

NORTH YORKSHIRE COUNTY COUNCIL**PLANNING AND REGULATORY FUNCTIONS SUB COMMITTEE****23 NOVEMBER 2012****DOWNGRADING OF PUBLIC BRIDLEWAY NO.15.29/38 (PART) TO FOOTPATH,
MONK ING ROAD, DACRE
MODIFICATION ORDER 2012****Report of the Corporate Director – Business and Environmental Services****1.0 PURPOSE OF THE 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 downgrade the bridleway known as Monk Ing Road (15.29/38) to footpath, in the parish of Dacre. 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, which is also attached to this report.
- 1.1 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 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.

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 determination of this Order, after consideration of the relevant evidence is whether, on the balance of probabilities, the existing bridleway should be recorded on the Definitive Map and Statement as a footpath.

4.0 BACKGROUND

4.1 An application was submitted to North Yorkshire County Council (“the Authority”) on 22 July 2010, by Mr J. Marshall and Ms C. Marshall of Monk Ing Farm, Dacre to modify the status of bridleway 15.29/38 by changing it to footpath on the Definitive Map and Statement (“DM&S”).

4.2 The application was supported by documentary evidence and four statements from local residents. The documents submitted were:

- 1844 Dacre Pasture Inclosure Award
- 1844 Dacre Pasture Inclosure Award Plan
- 1950 Parish Survey Schedules
- 1950 Parish Map
- Ordnance Survey (“OS”) maps 1849, 1854 and 1890
- Photographs of the route
- Letter from Mr G. Abbot (dated 2003)
- Four WCA E land owner evidence forms (dated 2010)

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 was not sufficiently cogent to call into question the depiction of the route on the DM&S as a public bridleway.

4.4 As a consequence of the decision referred to in paragraph 4.3 above the application was formally rejected and the applicants were informed of this decision on 4 July 2011.

4.5 The applicants exercised their right under Section 53(5) of the WCA81 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 the Secretary of State consequently directed North Yorkshire County Council (“the Authority”) to make an Order as is provided for in the legislation. A copy of the decision letter is attached to this report as Appendix 1.

4.7 The Order was duly made by the Authority on 23 March 2012 and advertised 27 April 2012.

4.8 During the consultation period the Authority received five objections to the Order.

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 1844 Dacre Pasture Inclosure Plan and Award makes no specific reference to the route being a public footpath but the eastern end of the route is shown on the Inclosure plan. The remainder of the route is not shown but is in part coincident with the boundaries of some of the land parcels mentioned in the award.

5.3 The 1950 Parish Survey Schedules submitted show that the route in question was initially recorded by Dacre Parish Council as a footpath when the path was surveyed as the earliest part of the Definitive Map preparation processes in 1950.

5.4 The 1950 Parish Map shows the route recorded as a bridleway with two field gates and a stile shown along its route.

5.5 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. The route is labelled "F.P." on the Ordnance Survey (OS) 25 inch map of 1909 and the 6 inch OS map of 1910.

5.6 The photographs of the route show stiles obstructing the route including a stone stile.

5.7 The letter from Mr Abbot states that horses have never used the route because there is a five feet high wall with a stile that prevents equestrian use.

5.8 The four land owner evidence forms agree that there had always been stiles on the route. Two of the four witnesses also mention cattle grids on the route. One witness records that a diversion had been made in the past and the Order referred to the route as a footpath.

6.0 EVIDENCE AGAINST THE APPLICATION

6.1 Following the making of the Order five objections were received but no material evidence was contained in those submissions.

6.2 Two of the five objectors stated that they did not believe that there was sufficient new evidence to challenge the presumption that the DMS was correct and thereby the application does not meet the test set out in section 53 of WCA81.

7.0 COMMENTS ON THE EVIDENCE

- 7.1 The DM&S is conclusive evidence that a public right of way exists over the route indicated on the DM&S. Therefore, any evidence put forward to support changing the status of a route shown on the DM&S must be of sufficient weight to rebut the presumption that the DM&S is correct “on the balance of probabilities”.
- 7.2 The 1844 Dacre Pasture Inclosure Plan does not show a route coincident with the entire Order route nor is there any mention of a public right of way crossing the relevant land parcel shown in the Award. This suggests that no such route was created by or recognised in this Inclosure Award process. However, the absence of a route cannot be interpreted as providing conclusive evidence that no such route came into being after the date of the Award. Therefore this evidence does not challenge the presumption that the DMS is correct.
- 7.3 The 1950 Parish Survey Schedules
- 7.3.1 The 1950 Parish Survey Schedules show that the Order route was originally claimed by the Dacre Parish as a public footpath, and the reason given in the Schedule was that a public right of way was “Awarded Dacre Pasture Award”. The Schedule was signed by the Applicant’s father who was on the Parish Council at that time. However, as shown in 7.1 above only a small section of the eastern end of the route appears to have been awarded by the Inclosure. This is not addressed by the Parish Council within the Schedule, but indicates that by 1950 it was accepted locally that the public had right to use the entire route rather than just the eastern end that features in the Award.
- 7.3.2 Despite being recorded as a footpath in the 1950 Parish Survey Schedules, when the Draft Map was issued by West Riding County Council (“WRCC”) in 1953, the route was shown as a bridleway. There is no evidence to show why the change to the status had been made.
- 7.4 Following the issue of both the Draft Map and Provisional Map there were statutory consultation periods when representations could be made by the public about any of the routes appearing on the maps. There is no evidence of any challenges to the status of bridleway being received by WRCC at either the Draft Map stage (1953) or the Provisional Map stage (1968).
- 7.5 However, in 1970 the minutes of the Parish Council show that it did approach WRCC about the route being misrecorded, but they were advised that at that stage of the process only a land owner could challenge the inclusion of, or status of, a route on the Provisional Map. No such challenge was received from the land owner. It appears that the due process was followed and, therefore, the evidence of the Parish Schedules is insufficient to overturn the presumption that the DM&S is correct.

- 7.6 The 1950 Parish Map is the map that accompanies the Parish Schedule and was completed at the time of the initial Parish survey. With one or two exceptions, the Parish Maps from the former WRCC area of North Yorkshire no longer exist. They were not part of the handover of documentation following Local Government re-organisation in 1974. Upon further investigation the document referred to by the applicant as the “1950 Walking (Parish) Map” that was submitted with the application, was identified to be an extract of the Definitive Map and is therefore not relevant to this Order.
- 7.7 The OS maps submitted to support the application and subsequent Order, do show the route as it exists on the ground, labelling it as “FP”. OS maps carry the disclaimer that the representation of a route on the OS map does not indicate a public right of way; which means it is not possible to draw any conclusions on the basis of this notation, regarding whether or not the Order route was a bridleway or a footpath. However, recording a route on an OS map that is labelled as footpath is suggestive of the character of the way at the time of its survey, but does not seem sufficient to overturn the presumption that the DM&S is correct.
- 7.8 The photographs submitted with the application show a number of wooden stiles, a cattle grid, and stone stiles. The wooden stiles do not assist as they could have been installed at any time. The cattle grid may have been in place for many years or may be a recent addition as it is only recalled by two of the four witnesses. The stone stile appears to have been altered at some point in the past as there are obvious differences in the standard of walling. The presence of stone stiles was recorded by all of the applicant’s witnesses, supporting the presence of this structure on the route within living memory. In addition the Definitive Map shows a number of field gates and stiles on the route, again supporting their presence in the 1950s when this information was collected. However, previous decisions made by the Planning Inspectorate (“PINS”) demonstrate that the presence of stiles on a route is not sufficient to prove that a route was not a bridleway. Therefore this evidence does not sufficiently challenge the presumption that the DM&S is correct.
- 7.9 The statement from Mr Abbot and the content of the land owner evidence forms support the presence of features that would have prevented the use of the route by horses over a long period (1934 to 2012). There is also mention of a Diversion Order having been carried out in the past on a small section of the route, and it was alleged that it referred to the route as a footpath. At the time the appeal had been submitted to PINS the Authority did not hold a copy of the Diversion Order. In her decision letter, the Inspector sets out clearly that a Diversion Order does not have the capability to alter the status of a route. Following the PINS decision to direct the Authority to make the Order, Harrogate Borough Council discovered the Diversion Order which had been made by them under Town and Country Planning legislation in relation to a planning application. In contradiction to the witness evidence, the route is in fact referred to as a bridleway within the Order. Therefore it appears whilst a number of stiles have been present on the route for many years, this does not carry sufficient weight to overturn the presumption that the DM&S is correct.

8.0 CONCLUSIONS

- 8.1 No single piece of evidence submitted by the applicant is sufficient to challenge the presumption that the DM&S is correct. When considered as a whole there still seems insufficient evidence, “on the balance of probabilities”, to challenge the presumption that the DM&S is correct and that the route should remain recorded as a bridleway.
- 8.2 In conclusion it is considered that there is insufficient evidence on the balance of probabilities to prove that the route should be recorded as a footpath. 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.

9.0 RECOMMENDATION

- 9.1 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, allowing the Authority to take a neutral stance towards the confirmation of the Order.

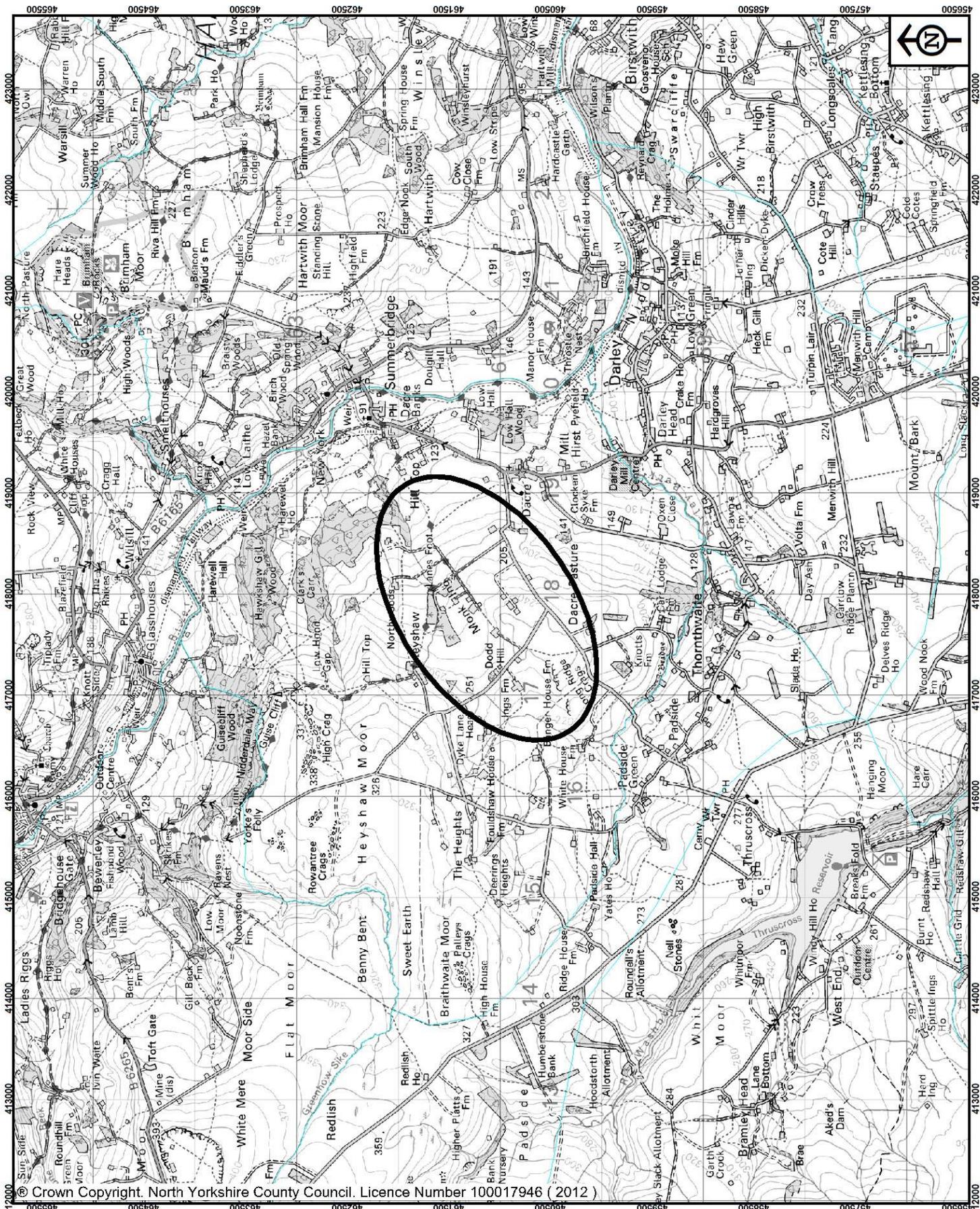
DAVID BOWE

Corporate Director, Business and Environmental Services

Author of Report: Russ Varley, Definitive Map Officer

Background papers

- DMMO application dated 22 July 2010
- 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

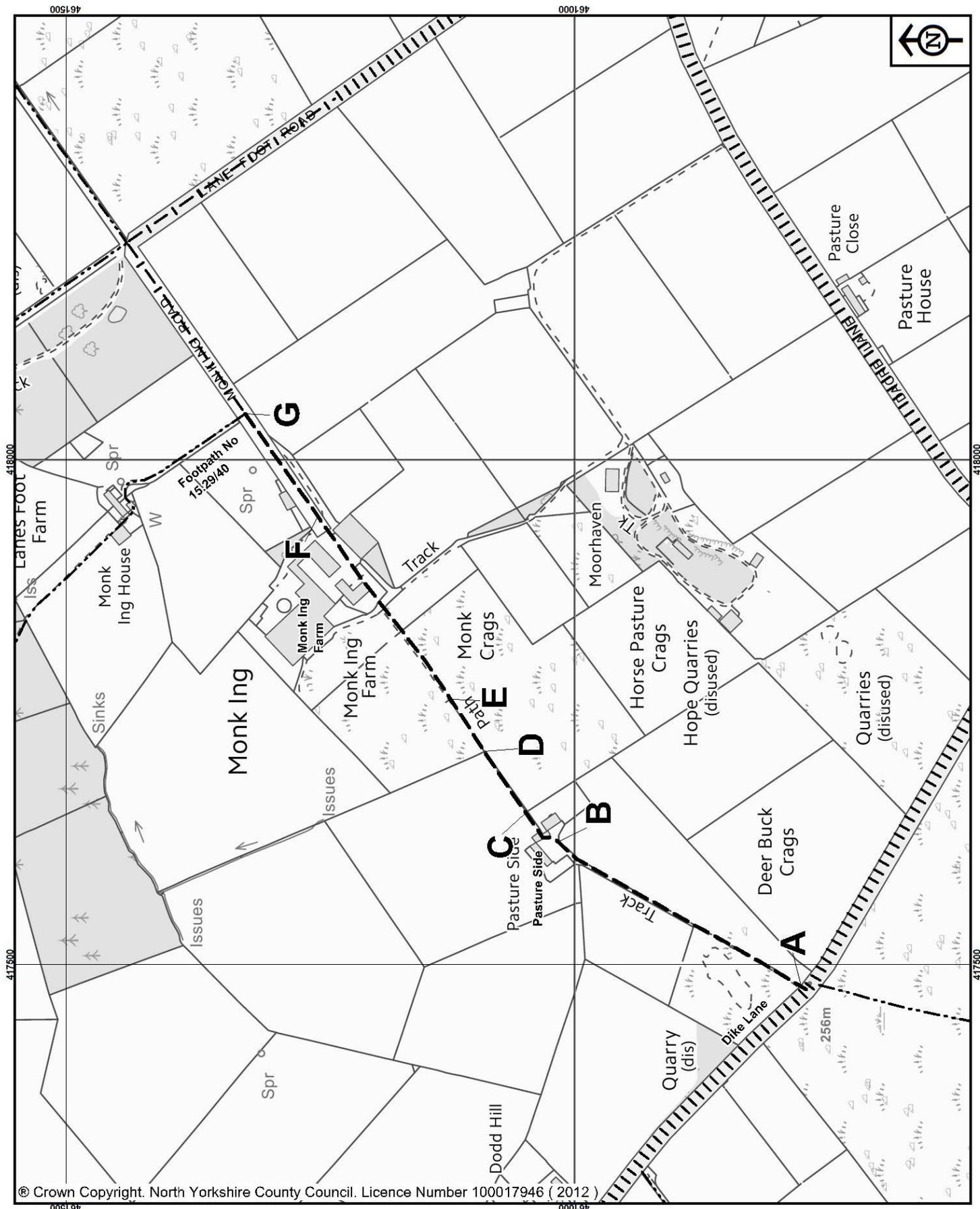
Map drawn on 21 September 2012

Drawn by RJV Scale 1:50000

Planning & Regulatory Functions Sub
Committee

23 November 2012
DOWNGRADING OF PUBLIC
BRIDLEWAY NO.15.29/38 (PART)
TO FOOTPATH, MONK ING ROAD,
DACRE MODIFICATION ORDER 2012

File Ref No. HAR/2010/14/DMMO



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North Yorkshire County Council

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PLAN 2

Key:

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

Map drawn on 21 September 2012

Drawn by RJV Scale 1:5000

Planning & Regulatory Functions Sub Committee
23 November 2012
DOWNGRADING OF PUBLIC BRIDLEWAY NO.15.29/38 (PART) TO FOOTPATH, MONK ING ROAD, DACRE MODIFICATION ORDER 2012

File Ref No. HAR/2010/14/DMMO



4/05 Kite Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Direct Line: 0117 372 8889
Customer Services: 0117 372 6372
Fax No: 0117 372 6241
e-mail: john.greenslade@pins.gsi.gov.uk



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

Your Ref: HAR/2010/14/DMMO
Our Ref: FPS/P2745/14A/3
Date: 22 DEC 2011

Dear Sir

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14
North Yorkshire County Council
Refusal to downgrade Public Bridleway No. 38 to a Public Footpath at Monk Ing Road, Dacre

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)