

## NORTH YORKSHIRE COUNTY COUNCIL

### PLANNING AND REGULATORY FUNCTIONS SUB COMMITTEE

27 SEPTEMBER 2013

#### HIGHWAYS ACT 1980

#### BRIDLEWAY NO 15.96/42 AND FOOTPATH NO 15.96/36

#### FISHER FOUNTAIN FORD TO WEST HALL FARM, NESFIELD

#### DIVERSION ORDER 2005

### Report of the Corporate Director – Business and Environmental Services

#### **1.0 PURPOSE OF REPORT**

- 1.1 To seek Member resolution not to proceed to seek confirmation of an Order to divert Bridleway No 15.96/42 and the connecting Footpath No 15.96/36.
- 1.2 The Diversion Order was published at the same time as a Modification Order to add the said Bridleway to the Definitive Map and Statement of public rights of way, with the intention that it immediately be diverted upon being recorded. The Modification Order is unopposed and will be confirmed by the County Council in the near future.
- 1.3 A location plan for the Orders is attached to this report as Plan 1. For clarity, the route of Bridleway No 15.96/42 as recorded in the Modification Order is shown by a broken black line and is marked A - B on a separate plan attached to this report as Plan 2. The proposed Diversion Order routes of the Bridleway and Footpath are shown as broken black lines on the attached Plan 3.

#### **2.0 LEGAL IMPLICATIONS & COMMITTEE RESPONSIBILITIES**

- 2.1 Under Section 119 of the Highways Act 1980, the County Council can make a Diversion Order where it is satisfied that is expedient to do so in the interests of the owner, lessee or occupier of the land crossed by the route in question.
- 2.2 The Council's decision whether to make an Order is the first stage of the process. If there is objection to a made Order that is not subsequently withdrawn, the power to confirm the Order rests with the Secretary of State.
- 2.3 Under the terms of the Highways Act 1980 the County Council has a power, but not a duty, to submit an opposed Diversion Order to the Secretary of State for a decision whether to confirm the Order or not. The Committee can therefore choose whether to:
  - (i) submit the Order to the Secretary of State for confirmation, or
  - (ii) to make a formal resolution not to proceed with the Diversion Order.

### **3.0 BACKGROUND TO THE MODIFICATION AND DIVERSION ORDERS**

- 3.1 On 21 April 1997 an application was submitted under Section 53 of the Wildlife and Countryside Act 1981 for a Definitive Map Modification Order to add Bridleway No 15.96/13 from Fisher Fountain Ford to West Hall Farm, Nesfield, as shown on Plan 2 between points A – B. The Bridleway forms part of a longer through-route between the village of Addingham and the county vehicular road from Beamsley to Nesfield (West Hall Lane).
- 3.2 The application was prompted by horse riders being prevented from using the route and the imminent sale of property at West Hall Farm over which the Bridleway runs. The evidence submitted in support of the application was a combination of user evidence and documentary (historical) evidence.
- 3.3 Under powers contained in the County Council's Constitution delegated to the Head of the then relevant service, it was determined that the evidence submitted was sufficient to justify making an Order that the Bridleway should be added to the Definitive Map and Statement.
- 3.4 Following the sale of the farm the new landowner disputed any evidence of the proposed bridleway. He also approached the County Council regarding a legal diversion of Footpath 15.96/36 for reasons of better agricultural use of his land. His intention was to create a small paddock as indicated by the section of the proposed diversion shown as D-E-F-H on Map 3. Subsequent discussions between the landowner and Definitive Map Officers resulted in a proposal to make two Orders:-
- (i) the Modification Order to add the Bridleway, and
  - (ii) a Diversion Order to divert the Bridleway (should it be held to exist) and Footpath, in the interests of the landowner, at the same time
- 3.5 Initial consultations regarding both proposed Orders were conducted and no objections were received, consequently both Orders were published on 4 August 2005.
- 3.6 The Rambler's Association objected to the Diversion Order and stated that it had not been consulted in the initial stages of the diversion application. It emerged that the initial consultation had not reached the Association in the post; had it done so, and had the Association objected in response to the initial consultation, it is unlikely that the Diversion Order would have been made at all. The Rambler's Association later stated its firm intention to maintain the objection.
- 3.7 The landowner initially objected to the Modification Order but has very recently withdrawn his opposition. There were no other objections to the Modification Order and as such it will be confirmed by the County Council shortly. At the same time the landowner has advised that he is no longer proposing to create the aforementioned paddock and is therefore no longer interested in seeking the diversions proposed in the Diversion Order.

### **4.0 OBJECTION TO THE DIVERSION ORDER**

- 4.1 The Rambler's Association objected to the Order on the following grounds:

- (i) The amalgamation of the Footpath and Bridleway together
- (ii) The general inconvenience of the proposed diversionary route

## **5.0 COMMENTS ON THE OBJECTION**

### **5.1 The amalgamation of the Footpath and Bridleway:**

The existing public footpath is a narrow but pleasant route, running for some of its length between a row of trees and a fence line, and has a narrow tarmac surface. The section of footpath proposed for extinguishment is shown as a solid black line G – B on the attached Map 3, whilst its diverted route follows a short section of footpath between G – D then continues along the bridleway D-E-F-H, ie the ‘amalgamation of the Footpath and Bridleway together’ as described by the Rambler’s Association.

The diverted alignment D-E-F-H would be 3 metres wide in order to accommodate both horses and walkers, in comparison to the current width of Footpath 15.96/36 at 1.5 metres. Whilst the diverted route would not be unpleasant, the Rambler’s Association’s objection refers to losing the use of the existing footpath between G – B by walkers alone. Pleasure in sharing a route with only walkers is a subjective matter, because the sharing of a route with horse riders can be regarded by some as a pleasant, countryside experience; on the other hand some people are nervous when passing horses and would rather avoid them. It is therefore recognised that the loss of this section of the footpath in favour of a longer bridleway could be considered to have an effect on public enjoyment of the route as a whole.

### **5.2 The general inconvenience of the proposed diversion route:**

The existing Footpath between G-B has a straight alignment measuring 75 metres long. In contrast, the diverted route G-D-E-F-H is a circuitous route and measures 196 metres, i.e. 121 metres longer than G - B. It is therefore accepted that the diverted route could be considered as substantially less convenient to the public as a result of the Order. Section 119(6) provides that a Diversion Order should not be confirmed where the diversion route is substantially less convenient than the existing route.

## **6.0 CONCLUSION**

6.1 The Diversion Order was made in the landowner’s interests for reasons of better agricultural use of his land. However the landowner has recently advised he is no longer interested in seeking the diversion proposed. Further, when applying the legal tests set out in 2.2 above, it is recognised that the objection to the Order submitted by the Rambler’s Association is sustainable on both counts.

6.2 Government Rights of Way Circular (1/09) provides that Authorities have the discretion not to proceed with orders to which there are representations or objections or may withdraw an order for other reasons, such as external factors making a scheme no longer appropriate. In order to bring the procedure to an end, the authority must make a formal resolution not to proceed, and should notify the applicant and those who have made representations or objections of the passing of the resolution.

- 6.3 Given the circumstances that now pertain, in particular that the landowner no longer has a desire for the diversion proposed, Officers seek formal resolution of the committee not to proceed any further with the order.
- 6.4 The landowner has been informed by Officers that he would still be at liberty to consider applying for any other alternatives for a diversion of the Footpath and/or Bridleway should he wish to do so in the future in the event that the current order does not proceed.

## **7.0 FINANCIAL IMPLICATIONS**

- 7.1 There may be financial implications for the authority in covering any cost associated with any subsequent submission to the Secretary of State should the order proceed. Such costs cannot be avoided and the Secretary of State may decide that a public inquiry should be held to resolve a disputed Order. There will be minimal cost to the Council, in the form of notification to interested parties, in the event it is resolved not to proceed with the order.

## **8.0 RECOMMENDATION**

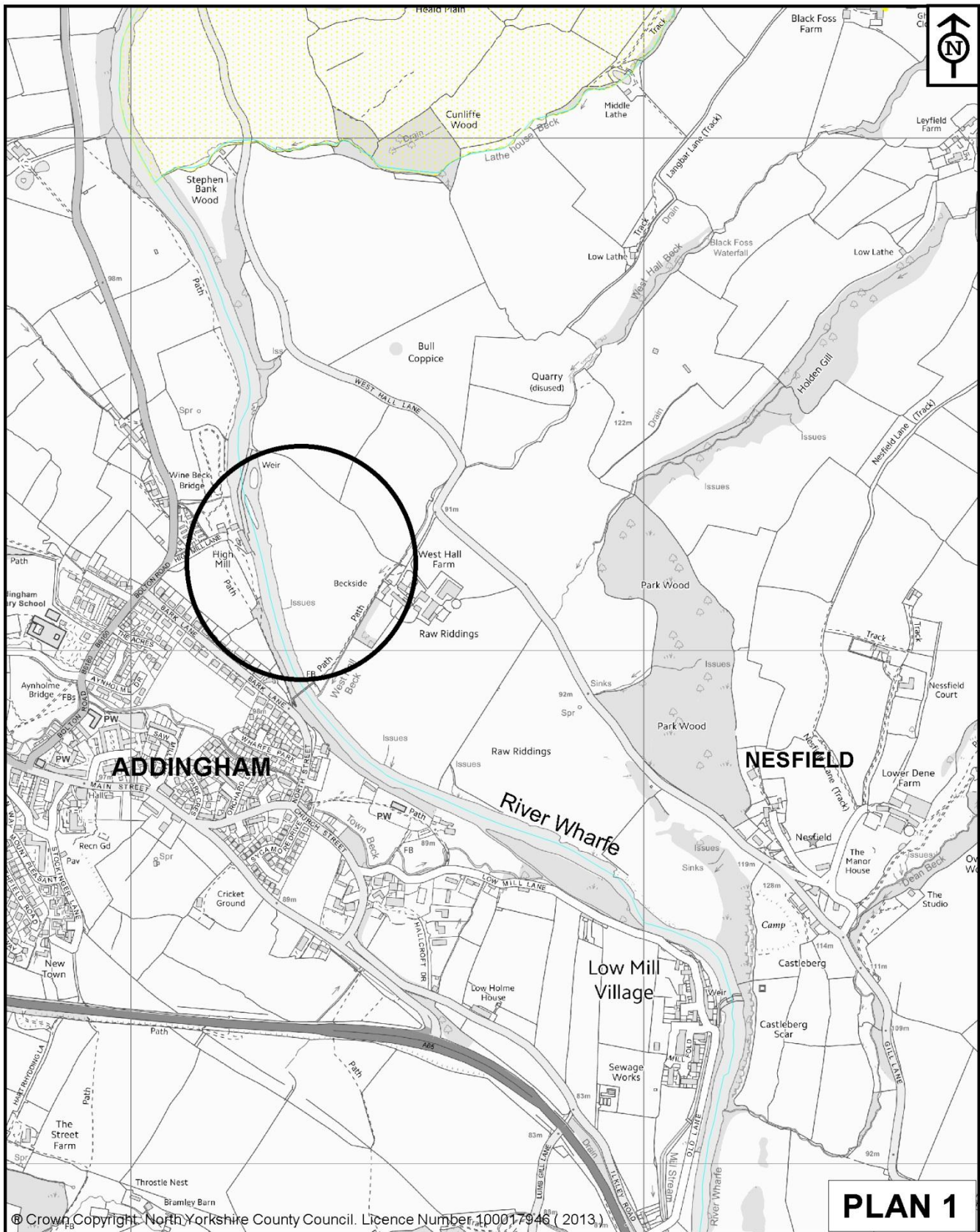
- 8.1 That the Committee make a formal resolution not to proceed with the Diversion Order following which officers are to notify the relevant parties in accordance with directions contained in Government Rights of Way Circular (1/09).

DAVID BOWE  
Corporate Director – Business and Environmental Services

Author of Report: Susan Stott

### Background Documents:

Definitive Map Team Case File Ref. No. HAR/1997/1/DMMO



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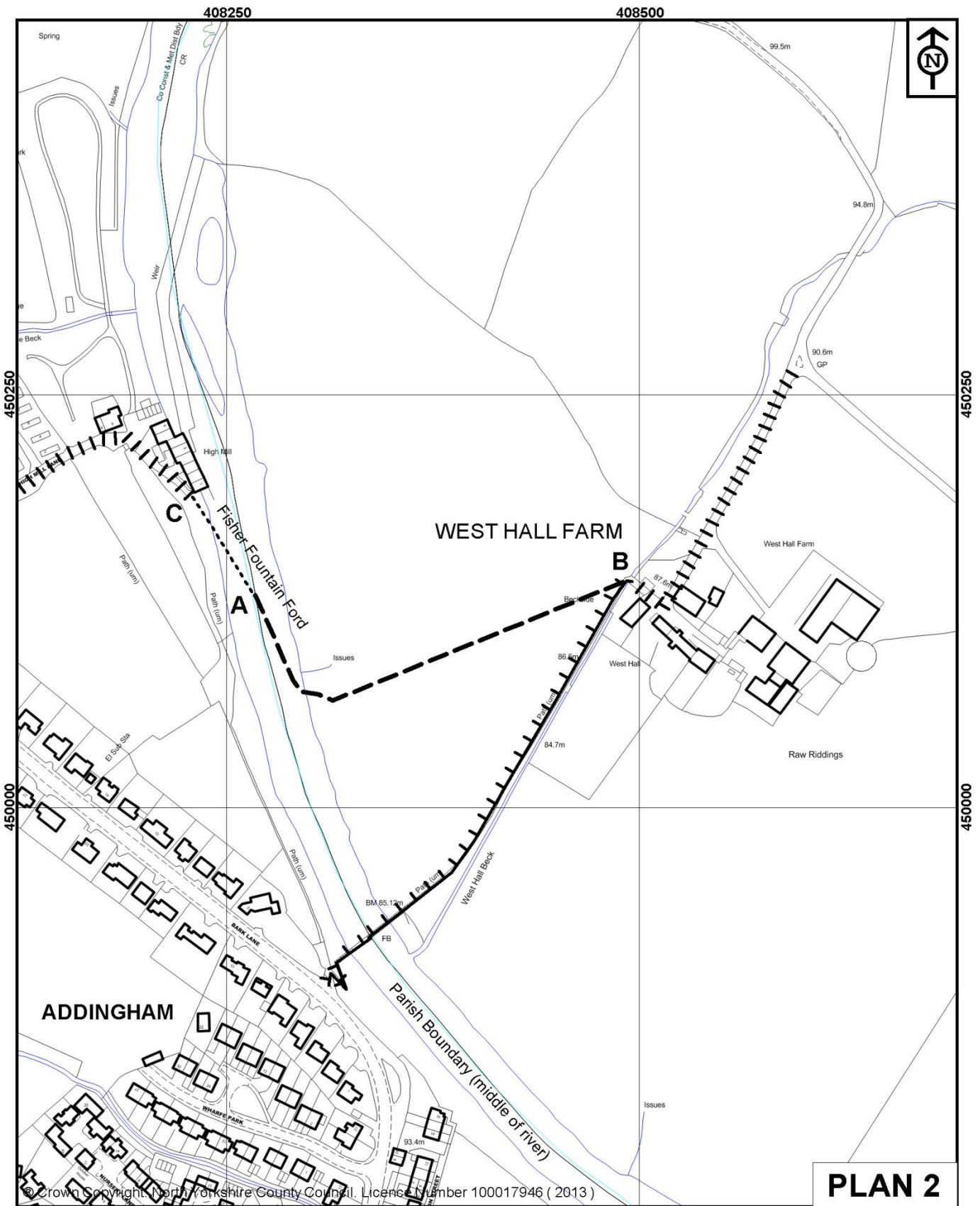
**North Yorkshire County Council**

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

**LOCATION PLAN**

Map drawn on 9 August 2013  
Drawn by SS      Scale 1:10000

**North Yorkshire County Council**  
Planning & Regulatory Functions  
Sub-Committee  
20th September 2013  
Bridleway No.15.96/42 and Footpath No.  
15.96/36, Fisher Fountain Ford to West  
Hall Farm, Nesfield Diversion Order 2005  
File Ref. No. HAR/1997/1/DMMO



**North Yorkshire County Council**

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

**Key:**

Order Route A-B ————

Draft Creation Agreement C-A - - - - -

Public Footpath |||||

Maintainable Highways |||||

Map drawn on 9 August 2013

Drawn by SS      Scale 1:3000

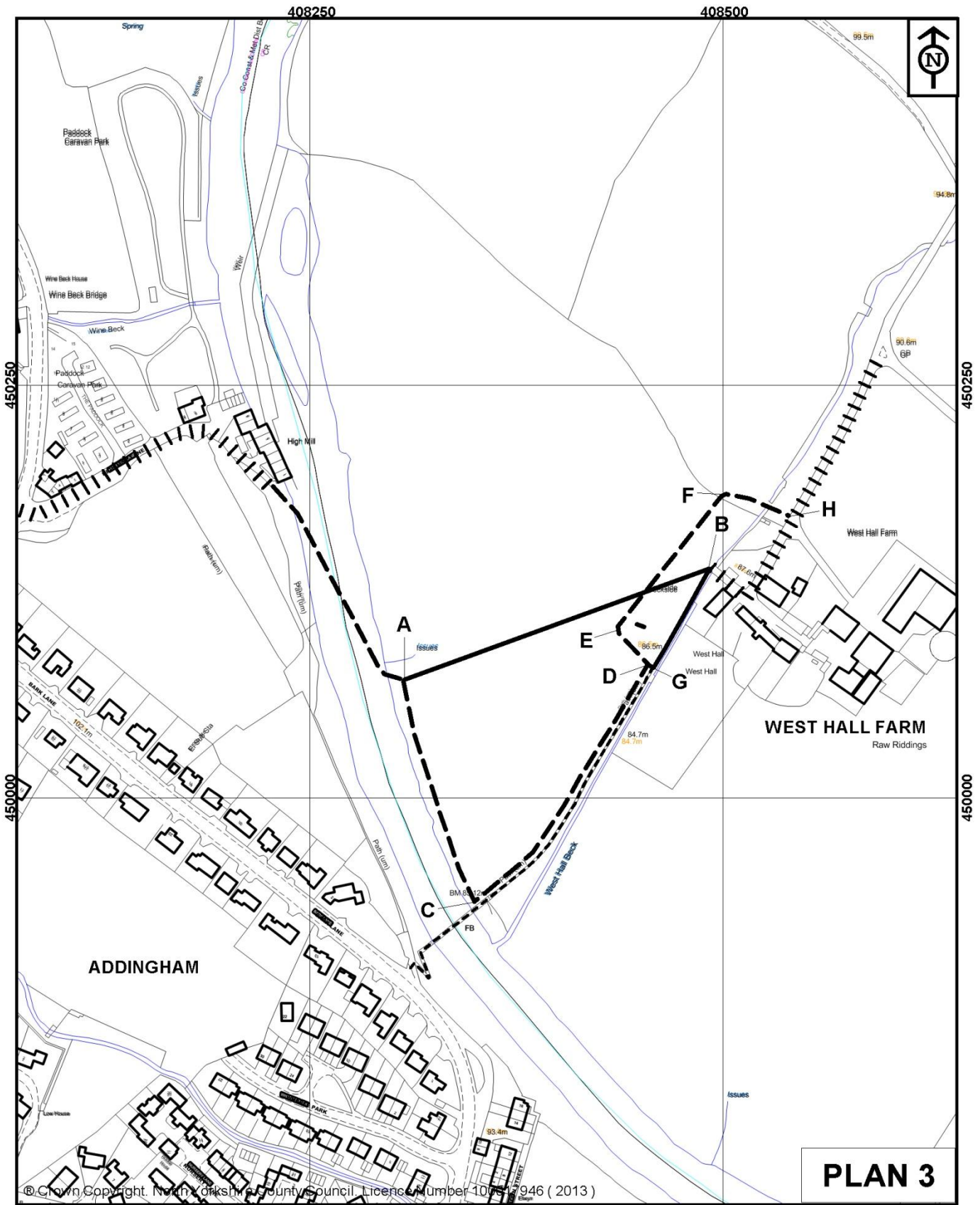
**North Yorkshire County Council**

Planning & Regulatory Functions  
Sub-Committee

20th September 2013

Bridleway No.15.96/42, Fisher Fountain  
Ford to West Hall Farm, Nesfield  
Modification Order 2005

File Ref. No. HAR/1997/1/DMMO



**PLAN 3**

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**North Yorkshire County Council**

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

**Key:**

- Extinguished Bridleway A-B
- Diverted Bridleway A-C-D-E-F-H
- Extinguished Footpath G-B
- Diverted Footpath G-D
- Footpath to remain
- Maintainable Highways

Map drawn on 9 August 2013  
Drawn by SS

**North Yorkshire County Council**

Planning & Regulatory Functions  
Sub-Committee

20th September 2013

Bridleway No.15.96/42 and Footpath No. 15.96/36, Fisher Fountain Ford to West Hall Farm, Nesfield Diversion Order 2005

File Ref. No. HAR/2005/24/DO

Scale 1:3000