

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE

2 MARCH 2012

**APPLICATION TO UPGRADE A BRIDLEWAY TO RESTRICTED BYWAY
AND TO ADD A RESTRICTED BYWAY, KNOWN AS STRIPE LANE,
TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISHES OF
APPLETON EAST & WEST AND HORNBY**

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 add a Restricted Byway along the route known as Stripe Lane, which runs from Tunstall to Hornby, via West Appleton, within the parishes of Tunstall, Appleton East & West and Hornby. A location plan is attached to this report as **Plan 1**. The route referred to is shown as **B – C – D – E – F - G** on **Plan 2**.
- 1.2 To request Members to authorise the Corporate Director of Business and Environmental Services to make a Definitive Map Modification Order which, if confirmed, will record a Restricted Byway on the Definitive Map and Statement.

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 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 However, if there were an objection to an Order that was not subsequently withdrawn, only the Secretary of State would have the power to decide if it should be "confirmed".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, and
- the discovery of 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”.

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 INFORMATION

4.1 The first 120 metres of the route from Moor Lane in Tunstall to the Appleton East & West Parish Boundary, between Points A – B on Plan 2, is recorded as a publicly maintainable unclassified road on the List of Streets, and is known as Stripe Lane.

4.2 The next 1,010 metres of the route between Points B – C on Plan 2 is a surfaced ‘road’ and is recorded on the Definitive Map as a public bridleway.

4.3 The next 1,260 metres of the route between Points C – G on Plan 2, is a surfaced ‘road’, which is not recorded as a publicly maintainable highway on the List of Streets, and is not recorded as a Public Right of Way on the Definitive Map.

- 4.4 The section of the route between Points B – G is, however, informally noted on Highways Section records as being ‘ratione tenurae’, denoting that it is understood that the route is a privately maintained highway. This status is disputed by the landowner and is discussed below.
- 4.5 There is currently a gate across the route at Point D on Plan 2.
- 4.6 The whole route has been subject of 12 applications and requests from successive landowners and parishioners, to North Yorkshire County Council and its predecessor authorities, for the route to become publicly maintainable, to relieve the landowners from the obligation for maintenance and for the route to be improved.
- 4.7 There have been issues relating to maintenance and encroachment of the section of the route B – C between landowners, and between landowners and the County Council’s Highways Section. The resolution of the issues involved the Magistrate’s Court and the Ombudsman. Whilst the status of the route was partly relevant to these issues, and research was undertaken, the outcome was not entirely conclusive. The application subject to this report relates exclusively to establishing what rights exist, and has entailed further research, which has uncovered evidence that was not previously available to the County Council.

5.0 THE APPLICATION

- 5.1 An application made under Section 53 of the Wildlife and Countryside Act 1981 was submitted to the County Council in May 2005 by Tunstall Parish Council following local concern that the route had been obstructed by gates in 2004. The application was initially supported by 29 Evidence of Use forms, an e-mail and a letter. Subsequently a further 16 forms were submitted, giving a total of 45 forms, and documentary evidence was also later provided.
- 5.2 The application was to add a footpath to the Definitive Map and Statement on the section between Points C – D - E on Plan 2 but it was noted that horses, cyclists and vehicles had also made use of the route. The application was then amended by the Parish Council for a byway open to all traffic (BOAT) to be added to the Definitive Map and Statement. The Parish Council had only applied for the section which crosses the property known as West Appleton Farm between Points C – D – E to be recorded, as this was the only section that had been obstructed.
- 5.3 After the submission of the application the implementation of the Natural Environment and Rural Communities Act 2006 (NERC2006) extinguished any unrecorded public rights of way for mechanically propelled vehicles.

- 5.4 Before the investigation of the application commenced, the applicant and the landowners had been advised that the original application to record the route as a BOAT did not meet criteria set by NERC2006, and that the available evidence suggested that the highest rights that could now be claimed on the route would be those of a restricted byway (RB).
- 5.5 They were also advised that it was the County Council's intention to investigate the whole route B – G, to clarify the status, and to prevent the possible creation of an anomaly.
- 5.6 The application demonstrated that the general public had used the route between Points A - G on Plan 2, as of right, by vehicle, on horseback, by bicycle and on foot for many years, and that this use had been sustained up until the summer of 2004, when the route was obstructed by the erection and intermittent locking of a gate at Point D on Plan 2.
- 5.7 When preliminary investigations into the application commenced, landowners affected by the application were contacted and invited to submit any evidence that might be relevant to the application. Two landowners objected to the application.
- 5.8 In May 2011 informal investigations into the application commenced and officers met with the main objector to discuss the application and the DMMO process.
- 5.9 In July 2011, officers interviewed many of the people who had completed and submitted evidence of use forms in order to clarify their evidence.

6.0 EVIDENCE IN SUPPORT OF THE APPLICATION

6.1 USER EVIDENCE

- 6.1.1 A total of 45 evidence of use forms were submitted, however it was apparent that some of the users who lived on the route, or used the route to gain access to properties along the route, were not using the route exclusively as of a public right. Access to properties would generally be considered as exercising private rights, and so these forms were discounted in the final analysis.
- 6.1.2 Seventeen forms were eventually 'discounted', leaving a total of 28 evidence of use forms that were considered to be valid. The chart in Table 1 attached to this report shows the length of time each witness used the route. The first twenty eight forms represent the valid witnesses, the remaining 17, shown in magenta, represent the discounted forms.
- 6.1.3 These 28 witnesses who completed the valid forms have used the route either by motor vehicle, on horseback, with a horse-drawn vehicle, on a bicycle or on foot, "as of right" (i.e. without force, without secrecy and without permission).

6.1.4 Overall, their use of the route spans a period of more than 70 years which is well in excess of 20 years after which a presumption of dedication arises. Of the 28 witnesses, all used route at some time between 1984 and 2004, and the majority refer to the route as Stripe Lane.

6.1.5 The majority of the 28 witnesses have made use of the route in more than one manner:

- 26 claim to have used the route on foot.
- 21 claim to have used the route by a motor vehicle.
- 12 claim to have used the route on pedal cycle.
- 12 claim to have used the route on horseback.
- 1 claims to have used the route by horse drawn vehicle.

This information is shown in more detail in Table 2 attached to this report.

6.1.6 None of the witnesses state that they had ever been stopped or challenged when using the route until 2004/2005: the date that a barrier, in the form of 2 gates, was erected and locked intermittently.

6.1.6 The gates appear to have been closed or closed and locked, intermittently: thus preventing use of the route to some users some of the time, and to others, never – depending on when witnesses used the route. The erection of the gates is the first clear indication to the public that their right to use the route was challenged.

6.1.7 The people who had completed Evidence of Use forms were invited to the local village hall to be interviewed by officers about their use of the route.

6.1.8 The results of these interviews consistently demonstrated that:

- People used the route between Tunstall and Hornby with vehicles, on horseback, cyclists and pedestrians.
- People using vehicles, on horseback, on foot and on bicycles were never challenged by either of the former owners of West Appleton Farm: (the objector's father and grandfather).
- Users remembered his father as very friendly, and said that he often chatted to, and passed the time of day, with users of the route.
- Witnesses remembered a dog being at the farm. Although this dog was reputed to dislike horses, it was taken under control by the objector's father whenever it seemed likely to cause a nuisance.
- Only 1 witness commented on the dog being a *nuisance*; though it did not prevent that witness from continuing to use the route.
- No-one recalled any signage to indicate that any part of the route was not a public right of way.
- Some witnesses remembered signs that said "keep dogs on a lead" and others remembered that there may have been a sign but could not remember what it was like, or what it might have read.

- When recent photographs of a sign located a few metres to the east of the gate at D were shown to witnesses, they seemed genuinely surprised and said either that they had never seen it before or that “it must be new”.
- Another resident adjacent to the route confirmed that it was he who requested the ‘No through Road’ sign to be erected at the Tunstall end of the route.

6.2 OLD MAPS

6.2.1 Research has revealed several maps that clearly show the route between Tunstall and Hornby:-

- Greenwoods Map editions 1817 & 1834,
- Ordnance Survey editions between 1857 – 1992
- Hobson’s Fox-Hunting Atlas 1850-80
- 1834 ‘Plan of Estate of Tunstall’ shows the start of the route which is marked ‘*From Bedale*’.

6.2.2 No Tithe or Inclosure Award has been found for Appleton East and West, however they have been found for the 2 neighbouring parishes, Tunstall and Hornby. The ends of the application route are clearly shown on:-

- 1808 Inclosure Map of Tunstall, showing the start of the route, which is marked ‘*From Hornby*’.
- 1843 Tithe Map of Tunstall, with the start of the route marked “*From Hornby*”.
- 1844 Tithe Map of Hornby, with the start of the ‘claimed’ route shown not obstructed in any way.

6.3 FINANCE ACT 1910 - FIELD BOOK AND HERITAMENTS

6.3.1 The Finance Act 1910 entailed a land and property survey to establish the level of tax that could be levied when the property was sold. Within the survey there were a number of categories under which property owners could claim a reduction in the valuation of their property which would reduce their tax liability. One of the categories was public rights of way. Whilst not mandatory, it was in a property owner’s interest to declare public routes across their land.

6.3.2 At East and West Appleton an entry in the Valuation Book lists a *house and land at West Appleton* as having a reduction of £24 on the valuation for a number of public rights of way including a route described as a “*Public Road, Hornby to Tunstall*”.

6.3.3 Although it is not completely clear to which right of way this relates, documents support the supposition that this ‘*house and land at West Appleton*’, and West Appleton Farm, are the same property, and therefore that the route referred to is the application route, as there is no other route that the description would fit.

6.3.4 Other Finance Act documents also refer to a “*Public Road, Hornby to Tunstall*”: which it is reasonable to assume relates to the application route from Hornby to Tunstall via West Appleton, as there is no other road fitting this description.

6.4 DOCUMENTS RELATING TO THE RATIONE TENURAE STATUS OF THE ROUTE

6.4.1 The objector to this application does not accept that this route is, or was, a *ratione tenurae* route, and considered that informal notation on the County Council's current highway records was inconclusive. Further research has clarified the situation.

6.4.2 As referred to above a number of applications have been made to the successive Highway Authorities for the Tunstall to Hornby route to be made maintainable at public expense. Each of these applications have been unsuccessful largely due to the required initial financial liability to the landowners, and secondly to the perceived financial liabilities to the authorities.

6.4.3 Evidence has been submitted relating to such an application being made as early as 1879. This took the form of *The Highways Board Minutes (1867 – 1894)*, *Wapentake of East Hang*, which record, under the heading of ‘*Ratione Tenurae Road at Tunstall*’, an application made by a Mr Richardson to the Highways Board ‘*for making the road between Tunstall and his farm a Highway repairable by the Board.*’ The Highways Board was the body responsible for the maintenance of highways in the late C19th.

By reference to:-

- Extract from 1881 Census of England
- Extract from the Finance Act 1910 Books
- Extract from Hornby Castle Estate Sale Catalogue

it has been established that Mr Richardson was the occupant of West Appleton Farm.

6.4.4 Eleven subsequent applications or requests were made to North Riding County Council and North Yorkshire County Council between 1935 and 2002. The applications have generated an abundance of correspondence internally between council officers; and externally with landowners and their representatives and local residents, all are starting with the premise that the route is *ratione tenurae*.

6.4.5 The latest approach to the County Council for ‘adoption’ of the route was made by the objector in 2004.

- 6.4.6 The Parish Footpath Survey documents for the Parish of Appleton, dated 23 September 1952, which was undertaken as part of the original recording of public rights of way during the preparation of the Definitive Map, were examined to see if it could be established why the route had not been recorded as a public right of way at that time. Within these documents it is noted that footpath No's 12,13,14 '*connect to RT road from Hornby Castle to Tunstall*' and Bridleways No's '*4 and 5 are RT road*'.
- 6.4.7 It is clear from these documents that part of the route was considered to already be a highway and that there was therefore no need to record it again for the purposes of the production of the Definitive Map. It is noted however that the Parish did decide to record the section of route between Points B – C as a bridleway. It is not clear why this is the case but may be because the route may have been less well maintained, not being access to a number of properties, and therefore seeming less substantial.

7.0 EVIDENCE AGAINST THE APPLICATION

- 7.1 Two objections to this Application were received following the informal consultations.
- 7.2 One 'objection' was by telephone from the owner of Hornby Castle who stated that the public already had rights along the route and therefore the application was unwarranted. The comment is specifically on the proposal to make an Order to record the route on the Definitive Map, not on a belief that the rights do not exist.
- 7.3 The main objection to the application has been made by the owner of West Appleton Farm. His objections are that in his view:-
- The public does not have a right of way between the Bridleway at a point west of Mill Dam (Point C on Plan 2) to the front of West Appleton Farm to (Point E on Plan 2) in the direction of Hornby.
 - The public had only used the section of the route between Points C – E, by permission.
 - The route between Points B – G was not proven to be of *ratione tenurae* status.
 - Signs were erected by the landowner, informing the general public, that the route between points C and E was not a public right of way.
 - The County Council erected signs at Points A and G indicating that the route was not a 'through route'. The landowner has said that signs at each end of the route which say 'No access to Military Vehicles' together with 'cul - de sac' signs indicate that there is no through route between Tunstall and Hornby and that anyone trying to use the route is acting unlawfully.
 - The landowner commented that had the route between B and G been of *ratione tenurae* status (and therefore *public*), it would have been a cul-de-sac route in the past as the road between Hornby and Hackforth used to be a private road, and did not carry public rights.

- He states that it is not possible to acquire vehicular rights over the existing bridleway, between Points B – C, because any use of vehicles on the section of the route carrying the bridleway is illegal use.
- The landowner said that, following an article being published in the Northern Echo newspaper describing to its readers a route continuing through West Appleton Farm, he contacted the Northern Echo informing it that this route was not a public Right of way. He considers that this was a way of informing the general public that the route through West Appleton Farm was not a public right of way.
- He said that he kept a dog in order to protect his property, and to put people off from trying to use the route.
- He believed that the matter relating to the status of the road had already been investigated and that it was 'no longer an issue'.
- The landowner challenged the number of users that claim to have used the route. He says that the route has only been used since he resurfaced it at his own expense. He upholds that the public saw a resource (i.e. a good surfaced route) and feel aggrieved that they are not now allowed to use it.
- He stated that a lady who has lived along the route since the 1970s remembered seeing signs informing the public that the road was not a public right of way, and that a local mobile hairdresser who was born in Tunstall, remembered a sign at the end of the lane.

7.4 Further evidence submitted by the landowner against the application included:-

7.4.1 A letter from the brother of the objector stating that his father, (who was the previous owner of the farm) informed 'trespasser users' that they could only use the route through West Appleton Farm with permission, and that this section was not a public right of way. Vehicular use was limited and was only by permission. He also claims that he had seen people using the road on foot or by vehicle, and that he has either allowed them to continue across the section between Points D – E, or turned them back.

7.4.2 The landowner informed NYCC Officers that his sister recalled a lady asking permission from his father to pick brambles from West Appleton Farm.

7.4.3 A letter from Mr Colin Rosindale, a regular visitor to West Appleton Farm, since at least 1971, stating that the route was impassable to private vehicles and that a pedestrian walking past the farmhouse at West Appleton Farm was informed that it was 'private property'.

7.4.4 Letters dated 2009 and 2010 from Bedale Group Riding for the Disabled, thanking Mr S Metcalfe for allowing the Charity Fun Ride to go through his property.

8.0 COMMENT ON THE EVIDENCE IN SUPPORT OF THE APPLICATION

- 8.1 Evidence of Use Forms. After examination of the 28 valid Evidence of Use forms and consideration of the information gathered after interviewing over 20 witnesses in 2011 the circumstances of the use of the route has been clarified.
- 8.1.1 Within the Evidence of Use forms the witnesses recorded that they were not prevented from using the route until 2004, this was corroborated by the information provided by witnesses within the interviews.
- 8.1.2 It seems clear that this route has been used freely by the public until the gates were erected. The gates were then only intermittently locked and use of the route continued. This inconsistent pattern of available access through the gate is reflected in the variances of the date of 'challenge' noted within the Evidence of Use forms. Therefore 2004 has been established as the point of challenge.
- 8.1.3 Within the interviews many people gave their recollections of the route from over many years, and the picture that consistently unfolded was that this route had always had the look of a country lane and had been available for anyone to use at any time.
- 8.2 The old maps. Whilst the representation of a route on a map is not in itself evidence of public rights, the maps dating from the early C19th consistently show the route, and are indicative of the physical existence of the application route on the ground at that time.
- 8.2.1 The Inclosure and Tithe Award maps from the 2 neighbouring parishes also do not directly provide evidence of public rights, but they do acknowledge the route as it leaves the perimeter of both Tunstall and Hornby parishes. The maps annotate the stub end of the route indicating where the route leads to. It is reasonable to speculate that this implies that the routes were available to use.
- 8.3 The Finance Act 1910. The purpose of the land survey was to value the land and property to calculate taxation liability. Whilst public rights of way were relevant to the calculation they were a minor consideration in the process, and were not individually identified on the plans even when they were mentioned within the valuation. Therefore it is only supposition, but a reasonable supposition that the route referred to as a 'Public Road' across the property described as '*a house and land at West Appleton*' is the application route. There are no other substantial through routes across this property that would appear to fit this description.

- 8.4 Status of the route as Ratione Tenurae. The County Council's List of Streets is the record of Highways maintainable at public expense. There is no formal requirement for the County Council to hold records of highways maintained at private expense. However, the application route is informally annotated on current highway records as being ratione tenurae, and this was initially the only basis on which it was understood that the application route was a privately maintained highway.
- 8.4.1 During the disputes in the past between the objector and the County Council relating to part of the application route some research was undertaken but the outcome was inconclusive. It was accepted at that time that the ratione tenurae status was not proved.
- 8.4.2 As the establishment of the status of the route is paramount in relation to the current investigation, more rigorous research has been undertaken to identify whether or not the route was considered to be a public highway in the past.
- 8.4.3 The wide range of letters and documents, 40 of which mention the status as ratione tenurae, dating back as far as 1879 have clarified that this route has certainly been considered to be a privately maintained public highway for at least 120 years. It has been acknowledged as such by successive landowners (including the objector and his grandfather), and the Parish Council, who have attempted to persuade the highway authority to accept liability for maintenance because the route was being used by the public in vehicles, and the amount of use was increasing. There is no evidence within these documents that there had been any challenge to the understanding that the route was a privately maintainable highway, (until 2004). This counters the landowners' assertion that it cannot be shown that this route is ratione tenurae.
- 8.4.4 The Parish Survey in 1952 shows that whilst the northern section of the application route was recorded as a bridleway the southern section was not marked to be recorded, and 3 footpaths terminate on the 'road'. It is not reasonable that these routes were considered to be cul-de-sacs where they met the 'road', the only explanation can be that the 'road' was believed to be a public highway at that time.

9.0 COMMENTS ON THE OBJECTIONS

- 9.1 Clearly it is the objector's view that there are no public rights of any kind between Points C – E across his property. He is not disputing the bridleway rights between Points B – C.

- 9.2 Route was used by Permission of Landowner. No evidence has been found to substantiate the claim that the public used the route by permission only. Many people who had completed evidence of use forms were also interviewed, and none of them said that permission had been either sought or granted. The objector did not submit evidence, for example by naming the people who had been granted permission, to support the claim that the use of the route was by permission only.
- 9.3 Signs Erected by Objector/Landowner. No record or evidence of these has been found, and no member of the public recalled signs in the past. Signs have been put up within the last year, but this is outside of the 20 year period under examination.
- 9.4 Signs erected by the County Council. The Highways Section have explained that:-
- the red and white sign erected at each end of the route A – G, suggesting a ‘cul-de-sac’ route or a ‘No through Road’, is not a regulatory sign; it is an informative sign only and is not enforceable. It was erected at the request of East & West Appleton Parish Council in 2004.
 - The ‘No Access to Military Vehicles’ sign was erected by MOD at the request of a resident along the route resulting from overuse by military vehicles.
- 9.5 The Route would have been a Cul-de-Sac in the past. This comment has been found to be incorrect. Research of the County Council’s records show that the road between Hornby and Hackforth (now known as C232) was also recorded as *ratione tenurae* prior to it becoming a publicly maintained highway on 1936.
- 9.6 Unproven Status of the Route. Until research was undertaken with respect to this application the evidence to establish the status of the route between Points C - F was inconclusive. The evidence discovered has now clarified that the route was considered to be a highway in 1879, and was apparently being used by vehicles at that time. It is also now clear that landowners and local residents accepted that this route was a highway in the 1930s and 1940s when applications were made for it to become maintained by North Riding County Council.
- 9.7 County Council statement that “*The status of the road is no longer an issue*”. It is correct that this comment was made in a letter to the objector in 2001 during the period when the issues of maintenance and encroachment were being investigated. It had also been stated that ‘*it is highly unlikely that NYCC can find any documentary evidence to substantiate that this is an RT route.*’ It seems that research had been undertaken to clarify the status of the route, but that it had been inconclusive at that time, and the decision had been made to take the matter no further. The further research undertaken in respect of this application has overturned the situation in 2001.

- 9.8 Recollections of mobile hairdresser. The hairdresser was spoken to by officers. She said that she was very young when she lived in Tunstall, and, although she remembered a sign, she did not know what it said.
- 9.9 Recollection regarding a lady permitted to bramble pick. This recollection is too vague to be helpful, it does not specifically refer to a location.
- 9.10 Mr C Rosindale's Letter. Mr Rosindale's comments are not corroborated by any of the statements made by people who had completed Evidence of Use forms. Officers were unable to contact Mr Rosindale to gain more information.
- 9.11 The letters from Bedale Group Riding for Disabled were not very informative. Officers spoke to the letters' author who said that it was understood that people had used the route for a long time and she was aware of a dispute about the road. So, out of respect for the landowner, and to ensure the route would be open to groups of young riders on the day, she saw it fit to ask for permission. The letter was written after the erection of the gates when it was possible that access could be blocked by locked gates.
- 9.12 Northern Echo Article. Although NYCC does not doubt the objector's statement, no letter or formal account of this has been submitted. It is considered that advising the newspaper that they should not have promoted the route does not constitute bringing to the attention of the public at large that the route is not public.
- 9.13 Dog(s). A letter from a solicitor to the objector in 1998 suggests that the dog was a working farm dog. The solicitor refers to "concern about your liability re members of the public exercising their right of way by walking their dogs along the footpath/bridleway which goes through your land." This seems to suggest that the landowner was acknowledging the public's right of access past the farm.
- 9.14 Illegal Use of Vehicles on Bridleway. If public vehicular rights already existed when the bridleway was recorded, use of the route by vehicles cannot be considered as illegal.

10.0 CONCLUSION

- 10.1 The original application was for a BOAT to be recorded on part of the route only. The application was affected by the NERC Act such that any mechanically propelled vehicular rights had been extinguished; therefore the highest rights that are able to be recorded are those of a restricted byway.
- 10.2 It was considered that the whole route between Tunstall and Hornby should be examined to avoid the possibility of the outcome leaving an anomaly.

- 10.2 The evidence relating to the status of the route as a *ratione tenurae* road has clarified that the route has been understood to be a privately maintained highway since at least 1879, and was apparently accepted as carrying vehicular rights. This evidence is supported by the Evidence of Use forms where those witnesses who have known the route for many years have commented that the route was used by all types of traffic in the past.
- 10.3 If the historic evidence had not been available the user evidence in itself was sufficient to reasonably allege that at least bridleway rights had been established from the end of the existing bridleway at Point C to the public highway in Hornby.
- 10.4 Although the objector has tried to demonstrate that his family have taken actions to prevent the public from using the route, these actions do not appear to have prevented public access along the route until the locking of the gate in 2004. Further more, it is reasonable to assume from the historic evidence that public vehicular rights were already in existence along the whole route as far back as the late C19th, well before any attempt at preventing public access was made.
- 10.5 It is considered that the bridleway between Points B – C should be upgraded to a restricted byway, and, as it has been reasonably alleged that such rights exist between Points C – D - E – F - G, that this section should also be recorded as a restricted byway. Therefore it is considered that an Order should be made to add the whole route to the Definitive Map and Statement as a restricted byway.

11.0 RECOMMENDATION

11.1 It is therefore recommended that:-

The Committee authorise the Corporate Director of Business and Environmental Services to make a Definitive Map Modification Order for the route shown as B – C – D – E – F - G on Plan 2 of this report to be shown on the Definitive Map and Statement as a Restricted Byway,
and,

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 powers 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

Author of Report: Judy Smith, Definitive Map Officer

Background Documents:

Background papers:

DMMO application submitted by Tunstall Parish Council.

Evidence submitted in support of the application

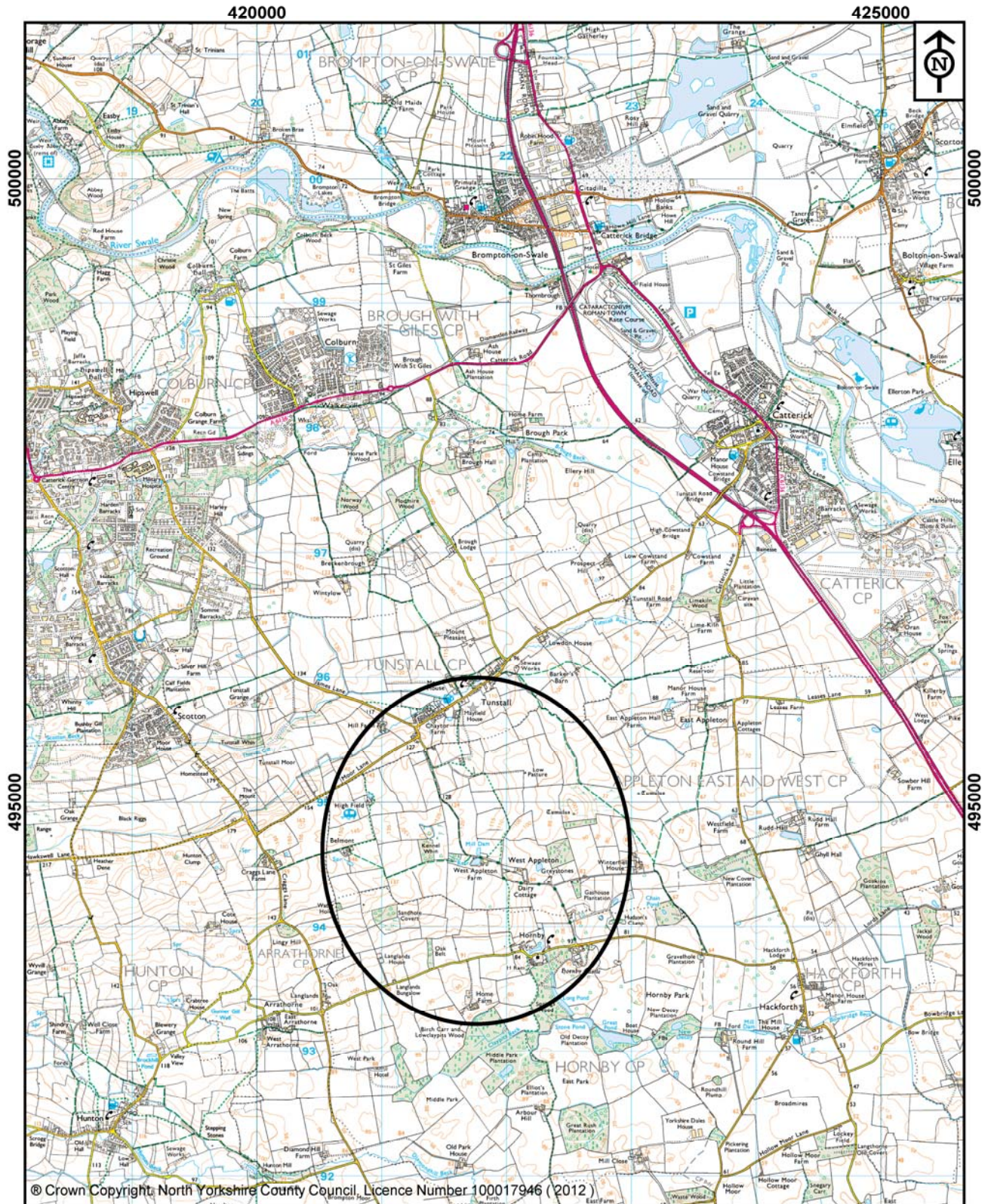
Evidence submitted against the application

The documents are held on a file marked:

“County Council’s Planning and Regulatory Functions Sub-Committee,

2 March 2012

Application to Upgrade a Bridleway to Restricted Byway and to Add a Restricted Byway, known as Stripe Lane, to the Definitive Map and Statement in the Parishes of Appleton East & West And Hornby”, which will be available to Members at the meeting.



North
Yorkshire County Council

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

LOCATION PLAN

Map drawn on 29 November 2011

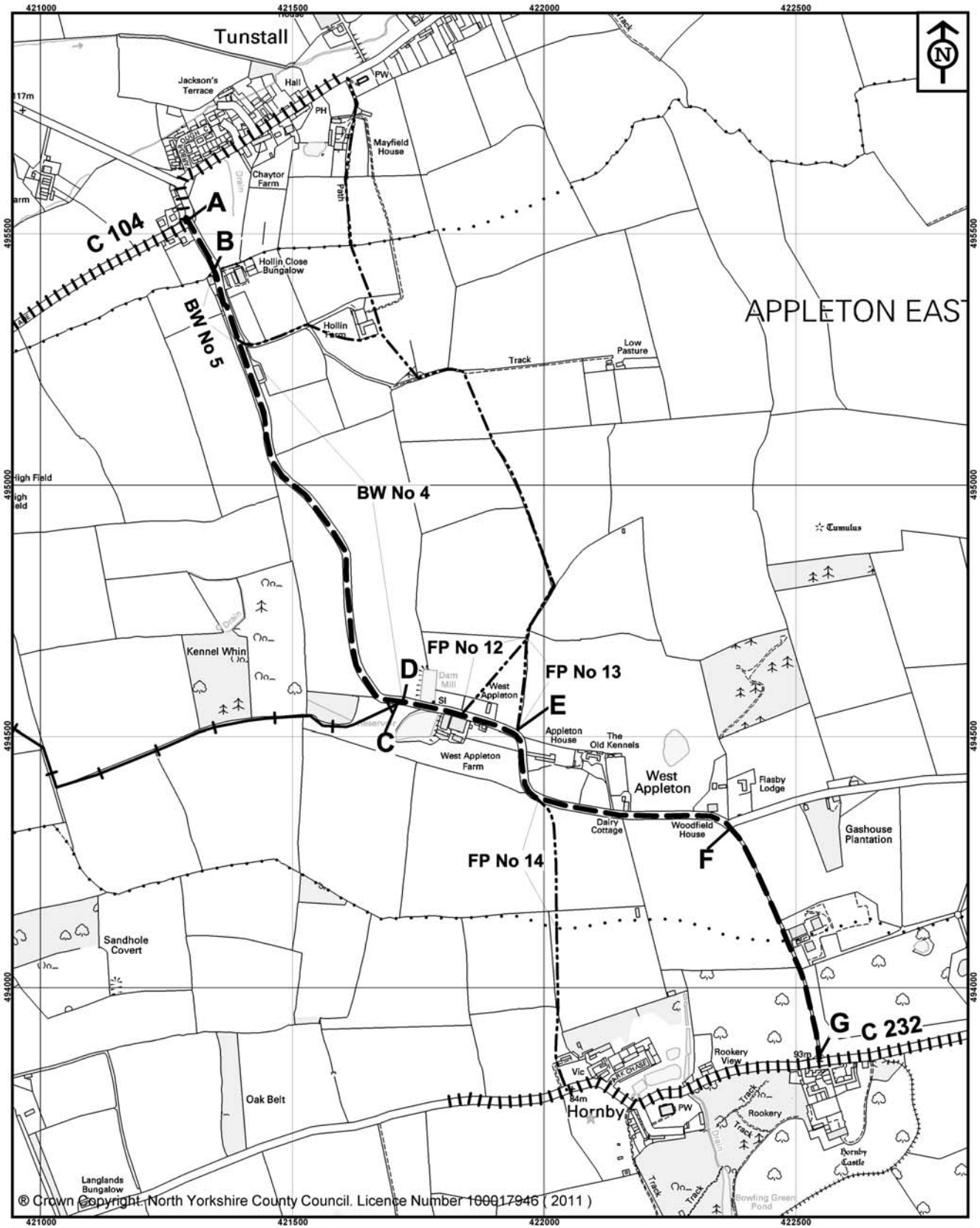
Drawn by JS | Scale 1:48701

North Yorkshire County Council

Planning And Regulatory Functions
 Sub Committee
 2 March 2012

PLAN 1

File Ref No. RICH/2005/01



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

Key:

- RB to be recorded
- Other footpaths
- Other bridleways
- Maintained Highways

Map drawn on 24 November 2011
Drawn by JS Scale 1:10000

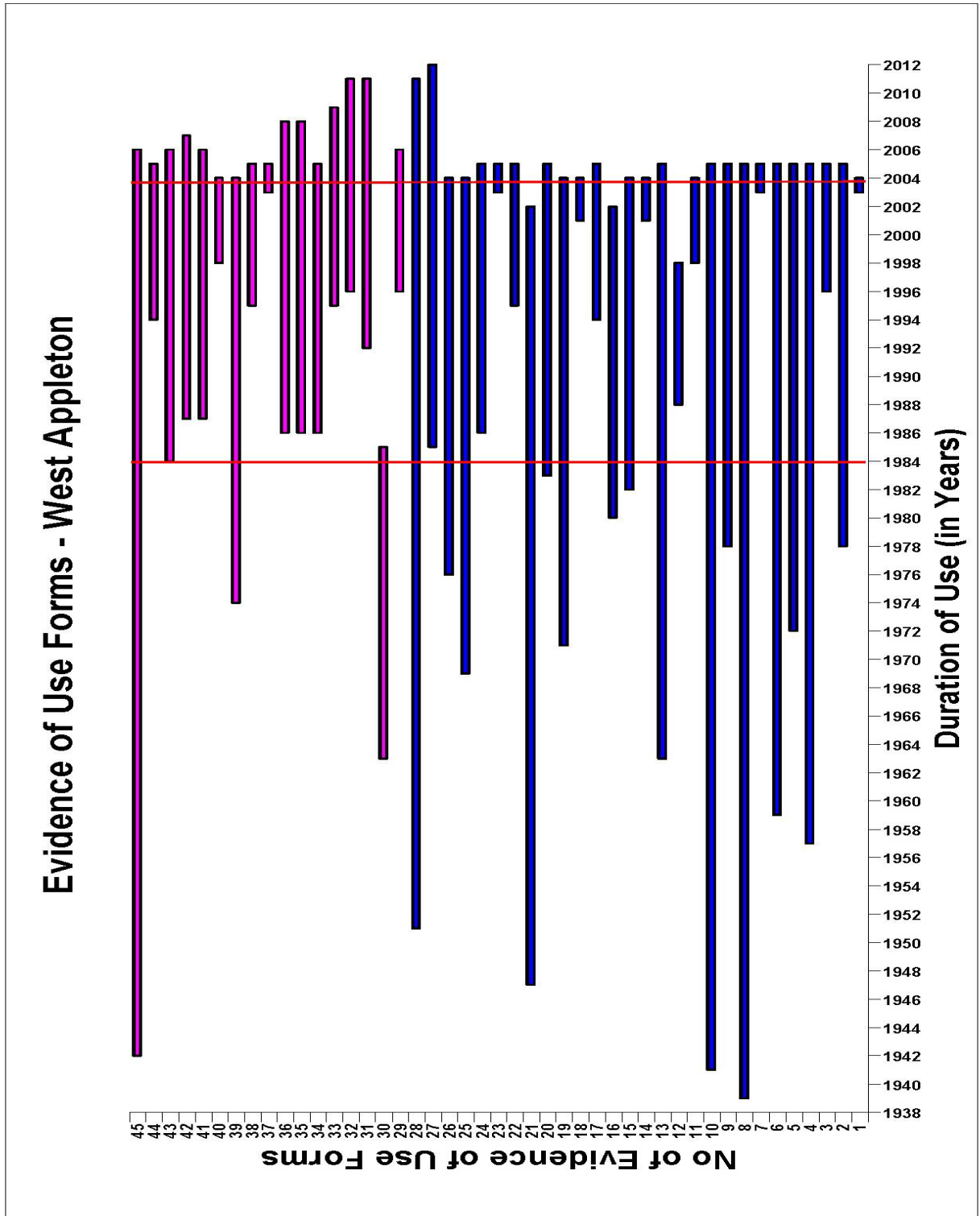
North Yorkshire County Council

Planning And Regulatory Functions
Sub Committee
2 March 2012

PLAN 2

File Ref No. RICH/2005/01

**TABLE 1:
USER CHART**



**TABLE 2:
USAGE BREAKDOWN**

User No.	Foot	Horseback	Motor Vehicle	Pedal Cycle
1	yes	no	yes	no
2	yes	yes	yes	yes
3	yes	yes	yes	no
4	yes	no	yes	yes
5	yes	yes	yes	no
6	yes	no	yes	yes
7	yes	no	yes	yes
8	yes	yes	yes	yes
9	yes	-	yes	yes
10	yes	-	-	-
11	yes	-	-	-
12	no	yes	yes	no
13	yes	no	yes	yes
14	yes	no	no	no
15	yes	no	yes	yes
16	yes	yes	yes	no
17	yes	no	no	no
18	yes	no	yes	yes
19	yes	yes	yes	no
20	yes	yes	no	no
21	no	yes	no	no
22	yes	yes	yes	yes
23	yes	yes	yes	no
24	yes	no	yes	yes
25	yes	yes	yes	-
26	yes	no	yes	no
27	yes	no	no	no
28	yes	no	yes	yes
Total	26	12	21	12