

Agenda

Meeting: **Planning & Regulatory Functions
Sub-Committee**

Venue: **The Council Chamber, County Hall,
Northallerton, DL7 8AD**

Date: **Friday, 7 March 2014 at 10.00 am**

Business

1. Minutes of the meeting held on 15 November 2013. (Pages 1 to 13)
2. Public Questions or Statements.

Members of the public may ask questions or make statements at this meeting if they have given notice to Stephen Loach of Democratic Services (*contact details below*) no later than midday three working days before the day of the meeting. Each speaker should limit themselves to 3 minutes on any item. Members of the public who have given notice will be invited to speak:-

- at this point in the meeting if their questions/statements relate to matters which are not otherwise on the Agenda (subject to an overall time limit of 30 minutes);
- when the relevant Agenda item is being considered if they wish to speak on a matter which is on the Agenda for this meeting.

3. Application for Public Footpath No. 25.45/16, Helmsley, Ryedale Modification Order 2013 – Report of the Corporate Director, Business and Environmental Services. (Pages 14 to 22)
4. Application for Proposed Withdrawal of the Diversion Orders for Footpath No. 20.49/6, Newsham Hall, Newsham – Report of the Corporate Director, Business and Environmental Services. (Pages 23 to 27)
5. Other business which the Chairman agrees should be considered as a matter of urgency because of special circumstances

keep north yorkshire in touch

Carole Dunn
Assistant Chief Executive (Legal and Democratic Services)

County Hall
Northallerton

March 2014
SL/ALJ

Notes:

- (a) Members are reminded of the need to consider whether they have any personal or prejudicial interests to declare on any of the items on this agenda and, if so, of the need to explain the reason(s) why they have any personal interest when making a declaration.

The relevant Democratic Services Officer or Monitoring Officer will be pleased to advise on interest issues. Ideally their views should be sought as soon as possible and preferably prior to the day of the meeting, so that time is available to explore adequately any issues that might arise.

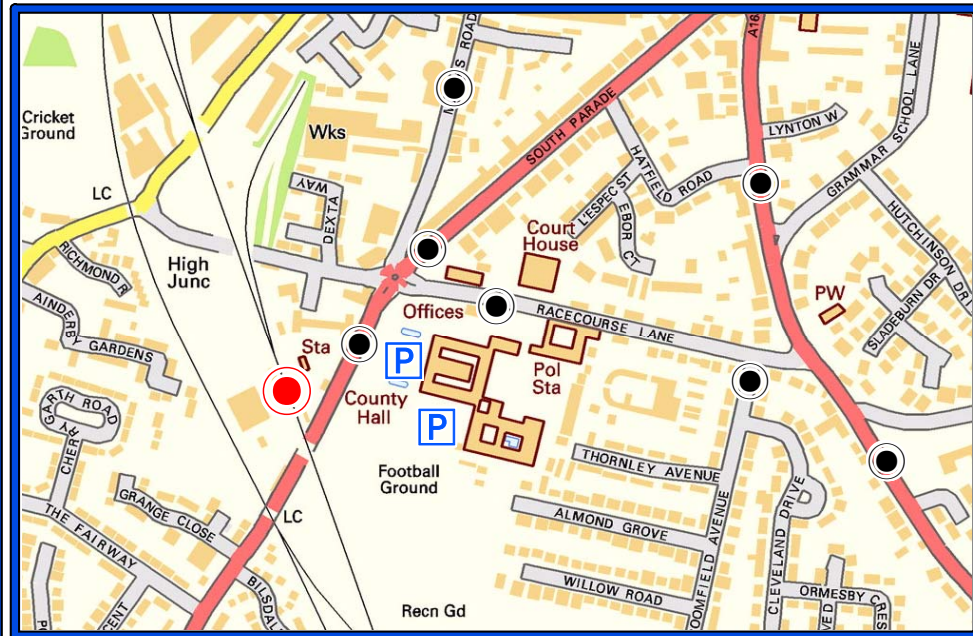
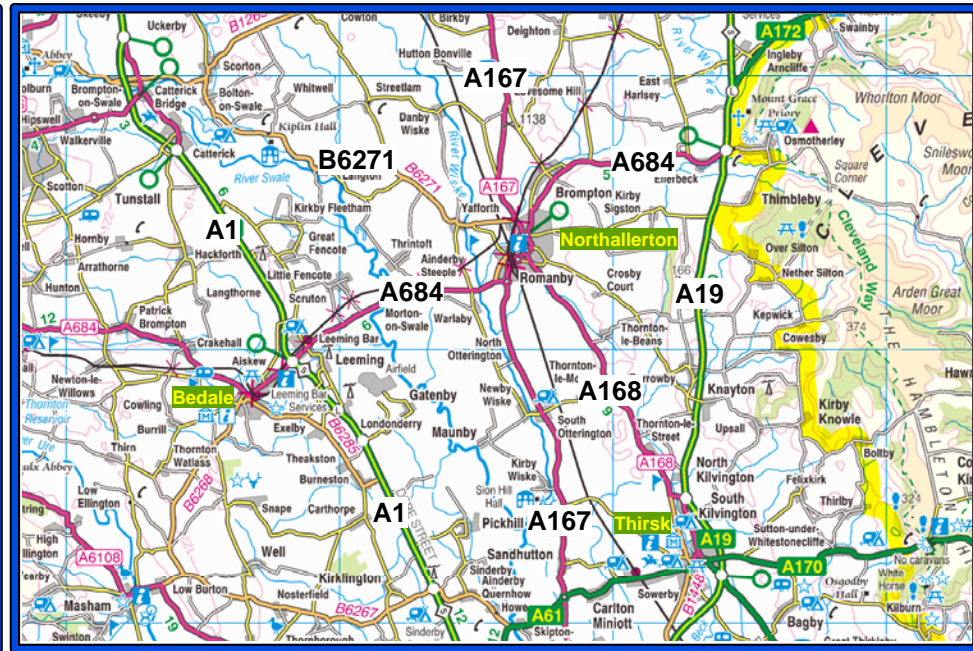
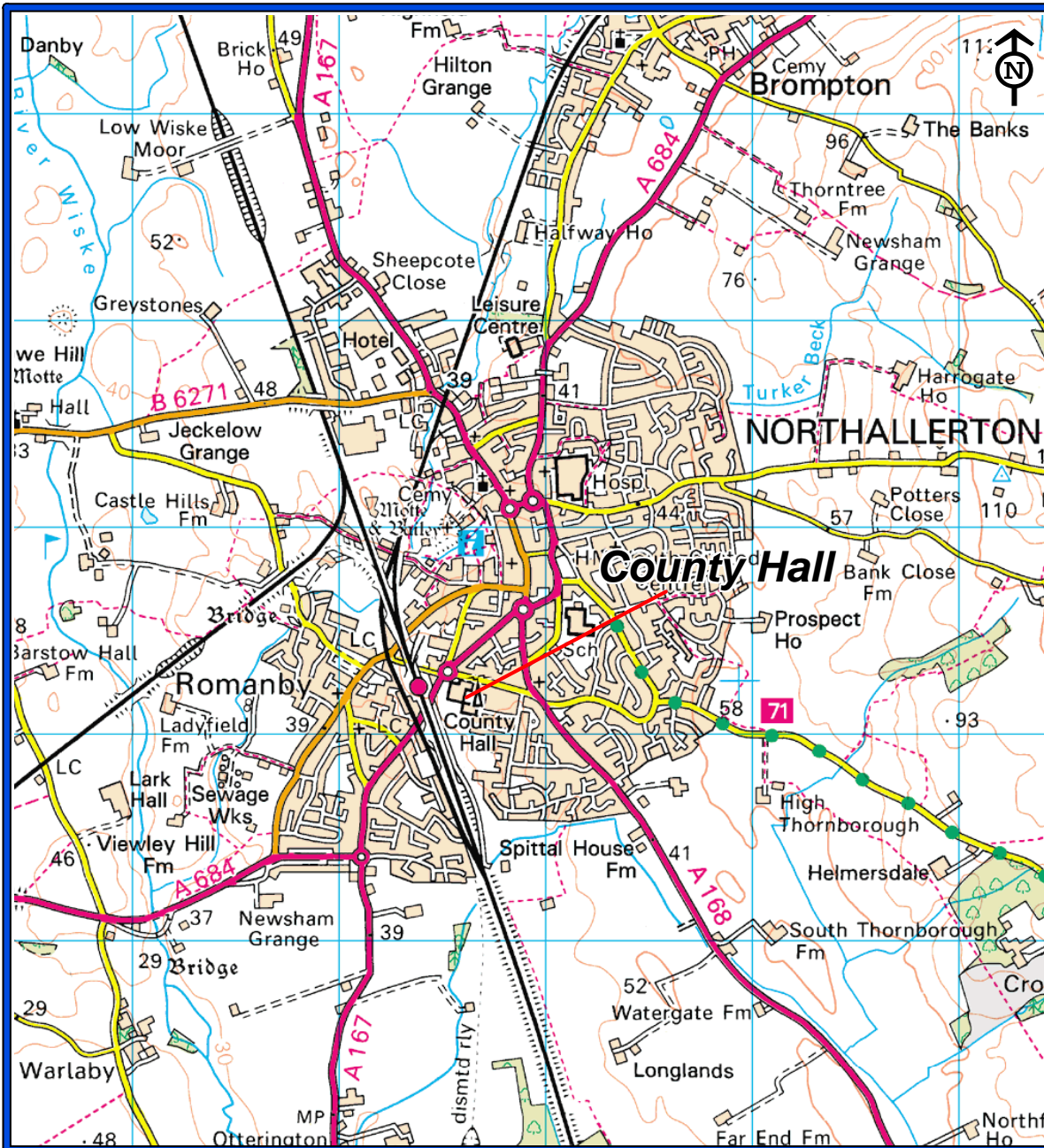
Planning and Regulatory Functions Sub-Committee

1. Membership

County Councillors (5)							
	<i>Councillors Names</i>				<i>Political Party</i>		
1	BLADES, David				Conservative		
2	HESELTINE, Robert				Independent		
3	HOULT, Bill				Liberal Democrat		
4	SANDERSON, Janet				Conservative		
5	TROTTER, Cliff				Conservative		
Total Membership – (5)				Quorum – (3)			
Con	Lib Dem	NY Ind	Labour	Liberal	UKIP	Ind	Total
3	1	0	0	0	0	1	5

2. Substitute Members

Conservative		Liberal Democrat	
	<i>Councillors Names</i>		<i>Councillors Names</i>
1		1	GOSS, Andrew
2		2	JONES, Anne
3		3	GRIFFITHS, Bryn
4		4	
5		5	
NY Independent		Labour	
	<i>Councillors Names</i>		<i>Councillors Names</i>
1		1	
2		2	
3		3	
4		4	
5		5	
Liberal		UKIP	
	<i>Councillors Names</i>		<i>Councillors Names</i>
1		1	
2		2	
3		3	
Independent			
1			



Visitor Parking
at County Hall



Northallerton National
Rail Station



Bus Stops

County Hall

Northallerton
North Yorkshire
DL7 8AD

Tel : 0845 8 72 73 74



North
Yorkshire County Council

North Yorkshire County Council

Planning and Regulatory Functions Committee Sub- Committee

Minutes of the meeting held on 15 November 2013, commencing at 10.00 am at Sutton-under-Whitstonecliffe Village Hall, Sutton-under-Whitstonecliffe, Thirsk.

Present:-

County Councillors Robert Heseltine (Chairman), David Blades, Bill Houlton, Janet Sanderson and Cliff Trotter.

There were six members of the public present.

Copies of all documents considered are in the Minute Book

12. Minutes

Resolved -

That the minutes of the meeting held on 20 September 2013, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

13. Public Questions or Statements

The Democratic Services Officer reported that other than those persons who had registered to speak on items listed on the agenda there were no questions or statements from Members of the public.

14. Application for Extinguishment of Footpath No. 10.110/5, Fairfield House, Northallerton

Considered –

The report of the Corporate Director, Business and Environmental Services informing 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 was attached to the report as Plan 1. The section of footpath proposed to be deleted was shown as A – B on Plan 2.

Members were requested to authorise the Corporate Director, Business and Environmental Services, to make a Public Path Extinguishment Order.

Definitive Map Team Officer, Andy Hunter, presented the report highlighting the Committee's responsibilities in terms of making an order stopping up a path were it appeared to the Council that it was expedient to do so on the grounds that it was not needed for public use. He outlined that this was the first stage of the process and if Members were to authorise an Order and no objections to the order were made then the

County Council could confirm this, subject to satisfaction that it was expedient to do so, having regard to the extent, and having regard to the effect the extinguishment of the right of way would have as respects to the land served by the path or way. Should objections to an Order be submitted, that were not subsequently withdrawn, then the Authority was minded to pursue the confirmation of the Order. The power of confirmation rests with the Secretary of State.

Mr Hunter outlined the background to the application and the representations that had been received against the proposed diversion. He noted that the Ramblers objected to the proposal pointing out that the footpath was long standing and had existed since 1952. The Ramblers believed the route should be open and, if it was, that the public would make use of it. The British Horse Society's representative had objected on the grounds that the reasons for the extinguishment were not reasonable or relevant.

Mr Hunter provided a comment on the objections raised and their implications for the application and provided a visual presentation, which gave details of the route and photographs of the route.

In conclusion he considered that, as the path was in an urban setting, the continuation of the path network was surfaced and there was an alternative adjacent existing surface path, the Council could justify making an Extinguishment Order on the grounds that the appropriate legal test was met.

A representative of the Ramblers, Mr John Marshall, addressed the Committee and spoke in objection to the application. He noted that around ten years ago he had reported an obstruction of the right of way indicated as A-B on the plan, submitted to the meeting, to the County Council. He also noted that the Definitive Map of 1951 showed a path through the fairground storage to the top of the Applegarth car park. He noted there was also a path, not shown on the plan, that went alongside the side of Sun Beck. He noted that since then further fairground equipment had been stored along the route of that path making it difficult to use and now a fence had been erected around that site blocking off the path completely. He noted that the path, therefore, was no longer available and, until today, nothing appeared to have been done about the situation. He noted that a previous site visit had seen agreement given to divert the path around the north edge, but this did not appear to have been followed through. He did not see any reason why the path could not go to the north of the fairground storage and thought that this proposal had been agreed.

A Member asked Mr Marshall to point out the area on the plan where the proposed diversion had been suggested. He highlighted that and also gave details as to the location of Sun Beck. Mr Marshall pointed out that it was difficult to stick to the route on the Definitive Map as cars encroached on to there, when parking in the car park. He did, however, indicate that the route could still be passed through.

Mr Marshall then reiterated that path A-B was a public right of way, which was historically on the map and had been walkable. He noted there were no records held by Hambleton District Council when the equipment had begun to be stored across that route and he noted that the change of use had just happened. He re-emphasised that the route had been blocked and considered that it was a duty of the County Council to re-open that as it had been blocked for around ten years.

He noted that there was a suggestion that a path around the outside of the car parking area could be a satisfactory diversion and he had been led to believe that this would be the solution to the issue.

Following the representations from Mr Marshall, Members discussed the report and information provided both with officers and Mr Marshall and the following issues and points were highlighted:-

- The County Council's legal representative, Laura Renaudon, stated that it was for the Committee to determine whether the path recorded was used by the public and, if so, then the application to extinguish should be refused. If an alternative route was available, without significant detriment to those using the path then it would be expedient to extinguish.
- Public Rights of Way Officer, Andy Hunter, noted that a consultation had taken place with regards to an extinguishment of the path in 2006, but there had been no consultation in relation to a Diversion Order. He noted that the landowner would not be happy with a diversion due to security issues which was why an extinguishment was being sought.
- A Member of the Committee noted that the issue had been under consideration for a number of years previously, and suggested that there was a significant problem in relation to the alternative route highlighted. He noted that this adjoined a route that allowed the children from Applegarth Primary School to walk alongside the culvert, unguarded against them falling in to that. He noted that the area was particularly dangerous when it was in flood. He stated that he hoped that consideration of this matter would assist in bringing a resolution to that issue. He noted that the stopping off of the current route would lead to there being no way of getting to the other side of the river, which again would prove dangerous. He suggested that the matter be deferred to allow further information to be submitted.
- The issue of the landowners security was questioned and it was clarified that the whole of the fairground compound had a high fence around it which cut across the recorded footpath and the landowner was questioning the security of his possessions should the route be re-opened.
- Details of where the primary school was situated in relation to the public footpath network were provided. It was noted that the County Council usually had responsibility for ensuring that footpaths were safe to use, with some exceptions, however, legal representative, Laura Renaudon, stated that it was difficult to see how the safety issue for children leaving the primary school affected the route A-B, which was under consideration. In response to that, a Member stated that the extinguishment of route A-B could not be undertaken as the alternative proposed was unsafe.
- Andy Hunter outlined the recorded footpath and the possible alternative. He noted that, on some of the track that the Councillor had indicated, this was not surfaced and that there may be safety issues near to the river, although there was a possibility that these issues could be addressed.
- The Chairman and a number of Members suggested that it may be worthwhile undertaking a site visit to the area to obtain first-hand knowledge of whether the alternative route was safe and whether there was a risk to the children coming from the primary school. Another Member emphasised that it was not the duty of the Committee to find a solution but to deal with the application in front of them. He considered

that if the extinguishment could not be undertaken without the safety concerns being addressed then the Committee should refuse the extinguishment order. The Chairman agreed with this stating that should the recorded path be extinguished then it would be lost forever and the alternative route would have to be used.

Resolved –

That the application to make an Extinguishment Order for the route shown as A-B on Plan 2, attached to the report, be refused on the grounds that the alternative route suggested following the extinguishment was considered to be unsafe and was a particular risk to the children of the nearby primary school should they chose to use that route;

That should the applicant wish to pursue the Extinguishment Order for the route shown as A-B on Plan 2 appended to the report then the application should be submitted to the Secretary of State for determination.

15. Application For Diversion of Footpath Nos. 10.92/3 and 10.92/4, Barker's Building, Cross Lane, Little Ayton

Considered –

The report of the Corporate Director, Business and Environmental Services seeking a formal resolution from Members to withdraw the sealed Diversion Order for footpath Nos. 10.92/3 & 10.92/4, Barker's Building, Cross Lane, Little Ayton. A location plan was attached to the report as Plan 1 and the details of the Order were shown on Plan 2.

Andy Hunter, Definitive Map Team Officer, presented the report highlighting the Committee's responsibilities in respect of the County Council having the discretion not to proceed with orders to which there had been representations or objections or to withdraw an order for other reasons, such as external factors making a scheme no longer appropriate. He noted that a formal resolution not to proceed was required from the Committee for this to take place.

He explained that the owner of Barker's Building had submitted an application to the Council to divert the footpaths as shown on Plan 2. An Order was made in 2008 in the interests of the landowner and objections were received from the Ramblers and a member of the public. The applicant subsequently sold the property and was no longer interested in the land or the diversion of the Rights of Way. The current landowner was aware of the sealed Order and the intention to abandon the Order. He was also aware that it was open to him to make his own application to the Authority if he wished to divert the Public Rights of Way across his land.

In conclusion Mr Hunter considered that the applicant no longer owned the property and therefore had no interest in pursuing the Order. To enable the procedure to be brought to a close the Committee was requested to make a formal resolution that the Diversion Order was not pursued to confirmation.

Resolved –

That the Committee authorises the Corporate Director, Business and Environmental Services to withdraw the sealed Diversion Order for footpath Nos. 10.92/3 and 10.92/4, Barker's Building, Cross Lane, Little Ayton.

16. Application to Record a Footpath to the Definitive Map off Mucky Lane, Easby, Stokesley

Considered –

The report of the Corporate Director, Business and Environmental Services advising 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 was attached to the report as Plan 1. The application route was shown as a dashed black line and marked A-B on the plan attached to the report as Plan 2.

Members were requested to authorise the Corporate Director, Business and Environmental Services, to make a Definitive Map Modification Order.

Beth Brown, Definitive Map Team Officer, presented the report highlighting the Committee's responsibilities in terms of the granting of Modification Orders. She outlined the legal implications under Section 53 of the Wildlife and Countryside Act 1981 which required a Highway Authority to make an Order where an application was supported by evidence showing that a Right of Way which was not shown on the map and statement, subsisted or was reasonably alleged to subsist. She also noted that under Section 31 of the Highways Act 1980 a statutory presumption arose that a way had been dedicated as a highway where the way had actually been enjoyed by the public, as of right, and without interruption for a full period of 20 years unless there was sufficient evidence that there was no intention during that period to dedicate it.

Mrs Brown outlined the background to the application which was submitted to the County Council on 9 April 2009 by a resident of Easby. The application followed the rejection of a previous application made in 2004 by Easby Parish meeting. The 2009 application was supported by evidence from the previous application, together with three additional evidence of use forms. Objections to both applications were received from the affected landowner, who had purchased the land in 2003. Following the purchase of the land the 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.

Mrs Brown stated that the application was supported by 24 Evidence of Use Forms highlighting use by the public between 1936 and 2003, a letter from the applicant detailing the reasons why she believed the previous application should not have been rejected and 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. Of the 24 forms, eight could not be used as evidence for public use of the route as 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 and one of the forms gave no dates of use. Of the 16 valid user evidence forms 11 witnesses stated they were never stopped or challenged when using the route, whilst five witnesses stated that they had been prevented from using the route by locked gates or signs since the new owners took over the land, or they had been challenged by the new landowners.

Three of the witnesses used the route once or twice a year, five used it up to ten times a year and seven witnesses claimed they used it more than ten times a year. A variety of reasons were given for using the route. It was noted that some of the routes provided within the evidence did not correspond, with two showing a route following the river and nine a more direct route corresponding with the Ordnance Survey map of 1894. The former landowner had noted that signs deterring people from using the application route

had been removed in 1916. He also noted that people had been actively encouraged to use the route with no measures in place to prevent it. A gate had been in place on the western end of the route but this had been to prevent livestock from escaping and had not been locked. The former landowner also asked that the current landowners remove a sign preventing people from using the route when he was made aware of this. Details of a letter dated 6 November 1985 relating to the repairs required for the stone bridge which are claimed to be on that route, needing urgent repair, and asking for a grant for that purpose were noted. At the time a reply had been given that there was no recorded public footpath across the bridge therefore the County Council were unable to help.

In terms of the evidence against the application the current landowners had submitted an objection stating that the land was never accessible to the public 24 hours a day, seven days a week, when the previous owner had been there. They also stated that people had used the claimed route with the permission of the previous landowner and that they were concerned about health and safety issues and the effect on their farming business. The current landowners requested that the evidence in their objection to the previous application be carried over to this application. Details submitted by the landowner suggested that the gates were tied shut at times during the ownership of the previous landowner and that many that had completed the evidence of use forms were employed by the previous owners and therefore the route was used by permission. The landowner also outlined his concerns regarding the affect the claimed footpath would have on his farming business noting that a dairy bull was kept in the fields alongside the path and could be a danger to the public. Seven written statements from local residents were submitted with the landowner's submission also objecting to the route.

Details of further submissions from the landowner and his wife were outlined. Mrs Brown provided a comment on the evidence provided and its implications for the application.

In conclusion Mrs Brown stated there were contradictions between the evidence of the users and the previous landowner and the current landowners but considered that evidence suggested that the route had been used by a number of people "as of right" for over 20 years prior to any challenge and a further group of people who had used the route with permission. The contradictions arose over the question of use by permission as opposed to use "as of right" with the current landowners stating that use was by permission only whereas statements from the previous landowner said that the use was "as of right". She considered that there was sufficient evidence to reasonably allege that a right of way existed along the claimed route and therefore that an Order should be made to add to the route to the Definitive Map as a public footpath.

She noted that should the Committee be minded to agree the application and an Order was made, the formal process would allow further investigations of evidence submitted to ascertain whether or not a public right of way existed on the balance of probabilities to confirm an Order.

Landowner, Mrs Andrea Chapman, addressed the Committee in objection to the application. She stated that 15 letters had been submitted in relation to the application stating that permission had been required to use the route or people knew that the route was private. A number had still used the route despite a sign being in place stating "no trespassers". People using the route had been challenged at the time. She noted that previous use had been for those working for the previous landowner. She considered the current route to be dangerous both in terms of livestock being present at the watering hole and the bridge along the route, following a structural survey, having been designated as dangerous. She noted there were other footpaths in the area that could be used to access and egress the area without having to use this particular path. She

noted that the County Council had previously stated that there were insufficient funds to repair the bridge as this was not dedicated as a footpath. She considered that the application was based on pure speculation and not facts.

Mr Robert Chapman, also the landowner, addressed the Committee and spoke in objection to the application. He noted that when he had bought the land he had been advised that there was one footpath that would have to be made safe for public use. He noted that a structural survey was undertaken on the bridge which had determined that to be unsafe. He stated that if the footpath was to open along that route, then unless repairs in the region of £60,000 were undertaken, the bridge could not be used. He also outlined the dangers of the public using the area near the watering hole and the potential risk to their safety from livestock around that area. He considered that a risk assessment would have to be undertaken to determine whether the route was safe or whether people were in danger from using that. He noted how the potential of opening the route could split his land ownership. He stated that people had asked for permission to use the route and he had stopped them due to safety concerns. He highlighted the dangers of people walking along a route that had livestock walking around freely. In response to a question from a Councillor he noted that there were no stiles along the route but there were gates at either end. He noted that the walls of the bridge along the route were unsafe and were likely to collapse should anyone lean against them. He highlighted the report produced by Jacobs in relation to this. Members noted the health and safety concerns that had been outlined by the landowners, however, the County Council's legal adviser, Laura Renaudon, stated that Members were required to determine whether the claimed route was reasonably alleged to exist and not on the safety aspects of the route.

Local resident, Mrs Grace Wade, addressed the meeting and spoke in objection to the application. She considered that the route had been used to gain access to properties, with the permission of the landowner. She considered that there would have been difficulty using the route for the 20 years stated because of the unsafe state of the stone bridge. She noted that there was a gate on the other side of that. She provided a photograph giving details of a sign that she stated had been in place for 30 years plus which stated "private fishing – no trespassing". She noted that there was no reference to the route on the Definitive Map and that there were other, alternative public footpaths available in the area.

Mr John Foster, on behalf of the applicant, addressed the Committee and spoke in favour of the application. He stated he had been a resident of Low Easby for the 20 year qualifying period and during that time had used the route extensively and had never been challenged or stopped. He considered that the route had always been used as a footpath, with no locked gates in place and nothing to deter anyone from using that route. He noted that those trying to use the route had never been challenged or stopped previously and suggested that the application should be approved.

In response to questions from Members he noted that he had walked his dogs along the route regularly and had not been challenged or encountered any locked gates. In terms of the stone bridge he noted that he had walked across that regularly without any problem. He stated that he had walked the route during the qualifying period.

County Councillor Heather Moorhouse, whose electoral division the application was in, addressed the meeting and stated that the village was split on the matter. She noted that issues relating to the safety of the bridge had been discussed back in 1976. She noted that there had been little chance of this being replaced in the intervening period.

Following the representations, Members discussed the report and information provided both with officers and those present and the following issues and points were highlighted:-

- A Member asked what risk would there be to the landowner should the application for the route be approved. In response the County Council's legal adviser, Laura Renaudon, emphasised that the issue was not relevant to the Committee's decision as they had to merely concern themselves with whether the route was reasonably alleged to exist over the 20 years period indicated.
- It was noted that the application was submitted when the current landowners had prevented the use of the route. The issue for Members related to whether permission had been given for the use of the route during the qualifying 20 year period.
- It was emphasised that the current condition of the bridge should not affect the Committee's determination of the application as they were required to determine whether the route was reasonably alleged to exist during the qualifying 20 year period.
- It was noted that should objections to the application continue, should the Order be minded to be granted by the Committee, then the next stage of the process would be invoked and the matter would be subjected to a public inquiry.

Resolved –

- (a) That the Corporate Director - Business and Environmental Services, be authorised to make a Definitive Map Modification Order to record the route shown as A-B on Plan 2 of the report to be shown on the Definitive Map as a Public Footpath; and
- (b) That in the event that formal objections were made to that Order, and were not subsequently withdrawn, authorisation be given to 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 could support confirmation of the Order.

17. Application to Record a Public Bridleway at Chestnut Bank, Borrowby

Considered –

The report of the Corporate Director, Business and Environmental Services, advising 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 was attached to the report as Plan 1. The application route was shown as a solid black line with bars at intervals and marked A-B on the plan attached to the report as Plan 2.

Members were requested to authorise the Corporate Director, Business and Environmental Services, to make a Definitive Map Modification Order.

Definitive Map Team Officer, Beth Brown, presented the report highlighting the Committee's responsibilities in terms of the granting of Modification Order applications. She explained the legal implications under Section 53 of the Wildlife and Countryside Acts 1981 which required the County Council to keep the Definitive Map and statement under continuous review and provided details of situations where the Definitive Map and Statement should be modified.

Mrs Brown stated that the application had been submitted to the County Council on 10 April 2006 by Borrowby Parish Council to record the route identified on Plan 2 (known locally as Chestnut Bank) on the Definitive Map as a public bridleway. The application was submitted following concerns raised to the Parish Council by local residents that some householders adjacent to the claimed route would look to incorporate this into their properties, which would stop public use. Following an initial consultation a joint response was received from the residents of five properties adjacent to the claimed route stating that although they were happy for this to be recorded as a public footpath they objected to it being recorded as a public bridleway. Details of the route were provided and a series of photographs were shown to give Members visual context of the route. It was noted that ownership of the claimed route could not be identified, that it was most likely a public highway but was not part of a route recorded on the List of Streets.

She noted that the application was supported by 72 evidence of use forms claiming the use "as of right" from the 1930's up until 2006 when the application was submitted. Of those forms, six did not show use of the route "as of right" so had been discounted from the supporting evidence. Of the 66 valid evidence of use forms all had used the routes on foot, 41 stated that they had used it on a bicycle, 19 on horse-back and 13 motor vehicles. None ever sought or were given permission to use the route. The majority used the route for safety reasons, to avoid the tarmac road which was narrower and steep at this point with no pavement. None of the witnesses stated that they were ever stopped or challenged when using the route although some referred to a skip being left on the route while building works were carried out at one of the properties during 2005. As they had been no effective challenge to the public's use of the route the relevant 20 year period was calculated back from the date of the DMMO application to 1986.

Mrs Brown stated that 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 they believed it had always been a public footpath and were objecting to the claim that it was a bridleway. They considered that other than pedestrian usage the claims made in the evidence of use forms were greatly exaggerated. They noted that until 1960 the Grey House was a pub with a blacksmiths at the rear which would account for the high numbers of equestrian, cycle and motor vehicle users.

In terms of historical and other evidence old maps and the tithe map for Borrowby all showed the claimed route as being within the same parcel of land as the main road through the village. It had been established that the claimed route would have highway rights, even though the track itself was not maintained by the County Council.

In response to the evidence Mrs Brown stated that the historical evidence together with the user evidence showed that the route had been used for a period well in excess of the required 20 years. She noted that the main issue for Members to determine was whether the route was a public footpath or was a bridleway, in line with the application submitted. She noted that the Natural Environment and Rural Communities Act (NERC) 2006 extinguished any unrecorded rights for mechanically propelled vehicles and amended previous legislation to the effect that such rights could not be acquired through public use. This meant that motor vehicle use had to be discounted from the evidence

and the highest status that could be recorded for the claimed route was a restricted byway. In view of the evidence of use forms submitted indicating that there had been equestrian, cyclist and motor vehicle use of the route, and taking account of the NERC Act 2006 it was suggested that rather than an Order being considered for a bridleway, the route should be considered as a restricted byway.

In conclusion Mrs Brown stated that for the route to be added to the Definitive Map the Authority had to be satisfied that the public right concerned was reasonably alleged to exist. In line with the issues highlighted above, she suggested that should Members be minded to make the order then this should be added to the Definitive Map as a restricted byway, rather than a bridleway.

Members discussed the report and information provided with officers and the following issues and points were highlighted:-

- It was clarified that as the route was not on the List of Streets and, therefore, not maintainable by the County Council, then higher rights did not exist above a restricted byway.
- Members noted that the application submitted was for a bridleway, therefore, the recommendation of officers was for a route with higher rights. In response Beth Brown stated that the evidence supplied indicated that the route, in line with the NERC Act 2006, should be considered as a restricted byway, should Members be minded to approve the application.
- It was noted that there had been no objections to people walking along the route, however, some local residents were concerned about the route being used by cycle, horse back and motor vehicle.
- It was noted that there had not been any prevention of use of the route during the qualifying 20 year period.
- It was also noted that it was a pure coincidence that the application had been submitted at the time when the NERC Act 2006 came into being.

Resolved –

- (a) That the Corporate Director - Business and Environmental Services be authorised to make a Definitive Map Modification Order to record the route shown as A-B on Plan 2 of the report on the Definitive Map as a restricted byway; and
- (b) That in the event that formal objections were made to that Order, and were not subsequently withdrawn, authorisation be given to refer 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 could support confirmation of the Order.

18. Application to register land as a Town or Village Green - The Green, Main Street, Seamer

Considered –

The report of the Corporate Director, Business and Environmental Services on an application (“the Application”) for the registration of an area of land at The Green, Main Street, Seamer, identified on the plan at Appendix 1 (“the Application Site”) as a Town or Village Green.

Mr Doug Huzzard, Highways Asset Manager, presented the report, highlighting the legal criteria under the provisions of the Commons Act 2006 for the registration of land as Town or Village Green. He provided full details of the criteria and noted that all had to be met for an application for Town or Village Green status to be approved.

Mr Huzzard gave a presentation of photographs of the site and noted that it was owned by Seamer Parish Council. The application site was situated at the junction of Main Street and a road known as The Green in northern Seamer. Details of the boundary and access to the site were provided.

The application was submitted by Seamer Parish Council and accepted by the County Council in October 2012. The evidence accompanying the application provided a conveyance dated 15 March 1981 indicating the application site had been transferred to the Parish Council and there was no leaseholder of the land nor any proprietor of any relevant charge over the application site. A copy of the Register of Title was received by the Registration Authority in February 2013.

It was noted that there were no objections to the application.

In conclusion Mr Huzzard stated that the Committee must be satisfied, through the evidence available, that all the criteria contained with the relevant Act were met. It was his view that on the balance of probabilities those had been satisfied.

Members asked whether conditions could be attached to the registration that the Village Green be made fully accessible to the public, noting a sign that had been erected by the Parish Council, which indicated that certain sports and pastimes could not take place within the grounds to be registered. The County Council’s legal adviser, Laura Renaudon, indicated that once the land had been registered as Village Green then it would be understood that the public could use the registered land for lawful sports and pastimes.

Resolved –

That Application Site identified as The Green, Seamer be registered as a Town or Village Green.

19. Application to Register land as a Town or Village Green – Staveley Village Green, Staveley

Considered –

The report of the Corporate Director, Business and Environmental Services on an application (“the Application”) for the registration of an area of land at Staveley identified on a plan attached to the report (Appendix 1) (“the Application Site”) as a Town or Village Green.

Doug Huzzard, Highways Asset Manager, presented the report, noting that, at its previous meeting, the Committee had deferred the application to allow further investigation to be made into the issues raised by an objector.

Mr Huzzard summarised the legal issues to be determined by the Committee in relation to the application under the provisions of the Commons Act 2006.

He noted that the application site, which was shown as a hatched area on a plan appended to the report, was owned by Staveley Parish Council. This was a triangular piece of land situated at the junction of Main Street, Minskip Road and the flats in East Staveley. The site formed an island and was surrounded by publically maintainable highway.

The application was submitted by Staveley Parish Council in April 2013 and was accepted as duly made in May 2013 by the County Council.

An extract from Harrogate Borough Council's on-line planning application information confirmed that planning permission for the change of use of the application site from allotments to Village Green status was granted in August 1987.

Mr Huzzard referred to the questions submitted to the previous meeting by a Mr David Rice of Gloucestershire suggesting that a section of the application site was public highway and that the area of highway land should be removed from the application before registration took place. Mr Huzzard provided pictorial details, by way of a photographic presentation, of the suggested public highway section indicated by Mr Rice. He noted that on one edge of the application site was a one metre strip of land maintainable at public expense, highway land, which was currently maintained by the Parish Council. He noted that the bus shelter, street lighting, waste bin and notice board within the land all belonged to the Parish Council. He noted that a number of stones had been placed by the Parish Council, within the strip of highway land, to prevent parking on the grass there, but as this strip of land was maintained by the Parish Council it was felt unreasonable for the County Council to ask them to remove these. In conclusion Mr Huzzard stated that for the application to be approved the Committee must be satisfied that on the evidence available the criteria contained within the Commons Act 2006 had been met and in his view, on the balance of probabilities, he was satisfied that this was the case.

Following the presentation Members raised the following issues:-

- It was asked, as the Parish Council maintained the strip of land which was public highway, whether they could claim ownership of that. In response Mr Huzzard stated that there was an agreement for them to maintain this piece of land on behalf of the County Council and many such agreements existed throughout the County. This did not mean that they could claim ownership to that land.
- Members considered that the issues raised by Mr Rice in his questions had been fully answered by the presentation provided to the meeting.

Resolved –

That the Application Site identified as Staveley Village Green be registered as a Town or Village Green.

The meeting concluded at 11.35 am.

SL/ALJ

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

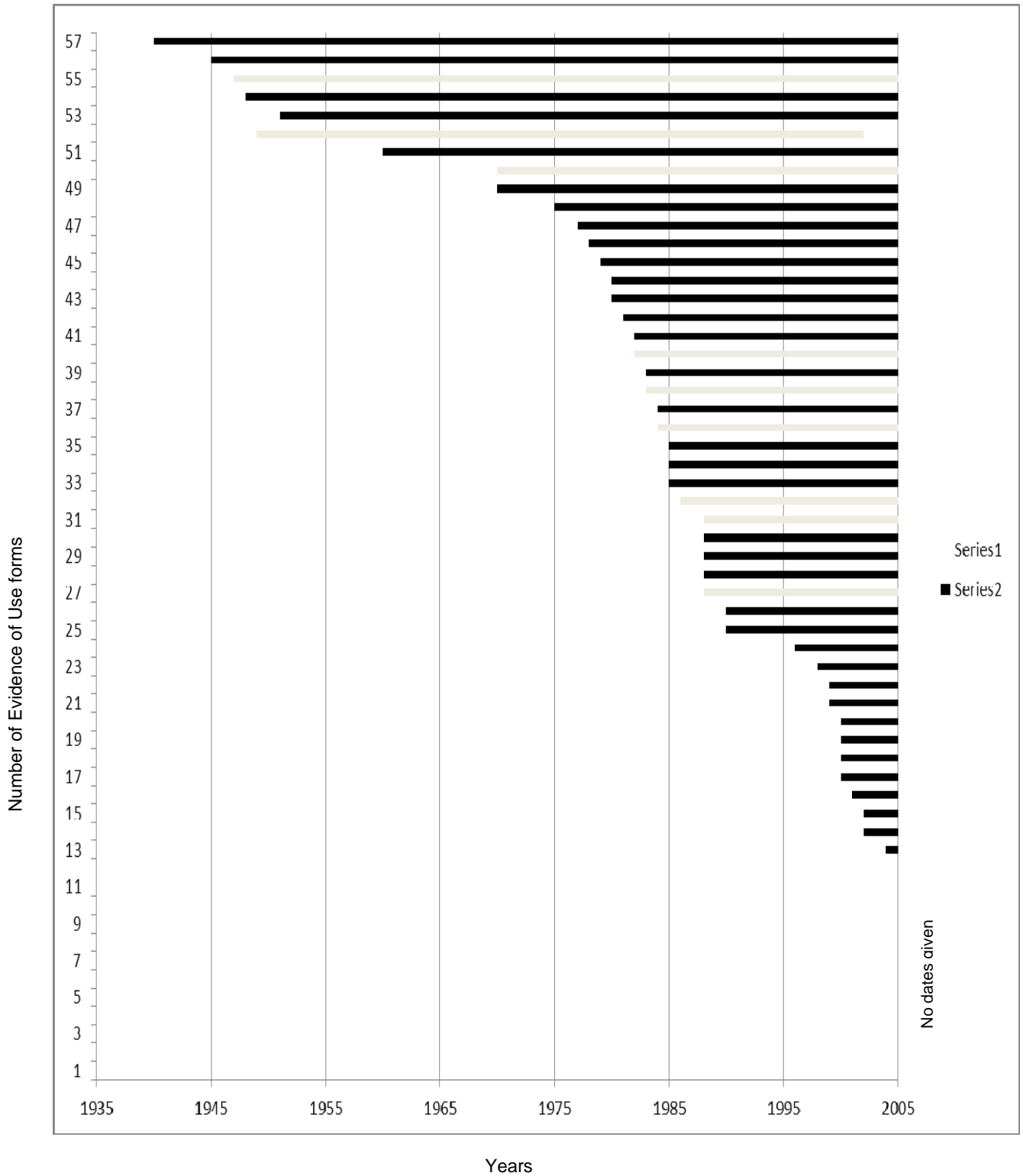
Author of Report: Russell Varley

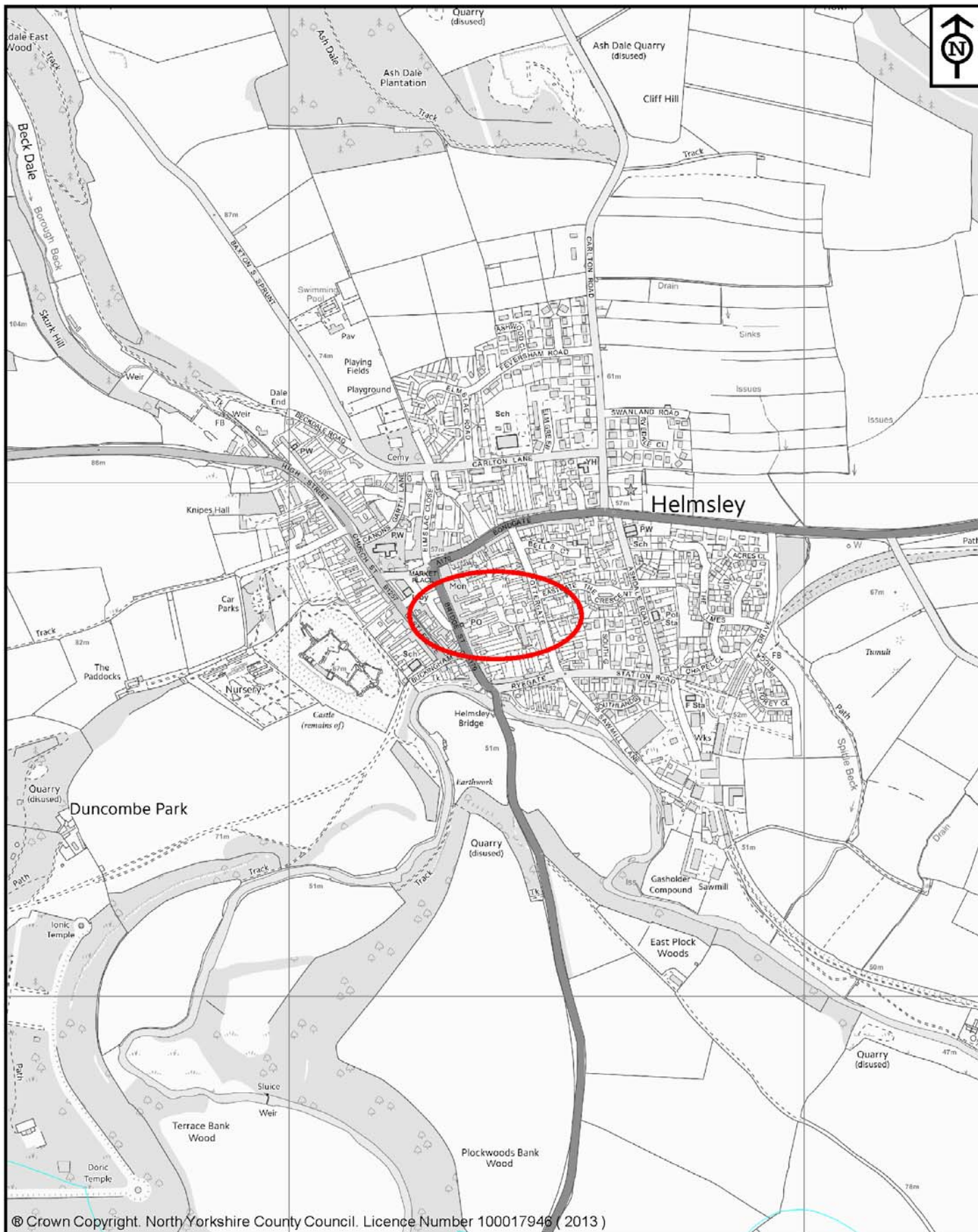
Background Documents:

- 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






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

North Yorkshire County Council

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

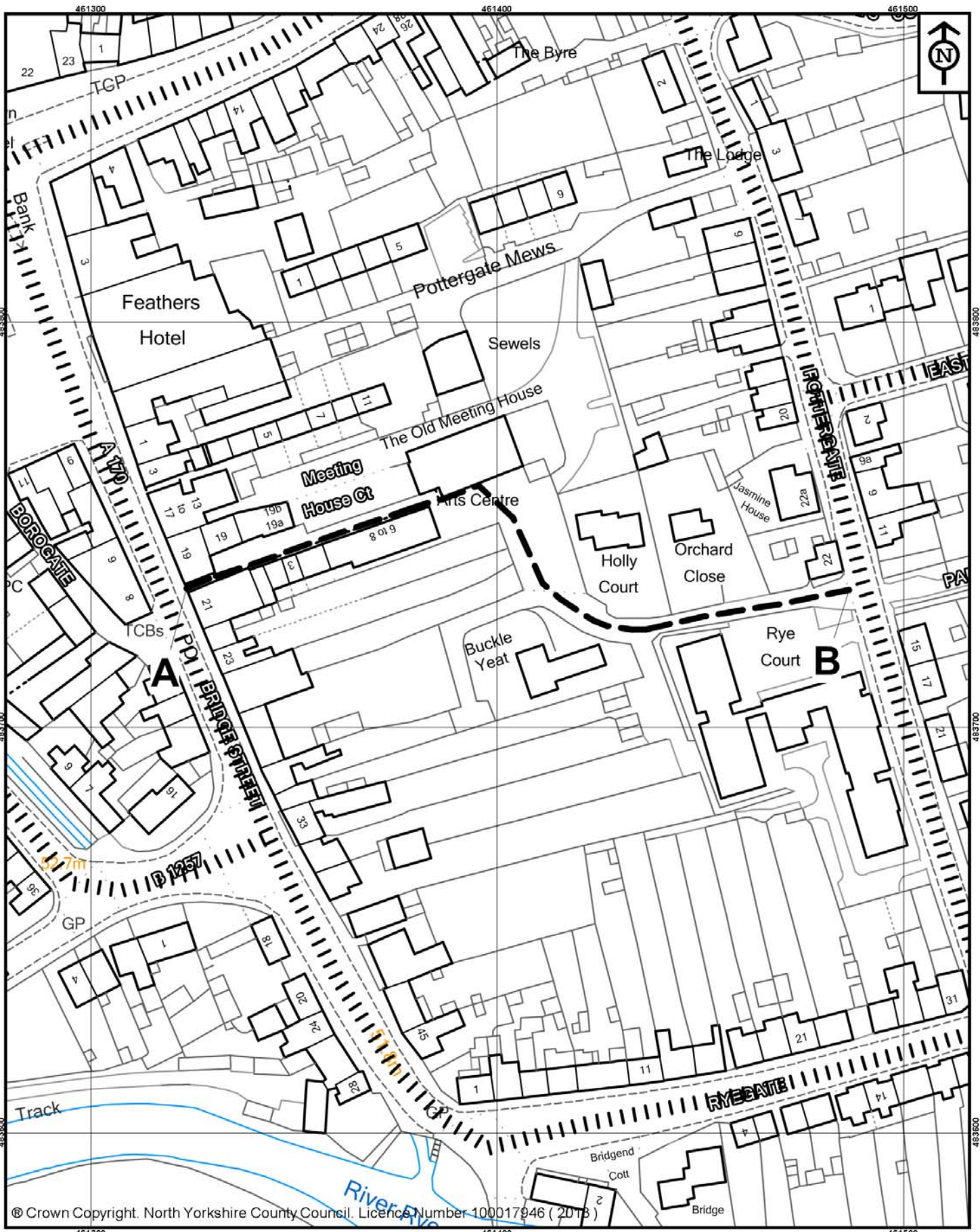
Key:
Location of Route 

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



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

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

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

NORTH YORKSHIRE COUNTY COUNCIL**PLANNING & REGULATORY FUNCTIONS SUB-COMMITTEE****7 MARCH 2014****PROPOSED WITHDRAWAL OF THE DIVERSION ORDERS FOR
FOOTPATH NO. 20.49/6, NEWSHAM HALL, NEWSHAM****1.0 PURPOSE OF THE REPORT**

- 1.1 To inform Members and to seek the formal resolution not to proceed to confirm the sealed Diversion Orders for footpath No. 20.49/6, Newsham Hall, Newsham. A location plan is attached to this report as **Plan 1**. The effect of the Orders is shown on **Plan 2**.

2.0 LEGAL IMPLICATIONS

- 2.1 The County Council has the discretion not to proceed with Public Path Orders to which there have been 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 Council must make a formal resolution not to proceed, and it is such a resolution which is sought by this report.
- 2.2 If the Committee makes a formal decision not to proceed with the Order, the applicant and those who have previously made representations or objections to the Order, will be notified.

3.0 BACKGROUND

- 3.1 An application was submitted to the Council under Section 119 (1) of the Highways Act 1980 to divert the footpath at Newsham Hall as shown on Plan 2.
- 3.2 The applicant sought to divert the path from a route crossing the gardens of three proposed residential properties onto a new route along the access to the new estate and passing through a snicket between two other proposed properties.

- 3.3 An Order was made in 2006, by which time some of the new properties had been sold. The Order was abandoned due to a procedural error relating to the public notification of the Order. A second Order proposing the same diversion of the footpath was made in 2007 and 6 objections were received from residents who were now living within the new development. One letter in support of the proposed diversion was also received.
- 3.4 In the light of the objections to the second Order, and following consultation with the Parish Council, it was considered that there was little merit in pursuing the Diversion Order, particularly as there is a further public footpath lying just to the west of the Order route that serves much the same purpose as the Order route.
- 3.5 As an Order has been made, and as the authority is required to make a formal resolution not to proceed, the Planning and Regulatory Functions Sub-Committee is being requested to authorise the withdrawal of the 2006 and 2007 Orders. Interested parties would be notified.
- 3.6 The consequence of the abandonment of the Diversion Orders would be to leave the footpath on the original alignment shown A – B on Plan 2, however, as this route has historically been obstructed, and as there is a nearby alternative footpath, a further proposal is being considered to promote an order to extinguish the original route.

4.0 FINANCIAL IMPLICATIONS

- 4.1 If the Orders were to be abandoned, there would be no financial implications for the authority.

5.0 IMPLICATIONS FOR EQUALITIES

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

6.0 CONCLUSION

- 6.1 As there is adequate existing provision by the rights of way network close by to the order route there is no need for the diversion orders concerned. The Committee is therefore requested to make a formal resolution that the Diversion Orders are not pursued to confirmation.

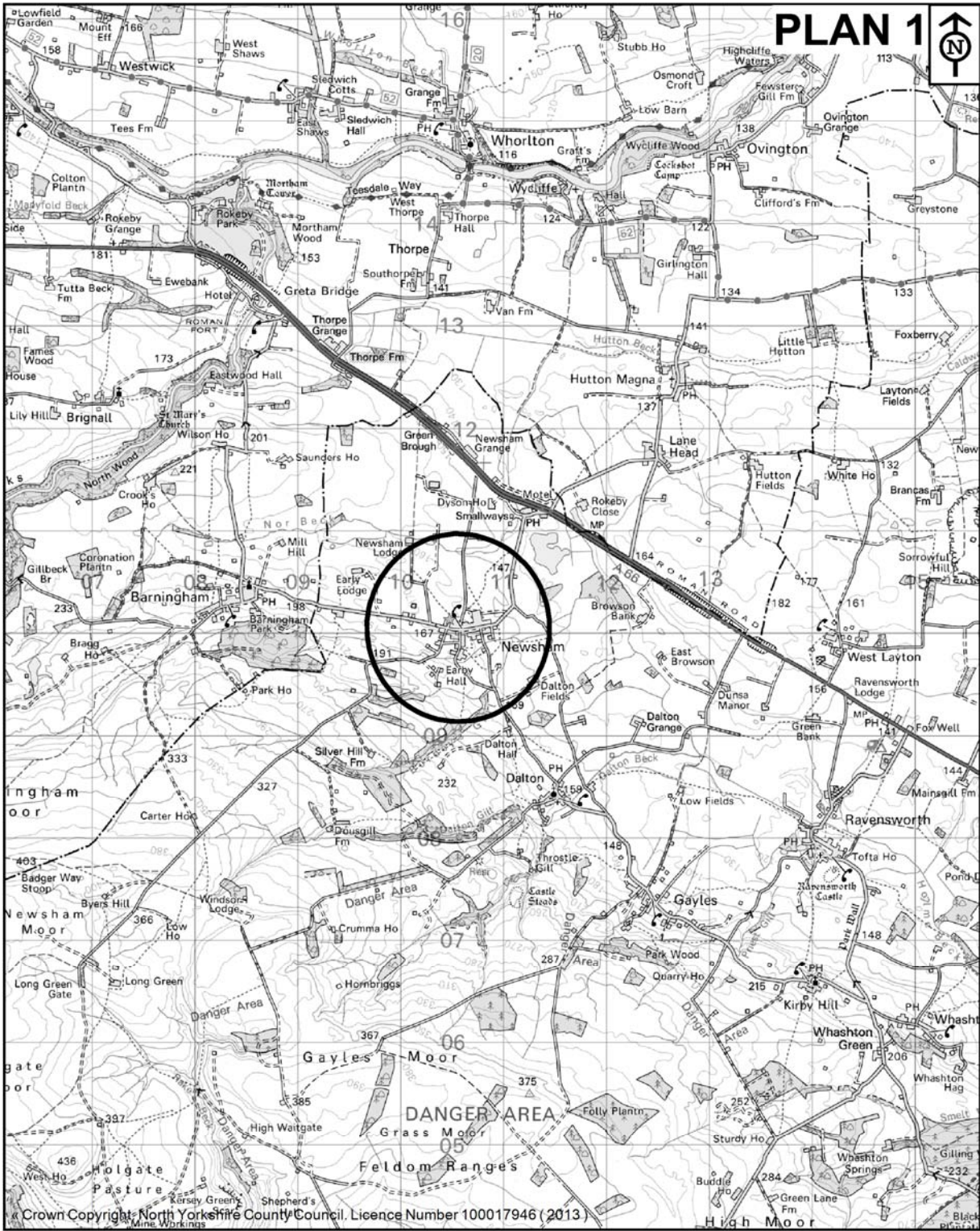
7.0 RECOMMENDATION

- 7.1 It is recommended that the Committee authorise the Corporate Director, Business and Environmental Services to withdraw the sealed Diversion Orders for footpath No. 20.49/6, Newsham Hall, Newsham referred to in this report.

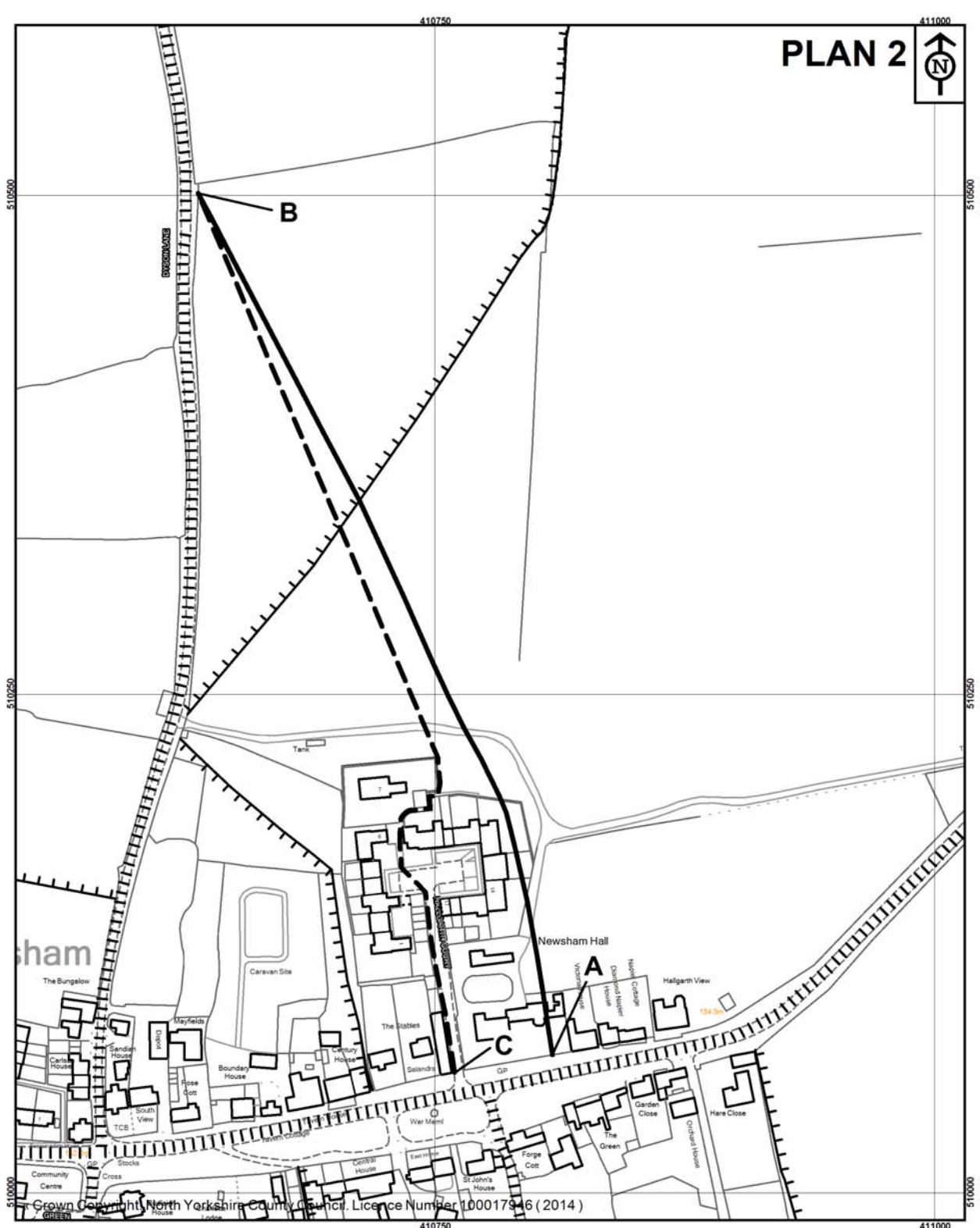
DAVID BOWE
Corporate Director – Business and Environmental Services




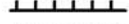

Author of Report: Andy Hunter

Background Documents: Definitive Map Team Case file ref: RICH/2004/14/DO



 <p>North Yorkshire County Council Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>PLAN 1 LOCATION PLAN</p> <p>Map drawn on 15 January 2014 Drawn by AWH Scale 1:50000</p>	<p>North Yorkshire County Council PROPOSED WITHDRAWAL OF DIVERSION ORDERS FOR FOOTPATH NO. 20.49/6, NEWSHAM HALL, NEWSHAM Plan prepared for the Planning & Regulatory Functions Sub-Committee 7 March 2014 File Ref No. RICH/2004/14</p>
--	--	--



 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<h3>PLAN 2</h3>		<p>North Yorkshire County Council</p> <p>PROPOSED WITHDRAWAL OF DIVERSION ORDERS FOR FOOTPATH NO. 20.49/6 NEWSHAM HALL, NEWSHAM</p> <p>Plan prepared for the Planning & Regulatory Functions Sub-Committee 7 March 2014</p> <p>File Ref No. RICH/2004/14</p>
	<p>Key:</p> <p>Footpath to be added C - B </p> <p>Footpath to be deleted A - B </p> <p>Other footpaths </p> <p>Maintained Highways </p> <p>Map drawn on 17 February 2014</p> <p>Drawn by AWH</p>	<p>Scale 1:2500</p>	