

NORTH YORKSHIRE COUNTY COUNCIL
PLANNING AND FUNCTIONS SUB-COMMITTEE

8 MARCH 2013

APPLICATION TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT FROM MOSSCARR LANE TO THE LEEDS CITY COUNCIL 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 Leeds City Council 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 However, if there were an objection to an Order that was not subsequently withdrawn, the power to confirm the Order would rest with the Secretary of State and it is likely that a Public Inquiry would be held in deciding whether or not to confirm the Order.

3.0 LEGAL CONSIDERATIONS

- 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 can make a Modification Order to modify the Definitive Map and Statement where there has been:-

- 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 1980, a statutory presumption arises that a way has been dedicated as a highway where 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 1980, 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 declarations that no additional ways have been dedicated since the date of 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 and Countryside Act 1981 to add the route shown A - B - C on Plan 2 to the Definitive Map and Statement as a Bridleway. The application was supported by historical information only.
- 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 Leeds City Council’s area 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 the following evidence of use:-

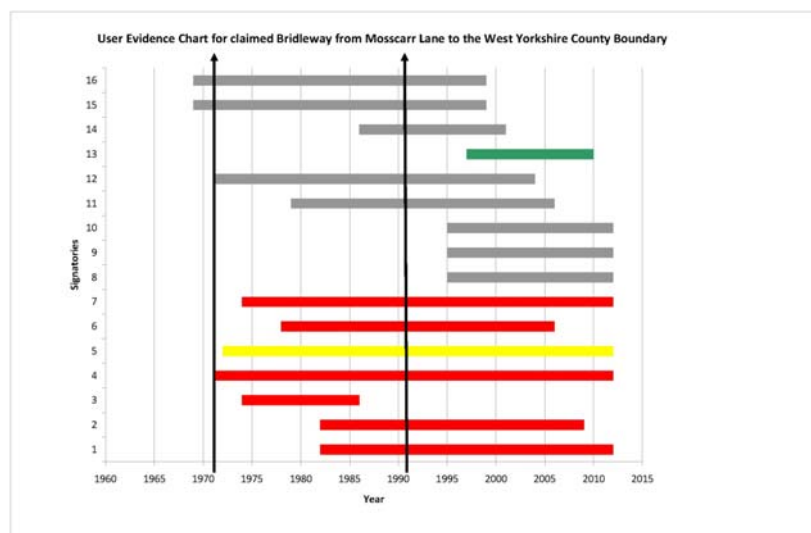
- 8 evidence of use forms submitted in 2006.
- 1 letter providing limited information regarding use accompanying the application in 2006.
- 16 evidence of use forms submitted in 2012.
- 6 letters providing information on use were submitted in 2012.

In total, therefore, the Authority has 24 evidence of use forms and 7 letters alleging use of the route as a public right of way.

5.1.1 Of the 24 evidence of use forms that were submitted, 10 forms have been disregarded as the signatories either acknowledged that they had used the route by permission of the owner (4 witnesses), or they had not indicated on the plan the alignment they had used (6 witnesses). The remaining 14 signatories appear to have demonstrated use of the route as of right.

5.1.2 Of the 7 letters submitted containing evidence of use of the route, 3 signatories had already submitted an evidence of use form so their letter was combined with their form and 2 letters did not provide any dates of usage of the route; this left 2 letters providing additional evidence of use of the route.

5.1.3 Therefore, the Authority is in possession of 14 evidence of use forms and 2 letters providing evidence that the public had used the application route from 1969 to 2012. The chart below shows the claimed use of the route. The date of challenge to the public's use of the route has been established as 10 January 1991, as referred to in 6.1 below.



- 5.1.4 The colouring on the chart demonstrates the different usage of the application route:-
- red shows use on foot and pedal cycle (6 signatories);
 - yellow shows use on foot, pedal cycle and in a vehicle (1 signatory);
 - grey shows use on foot only (8 signatories); and
 - green shows use on foot and on horseback (1 signatory).
- 5.1.5 When examining the evidence as a whole (including the evidence of those users excluded for the purpose of the Section 31 of the Highways Act 1980 test), it is apparent that 7 witnesses mention 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 1 signatory, and 1991 by another signatory. No dates were provided by the remaining 5 signatories for the locking of the gate.
- 5.1.6 1 witness, in a letter dated 2006, stated that they had found the gate locked and had to resort to lifting their cycle over the gate but gave no date for when this happened.
- 5.1.7 The majority of signatories did not seem to regard the locking of the gate as a challenge to the public, as the evidence forms claim continued use of the route until 2012.
- 5.1.8 All of the signatories indicated that they had observed other people using the route on foot, 6 signatories observed people using it on horseback, and 9 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; and
 - 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 turnpike 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 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 Tithe Map to distinguish all of the other public highways within the parish; it 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 ‘new’ 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 During the initial consultation and subsequent investigation the Authority received 1 objection and 4 statements from land owners whose holdings are either crossed by the proposed right of way or are adjacent to the proposed right of way.
- 6.2 The previous owner 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 on 10 January 1991 and this statement was renewed 5 years later. The submission of the Section 31 declaration is a formal process to prevent the acquisition of highway rights by the public. This action by the then landowner clearly demonstrates a lack of intention to dedicate any further rights of way over his land from 10 January 1991. This action is the challenge to the public’s use of the route; consequently the evidence supporting the application needs to demonstrate unhindered use from 10 January 1971 to 10 January 1991 in order for a right of way to have been brought into being through use. This period is shown by the black arrows on the chart in paragraph 5.1.3.
- 6.3 The first statement received was from the person who has owned the land affected by the application since 2005 and detailed the following points:-
- gates were locked at point B (shown on Plan 2);
 - the gates were often obstructed by trailers as well as being locked;
 - permission to use the route had been given to an elderly couple who live nearby;
 - the land owner witnessed a neighbouring land owner exercising their dogs along the route; and
 - the land owner witnessed an unknown local family using the route on bicycles.

- 6.4 The second statement received was from the owner of land adjoining the route after it crosses the County boundary. He has owned this land since 2008 and made the following points:-
- the land owner has challenged people using the route and informed them it was not a public right of way;
 - that he has only seen walkers or cyclists using the route, never anyone on horseback; and
 - that he installed signs at each end of the route at an unspecified date after his purchase of the land in 2008.
- 6.5 The third statement received was from the land owner who had owned the land affected by the application since 1972. He made the following points:-
- there was a gate on the route in 1972 that was closed but not locked; however, it is not possible to determine the exact location of the gate from the statement;
 - in the late 1980s this gate was replaced with new gates that were habitually locked;
 - a sign was erected on the western side of Ingmanthorpe Hall stating that the way was not a public right of way;
 - the land owner made a deposition under S31 of the Highways Act 1980 to the Authority around 14 January 1991 to prevent the dedication of any new rights of way across his holdings;
 - Permission to access the route has been given over the years: these permissions include locals from Bickerton, a local riding school, and a cycle event; and
 - any person found on the track without permission was challenged and informed that the route was not a right of way.
- 6.6 The fourth statement received was from the land owner who has owned the land between A and B on plan 2 since 2004 and had initially objected to the application on the following grounds:-
- 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;
 - when he bought the land in 2004 there was a gate at Point B on Plan 2 that has remained locked and was only opened on occasions for access to the fields for farming practices;
 - he has verbally challenged anybody using the application route;
 - he 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; and
 - his statement added that he has seen very few people using the track.

7.0 RESPONSES FROM OTHER INTERESTED PARTIES

- 7.1 During the initial consultations into this application, Bilton-in-Ainsty with Bickerton 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 ASSESSMENT OF 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 is the application route was stopped up.
- 8.2 Although highway rights were stopped up in 1828 along the application route, some 23 years later it is depicted on the Tithe Map of 1851 in the same manner as other highways. This may be indicative that the route continued to be used as a highway; equally it may merely reflect that the route continued to physically exist on the ground, giving the appearance of being a highway without being used as such. The late C19th and early C20th cycling and road maps indicate that a route existed when those maps were produced, but do not provide evidence of public rights. It is considered therefore that the limited documentary evidence is inconclusive and, whilst not dismissed, is not being relied upon to demonstrate the existence of public rights.
- 8.3 The user evidence shows that 2 people claim to have used the route on foot since 1969 and a further 2 people claim to have started using the route in 1971. Due to the deposition made by the land owner referred to in 6.5 above, the period under consideration is known to be 10 January 1971 to 10 January 1991. It is not known exactly when the 2 people who started using the route in 1971 began using it, but it seems unlikely that it would have been before 10 January. However it is not necessary, under the 1980 Act, for a single person to have used the route for the full 20 year period. Rather it is sufficient to demonstrate the public have used the route for the whole period.
- 8.4 Of those witnesses who used the route during the period 10 January 1971 to 10 January 1991, 5 used the route only on foot, 6 used the route on foot and pedal cycle, and 1 used the route on foot, on pedal cycle and in a motor vehicle.
- 8.5 The evidence supplied by 3 of the land owners is not relevant to the application because it does not fall within the relevant period.

- 8.6 The land owner who came into possession of the property in 1972 has indicated that gates and signs stating that there was no public right of way were in place for the majority of the relevant period; however, in the light of the user evidence they do not appear to have prevented use of the route.
- 8.7 Given the steps taken by the land owner and the limited user evidence during the relevant period, this application is finely balanced. However, it is considered that there is sufficient user evidence across the relevant period to maintain a reasonable allegation of the right subsisting.
- 8.8 Assessment of the user evidence indicates that the initial claim for a bridleway is unsustainable because there is no qualifying use by horse traffic in the relevant period (see chart at 5.1.3 above). There has, however, been extensive use of the route by cycles which, when taken with the historic evidence of its depiction on old road maps, indicates that restricted byway would be the correct route classification. A restricted byway gives the public a right of way on foot, on horseback or leading a horse and for non-mechanically-propelled vehicles.
- 8.9 Officers are satisfied that the application gives rise to a legal event as defined in Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, namely, “the 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.” (See also 3.1 above.)

9.0 LEGAL IMPLICATIONS

- 9.1 There are no legal implications associated with the introduction of these proposals.

10.0 CONCLUSIONS

- 10.1 Officers are satisfied that, whilst finely balanced, 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. Case law has established that in deciding whether to make an Order under Section 53(3)(c)(i) of the 1981 Act, the test to be applied is not whether the evidence establishes that a right of way exists but whether a right of way can, from the evidence, reasonably be alleged to exist.
- 10.2 Although the original application was for the route to be recorded as a bridleway it is considered that, with reference to the evidence of use by pedal cycles, an Order should be made to record the route as a restricted byway.

11.0 RECOMMENDATION(S)

11.1 It is therefore recommended that:-

- (i) 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
- (ii) 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.

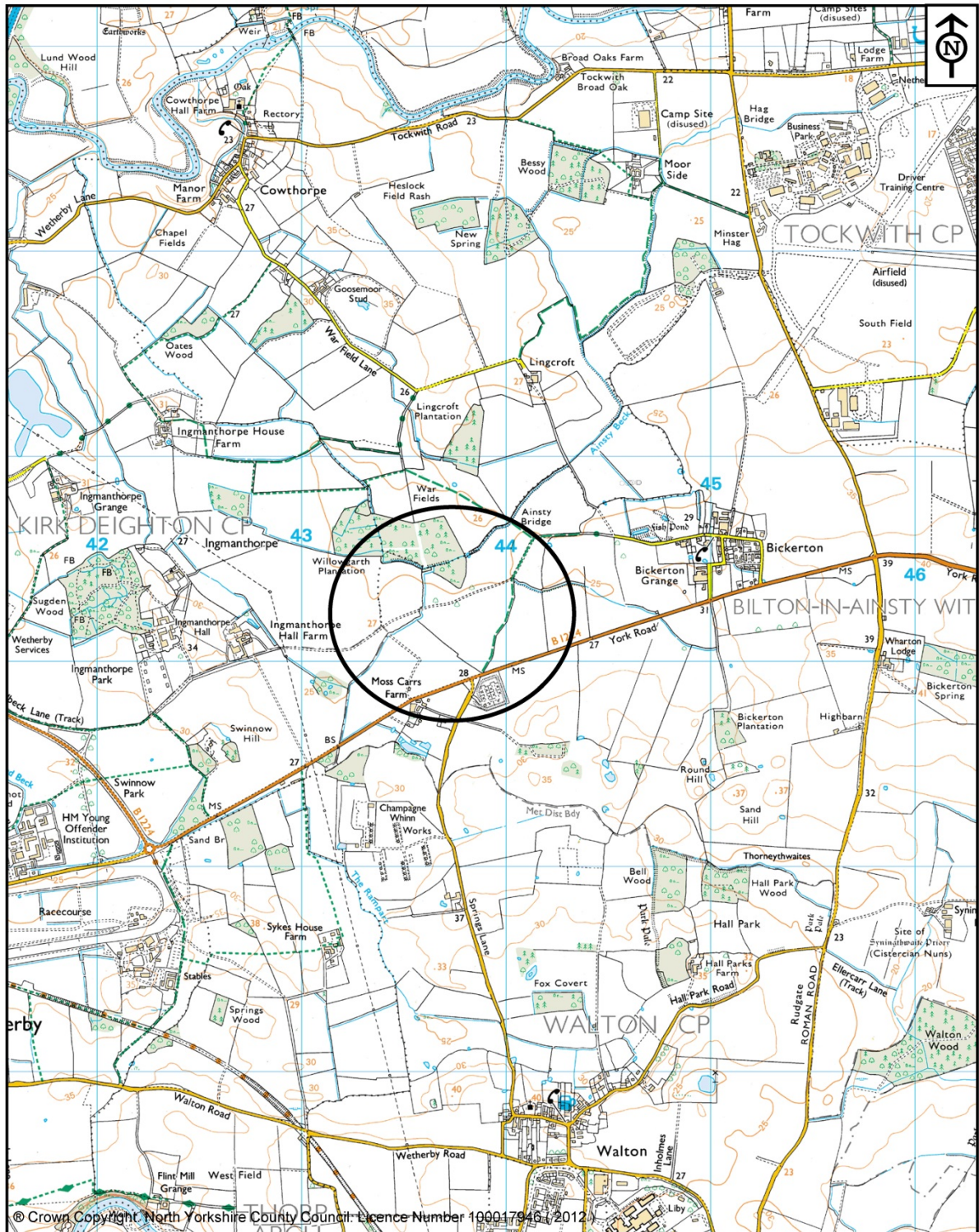
DAVID BOWE

Corporate Director – Business and Environmental Services


Author of Report: Russell Varley, Definitive Map Officer

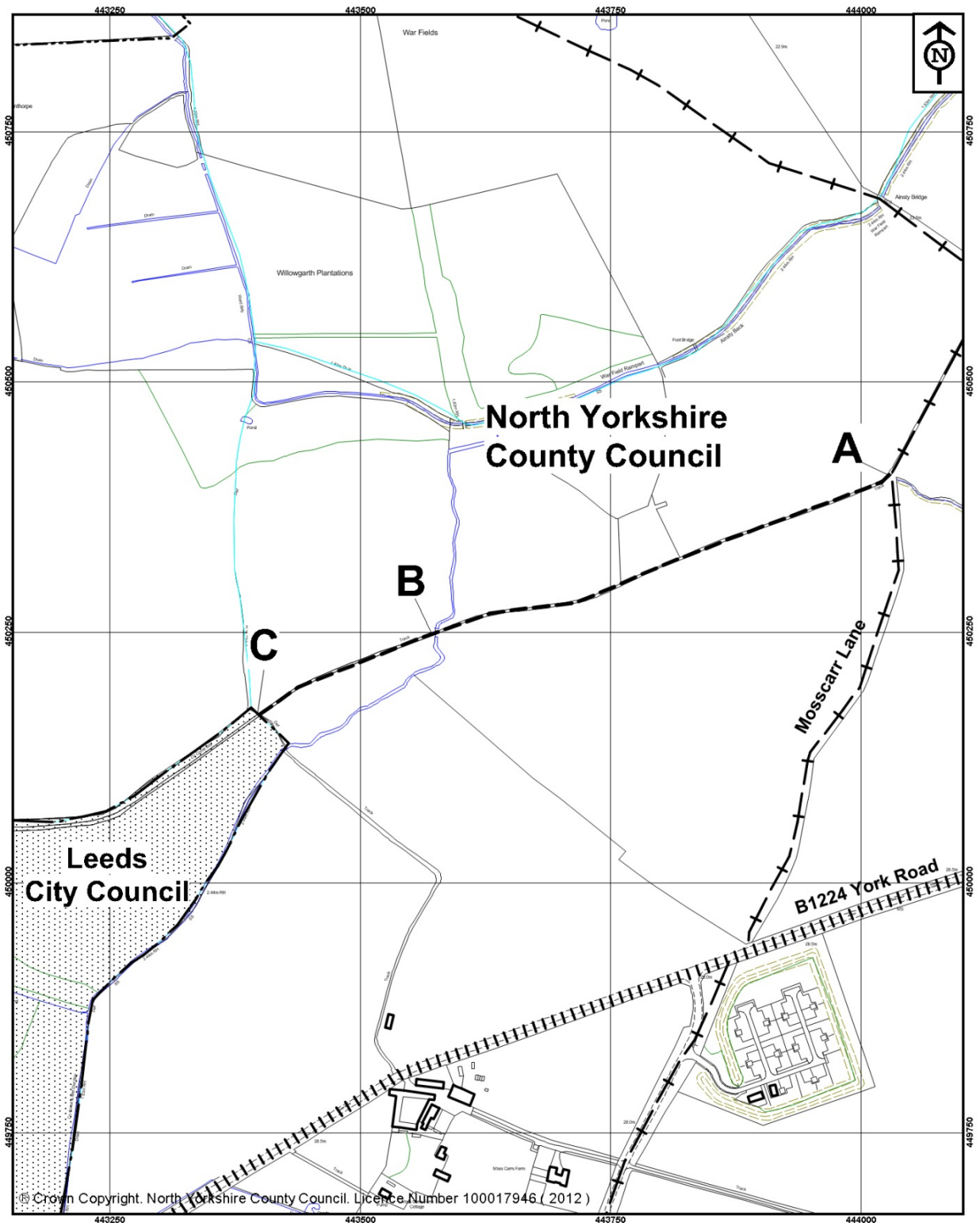
Background Documents:

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



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 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<h2 style="text-align: center;">Location Plan</h2> <h3 style="text-align: center;">PLAN 1</h3> <p>Map drawn on 12 April 2012 Drawn by JRP Scale 1:25000</p>	<p>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
08 MARCH 2013

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

NYCC – 8 March 2013 «date»– Planning and Regulatory Functions Sub-Committee
Application to Add a Bridleway to the Definitive Map and Statement from Mosscarr
Lane to the Leeds City Council Boundary, Bilton-in-Ainsty with Bickerton/11