

NORTH YORKSHIRE COUNTY COUNCIL**PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE****2 MARCH 2012****APPLICATION TO ADD A FOOTPATH BETWEEN MILL LANE AND FOOTPATH
NO 20.56/6, REDMIRE****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, the effect of which, if confirmed, would be to add a Footpath, which runs between Mill Lane and Footpath No 20.56/6 in Redmire. 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 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 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 However, if there is objection to an Order that is not subsequently withdrawn, only the Secretary of State would have the power to decide if it should be "confirmed".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, indicates that a right of way which is not shown on the 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.

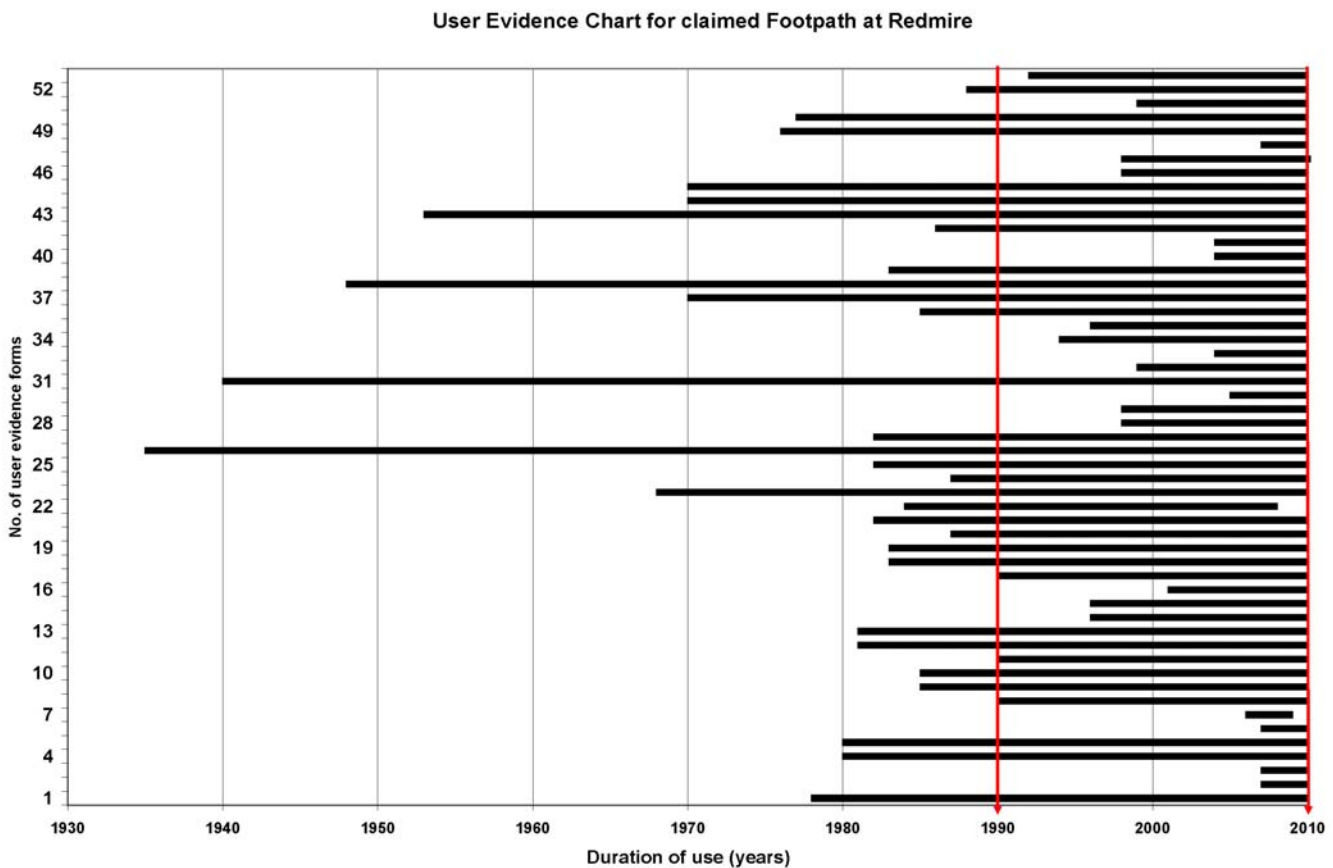
4.0 BACKGROUND

- 4.1 On 22 July 2010 a resident of Redmire submitted an application under the Wildlife & Countryside Act 1981 to add the route shown A – B – C on Plan 2 to the Definitive Map and Statement as a Footpath.
- 4.2 The application was submitted after the landowners adjacent to the application route blocked the stile at Point B on Plan 2 in May 2010, and then verbally challenged a number of people using the route. As the blocking of the stile is the point of challenge to the public’s use of the route, the 20 year period of use examined to establish any dedication of the route as a public right of way has been identified as between 1990 - 2010.

5.0 EVIDENCE IN SUPPORT OF THE APPLICATION

- 5.1 The application was supported by 59 user evidence forms, claiming uninterrupted use of the route on foot from the 1930s up to 2010. During investigations a further four user evidence forms were submitted making a total of 63 forms completed by 65 signatories.
- 5.2 None of the witnesses state that they were ever stopped or challenged whilst using the route prior to 2010.
- 5.3 Eight of the users have indicated that they had a private right to use the route, or that they used it with permission. These eight user evidence forms have been withdrawn from the supporting evidence, as they do not support the use of the route “as of right”, and therefore do not meet the criteria of Section 31 Highways Act 1980.
- 5.4 Of the remaining 55 user evidence forms, 53 of the users demonstrated on their forms that they had used the application route, the other two users described using Mill Lane but not the application route, therefore their evidence cannot be considered in determining public rights on the application route.

5.5 This leaves 53 user evidence forms; of these, eight claimed that they had used the route once or twice a year; five claimed that they had used the route up to ten times a year, and forty-two claimed that they had used the route more than ten times a year. The chart below shows the claimed use of the route “as of right”, (i.e. “without secrecy, force or permission”). The vertical red lines show the period of 20 years under consideration.



5.6 On these 53 user evidence forms, reasons given for using the route include access to Redmire Falls, visiting the Sulphur Well, good views down the River Ure and as a walk with friends and family. All of these are bone fide reasons for using a public right of way.

5.7 As some doubt had been expressed by the objector to the proposed footpath, relating to the existence of the crossing of the boundary wall in the past, witnesses who had submitted user evidence forms were asked to complete a second form, providing more specific information about their use of the route, and details of the boundary between Mill Lane and the application route. Of the 65 forms sent out, responses were received from 43 signatories.

- 5.8 Twenty nine signatories stated that they believed the stone wall and stile to have be in existence during their complete use of the application route. Fourteen signatories stated that the current stone wall was not always in existence, but were unclear when the wall was erected, eight of these signatories remembered that before the wall was installed a wooden fence was present with a hand gate in the same location as the current stone stile. The actual situation was clarified by a previous landowner as described in 5.10 below.
- 5.9 The signatories were also asked about their wider use of the route, to clarify whether they made use of the route via points B and C to access Redmire Falls, or whether they made use of Mill Lane only to access Redmire Falls. Of the 43 signatories who responded, 27 showed that they generally walked a circular route from Redmire village along Well Lane, then joined the application route, continuing to Redmire Falls in a westerly direction and then returned back to the village along Mill Lane. Ten of the signatories stated that they walked a similar route, but did not go down to Redmire Falls.
- 5.10 A landowner evidence form was returned by one of the previous landowners of Mill Farm, providing evidence regarding the boundary between their land and Mill Lane. They indicated that they bought the property in 1990 from the Bolton Estate, and that the Estate informed them that people used a route at the bottom of their field (which corresponds to the application route) when they purchased the property.
- 5.11 The landowner has clarified that when they moved into the property in 1990 there was no field boundary separating Mill Lane from the field to the east. They wanted to keep horses and sheep in this field, so they installed a post and rail fence with a hand gate (in the same position as the current stone stile) to allow the public to use the path at the southern side of the field (the application route). The landowner later acquired more livestock and therefore needed a stronger boundary, so the present stone wall was built in 1996, with the consent of the person who owned the adjacent Fishing Lodge at that time. The stone wall was erected in the same location as the post and rail fence, and a stone stile replaced the gate to allow the public to continue using the path ie the application route.
- 5.12 One of the previous tenants of Mill Farm completed a user evidence form and stated that they lived there for 40 years from the 1930s, and that the public always used the application route when walking from Well Lane to the Redmire Falls.
- 5.13 An undated photograph was supplied showing the post and rail fence between Mill Lane and the application route, showing a hand gate in the fence line where the application route meets Mill Lane, this corresponds to Point B on Plan 2.
- 5.14 No historical evidence was submitted in support of this application.

6.0 EVIDENCE AGAINST THE APPLICATION

6.1 During initial investigations into the application, an objection was received from the representatives of the current owner of the Fishing Bothy. The objection is on the basis that:-

- The original footpath was obstructed in 1991 by the erection of a fence, causing the public to resort to using a different access onto Mill Lane,
- This is the only reason that the public used the new route,
- When the original footpath has been unobstructed there will be no need for the new path, and that there is no public interest in forming a duplicate path,
- Use of the route had been in exercise of private rights or by permission, and not “as of right”, and therefore could not be used as evidence of a public right of way. The objector stated that the route was only used by fishermen with a private right.

6.2 The landowner’s representative submitted two aerial photographs showing Mill Lane, Mill Farm and the Fishing Bothy dated 1990 and 1994.

6.3 The photograph taken in 1990 shows that no boundary was present between Mill Lane and the field containing the application route. In this photograph the position of the application route is only partially visible due to the tree cover.

6.4 The photograph taken in 1994 shows that a boundary fence is present between Mill Lane and the field containing the application route, the alignment of the application route is only partially visible due to the tree cover.

6.5 The landowner’s representative contends that it is evident from these photographs that there is no trace of any established footpath going to, or from, the Fishing Bothy. He states the constant and regular use of the route would form a clear and visible pathway, and that as no path is evident is supportive that a route has not been established.

6.6 He further states that he has information from witnesses that contradicts that a gate was provided for pedestrian traffic at the same point where the present stile currently exists.

7.0 RESPONSES FROM OTHER LANDOWNERS AND INTERESTED PARTIES

7.1 During the initial consultation Redmire Parish Council confirmed that they are in support of this application. The Parish Council have now taken over the application from the local resident.

7.2 The local representative of the Ramblers Association confirmed that they are also in support this application.

7.3 During the initial consultation the current owners of Mill Farm stated that they were aware that the application route was used extensively throughout the twelve years they have lived at the property. They also stated that this route is “The natural evident path for those taking the riverbank walk from Wensley to Redmire Falls.”

8.0 COMMENTS ON THE EVIDENCE

8.1 It is clear from the evidence that members of the public have enjoyed use of the application route “as of right” from the 1930s to 2010. This satisfies the test as set out under Section 31 Highways Act 1980.

8.2 The majority of the user evidence indicates that the public who approached the application route from the east walked on the application route and did not cut the corner north-westwards from Point C to join Mill Lane, but were actually heading in a westerly direction to continue towards Redmire Falls. It is also apparent that this route had been taken prior to the obstruction of the definitive footpath (at Point D) by the construction of the wall.

8.3 The user evidence submitted supports the comments by the landowners with regard to the installation of the fence and wall, and associated hand gate and stone stile. It shows that the public did not deem the construction of the fence or wall to be a challenge to their usage of the path, as facility was provided to allow continued use of the route. The only challenge that signatories recorded, were those that took place in 2010.

8.4 The evidence that was submitted by the current and previous landowners and tenant of Mill Farm indicates that from the 1930s until 2010 the owners and occupiers of the land made no attempt to challenge the public’s enjoyment of this route. Indeed, measures were taken by the landowners to provide a passing point through the field boundary to allow the public to continue to use the route which could be deemed as dedication under Common Law (see paragraph 5.11).

8.5 It is acknowledged, as the objector notes, that once the wall had been constructed across the north western end of the definitive footpath (at Point D), causing an illegal obstruction to the route, the public had to make use of the route A – B – C. However, it is clear that the landowners were aware that the public used this route, and if the landowners had not wanted the route to become a public right of way, notices could have been installed to notify the public that this route was for private use by fishermen only.

8.6 The aerial photographs that were submitted show that no boundary was present in 1990 and that a fence structure was installed at some point between 1990 and 1994. This supports the evidence supplied by the previous landowner of Mill Farm (see paragraph 5.11). From the photographs, it is unclear if the fence obstructed the application route in 1994, due to the tree cover obscuring the application route.

8.7 No evidence has been submitted by the objector to demonstrate that previous owners took any action to indicate to users of the route that the use was only allowed for private purposes.

9.0 CONCLUSIONS

- 9.1 Officers are satisfied that the user evidence demonstrates use of the route by a large number of walkers, “as of right” (i.e. without force, secrecy or permission), for well over 20 years, before any challenges to users were made in 2010. Officers have not been presented with any evidence to rebut the assertion that the route has been used by the public as described above; or of any actions showing an intention not to dedicate by previous landowners or tenants prior to 2010.
- 9.2 Officers are therefore satisfied that a public right of way is reasonably alleged to subsist, and that an Order should be made to add the route to the Definitive Map and Statement as a Footpath.

10.0 RECOMMENDATIONS

- 10.1 It is therefore recommended that 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 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 powers delegated to him within the County Council’s Constitution, to decide whether or not the County Council can support confirmation of the Order.

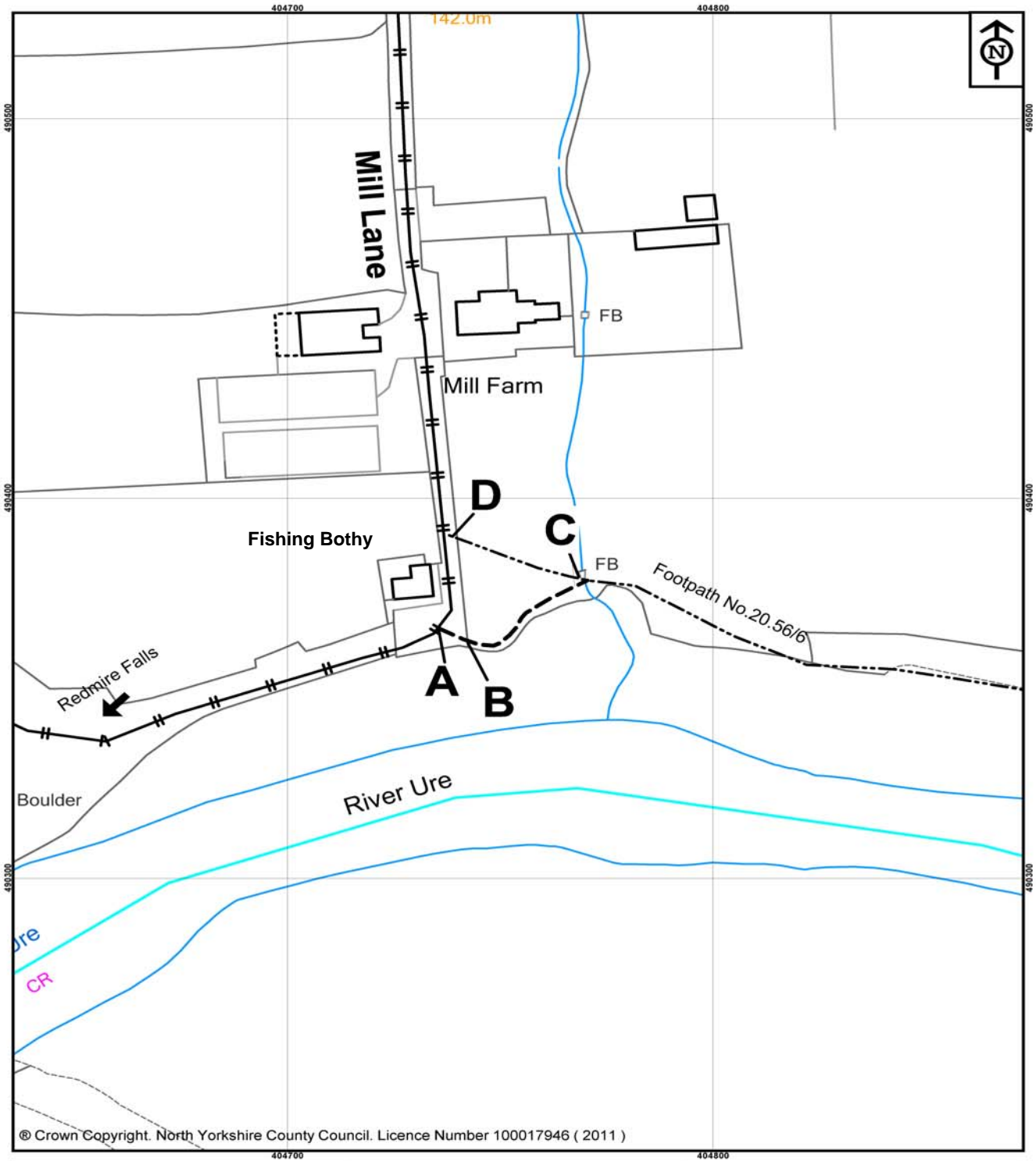
DAVID BOWE
Corporate Director Business and Environmental Services






Author of Report: James Perkins, Definitive Map Officer

Background papers

- DMMO application dated 22 July 2010
- 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 add a footpath between Mill Lane and footpath No 20.56/6, Redmire”, which will be available to Members at the meeting.



 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p> <p>Application Route </p> <p>Other footpaths </p> <p>Maintained </p> <p>Highways </p>	<p>Planning And Regulatory Functions Sub Committee 2 March 2012 Application to add a footpath between Mill Lane and Footpath No.20.56/6, Redmire</p> <p>PLAN 2</p>
	<p>Map drawn on 21 November 2011 Drawn by _____ Scale 1:1250</p>	<p>File Ref No. RICH/2010/05</p>