

## NORTH YORKSHIRE COUNTY COUNCIL

### PLANNING & REGULATORY FUNCTIONS SUB-COMMITTEE

15 NOVEMBER 2013

#### APPLICATION FOR AN EXTINGUISHMENT ORDER FOOTPATH NO. 10.110/5, FAIRFIELD HOUSE, NORTHALLERTON

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

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

- 1.1 To inform Members of an application made under Section 118 of the Highways Act 1980, the effect of which, if pursued, would be to extinguish Footpath No. 10.110/5, crossing land at Fairfield House, Northallerton. A location plan is attached to this report as **Plan 1**. The section of footpath proposed to be deleted is shown as A – B on **Plan 2**.
- 1.2 To request Members to authorise the Corporate Director, Business and Environmental Services, to make a Public Path Extinguishment Order.

##### **2.0 THE COMMITTEE'S RESPONSIBILITIES**

- 2.1 Under Section 118 of the Highways Act 1980, the County Council may make an order stopping up a path where it appears to the Council that it is expedient to do so on the grounds that it is not needed for public use.
- 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, but will need to:
  - i) be satisfied that it is expedient to do so having regard to the extent, if any, that it appears that the path would be likely to be used by the public (when considering likely use, temporary obstructions to the current path must be disregarded)
  - ii) have regard to the effect the extinguishment of the right of way would have as respects land served by the path or way.
- 2.3 However, if there were an objection to an Order that is not subsequently withdrawn, and the Authority is minded to pursue the confirmation of the Order, the power of confirmation rests with the Secretary of State, who will apply the legal tests set out in 2.2 above.

### **3.0 BACKGROUND**

- 3.1 The owner of Fairfield House has submitted an application requesting the County Council to make an order under Section 118 (1) of the Highways Act 1980 to extinguish the footpath as shown on Plan 2. If such an Order is to be made, the applicant will be liable for the administration cost and for the cost of advertising both the making and confirmation of the Order.
- 3.2 The footpath crosses land used to store and maintain fairground rides, caravans and their associated vehicles, and as a horse paddock. The applicant wishes to extinguish the footpath on the ground that it is no longer required for public use, and that a more suitable alternative tarmaced path exists, bordering the adjacent Applegarth public car park.
- 3.3 An informal consultation was conducted for this application in December 2006, in accordance with the required procedure.
- 3.4 In response to the consultation, objections were received from The Ramblers and the British Horse Society.

### **4.0 REPRESENTATION AGAINST THE PROPOSED DIVERSION**

- 4.1 The Ramblers objected to the proposal, pointing out that the footpath is longstanding and has existed since 1952. The Ramblers believe the route should be opened up and that if it was open the public would make use of it, and that the landowner could apply to divert the path within his site.
- 4.2 The British Horse Society's representative objected on the grounds that the reasons for the extinguishment were not reasonable or relevant.

### **5.0 COMMENTS ON THE OBJECTIONS**

- 5.1 The Ramblers point out that the footpath has existed since 1952. The path was first recorded on the Definitive Map in 1952; however, the fact that a right of way exists or has existed for some time would not appear to be relevant to the tests to be considered in 2.1 and 2.2 above.
- 5.2 The route has been obstructed for a number of years by a fence which has been possible to bypass, and intermittently, by parked wagons (which are regarded as temporary obstructions). Temporary obstructions to the current path must be disregarded when considering likely public use.
- 5.3 If the path was made available for use, the public would have a choice between two routes having the same destination. The route through Fairfield House has a much more private feel to it than the path around the outside of the property and would require gates or stiles at each end of the paddock. By comparison, the path around the outside of the property is free from gates or stiles and is surfaced, and therefore could be considered to be more

convenient to use, albeit 32 metres longer. Overall, it is considered that within the urban setting of these footpaths, footpath No. 10.110/5 would see little or no use if it were available for use.

- 5.4 The landowner has considered diverting the path within the site but has not been able to identify a satisfactory route. The site consists of several plots of land owned by different family members. Some plots are empty during the summer months when the fair is on the road, but during winter the plots are likely to be filled with fairground rides, caravans and their associated vehicles.
- 5.5 The British Horse Society objection is not considered to be relevant: The proposed extinguishment is being considered on the grounds that the footpath is not needed for public use. A well-used tarmac surfaced footpath runs around the outside of the site and serves the same purpose as the application route. It would appear that this fact alone is sufficient to satisfy 2.1 above.

## **6.0 IMPLICATIONS FOR EQUALITIES**

- 6.1 Consideration has been given to the potential for any adverse equality impacts arising from the recommendation. It is believed that the recommendation does not have an adverse impact on any of the protected characteristics identified in the Equalities Act 2010.

## **7.0 FINANCIAL IMPLICATIONS**

- 7.1 There may be financial implications for the authority in covering any cost associated with any subsequent decision to forward an opposed order to the Secretary of State for confirmation. Such costs cannot be avoided. The Planning Inspectorate may decide that a public inquiry should be held to resolve an application.

## **8.0 LEGAL IMPLICATIONS**

- 8.1 If an Order were to be made, and that Order is formally opposed, the County Council has the discretion to proceed with the Order by seeking its confirmation by forwarding it to the Secretary of State, or not to proceed with the Order, and may withdraw it by formal resolution.

## **9.0 CONCLUSION**

- 9.1 It is considered that as this path is in an urban setting, the continuation of the path network is surfaced and there is an alternative adjacent existing surfaced path, that the Council could justify making an Extinguishment Order on the grounds that the legal test set by section 118 (1) Highways Act 1980 are met. That is to say, that in this particular instance it is considered appropriate that

the unsurfaced section of footpath should be stopped up on the ground that it is not needed for public use.

**10.0 RECOMMENDATION**

10.1 It is therefore recommended that the Committee authorise the Corporate Director, Business and Environmental Services to make an Extinguishment Order for the route shown as A – B on Plan 2.

And,

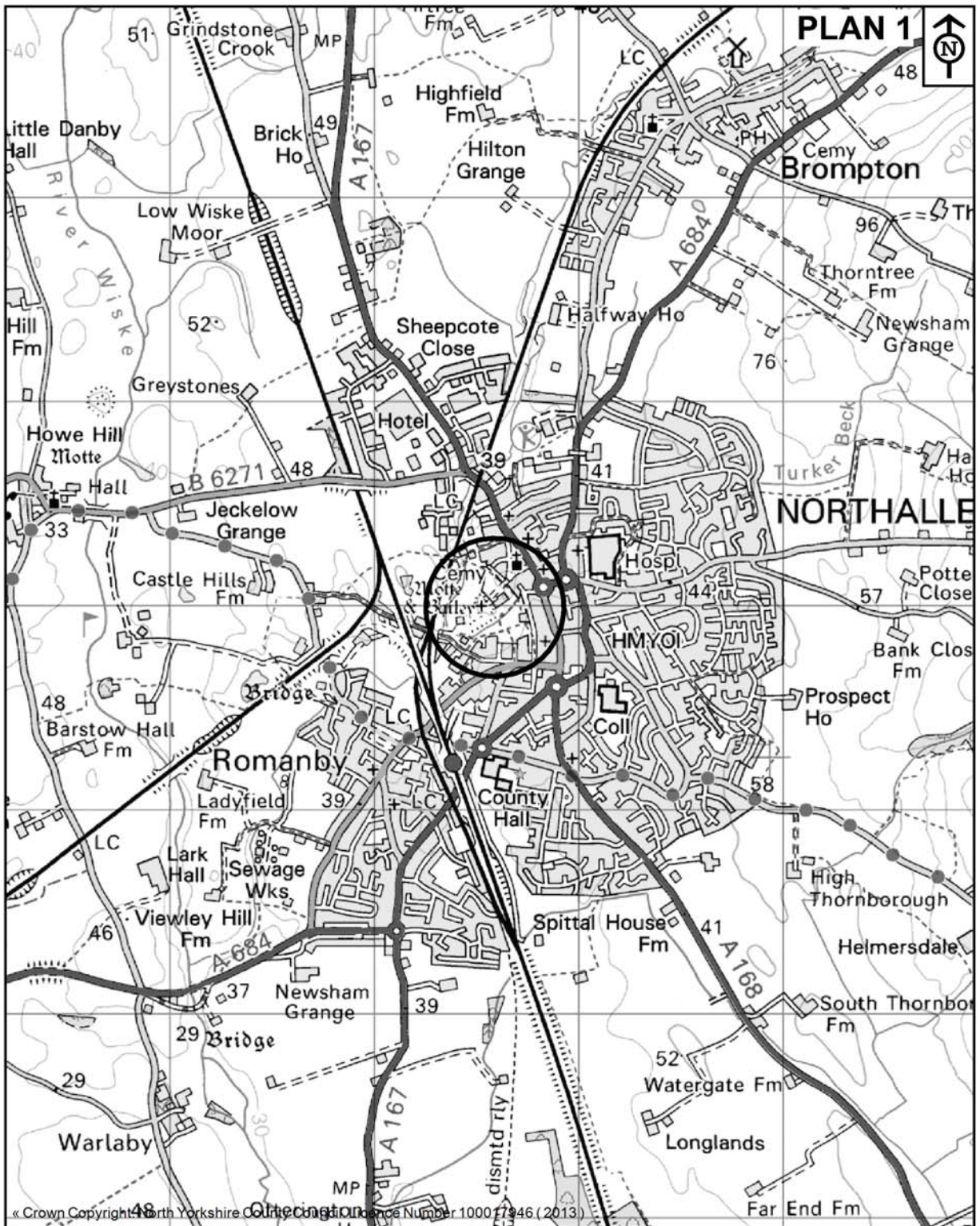
10.2 in the event that formal objections are made to that Order, and are not subsequently withdrawn, the Committee authorise the referral of the Order to the Secretary of State for determination, and permit the Corporate Director, under powers delegated to him within the County Council's Constitution, to decide whether or not the County Council can support confirmation of the Order.


DAVID BOWE

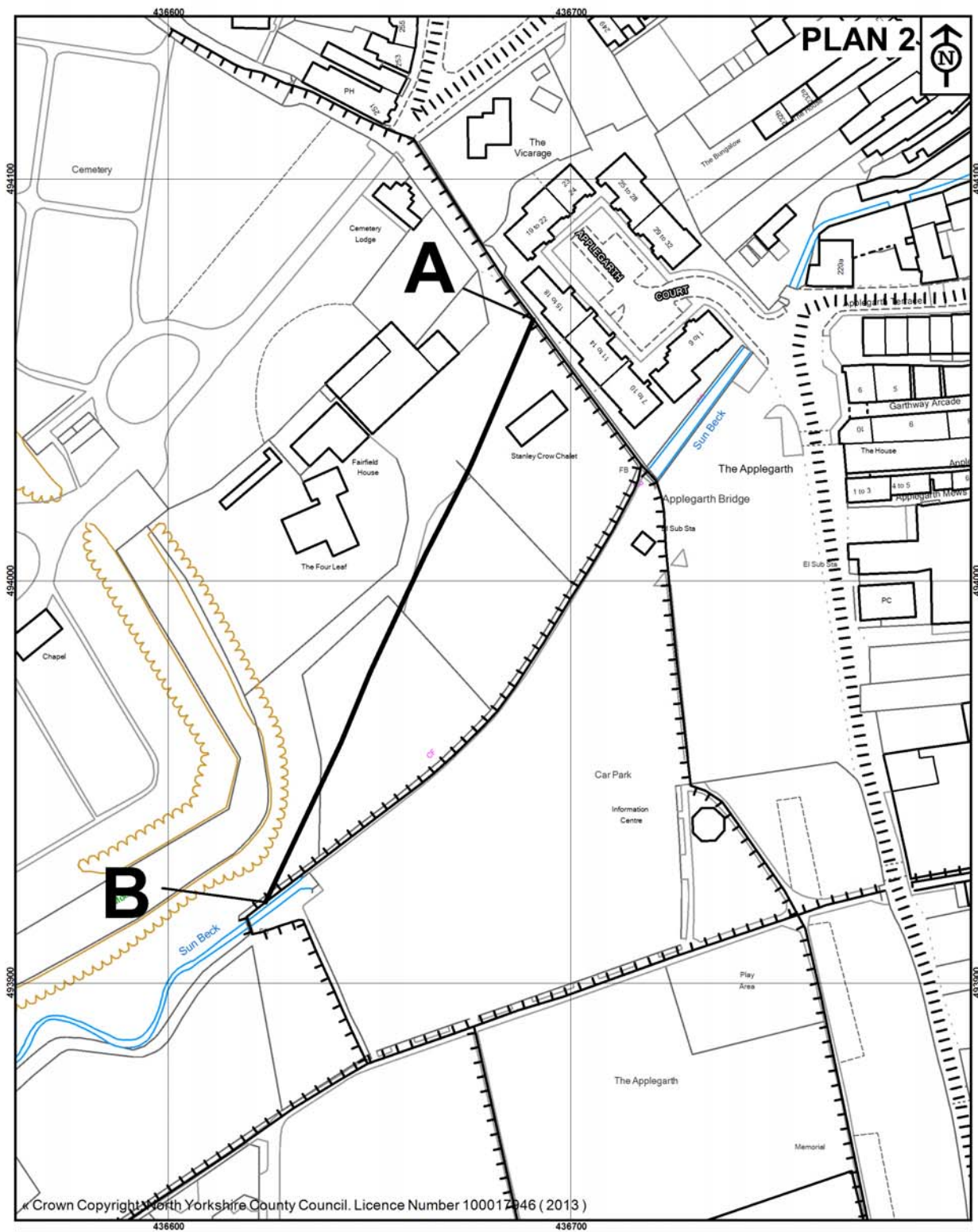
Corporate Director – Business and Environmental Services

Author of Report: Andy Hunter

Background Documents: Definitive Map Team Case file ref: HAM/2006/20/EO



 <p><b>North Yorkshire County Council</b></p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<h2>PLAN 1 LOCATION PLAN</h2> <p>Map drawn on 9 September 2013 Drawn by AWH      Scale 1:25000</p>	<p><b>North Yorkshire County Council</b></p> <p><b>Application for Extinguishment of Footpath No. 10.110/05, Fairfield House, Northallerton</b></p> <p>Plan prepared for the Planning &amp; Regulatory Functions Sub-Committee on 15 November 2013</p> <p>File Ref No. HAM/2006/20</p>
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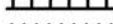



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**North Yorkshire County Council**

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Waste and Countryside Services  
County Hall  
Northallerton  
DL7 8AH

**PLAN 2**

Key:  
Footpath to be deleted   
Other footpaths   
Maintained Highways 

Map drawn on 9 September 2013  
Drawn by AWH Scale 1:1250

**North Yorkshire County Council**

**Application for Extinguishment of Footpath No. 10.110/05, Fairfield House, Northallerton**

Plan prepared for the Planning & Regulatory Functions Sub-Committee on 15th November 2013

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