

NORTH YORKSHIRE COUNTY COUNCIL**PLANNING AND REGULATORY FUNCTIONS SUB COMMITTEE****23 NOVEMBER 2012****UPGRADING OF FOOTPATH NO 15.39/16 & FOOTPATH NO 15.39/4 (PART) TO
BRIDLEWAY, HORSEMANS WELL, FELLISCLIFFE
MODIFICATION ORDER 2012****Report of the Corporate Director – Business and Environmental Services****1.0 PURPOSE OF REPORT**

- 1.1 To advise Members of a direction from the Secretary of State which caused the County Council to make Definitive Map Modification Order, the effect of which, if confirmed, would be to upgrade footpath No. 15.39/16 & footpath No. 15.39/4 (part) to bridleway, at Horsemans Well, in the parish of Felliscliffe. 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 – H – I – J 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 refer the opposed Order to the Secretary of State for determination, allowing the Authority to retain a neutral stance towards its confirmation.

2.0 THE COMMITTEE'S RESPONSIBILITIES

- 2.1 The Committee, in reaching a view, should base its decision on the evidence before it 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.

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, 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.

3.2 In this instance the DMMO has already been made following a direction made by the Secretary of State.

3.3 The relevant test to be applied by the Secretary of State for the determining whether or not the Order should be confirmed, after consideration of the relevant evidence is whether, on the balance of probabilities, the existing footpath should be recorded as a bridleway.

4.0 BACKGROUND

4.1 An application was submitted on 1 December 2005, by the Harrogate Bridleways Association, to modify the status of footpath 15.39/16 and part of footpath 15.39/4 by changing it to the status of bridleway on the Definitive Map and Statement. The applicant believes that the route was incorrectly recorded as a bridleway during the original production of the Definitive Map and Statement in the 1950s to the 1970s.

4.2 The application was supported by documentary evidence only, no user evidence being supplied. The documents submitted were:

- Circa 1770 Survey of the Forest of Knaresborough
- 1777 The West Riding of Yorkshire map prepared by Eman Bowen
- 1778 Forest of Knaresborough Inclosure Award and Plan
- 1834 Map of Yorkshire prepared by Christopher Greenwood
- 1844 A New Survey of Yorkshire map prepared by Hobson
- 1871 The History a Topography of Harrogate and the Forest of Knaresborough written by William Grange
- 1873 Ordnance Survey (“OS”) one inch to one mile map
- Circa 1900 Mounsey’s Cycling and Touring Map. Forth Miles about Otley
- 1904 OS one inch to one mile map
- 1918 The Bradford Antiquary. The Roman Road from Ilkley to Aldborough by Percival Ross
- 1940 OS one inch to one mile map
- 1985 Roads and Trackways of the Yorkshire Dales by Geoffrey N. Wright

As well as the evidence listed above the applicant also enquired about the Draft Definitive Map in North Yorkshire County Council’s (“the Authority”) possession which, the applicant understood, depicted the relevant footpaths as bridleways.

4.3 The submitted evidence was considered by officers along with the information already in the Authority’s possession in the context of the provisions of s.53(3)(c)(ii) of the Wildlife and Countryside Act 1981 (“WCA81”). It was decided that the submitted evidence, although initially compelling, was not sufficiently cogent to call into question the depiction of the route on the Definitive Map and Statement (“DM&S”) as a public footpath.

- 4.4 As a consequence of the decision referred to in paragraph 4.3 above the application was formally rejected and the applicant was informed of this decision on 17 August 2010.
- 4.5 The applicant exercised his right under Section 53(5) of the Wildlife and Countryside Act 1981 to appeal this decision to the Secretary of State.
- 4.6 The Secretary of State appointed a member of the Planning Inspectorate who determined to allow the appeal, and consequently the Secretary of State directed the County Council to make an Order as is provided for in the legislation. A copy of the decision letter (DL) dated 19 December 2011 is attached to this report as Appendix 1.
- 4.7 The Order was duly made by the Authority on 3 April 2012 and advertised on 4 May 2012.
- 4.8 During the formal consultation period the Authority received eighteen letters of support for the Order, and a single objection.

5.0 EVIDENCE IN SUPPORT OF THE APPLICATION

- 5.1 No additional evidence came to light as a result of the consultation process.
- 5.2 The 1770 Survey of the Forest of Knaresborough and the 1778 Forest of Knaresborough Inclosure Award and Plan both show a route that appears to be the same as public footpath 15.39/16 and 15.39/4. Within the text of the 1778 Award the route is referred to as Long Lane with an “antient” (obsolete form of ancient) lane linking it to Long Lane Road to the south. No mention of the status of Long Lane is given within the Award.
- 5.3 All of the maps submitted show a way that appears to be coincident with the application route, but they do not give a clear indication of the status of the route. In addition to the submitted maps, other maps in the Authority’s possession also show the application route.
- 5.4 The extracts from local history books submitted indicate that the authors believed the application route was the continuation of the Roman road, Watling Street, and state that the stony surface of the old road was identifiable beneath a covering of soil and vegetation.

6.0 EVIDENCE AGAINST THE APPLICATION

- 6.1 An initial response to the processing of the application was made on behalf of one of the affected land owners by The Land and Development Practice(consultants) prior to the officer decision referred to in paragraph 4.3 of this report.

- 6.2 In the submission no material evidence was presented to refute the evidence submitted with the application. Rather their report sought to draw the attention of the Authority to relevant parts of the WCA81 and associated case law with the objective of demonstrating that the evidence supplied by the applicants did not meet the required standard to justify the making of an Order. They submitted a number of documents indicating that the 1778 Forest of Knaresborough Inclosure Award and Plan had already been taken into account by West Riding County Council (“WRCC”) after the Draft Map had been produced in 1953, during the preparation of the DM&S during the 1950s, and as such could not now be considered to be ‘new’ evidence allowable to support the upgrading of the footpath.
- 6.3 Following the making and advertising of the Order a further submission was made by Land and Development Practice, on behalf of their client, formally objecting to the Order. In this submission Land and Development Practice called into question the Secretary of State’s reasons for directing the Authority to make the Order, claiming that their submission demonstrated that the Order should not be confirmed and requesting the matter be determined by a local public inquiry.

7.0 RESPONSES FROM OTHER INTERESTED PARTIES

- 7.1 The letters of support received did not provide any new evidence but simply welcomed the possibility of a new traffic free route open to horse riders.

8.0 COMMENTS ON THE EVIDENCE

- 8.1 The evidence submitted by the applicant presents a compelling case that a public right of way of some antiquity and significance exists along the application route. This was also the view of the Inspector (DL paragraph 15). The presence of a public right of way is not in dispute, as the route is already recorded as a footpath; rather it is the status of the route that is at issue.
- 8.2 The evidence supplied by the applicant is silent on the status of the route but does refer to it as being linked with Long Lane Road by an “antient” lane. The applicant is relying on the assumption that a route that is important enough to be recorded on the Inclosure Award Plan, and on so many later maps over such a long period time cannot have been only a footpath historically, and therefore must have at least bridleway rights.

- 8.3 In the DL the Inspector highlights the point that the other maps submitted with evidence are supported by the OS mapping evidence in showing the route as a substantial lane. However, as the Inspector notes in DL paragraph 23, the apparent importance of the route declines over the early part of the twentieth century until, by 1940, the route is shown on the OS map only as a single pecked line that could either be a bridleway or footpath. This decline in significance could explain the decision of WRCC to accept the arguments of the objector that the way was for pedestrian use only, despite it having initially been claimed as a bridleway.
- 8.4 The Inspector, in considering the evidence suggesting that the way was the Roman road known as Watling Street makes the legitimate point that whilst in the eighteenth century this was held to be the case; later historians appear less convinced that the Order route is coincident with Watling Street.
- 8.5 The applicant has also argued that the statements made by the owners, occupiers and tenants in the 1950s, that the route was not a bridleway, have no value if higher rights had already been established by this time. This would indeed be the case if the earlier documents do in fact demonstrate that higher rights had already been established. This point was also made by the Inspector in DL paragraph 26. Having reviewed the available evidence in the light of the Inspector's comments, officers are not satisfied that the older evidence submitted by the applicant is sufficiently clear to establish the presence of higher rights.
- 8.6 In the closing paragraphs of the DL, the Inspector states that none of the evidence adduced prevents the existence of higher rights and, when taken as a whole, it is sufficient to tip the balance of probability in favour of the existence of higher rights. It is the view of officers that whilst this may be the case, it may not be sufficient to overturn the initial presumption that the DM&S is correct.
- 8.7 The objector has not been able to submit any evidence to demonstrate that the route was not historically a bridleway, or that if it had been a bridleway in the past that these rights had been removed by a due process.
- 8.8 However, the documents that the objector provided did demonstrate that the 1778 Forest of Knaresborough Inclosure Award, which is the main piece of evidence that the applicant had relied upon, had indeed previously been considered by WRCC during the preparation of the Definitive Map & Statement. Therefore it was felt that it did not qualify as acceptable evidence to now be taken into account, in consideration of the status of the route. Whilst it is most likely that the 1770 Survey of the Forest of Knaresborough was part of the documentation relating to the Inclosure Award, it does appear that it had not been considered in itself by WRCC at the time of the making of the DM&S, and can therefore be considered as new evidence, although it does not provide clear information as to the status of the route.

9.0 CONCLUSIONS

- 9.1 The evidence submitted by the applicant is not particularly strong in determining the status of the route, and relies to a great degree on assumptions about the ancient highway network around Felliscliffe, depicted, but not clarified, within the Inclosure Award.
- 9.2 The objector has submitted no evidence that directly refutes the evidence of the applicant.
- 9.3 It is considered that the quality of the evidence has not been strengthened since the application was first made and that consequently the Authority believes that there is insufficient evidence to support the confirmation of the Order. That said, it is also considered there is insufficient evidence for the Authority to rely upon to actively oppose the confirmation of the Order. Therefore, there seems to be little alternative for the Authority other than to take a neutral stance, allowing the matter to be determined by the Secretary of State. It is not uncommon in such circumstances for an authority to take this position.

10.0 RECOMMENDATION(S)

10.1 It is therefore recommended that:-

The Committee authorise the Corporate Director of Business and Environmental Services to refer the opposed Order to the Secretary of State for determination, and authorise the Authority to take a neutral stance towards its confirmation.

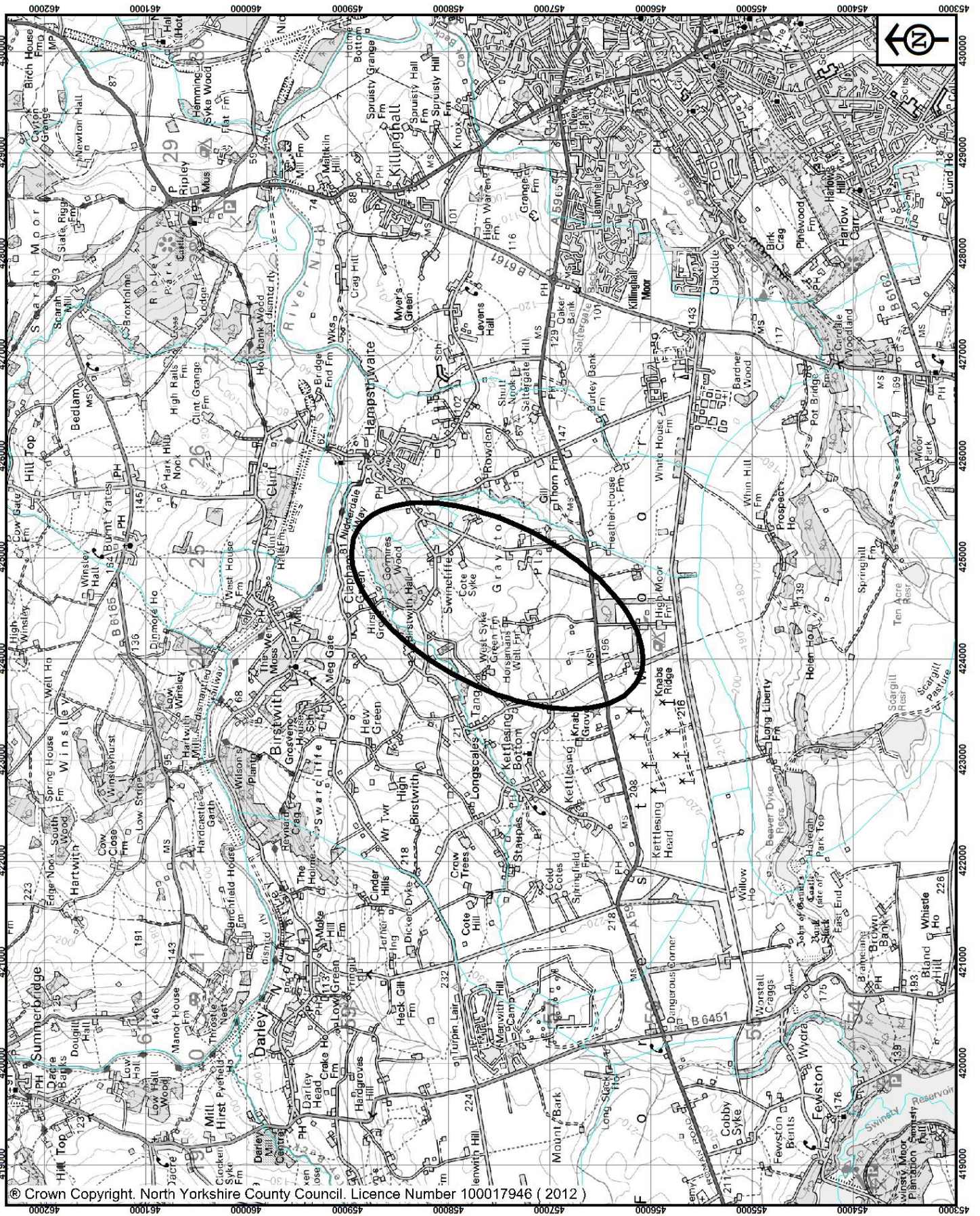
DAVID BOWE

Corporate Director – Business and Environmental Services

Author of Report: Russ Varley

Background Documents:

- DMMO application dated 1 December 2005
- Evidence submitted in support of, and against the application and Order
- Secretary of State's decision letter



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**North
Yorkshire County Council**

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

PLAN 1

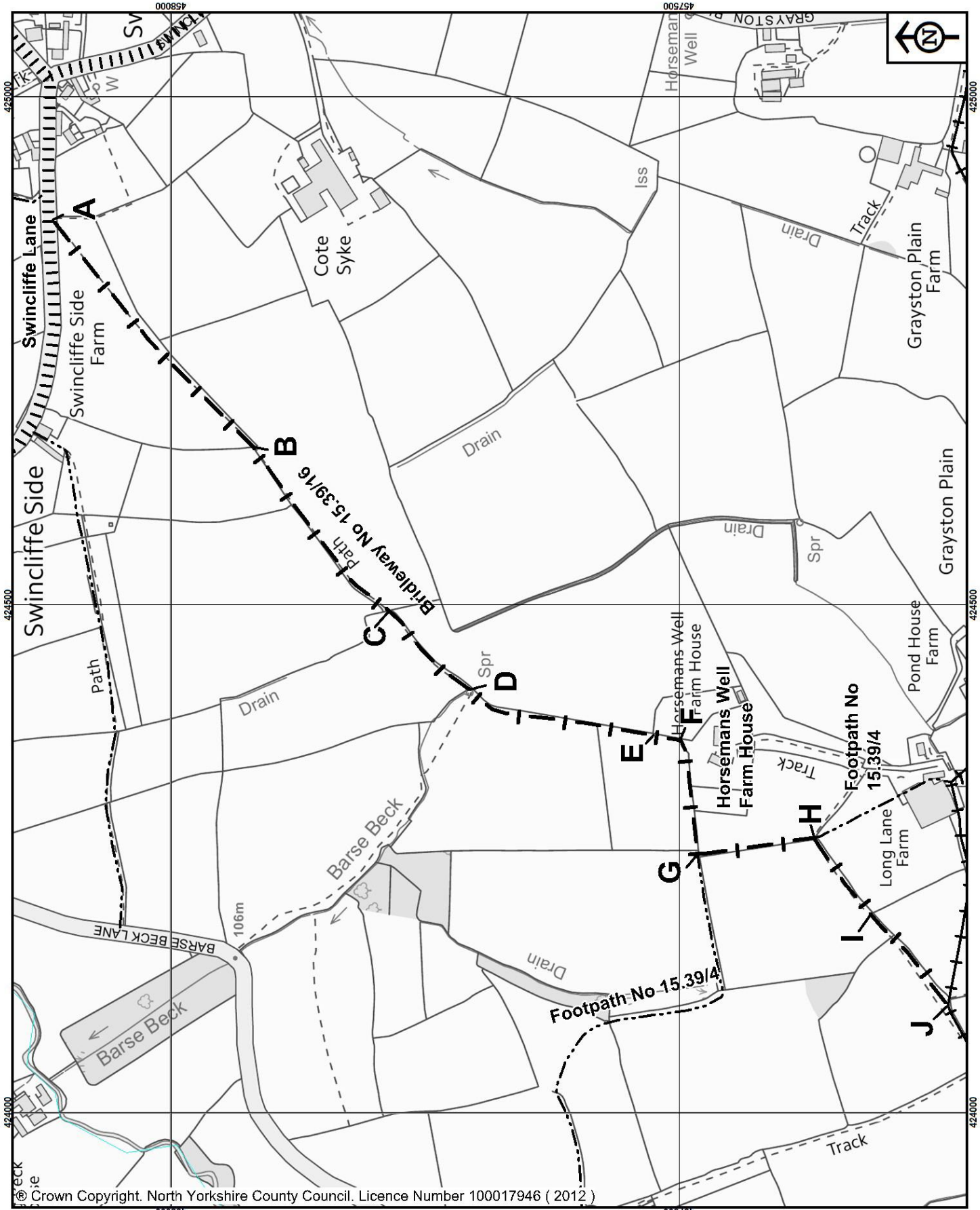
Map drawn on 20 September 2012

Drawn by RJV

Scale 1:50000

Planning & Regulatory Functions Sub
Committee
23 November 2012
UPGRADING OF FOOTPATH
NO 15.39/16 & FOOTPATH
NO 15.39/4 (PART) TO BRIDLEWAY,
HORSEMANS WELL, FELLISCLIFFE
MODIFICATION ORDER 2012

File Ref No. HAR/2005/07/DMMO



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North Yorkshire County Council

Public Rights of Way
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PLAN 2

Key:

- Bridleway to be recorded
- Other footpaths
- Other bridleways
- Maintained Highways

Map drawn on 20 September 2012

Drawn by RJV Scale 1:5000

Planning & Regulatory Functions Sub Committee

23 November 2012

UPGRADING OF FOOTPATH NO 15.39/16 & FOOTPATH NO 15.39/4 (PART) TO BRIDLEWAY, HORSEMANS WELL, FELLISCLIFFE MODIFICATION ORDER 2012

File Ref No. HAR/2005/07/DMMO

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James Perkins
North Yorkshire County Council
County Hall
Northallerton
North Yorkshire
DL7 8AD

Your Ref: HAR/2005/07/DMMO

Our Ref: FPS/P2745/14A/2

Date: **19 DEC 2011**

Dear Sir

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14

North Yorkshire County Council

Council's refusal to modify the Definitive Map to upgrade Footpath 16 to a Bridleway at Horsemans Well, Felliscliffe

I enclose herewith a copy of the Inspector's decision on this Appeal.

For your information, you will also find enclosed two leaflets entitled *Our Complaints Procedure* and *Challenging the Decision in the High Court*.

Please note that this decision can only be challenged by applying to the Administrative Court for a judicial review.

If you have any queries about the enclosed decision, please contact the Quality Assurance Unit at the following address:

Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Tel: 0117 372 8252

http://www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm

An electronic version of the decision will shortly appear on the Inspectorate's website.

Yours faithfully

John Greenslade

(Rights of Way Section)

APPdesp la