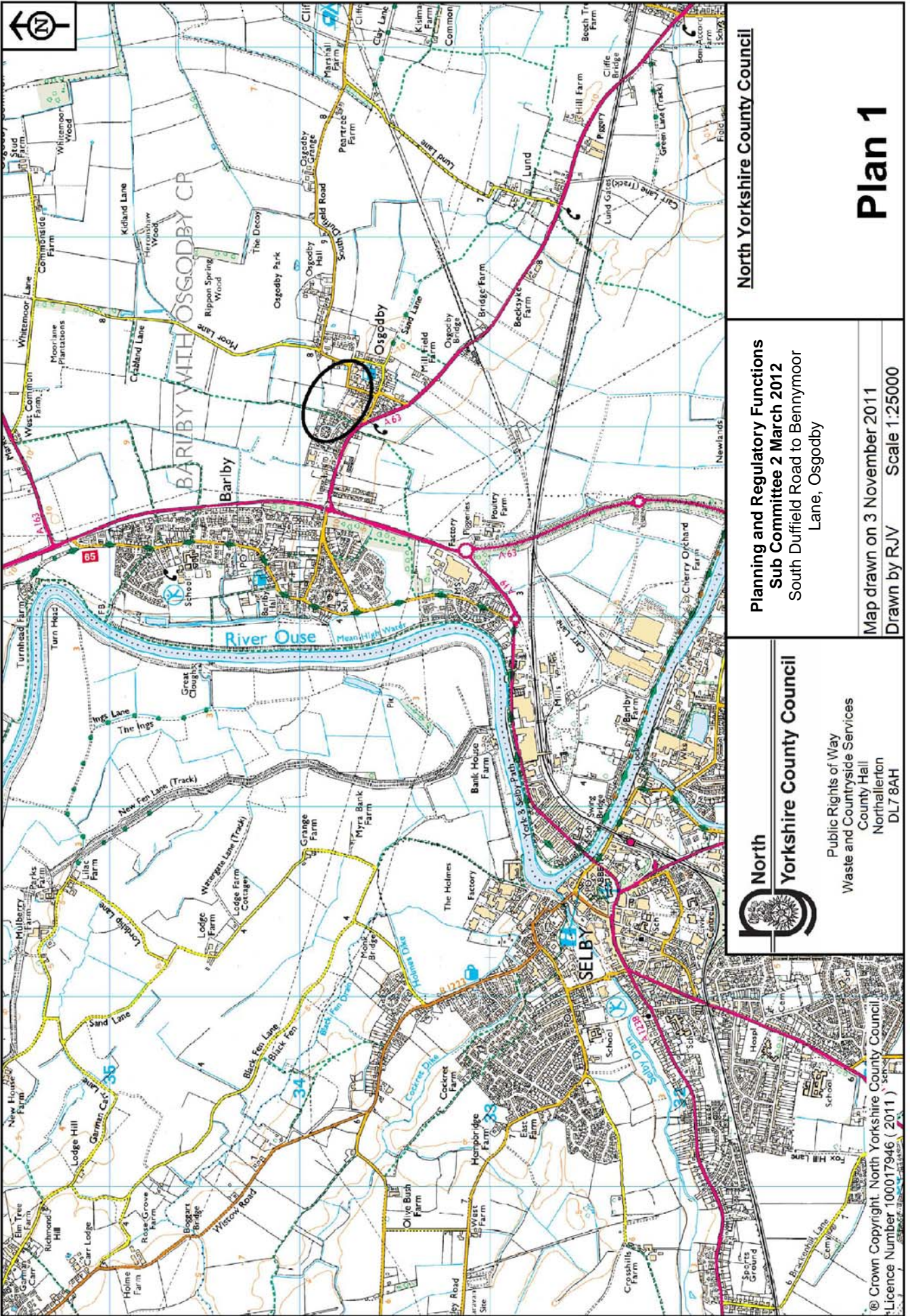
Background Papers: -

DMMO application dated 29 March 2007.

Evidence submitted in support of, and against the application.

The documents are held in a file marked:

“South Duffield Road to Bennymoor Lane, Osgodby. Report to the Planning and Regulatory Functions Sub Committee, 2 March 2012 – Background Papers” which will be available to the Members at the Meeting.



North Yorkshire County Council

Planning and Regulatory Functions
 Sub Committee 2 March 2012
 South Duffield Road to Bennymoor Lane, Osgodby

Plan 1

Map drawn on 3 November 2011
 Drawn by RJV Scale 1:25000



North Yorkshire County Council

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