

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS SUB COMMITTEE

26 APRIL 2013

PUBLIC FOOTPATHS 35.74/16 AND 35.74/17 PINFOLD HILL TO CARR LANE, WISTOW, MODIFICATION ORDER 2011

Report of the Corporate Director – Business and Environmental Services

1.0 PURPOSE OF REPORT

- 1.1 To advise Members of an opposed Definitive Map Modification Order, the effect of which, if confirmed, would be to add public footpaths 35.74/16 and 35.74/17 to the Definitive Map and Statement at Wistow, Selby. A location plan is attached to this report as **Plan 1**.
- 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 support 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 IMPLICATIONS

- 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.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There may be financial implications for the authority in covering any cost associated with any subsequent public inquiry. Such costs cannot be avoided where the Planning Inspectorate decides that a public inquiry should be held to resolve an application. In this particular instance it appears unlikely that a public inquiry would be necessary.

5.0 IMPLICATIONS FOR EQUALITIES

- 5.1 There is a statutory requirement to investigate applications for Definitive Map Modification Orders, regardless as to whether the outcome would benefit or prejudice owners, occupiers or members of the general public, and it is considered that equality and diversity issues are not relevant to the outcome of the process. In any event it is considered that the outcome would have no impact on the protected characteristics identified in the Equalities Act 2010.

6.0 BACKGROUND

- 6.1 On 20 September 2004 Wistow Parish Council submitted an application under the Wildlife and Countryside Act 1981 to add the route shown A – B – C – D – E on Plan 2 to the Definitive Map and Statement as a footpath. A detailed view of the northern section of the Definitive Map Modification Order route referred to as A – B is shown on **Plan 3**, attached to this report. The northern section of the Diversion Order route referred to is shown as F – G on **Plan 4** attached to this report. The application was supported by user evidence forms.
- 6.2 The application to the County Council was submitted in reaction to the obstruction of the northern end of the route by a wall and fence constructed across the claimed route.

7.0 EVIDENCE SUPPORTING THE APPLICATION

- 7.1. The application was supported by the following evidence of use:
- 27 evidence of use forms alleging use between 1914 and 2004.

- 7.2 Of the 27 evidence of use forms that were submitted, five forms have been disregarded as the witness acknowledged that they had used the route by permission of the owner (two witnesses) or had not recorded the period over which they used the route (three witnesses). The remaining 22 signatories appear to have demonstrated use of the route as of right.
- 7.3 The 22 witnesses allege use of the route as footpath
- 7.4 Reasons given for using the route include leisure walking, dog walking, exercise, and using the route as a way out of the village during floods. All of these are *bona fide* reasons for using a public right of way.
- 7.5 In addition to the evidence supplied by the applicant, examination of the 1908 edition Ordnance Survey map shows the existence of a track that generally corresponds with the route claimed by the evidence of use forms. The claimed route became partially obstructed by the newly laid out gardens of houses constructed in the early 1980s, although it seems that the public continued to make use of the majority of the route avoiding the obstruction by walking within the land to the south west of the gardens

8.0 THE MAKING OF THE ORDER

- 8.1 An initial consultation was carried out in September 2010. One objection was received at this time, from a resident of Woodall Court (Woodall Court is adjacent to point A on plan 3).
- 8.2 Following negotiations with both the objector and the Parish Council it was agreed that if the Definitive Map Modification Order was successful, the route shown as A – B on plan 3 would be immediately diverted on to a new alignment crossing the open space at the centre of the village owned by the Parish Council. This open space is already crossed by a suitable path with a tarmac surface. The path is shown as F – G on Plan 4.
- 8.3 Once the proposal detailed in 8.2 had been agreed, the objector withdrew his objection.
- 8.4 Following the withdrawal of the objection, the Definitive Map Modification Order and the agreed Diversion Order were made by the Authority in January 2012.
- 8.5 Both Orders were advertised between 3 May 2012 and 14 June 2012.
- 8.6 One objection to the Definitive Map Modification Order was received from a local resident during the formal consultation period. No objections to the Diversion Order were received. The reference to the Diversion Order within this report is for information only; it is not subject of this report.

9.0 OBJECTION TO THE DEFINITIVE MAP MODIFICATION ORDER

- 9.1 The objection was based on grounds that the Parish Council had not allowed the objector to erect an access gate from his property directly on to the open space to the south west of his property.
- 9.2 The objector submitted a photocopy of his conveyance dated 6 May 1983. The conveyance included an extract of a plan produced by the developer of the housing estate showing the proposed layout of the new houses and gardens showing a 'corridor' between boundaries at the bottom of the gardens annotated "Trim back extg thorne hedge to boundary and leave 1.00m wide public right of way adjacent to boundary". The objector also submitted an aerial photograph showing the general area around his property with a black line drawn to indicate the path.
- 9.3 The objector did not present any evidence to suggest that the route was not a public right of way.

10.0 ASSESSMENT OF THE EVIDENCE

- 10.1 For the purpose of calculating the relevant period under the Highways Act 1980 the challenge to the public's use is taken to be the erection of the wall and fence that obstructed the route in 2003. This gives a relevant twenty year period of 1983 to 2003.

10.2 EVIDENCE SUPPORTING THE EXISTENCE OF A RIGHT OF WAY

- 10.2.1 Supporting the existence of the right of way are the 22 valid evidence of use forms that allege use of the route since 1914. Of the 22 witnesses, fifteen stated that they have used the route for twenty or more years. This represents 68% of the users. The remaining witnesses have used the route for between four and seventeen years.
- 10.2.2 Of the 22 witnesses, 14 have usage within the relevant twenty year period between 1983 and 2003.
- 10.2.3 The user evidence is sufficient to support the existence of a public right of way across the land shown in plan 2 commensurate with a footpath.

10.3 EVIDENCE REFUTING THE EXISTENCE OF A RIGHT OF WAY

- 10.3.1 The evidence submitted to support the objection shows that the developer of the properties on Pasture Close and Pasture Way acknowledged the existence of a right of way running between an existing hedge and the south western boundary of these properties. Whilst not being exactly coincident with the route depicted on the 1908 Ordnance Survey map, the route acknowledged is very close to the Order route shown in plan 2. This information further supports the existence of some sort of through route available to the public rather than assisting to refute the existence of a public right of way.

10.3.2 The aerial photograph supplied may also support the existence of the way shown on the developer's plan but it is not sufficiently clear to be conclusive.

10.3.3 Therefore the evidence supplied to support the objection has no relevance to whether or not a right of way exists across the land shown on plan 2. As the objection was 'duly made', in that it was made in time and alleges grounds for the objection (notwithstanding they may be irrelevant), then an Order must be submitted to the Secretary of State for determination. It is open to him to then disregard an objection which has no legal grounding, and in doing so to consider an award of costs against an objector. Whilst in this instance the need to submit the order is frustrating, the objector is elderly and has not made the objection vexatiously, so there is no intention to press for any award of costs.

10.4 It is considered that there is significant evidence to provide suitable grounds for the Authority to support the confirmation of the Order when it is sent to the Secretary of State for determination, and that no valid evidence has been submitted to suggest that rights do not exist.

11.0 CONCLUSIONS

11.1 The Definitive Map Modification Order has one duly made objection and needs to be sent to the Secretary of State for determination.

11.2 The Diversion Order which is not subject of this report, has no duly made objections but cannot be confirmed until the route to be diverted is recorded on the Definitive Map and Statement following confirmation of the Definitive Map Modification Order.

11.3 The evidence supporting the Definitive Map Modification Order is sufficient to justify the addition of the route shown in Plan 2 as a public footpath on the Definitive Map and Statement.

12.0 RECOMMENDATION

12.1 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 support its confirmation.

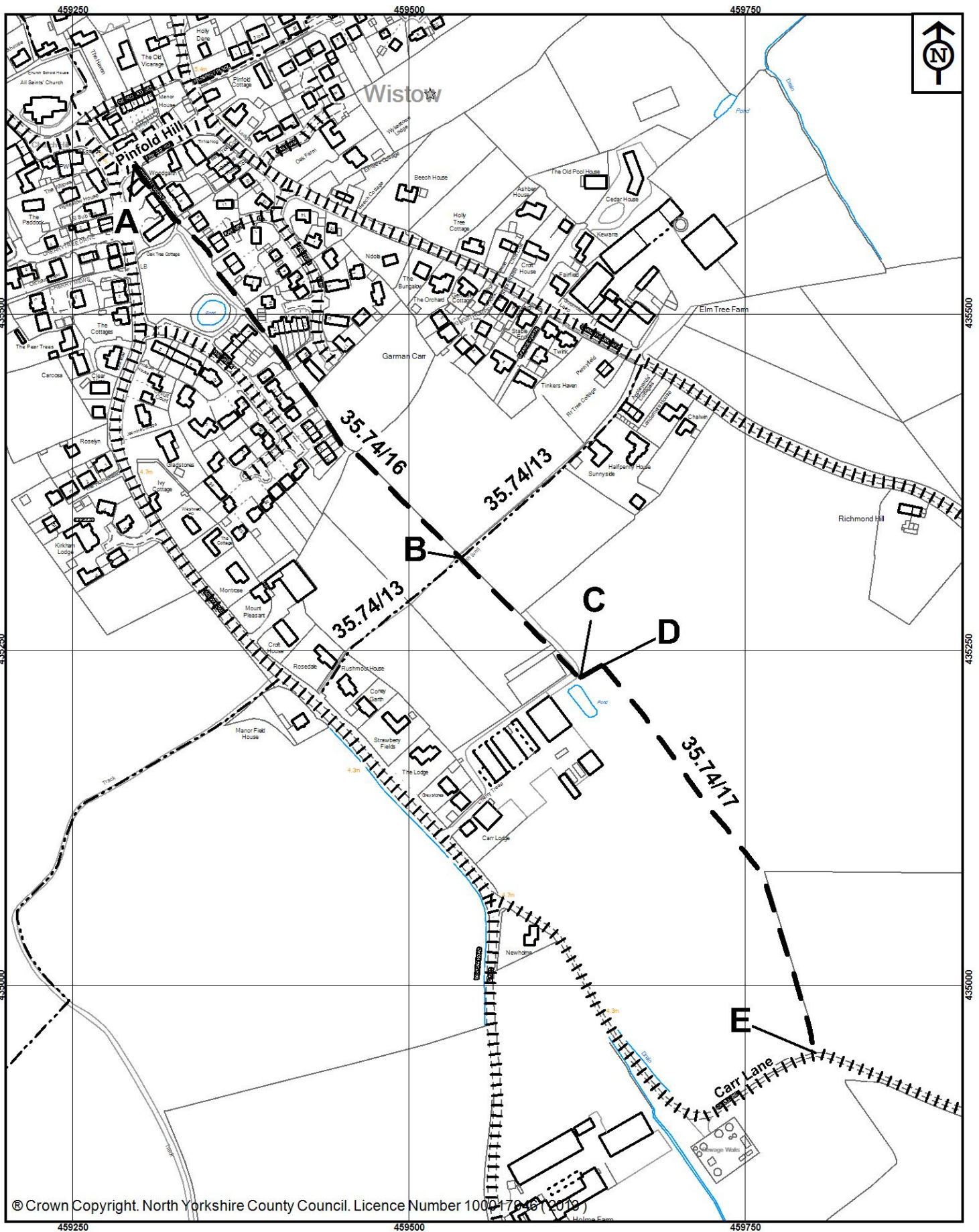
DAVID BOWE

Corporate Director Business and Environmental Services

Author of Report: Russell Varley, Definitive Map Officer

Background papers

- DMMO application dated 20 September 2004
- Evidence submitted in support of, and against the application



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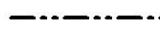
Public Rights of Way
Waste and Countryside Services
County Hall
Northallerton
DL7 8AH

Key:

Footpath to be recorded

Other footpaths

Maintained Highways



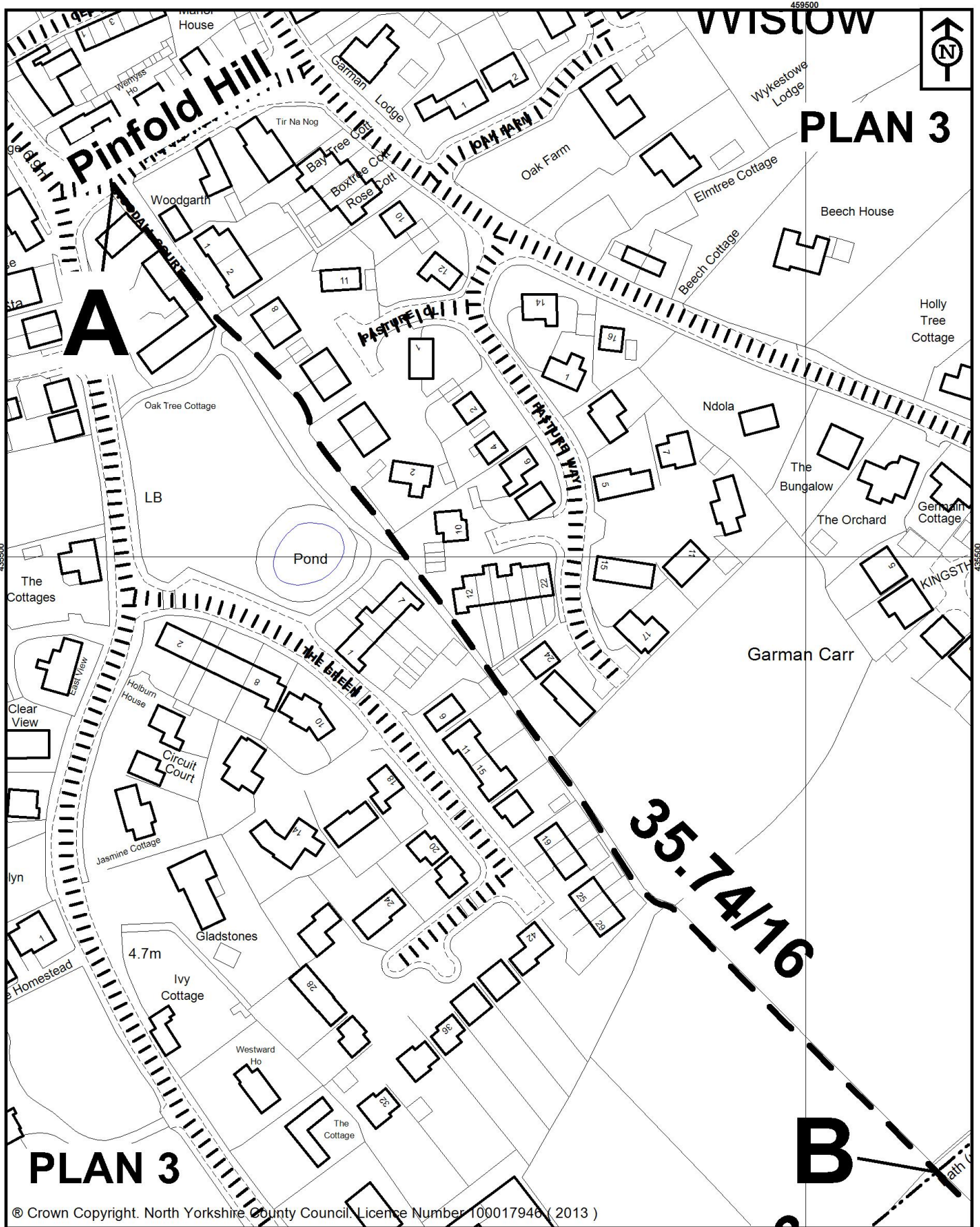
Map drawn on 18 February 2013

Drawn by RJV





Scale 1:3750

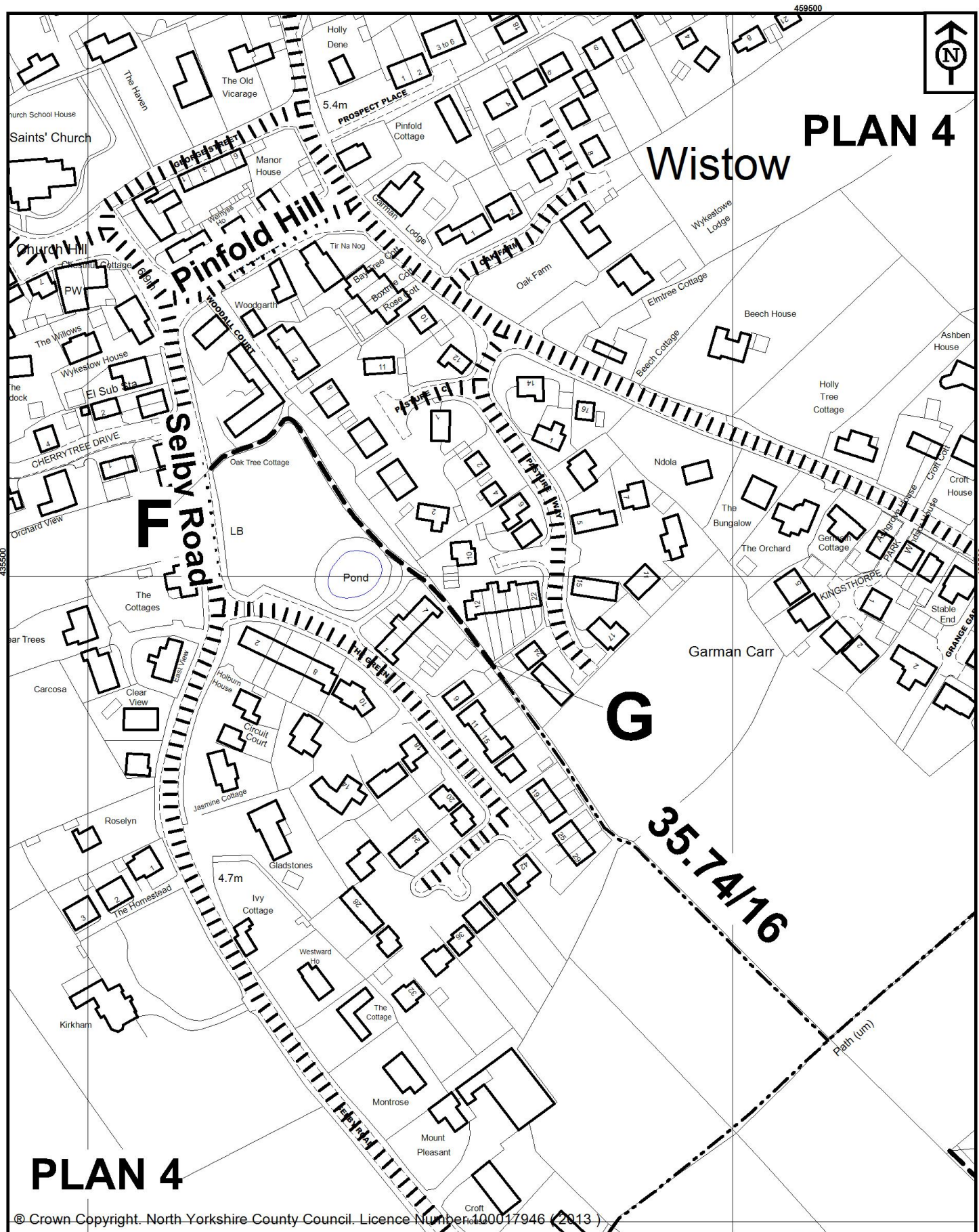
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Planning and Regulatory Functions
Sub Committee 26 April 2013
Public Footpaths 35.74/16 and
35.74/17 Pinfold Hill to Carr Lane,
Wistow, Modification Order 2011



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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>	<p>Key:</p> <p>Footpath to be recorded </p> <p>Other footpaths </p> <p>Maintained Highways </p> <p>Map drawn on 27 March 2013</p> <p>Drawn by RJV Scale 1:1500</p>	<p><u>North Yorkshire County Council</u></p> <p>Planning Regulatory Functions Sub Committee 26 April 2013 Public Footpaths 35.74/16 and 35.74/17 Pinfold Hill to Carr Lane, Wistow, Modification Order 2011</p> <p>File Ref No. SEL/2004/01/DMMO</p>
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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>	<p>Key:</p> <p>New alignment </p> <p>Other footpaths </p> <p>Maintained Highways </p> <p>Map drawn on 27 March 2013</p> <p>Drawn by RJV Scale 1:1500</p>	<p>North Yorkshire County Council</p> <p>Planning Regulatory Functions Sub Committee 26 April 2013 Public Footpaths 35.74/16 and 35.74/17 Pinfold Hill to Carr Lane, Wistow, Modification Order 2011</p> <p>File Ref No. SEL/2004/01/DMMO</p>
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