

NORTH YORKSHIRE COUNTY COUNCIL**PLANNING AND REGULATORY FUNCTIONS SUB COMMITTEE****7 MARCH 2014****PUBLIC FOOTPATH No. 25.45/16, HELMSLEY, RYEDALE
MODIFICATION ORDER 2013****Report of the Corporate Director – Business and Environmental Services****1.0 PURPOSE OF REPORT**

- 1.1 To seek Members approval for the Corporate Director of Business and Environmental Services to refer the opposed Definitive Map Modification Order (DMMO) to record a public footpath between Pottergate and Bridge Street, Helmsley, Ryedale, to the Secretary of State for confirmation.

2.0 THE COMMITTEE'S RESPONSIBILITIES

- 2.1 The Committee, in considering the DMMO 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.

3.0 LEGAL IMPLICATIONS

- 3.1 Under Section 53(2) of the Wildlife and Countryside Act 1981 the County Council has a duty to keep the Definitive Map and Statement under continuous review, and to make a DMMO to modify the Definitive Map and Statement where as provided in section 53(3)(c)(i):-

the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the 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

- 3.2 In this instance a DMMO has been made in accordance with powers delegated to the Corporate Director Business and Environmental Services as no objections were received within time during the pre-order consultation.

- 3.3 The relevant legal test to be applied by the Secretary of State in determining whether or not this Order should be confirmed, after consideration of the relevant evidence is whether, on the balance of probabilities, the route should be recorded on the Definitive Map and Statement as a footpath.

4.0 FINANCIAL IMPLICATIONS

- 4.1 In submitting the DMMO to the Planning Inspectorate for determination by the Secretary of State there are financial implications for the authority in covering any cost associated with any subsequent public inquiry which is likely to be held. Such costs cannot be avoided where the Planning Inspectorate decides that a public inquiry should be held to resolve an application and in this case appointment of Counsel to provide advocacy at inquiry is likely to cost in the region of £3000.

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 TO THE MAKING OF THE ORDER

- 6.1 The application was submitted to North Yorkshire County Council on 6 August 2012, by Helmsley Town Council to record the route indicated as A – B on Plan 2 on the Definitive Map as a public footpath. The application was supported by 27 evidence use forms. A further 30 forms were received after the application was submitted.

- 6.2 The 57 evidence of use forms are represented in the bar chart below in Appendix 1. Of the 57 forms received, 21 were not taken into account as material evidence for reasons including:

- Use by permission
- Use by licence for deliveries to the premises
- Insufficient information provided
- Use outside the relevant period.

- 6.2.1 These 21 evidence of use forms are shown as grey lines (or left blank in the case of the forms with no dates of use) in the bar chart. The 36 remaining valid evidence of use forms are shown as black lines.

- 6.3 Of those 36 evidence of use forms, none of the witnesses report ever being prevented from using the route until it was fenced off during construction work in 2011. However four witnesses noted that there was a chain across the route but it was easy to either bypass or step over. It is not clear when the chain was put in place with 2005, 2007 and 2009 all being given as dates when the witnesses first noticed a chain.
- 6.4 One witness reports using the route once or twice each year, the remaining 35 all claim to have used the route more than ten times each year. The main reason given for using the route was as a shortcut to and from the shops in Helmsley town centre.
- 6.5 Although use of the route continued until 2011, one of the owners of the land crossed by the route (the objector below) had submitted a declaration made under section 31(6) of the Highways Act 1980 in 2005 stating that they had no intention to dedicate any rights of way across their property. Such declarations do not act retrospectively, therefore was only valid from the date of submission. The date of the declaration is the actual date at which the public's right to use the route was brought into question. The 20 year period of use of the route that has been considered in relation to the public's acquisition of rights was therefore 1985 – 2005.
- 6.6 A consultation was carried out between 13 May 2013 and 10 June 2013. No objections to the application were received during this period.
- 6.7 As sufficient evidence had been received to reasonably allege that public pedestrian rights had been acquired by 2005, and as no objections were received within the consultation period, an Order to record the route was "made" on 15 July 2013 and was the subject of statutory notification between 31 July 2013 and 11 September 2013.
- 6.8 One duly made objection was received during the notification period.

7.0 THE OBJECTION TO THE ORDER

- 7.1 One duly made objection to the Order was received during the consultation period following the sealing of the Order. The objection was made by one of the land owners affected by the order route.
- 7.2 Included with the objection were the following documents:
- A letter from the objector.
 - An undated photograph showing signs stating that there was private parking only.
 - A letter from the Duncombe Park Estate enclosing a copy of a letter and map sent to another resident of Helmsley.
 - 41 witness forms giving evidence that they believed the route was not public.

- 7.3 In the letter the objector stated that:
- there was no public right of way across the land when they purchased the property in 1989, nor was there a right across the surrounding land they purchased in 1991. where a newly built garage is now situated there used to be some sheds that were erected during the 1940s and subsequently burnt down in 2000.
 - a wall continued from the house to the door of what is now the Arts Centre (this building was originally the Quaker House) and there was a gate in this wall that was sometimes closed to prevent antisocial behaviour.
 - there were a large number of signs erected on the land which read "Private property, no bicycles or dogs allowed", "trespassers will be prosecuted", "Private land, customer parking only".
 - any users of the path had been given permission.
 - a two part chain had been placed across the way that entirely obstructed it and that it had always been there.
 - the recording of a public right of way adjacent to the property would have an adverse effect on its value.
- 7.4 The photograph supplied shows two signs attached to what appears to be the southern wall of the Helmsley Arts Centre. The signs read "Private parking. Unauthorised vehicles will be clamped. Pennita". (Apparently taken after March 2001 - "Y" registration car clearly visible).
- 7.5 The letter from the Duncombe Park Estate, dated 12 November 2012, expressed sympathy for the objector and enclosed a copy of a letter dated 24 May 2012 sent to an adjacent resident. The copy letter set out that the Estate believed that there was no access across the Order route and that the Estate granted a private right of access that leads from Bridge Street to Meeting House Court. The Estate commented that they were not aware of any rights of access from Pottergate to the land between Bridge Street and Pottergate.
- 7.6 The 41 forms submitted by the objector all state that the witnesses believed the route was permissive to enable them to get to the shop owned by the objector's family.

8.0 COMMENTS ON THE EVIDENCE

- 8.1 The evidence of use forms submitted with the application indicates that a body of people have used the claimed route for in excess of 20 years prior to the challenge in the form of the land owner's submission of the declaration under section 31(6) of the Highways Act 1980 in 2005.
- 8.2 During the period prior to 2005 36 witnesses have used the route, and 19 of them have individually used the route for in excess of twenty years. This appears to be sufficient use to have made the land owners aware that a right was being asserted against them.

- 8.3 The objector's comment that neither they, nor the Duncombe Park Estate, were aware that there was a public right of way across the land is consistent with the fact that there is currently no such way recorded on the Definitive Map.
- 8.4 It is implied that a shed may have blocked the way before being burned down in 2000. The County Council has obtained a photograph from the Helmsley Archive that clearly shows the aftermath of the fire, and it is apparent that the shed referred to would not have prevented access along the claimed route, and so has no relevance to whether or not the Order should be confirmed.
- 8.5 The wall and gate referred to by the objector is not mentioned by the witnesses who used the route. Photographs of the area allegedly taken in 1993 show the narrow passage past the objector's property. It is implied by the objector that it was this passage that was blocked to try and stop anti-social behaviour. However this is not mentioned by any of the witnesses therefore it would appear that they were not aware that their right to use the route was being called into question. In such circumstances the actions taken by the land owner cannot be seen as sufficient to prevent the dedication of a public right of way.
- 8.6 The signs in the photograph and those referred to by the objector allegedly make reference to discouraging use on bicycles, use with dogs or unauthorised parking of vehicles. There is no mention of preventing use on foot, and are therefore insufficient to prevent the dedication of a right of way on foot.
- 8.7 Use by permission to use a way would not qualify as contributing to dedication as a public right of way. However, there are 36 users who claim their use was without permission. This is deemed sufficient use to bring about a presumption of dedication.
- 8.8 The chain referred to by the objectors is corroborated by four of the witnesses. However, the earliest reported date the chain was in place was 2005. This contradicts the objector's statement that the chain had always been in place. The chain does not appear to have prevented access by pedestrians.
- 8.9 The impact of a public right of way on property values is not relevant to determining whether or not public rights have been established.
- 8.10 The letter from the Duncombe Park Estate is a restatement of the objector's position that they were not aware of any rights of way crossing the land.
- 8.11 The 41 forms submitted by the objector have all been completed by people who claim to have previously visited the objector's shop. As such their use was, in effect, at the invitation of the land owner and was not as of right. It is acknowledged that their use of the route does not contribute to the establishment of public rights, however there is substantive evidence from the other 36 evidence of use forms to support that their use of the route was as of right.

9.0 CONCLUSIONS

- 9.1 By submitting their section 31(6) declaration the land owner demonstrated that they had no intention to dedicate a right of way across their property from the time of the submission of that declaration, however such declarations do not act retrospectively therefore in this instance the declaration has no relevance to the use of the route prior to 2005.
- 9.2 There is sufficient evidence to demonstrate that prior to the declaration being submitted a public right of way on foot had been brought into being.

10.0 RECOMMENDATION

- 10.1 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 in any procedure that may be prescribed by the Secretary of State (public inquiry or similar) to assist in reaching their decision.

DAVID BOWE

Corporate Director – Business and Environmental Services

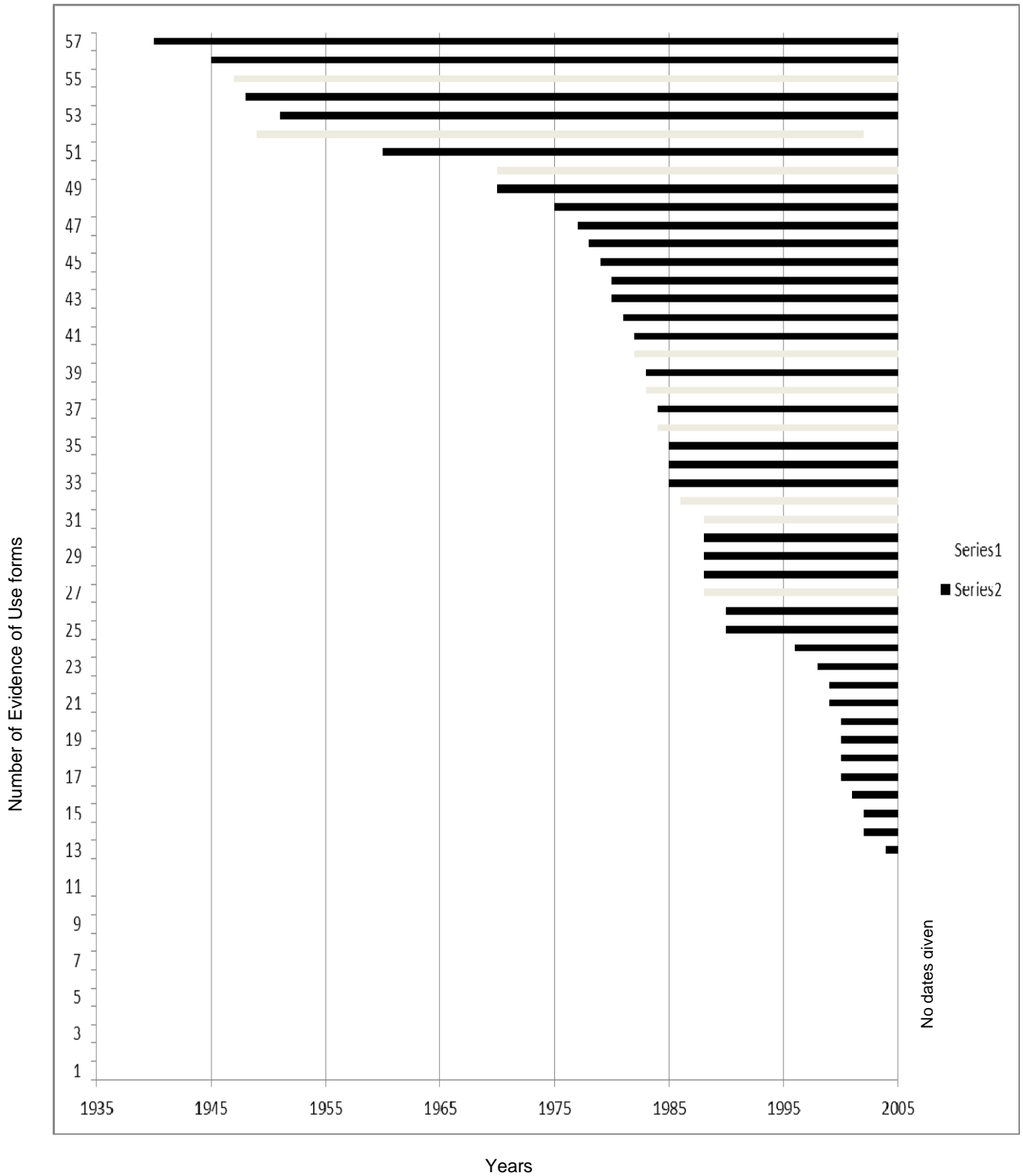
Author of Report: Russell Varley

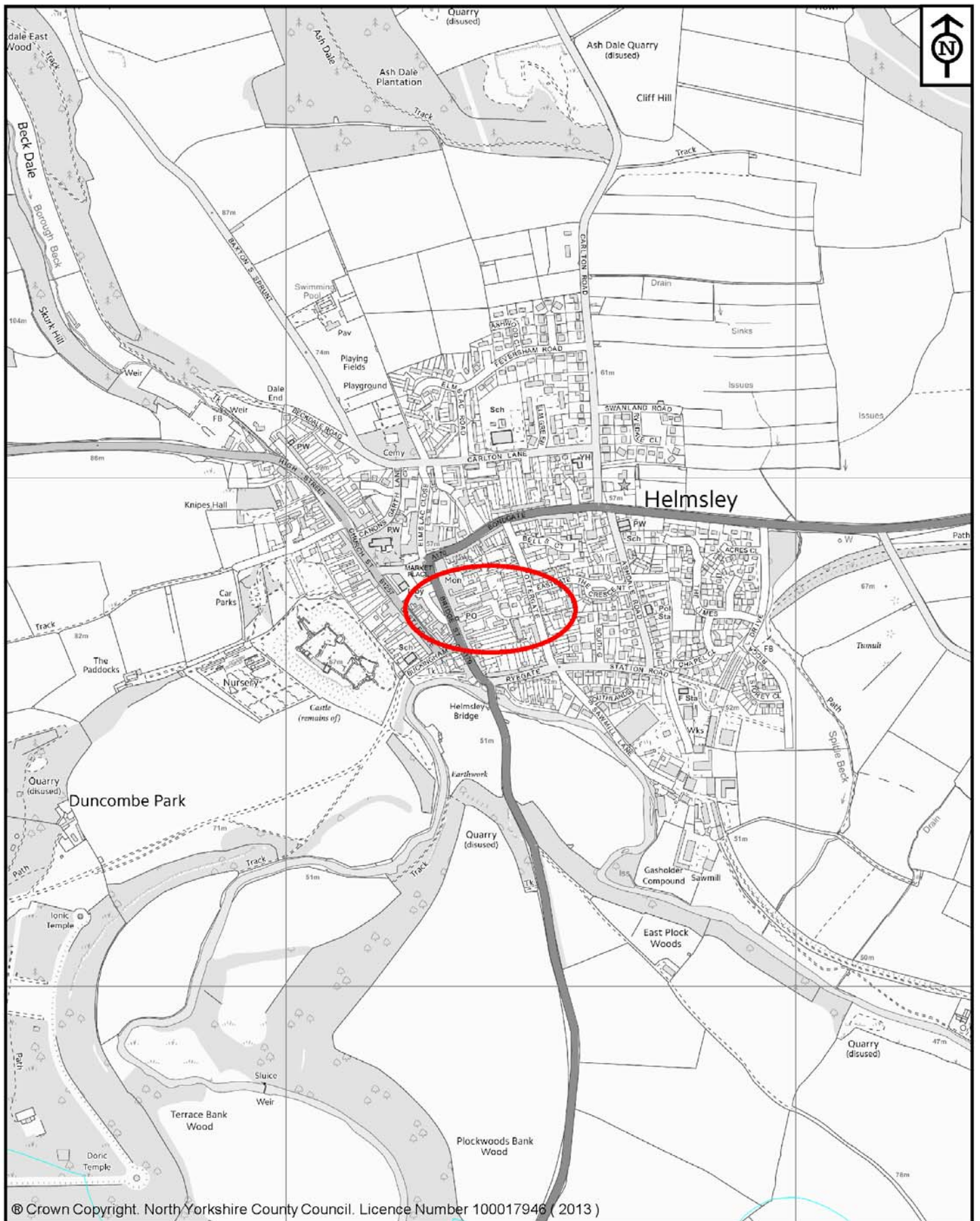
Background Documents:

- DMMO application dated 6 August 2012
- 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, 7 March 2014, Public Footpath No. 25.45/16, Helmsley, Ryedale Modification Order 2013, which will be available to Members at the meeting.

Chart showing the years of usage of the route






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North Yorkshire County Council

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

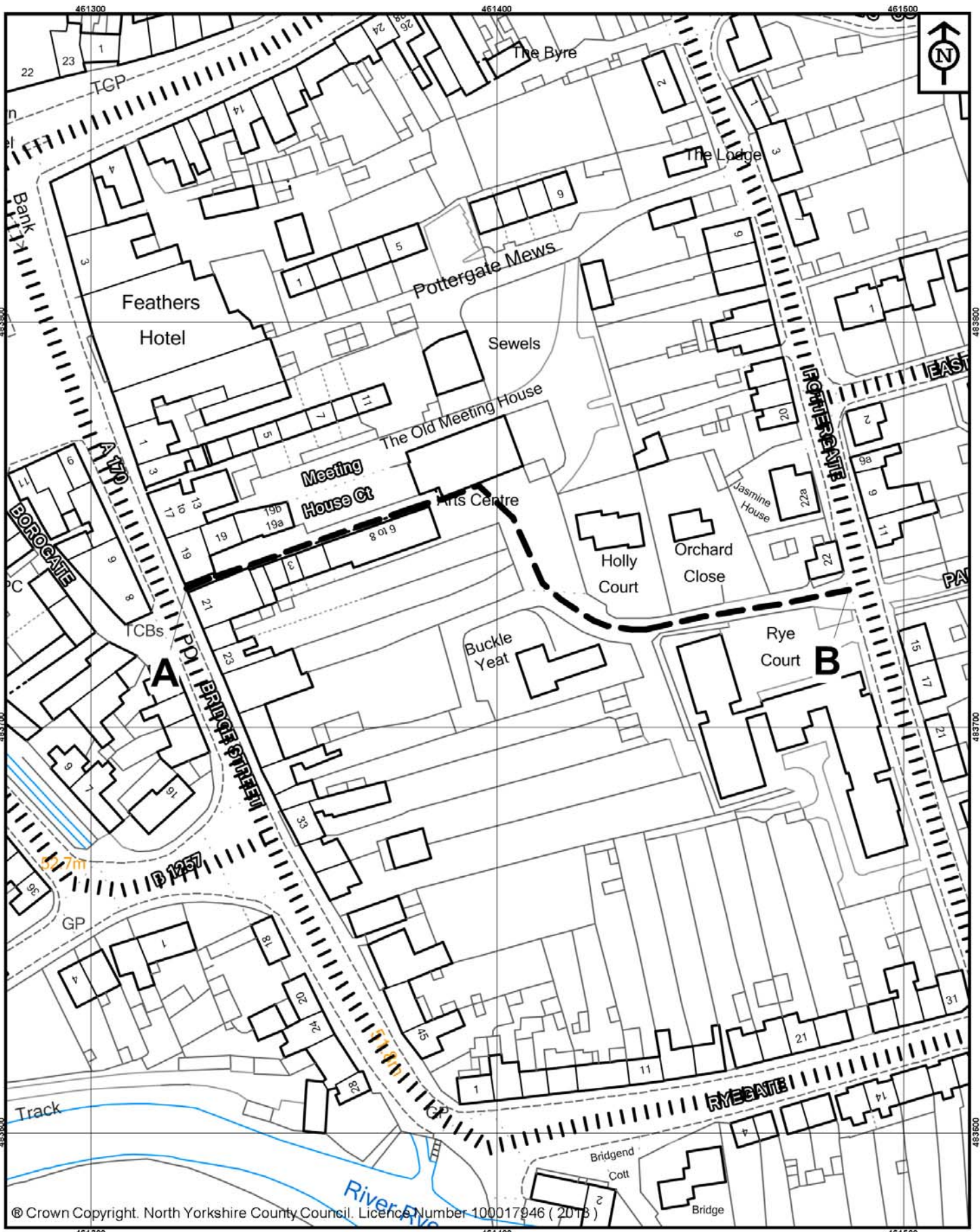
Key:
Location of Route 

Map drawn on 12 November 2013
Drawn by RJV Scale 1:10000

North Yorkshire County Council
Planning & Regulatory Functions Sub-committee
7 March 2014

Public Footpath No. 25.45/16,
Helmsley, Ryedale

File Ref No. RYE/2012/04/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 (A - B)
Maintainable highways

Map drawn on 12 November 2013
Drawn by RJV Scale 1:1250

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