

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 DODGSON LANE AND DARK LANE, AND TO UPGRADE FOOTPATH NO 05.41/23 (PART) TO A BRIDLEWAY, THORNTON-IN-CRAVEN AND LOTHERSDALE

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 Dodgson Lane and Dark Lane, and to upgrade Footpath No 05.41/23 to a Bridleway, within the parishes of Thornton-In-Craven and Lothersdale. A location plan is attached to this report as **Plan 1**. The route referred to is shown as **A – B - C – D** 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 However, if there were an objection to an Order that was not subsequently withdrawn, only the Secretary of State would have the power to decide if it should be "confirmed".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 over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.

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 in question can be broken down into the following sections :-

4.1.1 The first 800 metres of the route (**A – B**), is not currently recorded on the Definitive Map, but it is recorded as an Unclassified Public Maintainable Highway on the List of Streets known as U2520/ Dodgson Lane.

4.1.2 The next 520 metres of the route (**B – C**) crosses open moorland and is recorded on the Definitive Map as Footpath No 05.41/23,.

- 4.1.3 The next 375 metres of the route (**C – D**), follows the alignment of the sunken lane know as Dark Lane to the Lancashire County boundary. This section is not currently recorded on either the Definitive Map or the List of Streets.

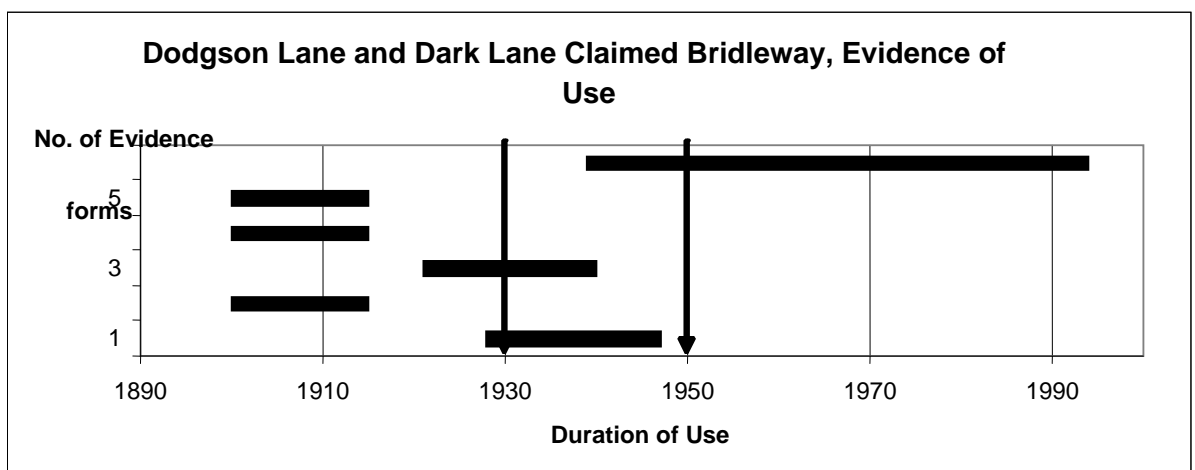
5.0 BACKGROUND TO THIS REPORT

- 5.1 An Application under Section 53 of the Wildlife and Countryside Act 1981 was submitted to the County Council on 30 November 2009 by Trawden Forest and Border Bridleway Association for Footpath No 05.41/23 (Part) to be upgraded to bridleway status and to record the lane known as Dodgson Lane and Dark 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 six evidence of use forms, together with the Thornton In Craven Inclosure Map and Award 1825, old OS maps dated 1839, 1913, 1940, 1954, 1956 and 1971, and photographs of the route.
- 5.3 The applicant claims that the public had been using the route for many years, up until 1945 in the war years when the route became overgrown and a fence was installed across the route at the top and bottom of Dark Lane as shown on Plan 2 at Points C and D in 1950 by the landowner at Windlefield Farm. It is considered that for the purposes of assessing the user evidence submitted the fence installation constituted challenge to the public rights. Consequently the 20 years pre dating 1950 is the relevant period for considering evidence of use in this case. The evidence of use forms were actually completed in 2004, 5 years prior to the application being submitted to the County Council, and some 54 years after the date of challenge.
- 5.4 When investigations into the application commenced in June 2011, landowners affected by the application (along with local Parish and District Councils, and user groups) were contacted and invited to submit any evidence that might be relevant to the application. Objections were received from the owners of land along the route and the adjoining parish in Lancashire, Earby Town Council.
- 5.5 The evidence submitted opposing the application was in the form of two letters from the landowner at Windlefield Farm, supported by three landowner evidence forms stating that they have never witnessed members of the public using the application route, and a statement from the Parish Council with concerns over the detrimental affects a bridleway would have on the wildlife in this area.

6.0 USER EVIDENCE IN SUPPORT OF THE APPLICATION

- 6.1 A total of six evidence of use forms were submitted by local people, claiming the route referred to as A – B – C - D in Plan 2 as a public bridleway.

- 6.2 All of the signatories claim to have used the route on foot, some of the signatories also stated that they had used it by other means. One of these stated that they had used it on horseback, another signatory stated that they had used it on horseback and on a horse and cart, and one other had used the route on horse and cart. Five of the signatories had seen people using the route on foot, three signatories had seen people using in on horseback, and a further two signatories had seen people using it by horse and cart. Discounting the three people who used the route on foot only, this leaves three people who had used the route on horse or by horse and cart.
- 6.3 The application was submitted for the route to be recorded as bridleway, but it is apparent that the majority of the signatories have used it or witnessed members of the public using it with horse and cart. Therefore it is considered that if the public has acquired public rights, they are more likely to be as a restricted byway than as a public bridleway.
- 6.4 The three signatories together claim use of the route from 1921 to 1994. Their combined usage is above the 20 year period, but as individuals only one of the signatories has used the route for a period in excess of 20 years prior to the status of the route being called into question in as set out in paragraph 3.2.
- 6.5 The claimed use of the route on horseback or by horse and cart by these three witnesses is shown in black in the bar chart below, with the usage of the route by the signatories on foot only is shown in hatched style.



- 6.6 None of the witnesses state that they had been prevented from using the route until the route became overgrown after the war.

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 of public rights higher than footpath:

- 7.1.1 Thornton Inclosure Award and Plan 1825 ”
- 7.1.2 1st Edition OS map 1839, showing the route marked as Footpath, as shown on Plan 2 from Points C – D.
- 7.1.3 1913 OS map, track visible on the map, no indication of status provided due to scale of the map.
- 7.1.4 1940 OS map, track visible on the map, shown as an enclosed lane named as Dodgson Lane between Points A and B on plan 2. An enclosed lane named as Dark Lane between Points C and D on Plan 2. On the map it is shown as an unnamed track depicted as a broken line boundary between Points B – C on Plan 2.
- 7.1.5 1954 OS map, track visible on the map, no indication of status provided due to scale of the map.
- 7.1.6 1956 OS map, track visible on the map, shown as an enclosed lane named as Dodgson Lane between Points A and B on Plan 2. An enclosed lane named as Dark Lane between Points C and D on Plan 2. On the map it is shown as an unnamed track displayed as a broken line boundary between Points B – C on Plan 2.
- 7.1.7 1971 and 1977 OS maps, track visible on the map, shown as a enclosed lane named as Dodgson Lane between Points A and B on plan 2. A enclosed lane named as Dark Lane between Points C and D on Plan 2. On the map it is shown as an unnamed track displayed as a broken line boundary between Points B – C on Plan 2.
- 7.1.8 Notes on Dark Lane 1997 (see paragraph 7.4 below)
- 7.1.10 Photos of the route
- 7.2 A copy of the Thornton Inclosure Plan 1825 was submitted with the application. This shows the route in part as “Dodgson House Road” shown on Plan 2 between Points A and B, this section of the route is presently recorded on the List of Streets as noted in paragraph 4.1. For the section of the route between Points B and C on Plan 2 there are no markings present on the Inclosure Plan to indicate the existence of a lane. Between the Points C – D on Plan 2 is shown as a narrow bounded lane from Birch Hall running in generally southerly direction to a point west of Windle Fields, it is not annotated with a name on the map.
- 7.3 The Thornton Inclosure Award 1825, describes the route shown between Points A and B on Plan 2 as a “Public bridle and carriage road and highway of thirty feet commencing at an ancient gate in the lands near Dodgson House and leading in a south easterly direction across Thornton Moor to the Colne and Skipton Turnpike Road in the township of Lothersdale and which is named as “Dodgson House Road”. No reference in the award is given for the remaining sections of the route between B and D on Plan 2.

- 7.4 A researcher on behalf of the applicant compiled historic notes on Dark Lane in 1997. Comments are provided for the reasoning why the remaining sections of the route are shown on the Inclosure Plan, but not mentioned in the Inclosure Award. It was suggested by the researcher that these lanes were already pre-existing public ways that were not required to be included in the Inclosure process on 1825 because the rights had already been set out.
- 7.5 A number of photographs undated of the claimed route were submitted with the application. These show stone gateposts on the route with some of the posts including bench markings (used by the Ordnance Survey for referencing points of elevation) and the existence of a boundary stone indicating the boundary between Skipton Rural District Council and Earby Urban District Council, located in the middle section of Dark Lane at the former district boundaries. These photographs do not evidence the route's status, but merely show that the route was substantial at some time in the past.
- 7.6 The section of the claimed route shown A – B is recorded on the List of Streets. The purpose of the List of Streets is to identify those public highways that are maintainable at public expense; the document does not actually define the status of a particular route. The status of the route, and therefore who has the right to use it, would be clarified if an Order were to be made, and confirmed.

8.0 EVIDENCE AGAINST THE APPLICATION

- 8.1 The landowner of Windlefield Farm affected by the application registered her objection in two letters dated the 14 May 2011 and 27 June 2011 on the following grounds:
- 8.1.1 Dark Lane has not been accessed for over 60 years, her husband farmed Windlefield Farm from the early 1950's and informed her that the area had not been accessed during this time.
- 8.1.2 Area known as Dark Lane has been fenced off (at the top and bottom) for many years and is totally overgrown with dense and ancient vegetation. The county councils of Lancashire and North Yorkshire have never suggested that these fences should be removed to provide access.
- 8.1.3 The application route is in close proximity to Three Acre Clough which is a Biological Heritage Site is a natural refuge and corridor for wildlife, mammals, bird's and insects. These areas of land are a major contribution to the ecological diversity of the area.
- 8.1.4 An area of the route over the moor land is home to a number of nesting birds, some of these birds are in decline and the establishment of a bridleway will bring horse riders and mountain bikers, destroying these venerable and valuable nesting sites.

- 8.1.5 Photographs were submitted to demonstrate the obstructed and overgrown nature to Dark Lane in its current state.
- 8.1.6 There is already an existing bridle path nearby on Stanridge Clough Lane which starts and finishes where the new proposed bridle path starts and finishes, so why destroy this habitat for the sake of another bridle path in close proximity to the existing one.
- 8.1.7 The user evidence submitted in support does not provide indication of use by the public, however it shows that signatories used the application route for access to properties off the application route prior to the war.
- 8.1.8 Some of the signatories state that it is a public right of way but do not provide information to substantiate this, there are many discrepancies and inconsistencies in the signatories submissions.
- 8.2 Two landowners and one tenant who live in close proximity to the route (including the landowner who submitted the letters) sent in landowner evidence forms. They all stated that they did not consider this route to be a public right of way. The only recollection they had was some motor bikes attempting to get down the lane, but they were challenged by the landowner, no date was provided to when this challenge took place.
- 8.3 Earby Town Council objected to the application on the following grounds:
- 8.3.1 The track is used by farm vehicles as well as walkers and to allow horses and bicycles would pose a danger of causing an accident.
- 8.3.2 The landowner has planted lots of trees which it is hoped will encourage and sustain birds and other wildlife who already benefit from the wooded areas.
- 8.3.3 Dark Lane is a deep gully with water in the bottom and trees either side and in the bottom of the claimed route.
- 8.3.4 A fence has been in place for over 40 years at the county boundary as shown as Point D on Plan 2.

9.0 COMMENTS ON THE EVIDENCE

- 9.1 There is no prescribed lower limit of the number of forms that are required to support an application sufficiently, however it is not credible that just three forms can evidence use by the public over twenty years, also the evidence relates to a time period so long ago that it cannot realistically be the subject of proper scrutiny.
- 9.2 It is difficult to come to a conclusion on the conflicting evidence of users and those local residents who state they have never seen riders using the route. The landowner evidence forms from local residents state they never saw horseriders using the route mostly cover the period from the 1960's onwards.

Their comments that nobody used the route is after the 1950's when users of the route note that it was overgrown and obstructed.

- 9.3 The historical documentary evidence, especially the Inclosure Award and Map, provide strong evidence that the section of the route as shown A to B on Plan 2 should be recorded as a restricted byway in the Definitive Map and Statement. This section of the application route is currently recorded as a Unclassified Public Maintainable Highway in the List of Streets. (see paragraph 7.2). This section is referred to as a "Public Bridle and Carriage Road" in the Inclosure Award, the reference of "Carriage Road" is evident of historic vehicular use carrying a higher status than bridleway. The remaining sections of the application route are not mentioned in the Award but are shown as routes on the Inclosure Map, this does not provide evidence with regard to the status of the route and can be relied only as evidence that something existed on the ground at the time of the production of these documents.
- 9.4 With regard to the old OS maps, although the application route is not marked as "bridle road" or "B.R." in 1839, 1913, 1940, 1954, 1956, 1971 and 1977, this does not preclude the possibility that the route may been a bridleway but simply not recorded by the OS. On early OS maps not all footpaths and bridleways were labelled as such. It was at the discretion of the OS surveyor, who usually only marked their status where there was a possibility they could be confused for roads. In any case notation (or in this case lack of notation) on OS maps is not evidence in itself as to the status of any given route at the time the map was produced.
- 9.5 Neither the Draft (1953) nor Provisional (1970) maps issued as part of the process of the production of the Definitive Map, showed the route as a public path. They showed only the public right of way network as it is currently recorded on the Definitive Map which was drawn up in 1972.

10.0 CONCLUSIONS

- 10.1 It is not considered that viewed in isolation, the user evidence submitted by the applicant provides evidence that meets the statutory test for dedication of the route.
- 10.2 However, officers are satisfied on balance that the recording of the section of the route A – B on the list of streets, and the historical documentary evidence (Inclosure Award and old maps) available to them demonstrates that part of the claimed route, shown A - B on Plan 2, should be recorded on the Definitive Map and Statement as a restricted byway..
- 10.4 Whilst there is sympathy with the landowners' and town council's concerns over potential danger to multiple users in the narrow sunken lane and disturbances to the conservation sites due to increased use by the public, those are not issues relevant to determining whether or not public rights to use the route exist.

- 10.5 It is considered that currently there is not sufficient evidence that a route should be recorded on the Definitive Map and Statement between points B - D shown on Plan 2 attached to this report

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 that part of the application route shown as A – B 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.

- 11.2 The Committee refuse that part of the application for the section of the route shown between points B - D to be recorded on the Definitive Map and Statement.

DAVID BOWE

Corporate Director Business and Environmental Services

Author of report: James Perkins, Definitive Map Officer

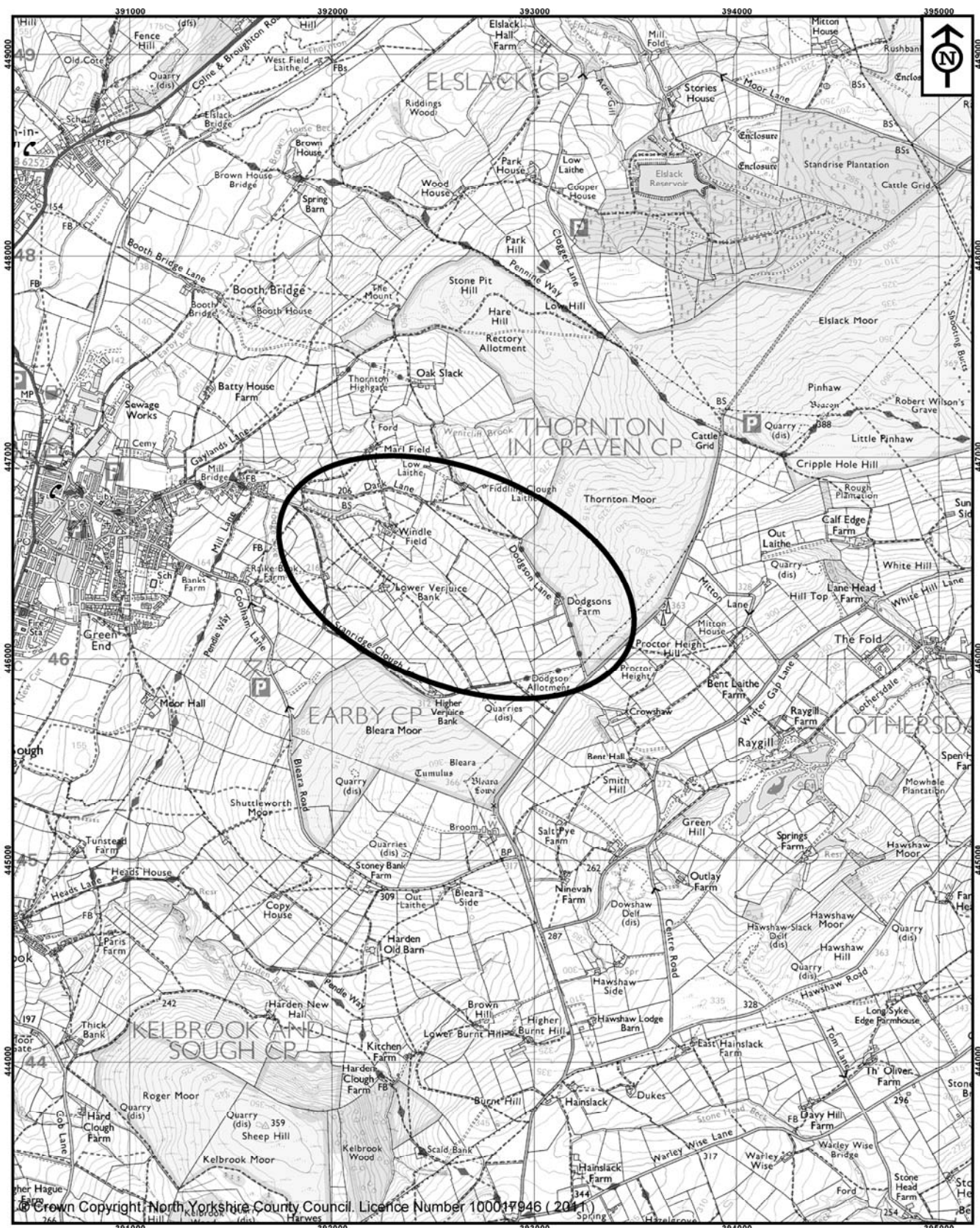
Background papers:

DMMO application dated 30 November 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 at Dodgson Lane and Dark Lane, and to upgrade Footpath No 05.41/23 (part) to a Bridleway, which will be available to Members at the meeting.




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North Yorkshire County Council

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

Key:
Location



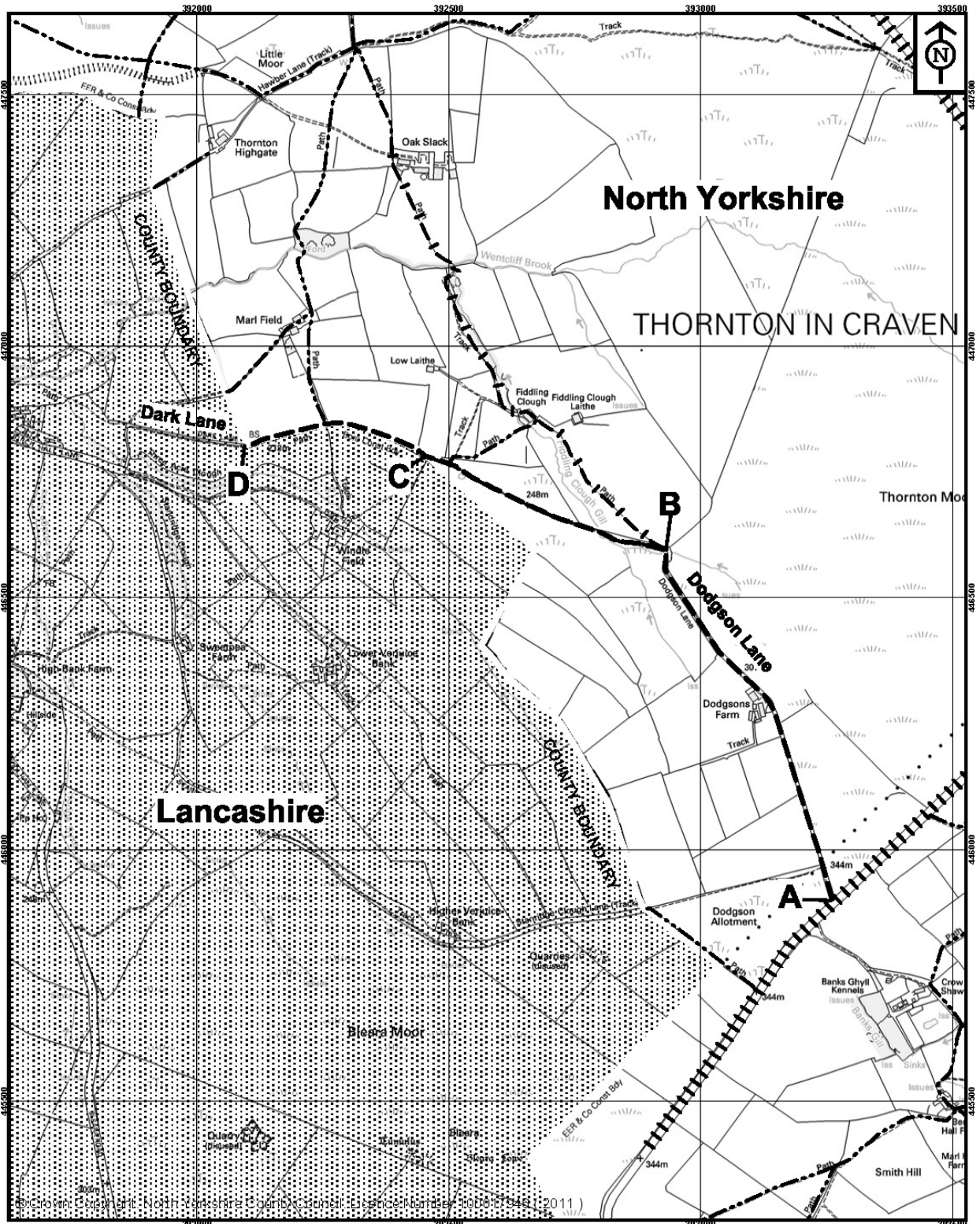
Map drawn on 8 December 2011
Drawn by JRP

North Yorkshire County Council

Plan prepared for the
Planning and Regulatory
Functions Sub-Committee
on 13 April 2012

PLAN 1

File Ref No. CRA/2009/10/DMMO



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North Yorkshire County Council

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

Key:

- Application route
- Other footpaths
- Other bridleways
- Maintainable highways

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

Planning and Regulatory Functions
Sub-Committee 13 April 2012
Application to Add A Bridleway at the Definitive Map And Statement at Dodgson Lane and Dark Lane, and to Upgrade Footpath No 05.41/23 (Part) to a Bridleway, Thornton-In-Craven and Lothersdale
PLAN 2

File Ref No. CRA/2009/10/DMMO