

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE

13 APRIL 2012

APPLICATION TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT AT HAWBER LANE, AND TO UPGRADE FOOTPATH NO 05.41/11 (Part) AND FOOTPATH NO 05.41/16 (Part) TO BRIDLEWAYS, THORNTON-IN-CRAVEN, CRAVEN

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 Bridleway along the route known as Hawber Lane, and to upgrade Footpath No 05.41/11 and Footpath No 05.41/16 (Part) to a Bridleway, within the parish of Thornton-In-Craven. A location plan is attached to this report as **Plan 1**. The route referred to is shown as **A – 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 Bridleway 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 However, if there were an objection to an Order that was not subsequently withdrawn, only the Secretary of State would have the power to decide if it should be "confirmed".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 DESCRIPTION OF ROUTE

4.1 With reference to **Plan 2**, the whole length of the route is broken down into sections.

4.1.1 The first 88 metres of the route (**A – B, Plan 2**), follows the alignment of what is currently shown on the Definitive Map as Footpath No 05.41/11 to the gate at Point B.

4.1.2 The next 751 metres of the route (**B – C, Plan 2**) follows the alignment of a track over open moorland. This section is not currently recorded on the Definitive Map or the List of Streets.

4.1.3 The next 326 metres of the route (**C – D, Plan 2**), follows the alignment of what is currently shown on the Definitive Map as Footpath No 05.41/11 to its junction with Hawber Lane at Point D.

- 4.1.4 The next 347 metres of the route (**D – E - F, Plan 2**), follows the alignment of what is currently shown on the Definitive Map as Footpath No 05.41/11 and Footpath No 05.41/16 along Hawber Lane.
- 4.1.5 The next 756 metres of the route (**F - G, Plan 2**), follows the alignment of the sunken lane to its junction with the county boundary at Point G. This section is not currently recorded on the Definitive Map or the List of Streets.

5.0 BACKGROUND TO THE REPORT

- 5.1 An application under Section 53 of the Wildlife and Countryside Act 1981 was submitted to the County Council on 1 December 2009 by Trawden Forest and Border Bridleway Association, for parts of Footpath No 05.41/11 and Footpath No 05.41/16 to be upgraded to bridleway status, and to record two sections of route, including the lane known as Hawber Lane, on the Definitive Map and Statement as a bridleway. A corresponding application has also been made to Lancashire County Council for the section within their area.
- 5.2 The application was supported by fourteen evidence of use forms which were completed in 1994, however the application was not actually submitted to the County Council until 2009, after the applicant had undertaken documentary research.
- 5.3 The application was further supported by historical documentary evidence including :-
- Thomas Jefferys' Map 1775,
 - John Tuke Map 1787,
 - Cary' s Map 1787,
 - Smith's Map 1801,
 - Thornton Inclosure Map and Award 1825,
 - Reprint David Charles Map 1840,
 - Hobson Map 1844, Plan of Earby and Highgate Estates 1872,
 - The history and Antiquities of the Dearnery of Craven 1878,
 - Geographi Large Scale Road Map 1900,
 - 1st Edition Ordnance Survey Map, Ordnance Survey map editions 1853, 1896, 1907, 1909, 1913, 1947, 1954, 1956, 1973, 1983,
 - Thornton In Craven Village Walk Earby and District in Bygone Days
 - Notes on Earby and District in Olden Times..
- 5.3 When investigations into the application commenced in September 2011, landowners affected by the application (along with local Parish and District Council, and user groups) were contacted and invited to submit any evidence that might be relevant to the application.

5.5 One letter objecting to the proposed Definitive Map Modification Order was received from the land agent representing the owners of Earby Estate who own a section of land at the eastern end of the application. . Their objection stated that the estate was not aware that the route was a public bridleway, and the landowners had never witnessed members of the public using it on horseback.

6.0 USER EVIDENCE IN SUPPORT OF THE APPLICATION

6.1 A total of fourteen evidence of use forms were submitted, claiming to have used the route as shown on Plan 2 as a public bridleway.

6.2 All of the signatories had used the route on horseback, five of these also stated that they had used it on foot, and another signatory stated that they had used it on a bicycle.

6.3 Regarding other use that they had observed, nine of the signatories had seen people using the route on foot, all of the signatories had seen people using in on horseback, and a further two signatories had seen people using it on bicycle.

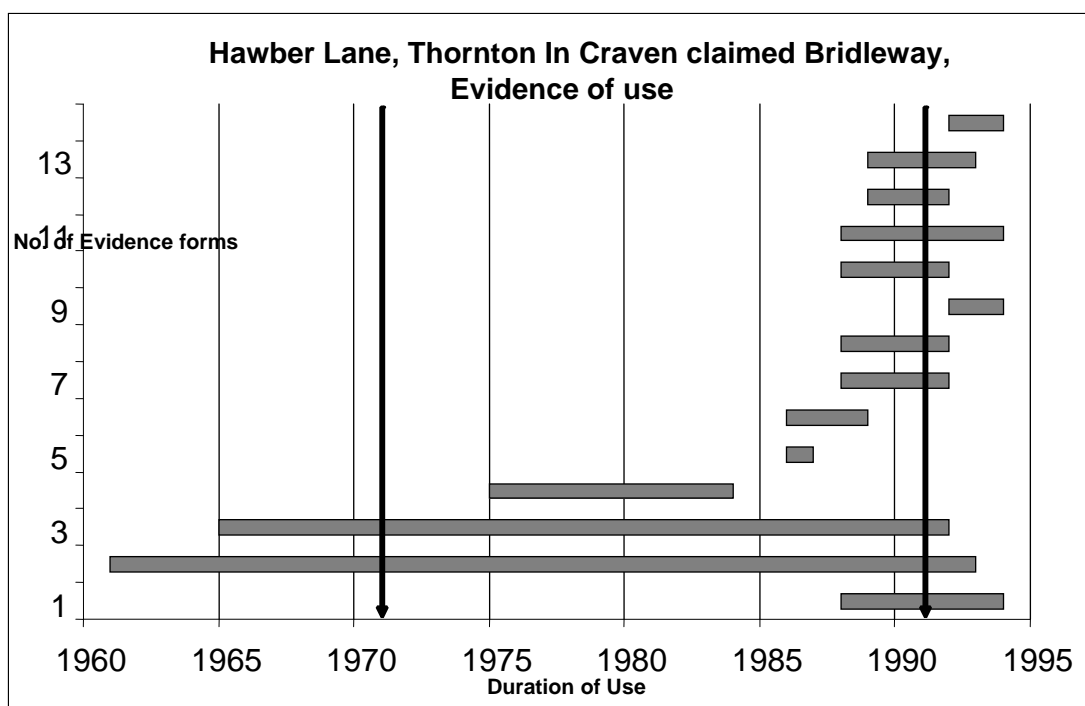
6.4 The evidence of all of the fourteen signatories, considered together, claim use of the route as a bridleway from 1961 to 1994, their combined claimed usage is in excess of the 20 year period, with the majority of the usage on horseback taking place between 1986 to 1994 (eight years). The forms were completed in 1994, therefore use of the route after that date is not recorded.

6.5 Two of the signatories noted that they spoke to a farmer, presumed to be the landowner, while they were using the route and they did not object to them using the route on horseback. The signatories stated that they were not given specific permission to use the route.

6.6 Four of the signatories stated that the gate off Clogger Lane was padlocked shut in 1992 shown on Plan 2 as Point B. One of the signatories explains that it was understood that the gate was padlocked to stop the horses from galloping on the path, and another explains it was to stop travellers from camping on the moor land.

6.7 Four of the signatories stated that they had been verbally challenged by the landowner at Thornton Highgate (it is unclear if this is the same landowner as the one who did not object to equestrian use on the route, referred to above), whilst using the route on horseback. The dates given for the challenges by the landowner to the signatories was in 1991 and 1992.

- 6.8 It was the challenges to the public's use made in 1991 and 1992 that triggered the DMMO application submission. For the purpose of calculating the period of use required for presumed dedication under the Highways Act 1980, 1991 is the earliest challenge shown in the evidence, and therefore it is this date that is considered as the point of challenge prior to which 20 years use requires to be demonstrated.
- 6.9 The claimed use of the route on horseback by the fourteen witnesses is shown on the bar chart below, with the relevant twenty year period of use, prior to the point of challenge, indicated with the arrow marks from 1971 to 1991. The witnesses in their evidence have demonstrated overall, that the route was used from 1961 to 1994.



7.0 HISTORICAL EVIDENCE IN SUPPORT OF THE APPLICATION

7.1 The applicant submitted copies of the following old maps to support the claim that the route is a bridleway.

- Thomas Jefferys Map 1775;
- John Tuke Map 1787;
- Cary's Map 1787;
- Smith's Map 1801;
- Thornton Inclosure Map and Award 1825;
- Reprint David Charles Map 1840;

- Hobson Map 1844, Plan of Earby and Highgate Estates 1872;
- The history and Antiquities of the Dearnery of Craven 1878;
- Geographic Large Scale Road Map 1900;
- 1st Edition Ordnance Survey Map, Ordnance Survey map editions 1853,1896, 1907, 1909, 1913, 1947, 1954, 1956, 1973, 1983;
- Thornton In Craven Village Walk Earby and District in Bygone Days;
- Notes on Earby and District in Olden Times.

7.2 Thomas Jefferys Map 1775, John Tuke Map 1787 and Geographic Large Scale Road Map 1900, shows a route of some importance as an open and enclosed track, that runs generally on the same alignment to the application route, but differs in its alignment across the moorland on Plan 2 Points A to C and at the western end of the route at Booth Bridge on Plan 2 Points E to G.

7.3 Carys Map 1787, Smiths Map 1801 and David Charles Map 1840, is drawn on a small scale, a route is shown in the same way as the Jefferys and Tuke Map. It shows the route in question linking Thornton village to the Skipton to Colne Road. Due to the scale of the map it is hard to determine if the route is located on the same alignment as the application route.

7.4 The Thornton In Craven Inclosure Award and Plan 1825, lists the road as a:-

“Private and Occupation Road of the width of twenty four feet commencing at the East end of Hauber Lane and leading in a south easterly and easterly direction to the south west corner of an allotment set out to the Rector of Thornton for Glebe thence in an easterly direction across the same allotment and another allotment also set out to the said Rector for tithes to the north east corner of an allotment sold to Sir John Lister Kaye and thence in a south easterly direction to the north end of the Wentcliffe Head Road”

On Plan 2 the route is shown between Points A – C as a non bounded track and between points C – F as an enclosed lane.

7.5 The remaining section of the route on Plan 2 between Points F – G is shown as an inclosed track on the Inclosure Plan. Within the Inclosure Award it is not specifically listed, but referenced as Hauber Lane and described as the eastern starting point for the route that is set out in the Inclosure Act.

7.6 It is stated in the Thornton In Craven Award that this route is provided for the members of the public “For the use and benefit of all and every person and persons body or bodies.” This shows that this route was intended for public usage and not as a private right of way.

7.7 Hobson’s Map 1844, shows the existence of a route from the western end at Booth Bridge only, between Points F – G. No indication of the route is present on this map between Points A – F.

- 7.8 1st Edition Ordnance Survey Map 1853, shows a route on the same alignment as the application route.
- 7.9 Plan of Earby and Highgate Estates 1872, shows the property of Thornton Highgate to the south of Point E on Plan 2, the plan shows that a route exists that takes you to the Skipton to Colne Road, pointing in the direction of the application route as show A to E, but this is an assumption as the application route is not present on the plan.
- 7.10 The History and Antiquities of the Deanery of Craven 1878, shows a route shown on the same alignment as shown on the Thomas Jefferys Map 1775.
- 7.11 Ordnance Survey Map 1896, indicates a route on the same alignment as the application route. The naming of the lane has altered from Hauber Lane to its present naming of Hawber Lane.
- 7.12 Ordnance Survey Maps of 1907 and 1909, shows the application route marked as a track and inclosed lane from Points C to G on Plan 2. The remaining section of the route (A - C on Plan 2) is not visible on the map.
- 7.13 Ordnance Survey Map 1913, shows a track on the same alignment as the application route, the scale of this map is on a small scale of one inch to one mile.
- 7.14 Ordnance Survey Map 1947, shows a track for part of the application route from Point C to G on Plan 2. The remaining section of the route A to C is not visible on the map.
- 7.15 Ordnance Survey Map 1954 and 1956, shows an intermittent broken line depicting the physical remains of the sunken track (between Points E to G on Plan 2), this section of the route is named as Hawber Lane on the map. The section of the route from Points E to D on Plan 2 is shown as a solid lined track. The remaining part of the route is show as a track across the moorland using a broken line.
- 7.16 Ordnance Survey Map 1973 and 1983, shows the application route marked as a track with broken boundary lines shown from Points A to D and E to G on Plan 2. The remaining section of the route (D - E on Plan 2) is depicted as a track with a solid edged line on both sides.
- 7.17 Earby and District in Bygone Days Village Walk and Earby and District in Olden Times, these documents make reference that Hawber Lane is an ancient local route from the Colne to Skipton Road to the village of Thornton.

7.18 A number of photographs taken in July 2004 of the claimed route were included with the application. These show stone gate posts, some of which include bench markings, and the existence of a guide post, showing the direction to Thornton located at a point shown as Point F on Plan 2. The photographs are not evidence of the route's public status and whilst taken after the relevant 20 year period they do show that the route is substantial in nature.

8.0 EVIDENCE AGAINST THE APPLICATION

8.1 The land agent acting on behalf of Earby Estate objected to the application in a letter dated the 11 January 2012. The following comments were contained in the objection:

8.1.1 After consultation of the historic maps they acknowledge the existence of the track on the historic maps, but this has never been identified as a bridleway and to the best of their knowledge, never used as such.

8.1.2 These routes have not been used with any regularity by anyone on horseback within living memory of their clients, one of whom lives on the Estate.

9.0 COMMENTS ON THE EVIDENCE

9.1 The user evidence submitted with the application is relatively weak. It does indicate 20 years use of the claimed route without force, without secrecy and without permission it could be interpreted that the majority of the users were using the route as a bridleway "as of right". This meets the criteria of Section 31 of the Highways Act 1980, but the evidence submitted does not provide an equal consistency of use over the twenty year period. The majority of the use is weighted towards the latter end of the usage, within an eight year period from 1986 to 1994.

9.2 It is deemed that the date of challenge, when the claimed right to use the route was called into question, was in 1991 when the users refer to being verbally challenged by the landowner.

9.3 It is difficult to draw conclusions from the conflicting evidence submitted against the application and in support of the application. The agents on behalf of Earby Estate state that their clients have never seen riders using the route, however the user evidence submitted with the application claims usage of the route from 1960's to 1990's, with some of the signatories indicating that they had spoken to landowners when using the route (and were not turned back), whilst others had been challenged by landowners.

- 9.4 The historical travelling maps and the Ordnance Survey maps show that a route existed on an alignment from 1775 that is certainly very similar to the application route. Some of the maps show the same alignment as the application route. However, these documents can only indicate that there was physically a route on the ground, but do not provide evidence of the status of the route.
- 9.5 The Inclosure Award and Map, is the only historic documentation that provides an indication as to the public status of the route. The status of the route is referred to as "a Private and Occupation Road", this indicates that the route between Points A and F on Plan 2 had the status of a public vehicle highway at the time. The meaning of the word 'private' in this context may well not have the same meaning as 'private' today. It is common in Inclosure Awards to describe public carriage roads, private carriage roads and occupation roads. Generally, public carriage roads equate to our main roads where public carriages, for example stage coaches, are the 'through traffic' travelling the main road network, private carriage roads are the minor local network of lanes used by the local people, and the occupation roads are those serving as access to land. In the context of this Inclosure Award it is relatively clear from the description of who has the right to use the route; "For the use and benefit of all and every person and persons body or bodies.", that this is considered to be a public road.
- 9.6 The remaining section of the application route is not mentioned in the Inclosure Award but is shown as a route on the Inclosure Map. It is reasonable to infer that the status of the route would be of the same status as the section of the route that is included in the Inclosure process (A – F on Plan 2), as both parts of the route contain the same names, and the ancient lane, Hauber Lane, is referenced in the description of the route as set out in the Inclosure Act (see paragraph 7.7).
- 9.7 From the Inclosure Award the historic status of the route is that of a vehicular highway. In the event that the content of the Award is considered incontrovertible evidence of the relevant public status of the route today then taking account of Section 67 of Natural Environment and Rural Communities Act 2006, which has extinguished any motor vehicle rights, the route should be recorded as a restricted byway.
- 9.8 The Earby Estate submission states that the owners have never known the claimed route to be a bridleway. The route is not currently recorded as a bridleway, hence the application. Nor was it recorded as such in the early stages of the production of the Definitive Map, ie. on either the Draft (1953) nor Provisional (1970) maps. However this does not preclude the possibility that unrecorded rights may have existed, and should have been recorded at that time..

10.0 CONCLUSIONS

- 10.1 It is of doubtful that viewed in isolation, the user evidence submitted by the applicant provides significant weight in meeting the statutory test for dedication of the route as a restricted byway.
- 10.2 However, in the light of the historical documentary evidence available it is probable that the claimed route is reasonably alleged to subsist.
- 10.3 Although the application was for the route to be recorded as a bridleway, the documentary evidence, particularly the Inclosure Award and map, suggest higher rights, indicating that the application route, in full, should be shown on 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 A - 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: James Perkins, Definitive Map Officer

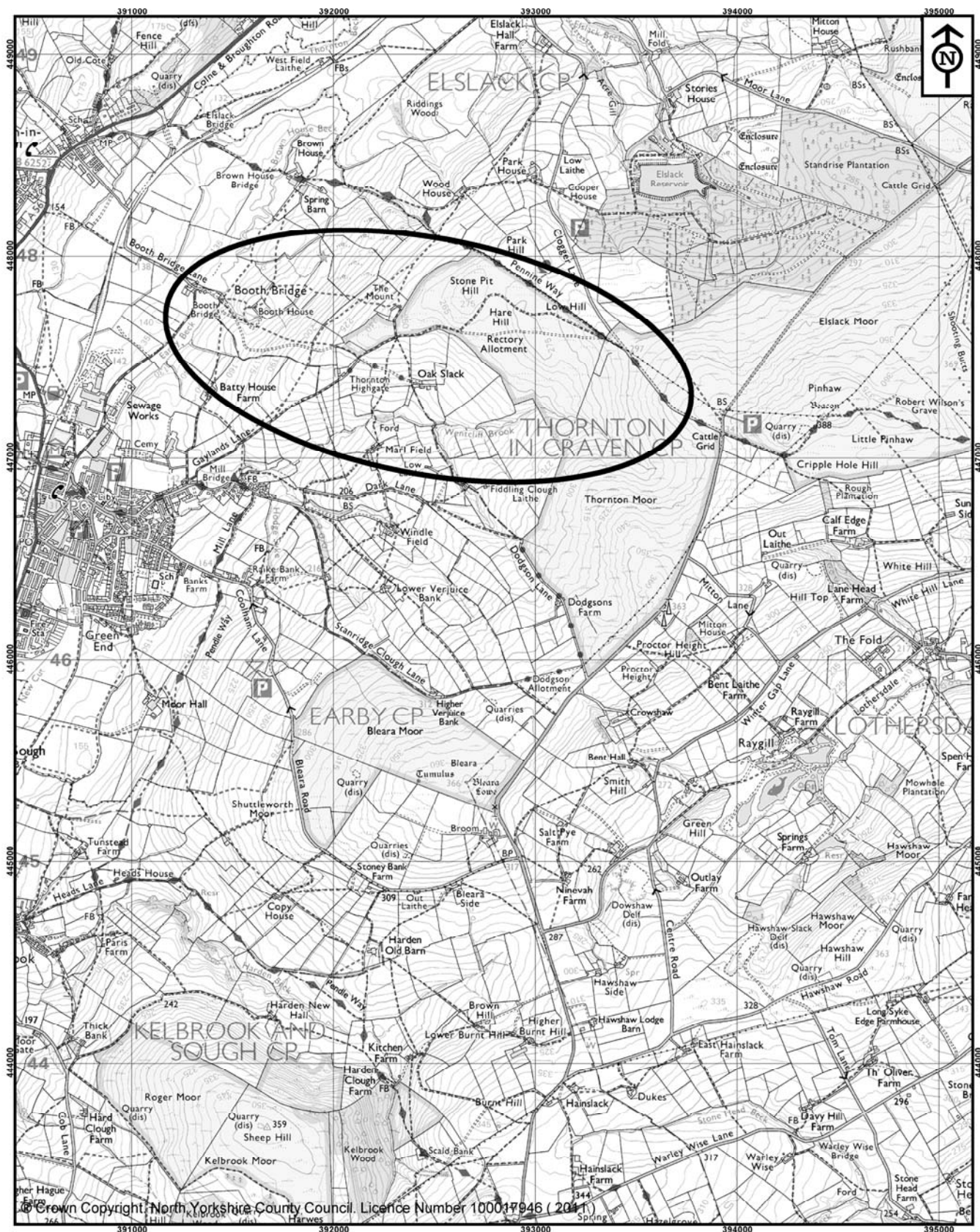
Background papers:

DMMO application dated 1 December 2009


Evidence submitted in support of, and against the application

The documents are held on a file marked:

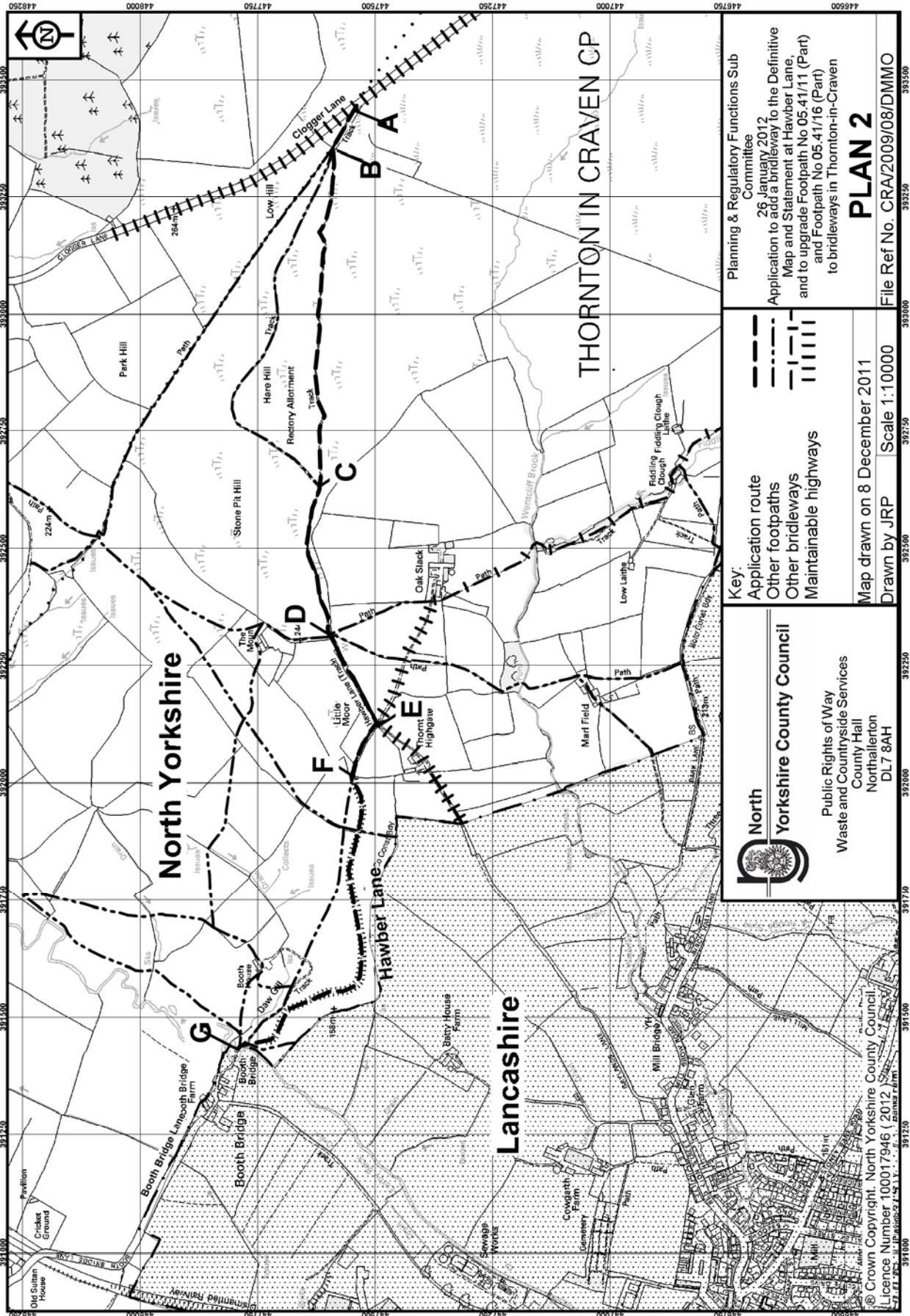
County Council's Planning and Regulatory Functions Sub-Committee, 13 April 2012
Application to add a Bridleway to the Definitive Map and Statement at Hawber Lane, and to upgrade Footpath No 05.41/11 (Part) and Footpath No 05.41/16 (Part) to Bridleway, Thornton-In-Craven, Craven




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

Key:
 Location 
 Map drawn on 8 December 2011
 Drawn by JRP Scale 1:25000

North Yorkshire County Council
PLANNING AND REGULATORY FUNCTIONS
SUB-COMMITTEE
 13 APRIL 2012
 APPLICATION TO ADD A BRIDLEWAY TO THE
 DEFINITIVE MAP AND STATEMENT AT HAWBER
 LANE, AND TO UPGRADE FOOTPATH NO 05.41/11
 (Part) AND FOOTPATH NO 05.41/16 (Part) TO
 BRIDLEWAYS, THORNTON-IN-CRAVEN, CRAVEN
PLAN 1
 File Ref No. CRA/2009/08/DMMO



Planning & Regulatory Functions Sub
 Committee
 26 January 2012
 Application to add a bridleway to the Definitive
 Map and Statement at Hawber Lane,
 and to upgrade Footpath No 05.41/11 (Part)
 and Footpath No 05.41/16 (Part)
 to bridleways in Thornton-in-Craven

PLAN 2
 Map drawn on 8 December 2011
 Drawn by JRP Scale 1:10000

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

© Crown Copyright, North Yorkshire County Council.
 Licence Number 100017946 (2012)