

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE

15 NOVEMBER 2013

APPLICATION TO RECORD A PUBLIC BRIDLEWAY AT CHESTNUT BANK, BORROWBY

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 bridleway at Chestnut Bank in the village of Borrowby, Hambleton. A location plan is attached to this report as Plan 1. The application route is shown as a solid black line with bars at intervals 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 However, if there were an objection to an Order that was not subsequently withdrawn, the power to confirm the Order would rest with the Secretary of State and it is likely that a Public Inquiry would be held in deciding whether or not to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 an applicant.

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

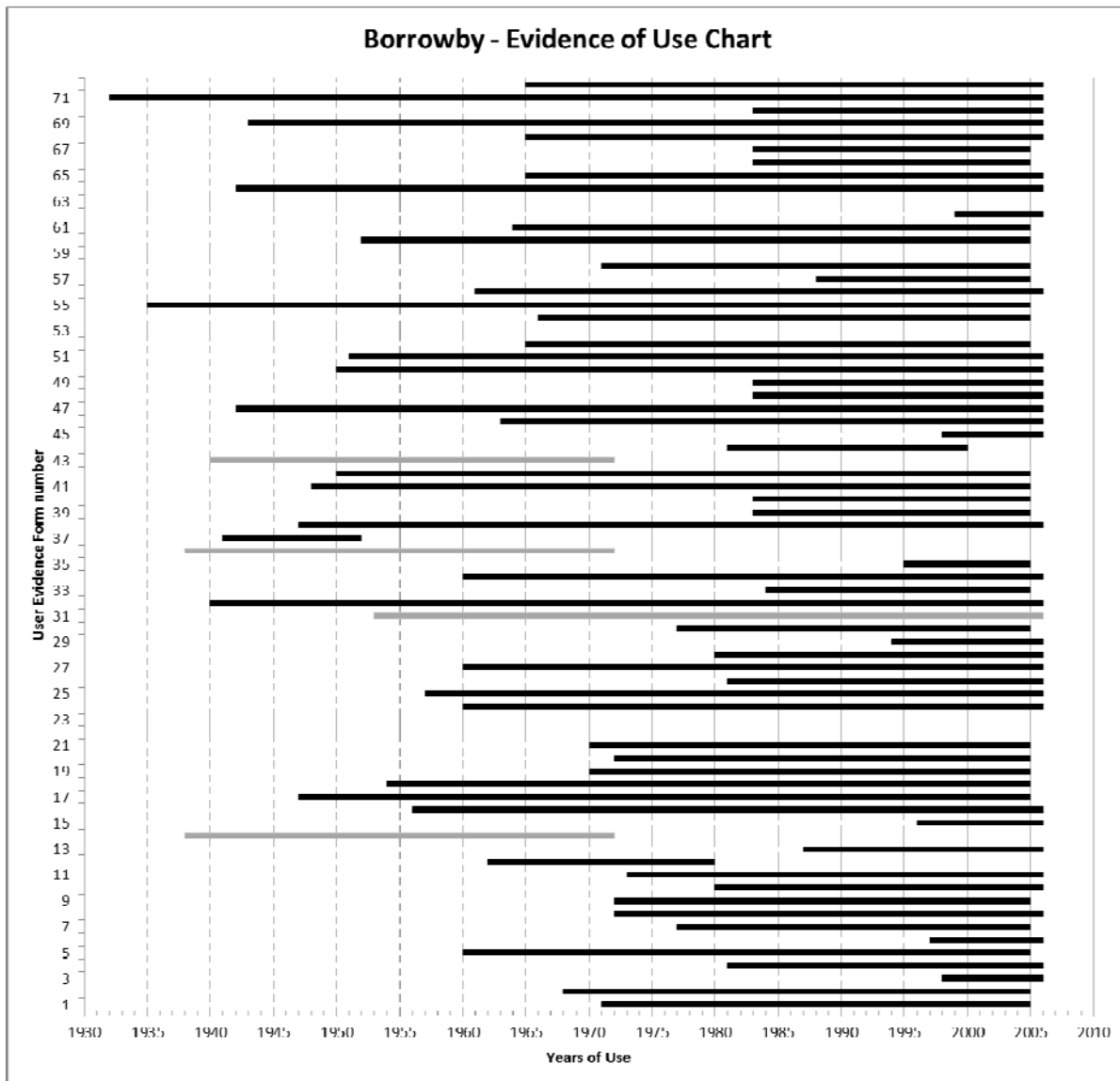
- 6.1 An application was submitted to North Yorkshire County Council on 10 April 2006, by Borrowby Parish Council, to record the route indicated on Plan 2 (known locally as Chestnut Bank) on the Definitive Map as a public bridleway.
- 6.2 The application was submitted following concerns raised to the Parish Council by local residents that some householders adjacent to the claimed route were looking to incorporate the claimed route into their properties, and that this would stop public use of the route.
- 6.3 An initial consultation was carried out between 26 January 2011 and 28 February 2011. A joint response was received from the residents of five properties adjacent to the claimed route, stating that although they were happy for the route to be recorded as a public footpath, they were objecting to it being recorded as a public bridleway.

- 6.4 The route is a stone track, lying parallel to the main village street, and an initial examination of the evidence and the character of the route suggested that the claimed route may in fact form part of the main public highway through the village, which is recorded on the List of Streets as "Village Streets", number TK 261 U in the Parish of Borrowby. There are electricity poles, streetlights and public utility services along the route and adjacent verges. A number of witnesses who submitted evidence with the application stated that historically (up until about the 1960s) there were shops and a pub along the route.
- 6.5 Despite inquiries we have been unable to ascertain the ownership of the claimed route.
- 6.6 It has been established that the claimed route is most likely a public highway, but that it is not part of the route recorded on the List of Streets.

7.0 EVIDENCE SUBMITTED IN SUPPORT OF THE APPLICATION

- 7.1 The application is supported by 72 Evidence of Use forms, claiming use of the route as of right (ie without force, without secrecy and without permission), from the 1930s up until 2005 / 2006 when the application was submitted. The bar chart below shows the usage of route.
- 7.2 Of the 72 Evidence of Use forms, six do not show use of the route as of right, so have been discounted from the supporting evidence. These six witnesses used the route as private access to properties, and their use is shown as grey lines in the bar chart below. Three forms did not give any dates of use (two of which have already been discounted as they did not use the route as of right); these are shown as blank lines in the bar chart. This leaves 66 valid Evidence of Use forms.
- 7.3 Of the 66 valid Evidence of Use forms, all 66 witnesses had used the route on foot, 41 stated that they had used it on a bicycle, 19 on horseback and 30 in a motor vehicle.
- 7.4 None of the 66 witnesses ever sought or were given permission to use the route. Some state that they believe the route is public because it has been used for as long as they can remember, and once gave access to shops and the pub. Two witnesses state that there was once a public bench in front of the garden wall of the property known as Firn Bank. Other witnesses refer to a blacksmiths shop, a fish and chip shop and a pub along the route. All of these are now closed.
- 7.5 Most witnesses state that they used the route for safety reasons, to avoid the tarmac road which is narrow and steep at this point, with no pavement. Some witnesses state that the route was a safe alternative in snow and icy weather, as it is not as slippery as the tarmac road. Many witnesses state they used the route when walking or cycling to school, or when walking up and down the village. 52 of the 66 witnesses state that they used the route more than 10 times a year, with the remainder using it less frequently.
- 7.6 None of the witnesses state that they were ever stopped or challenged when using the route, although some refer to a skip being left on the route whilst building works were carried out at one of the properties along the route during 2005.

- 7.7 As there has been no effective challenge to the public's use of the route, the relevant 20 year period is calculated back from the date of the DMMO application, ie 1986 – 2006.



8.0 EVIDENCE AGAINST THE APPLICATION

- 8.1 A joint letter from the residents of five properties adjacent to the claimed route in response to the application stated that although they were happy for the route to be recorded as a footpath, as they believed it always had been a public footpath, they were objecting to the claim that it is a bridleway.
- 8.2 The residents stated that with the exception of pedestrian usage the claims were extremely exaggerated, as during the time they had lived at the properties (periods of time from 2 years up to 47 years) the route had never been in regular use by equestrians, cyclists and motor vehicles, other than as access to the properties.
- 8.3 In their objection, the residents state that until 1960 Grey House was a pub (The Grey Horse) with a blacksmith's at the rear, and that this would account for the high numbers of equestrian, cycle and motor vehicle users.

9.0 HISTORICAL AND OTHER EVIDENCE

- 9.1 Old OS maps (dated 1892, 1912 and 1928) and the Tithe Map for Borrowby (dated 1851) all show the claimed route as being within the same parcel of land as the main road through the village.
- 9.2 It has been established that the claimed route would have highway rights, even though the track itself was not maintained by the County Council.

10.0 COMMENTS ON THE EVIDENCE

- 10.1 The User Evidence, together with the old maps and NYCC correspondence, shows that the public have used the claimed route as of right for a period well in excess of the required 20 years prior to the DMMO application being submitted.
- 10.2 There seems to be no argument over the use of the route by the public on foot, however the question is over what higher rights, if any, exist along the claimed route. Although the application was submitted for a bridleway, it is the evidence submitted that must be examined to determine what status of route any Definitive Map Modification Order should be made to record.
- 10.3 The Natural Environment and Rural Communities Act 2006 extinguished any unrecorded rights for mechanically propelled vehicles and also amended previous legislation to the effect that such rights cannot be acquired through public use. This means that motor vehicle use must be discounted from the evidence, and that the highest status that could be recorded for the claimed route is restricted byway (ie a route that can be used by the general public on foot, horseback, bicycle and non-motorised vehicles such as horse-drawn carriages).
- 10.4 Due to the number of users who state that they have used the route on a bicycle, it is appropriate that the claimed route should be recorded as a restricted byway. Although cyclists can legally use bridleways (this right was given in the 1968 Countryside Act), evidence of use by cyclists cannot be used to claim bridleway rights through the DMMO process. Only evidence of use by horseriders can give rise to a bridleway under the Highways Act 1980. Prior to the NERC Act 2006, use by vehicles, regardless of their means of locomotion, gave rise to a byway open to all traffic. The NERC Act 2006 amended this so that evidence of use by non-mechanically-propelled vehicles, which includes bicycles, would give rise to a restricted byway.
- 10.5 The objectors suggest that the presence of the pub and the blacksmith's would account for the equestrian, cyclist and motor vehicle use of the route. However, they also state that the pub closed in 1960. Approximately two thirds of the User Evidence forms relate to the period after 1960, with the other third relating to the whole time period both prior to and after 1960. Only one witness used the route solely before 1960. Although five witnesses state in their User Evidence forms that the claimed route was access to the shops and pub, only one witness replied that he used the route to get to the pub in response to the question asking why they used the route.

10.6 The objectors also state that in the time they have lived alongside the route, it has not had regular equestrian and cycle use. All witnesses who state that they used the route on horseback and bicycle also state that they used the route on foot. It may be that these witnesses more regularly used the route on foot, with their cycle and equestrian use less common. The Evidence of Use forms, at the time of completion, did not allow for people to differentiate between the level of use by different means.

11.0 CONCLUSIONS

11.1 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. Officers are satisfied that there is sufficient evidence to reasonably allege that a right of way exists along the claimed route, and therefore an Order should be made, but that it should be made to add the route to the Definitive Map as a restricted byway, rather than as a bridleway.

11.2 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.

12.0 RECOMMENDATIONS

12.1 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 on the Definitive Map as a restricted byway; 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.

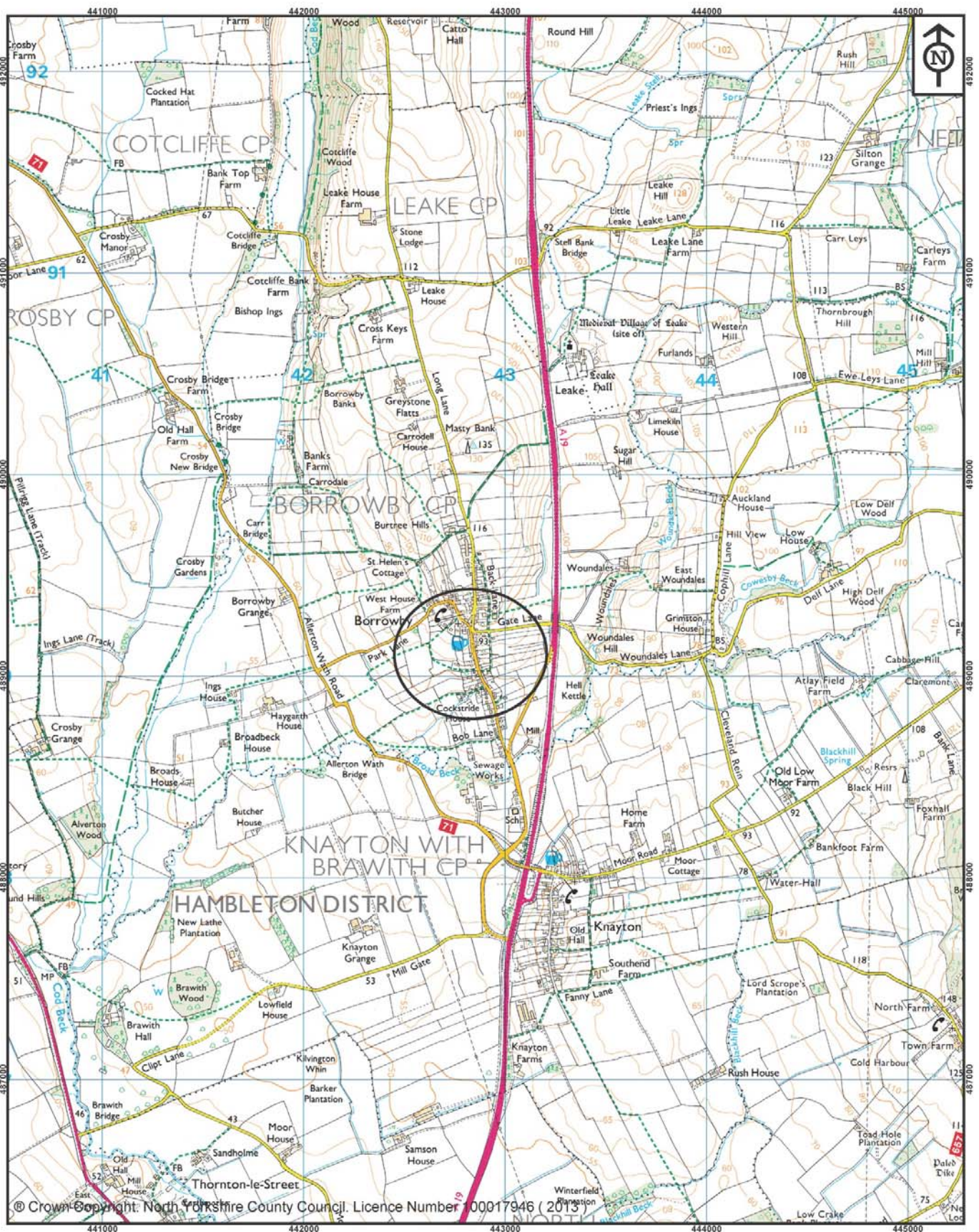
DAVID BOWE
Corporate Director – Business and Environmental Services

Author of Report: Beth Brown

Background Documents:

- DMMO application dated 10 April 2006
- 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 Bridleway at Chestnut Bank, Borrowby, 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

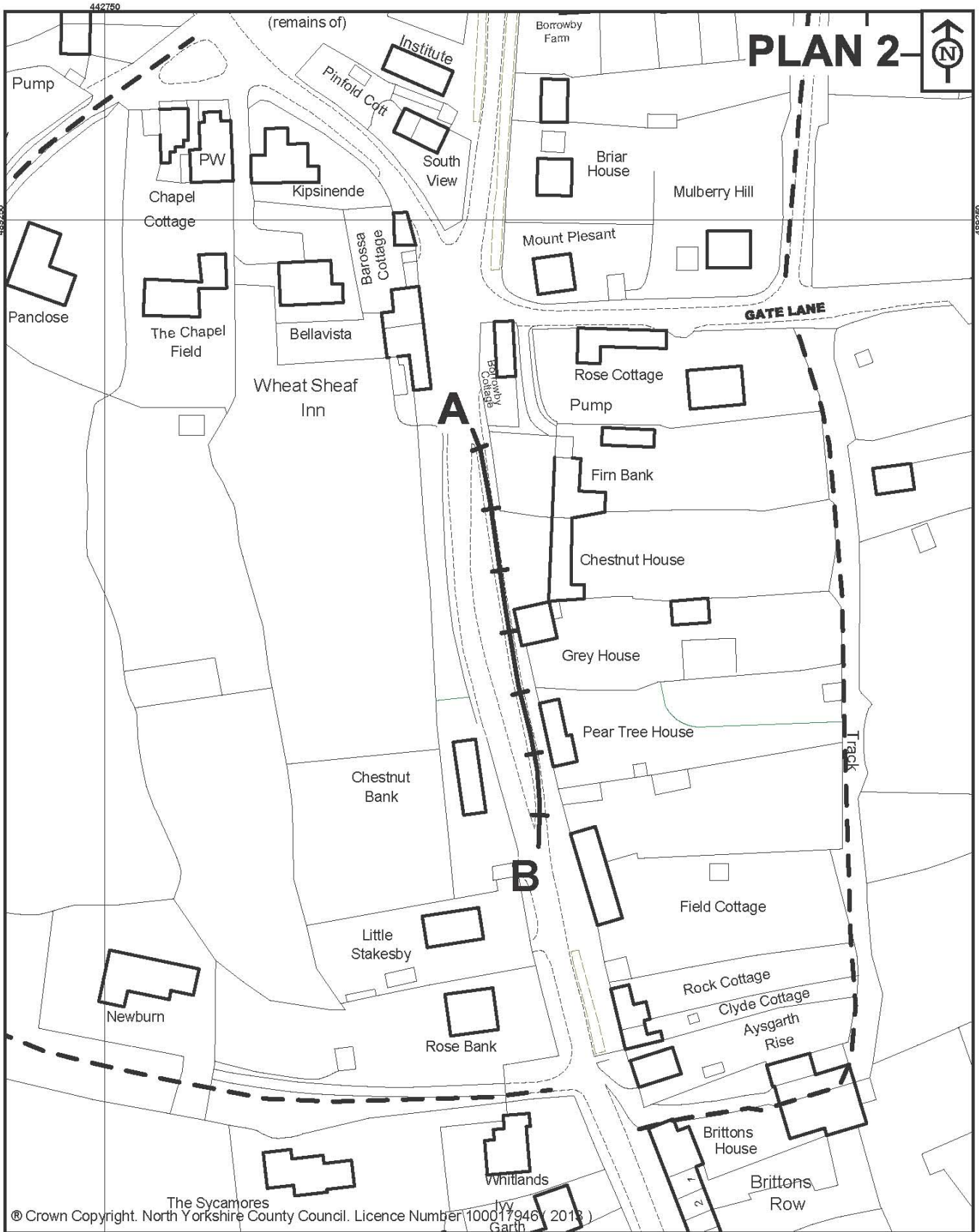
**PLAN 1
LOCATION PLAN**

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
bridleway at Chestnut Bank,
Borrowby



File Ref No. HAM/2006/01/DMMO



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North Yorkshire County Council

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

Key:
Application route 
Other footpaths 

PLAN 2

Map drawn on 11 July 2013
Drawn by BB Scale 1:1250

North Yorkshire County Council

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