

North Yorkshire County Council

Planning and Regulatory Functions Committee Sub- Committee

Minutes of the meeting held on 10 February 2012, commencing at 10.00 am at Knaresborough House, High Street Knaresborough.

Present:-

County Councillors John Blackburn, David Blades, Robert Heslestine, Andrew Goss (substitute for Bill Houl), and Cliff Trotter.

15 members of the public were present.

55. Appointment of Chairman and Vice-Chairman for the meeting

Resolved -

That for the purposes of this meeting County Councillor John Blackburn be appointed Chairman and County Councillor David Blades be appointed Vice-Chairman.

County Councillor John Blackburn in the Chair

Copies of all documents considered are in the Minute Book

56. Minutes

Resolved -

That the minutes of the meeting held on 13 January 2012, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

57. Public Questions or Statements

The Democratic Support Officer reported that other than those persons who had registered to speak on the following item there were no questions or statements from members of the public.

58. Application to Register Land as a Town or Village Green – The Old Orchard, Blind Lane, Knaresborough

Note: Prior to consideration of this item of business, the following Members each declared a personal interest for the reasons indicated:-

County Councillors Andrew Goss and Cliff Trotter because they were Members of Harrogate Borough Council.

Considered –

The report of the Corporate Director – Business and Environmental Services inviting the Sub-Committee to determine an application received from Mrs E J Inman to register an area of land at Blind Lane, Knaresborough as a Town or Village Green. The application site was owned by Linden North Limited and was subject to construction work following the granting of planning permission for low cost housing. A location plan was attached the report. As the Commons Registration Authority the County Council was responsible for determining the application.

Also appended to the report was a full copy of the application, together with supporting evidence submitted by the Applicant and the objections received in response. The relevant legislation and determining criteria to be applied under the Commons Act 2006 were set out in the report. The report recommended that the application be refused as the relevant criteria had not been satisfied.

The matter had been reported to the County Council's Harrogate Area Committee for information and the report had been noted.

The item was introduced by Doug Huzzard, the County Council's Highway Asset Manager. He stressed the importance of strict appliance of relevant criteria to the evidence when making a decision. Members of the Sub-Committee had he said to be satisfied that the claimed use over the relevant 20 year period had been 'as of right'. Members were reminded of the merits of whether or not it might be beneficial for the land to be a town or village green were not material. Consequently any support in that vain should be disregarded and at the same time Members were not be influenced by the planning permission granted in respect of the site as it was not material. A series of photographs of the application site taken during the period 1981 to the present date were shown at the meeting. The photographs not all of which he acknowledged were taken during the relevant 20 year period gave a pictorial indication of the history of the site. Members were advised that the reason the report recommended refusal was because given the evidence submitted on balance the claim lacked credibility. Further the majority of the evidence submitted claiming use of the site was not specific enough and therefore little or no weight could be attached to it.

The Chairman then invited those Members of the Public who had registered to speak to address the Committee.

County Councillor Bill Hoult said that he had represented the division in which the application site was located for the last 12/13 years. Additionally he had also been district and town councillor for over 20 years. For several years during that time he had been the district councillor for the ward in which the application site was situated. He lived approximately a quarter of mile from the site. Throughout that period he had no recollection of the land being used to the extent claimed by the Applicant. He did not doubt that children had spasmodically played on the land but such use had not he said been sustained consistently across the site over a twenty year period.

Members of the Committee asked County Councillor Hoult if he had seen any evidence of paths on the site being made for example by people walking their dogs. County Councillor Hoult replied that the site was scrub land and very overgrown and that access was difficult. He said that he had no knowledge of the land being used intensively for any purpose.

The Applicant, Mrs E Inman spoke in support of the application she had submitted. She said she had collected 50 signatures from local residents who had personal experience of the land being used for recreational purposes as evidenced by the statements they had submitted. Throughout the relevant 20 year period the land had never been secured in any way nor had any maintenance work been carried out.

A Member referring to the letter at page 91 of the agenda papers asked what evidence Mrs Inman had to substantiate the statement she had made to the press that the land had been left by the Jacob Smith family for the benefit of local residents. Mrs Inman said that the land had been neglected for a long time. She acknowledged that her statement was based on hearsay and assumption and that there was no evidence to the contrary. She did however concede that she did not have any factual evidence to support her statement.

Reference was made to the photographs taken of the site before it was cleared for construction work. A Member asked how children had accessed the site which was clearly very overgrown and dangerous due to the fly tipping that had taken place. Mrs Inman replied that the site was not bounded by a fence or hedge and that there was no physical barrier to prevent access to the site. Certain parts of the site were from a health and safety aspect dangerous but that overall the land was a beautiful space where children had played and enjoyed nature. Public access to the land had only been denied after the developers had commenced construction work.

Members sought clarification of the activities children had undertaken on the land especially during the summer months when the vegetation would be very dense. Mrs Inman said that there were some clear areas. Activities included hide and seek and swings made in the trees. Lots of children played on the land which was also used by dog walkers. Local residents had told her that children, parents and grandparents of the same family had all used the land for recreational activities.

Harrogate District Councillor Ivor Fox then addressed the Committee. He said that he lived in the vicinity of the application site and had regularly walked along Blind Lane for over a decade. If action had been taken earlier he considered there may have been a case for registering the land as a town or village green. As things stood he very much doubted that the evidence was sufficient to meet the required legal criteria.

Mr Matthew Barker on behalf of Linden Homes North spoke against the application. He said he had visited the site in 2010 and had seen no evidence of it having been used for recreational purposes. The very dense undergrowth made the land inaccessible. He referred Members to the evidence collected by Linden Homes North and said the evidence submitted in support of the Application contained no details of specific activities or any detailed dates of claimed use.

A Member asked when the site was cleared if any evidence of use had been discovered or the remains of children's swings uncovered. Matthew Walker said that he had walked around the perimeter of the site and had struggled to gain access. During his inspection he confirmed that had not seen any evidence of tree swings or ropes.

In light of earlier questioning of the Applicant by one Member Simon Evans, Legal Officer, advised members that trespass of land in itself would effectively amount to use of the land 'as of right' one of the criteria required by the Commons Act 2006. This assuming that entry had not been by force.

The Chairman invited Members to comment on the report and the evidence presented at the meeting.

County Councillor Hesletine said that after reading the papers and listening to the speakers that day he was not convinced that the requirements of Section 15 (2) of the Commons Act 2006 had been met. The evidence submitted by Harrogate Borough Council was very clear and he referred to paragraph 6.5 of the report which stated that the Applicant had not challenged that entry was forced. He did not consider that usage had been 'as of right'. The report itself was very strongly worded to an extent he had not previously witnessed and he was mindful of the reasons given for the recommendation. Also the evidence submitted via sworn affidavits carried great weight. All of this when coupled with the response of the Applicant that she was unable to substantiate the statement she had made to the press was why he supported the recommendation in the report. He thanked the Applicant for her honesty and said that the application was a case of 'the heart leading the head'.

County Councillor David Blades supported the comments expressed by County Councillor Hesletine and added that the photographic evidence was enlightening. He was not convinced that the claimed usage took place over the required 20 year period.

County Councillor Andrew Goss agreed with the comments made earlier and said that there was no evidence that the land had been used by dog walkers or as a playground by children over a 20 year period. At best this use was sporadic due to the overgrown and derelict nature of the site.

Resolved –

That the Application to register land known as The Old Orchard, Blind Lane, Knaresborough as a town or village green is refused on the grounds that not all of the relevant criteria in Section 15(2) of the Commons Act 2006 are satisfied.

The meeting concluded at 10.45 am.

JW/ALJ

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.

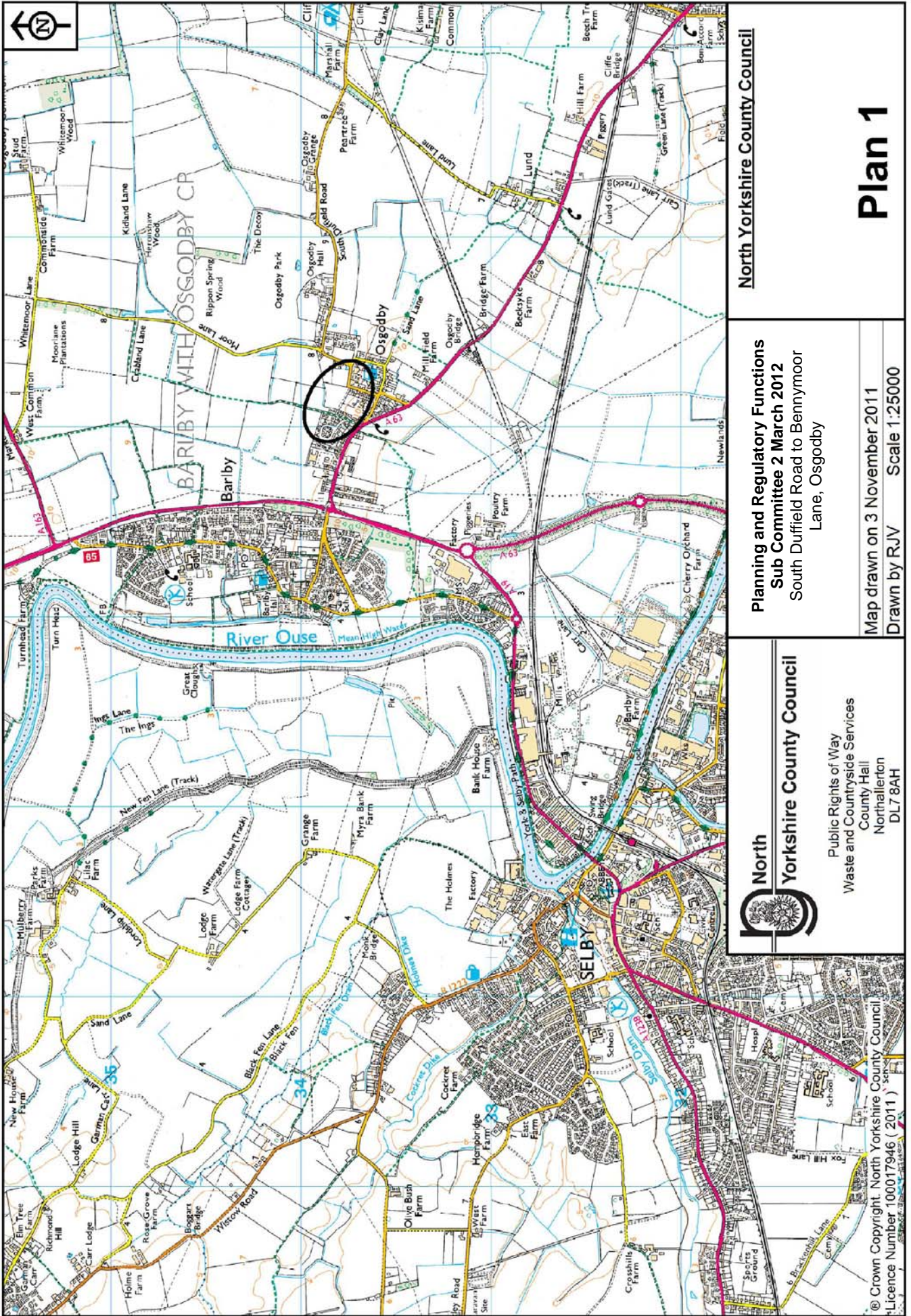
DAVID BOWE
Corporate Director – Business and Environmental Services

Author of Report: Russ Varley

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

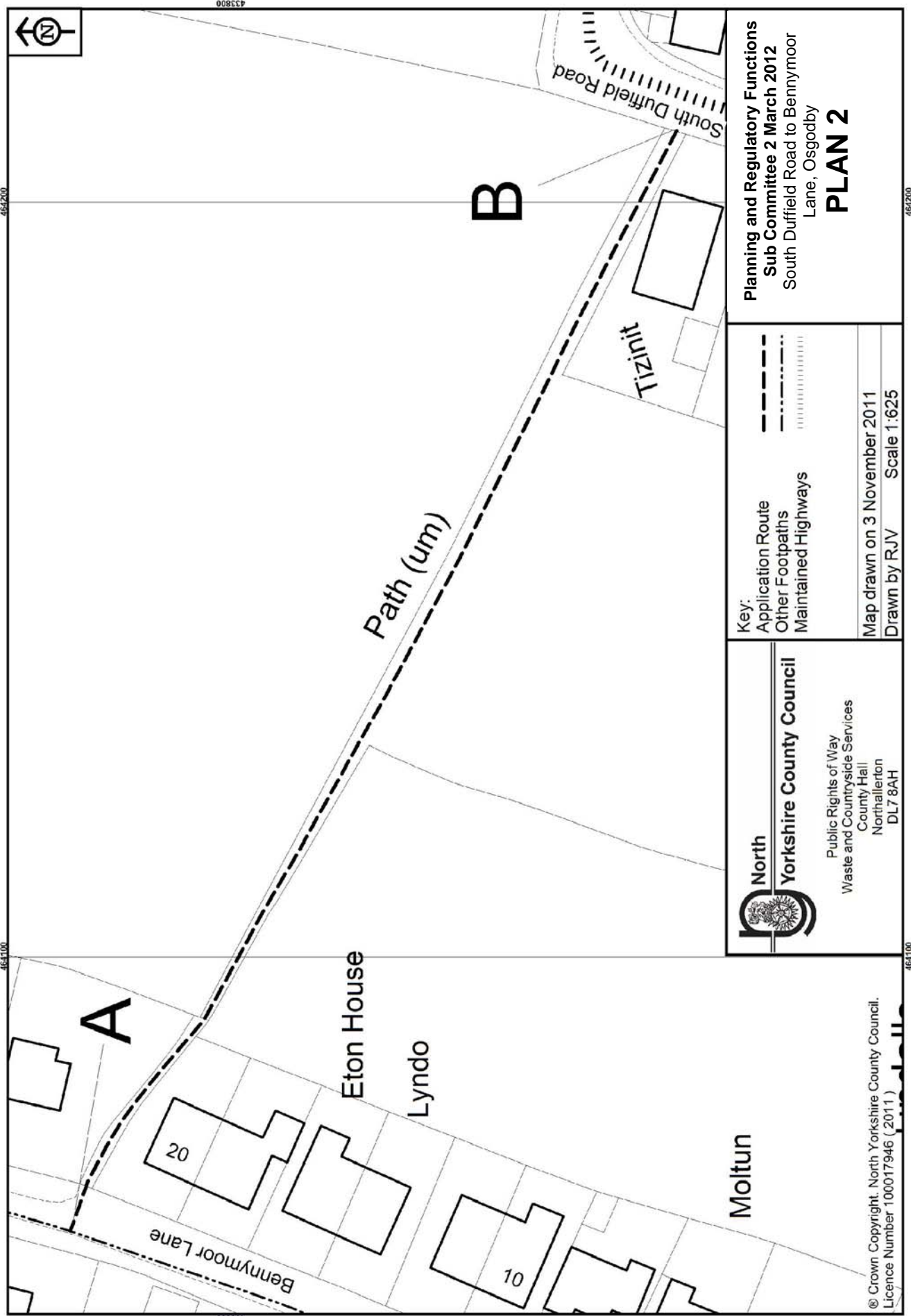
Plan 1

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

North Yorkshire County Council

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

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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 SAND 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 Sand 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 TO THE APPLICATION

- 4.1 The route shown on Plan 2 was first brought to the attention of the County Council in 1977 when six evidence of use forms were submitted to the authority, requesting the route to be added to the Definitive Map under the review process. At that time there was no facility within the legislation to make amendments to the Definitive Map by application, and further investigations were deferred until the area was next subjected to a review of its rights of way.
- 4.2 An application dated 29 March 2007 was made under the Wildlife and Countryside Act 1981 for the same route as in the 1977 forms to add a footpath to the Definitive Map and Statement at Osgodby, by Barlby and Osgodby Parish Council. The application was supported by a further fourteen user evidence forms giving a total of twenty forms supporting the application.
- 4.3 It is not clear what spurred the application to be made in 2007 but the submission of an application can be viewed as bringing the route into question for the purposes of the Highways Act 1980. The date of challenge is important because it is from this date that the twenty year period is calculated back.

- 4.4 The claimed route lies along a reasonably well-defined track that runs across two fields between the two roads.
- 4.5 The land crossed by the application route is in the ownership of three land owners.
- 4.6 Following the initial consultation with other local councils, user groups, and land owners one objection was received.
- 4.7 Of the remaining two land owners one is the County Council, whose Asset Management Team have confirmed that they have no objections to the establishment of the path.
- 4.8 The third land owner has confirmed that he has no objections to the path if it is established on its historical route. However he has stated that he would object if the route was diverted from this historic way eastwards. The route indicated on Plan 2 attached to this report is on the historic route of the path as indicated by the old Ordnance Survey maps.

5.0 EVIDENCE IN SUPPORT OF THE APPLICATION

5.1 Evidence of Use Forms

- 5.1.1 A total of twenty evidence of use forms have been submitted in support of this application by nineteen witnesses. One person completed a user evidence form in 1977 and then a further form in 2007.
- 5.1.2 Reasons given for the use of the route are leisure walks and dog walking, which are bone fide reasons for using a public right of way.
- 5.1.3 The span of usage covered by the forms is from 1922 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 Four witnesses report that, for many years, there were kissing gates giving access to the northernmost field crossed by the route.

5.2 Historic Evidence

- 5.2.1 The application was submitted with an old Ordnance Survey map. Further research shows that the route appears on both the 1892 edition and the 1907 edition OS maps. The route is shown as an unfenced track on these maps.

6.0 EVIDENCE AGAINST THE APPLICATION

- 6.1 Following the initial application and subsequent consultation one objection has been received. This is from a landowner whose property is crossed by the northern end of the application route. The land has been in his ownership since the mid 1970s.
- 6.2 The objection is on the grounds that there were no public rights across the field.
- 6.3 The land owner states that no permission has ever been granted for anyone to use the alleged route.
- 6.4 The land owner also states that when people have been seen they have been routinely challenged and turned back.
- 6.5 The land owner also denies any knowledge of any kissing gates or other means of giving access to the field, and states that his field next to South Duffield Road was wire fenced.
- 6.6 The land owner does acknowledge that there was a “stockman’s management tool” in the north eastern corner of the field. From the description given by the landowner, this appears to be somewhat similar to a stile, and has allowed access over the wire fence.

7.0 COMMENT 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 Of the nineteen witnesses, two 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.
- 7.3 One witness reports using the route to access their own land, meaning this use may have been under licence and therefore does not accrue public rights for the purposes of the Highways Act 1980. This evidence has also been removed from consideration.
- 7.4 In the light of the above there remain sixteen witnesses, and their evidence meets the twenty year use test set down in the Highways Act 1980.
- 7.5 The depiction of the route on the old Ordnance Survey map demonstrates that the route has physically existed for over 100 years, however this does not prove in itself that any public rights exist.

8.0 COMMENT ON THE EVIDENCE AGAINST THE APPLICATION

- 8.1 The evidence supplied with the objection consists of a long statement from the land owner stating his position.
- 8.2 The fact that people using the path had not sought permission and that the land owner had not granted permission confirms that the use set out in the evidence of use forms was “as of right”, meeting this requirement of the Highways Act 1980.
- 8.3 The challenging of people by the land owner is not corroborated by the evidence of use forms, none of the witnesses recorded that they had been prevented from using the route. Therefore, it is not possible to draw any conclusions on this matter.
- 8.4 The land owner denies any knowledge of any kissing gates on the route, however it is possible that any gates were not clearly identifiable by the time this landowner purchased the property. A couple of witnesses have commented that the remains of the kissing gates were still lying in the hedge in 2007. It is not possible to draw any conclusions on this particular issue.
- 8.5 As the stockman’s management tool (provided to give the stockman access to the field) appears to be the same as a stile, it may have allowed people to access the route. It was provided to allow the easy crossing of a barbed wire fence. The presence of barbed wire fences is corroborated by the evidence of use forms, but they do not appear to have prevented use of the route.
- 8.6 In summary, the objection makes relevant points suggesting that access has not been possible at all times due to fences, and that he has challenged people who have made use of the route, and therefore that public rights of way have not been established, they are not corroborated by the statements of the witnesses within the Evidence of Use forms.

9.0 CONCLUSION

- 9.1 Whilst the evidence is not clearly conclusive either in support of, or against the establishment of public rights, 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 not supplied sufficient evidence to satisfactorily rebut the reasonable allegation of the existence of the right of way.
- 9.3 The Selby Area Committee Meeting held on the 9 January 2012 made no comments on this matter.

10.0 RECOMMENDATION

10.1 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

Author of Report: Russ Varley

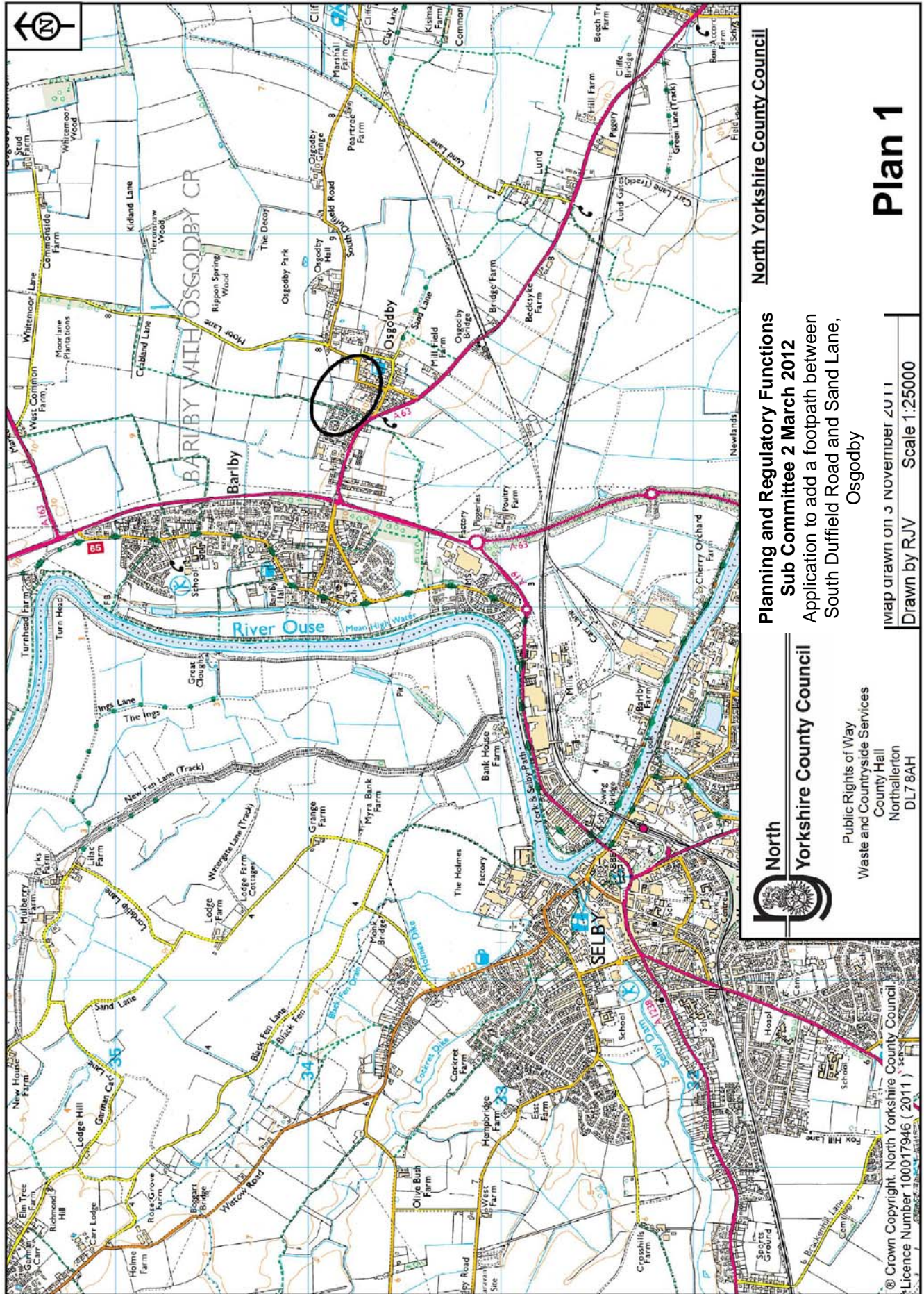
Background Papers: -

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 Sand 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
 Application to add a footpath between
 South Duffield Road and Sand Lane,
 Osgodby

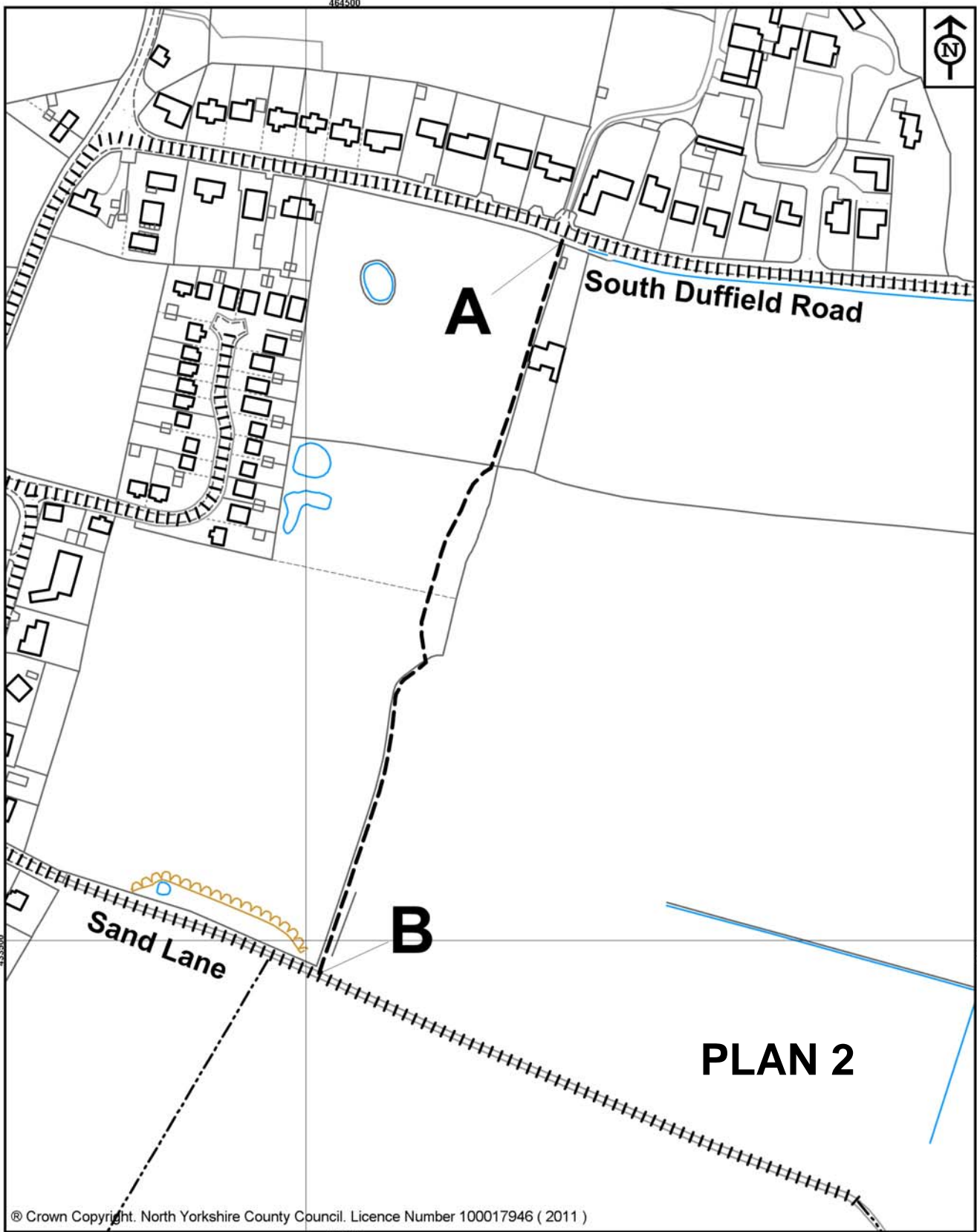
map drawn on 3 November 2011
 Drawn by RJV Scale 1:25000


North Yorkshire County Council

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

Plan 1

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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>	<p>Key:</p> <p>Application route - - - - -</p> <p>Other footpaths - - - - -</p> <p>Other bridleways - + - - -</p> <p>Maintainable highways </p>	<p>Planning and Regulatory Functions Sub Committee 2 March 2012 Application to add a footpath between South Duffield Road and Sand Lane, Osgodby</p>
	<p>Map drawn on 22 November 2011</p> <p>Drawn by RJV Scale 1:2500</p>	

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.

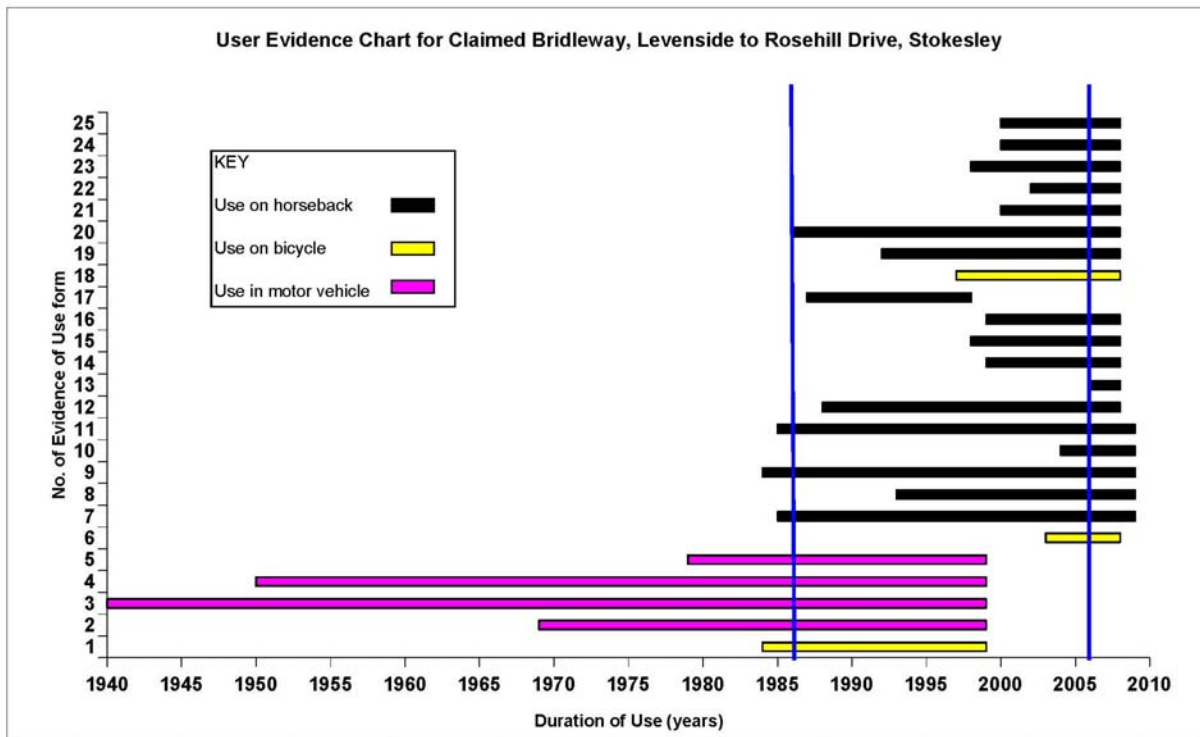
4.0 BACKGROUND

- 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

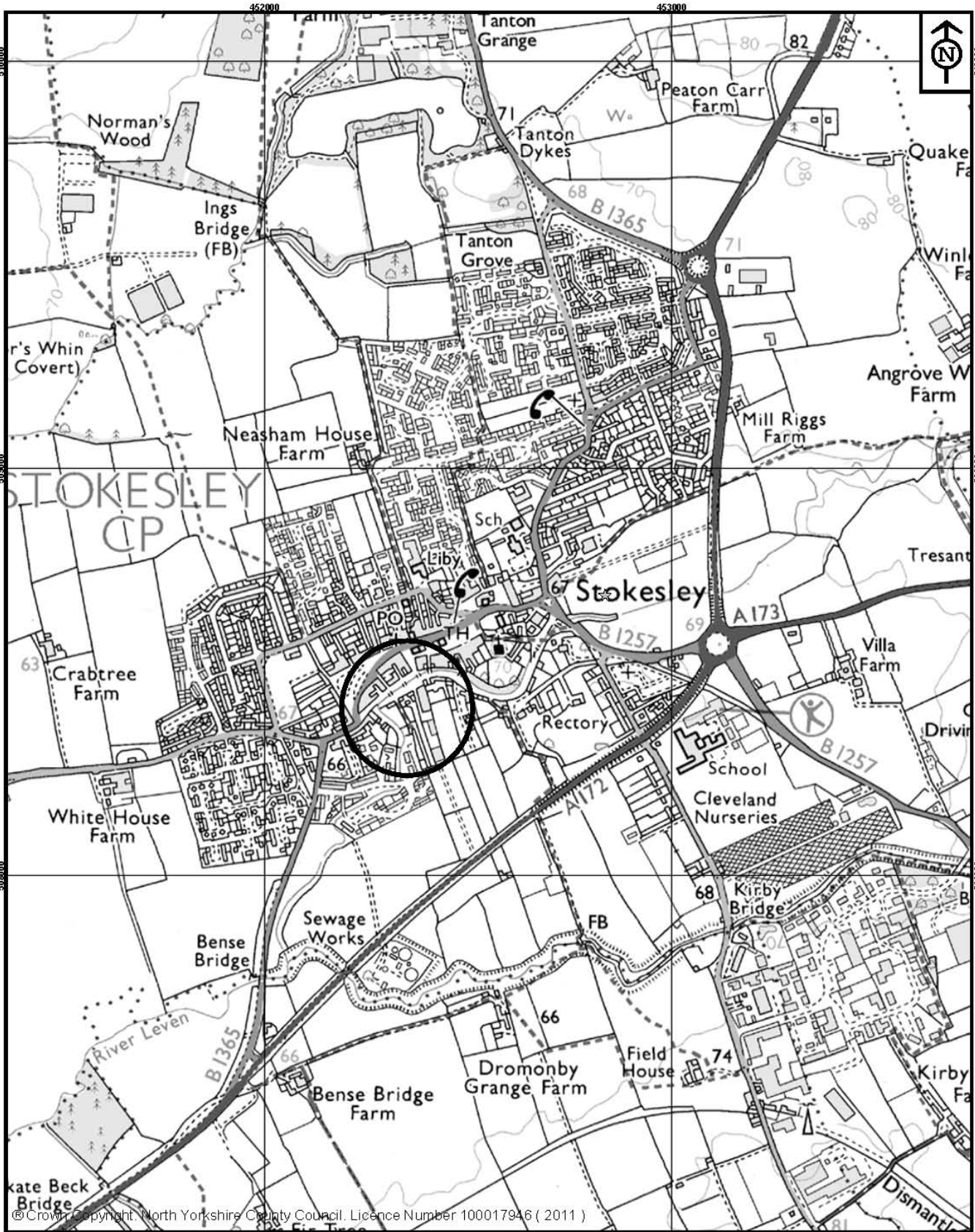
Corporate Director Business and Environmental Services

Author of Report: Beth Brown, Definitive Map Officer


Background papers

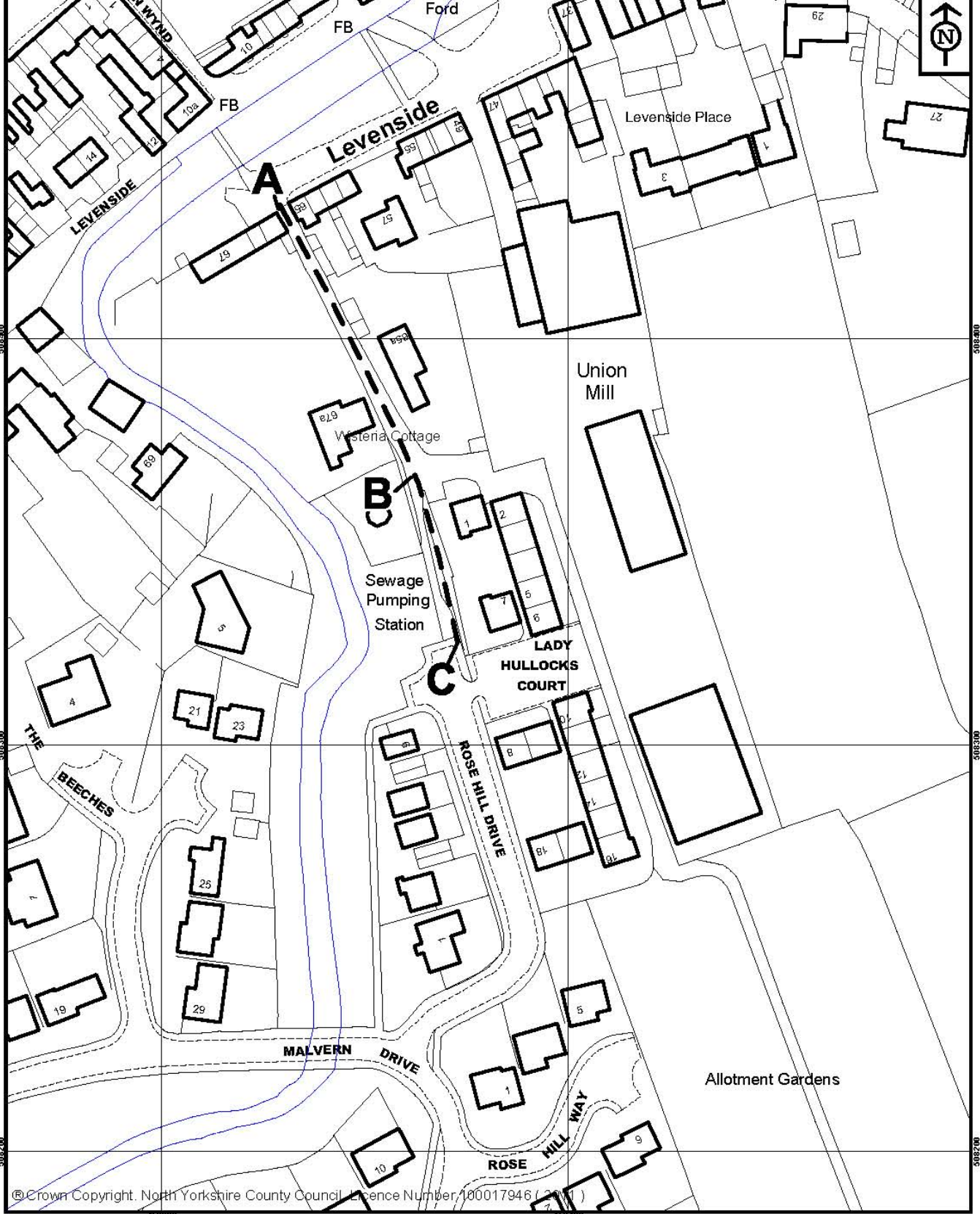
- DMMO application dated 20 January 2009
- Evidence submitted in support of, and against the application

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>	<p>PLAN 1</p> <p>LOCATION PLAN</p> <p>Map drawn on 15 December 2011 Drawn by B Brown Scale 1:12500</p>	<p>North Yorkshire County Council</p> <p>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>
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North Yorkshire County Council

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

NORTH YORKSHIRE COUNTY COUNCIL**PLANNING AND REGULATORY FUNCTIONS SUB COMMITTEE****2 MARCH 2012****APPLICATION TO ADD A RESTRICTED BYWAY TO THE DEFINITIVE MAP AND STATEMENT AT STANWICK PARK, STANWICK ST JOHN****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 track running from South Lodge, Stanwick St John, past Outer Lodge, to the Aldbrough St John road. A location plan is attached to this report as **Plan 1**. The route referred to is shown as A - B 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, 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.

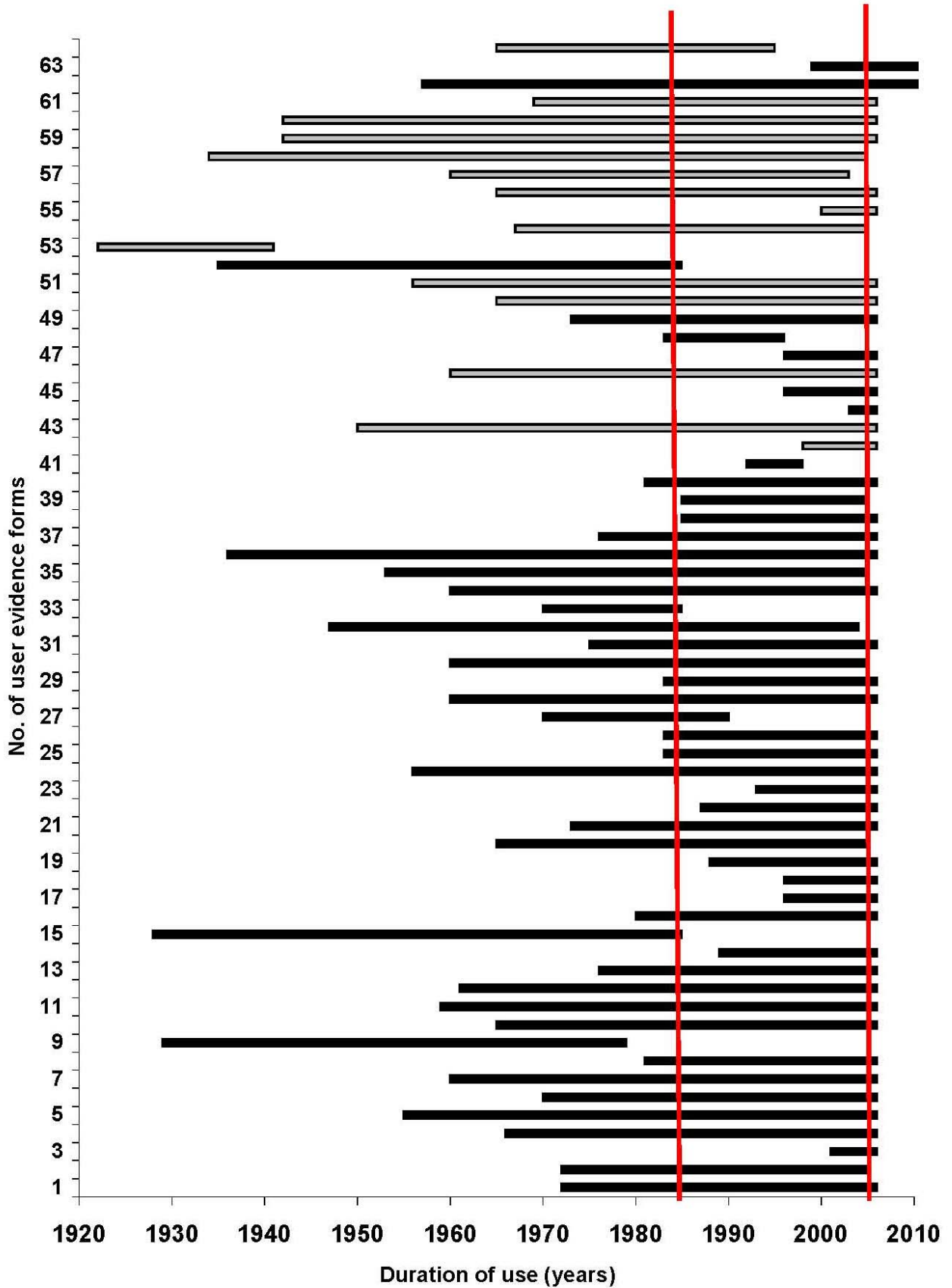
4.0 BACKGROUND

- 4.1 On 27 September 2006 Stanwick St John & Carlton Parish Council submitted an application under The Wildlife & Countryside Act 1981 to add the route shown A – B on Plan 2 to the Definitive Map and Statement as a Byway Open to all Traffic (BOAT). The application was submitted after the cut-off date for applications to record a BOAT as set out in the Natural Environment & Rural Communities Act 2006, therefore the Parish Council agreed to amend the application to record the route as a Restricted Byway.
- 4.2 The application was submitted after the owners of South Lodge and Outer Lodge put up gates (two field gates and an electric gate) across the application route in 2005, and challenged a small number of people using the route. The 20 year period of use required to show dedication of the route as a public right of way can therefore be set as 1985-2005.

5.0 EVIDENCE IN SUPPORT OF THE APPLICATION

- 5.1 The application was supported by 61 evidence of use forms, claiming uninterrupted use of the route from the 1920's up until 2005/2006, on foot, bicycle, horseback and in motor vehicles. During investigations into the application in 2011, a further three evidence of use forms were submitted, making a total of 64 forms.
- 5.2 The chart below shows the claimed use of the route. The bars coloured black show use of the route “as of right”, (ie “without secrecy, force or permission”), and the bars coloured grey show users who had a private right to use the route, or who used it with permission. The red vertical lines show the relevant 20 year period.

User Evidence Chart for claimed Restricted Byway at Stanwick Park
 (Grey bars show use with private rights or permission, black bars show use "as of right")



- 5.3 Of the 64 witnesses who completed user evidence forms, ten state that they had been challenged or prevented from using the route. Six witnesses give the dates of this challenge as 2005 or 2006, and another two give no date. One witness was asked where she was going by the owner of Outer Lodge in 2000, but was not stopped from using the route and was told that she was allowed to use the route as she lived in Stanwick. Another witness once found the gate at South Lodge shut in around 2000, but was unable to ascertain if it was locked or just shut as she is disabled so could not get out of her mobility scooter to check. Apart from these two occasions, none of the other witnesses state that they were ever stopped or challenged whilst using the route prior to 2005.
- 5.4 Of the ten witnesses who were challenged or prevented from using the route, four state that they were challenged by the owners of either South Lodge or Outer Lodge. Others state that they were prevented or put off using the route for one or more of the following reasons; the presence of loose Alsatian dogs (three users), difficult-to-use gates (six users) and vehicles parked on the route (five users).
- 5.5 A further 16 witnesses make reference to the gates installed in 2005, but state that the gates have not prevented them using the route.
- 5.6 One user states that she found the gate at South Lodge locked on a number of occasions in September 2005. None of the other witnesses have stated that they ever found any gates locked.
- 5.7 Some of the witnesses referred to a private right to use the track, set out in the deeds of some of the properties in Stanwick. Further investigation has shown that this private right applies to the properties that were sold as part of the Stanwick Park Estate in 1922.
- 5.8 Of the 64 forms only three user evidence forms have been withdrawn from the supporting evidence as these witnesses clearly state they have private rights in their property deeds, setting out a right "*at all times and for all purposes along the roadways marked on the said plan*", one of which corresponds to the line shown as A – B on Plan 2 of this report. Five other user evidence forms submitted by residents of Stanwick have been included in the supporting evidence, although it is uncertain whether they have private rights or not (four have not stated that they have private rights on the form, and one former resident could not remember if he had private rights or not).
- 5.9 A further 12 forms have been withdrawn from the supporting evidence, either because they showed use with permission, or used the route for access to farmland / livestock.
- 5.10 This leaves 49 valid user evidence forms; 44 showing clear use of the route "as of right" and another five completed by Stanwick residents who have not stated they have private rights.
- 5.11 Of the 49 valid user evidence forms, witnesses have all used the route by one or more means - on foot (43 witnesses), on horseback (29 witnesses), in a motor vehicle (15 witnesses), and on a bicycle (21 witnesses).
- 5.12 On the valid user evidence forms, reasons given for using the route include access to Aldbrough, leisure walking, dog walking, going to church, visiting friends and family, recreational riding, exercising horses, and as a safer alternative to the road. All of these are *bone fide* reasons for using a public right of way.

5.13 No historical evidence was submitted with the application.

6.0 EVIDENCE AGAINST THE APPLICATION

- 6.1 During initial investigations into the application, an objection was received from the owner of Outer Lodge, alleging that 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 owner stated that she has lived at Outer Lodge since 1998, and in that time the track has hardly ever been used, and that when it was used it was by those with a private right or those who had been given permission.
- 6.2 In her objection letter, the owner of Outer Lodge lists a number of people who she believes have a private right to use the route, because they farm land adjacent to the route. All user evidence forms completed by those using it to access land they own or farm have already been withdrawn from the supporting evidence.
- 6.3 The owner of Outer Lodge claims that many of the horseriders using the route did so in connection with a local riding stable, the owner of which she believes was given permission to use the route. She stated that other riders used it with the hunt, which also had permission to use the route.

7.0 RESPONSES FROM OTHER LANDOWNERS AND TENANTS

- 7.1 A neighbouring landowner (whose family owned Stanwick Park from 1922 until 1988, including the properties with access to the track and the land crossed by the application route) stated that he believes the route is a public right of way. He stated that for over 60 years, while the land was in the ownership of his family, the route was used by Stanwick residents and others without restriction on a daily basis. Over the years it had been used by Stanwick residents to get to the shops and services at Aldbrough, by people going to Stanwick church, by the postman, dustmen and delivery drivers, and by horseriders on a circular ride.
- 7.2 The current tenant of the land crossed by the application route (another member of the family who owned Stanwick Park from 1922-1988) stated that he believes the route is a public right of way. He also stated that he had never stopped anyone from using the route.
- 7.3 Agents for the current landowner (an investment company which purchased the land in 1988) stated they had no evidence to submit contrary to the application.
- 7.4 It appears that the owners of South Lodge do not own any land crossed by the application route, although it is believed that they are responsible for putting up one of the new gates across the route.

8.0 COMMENTS ON THE EVIDENCE

- 8.1 It is clear that there are a number of people resident in Stanwick who have a private right to use the application route “at all times and for all purposes”, and a small number of people who use the route to access farmland or livestock. These 2 categories of witness cannot be included in the evidence in support of the acquisition of public rights. However, it is also clear that the route has been widely used by others (approximately $\frac{3}{4}$ of those who completed evidence of use forms), “as of right” and this use has been unchallenged for over 70 years.
- 8.2 Consideration must be given to case law (*Mildred v Weaver* 1862, *Holloway v Egham UDC* 1908) which suggests that where a limited class of persons is entitled to use a route, it could be seen to negate any use which has been “as of right”. This is because it may not be reasonable to expect a landowner to differentiate between those exercising private rights, and those using the route “as of right”, making it difficult for them to challenge users.
- 8.3 Other case law states that on the other hand, it could be argued that on a route that a large number of people are entitled to use, it may not be worth the owner’s while to exclude the general public (*Grand Surrey Canal Co. v Hall* 1840).
- 8.4 However, even if the case in 8.2 applies to this route, if a landowner did not want the route to acquire public rights he could take other actions, such as putting up notices stating that the route was only open to those with private rights, or making a Section 31(6) deposit.
- 8.5 The current landowner has stated they have no evidence to submit, and there is no indication that they have taken any action to show an intention not to dedicate a public right of way.
- 8.6 There is no evidence that there were ever any notices stating that the route was private, or that anyone using the route was stopped or challenged prior to 2005. Members of the family previously owning the land who responded to investigations have stated that they were aware of public use of the route and believed the public had a right to use it.
- 8.7 Although it has been claimed that horseriders from a local stable had been given permission to use the route, this has been denied by the owner of the stable. In a telephone conversation with an Officer from the Definitive Map Team, the owner of the riding stable in question stated that she had never been given permission to use the route, but had used it believing it to be a public right of way. The riding stables were opened in about 1980, and at that time were based in Eppeby. The business moved to Sandwath Farm (part of the Stanwick Park landholding) in 1999, then moved to Namens Leases Farm, Aldbrough in 2010. The owner of the riding stable stated that ever since the business has been open, riders from the stable have used the route unchallenged, believing it to be open to the public.
- 8.8 During investigations into the application, 26 witnesses who stated they had used the route on horseback were contacted for further information about their use of the route. Of the 14 who replied, only four had a connection to the riding stable in question. The other ten had been riding independently, either on their own or with friends.

8.9 Apart from the challenges to users in 2005 (detailed in paragraphs 5.3 & 5.4), it would appear that no other actions were ever taken to stop people using the route. Witnesses have commented that the previous owner of Outer Lodge was always friendly to people using the route. It has also been stated by witnesses that the electric gates installed at Outer Lodge were easy to open from horseback or on foot.

9.0 CONCLUSIONS

9.1 Although it is clear that the route has been used by a number of people in exercise of private rights or with express permission, Officers are satisfied that the user evidence also demonstrates use of the route by a large number of walkers, horseriders, cyclists and motorists "as of right" (ie without force, secrecy or permission), for well over 20 years, before any challenges to users were made in 2005. Officers have been presented with no evidence of actions showing an intention not to dedicate by any landowner or tenant prior to 2005.

9.2 Due to the NERC Act 2006 (paragraph 4.1), public rights to use the route in a motor vehicle have been extinguished, so the highest status that the route could be recorded as, is a Restricted Byway.

9.3 It is considered 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 Restricted Byway.

10.0 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 on Plan 2 of this report to be shown on the Definitive Map as a Restricted Byway.

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.

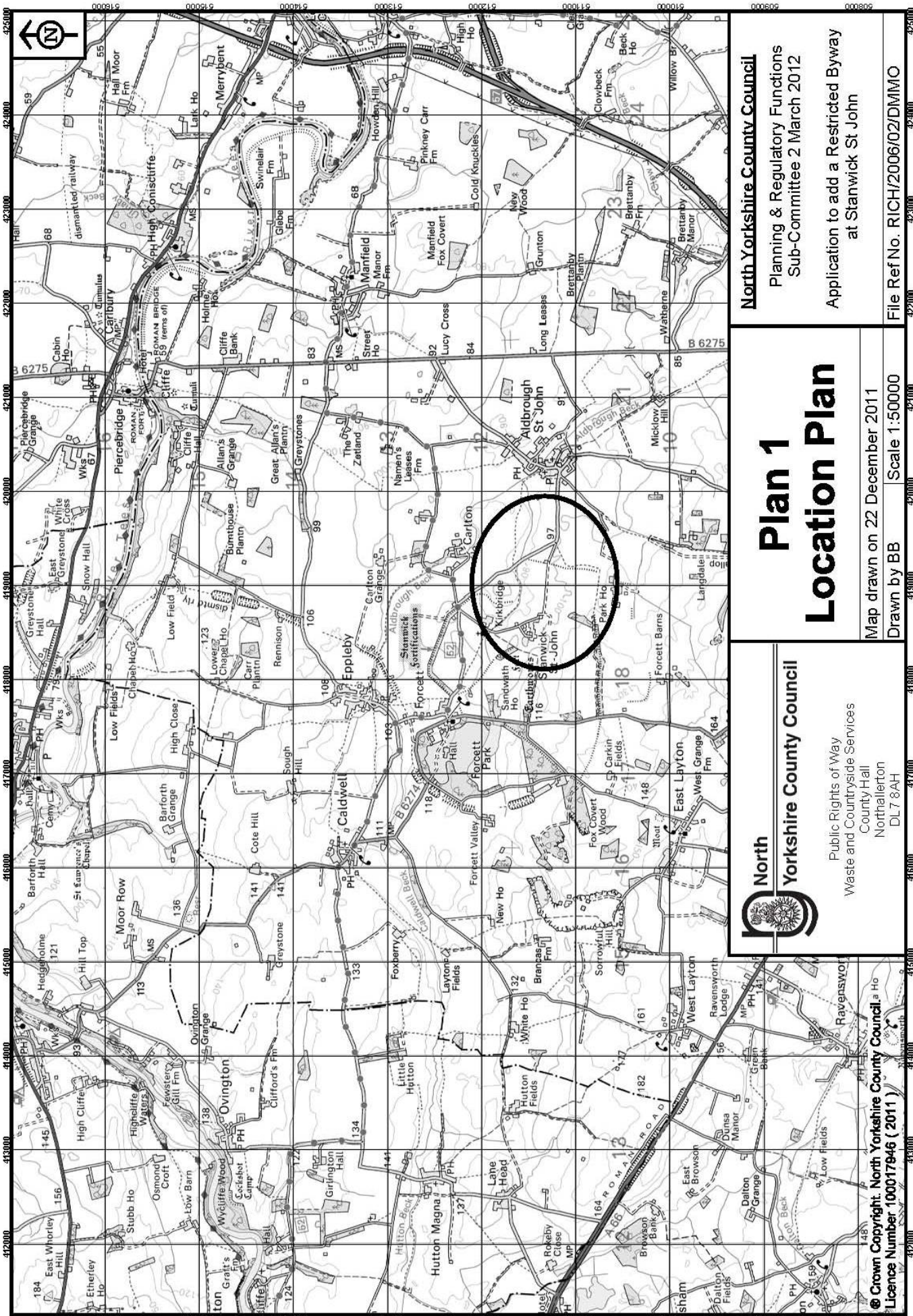
DAVID BOWE
Corporate Director Business and Environmental Services

Author of Report: Beth Brown, Definitive Map Officer

Background papers

- DMMO application dated 27 September 2006
- 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 Restricted Byway to the Definitive Map and Statement at Stanwick Park, Stanwick St John, which will be available to Members at the meeting.



North Yorkshire County Council
 Planning & Regulatory Functions
 Sub-Committee 2 March 2012

Application to add a Restricted Byway
 at Stanwick St John

File Ref No. RICH/2006/02/DMMO

Plan 1 Location Plan

Map drawn on 22 December 2011

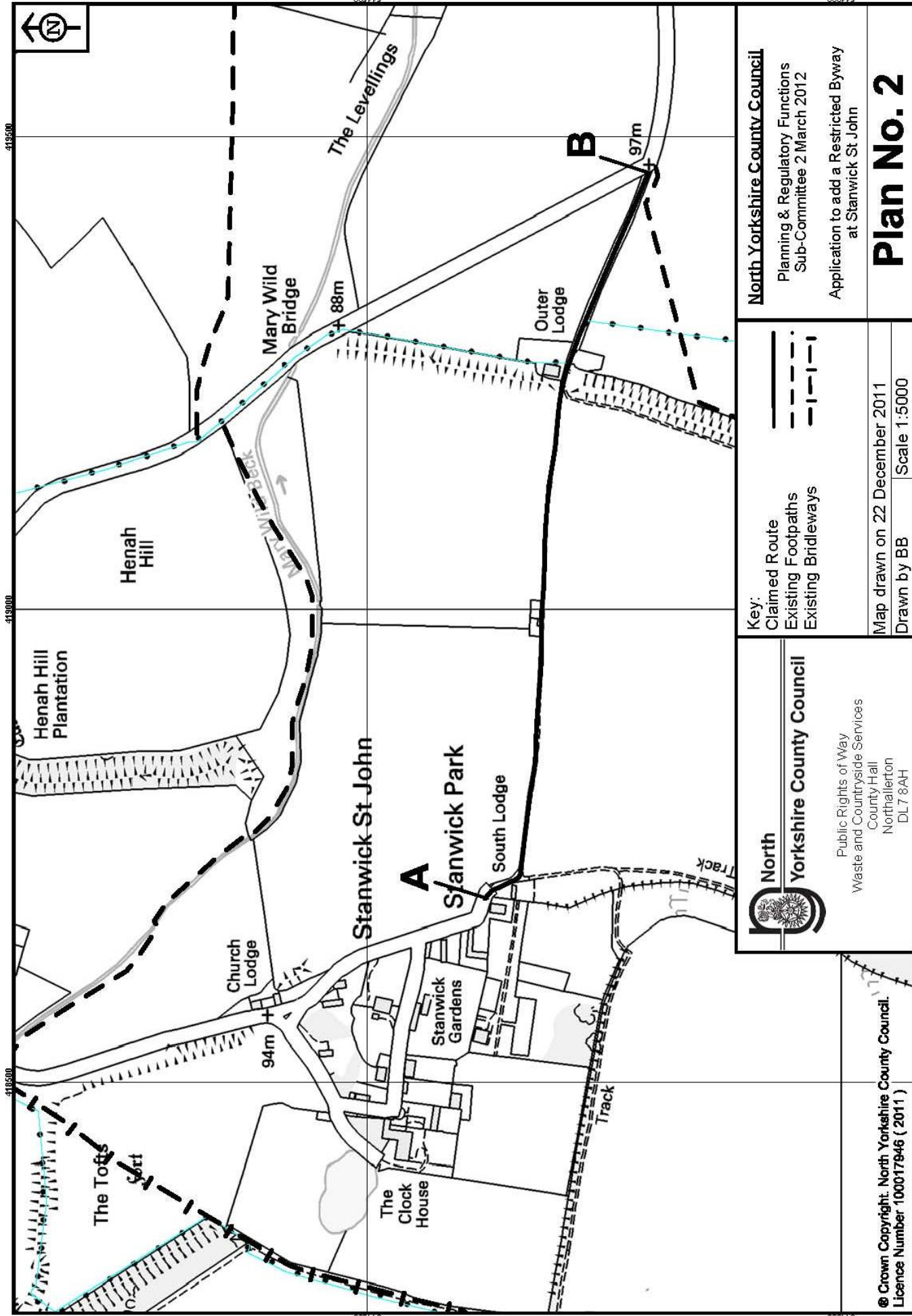
Drawn by BB Scale 1:50000



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 DL7 8AH

Key:
 Claimed Route
 Existing Footpaths
 Existing Bridleways

Map drawn on 22 December 2011
 Drawn by BB
 Scale 1:5000

North Yorkshire County Council
 Planning & Regulatory Functions
 Sub-Committee 2 March 2012

Application to add a Restricted Byway
 at Stanwick St John

Plan No. 2

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 Licence Number 100017946 (2011)

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

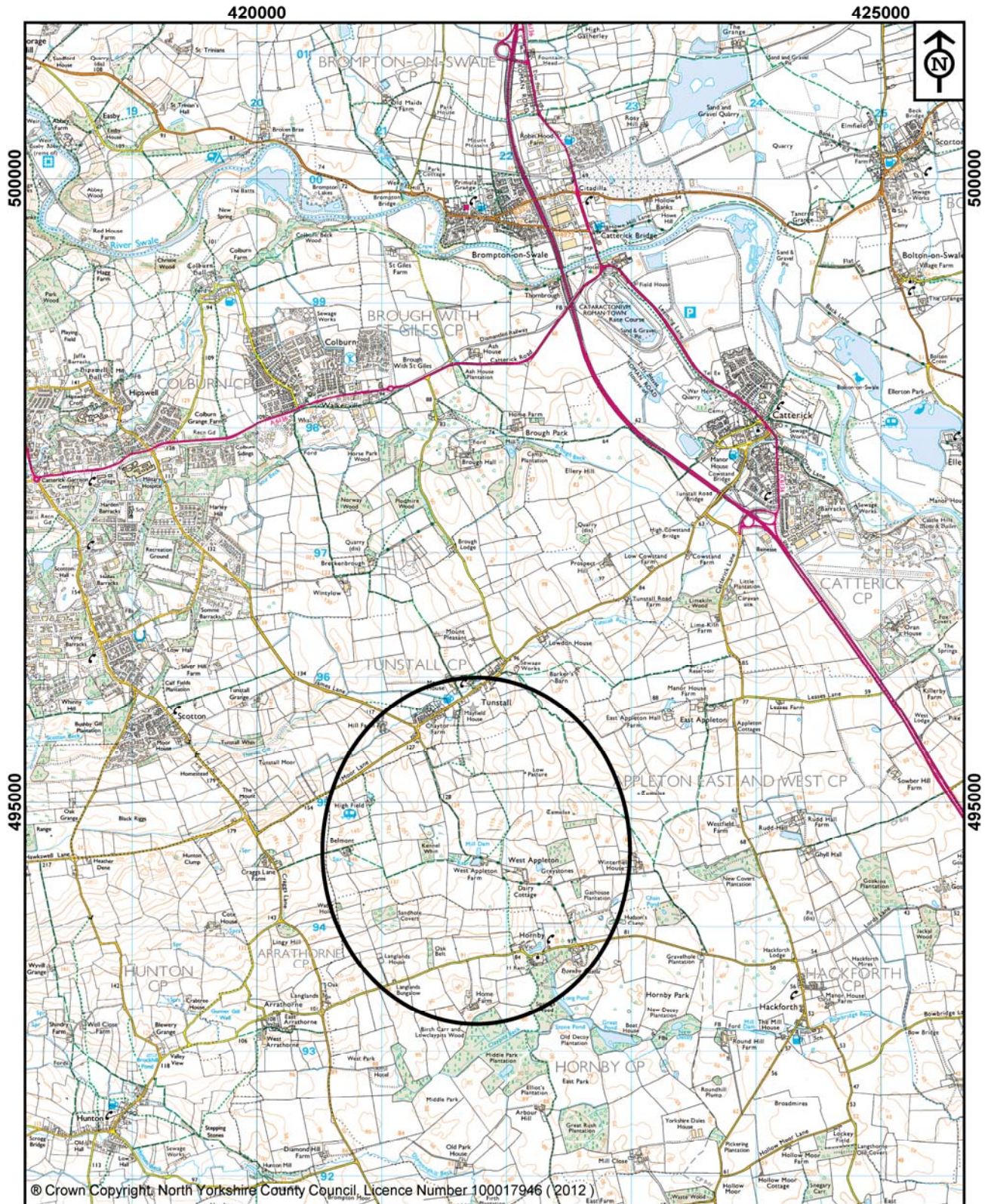
Evidence submitted against the application


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.

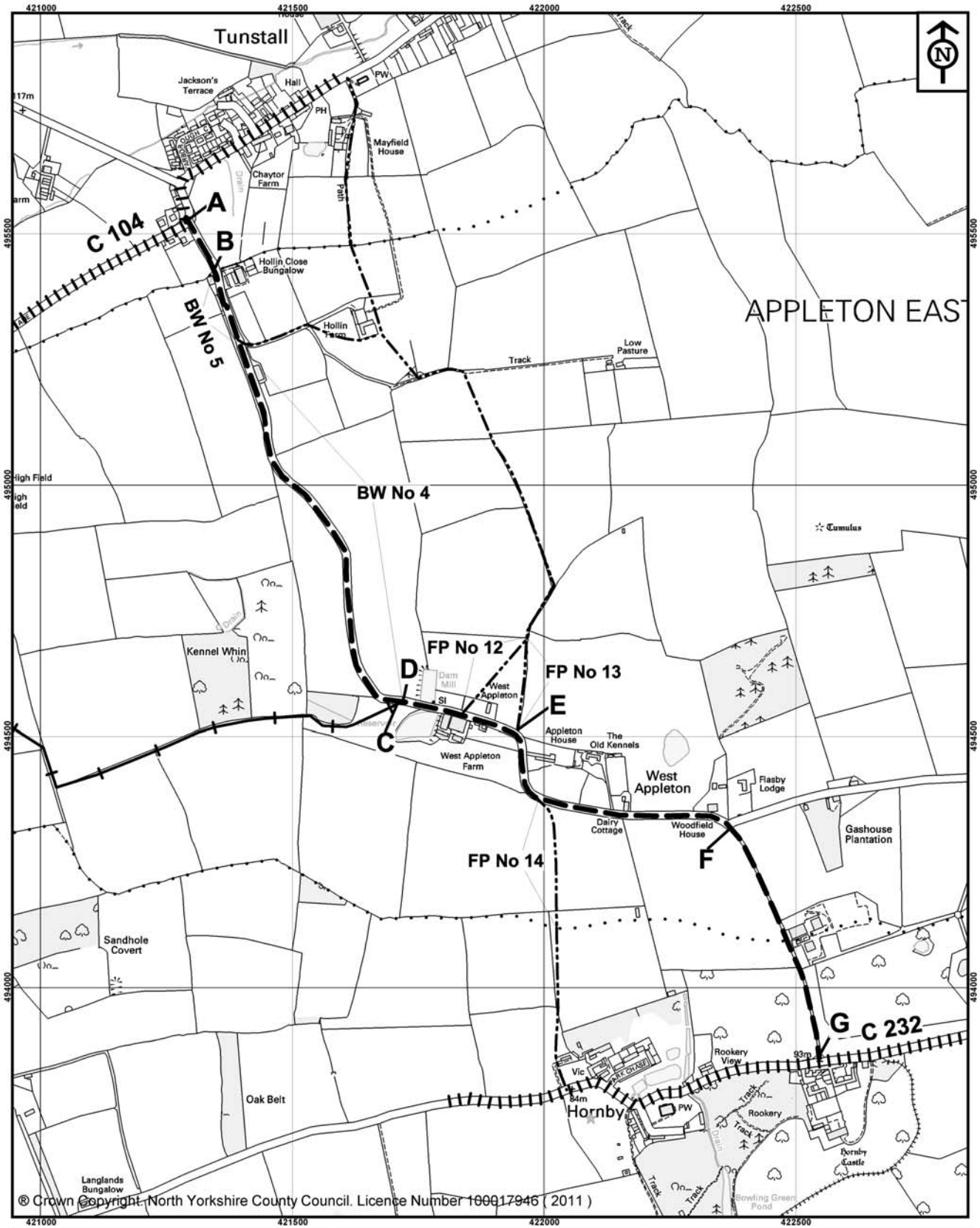



North Yorkshire County Council
 Public Rights of Way
 Waste and Countryside Services
 County Hall
 Northallerton
 DL7 8AH

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

supe Lane, Appleton East and west and Hornby to



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North Yorkshire County Council

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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

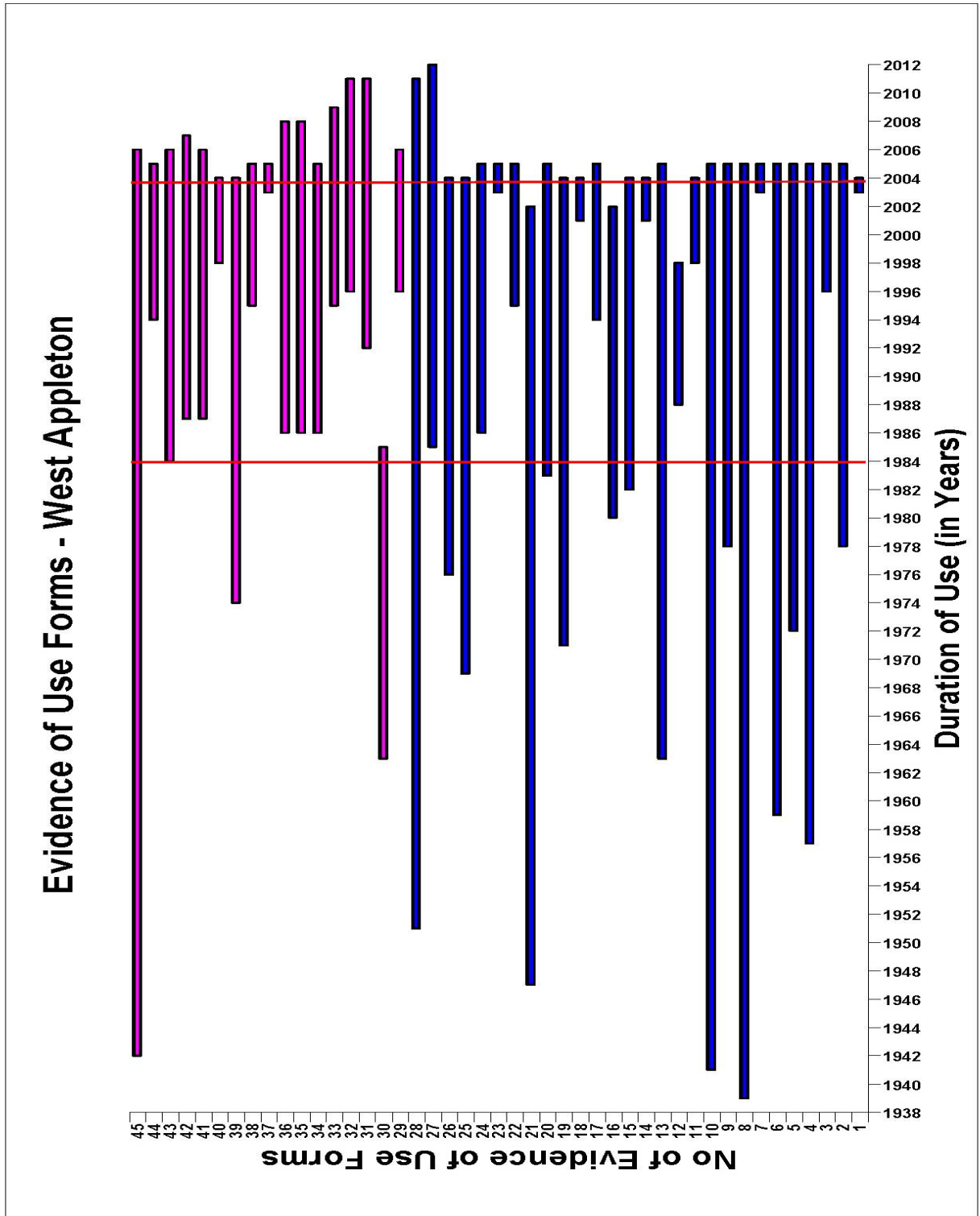
North Yorkshire County Council

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

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.

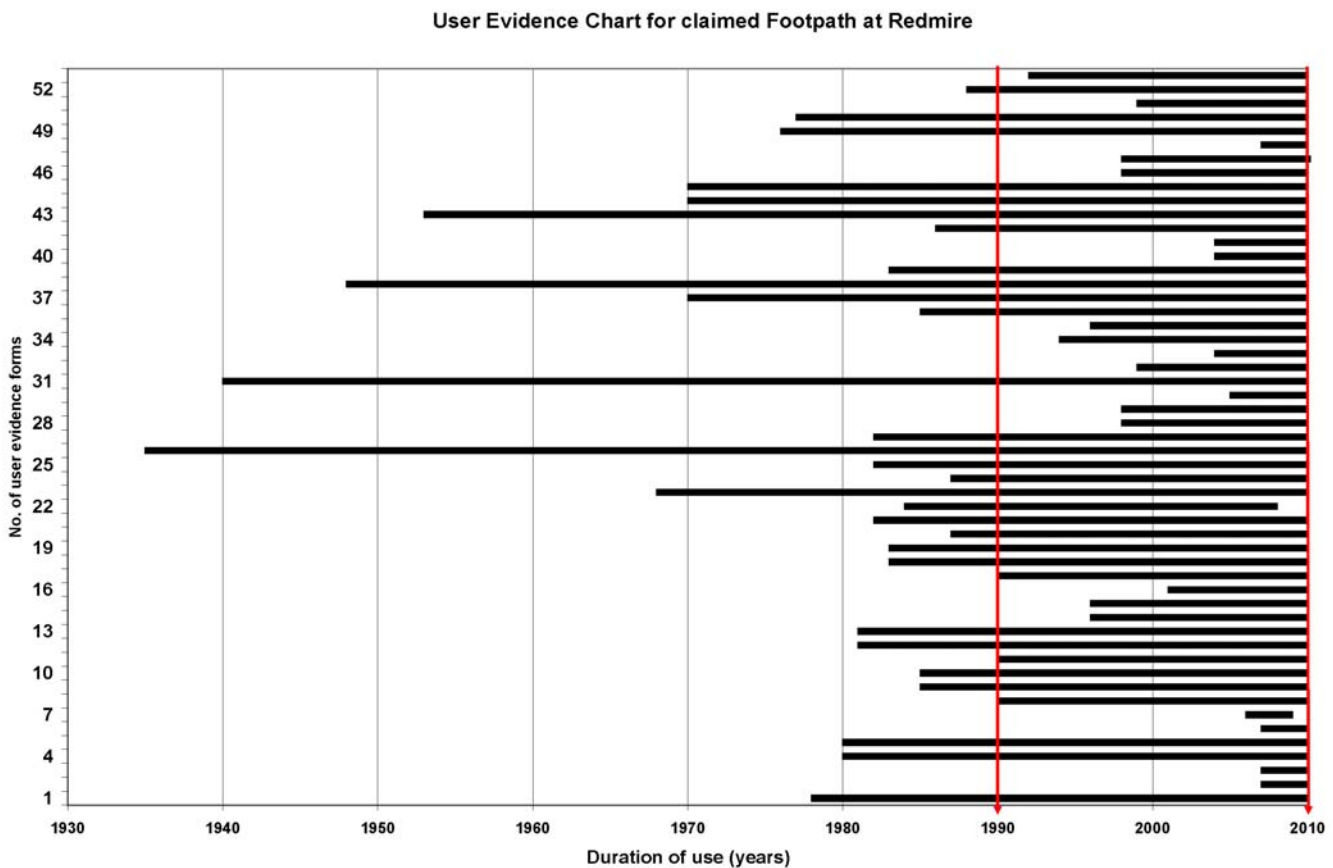
4.0 BACKGROUND

- 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.

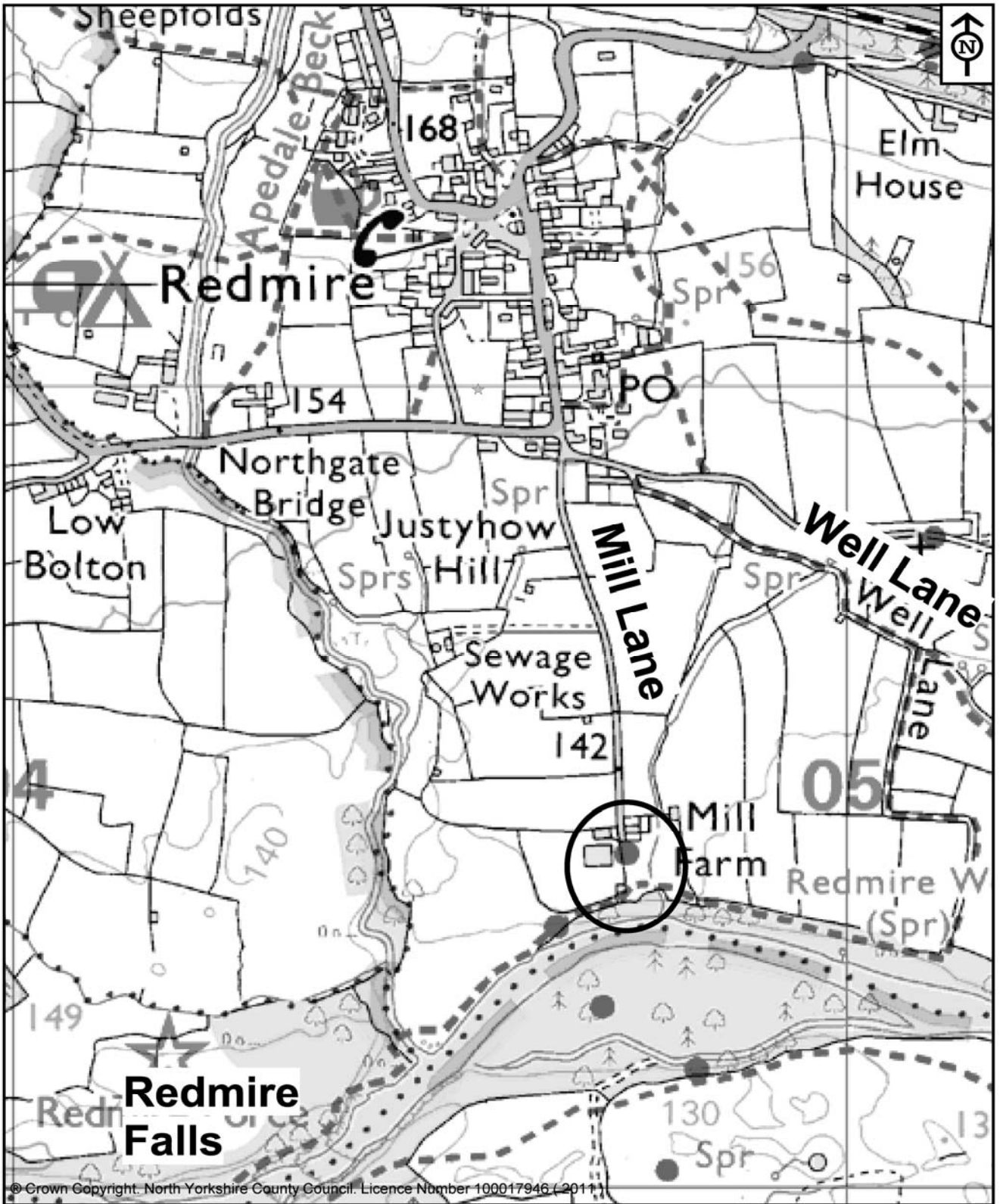
DAVID BOWE
Corporate Director Business and Environmental Services

Author of Report: James Perkins, Definitive Map Officer


Background papers

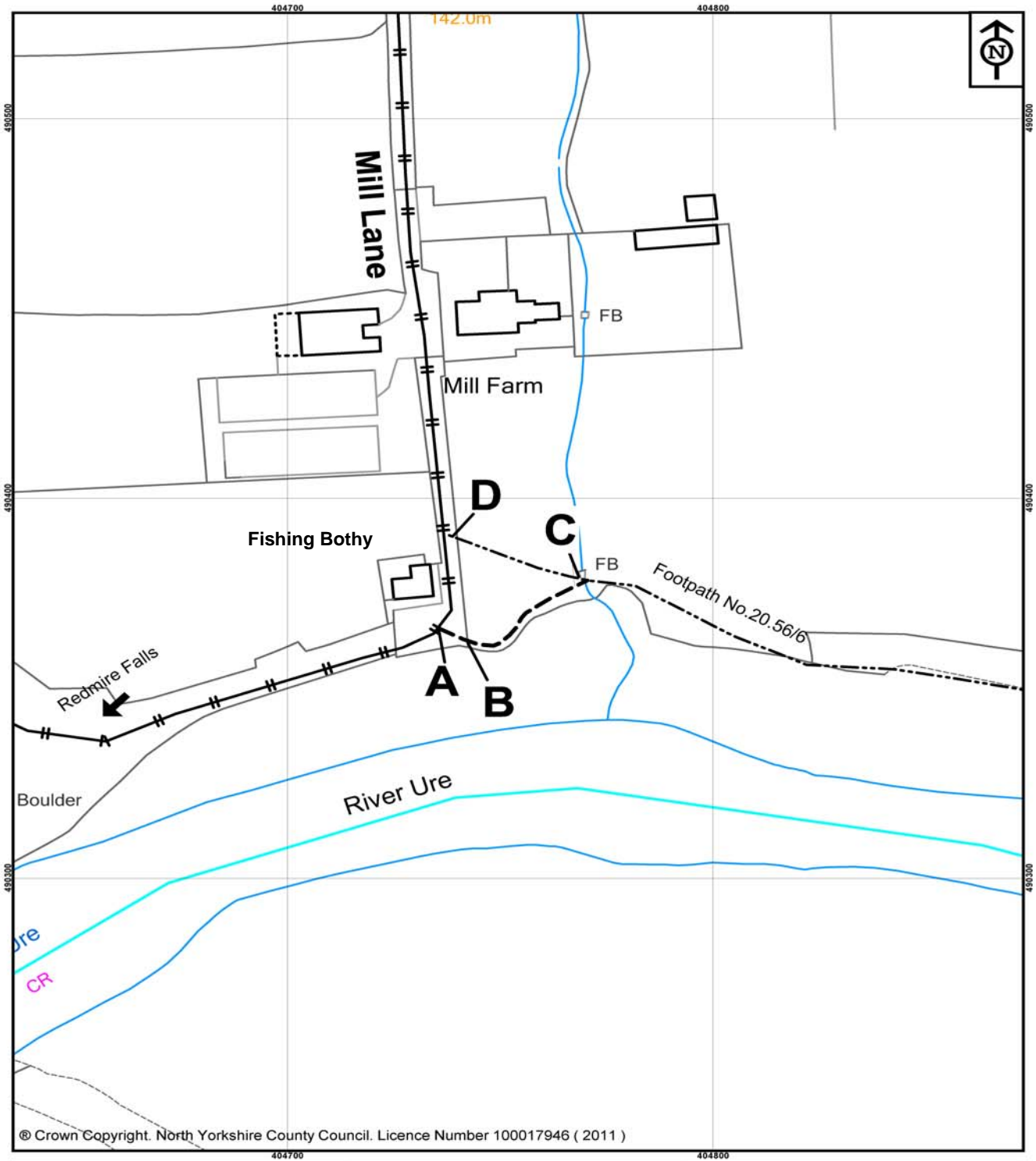
- DMMO application dated 22 July 2010
- Evidence submitted in support of, and against the application






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.



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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>Map drawn on 21 November 2011 Drawn by _____ Scale 1:6250</p>	<p>North Yorkshire County Council Planning And Regulatory Functions Sub Committee 2 March 2012</p> <p>Application to add a footpath between Mill Lane and footpath No. 20.56/6, Redmire</p> <p>File Ref No. RICH/2010/05</p>
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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>	<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</p> <p>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</p> <p>Drawn by _____ Scale 1:1250</p>	<p>File Ref No. RICH/2010/05</p>