

**NORTH YORKSHIRE COUNTY COUNCIL****PLANNING & REGULATORY FUNCTIONS SUB-COMMITTEE****22 JUNE 2012****APPLICATION TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT  
FROM MOSSCARR LANE TO THE WEST YORKSHIRE COUNTY BOUNDARY, BILTON-  
IN-AINSTY WITH BICKERTON****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 add a Bridleway along the track running from Moss carr Lane to the West Yorkshire County boundary, in the parish of Bilton-in-Ainsty with Bickerton. A location plan is attached to this report as Plan 1. The route referred to is shown as A – B - C on Plan 2, attached to this report.
- 1.2 To request Members to authorise the Corporate Director, 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 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 However, if there were an objection to an Order that was not subsequently withdrawn, only the Secretary of State would have the power to decide if it should be "confirmed".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:-

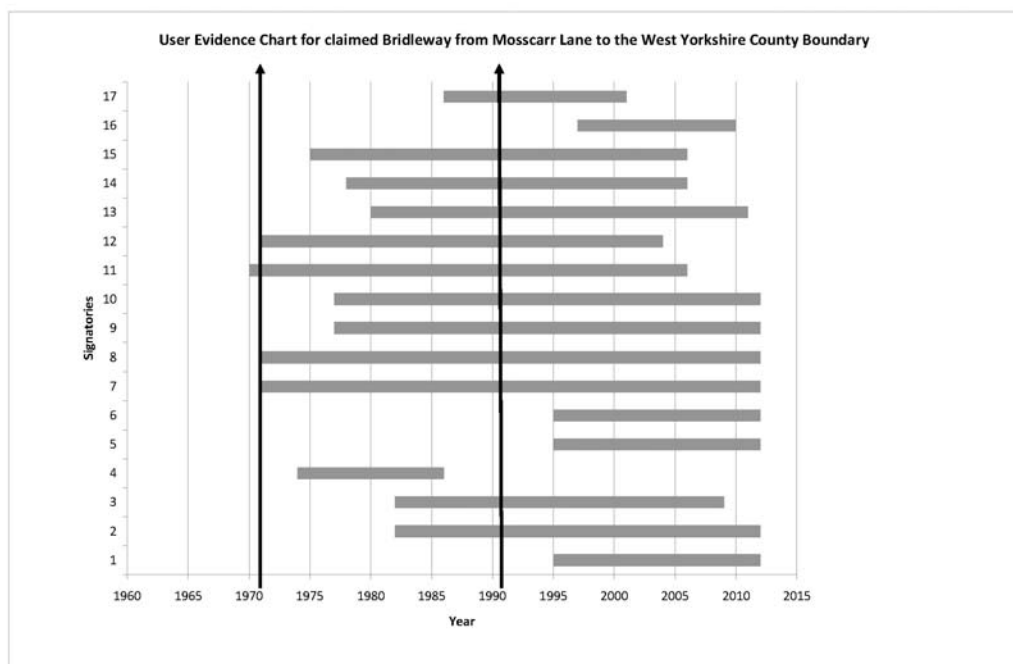
- the discovery of evidence which (when considered with all the other relevant evidence available to them) shows that a right of way which is not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way 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.
- 3.4 Under Section 31(6) of the Highways Act 1981, a landowner can deposit with the highway authority a map and statement showing the ways if any that the owner admits are dedicated as highways. If the owner subsequently follows this up with statutory declaration that no additional ways have been dedicated since the deposit this is sufficient, in the absence of proof in the alternative, to establish that no additional ways have in fact been dedicated in that time. The owner can continue to deposit further similar declarations at no more than ten yearly intervals, with the same effect. A landowner following this procedure demonstrates strong evidence of a lack of intent to dedicate any route from the time of submission of the initial deposit of a map and statement.

#### **4.0 BACKGROUND**

- 4.1 On 21 March 2000 a local resident 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 Bridleway.
- 4.2 The application submitted to North Yorkshire County Council referred to a route which stops at the county boundary, shown as Point C on Plan 2. The applicant has since applied to Leeds City Council (application submitted 2009) for the continuation of this route into West Yorkshire to be recorded as a Bridleway. That application is being dealt with separately by Leeds City Council.
- 4.3 The application to the County Council was submitted in reaction to the gate at the beck, shown as Point B on Plan 2, being locked in 2000, obstructing the application route.

## 5.0 EVIDENCE IN SUPPORT OF THE APPLICATION

- 5.1 The application is supported by eight evidence of use forms submitted in 2006, subsequent to the initial application, claiming uninterrupted use of the route on foot, bicycle and horseback from the 1960s up until when the evidence of use forms were submitted. The application is further supported by a letter from a local resident. A further fifteen evidence of use forms and six letters of support were submitted in 2012, making a total of 23 evidence of use forms. Those further forms claim use of the route up until the date of their submission. The letters submitted in 2006 provide only limited information and do not carry any significant evidential weight.
- 5.1.1 Of the twenty three signatories who completed user evidence forms, twenty two indicated that they had used the route as of right. The remaining signatory indicated that they were given permission to use the track, and on this basis this form has been disregarded from this process as not amounting to evidence of a claimed use as of right.
- 5.1.2 Of the remaining twenty two signatories, five did not mark on the plan the route that they used, so these have also been disregarded from this process.
- 5.1.3 The remaining seventeen signatories have indicated that they used the application route from 1970 to 2012. The chart below shows the claimed use of the route. The date of challenge has been established as 1991, as referred to in 6.1 below.



- 5.1.4 Seven of the signatories state that they had been prevented from using the route by a locked gate at the beck, shown on Plan 2 as Point B. Dates for the locking of this gate were given as 2000 by one signatory, and 1991 by another signatory. No dates were provided by the remaining five signatories for the locking of the gate.

- 5.1.5 One witness in a letter dated 2006 stated that they had found the gate locked and had to resort to lifting their cycles over the gate, but gave no date for when this happened.
- 5.1.6 The majority of signatories did not seem to regard the locking of the gate in 2000 or 1991 as a challenge to the public, as the evidence forms claim continued use of the route up until the forms were submitted in 2006 and 2012.
- 5.1.7 The seventeen witnesses that submitted plausible evidence of use forms have claimed use of the route by one or more means - nine signatories claim use of the route on foot only, six signatories on foot and on a bicycle, one signatory on foot and horseback and one signatory on foot, on bicycle and in a motorised vehicle.
- 5.1.8 All of the signatories indicated that they had observed other people using the route on foot, six signatories observed people using it on horseback and nine signatories observed people using it by bicycle.
- 5.1.9 Reasons given for using the route include leisure walking, dog walking, visiting friends and family, exercise. All of these are *bona fide* reasons for using a public right of way.
- 5.2 The application is also supported by the following historical documents:-
- Extracts from the Turnpike Trust Act of 1826, and associated plan showing the New Turnpike Road
  - Extract from a Quarter Session entry relating to the stopping up of the former Turnpike Road.
  - Notes on the history of the Old Wetherby to Bickerton Road.
  - Extracts from the Tithe Map of 1851.
  - .
- 5.2.1 The Turnpike Trust Act of 1826 provided for the shortening and diverting of the old road, which was located on the alignment of the application route (shown as A – B on Plan 2) onto a more direct route that follows the present alignment of the B1224. The Act provided that when the new route shall “have been completed and rendered fit and commodious for the public” the trustees should abandon and give up the maintenance and repair of the old route. The Act also incorporated a provision relating to the stopping up of obsolete sections of road following diversion.
- 5.2.2 On the 27 November 1828, a meeting was held of the Trustees of the Turnpike Trust to make an order for opening up the newly diverted road and the stopping up and discontinuing as a public highway of the old alignment of the road (shown on Plan 2 as A – B). The stopping up date of 1828 is relevant to this application, as any historical documentation presented to demonstrate highway rights prior to the stopping up order cannot be considered, as the highway rights were extinguished by the 1828 Order.
- 5.2.3 The Tithe Map of 1851 shows the application route annotated in brown. The annotation of brown is also used on the map to distinguish all of the other public highways within the parish. The Tithe document does not provide any indication that the route was maintained by an adjoining landowner. The application route is not named on the Tithe Map, but other highways are, including the turnpike road that was created by the 1828 Order referred to in paragraph 5.2.2 above.

## **6.0 EVIDENCE AGAINST THE APPLICATION**

- 6.1 The previous landowner of Ingmanthorpe Hall Farm (affected by the section shown on Plan 2 between points B –C) submitted maps and statements in accordance with Section 31(6) of the Highways Act 1980 firstly in 1991 and subsequently in 1996. The submission of the Section 31 declaration is a formal process to prevent the acquisition of public rights by the public, his action by the landowner at that time, clearly demonstrates the landowner's lack of intention to dedicate any further rights of way over his land from 1991. This action is the challenge to the public's use of the route, consequently the relevant 20 year period to consider, in determining whether rights have been acquired is from 1971 – 1991. This is shown by the black arrows on the chart in paragraph 5.1.3.
- 6.2 During initial investigations into the application, an objection was received from the landowner of that part of the application route shown on Plan 2 between points A - B, alleging that the evidence submitted in support of the application is not of an adequate standard to determine that public rights exist, and that it appears that the application is an attempt to establish a new bridleway, rather than to correct errors or omissions.
- 6.3 The owner referred to in paragraph 6.2 above stated that he has owned his land since 2004, and in that time the gate at Point B on Plan 2 has remained locked, and was only opened on occasions for access to the fields for farming practices. He also stated that since he became the owner of the land he has verbally challenged anybody using the application route. The previous owner of that land has stated that the gates at Point B have been in existence for over twenty five years though did not state whether the gates had been locked during that time.
- 6.4 In his objection letter, the owner mentioned in paragraph 6.2 acknowledges that the application route was the former turnpike road that was stopped up and diverted in 1828. The landowner states that when comparing the historic maps, reference is made to Cowthorpe Lane and Moss carr Lane, and these routes are annotated as "Bridle Road". These tracks are shown in the same alignment as on the definitive map and are now recorded as bridleways. The owner notes that none of the historic maps show any annotation of the application route, although it is shown as a track, he presumes it to be a private track and not a right of way.

## **7.0 RESPONSES FROM OTHER INTERESTED PARTIES**

- 7.1 During the initial consultations into this application Bilton-In-Ainsty with Bicketon Parish Council confirmed their support of the recording of this route as a bridleway.
- 7.2 The British Horse Society confirmed that they support this application and commented that they are of the opinion that the route should be recorded as a restricted byway, as the route is shown as a road on the following historic maps; Geographia Road Map, Bacon's ½inch Road Map, Bacon's Cycling Road Map and Johnson's Road Atlas.

## **8.0 COMMENTS ON THE EVIDENCE**

- 8.1 It is clear that the application route was a highway recorded as a Turnpike Road until 1828 when it was diverted and the highway that was the application route was stopped up.
- 8.2 The Tithe Map of 1851 shows the route in the same manner as other highways even though the route was stopped up in 1828, this is suggestive that it had come back into use, or had continued to be used as a public highway of unknown status. The other historical maps indicate that a route existed when the maps were produced, but do not provide evidence of public rights.
- 8.3 Even if it is considered that the historic evidence is insufficient to demonstrate that public rights exist historically, there is sufficient evidence of use of the route prior to the 1991 challenge, to show significant unhindered use of the route by the public. The user evidence forms show that between 1971 and 1991 four signatories had each used the route for the whole twenty year period (detailed in paragraph 5.1.3). A further nine signatories had used the route for a significant part of this 20 year period.
- 8.4 Those witnesses all claim that they used the route on foot, six of the witnesses claim to have also used the route on cycle, and one of the witnesses also on horseback. All of the signatories noted that they observed other members of the public using the route on foot, nine signatories witnessed people using it on a bicycle, six signatories indicated that they had observed people using it on horseback (detailed in paragraph 5.1.8).
- 8.5 Although the application was submitted for the route to be recorded as a bridleway the evidence shows that the route was used more frequently by cyclists than by horseriders. A route cannot be recorded as a bridleway where there is greater use by cyclists. In this instance a bicycle is considered to be a vehicle, and the status that would be acquired would be that of a restricted byway, rather than bridleway.
- 8.6 The previous landowner of Ingmanthorpe Hall Farm provided strong evidence demonstrating a lack of intention to dedicate any further public rights of way on his land, following his submission of the statement and plan under Section 31(6) in 1991, but this submission is only applicable in preventing the establishment of public rights on the route after 1991.
- 8.7 The evidence of the current owner of the land affected by section A - B of the claimed route indicates the locking of gates and the verbal challenging of users, demonstrating an intention not to dedicate a public right of way. This shows continued challenge to users, but is not considered material as it occurred after the date of submission of the Section 31(6) declaration, and so is outside what is considered to be the relevant 20 year period.
- 8.8 Officers are satisfied that the application gives rise to a “discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist.”

## **9.0 CONCLUSIONS**

- 9.1 Officers are satisfied that there is evidence to demonstrate a reasonable allegation of the existence of a public right of way before the effective challenge made by the then landowner in 1991. Officers have been presented with no evidence of actions showing an intention not to dedicate by any landowner or tenant prior to 1991.
- 9.2 The signatories evidence of usage of the route extends to such use that is considered would independently justify that an Order should be made to add the route to the Definitive Map and Statement as a restricted byway.
- 9.3 The Tithe Map suggests further evidence of higher rights than bridleway, as the brown colouring of the route on the map suggests that a highway was present at the time of production of the map in 1851.
- 9.4 Although the application was for the route to be recorded as a bridleway, officers are satisfied that with reference to the user evidence and the Tithe Map, that the application route, in full, should be shown on the Definitive Map and Statement as a restricted byway.

## **10.0 RECOMMENDATION(S)**

- 10.1 It is therefore recommended that:-
- 10.2 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 on Plan 2 of this report to be shown on the Definitive Map and Statement as a restricted byway
- and,
- 10.3 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.

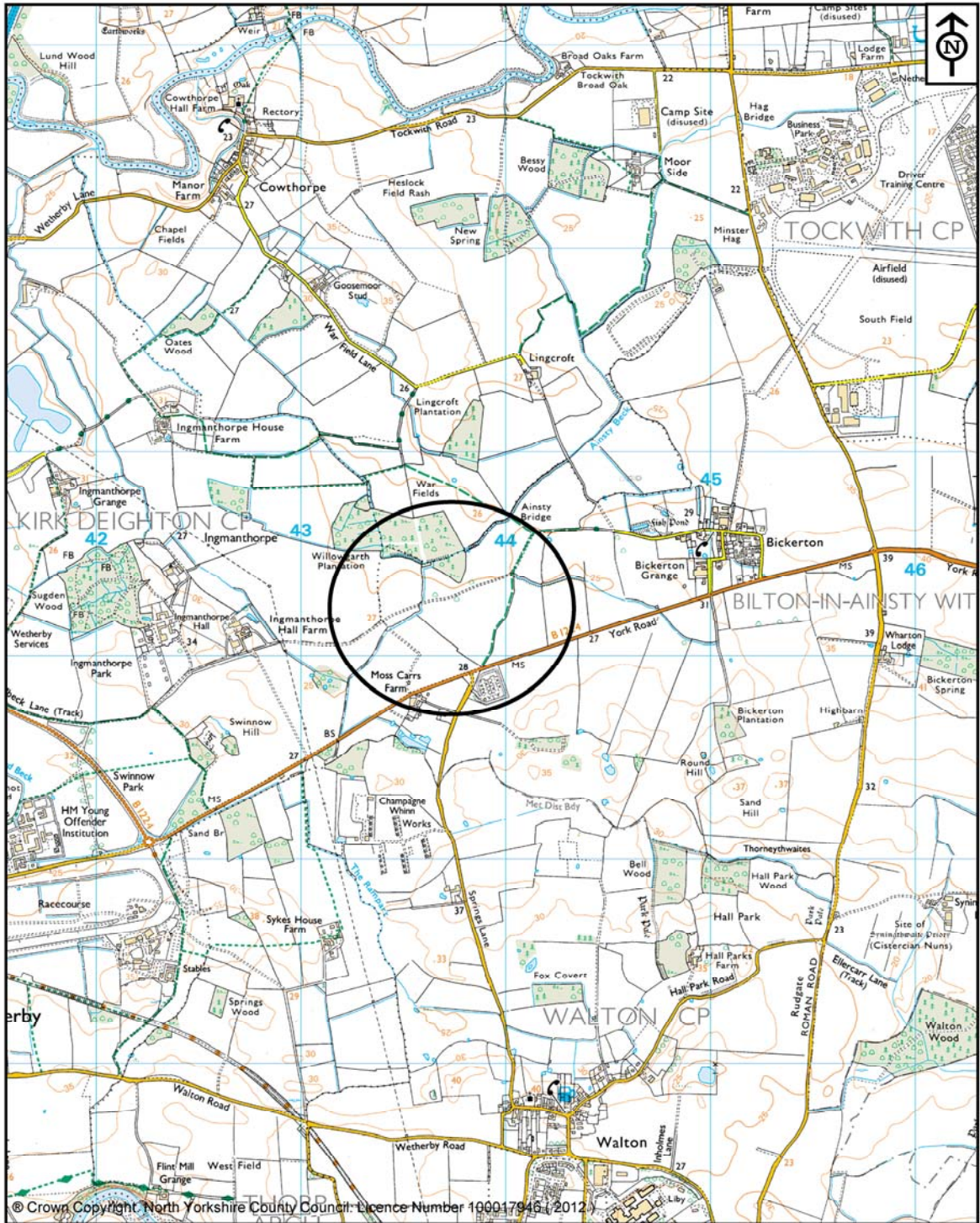
DAVID BOWE  
Corporate Director Business and Environmental Services


Author of Report: James Perkins

### Background papers

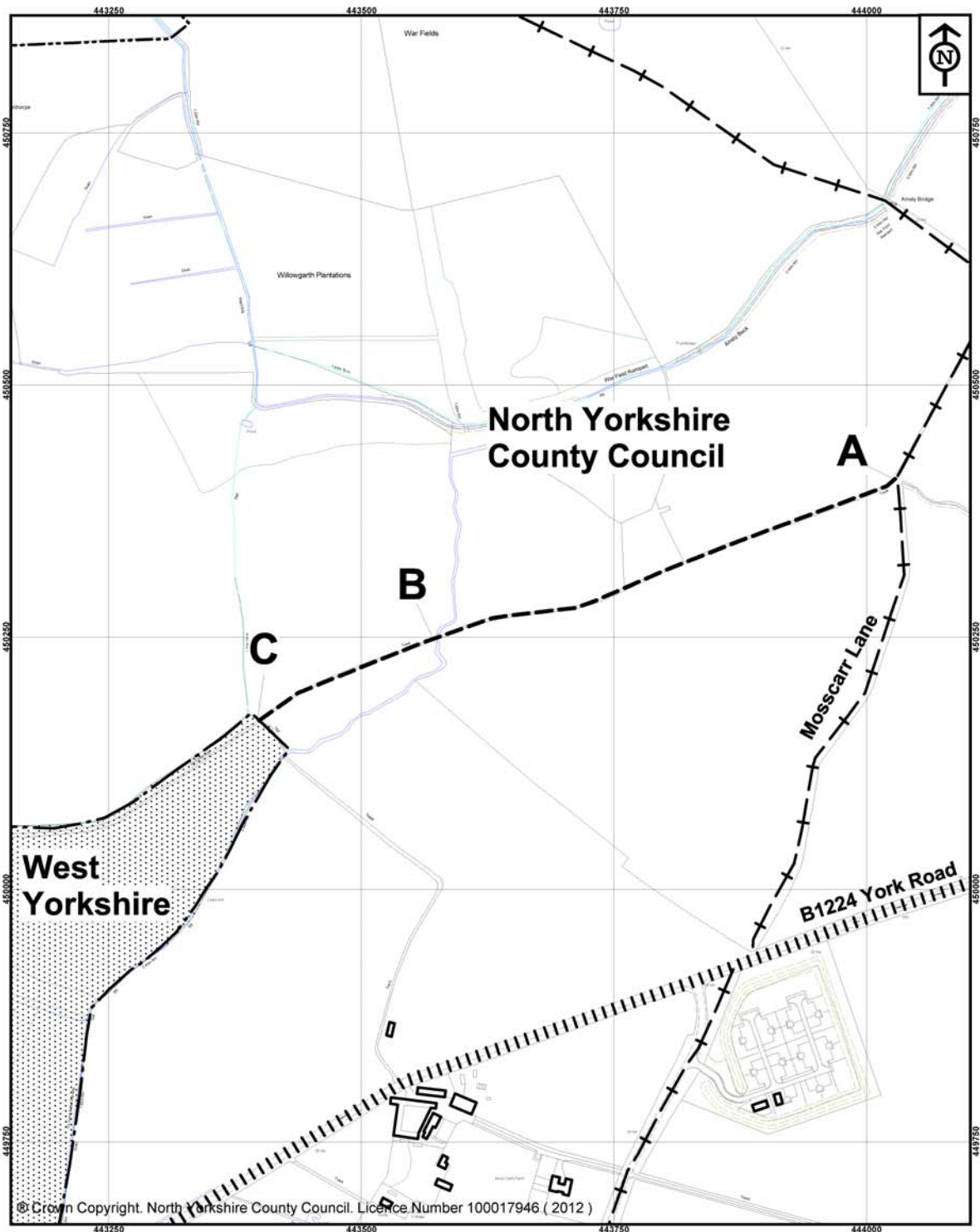
DMMO application dated 21 March 2000  
Evidence submitted in support of, and against the application

*The documents are held on a file marked:  
County Council's Planning and Regulatory Functions Sub-Committee, 22 June 2012,  
Application to add a Bridleway to the Definitive Map and Statement at Mosscarr Lane to  
West Yorkshire County boundary, Bilton-In-Ainsty with Bickerton, which will be available to  
Members at the meeting.*



 <p><b>North</b> Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p align="center"><b>Location Plan</b></p> <p align="center"><b>PLAN 1</b></p> <p>Map drawn on 12 April 2012 Drawn by JRP      Scale 1:25000</p>	<p align="center">PLANNING AND REGULATORY FUNCTIONS SUB COMMITTEE 22 JUNE 2012</p> <p>APPLICATION TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT FROM MOSSCARR LANE TO THE WEST YORKSHIRE COUNTY BOUNDARY, BILTON-IN-AINSTY WITH BICKERTON</p>
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**North Yorkshire County Council**

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

**PLAN 2**

Key:  
 Application route ————  
 Other footpaths - - - - -  
 Other bridleways — + —  
 Maintainable highways |||||  
 County Boundary — + — + —  
 Map drawn on 3 May 2012  
 Drawn by JRP Scale 1:5000

PLANNING AND REGULATORY FUNCTIONS SUB COMMITTEE  
22 JUNE 2012

APPLICATION TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT FROM MOSSCARR LANE TO THE WEST YORKSHIRE COUNTY BOUNDARY, BILTON-IN-AINSTY WITH BICKERTON

File Ref No. HAR/2000/1/DMMO