

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS SUB COMMITTEE

15 NOVEMBER 2013

APPLICATION TO RECORD A PUBLIC FOOTPATH FROM MUCKY LANE TO FOOTPATH No. 10.39/2, EASBY, HAMBLETON

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 record a public footpath between Mucky Lane and Footpath no. 10.39/2 in the Parish of Easby, Hambleton. A location plan is attached to this report as Plan 1. The application route is shown as a dashed black line and marked A – B on the plan attached to this report as Plan 2.
- 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 However, if there were an objection to an Order that was not subsequently withdrawn, the power to confirm the Order would rest with the Secretary of State and it is likely that a Public Inquiry would be held in deciding whether or not to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 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 expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during the period raises the presumption that way has been dedicated as a public path or a restricted byway.

- 3.2 Section 53 requires a Highway Authority to “make” an Order where an application is supported by evidence showing that “a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist”. For an Order to then be confirmed it is necessary to demonstrate that the alleged public right exists “on the balance of probabilities” given the evidence available.
- 3.3 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.
- 3.4 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 In the event that an Order were to be made and was then opposed, 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.

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 The application was submitted to North Yorkshire County Council on 9 April 2009, by a resident of Easby to record the route indicated as A – B on Plan 2 on the Definitive Map as a public footpath. This application followed the rejection of a previous application in 2004 made by Easby Parish Meeting, for a route on the same alignment. The 2009 application was supported by evidence from the previous application, together with three additional evidence of use forms.
- 6.2 Objections to both applications were received from the affected land owner, who had purchased the land in 2003. Following the purchase of the land, this landowner locked the gates on the bridge, put up signs and challenged people who tried to use the application route. It was these actions that led to the DMMO application being submitted.

7.0 **EVIDENCE SUBMITTED IN SUPPORT OF THE APPLICATION**

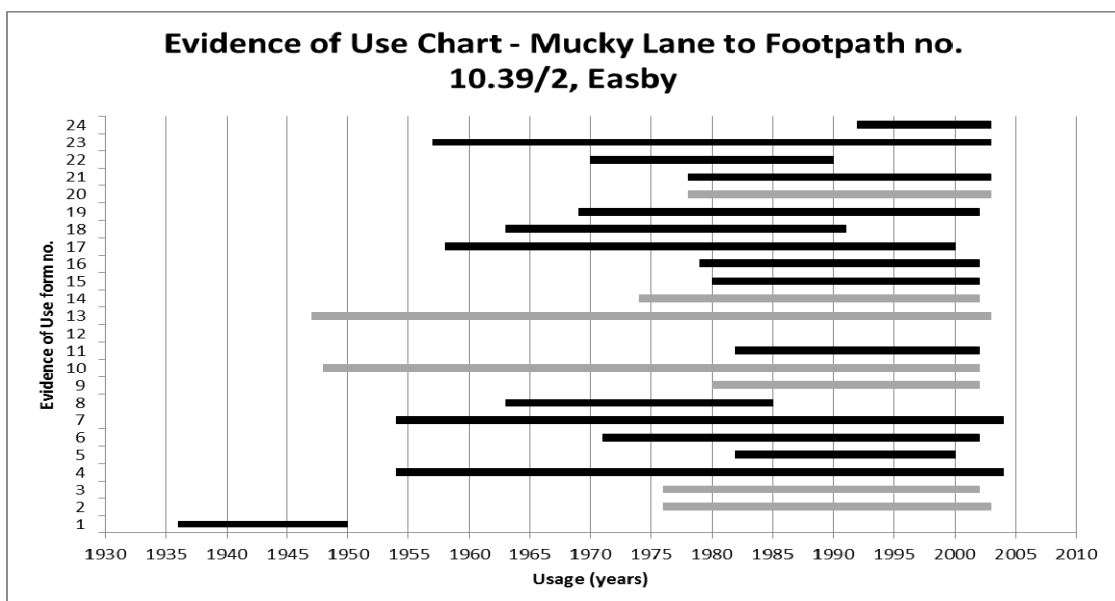
7.1 The application is supported by:

- 24 Evidence of Use forms, stating that the route has been used by the public between 1936 and 2003/4.
- A letter from the applicant, detailing the reasons why she believes the previous application should not have been rejected.
- A statement from the previous owner of the land, stating that he and his family had been happy for the public to use the application route.

7.2 The periods of use claimed by the 24 Evidence of Use forms are shown in the bar chart below. Of the 24 forms, eight cannot be used as evidence of public use of the route as of right, for the following reasons:

- Three forms were completed by the previous tenant / landowner or members of their family.
- Four forms were completed by people who had used the route with permission of the previous landowner / tenant. One of these witnesses had also used a different route to that claimed in the application.
- One of the forms gave no dates of use.

These eight Evidence of Use forms are shown as grey lines (or left blank in the case of the form with no dates of use – form no.12) in the bar chart. The 16 remaining valid Evidence of Use forms are shown as black lines.



7.3 Of the 16 valid User Evidence forms, 11 witnesses state that they were never stopped or challenged when using the route. Five witnesses state that they had been prevented from using the route by locked gates or signs since the new owners took over the land, or had been challenged by the new landowners. No witnesses have indicated that any previous landowner challenged them whilst using the route.

7.4 Three of the witnesses used the route once or twice a year, five used it up to 10 times a year, and seven witnesses claim they used it more than 10 times each year. Reasons given for using the route include; walking from Low Easby to Great Ayton, walking the dog, visiting family in Low Easby, recreational walking, and to enjoy the countryside.

- 7.5 The plan submitted with the application shows the claimed route following a line alongside the River Leven. Two of the Evidence of Use forms include a plan showing the same route to that on the application plan (ie following the river). Nine witnesses have drawn the route they walked as being slightly straighter, following a more direct line across the field from the stone bridge over the River Leven to join up to Footpath no. 10.39/2. This line corresponds to a track shown on the Ordnance Survey map of 1894. Five Evidence of Use forms did not include a map.
- 7.6 The previous landowner, Mr W Smith, completed an Evidence of Use form and also submitted a Witness Statement in 2007. In his statement Mr Smith confirmed that his family first became tenants of the land in 1916, and continued renting the land until 1987 when Mr Smith purchased it. Mr Smith sold the land where the claimed footpath runs, to the current owners in 2003. He states that in 1916 there were signs to deter people from using the application route, but that these were removed by his grandfather soon after he started farming the land.
- 7.6.1 Mr W Smith states that he and his father were happy to let people use the claimed route, took no measures to prevent it, and even actively encouraged its use. He states that the route was well-used up until the outbreak of foot and mouth in 2001, and that following this the route had still been used but not as frequently. Mr Smith states that he did not give people individual permission to use the route, but instead just left them to use it as they wished.
- 7.6.2 Mr Smith states that for a number of years there was a gate across the western end of the bridge, which was closed with a chain to keep livestock in. He states that the gate was never locked, and that people used it even when the chain was on.
- 7.6.3 Mr Smith further states that prior to selling the land to the current landowners he allowed them to use it for grazing livestock. He states that during this time the current landowners erected a sign to discourage people from using the route, however he made them remove the sign when he became aware of it.
- 7.7 On the County Council files there is a letter dated 6 November 1985 from the agents acting on behalf of the Easby Estate, which at the time was the landowner of the claimed route. The letter stated that the stone bridge which forms part of the claimed route was in need of urgent repair, and asked about the availability of grant aid towards the repair of the bridge, as they believed it was a public footpath. The County Council replied that as there was no recorded public footpath across the bridge they were unable to help.

8.0 EVIDENCE AGAINST THE APPLICATION

- 8.1 In response to informal consultations carried out in June 2013, the current landowners, Mr & Mrs Chapman, submitted an objection to the application, stating that the land was never accessible to the public 24 hours a day, 7 days a week when the previous owner had it. They also state that people had used the claimed route with the permission of the previous landowner, and that they are concerned about health and safety issues and the effect on their farming business if the route were to be recorded as a public footpath.
- 8.2 In their objection letter, the current landowners requested that the evidence in their objection to the previous application be carried over to this application. This evidence was submitted in December 2006, and included:
- Photographs showing parts of the claimed route, and the gates and signs put up by Mr & Mrs Chapman.
 - Signed statement from Mr R Chapman.

- Seven written statements in support of the objection.
 - Extracts from Mrs Chapman's diary 2002 – 2003.
- 8.3 In his statement, Mr Chapman confirms that he purchased the land from Mr Smith in March 2003. Mr Chapman states that he lives close to the land, and was aware of how Mr Smith used it for dairy farming. He states that the gates were tied shut, and that the land was never accessible 24 hours a day, seven days a week.
- 8.3.1 Mr Chapman states that some of those who had completed Evidence of Use forms were employed by previous owners, and therefore their use of the route was by permission. He also stated that a number of local residents had asked him for permission to walk the claimed route, as they had had permission from the previous owner.
- 8.3.2 Mr Chapman states his concerns over the effect the claimed footpath would have on his farming business. The claimed route crosses the field where they keep a dairy bull, and also passes the watering hole. They would not be able to keep the bull in this field if a public footpath crosses it, and there could be a danger to the public if cattle were startled when at the watering hole. He also raises concerns over the condition of the bridge, which would need costly repairs before it could safely be used by the public.
- 8.4 Seven written statements made by local residents were submitted with Mr & Mrs Chapman's objection, which can be summarised as follows:
- A statement from a local resident who has lived in Low Easby for 19 years, who has never used the stone bridge leading onto what she considers to be private land, and indicates that there are signs stating no trespassing and also that the route is gated on both sides of the bridge.
 - Two statements from a father and son who had been asked to carry out vermin control by the current landowners. In the letters they state that the gate over the bridge was chained shut. They saw no footpath in this area and it appeared too overgrown to have been used for many years. On two occasions in 2003 the son states that he was approached by the previous landowner and told it was private land.
 - A statement from a local resident who had moved to Easby in 2001, stating that the bridge was blocked by a solid wooden bar and metal gate. She recalled a notice on the wooden bar but not what the notice said.
 - A statement from a resident of Easby village for over 60 years, who does not recall anyone regarding the route as a public footpath in this time.
 - A statement from a resident who has lived in Easby for 36 years. He was a friend of the previous landowner's son and used to play around the land in question. He and the landowner's son would walk the claimed route to Great Ayton but he always understood that this was not the public footpath and the gates were always tied shut.
 - A statement from a resident who lived and worked at a nearby farm for 30 years, who states that the land was private, and that there have always been gates on both sides of the unsafe bridge which were closed with rope and chains. She states that one winter she required water for her stock and requested access to the field from the previous landowner. She recalls the gates being awkward to open, the field being overgrown, and the gateway being very muddy. There was no noticeable track.

- 8.5 Mrs Chapman also submitted extracts from her diary, dating from September 2002 to September 2003. These detail conversations between herself and local residents, concerning requests for permission to use the claimed route, and the dumping of garden rubbish on the Chapman's land at the end of the bridge.
- 8.6 Three further written statements and one letter were submitted with Mrs & Mrs Chapman's objection to the 2009 application, the contents of which are summarised as follows:
- A statement dated November 2004 from a local resident confirming that he had been refused when he asked Mrs Chapman for permission to walk the route he had previously walked with the permission of Mr Smith. It should be noted that this witness also completed an Evidence of Use form in 2009, in which he answered "No" to the question "Were you ever given permission to use the route?"
 - The second statement submitted was a copy of a statement submitted with Mr & Mrs Chapman's 2006 objection (see paragraph 8.4.)
 - A statement from the owner of a field in Low Easby, saying that she had refused permission for a neighbour to run her dog in their field, as there was no public right of way there. It is not clear from the statement whether this is the same field where the claimed footpath runs, or another field.
 - A copy of a letter to Mrs Chapman from a walker who has known the area for 36 years, and who states that the bridge has been gated off at both ends, and that in the past there was a sign saying "Trespassers will be prosecuted".

9.0 COMMENTS ON THE EVIDENCE

- 9.1 The Evidence of Use forms indicate that a body of people have used the claimed route in excess of 20 years. On the face of it, the evidence shows that a number of these people used the route without challenge from 1936 until 2003 when the current landowners purchased the land and took steps to prevent public access. 2003 can therefore be taken as the date of first challenge to public use of the route, making the relevant 20 year period for the purposes of the Highways Act 1980 as 1983 - 2003.
- 9.2 The variation in the routes drawn by witnesses on the Evidence of Use plans (referred to in paragraph 7.5) is not great, and all show a line walked linking Points A and B on Plan 2. Whilst two users appear to have walked a line keeping close to the riverbank, most others appear to have taken a more direct line across the field. This is not unusual, as people walking across an open pasture field will often walk slightly differing alignments, depending on ground conditions, undergrowth and other factors. In cases where a number of User Evidence forms have been submitted, the maps often show slight differences in route alignment, due to variation in people's abilities to understand and produce maps. The fact that all routes drawn do not show an identical alignment also gives weight to the forms having been completed by individual witnesses recording their own experiences.
- 9.3 The previous landowner Mr Smith purchased the land in question in 1987, however his family first became tenants of the land in 1916. The evidence of Mr Smith indicates that his family had never taken steps to prevent public access across the land, and at no point challenged members of the public using the route. Mr Smith stated that believed the route to be a well-established footpath, even though he acknowledges that it was not recorded on the Definitive Map. There were gates across the route, but the evidence suggests that these did not to deter or prevent the public from using the route.

- 9.4 The letter dated November 1985, from the agents acting on behalf of the Easby Estate (landowners at that time) requesting grant aid to repair the bridge, shows that the landowning Estate was aware that people were using the route as a public footpath.
- 9.5 The current landowners, Mr & Mrs Chapman, have provided evidence that they have challenged members of the public using the route since purchasing the land in 2003. This is supported by witness statements submitted with their objection, and also stated in many of the Evidence of Use forms submitted with the application. It is clear that the present landowners did prevent use of the route since they purchased the land in 2003, demonstrating their belief that the route is not a public right of way; however it is the 20 year period prior to that challenge which is under investigation at this time.
- 9.6 The current landowners also claim that use of the route by the public was done so with the permission of the previous landowner Mr Smith. This is contradicted by the statement from Mr Smith. While four of the Evidence of Use forms state that use of the route was with the permission of Mr Smith, ten state that no permission was sought for using the route (this includes the form from the witness who earlier claimed to have used the route with permission from Mr Smith – see paragraph 8.6.). Six forms do not state whether or not permission was sought to use the route.
- 9.7 A number of residents asked Mr and Mrs Chapman for permission to use the route after they had purchased the land. However, there is some uncertainty over whether these residents were seeking individual permission to use the route after it had been blocked, or whether they were seeking permission from the new landowners as they had done so in the past with the previous landowner.
- 9.8 The current landowners state that the recording of this route would have detrimental effects upon their business and also create a health and safety issue. They also state that the stone bridge is in an unsafe state and would need costly repairs. Whilst we can sympathise with these views, these are not issues that can be taken into account when considering a Definitive Map Modification Order application (see paragraph 2.1).

10.0 CONCLUSIONS

- 10.1 Whilst there are contradictions between the evidence of the users and the previous landowner, and the current landowners, the evidence suggests that the route has been used by a number of people “as of right” (ie without force, secrecy or permission) for over 20 years prior to any challenge. A further group of people appear to have had permission from the previous landowner to use the route.
- 10.2 The previous landowner states that he and his family never stopped or challenged anyone using the route. There is no evidence that the landowner prior to 1987 challenged the public’s use or acted in a way to demonstrate a lack of intention to dedicate. The letter from 1985 shows that the landowner at that time was aware of the public’s use of the route.
- 10.3 The contradictions arise over the question of use by permission, as opposed to use as of right. The current landowners and some witnesses state that use was by permission only, whereas statements from the previous landowner and other witnesses state that the route was used as a public right of way.

- 10.4 In determining whether or not to first “make” an Order following an application that has been made to add a route to the Definitive Map, a Highway Authority has to be satisfied merely that the public right concerned is reasonably alleged to exist. It is considered that there is sufficient evidence to reasonably allege that a right of way exists along the claimed route, and therefore that an Order should be made to add the route to the Definitive Map as a Public Footpath.
- 10.5 If an Order is made, the formal process will allow further investigations of the evidence submitted, to ascertain whether or not a public right of way exists on the balance of probabilities, which is the higher test required to confirm an Order.
- 10.6 A report for information only was presented to the meeting of the Hambleton Area Committee on 16 September 2013. Members noted the report but had no comments to submit. The response to the application from the local County Councillor and Chair of the Parish Meeting stated that the members of the parish are divided over whether or not the route should be added to the Definitive Map.

11.0 RECOMMENDATIONS

11.1 It is therefore recommended that:

- (a) the Committee authorise the Corporate Director of Business and Environmental Services to make a Definitive Map Modification Order to record the route shown as A – B on Plan 2 of this report to be shown on the Definitive Map as a Public Footpath; and
- (b) 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 in doing so 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

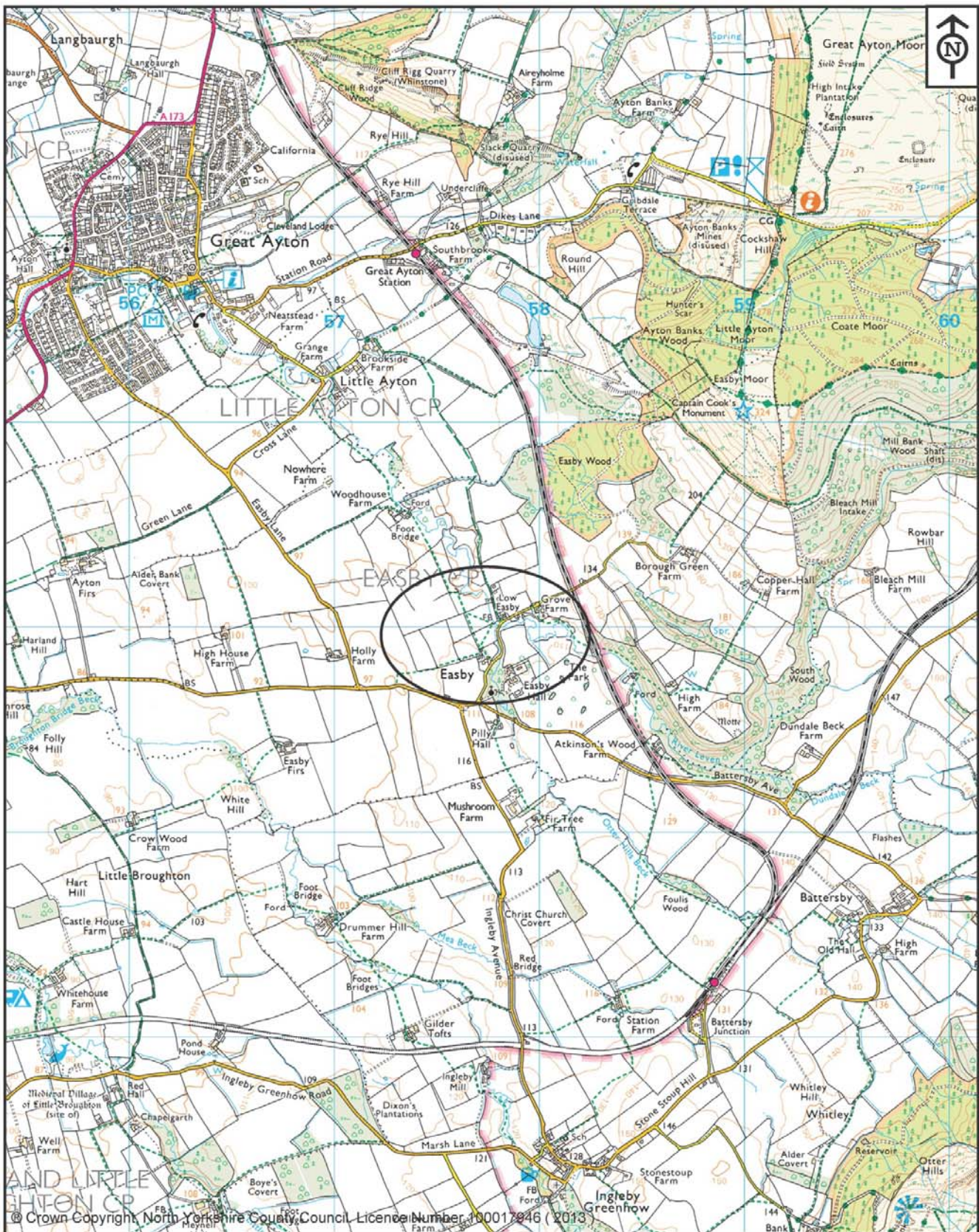
Corporate Director – Business and Environmental Services

Author of Report: Beth Brown

Background Documents:

- DMMO application dated 9 April 2009
- Evidence submitted in support of, and against the application

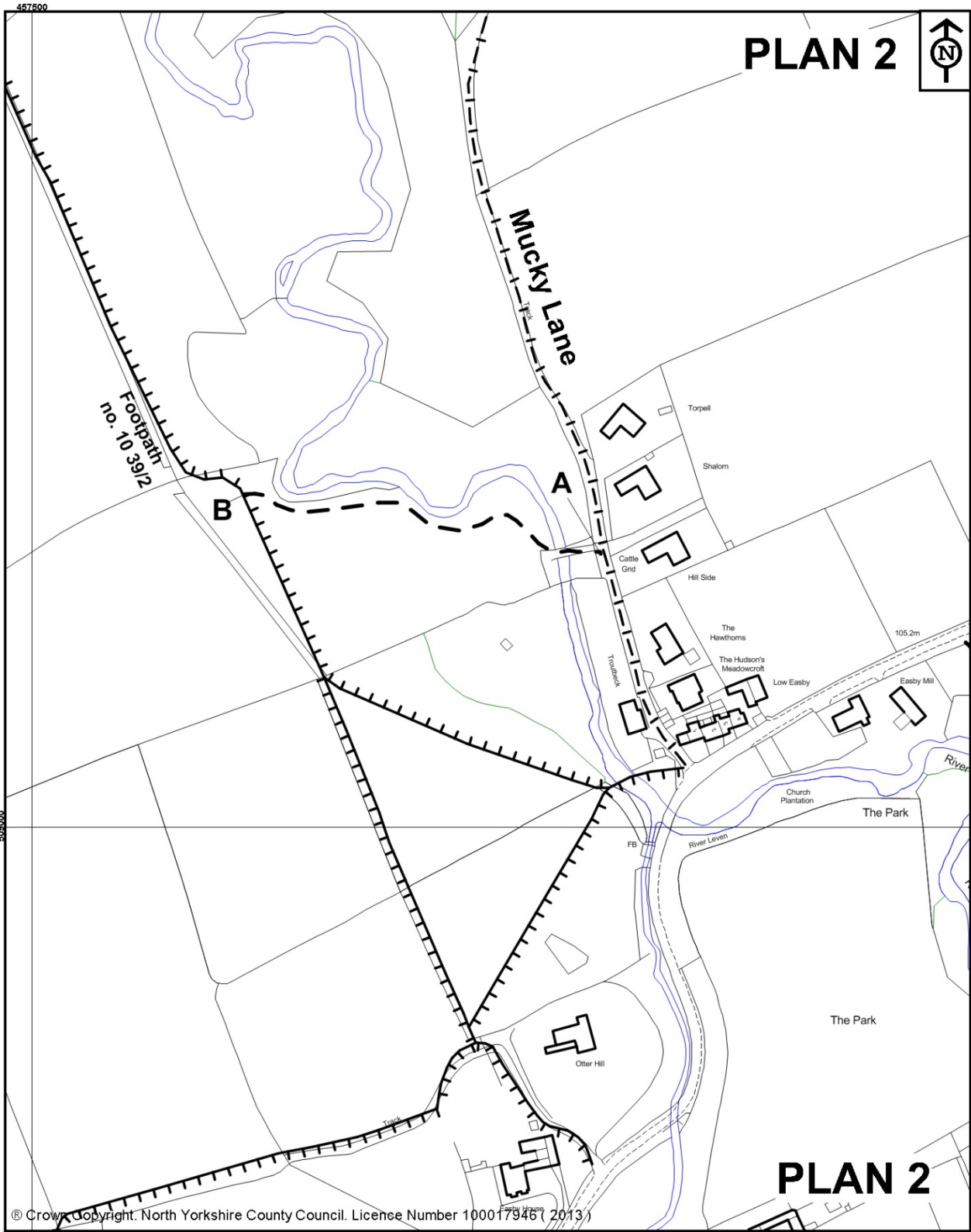
The documents are held on a file marked: County Council's Planning and Regulatory Functions Sub-Committee, 15 November 2013, Application to Record a Public Footpath from Mucky Lane to Footpath no. 10.39/2, Easby, Hambleton, which will be available to Members at the meeting.




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

**PLAN 1
 LOCATION PLAN**
 Map drawn on 11 July 2013
 Drawn by BB Scale 1:25000

North Yorkshire County Council
 Planning & Regulatory Functions
 Sub Committee 15 November 2013
 Application to record a public
 footpath from Mucky Lane to
 Footpath no.10.39/2, Easby
 File Ref No. HAM/2009/07/DMMO



© Crown Copyright. North Yorkshire County Council. Licence Number 100017946 (2013)

 <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>Application Footpath - - - - -</p> <p>Other Footpaths - - - - -</p> <p>Public Bridleways - - - -</p> <p>Map drawn on 19 June 2013</p> <p>Drawn by BB Scale 1:2500</p>	<p>North Yorkshire County Council</p> <p>Planning & Regulatory Functions Sub Committee 15 November 2013 Application to record a public footpath from Mucky Lane to Footpath no. 10.39/2, Easby</p> <p>File Ref No. HAM/2009/07/DMMO</p>
---	--	--