

NORTH YORKSHIRE COUNTY COUNCIL**PLANNING AND REGULATORY FUNCTIONS SUB COMMITTEE****2 MARCH 2012****APPLICATION TO UPGRADE PUBLIC FOOTPATH No. 10.140/19 TO A PUBLIC BRIDLEWAY, LEVENSIDE TO ROSEHILL DRIVE, STOKESLEY****Report of the Corporate Director – Business and Environmental Services****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 upgrade Footpath No. 10.140/19, which runs from Levenside to Rosehill Drive, to the status of Public Bridleway. A location plan is attached to this report as **Plan 1**. The route referred to is shown as A - B - C on **Plan 2**, which is also attached to this report.
- 1.2 To request Members to authorise the Assistant Chief Executive, Legal and Democratic 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 However, if there is objection to an Order that is not subsequently withdrawn, only the Secretary of State would have the power to decide if it should be "confirmed".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 keep the Definitive Map and Statement under continuous review and to make a Modification Order to modify the Definitive Map and Statement where the discovery of evidence which, when considered with all other relevant evidence available to them, shows that a highway shown in the Map and Statement as a highway of a particular description ought to be there shown as a highway of a different description. In relying on this provision an authority must be satisfied that “new” evidence has been discovered, to be considered in combination with all other evidence. It cannot simply re-examine the same evidence that was considered when the Map and Statement were created.
- 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.
- 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.

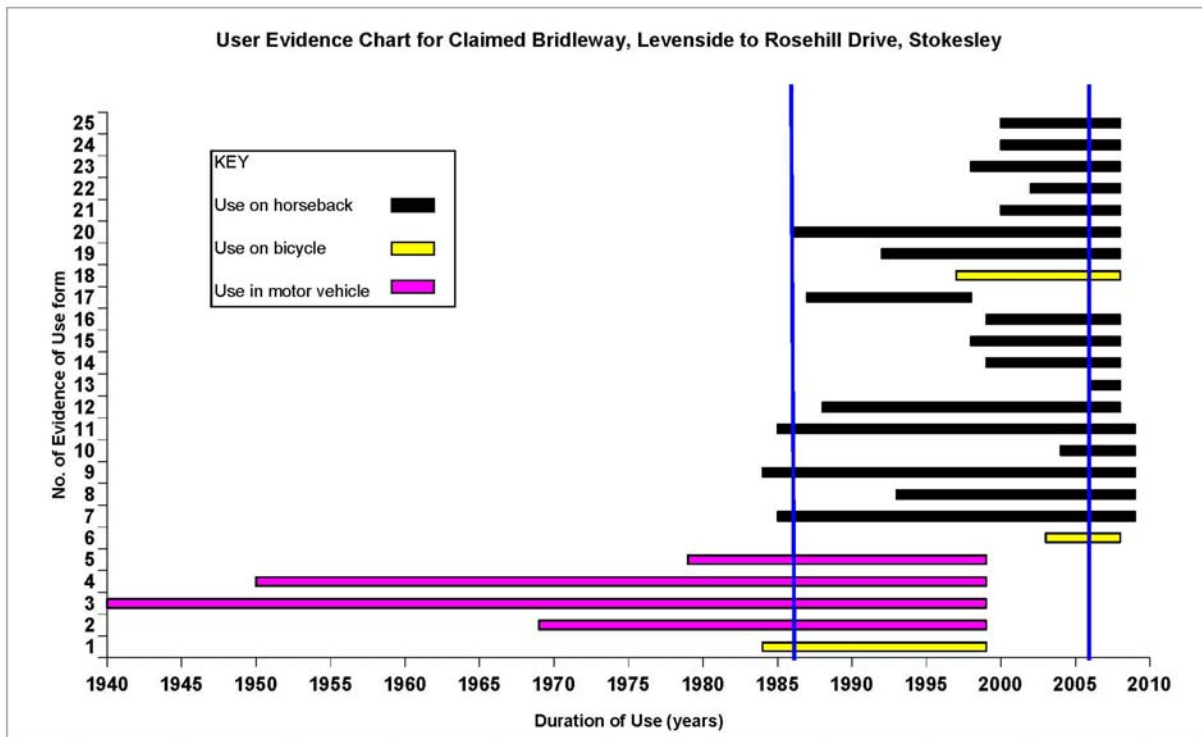
4.0 BACKGROUND

- 4.1 In February 2000, Stokesley Parish Council applied to have the route from Levenside to Rosehill Drive (shown as A – B – C on Plan 2) recorded on the Definitive Map as a Byway Open to All Traffic (BOAT). The first part of the route, shown as A – B on Plan 2, is a narrow tarmac-surfaced lane, approx 3-4 metres wide, leading south from the public highway known as Levenside. Approximately halfway along the route (at Point B) the lane turns off to the east, leading to the allotments. The application route continues south from Point B along a tarmac-surfaced pathway with grass verges (tarmac path approx 1.5 metres wide) to join the end of Rosehill Drive at Point C.
- 4.2 Stokesley Parish Council is the landowner of most the route. A section of the route adjacent to the Sewage Pumping Station is unregistered and the landowner of this section is unknown.
- 4.3 The application was supported by 17 Evidence of Use forms, showing use of the route on foot (17 users), on a bicycle (1 user) and in a motor vehicle (4 users).

- 4.4 The Parish Council submitted the application for a BOAT as they believed it was necessary in order to protect the rights of residents to access their properties, and for allotment holders and pigeon fanciers to access the allotments. After Officers explained that a public right of way was not needed to guarantee access to people who already had private rights to use the route, the Parish Council decided to withdraw the application for a BOAT, as they did not want the route to become a through-route for vehicles.
- 4.5 However, in order to protect the rights of those who used the route as a through-route on foot, the Parish Council requested that a Footpath Creation Order be pursued instead. The Creation Order was confirmed on 2 May 2001, and the route A – B – C added to the Definitive Map as Public Footpath No. 10.140/19.
- 4.6 After the Creation Order was confirmed, the Parish Council received complaints from some local residents that horse riders were using the route, and they were concerned about the safety of pedestrians. Local riders had also contacted the Parish Council and County Council stating that the route had been used by horse riders for many years, and therefore should have been designated a Public Bridleway.
- 4.7 On 20 January 2009 a local rider submitted an application under the Wildlife and Countryside Act 1981 to upgrade Footpath No. 10.140/19 to the status of bridleway.

5.0 EVIDENCE IN SUPPORT OF THE APPLICATION

- 5.1 The application to upgrade the footpath to bridleway was supported by 14 Evidence of Use forms. A further 6 Evidence of Use forms were submitted between January and April 2009, making a total of 20 forms. 18 of the 20 forms claim use of the route on horseback, uninterrupted and unchallenged between 1984 and 2009. Some of these users also stated they used the route on foot and bicycle. One signatory claims use of the route on bicycle only, and another claims use on foot and bicycle (but not on horseback).
- 5.2 The chart below shows the claimed use of the route. The User Evidence forms from the previous BOAT application were re-examined during investigations into the bridleway upgrade claim. The forms showing evidence of use on foot only were disregarded, as the route already has footpath status, but those showing use on bicycle and in a motor vehicle are included in the chart (Evidence of Use forms no. 1-5 on the chart below). Evidence of Use forms no. 6-25 on the chart was submitted with the bridleway upgrade application.



5.3 None of the witnesses state that they were ever stopped or challenged whilst using the route. However, correspondence between the Parish Council and the British Horse Society (BHS) in April 2006 shows that at this time the status of the route was called into question. Therefore, the point of challenge to the public's use of the route is accepted as being April 2006 and the period examined is the 20 year period prior to this i.e. 1986-2006. This period lies between the 2 vertical blue lines on the chart.

5.4 The BHS wrote to the Parish Council on 3 April 2006, stating that they believed a mistake had been made when the route was designated a public footpath, and that a Bridleway Creation Order should have been made instead. The Parish Council replied to the BHS in a letter dated 19 April 2006 stating that the "Parish Council does not agree that the footpath should become a bridleway as it is not suitable for the large groups of riders who are now using the path to exercise their horses".

5.5 No historical documentary evidence was submitted with the application. The applicant has said that the section of route from Points B - C was constructed in approximately 1983-84, at around the same time as the housing estate was built, as an access from the new houses through to Levenside and the town centre.

5.6 Three local residents wrote in support of use of the route by horse riders, stating that riders were always courteous to other users, there were no safety issues for pedestrians, and that the claimed route was safer for horse riders and cyclists than the main road. Two of these residents live adjacent to the path and stated that horse riders had used the route for 25 years. The British Horse Society also wrote in support of the application, stating that they felt a Bridleway Creation Order would have been more inclusive.

- 5.7 A copy of a letter dated 15 July 2003, from Stokesley Parish Council to the British Horse Society was submitted with the application. In this letter, the Parish Council stated “We have also agreed to request the installation of 2 signs on the footpath from Levenside to Rosehill Drive, saying ‘Give Way to Pedestrians’ and ‘Elderly People’.”

6.0 EVIDENCE AGAINST THE APPLICATION

- 6.1 Objections to the application were received from Stokesley Parish Council, the Ramblers Association, and two local residents.
- 6.2 The Parish Council objected on the grounds that although they had previously applied for the path to become a BOAT, the proposal was withdrawn as they “did not wish the path to become a through route or bridleway”. The Parish Council stated that they had made objections to the use of the route by horse riders to the relevant users over several years. Therefore the Parish Council maintain that the continued use of the route by riders, after the exchange of letters with the BHS in 2006, where users knew the objections of the Parish Council, should not be sufficient to show that public rights have come into existence.
- 6.3 The Ramblers Association objected on the grounds that the route was designated a public footpath, and that this was well-known to local equestrians, although they continued to use it. The Ramblers Association also feel that a mixed-use route, with pedestrians, equestrians and cyclists poses a safety risk.
- 6.4 A local resident objected on the grounds that the route was only ever private access to properties, the pumping station and the allotments. He also stated that the pathway through to the housing estate (Points B – C on Plan 2) is not suitable for horses, and had concerns over safety and the mess that horses leave.
- 6.5 Another local resident objected on the grounds that the mess left by horses is unsightly and dangerous.

7.0 COMMENTS ON THE EVIDENCE

- 7.1 The letter from the Parish Council to the British Horse Society (referred to in paragraph 5.7) suggests that at the time the letter was written (July 2003) the Parish Council were not only aware that the route was being used by horse riders, but were acting in a way consistent with intention to dedicate the route as a bridleway. The letter does not state any objections to the use of the route by horse riders. Agreeing to install signs saying “Elderly People” and “Give Way to Pedestrians” suggests an acceptance of use by horse riders, and taking steps to minimise potential user conflict on the route.

- 7.2 All four objectors acknowledge that the route was used regularly by horse riders. The Parish Council stated in their objection that they challenged this, but none of the other objectors stated they ever stopped or challenged horse riders. None of the riders stated in their evidence of use forms that they had ever been stopped or challenged when using the route.
- 7.3 The Parish Council stated that they had made objections to the use of the route by horse riders over several years (paragraph 6.2), however, all the correspondence sent in to demonstrate this dates from 2006 onwards (which is outside the relevant 20 year period). The Parish Council have not submitted any evidence to show that prior to this date they had taken any action to challenge or prevent horse riders using the route.
- 7.4 The user evidence submitted with the bridleway upgrade application shows that riders have used the route on horseback unchallenged since 1984. This appears to have been around the time the housing estate was built, and with it the tarmac pathway through from Rosehill Drive, suggesting that horse riders have used the route ever since the pathway came into existence.
- 7.5 All the horse riders stated that they used the route as it was safer than using the main road for recreational riding.
- 7.6 The user evidence from the previous BOAT application shows some use prior to the 1980s, on foot and in motor vehicles. Given that there is no evidence of a through-route prior to the construction of the housing estate in the 1980s, it can probably be assumed that the use in a motor vehicle was for access to properties and the allotments. It is unclear from the user evidence forms where exactly the walkers went prior to the through-route to Rosehill Drive being constructed, as there are no plans with these forms, and they mostly state their purpose of use as “walking”, “recreational walking”, or “access to allotments”.

8.0 CONCLUSIONS

- 8.1 After reviewing the evidence, Officers are satisfied that the user evidence supporting this application is “new” evidence, i.e. previously unseen by the Authority during the process of the preparation of the Definitive Map in the 1950s. Also, the User evidence supplied with the BOAT application showed mainly use on foot, with some motor vehicle and bicycle use, but no use on horseback. Evidence of use on horseback only came to light after the Footpath Creation Order was confirmed.
- 8.2 Officers are satisfied that the user evidence demonstrates use of the route by horse riders “as of right” (i.e. without force, secrecy or permission), for over 20 years, before the use of the route on horseback was called into question in 2006. Officers have been presented with no evidence of actions showing an intention not to dedicate by any landowner or other interested party prior to 2006.
- 8.3 Officers are therefore satisfied that bridleway rights have been acquired by the public, and that an Order should be made to upgrade Footpath No. 10.140/19 to the status of Public Bridleway.

9.0 RECOMMENDATIONS

It is therefore recommended that

- i) The Committee authorise the Corporate Director, Business and Environmental Services to make a Definitive Map Modification Order for the route shown as A – B – C on Plan 2 of this report to be shown on the Definitive Map and Statement as a public bridleway.
- ii) In the event that formal objections to that Order are made, and are not subsequently withdrawn, the Order be referred to the Secretary of State for determination. In so doing the Corporate Director exercises 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

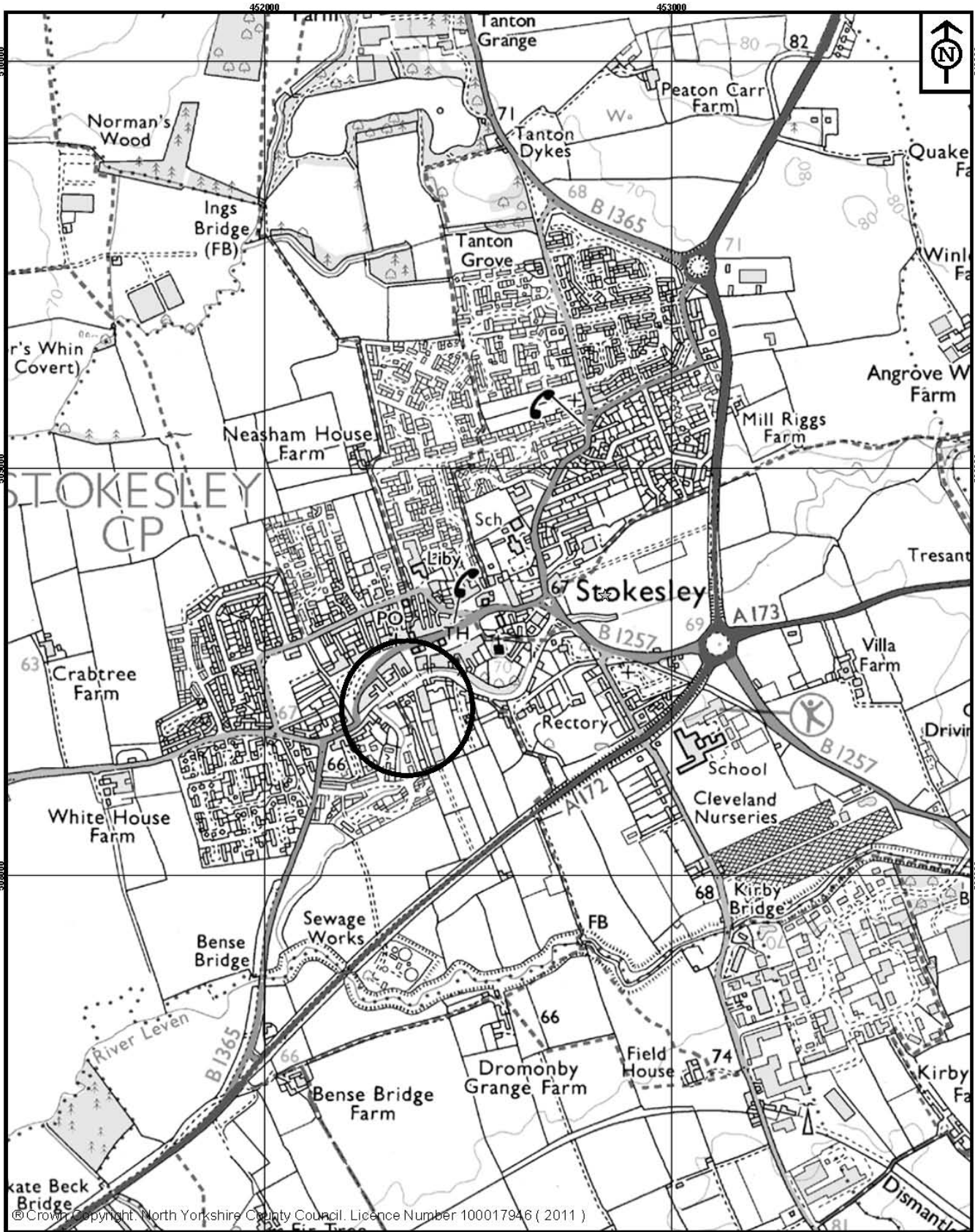
Corporate Director Business and Environmental Services

Author of Report: Beth Brown, Definitive Map Officer


Background papers

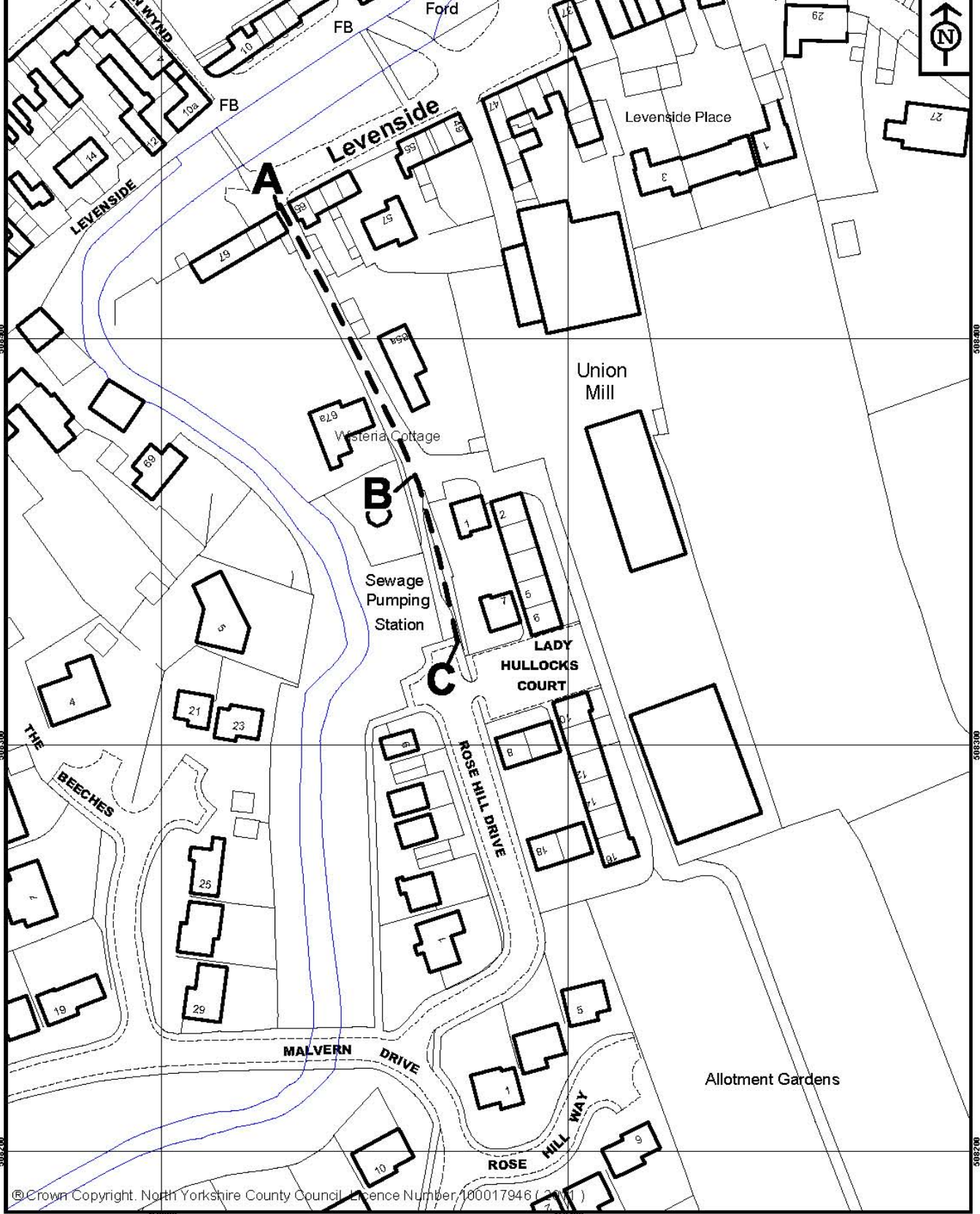
- DMMO application dated 20 January 2009
- Evidence submitted in support of, and against the application

The documents are held on a file marked: County Council's Planning and Regulatory Functions Sub-Committee, 2 March 2012, Application to upgrade Public Footpath No. 10.140/19 to a Public Bridleway, Levenside to Rosehill Drive, Stokesley, which will be available to Members at the meeting.



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 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<h1>PLAN 1</h1> <h2>LOCATION PLAN</h2>	<p>North Yorkshire County Council Planning & Regulatory Functions Sub-Committee 2 March 2012</p> <p>Application to upgrade footpath no.10.140/19 to bridleway, Levenside to Rosehill Drive, Stokesley</p> <p>File Ref No. HAM/2009/08/DMMO</p>
	<p>Map drawn on 15 December 2011 Drawn by B Brown Scale 1:12500</p>	



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

Key:
Application route - - - - -

PLAN 2

File Ref No. HAM/2009/08/DMMO
Map drawn on 15 December 2011
Drawn by B Brown | Scale 1:1250

North Yorkshire County Council

Planning & Regulatory Functions
Sub-Committee 2 March 2012

Application to upgrade footpath
no. 10.140/19 to bridleway,
Levenside to Rosehill Drive,
Stokesley