

Public Document Pack

**North Yorkshire County Council
Business and Environmental Services - Executive Members & Corporate Director Meetings -
Department**

Friday, 29 April 2022 / 2.00 pm

A G E N D A

- 1 **Apologies for Absence**
- 2 **Declarations of Interest**
- 3 **Exclusion of the public from the meeting during consideration of item(s) # on the grounds that it/they each involve the likely disclosure of exempt information as defined in the paragraph(s) # of Part 1 of Schedule 12A to the Local Government Act 1972 as amended by the Local Government (Access to information)(Variation) Order 2006**

Items for Executive Member decision

Items for Corporate Director decision

- 4 Opposed Bridleway No. 25.126.009 & Footpath No. 25.126 (Pages 3 - 16) (Pages 3 - 16)
- 5 Opposed Restricted Byway No. 25.63.2 Broates Lane, Middleton and Restricted Byway 25.73.4 Broates Lane, Pickering (Pages 17 - 32) (Pages 17 - 32)
- 6 Review of Driven Carriageway Inspections during Covid-19 (Pages 33 - 46) (Pages 33 - 46)

Any Other Business

- 7 Date of future formal meetings

Circulation:

Executive Members

Derek Bastiman
Don Mackenzie

Officer attendees

Karl Battersby
Jane Connolly

Presenting Officers

Penny Noake
Nigel Smith

This page is intentionally left blank

North Yorkshire County Council

Executive Members

29 April 2022

Opposed Bridleway No. 25.126/009 & Footpath No. 25/126/306 High Kingthorpe, Lockton, Diversion Order 2021

Report of the Assistant Director – Travel, Environmental and Countryside Services

1.0 Purpose of the report

- 1.1 To advise Corporate Director of Business and Environmental Services (BES) of the proposed submission to the Secretary of State (SoS) of an opposed Public Path Diversion Order for a bridleway and a footpath in the parish of Lockton, in Ryedale. A location plan is attached to this report as Plan 1. The proposal is shown in detail on Plan 2.
- 1.2 To request the Corporate Director, in consultation with the Executive Member for Access, to authorise that North Yorkshire County Council (NYCC), in its submission of the opposed Order to the SoS **will support confirmation of the Order**.

Background

2.0 Scheme of Delegation

- 2.1 Within the County Council's scheme of delegation, it is delegated to the Assistant Director of Travel, Environmental and Countryside Services, to decide whether to abandon an opposed Diversion Order where the Authority is of the opinion that the requirements to confirm the Order may not be met and where an Inspector appointed by the Secretary of State may decline to confirm the Order, or to recommend to the Corporate Director BES that the Order be referred to an Inspector appointed by the Secretary of State.

3.0 The Application

- 3.1 The application to divert the bridleway and footpath was submitted to the County Council in August 2020.
- 3.2 The reasons given for the application were to divert the bridleway and footpath away from the farm yard, to ensure safety of users from vehicle movements and enable safe movement of livestock within the yard. The proposed diversion would also improve security and privacy of the property, all of which are in the interests of the landowner.

4.0 Relevant legal criteria

- 4.1 Under Section 119 of the Highways Act 1980, the County Council, having consulted any other local authority, may divert a public right of way (PROW) where it appears to the Authority that in the interests of the owner of the land crossed by the PROW described in the Order, it is expedient that the line of the PROW should be diverted, and that the effect of diversion would not be substantially less convenient to the public.

- 4.2 The County Council charges applicants for the costs incurred in the processing/making of diversion Orders, as provided for by the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (S.I. 1993/407), amended by regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (S.I. 1996/1978).
- 4.3 Where an Order is opposed, the County Council cannot confirm the Order; it can only be confirmed by the Secretary of State. The Secretary of State will confirm an Order if he/she is satisfied that:
- i) in the interests of the landowner it is expedient to divert the footpath, and
 - ii) the diversion will not be substantially less convenient to the public as a result of the Order, and that it is expedient to confirm the Order having regard to the effect which:
 - (a) the diversion would have on public enjoyment of the route as a whole;
 - (b) the coming into operation of the Order would have, as respects other land served by the existing public right of way; and
 - (c) any new public right of way created by the Order would have, as respects the land over which the right is created and any land held with it.

5.0 The Making of the Order

- 5.1 An informal consultation was carried out and an objection was received from the Local Ramblers representative. A further objection was received by Ryedale Bridleways Group, but it was subsequently withdrawn.
- 5.2 A report was submitted to the Assistant Director, Travel, Environmental & Countryside Services and it was determined that despite the objection that a Diversion Order should be made.
- 5.3 The Diversion Order was made on 24 September 2021 and was duly advertised.
- 5.4 During the formal consultation, a further objection was received from the Local Ramblers Representative. The nature of the objections were as follows:
- i) The Ramblers stated that at present the bridleway from A to B is on a metalled surface, providing a good firm surface for walkers. The proposed diversion from A to E is across arable land which, at the time of our visit, was planted. For a substantial part of the year, the passage of horses across this soft ground would disturb the surface sufficiently to make it unsuitable for walkers; even in good conditions progress across an arable field can be difficult. The proposed diversion A to E would be substantially less convenient than the current route on a metalled surface.

Officer Comment.

The applicant and the NYMNP Ranger have expressed the view that the route receives little use by horses, and the objector has indeed agreed with this, it is surmised therefore that damage to the surface of the route is unlikely to occur.

- ii) The Ramblers suggested an alternative route following the fence-line from Points A to E rather than the cross-field route proposed.

Officer Comment.

This suggestion was rejected by Ryedale Bridleways Group, as there is an electric fence running down the field boundary which would be in too close a proximity to users of the route.

- iii) The Ramblers also suggested diverting the bridleway along the proposed line A to E, and create a footpath along the field edge.

Officer Comment.

NYCC rejected the idea of creating a new footpath, which would be only a matter of metres away from the proposed new section of bridleway and was not considered to be necessary. A solution of a “Permissive Footpath” running down the fence-line and to be used in bad weather was also rejected by the Ramblers, who stated that they would withdraw their objection if an additional footpath was created.

- iv) The Ramblers also suggested downgrading the bridleway from A to B to a footpath, extinguish the bridleway from B-C, and retain the footpath from B to D; create a new bridleway along the proposed line A-E-C; it would then not be necessary to create a footpath from E to F.

Officer Comment.

The purpose of the diversion is to divert the public rights of way away from a busy farmyard, and these suggestions do not achieve the stated purpose.

- 5.5 Considering these objections together, it is the view of Officers that they are without merit and would not be sufficient to prevent the order being confirmed.

6.0 Representation made by the local member

- 6.1 No formal representations were received from the local Councillor in response to the consultations regarding the Diversion Order.

7.0 Legal Implications

- 7.1 The opposed Order would be determined by an Inspector appointed by the SoS, and, as stated above, determination will most likely be by way of written representations.
- 7.2 The Inspector, on the basis of the evidence and the legal criteria would decide whether or not to confirm the opposed Order. If he/she decides to confirm the Order, the routes will be amended on the Definitive Map and Statement in accordance with the details within the Order.

8.0 Financial implications

- 8.1 If the opposed Order were to be submitted to the SoS, the Order would be most likely resolved by written representations or a Hearing.
- 8.2 There would be a non-rechargeable cost to the Authority in preparing a submission to the SoS and responding to any queries raised by the SoS and these costs would be for officer time, which would be met by the respective staffing budgets. In the unlikely event that the Inspector chose to hold a Public Inquiry or even a Hearing, the costs of arranging, hosting and supporting the event would fall to the Council but overall would be unlikely to exceed £1,000.00, for the preparation of a Public Inquiry documents, officer travel and attendance, and hire of a venue. These costs are largely officer time which would be met by the respective staffing budgets. The cost of the hire of the venue would be met from the Countryside Access Service budget.

9.0 Equalities Implications

9.1 It is the view that the recommendations do not have an adverse impact on any of the protected characteristics identified in the Equalities Act 2010.

10.0 Climate Change Implications

10.1 The proposal is to alter the alignment of routes already recorded as public routes within the County Council's records. The confirmation of this order would have no positive or negative impact on climate change.

11.0 Current Decision to be made

11.1 The decisions to be made at this stage are, firstly, whether the Order is to be abandoned, or is to be forwarded to the SoS for resolution.

11.2 Secondly, if it is decided that the matter is to be forwarded to the SoS then a further decision will need to be made, namely which stance the authority would take within its submission to the SoS towards the confirmation of the Order. The Authority needs to decide whether it:

- supports confirmation of the Order
- believes that the Order should not be confirmed,
- considers the circumstances are so finely balanced, or are particularly unclear and wishes to take a neutral stance.

12.0 Conclusions

12.1 In conclusion, the application for the Diversion Order was made to increase privacy and security of the property, and to ensure safety of users from vehicle movements and enable safe movement of livestock within the yard. It is felt that the Diversion Order meets the legal tests outlined in Para. 4.1 above.

12.2 The objection to the Order outlines a number of issues however it is felt that the proposed route is not substantially less convenient for the public and that the remaining objections are insufficient to prevent the confirmation of the Order.

12.3 Officers are of the view that the Order should be referred to the Secretary of State, and that there is no reason why the Authority should not support the confirmation of the Order.

13.0 Recommendation

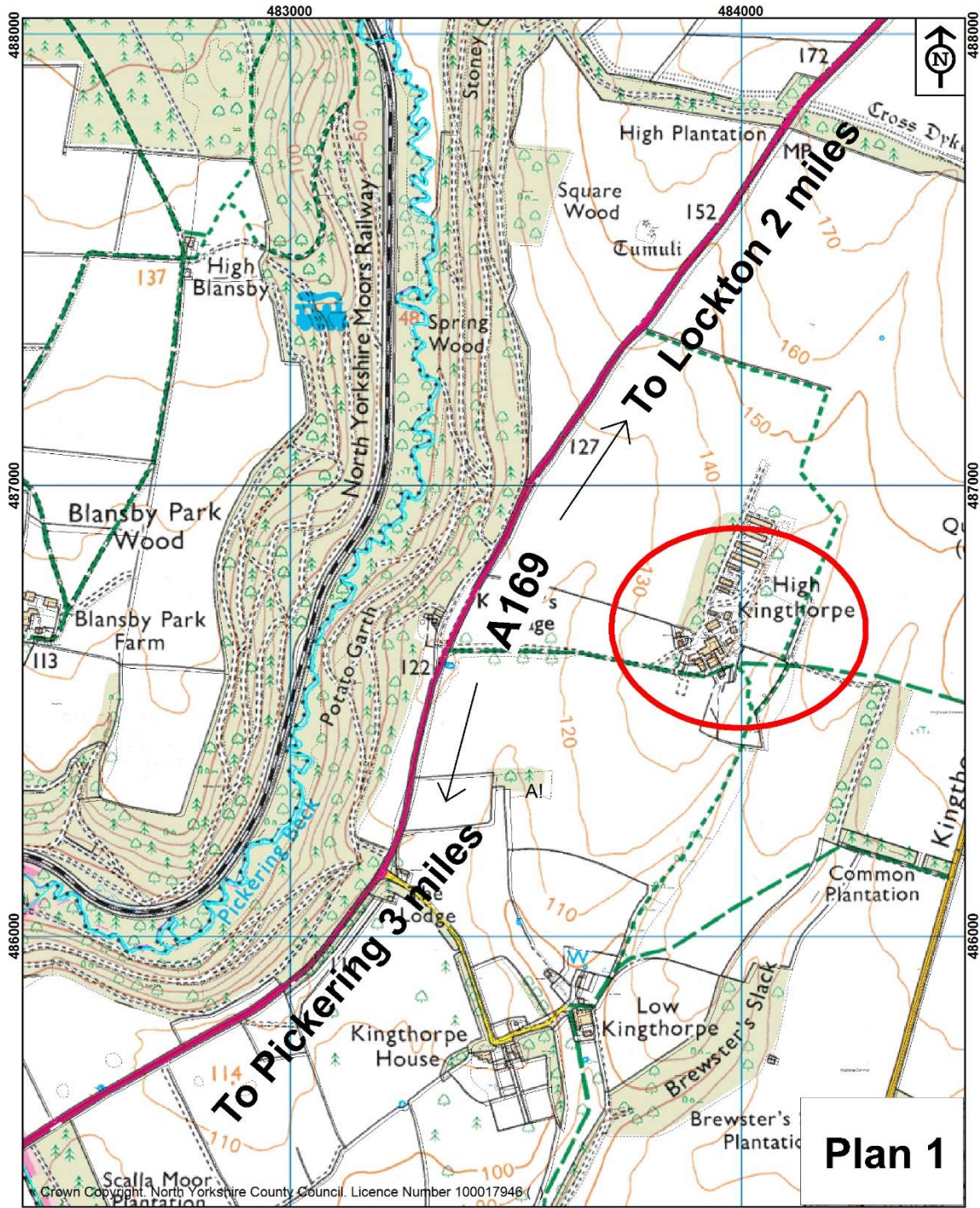
13.1 It is therefore recommended that the Assistant Director approves the referral of the opposed Diversion Order to the SoS, and that within the submission the Authority supports the confirmation of the Order.


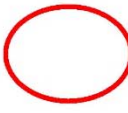
MICHAEL LEAH
Assistant Director - Travel, Environmental and Countryside Services

Author of report: Claire Phillips

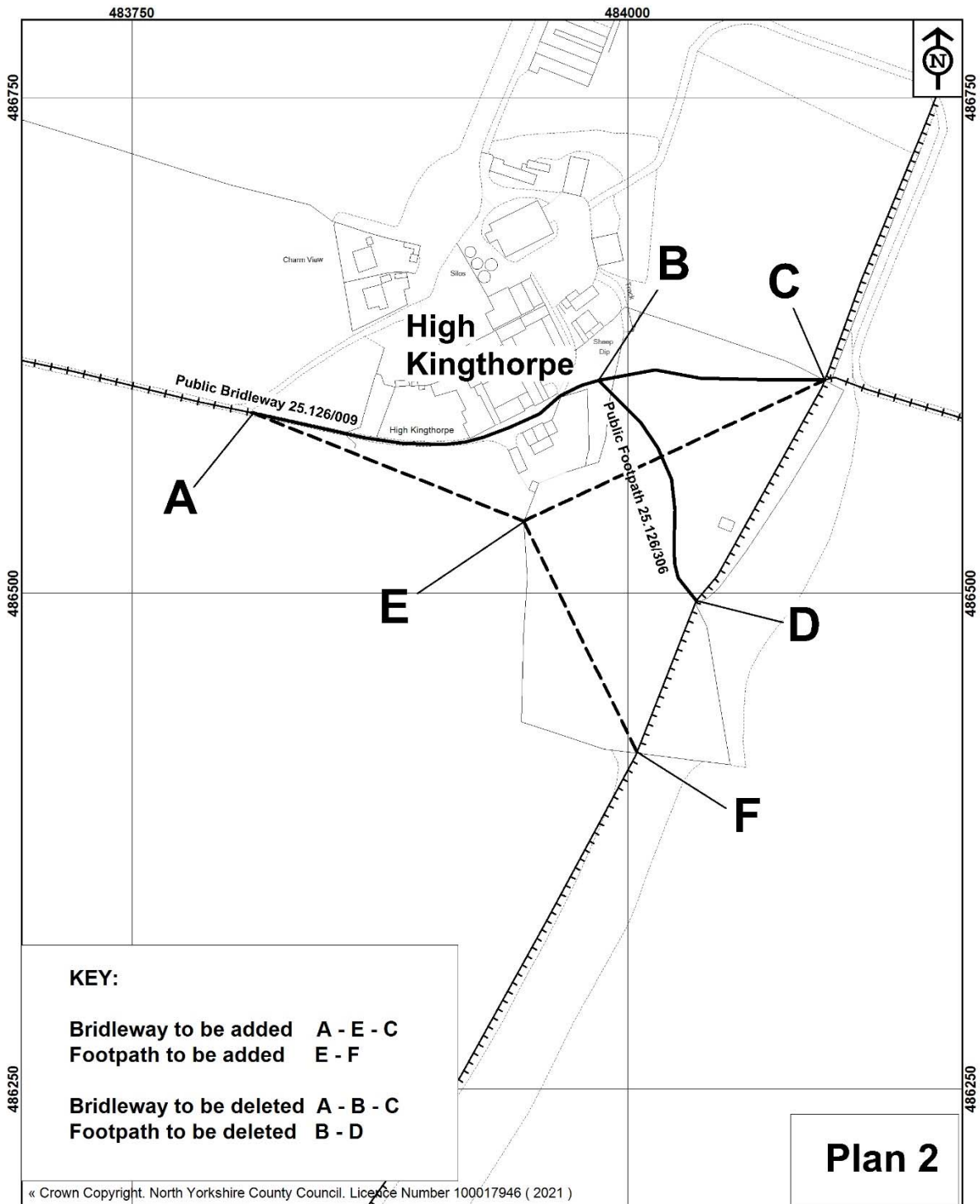
Background papers: File Ref RYE/2019/10/DO

Plan 1




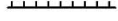
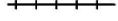


 <p>North Yorkshire County Council Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p> <p>High Kingthorpe </p>	<p>North Yorkshire County Council</p> <p>High Kingthorpe, Lockton Location Plan</p>
	<p>Map drawn on 8 February 2022 Drawn by CP</p>	

Plan 2



« Crown Copyright. North Yorkshire County Council. Licence Number 100017946 (2021)

 <p>North Yorkshire County Council Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p> <p>PRoW to be added </p> <p>PRoW to be deleted </p> <p>Other footpaths </p> <p>Other bridleways </p>	<p>North Yorkshire County Council Highways Act 1980 Section 119</p> <p>Bridleway No. 25.126/009 & Footpath No. 25.126/306 High Kingthorpe, Lockton Diversion Order 2021</p>
	<p>Map drawn on 8 February 2022</p> <p>Drawn by CP</p>	<p>Scale 1:2500</p>

BRIDLEWAY No. 25.126/009



1. Existing bridleway, looking generally east between Point A and Point B (2019).



2. Existing bridleway between Point A and Point B (2019).



3. Existing bridleway/footpath Point B (2019).



4. Existing bridleway between Point B and Point C (2019).



5. Existing bridleway field gate at Point C and existing footpath stile (2020).



6. Proposed bridleway, from Point A looking south east towards Point E (2020).



7. Proposed bridleway from Point E looking north west towards Point A (2020).



8. Proposed bridleway, Point E gate to be replaced (2020).



9. Proposed bridleway from Point C looking south west towards Point E on brow of hill (2020).

FOOTPATH No. 25/126/306



10. Existing footpath looking towards Point B behind large tree (2020).



11. Existing footpath looking towards Point D field gate (centre) and Point F in distance (centre right) (2019).



12. Proposed footpath between Point E and Point F (2019).



13. Proposed footpath Point F, just in front of field gate (2020).

This page is intentionally left blank

North Yorkshire County Council

Executive Members

29 April 2022

Opposed Restricted Byway No. 25.63/2, Broates Lane, Middleton and Restricted Byway 25.73/4, Broates Lane, Pickering Modification Order 2021

Report of the Assistant Director – Travel, Environmental & Countryside Services

1.0 Purpose Of Report

1.1 To advise the Corporate Director of Business and Environmental Services (BES) of the proposed submission to the Secretary of State (SoS) of an opposed Definitive Map Modification Order (DMMO).

A location plan is attached to this report as **Plan 1**. The route referred to, is shown by a bold hatched black line and is marked A-B (25.63/2) and B-C-D-E-F (25.73/4) on the plan attached to this report as **Plan 2**.

1.2 To request the Corporate Director, in consultation with the Executive Member for Access, to authorise that North Yorkshire County Council (NYCC), in its submission of the opposed Order to the SoS **will support confirmation of the Order**.

2.0 Background

- 2.1 The route, known as Broates Lane, runs between Middleton Lane in the Parish of Middleton, to Swainsea Lane in Pickering Parish and is recorded on the definitive map as a public footpath throughout.
- 2.2 The DMMO application to record Broates Lane as a restricted byway was made in 2013, in response to an unsuccessful attempt by the landowner to divert footpath 25.73/4 off his access track at the east end of Broates Lane, onto an alignment along the northern edge of the adjacent field.
- 2.3 The DMMO application was supported by 25 user evidence statements and historical documents including:
- Old maps
 - Finance Act records
 - Highway Records
 - Inclosure documents
 - Tithe map
- 2.4 The evidence was supportive of use by the public at large on horseback and by pedal cycle, and that use had been continuous through the relevant time-period (20 years preceding the date of the DMMO application).
- 2.5 Following the pre-order consultation and examination of the evidence, it was apparent that it was likely that higher rights than just footpath rights exist along the entire route, and given that those rights cannot now include motor vehicular rights, it is considered that the route should be recorded on the Definitive Map and Statement as a restricted byway.

- 2.6 Attached to this report as **Appendix 1** is a copy of the report submitted to the Assistant Director on 21 May 2019 in which the case for making a Definitive Map Modification Order to record a restricted byway was outlined. The Assistant Director approved the making of a DMMO.
- 2.7 The Order was made on 23 February 2021 and advertised 10 March 2021, attracting one objection which remains outstanding. The County Council cannot confirm a DMMO where there are outstanding objections; the Order must be forwarded to the Secretary of State for resolution.

3.0 Response to the Sealed Order

- 3.1 One objection was made to the making of the Order, from the landowner and relates specifically to the section A-B. The landowner has made no objection to the upgrading of the section B-F to restricted byway but is not persuaded by the evidence in relation to the section A-B. Their solicitor's comments were that:

The evidence does not justify the change to the definitive map because:

- i) Path A-B was not within the 1790 Pickering and Newton Inclosure Award relied upon by NYCC in relation to the section C-F.
- ii) The evidence from historic maps is inconclusive and inconsistent. Although some of it would support the existence of some sort of route A-B, some of it does not and some of the maps suggest a gap between a route appearing to correspond to the public carriage road referred to in 1790 Award as Nova Scotia Road and another route to the west side of the Broates farm buildings, generally marked 'Broates Lane' on these maps, so that there is not a consistent picture from the historical maps showing one continuous east-west route as proposed in the DMMO.

Officer comment

Point B is the boundary between land under the Cropton Inclosure Award of 1766 (covering A – B) and the land under 1790 Pickering Inclosure Award (covering B – F). Whilst the information within the Cropton Inclosure Award, particularly without the benefit of the associated Award Plan, is inconclusive, there is sufficient evidence to reasonably suggest a through-route by time of the Pickering Inclosure Award in 1790.

- iii) None of the user evidence relied upon by the Council claims 20 years use before the first 'Cut-off Date' on which the Council first published a draft definitive map and statement, being the date under section 31(2) of the Highways Act 1980 on which the right of the public to use the way as a restricted byway was first brought into question.

Officer comment

The definitive map process undertaken in 1965 was not calling into question any higher rights, merely establishing what rights were considered to exist at the time. The initial recording of the route as a footpath does not preclude the possibility that higher rights may exist which may be identified by historical evidence, and would not prevent the establishment of higher rights through usage. The challenge to public use came about when the current landowner proposed to divert the route at the eastern end. The user evidence submitted in support of the application indicates unhindered access by the public, horse riding, and riding pedal cycles.

4.0 The evidence in support of the Order

4.1 The Cropton Inclosure Award of 1766 accounts for the land over the land (A - B) but the map which would have accompanied the award has not been found. Nevertheless, it is possible to identify locations referred to in the text by reference to the other named routes. The Cropton Award refers to a place called Middleton Old Lane Gate which is thought to be the same location as Middleton Lane Gate so described on the 1854 OS map. This appears to be confirmed by reference to a place called Cottage Leas, which is described as being to the south of Middleton Old Lane Gate. The property existed as Cottage Leas until recent times and is currently known as the Tantara Country Hotel and lies 200 metres south of Middleton Lane Gate. Middleton Lane Gate is located at the junction with Broates Lane.

4.2 The Cropton Award describes three roads running from Middleton Old Lane Gate and from the description, the first, now recorded as a footpath, runs west from Middleton Lane Gate then northwards as a bridleway to High Lane, continuing to Saint Toft Brow and Cawthorne Old Inclosure. The road was in part, unusually wide and these sections can be seen on modern mapping. The second road can be identified as Middleton Road, running northwards from Middleton Lane Gate, passing High Nova Farm where it joined the first road. The third road was, from the description, running west to east and would appear to match Broates Lane:

*'....Also one other good and sufficient highway or road Twelve yards wide from **Middleton Old Lane Gate** aforesaid to the said place called **Lydgate** and the said road to be carried along on the **north side** of the old Inclosures of the said Thomas Graham, William Watson, John Mozeen, Thomas Hayes, John Storr, Robert Pennock and Thomas Robinson and on the **south sides** of the allotments of the said vicar of Pickering afore said and the Rector of Pickering aforesaid **for the use of the said several owners** of the said several old inclosures **only and their heirs.**'*

4.3 Running on the north side of the old inclosures and the south side of the vicar's allotments means the road must have been oriented west to east and therefore it would be reasonable to assume that the description refers to Broates Lane. If this is the case, the road would appear to have been set out for private use and not, in 1766, intended as a public road. It has not proved possible to identify the location of Lydgate as the name does not appear on maps of the vicinity. However by the time of the Pickering Inclosure Award 1790, the route is being referred to as 'a certain ancient road'.

4.4 The 1790 Pickering Inclosure Award accounts for one half of the route (B-F) and describes the route as a public carriage road of a width of 40 feet, and its connection to an existing route in Middleton as '...commencing at the end of a certain ancient road...' Based on consistent historic mapping evidence it would be reasonable to assume that the ancient road so described is the same route that currently continues through to Middleton Lane.

4.5 It is possible that by the time of the Pickering Inclosure Award was being prepared, 24 years later, that all of Broates Lane was being used as a public way. At the very least the description indicates that there was physically a through route by 1790. It seems unlikely that the Commissioners would have laid out a 40 feet wide public carriage road that was in effect a cul-de-sac at the parish boundary, and it is reasonable to assume the public would have made use of it subsequently.

5.0 Representations made by the local member

5.1 No formal representations were received from the local councillor in response to the consultations regarding the Order.

6.0 Equalities

6.1 It is the view that the recommendations do not have an adverse impact on any of the protected characteristics identified in the Equalities Act 2010.

7.0 Finance

7.1 As the Authority is obliged to refer all opposed DMMOs to the SoS there would be an unavoidable cost to the Authority in preparing a submission to the SoS and following through with the statutory process. If the SoS elects to hold a 'live' public inquiry over 2 days the costs to the Authority in this instance, without the need for advocacy support, would be in the region of £1,000.00, including the preparation of a Public Inquiry documents, officer travel and attendance, and hire of a venue. These costs are largely officer time which would be met by the respective staffing budgets. The cost of the hire of the venue would be met from the Countryside Access Service budget.

8.0 Legal

8.1 The opposed Modification Order would be determined by an Inspector appointed by the SoS and as stated above, determination is likely to be by way of either a Public Inquiry or written representations.

8.2 The Inspector, on the basis of the evidence and legal criteria will decide whether or not to confirm the opposed Modification Order. If the Inspector decides to confirm the Order as made, the route would be recorded on the Definitive Map and Statement in accordance with the details within the Modification Order.

9.0 Climate Change

9.1 The proposal is to record a higher status along an existing public footpath. The confirmation of this Order would have no positive or negative impact on climate change.

10.0 Current Decision to be made

10.1 In submitting an opposed Order to the SoS, the County Council needs to express whether, on the basis of available evidence, it;

- supports confirmation of the Order,
- believes the Order should not be confirmed, or
- considers the evidence is either so finely balanced, or is particularly unclear and wishes to take a neutral stance.

10.2 The current decision to be made is which stance the County Council is to take within its submission of this opposed DMMO to the SoS.

11.0 Conclusion

- 11.1 The historic evidence is clear that a public route existed from at least 1790 between the Points B – F, but is less conclusive as to the section A – B, although as the Pickering Inclosure Award makes reference to the route to the West of Point B as an ‘ancient road’ it is reasonable to assume the route was relatively substantial and would have been utilised by the public with horse and carts as a continuation of the public carriage road described in the Pickering Inclosure Award.
- 11.2 Even if the historic evidence were to be disregarded for the section within Middleton, the use of the route by horse riders and cyclists in the 20 year period prior to the challenge caused by the proposed diversion order in 2013 is sufficient to conclude that the route, on the balance of probabilities, has been deemed to be dedicated as a highway of greater status than the existing footpath status. Cycles are considered to be vehicles and the use by cycles would be supportive of the public status being recorded as a restricted byway.
- 11.3 Overall, it appears from the evidence that on the balance of probabilities the route should be recorded as a restricted byway on the Definitive Map. Therefore of the options outlined in 10.1 above, that in this instance, there is no reason why the County Council should not support the confirmation of the order.

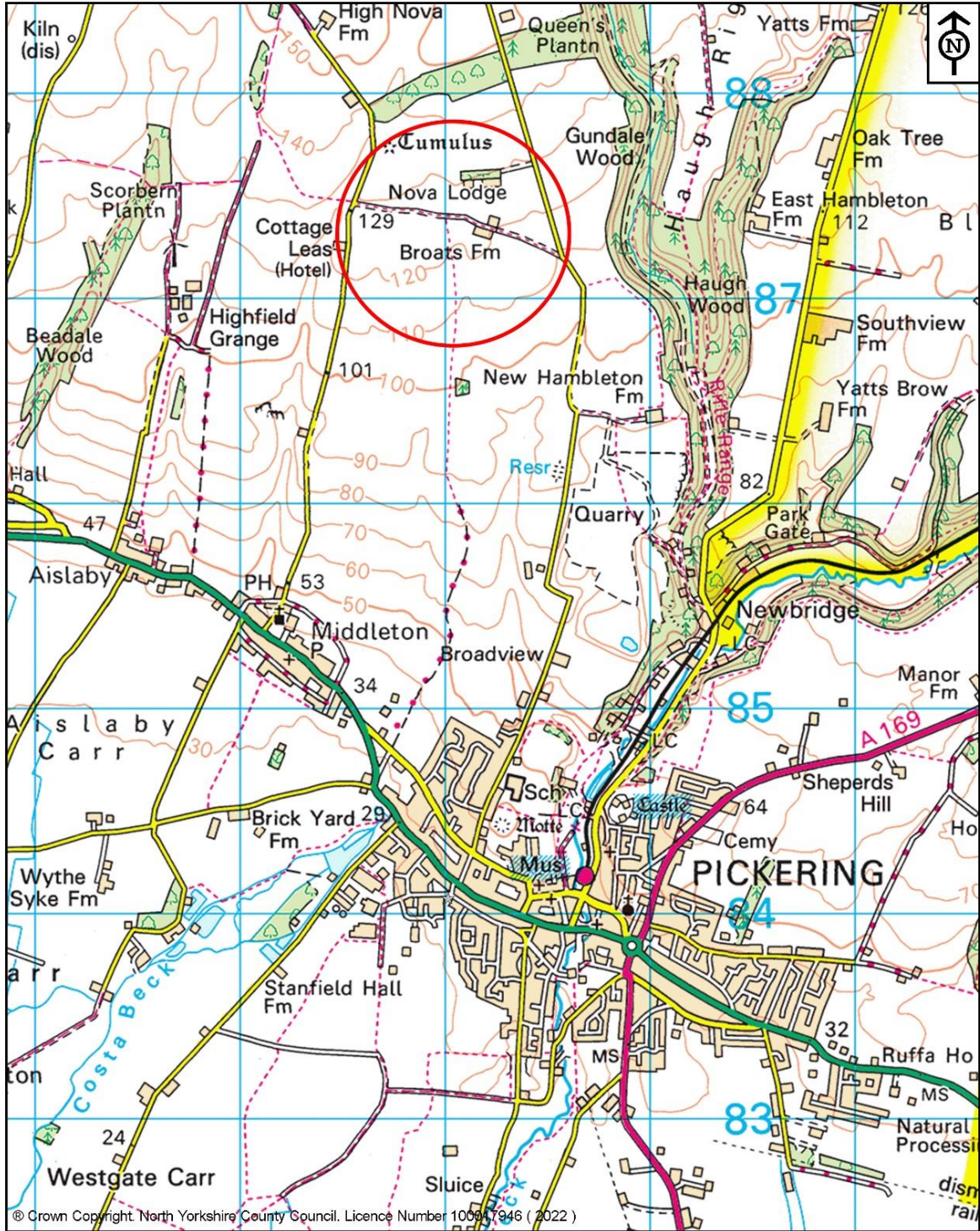
12.0 Recommendation


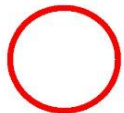
- 12.1 The application is supported by user evidence and historical documentary evidence which has not been countered by evidence from the objector to date, and which indicates that on the balance of probabilities restricted byway rights exist.
- 12.2 It is recommended that the Authority supports confirmation of the Modification Order in its submission to the Secretary of State.

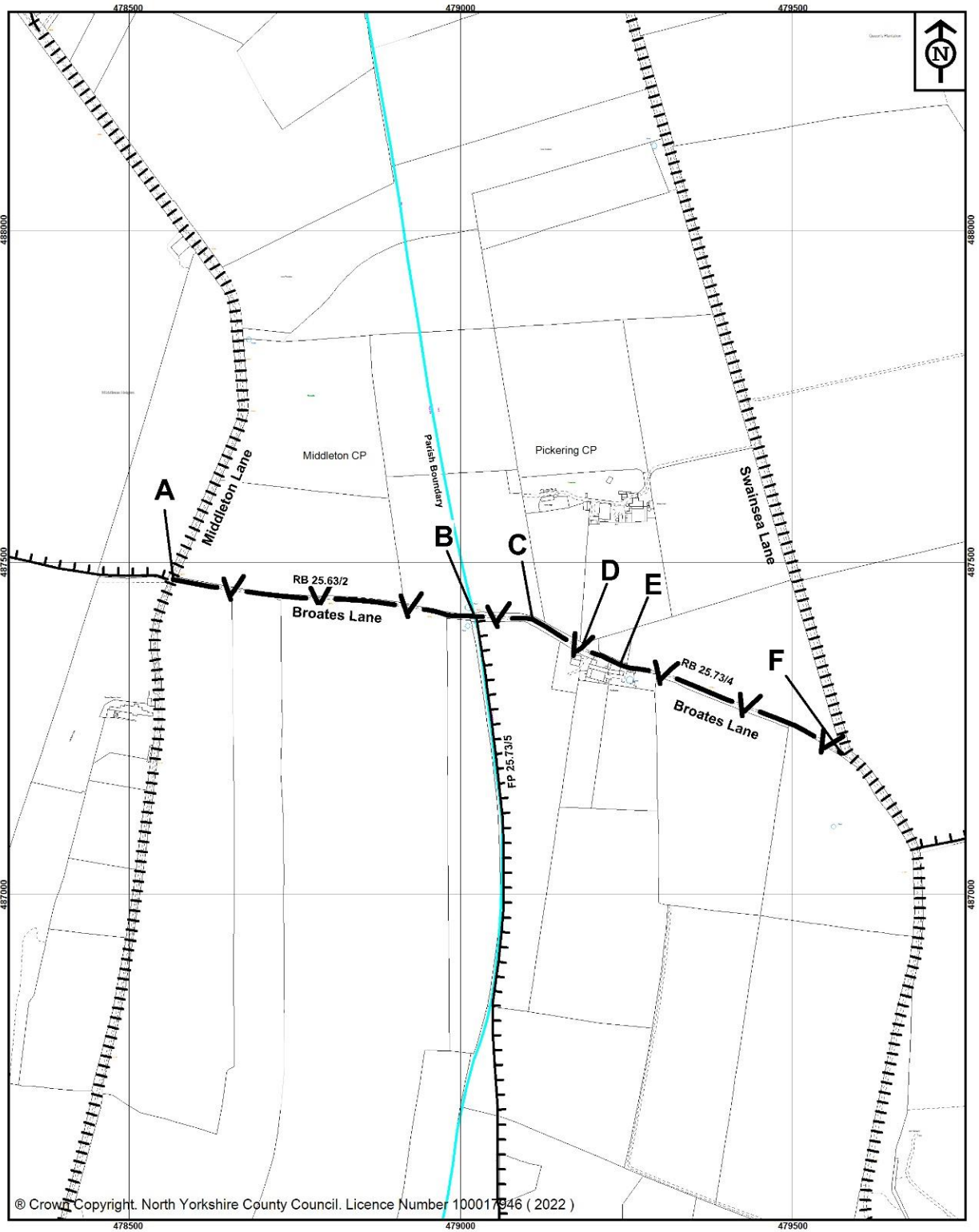
MICHAEL LEAH
Assistant Director - Travel, Environmental and Countryside Services




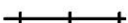

Author of Report: Andrew Hunter

Background Documents: File Ref RYE/2013/09/DMMO



 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p> <p>Broates Lane </p>	<p>Broates Lane (Middleton & Pickering Parishes) Location Plan</p> <p>PLAN 1</p>
	<p>Map drawn on 21 February 2022 Drawn by AWH Scale 1:25000</p>	



 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p> <p>Restricted Byway to be recorded </p> <p>Other footpaths </p> <p>Other bridleways </p> <p>Maintainable Highways </p>	<p>PLAN 2</p> <p>Restricted Byway No. 25.63/2, Broates Lane, Middleton and Restricted Byway No. 25.73/4, Broates Lane, Pickering Modification Order 2021</p>
	<p>Map drawn on 21 February 2022</p> <p>Drawn by AWH</p>	

North Yorkshire County Council

Report to the Assistant Director – Transport, Waste and Countryside Services

21st May 2019

DEFINITIVE MAP MODIFICATION ORDER APPLICATION TO UPGRADE FOOTPATHS 25.73/4 & 25.63/2 TO A RESTRICTED BYWAY, BROATES FARM, PICKERING & MIDDLETON PARISHES.

1.0 Purpose of the report

- 1.1 To set out the circumstances relating to a proposed Definitive Map Modification Order (DMMO) to upgrade two public footpaths to restricted byways, in light of objections having been received. A location plan is attached to this report as **Plan 1**. The route is shown as a bold dashed line A-B-C on **Plan 2**.
- 1.2 To request the Assistant Director to authorise the making of a Definitive Map Modification Order with regard to the application as described in this report.
- 1.3 To submit the matter to the Secretary of State for determination if objections are received and are not subsequently withdrawn.

2.0 Scheme of Delegation

- 2.1 Within the County Council's scheme of delegation, it is delegated to the Assistant Director – Transport, Waste and Countryside Services to exercise the functions of the Council under Part III of the Wildlife and Countryside Act 1981 in relation to rights of way. This delegation includes:
- power to make and advertise Definitive Map Modification Orders for the recording, of public rights of way, including those where an objection is received from any person or body entitled under the relevant statute to the proposed making of the Order.....

3.0 The Application

Applicant:	Ruth Russel
Date of application:	28 th October 2013
Type of Application	Definitive Map Modification Order
Parish:	Middleton
Local Member:	Councillor Greg White
Application supported by:	Evidence of use froms 24 users
List of documentary evidence:	1789 Pickering Inclosure Award Plan 1790 Pickering Inclosure Award 1817 Greenwood map 1825 Carey map 1827 Teasdale map 1834 Fowler Map 1859 1" OS First Edition

	1868 Cruchley map 1884 OS Revised 1903 OS 1" Revised New Series 1924 OS 1" Popular Edition 1920's Storey 1920's Bacon's Half Inch Road Map 1920's Gall & Ingliss, Horne's Tourist Map of Whitby & Neighbourhood 1920's Geographia 2 miles to the inch Road Map 1932 War Office 1" OS 1947 OS 2½" 1973 Johnson & Bacon Road Atlas of GB
Applicant's grounds for making the application	Prompted by the locking of a gate and an application by the landowner to divert the existing footpath onto an alternative route.

4.0 Relevant legal criteria

- 4.1 In deciding whether to make a Modification Order, the County Council must be satisfied that, in accordance with Section 53 of the Wildlife and Countryside Act 1981, the evidence discovered by the County Council, when taken into consideration with all other relevant evidence, is sufficient to show **that a highway shown on the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.**

5.0 Background

- 5.1 The route subject of this application is currently recorded on the Definitive Map as a public footpath. The current owner of Broates Farm applied to divert the footpath in 2013, the reasons given by the applicant included prevention of unauthorised use by 4x4 vehicles and horse riders, concern that dogs not under close control were affecting stock in fields and safety concerns over the extensive farm vehicle movements in the vicinity of the farm and footpath.
- 5.2 At a site meeting attended by the Diversion Officer, it was observed that part of the existing footpath ran along an enclosed track that had the appearance of a lane set out by an Act of Inclosure. The applicant was advised that the diversion application could trigger a DMMO application if users believed that higher rights existed, but the applicant was willing to continue with the process. The proposed diversion is shown as **Plan 3.**
- 5.3 Consultation took place in October 2013, and a number of objections were received from local interest groups, including:
- the diversion would cause an additional 270 metres of road walking;
 - that kissing gates would prevent riders and cyclists from using the new footpath,
 - that higher rights may exist..

The BHS stated that the route was awarded under the Pickering Inclosure Award as a public carriage road of 40 feet. Additionally, they submitted a list of documentary evidence based on old maps.

6.0 The DMMO Application:

- 6.1 A DMMO application was received at the end of October 2013 and covers the entire length of both footpaths, which commence on Middleton Lane in the parish of Middleton at Point A on **Plan 2** and runs eastwards for approximately 455 metres to the Pickering parish boundary at Point B, continuing east-south-east for approximately 600 metres through Broates Farm to its junction with Swainsea Lane at Point C.
- 6.2 The application was supported by 25 user evidence forms. A considerable amount of historical evidence was subsequently provided by the BHS Regional Access Officer.
- 6.3 Evidence of use covers the period 1950 to 2013 and indicates footpath, bridleway and vehicular use. Individual usage varies from 8 to 63 years, and 15 persons have used the route for 20 years or more. 6 users claim to have regularly used the route by vehicle.
- 6.4 Ordnance Survey maps have consistently mapped the route as a continuous track running between Middleton Lane in Middleton Parish and West Moor Road in Pickering parish. The 1854 maps show that the section of track in Middleton parish was called Nova Lane and on the Pickering side of the boundary as Nova Scotia Road. By 1893 the entire track is described as Broates Lane. Individually each map amounts to no more than circumstantial evidence but taken together they can amount to convincing evidence of a route in use. The authority for this view is derived from the case of *Fortune & Ors v Wiltshire Council and Anor* [2012]
- 6.5 Nova Scotia Road was set out by the 1790 Pickering and Newton Enclosure Award as a 40ft public carriage road. No evidence of any legal process that has stopped up those rights has been submitted to the Authority, with the exception of the blanket extinguishment of motor vehicle rights by NERC Act 2006. The definitive map process, in initially recording a footpath, can have had no effect on any prior higher rights that were created by enclosure.
- 6.6 The Award describes the route as "One other public carriage road to be called the Nova Scotia Road of the width of 40ft commencing at and leading south eastwards from the end of a certain ancient road in the Parish of Middleton over and across part of the West Moor to the north east corner of certain ancient inclosed lands within the township of Pickering called the Broates Closes and then turning southwards along the east side of the ancient inclosures to a gate leading to Swainsea Field."
- 6.7 As this Award only concerns land in Pickering and Newton, it can be assumed that the Commissioners would not have been concerned with recording detail in Middleton Parish and therefore reference to "...the end of a certain ancient road..." almost certainly refers to a point on the Pickering/Middleton parish boundary. In the absence of evidence to the contrary, it can be assumed that the ancient lane so described is the same route shown as Nova Lane on the 1854 OS map. On this map, Nova Lane commences on Middleton Lane at Middleton Lane Gate and runs eastwards to the Pickering parish boundary. The existing footpath follows the line of Nova Lane. This evidence would appear to indicate that a through-route existed at the time of the 1790 Enclosure.
- 6.8 Cropton Inclosure Award dated 9 October 1766. Unfortunately no accompanying map has been found, which may have helped to identify locations referred to in the text.

However, there are some similarities to place names on early OS maps. The Cropton Award refers to a place called Middleton Old Lane Gate, which is thought to be the same location as Middleton Lane Gate so described on the 1854 OS map. This appears to be confirmed by reference in the Award to a place called Cottage Leas, which is described as being to the south of Middleton Old Lane Gate. The property existed as Cottage Leas until recent times and is currently known as the Tantara Country Hotel. It lies 200 metres south of Middleton Lane Gate.

6.9 An informal consultation to upgrade the footpaths to restricted byway was carried out in 2016.

6.10 The diversion application was subsequently abandoned after it was acknowledged that the DMMO application to establish status would need to be determined before considering a diversion.

7.0 The objection

7.1 The owner of Broates Farm objected to the proposed DMMO. Their solicitor commented that:

- the crux of the case for allowing the application is the 1790 Pickering and Newton Inclosure Award but the carriage road set out by the award only accounts for half of the route and not the entire route which is subject to the DMMO.
- The provisions of Section 31 specify that there must have been use by the public, uninterrupted and as of right, for a period of 20 years in order to raise a presumption that the way has been dedicated as a PRow. As evidence has yet to be tested by interview, the requirements of S.31 have yet to be met.
- The objector believes that the 20 year period should be from the date of the Definitive Map, since that was the time when the public right to use the route as anything more than a footpath was called into question. Therefore the 20 year period should be counted back from 1965.

8.0 Authority comments on the objection:

8.1 Whilst the Pickering Award accounts for one half of the route, it does describe that it connected to an existing route in Middleton, referring to "...the end of a certain ancient road..."— See para 6.7. Based on consistent historic map evidence it would be reasonable to assume that the ancient road so described is the same route that currently continues through to Middleton Lane.

8.2 To satisfy the provisions of Section 31, interviews with persons who have completed Evidence of Use forms will be undertaken as part of the investigation into the DMMO application.

8.3 The definitive map process undertaken in 1965 was not calling into question any higher right, merely establishing what rights were thought to exist at the time. The initial recording of the route as a footpath does not preclude the possibility that higher rights may exist which may be identified by historical evidence, and would not prevent the establishment of higher rights through usage. The challenge to public use came about when the current landowner prevented access.

9.0 Financial implications

- 9.1 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. If an Inquiry were to be held the Authority may appoint external advocacy.
- 9.2 If an Order is made and is ultimately confirmed, the route would be added to the Definitive Map as a restricted byway, recording the public's right to use the lane on foot, horseback, bicycle or horse-drawn carriage. No works would be required to bring that use into being. The future maintenance burden will reflect this type of use. It should be noted that the route is currently used as a farm track and is therefore maintained to a reasonable standard by the owner for his own use.

10.0 Legal implications

- 10.1 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 as such 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.

11.0 Conclusions

- 11.1 Given the evidence of use and certain historical documents, and no contrary evidence that any attempt had been made to bring to the attention of the public that they did not have any rights higher than as a footpath, nor contrary evidence that any existing rights have been extinguished, it seems probable that higher rights than merely pedestrian do exist along the full route. Given those rights cannot now include motor vehicular rights, the most likely existing rights are those of a restricted byway.

12.0 Recommendation

- 12.1 It is therefore recommended that: the Assistant Director, Transport, Waste and Countryside Services, authorises the making of a Definitive Map Modification Order for the existing footpaths shown as A-B-C on Plan 2 of this report to be recorded on the Definitive Map as Restricted Byways.

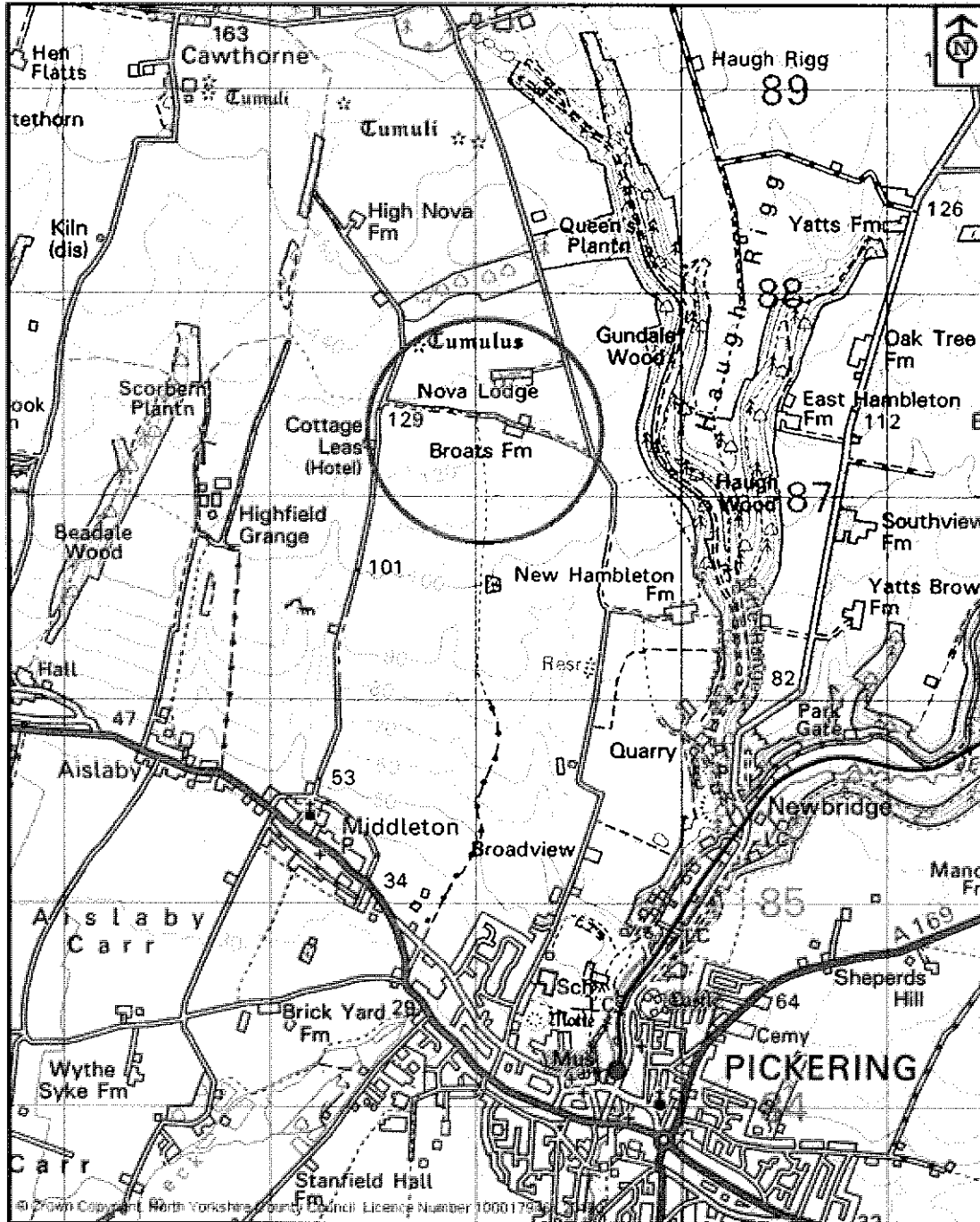
IAN FIELDING


Assistant Director Transport, Waste and Countryside Services

Author of report: Andrew Hunter

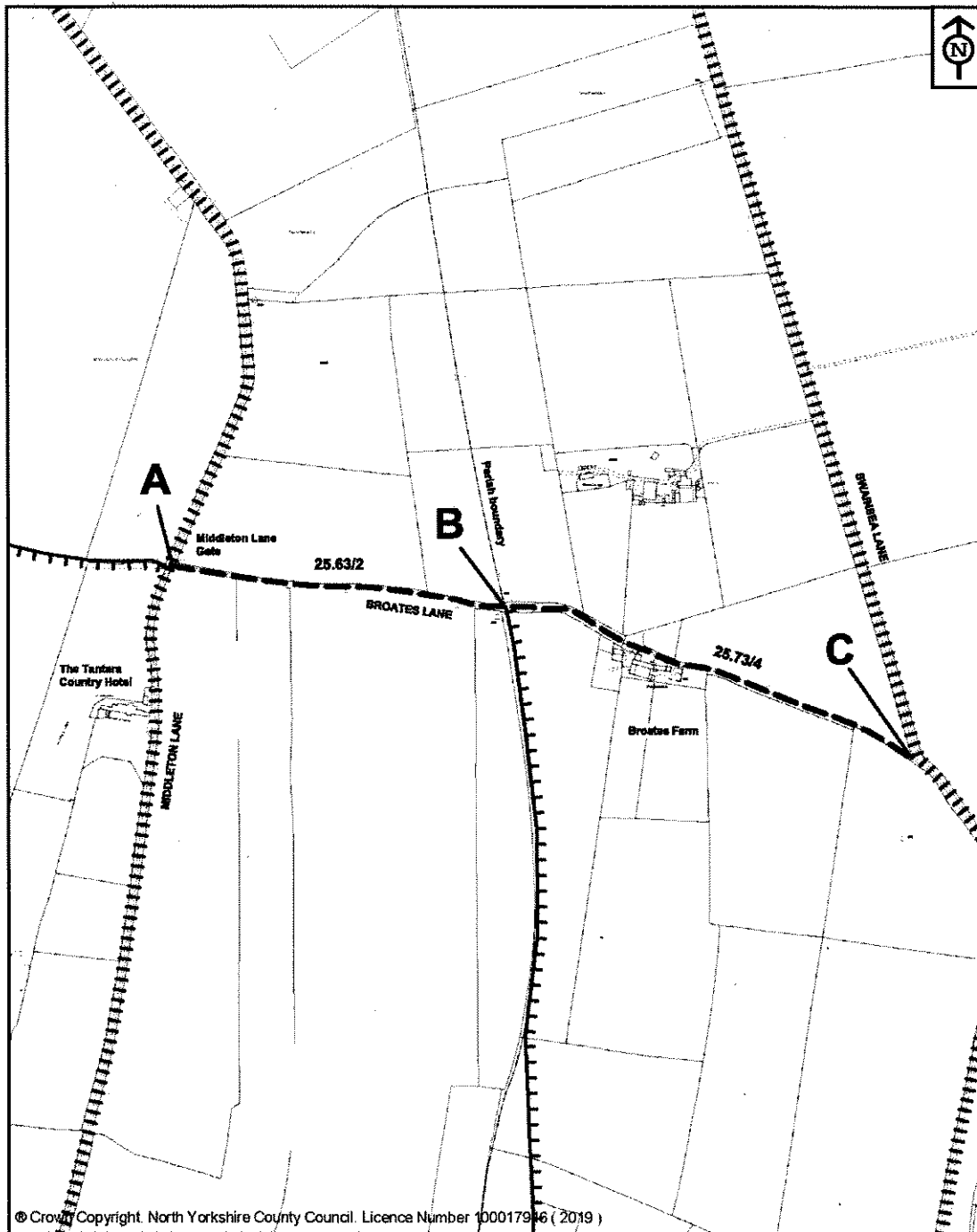
Background papers: File Ref RYE/2013/09/DMMO

Plan 1: Location Plan







 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall NorthaBerton DL7 8AH</p>	<p>LOCATION PLAN</p>		<p>North Yorkshire County Council</p> <p>DMMO APPLICATION TO UPGRADE FOOTPATHS 25 73/4 & 25 63/2 AT BROATES LANE, PICKERING & MIDDLETON PARISHES</p>
	<p>Map drawn on 13 May 2019</p>	<p>Drawn by AWH</p>	<p>Scale 1:25000</p>

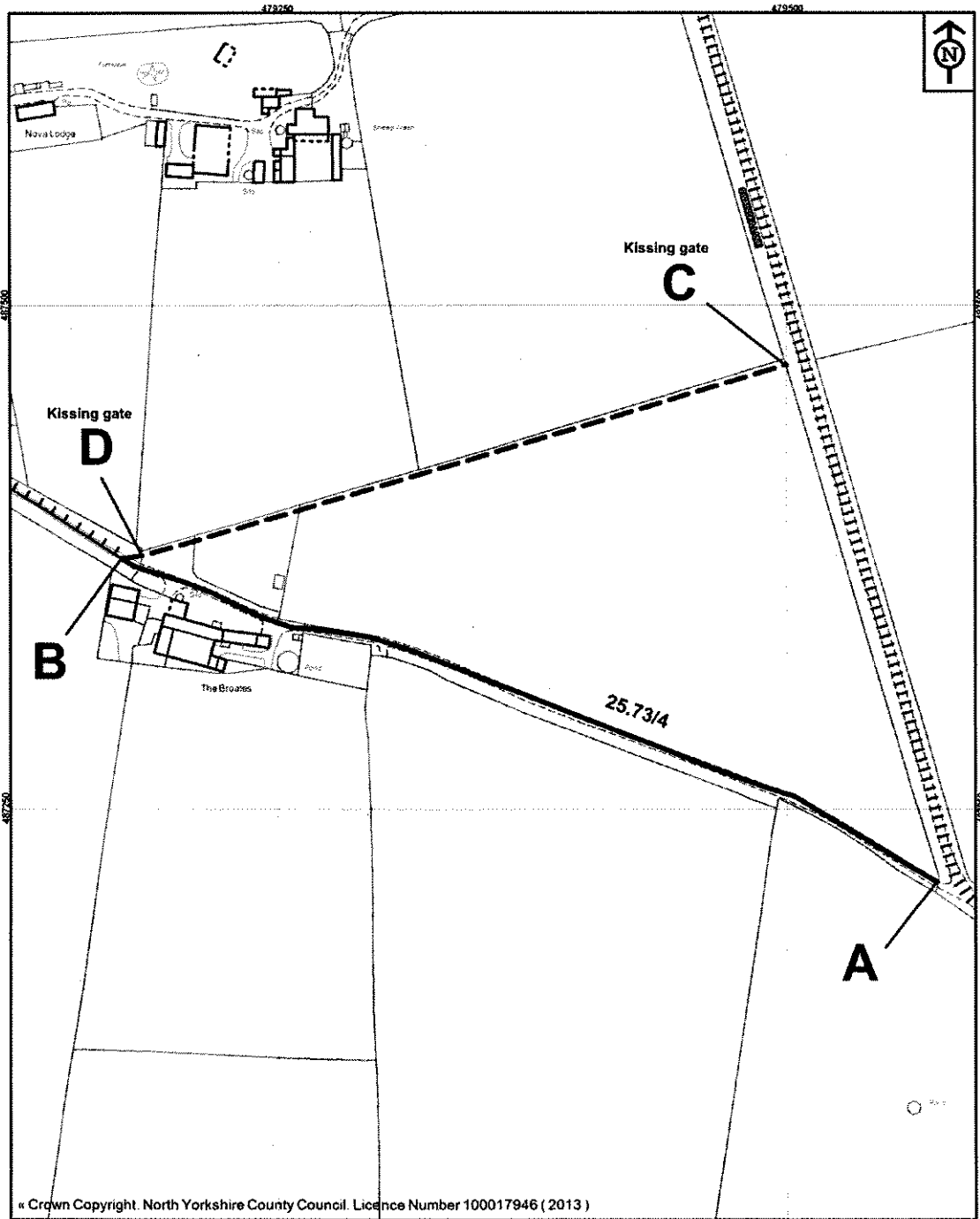
Plan 2: Report Plan




© Crown Copyright. North Yorkshire County Council. Licence Number 100017946 (2019)

 <p>North Yorkshire County Council Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p> <ul style="list-style-type: none"> Route to be recorded as Restrictefd Byway  Other footpaths  Maintainable Highways  	<p>North Yorkshire County Council</p> <p>PLAN 2</p> <p>DMMO Application to Upgrade Footpaths 25.73/4 & 25.63/2 At Broates Lane, Pickering & Middleton Parishes</p>
	<p>Map drawn on 13 May 2019 Drawn by AWH</p>	<p>Scale 1:7000</p>

Plan 3: Abandoned Diversion Proposal Plan



 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p> <p>Footpath to be added - - - - -</p> <p>Footpath to be deleted = = = = =</p> <p>Other footpaths </p> <p>Maintained Highways </p>	<p>North Yorkshire County Council</p> <p>Highways Act 1980 Section 119 Wildlife & Countryside Act 1981</p> <p>Proposed Diversion of Footpath No. 25.73/4, Broates Farm, Swainsea Lane, Pickering</p>
	<p>Map drawn on 11 October 2013</p> <p>Drawn by AWH Scale 1:2500</p>	

Report to the Assistant Director, Waste and Countryside Services

21st 15 May 2019

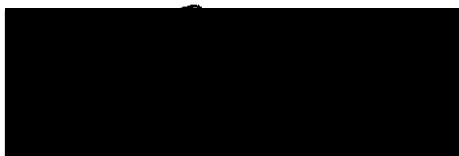
**DEFINITIVE MAP MODIFICATION ORDER APPLICATION TO UPGRADE FOOTPATHS
25.73/4 & 25.63/2 TO A RESTRICTED BYWAY, BROATES FARM, PICKERING &
MIDDLETON PARISHES.**

AUTHORISATION

I approve / ~~do not approve~~ the recommendation set out in the report.

ANY ADDITIONAL RECOMMENDATION or COMMENT:

.....
.....



Ian Fielding
Assistant Director of Waste and Countryside Services

Date: 21. 5. 19

North Yorkshire County Council

Business and Environmental Services

Executive Members

29 April 2022

Review of Driven Carriageway Inspections during Covid-19

Report of the Assistant Director – Highways and Transportation

1.0 Purpose Of Report

- 1.1 The purpose of this report is to update the Corporate Director, Business and Environmental Services (BES), in consultation with County Councillor Don Mackenzie, Executive Member for Access, in relation to earlier amendments to the current Highway Safety Inspection Manual V2.0 where deemed necessary. The report also provides an update on the move back to double-crewed highway safety inspections following necessary changes and exceptional circumstances due to the outbreak of Covid-19.
- 1.2 The intention is to manage the risk to the Council's employees by striking a balance between the new mantra of 'living with Covid' whilst maintaining and delivering a resilient service. It is acknowledged that at the time of writing this report the final restrictions will have been lifted, however the report will still take account of any central government guidance, infection rates as well as NYCC's position on the pandemic and resultant working arrangements. A further verbal update may well be required during the meeting of 29 April 2022.

2.0 Background

- 2.1 Earlier reports were presented to this meeting on 7 May 2020, then again on 18 December 2020, 23 July 2021, 22 October 2021 and 18 February 2022. In those reports, officers outlined that in complying with its duty to maintain the highway, as outlined within Section 41 of the Highways Act 1980 and for the purposes of Section 58, which provides for special defence, North Yorkshire County Council undertakes inspections of the highway. These inspections incorporate the carriageway, footway, grass verge and pathways upon which the public have a right of access and which are maintained at public expense.
- 2.2 The first report on 7 May 2020 outlined in detail the background to and purpose of the NYCC Highways Safety Inspection Manual (HSIM) and its the primary aim of providing operational guidance to those officers involved in undertaking highways safety inspections and the method of assessing, recording and responding to defects in the highway using a risk based approach.
- 2.3 Also contained in that report was an overview of the Coronavirus Act 2020 and the proposal to amend the HSIM to ensure compliance with the Act and the Regulations without compromising the Council's statutory duties nor unduly compromising the health and wellbeing of Council staff during the Government declaration of a threat to public health.

- 2.4 As such, an amendment to the wording in HSIM V2.0 was approved so that all Category of Roads may be inspected without a dedicated driver so long as that inspection be carried out in both directions and in accordance with the specific Risk Assessment. Following agreement at BES Executive meeting on 7 May 2020, the relevant part of Section 2 of the manual was amended to read as follows:
“As an exception to the above, driven inspections can be carried out from a slow moving vehicle without a dedicated driver being present in low risk situations on category 4b roads, and in the event of a Government declaration of threat to public health for the duration of the declaration made under statutory provisions. This would be in situations where any actionable defects can still be identified and there are no additional public safety risks from not having a dedicated driver. In such circumstances the normal safety inspection vehicle may be replaced with an appropriately liveried Highways Officer’s van. In urban areas, the inspection will be carried out at no more than 10 mph on category 4b roads and 20 mph on higher category roads and in both directions and the Highways Officer must walk any sections where parked vehicles restrict the view of the full highway extent. A record must be kept of the inspection method used.
- 2.5 Minor changes were also made to Section 2.6 – Performance Management, Page 15 of HSIM, regarding the frequency and methodology of safety inspection audits and specifically two types of random inspections.

3.0 Review of these (modified) arrangements

- 3.1 There have been a number of phases and changes to the landscape of national guidance and restrictions during the pandemic. In the summer of 2020, both infection and death rates were falling and restrictions were eased significantly from those initially imposed during the first ‘lockdown’. Towards the end of the summer of 2020, sadly rates rose again, necessitating a second ‘lockdown’. Given this ever changing picture, enquiries from local teams regarding how inspections were being undertaken and the pandemic continuing with no clear end in sight, it was agreed between the Assistant Director, Highways and Transportation and Head of Highway Operations that regular reviews of these arrangements should be undertaken.

4.0 Review Process

- 4.1 The report of December 2020 outlined how input from key personnel / groups was requested and associated discussion held. This led to the following recommendations being approved at that meeting (18 December 2020):
- i. the relevant part of Section 2 of the Highway Safety Inspection Manual that currently reads: *‘The maximum speed of the inspection vehicle throughout an inspection will be 20mph’* is amended with the highlighted text shown below to read:
 - a. *‘The maximum speed of the inspection vehicle throughout an inspection will be 20mph unless a dynamic risk assessment on rural roads concludes it is safer to undertake these inspections at a speed more in keeping with traffic flows. However, this would still be limited to no more than 20mph on category 4b roads and 30mph on higher category rural roads’*

- ii. to retain the amendments made to the HSIM following the BES Executive Members meeting of 7 May 2020 shown in italics in para 2.4 of this report, with the addition of the text shown as highlighted below:
 - a. *“As an exception to the above, driven inspections can be carried out from a slow moving vehicle without a dedicated driver being present in low risk situations on category 4b roads, and in the event of a Government declaration of threat to public health for the duration of the declaration made under statutory provisions. This would be in situations where any actionable defects can still be identified and there are no additional public safety risks from not having a dedicated driver. In such circumstances the normal safety inspection vehicle may be replaced with an appropriately liveried Highways Officer’s van. In urban areas, the inspection will be carried out at no more than 10 mph on category 4b roads and 20 mph on higher category roads and in both directions and the Highways Officer must walk any sections where parked vehicles restrict the view of the full highway extent. A record must be kept of the inspection method used including those occasions where the inspection was conducted between 20mph and 30mph in rural locations.*
- iii. that such amendments are only to be effective for the duration of the public health response period as conferred by the Coronavirus Act 2020 and the Health Protection (Coronavirus Restrictions) (England) Regulations 2020 and made by Government declaration
- iv. that a further review is undertaken at the end of March 2021 unless deemed necessary to be undertaken sooner.

4.2 Whilst the March 2021 review was delayed due to a variety of factors including that restrictions were still such that social distancing / wearing of masks etc. had not changed, officers were also dealing with a particularly challenging winter season (until May 2021) and other resource was also focused on the launch of NY Highways. In this intervening period, the practice of single crewed inspections was still in force and the arrangement continued throughout. Following the meeting on 23 July 2021 based on input and advice at the time from key consultees and the prevailing situation it was resolved that single-crewed inspections would continue, with a further review in October 2021.

4.3 The October 2021 report contained a number of recommendations which are listed below for ease of reference:

- That a transition to double crewed inspections commences from 1 November 2021, including consultation / engagement with Highway Officers via local management teams.
- As part of that consultation / engagement, where specific circumstances might preclude double crewed inspections - including personal/underlying health conditions - and Highway Officers are in agreement that single crewed inspections are retained in those circumstances
- Where double crewed inspections commence, the Health & Safety / Fleet / Public Health guidance contained in this report regarding mitigation and control measures is followed as rigorously as possible / activities permit and that this is done in conjunction with any task specific and Covid related risk assessments
- That provision remains in place to revert to single-crewed inspections on a larger scale if there is either a large outbreak amongst the workforce and/or the Government’s Plan B on the Autumn /Winter roadmap is invoked

- That ongoing monitoring of the situation continues over the coming months and a further report is submitted to your meeting of 18 February 2022 (unless deemed necessary to be reported sooner).
 - That the transition back to double-crewed inspections is fully concluded by the end of March 2022 unless circumstances dictate otherwise.
- 4.4 Since the meeting of October 2021, a new variant of Covid – the Omicron variant – emerged. This particular variant was highly transmissible and did give cause for ongoing caution and consideration from a business and service continuity perspective. This was particularly salient given that Highway Officers who undertake routine and non-routine highway inspections are also duty officers for our winter service, so any impact of Covid-19 would have the potential to impair two key service functions in Highway Operations. Single crewed inspections remained the norm since the October until the time of the February report given the associated risks of the Omicron variant.
- 4.5 It was acknowledged in the February 2022 report that taking into account all of the comments received, striking balance between ‘Living with Covid’ whilst maintaining an appropriate level of workforce resilience remained valid as it ensures service delivery & continuity as well as taking account of individual circumstances (such as underlying health conditions and/or people who may be clinically vulnerable).
- 4.6 At the time of writing the February report, there did seem to be some degree of optimism in terms of a positive direction of travel and based on the landscape at the time the report contained the following recommendations:
- i. That the transition to double crewed inspections that was enabled from 1 November 2021 (following your last meeting/discussion on this matter) continues, including consultation / engagement with Highway Officers via local management teams.
 - ii. As part of the above consultation / engagement, where specific circumstances might preclude double crewed inspections (such as personal / underlying health conditions) and Highway Officers are in agreement, that single crewed inspections are retained in those circumstances but reviewed bi-monthly by the Highway Officer concerned and their line manager
 - iii. Where double crewed inspections commence, the Health & Safety / Fleet / Public Health guidance contained in this report regarding mitigation and control measures is followed as rigorously as possible / as activities permit and that this is done in conjunction with any task-specific and Covid-related risk assessments
 - iv. That provision remains in place to revert to single-crewed inspections on a wider scale if there is either a large-scale Covid outbreak amongst the workforce and/or Government guidance changes
 - v. That the transition back to double-crewed inspections is fully concluded by the end of March 2022 unless circumstances [such as (iv)] dictate otherwise.
 - vi. That ongoing monitoring of the situation continues over the coming months and a final report is submitted to your meeting of 29 April 2022 (unless deemed necessary to be reported sooner) in order to bring this matter to a conclusion and return to Business as Usual. This would ultimately be dictated by factors such as the anticipated lifting of all restrictions and overall infection rates.
- 4.7 In preparation for this final review, key colleague and subject matter experts’ views have once again been sought as per all previous reports – these are summarised in the remainder of this section.

- 4.8 In terms of Legal and Democratic Services:
- Parts of the Coronavirus Act 2020 are still in force and have been retained to allow the Government to bring in further restrictions and regulations, if they are considered to be necessary. The Act is also subject to six monthly reviews. It was also acknowledge that the message from the Government is to live with Covid.
 - Whilst there are currently no legal restrictions in England that would prevent a return to the Highway Authority's policies regarding highway inspections we can be mindful of government guidance when considering how to manage the workforce. The key factor here is, absent any current restrictions, continuing with a modified inspection regime, which was adopted whilst Government restrictions were in place no longer carries, the same justification. Legal & Democratic services advised risk assessments to be carried out where any policy or procedure departure is being considered on an ongoing basis
- 4.9 From an Insurance & Risk Management (IRM) Perspective:
- Comments remain as per the last report insomuch that our third party claim repudiation rates are in line with expectation and not showing deterioration i.e. there does not appear to have been a drop in our ability to defend third party claims as a consequence of single crewed inspections being undertaken.
 - From an IRM perspective, a preference would be for twin crewed inspections simply to take away any challenge - however whilst the required measures for staff safety are in place then that remains the justification for single crewed.
 - Clearly this would need to be considered in conjunction with any Legal position & advice and being cognisant of comments in 4.8
- 4.10 In terms of ADEPT (Association of Directors of Economy, Planning & Transport) Engineering Board
- NYCC's Assistant Director H&T confirmed feedback from ADEPT members was that the approach was varied with some members retaining single crewed inspections 'for now', some members having moved permanently to single crewed inspections and some members having reverted to double crewed inspections
- 4.11 From a Health & Safety perspective, the following feedback was received:
- Covid-19 infection rates continue to remain high throughout North Yorkshire, however there have been no positive cases reported for NYCC staff working from Highways & Transportation offices during the previous three month period
 - Government guidance for Working safely during Coronavirus has now been replaced by reducing the spread of respiratory infections, including COVID-19, in the workplace issued 1st April 2022. Whilst there is no longer a specific reference to sharing vehicles within this document it does contain actions to reduce the spread of respiratory infections, including COVID-19 in workplaces, which could be used to translate to actions to control the spread of respiratory infection in vehicles. The relevant sections would be:
 - 'Let fresh air in – we continue to advise provision of adequate ventilation in vehicles by switching on ventilation systems that draw in fresh air or opening windows
 - Maintain a clean workplace – We continue to maintain cleaning of shared vehicles on a regular basis, especially high touch areas.'

- 4.12 With regard to NY Highways (NYH) (under normal circumstances NYH would typically provide drivers to assist NYCC Highway Officers undertake such inspections):
- NYH's Operations Manager (NYHOM) has confirmed now that with a few minor exceptions the additional fleet vehicles that had been used to facilitate single crewed travel to site had been either off-hired or repurposed. NYHOM stated he was still comfortable with providing a driver in a double-crewed scenario to facilitate / support double crewed inspections if control measures such as those outlined above were followed.
- 4.13 HR colleagues' comments remain largely unchanged from October 2021 and February 2022 reports and were:
- There is little change from last time: HR would still encourage the consultative approach you have started, with the view to returning to 'normal' in terms of crewed inspections.
 - Whilst the organisation is moving to working as normal, like UNISON, HR would still encourage appropriate risk assessments are in place and measures in place to mitigate any risk of infection (ventilation etc.) and identify and address any with serious pre-existing health conditions.
 - Any absence now due to COVID is addressed through our normal Attendance Management Policy and Procedure
- 4.14 Public Health colleagues commented as outlined below:
- COVID restrictions/mitigations have been removed nationally. The workplace guidance is now quite generic: [Reducing the spread of respiratory infections, including COVID-19, in the workplace - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/reducing-the-spread-of-respiratory-infections-including-covid-19-in-the-workplace). There is no longer any reference to social distancing or face coverings – focus is on not coming to work if you feel unwell, being vaccinated, and making sure spaces are clean and well ventilated.
 - The general NYCC guidance has been aligned with the above – we are now in the situation where our current measures are essentially our 'baseline'. COVID-19 is likely to be with us for years, and while additional measures may be brought in at a later date for now we need to assume that what we do after Easter is how we work for the foreseeable future. In this case, if the aim is to get back to multi-person crews then I would continue to proceed towards this. However, to mitigate there will need to be continued focus on ventilation, vaccination, and not attending work if unwell.
 - That said, COVID-19 rates are still extremely high. ONS Survey data estimates 1 in 14 people across England in the week ending 9th April (and slightly higher than that in Yorkshire & Humber).
 - Face coverings are now no longer required in NYCC workplaces (with some exceptions e.g. social care), but can be worn by individual choice, or following risk assessment for a particular area. People should still follow guidance on when to wear face coverings in the national guidance e.g. when in close contact with someone at higher risk from COVID-19 or other respiratory infections, or if you have symptoms/positive COVID-19 test result and you need to leave your home

- 4.15 UNISON, having taken soundings from members who work in this area replied as outlined below:
- Our position remains as outlined in the previous report, with the addition that given NYCC is moving even more towards normality (i.e. no face masks in buildings, no testing except for social care, etc). We would support a return to normal working with the previous caveats about ventilation, risk assessments, protecting vulnerable staff, etc.
 - Additionally, NYCC have now declassified Covid as an infectious disease in respect of sick pay arrangements, absence management trigger points and increment decisions, and the authority now defines Covid as being the same as any other respiratory illness.
- 4.16 Within Highway Operations, local teams' views were sought. By way of overview, their summarised views / overall feedback was:
- There is a range of very mixed opinions on what people would wish.
 - Looking at the comments received, along with the increasing disruption due to illnesses, it was felt that there needed to still be the options available to staff of both single and double crewed inspections.
 - There is also talk of the loss of cross-pollination of ideas and processes that is happening during single crewed inspections. However, the underlying worry is 'if we go to 100% double crewed inspections, we will have more people off ill'.
- 4.16.1 More detailed (but still précised for the purposes of this report) comments from teams is included as Appendix A to this report
- 4.17 Colleagues in Fleet stated from a fleet perspective double crewing was feasible based on other areas of fleet activity across NYCC and maintaining the suggestions offered in previous reports, but modified to take account of latest guidance, namely:
- Adequate ventilation
 - Regular cleaning with appropriate cleaning materials of surfaces especially regular touch points
 - Maximise distance between passengers – use outer seats.
 - Sit side by side and not behind others wherever possible
- 4.18 Taking into account all of the comments listed above, there are a number of key factors that need to be considered in coming to a conclusion and making subsequent recommendations whilst considering any legal or insurance implications from a change to policy or procedure and mindful of government guidance; those are:
- Given there are no legal restrictions, risk assessments to be carried out where any policy or procedure departure is being considered on an ongoing basis
 - The need to retain a consultative approach
 - The fact that infection rates are still high and the potential impact on service continuity has probably been mitigated throughout the pandemic by single crewed inspections. At the time of writing, the latest data (week ending 2 April) showed that 8.7% or 1 in 11 of our population was infected with Covid, which is slightly higher than the England average
 - The range of comments from those undertaking said inspections
 - The concept of 'Living with Covid'
 - Ensuring those with underlying / ongoing health conditions continue to be acknowledged and appropriate risk assessments / measures put in place

- 4.19 As per the last report, it does appear that the impact of both the Omicron Strain around Christmas and the latest surge of infections remain of some concern. In terms of severity or staff absences in Highway Operations must have been mitigated to some extent by the practice of single crewed inspections, which as acknowledged earlier in this report has had no impact on our repudiation of third party claims. That said, we have also had some teams undertaking double crewed and the absence of Covid cases as per para 4.11 could also be partly attributed to a responsible approach from those officers who have been double crewing
- 4.20 Any issues due to isolated staff absences have been managed along the way, and a blended approach of working from home, limited time in the office and other guidance/common-sense practice has no doubt assisted. Whilst the notion of fully returning to double crewed inspections by the end of March was referenced in the last report, infection rates are still high. Retaining an overall direction of travel back to full business as usual in a measured manner still seems feasible, but perhaps not at the rate / pace hoped for and recommended in the February report.
- 4.21 Ensuring the appropriate risk mitigation and control measures are in place, such as sanitising and ventilating vehicles and ‘buddying up’ / same pairings as much as possible remains valid.
- 4.22 A key consideration throughout these series of reports during the pandemic has always been the ability to maintain as much resilience and business continuity as possible whilst protecting staff. Having personnel double-crewed means twice the impact in terms of absences if positive tests result and the second person contracts Covid-19 from the first and this would still needs close monitoring with any change in approach or return to double-crewed inspections. However, as can be seen from earlier commentary in this report, ultimately there is that balance to be struck between living with Covid and managing the associated risks. These risks include managing the health and well-being of employees, safety elements associated with single crewed driving, the County Council’s ability to successfully defend against third party claims and the benefits that can be gained from shared knowledge, mentoring and ‘live’ training with an experienced and new HO sharing a vehicle.
- 4.23 Having taken all of the above into account, the recommendations in section 9 of this report continue to outline a way in which the direction of travel, transition and ultimately a return to double crewed inspections can still be enacted and managed, but with a slightly extended end date. With regard to that end date, where legitimate mitigating factors and associated risk assessments can evidence the need for single crewed inspections to be continued beyond this, but will need to be considered, evidence and justified on a case-by-case basis.

5.0 Equalities

- 5.1 Consideration has been given to the potential for any adverse equalities impacts arising from the recommendations of this report in consideration of the protected characteristics identified in the Equalities Act 2010 and NYCC’s additional agreed characteristics. An initial equality and impact assessment screening form has been completed and is outlined in Appendix B

6.0 Finance

- 6.1 There are no additional financial implications arising from this report. Activity will continue to be managed within existing budgets.

7.0 Legal

- 7.1 The County Council as Local Highway Authority, has a wide range of statutory duties imposed by a variety of legislation. Preparation of plans and carrying forward proposals is part of the County Council's function and there is an expectation that local authorities will have given government guidance due consideration.
- 7.2 The legal impacts of the emergency legislation were referenced in the report of 18 December 2020 and background paper (Executive Members report of 7 May 2020) as well as the report of July 2020.
- 7.3 Proper consideration as outlined in Section 5.0 is being given to equalities issues that are pertinent

8.0 Climate Change Impact Assessment

- 8.1 The current changes to the Highways Safety Inspection Manual with respect to driven carriageway inspections during Covid-19 were put in place to allow certain safety inspections to be completed without a dedicated driver. This amendment to how the service is delivered has no impacts with respect to climate change and so there is no need for a climate change impact assessment.
- 8.2 The completed Climate Change Impact Assessment can be found in Appendix C.

9.0 Recommendations

- 9.1 It is recommended that the Corporate Director, Business and Environmental Services (BES), in consultation with County Councillor Don Mackenzie, Executive Member for Access agree:
- i. That the transition to double crewed inspections that was enabled from 1 November 2021 (following your last meeting/discussion on this matter) continues, but with consultation / engagement with Highway Officers via local management teams on an individual case-by-case basis where it is believed a need for single crewed inspections to continue.
 - ii. As part of the above consultation / engagement, specific circumstances might preclude double crewed inspections. If it is established by the line manager (in consultation with HR if necessary) that mitigating circumstances exist and a double crewed inspection is not possible, then a work management approach is to be undertaken. This will include consideration of inspections being undertaken by another member of staff to enable double crewed inspections to take place. In those circumstances, a regular review will be undertaken of each individual case.
 - iii. Where double crewed inspections are undertaken, the Health & Safety / Fleet / Public Health guidance contained in this report regarding mitigation and control measures is followed as rigorously as possible / as activities permit and that this is done in conjunction with any task-specific and Covid-related risk assessments / NYCC guidance
 - iv. Acknowledging that parts of the Coronavirus Act 2020 are still in force and have been retained to allow the Government to bring in further restrictions and regulations, if they are considered to be necessary, provision remains in place to revert to single-crewed inspections on a wider scale if there is either a large-scale Covid outbreak amongst the workforce and/or Government guidance changes

- v. That the transition back to double-crewed inspections continues (subject to any individual exemptions / risk assessments) is fully concluded by the end of May 2022 (as opposed to March 2022 as referenced in the February 2022 report) unless circumstances [such as (iv)] dictate otherwise.
- vi. That, whilst ongoing monitoring of the situation continues over the coming months by local management teams in conjunction with the Head of Highway Operations and assistant Director Highways & Transportation) no further reports are required to be submitted and the matter becomes part of business as usual unless circumstances [such as (iv)] dictate otherwise

BARRIE MASON
Assistant Director
Highways and Transportation

Author of Report: Nigel Smith

Background Documents: Reports to Executive Members 7 May 2020, 18 December 2020, 23 July 2021, 22 October 2021 and 18 February 2022

Précised feedback from Highway Operations teams to supplement comments in para 4.16

- One area already undertaking double crewed inspections during March but with one Highway Officer (HO) driving and the other inspecting, with a level of 'comfort' coming from working with the same trusted partner. It was commented that this would be a concern if instructed to use other (and possibly regularly changing) drivers that a desire to return to single crewed may emerge
- Another area has been undertaking double crewed inspections recently and made a suggestion that we need to either agree that all routes that are of a particular class or hierarchy need to be double crewed or undertake a risk assessment of all the routes by the HOs to determine which routes need to be double crewed. Whichever approach is chosen, then this needs to be documented appropriately.
- A third area commented that, whilst Covid and other bugs are here to stay and we have to live with them, they can impact on absence records and 'lay a person out for days/ a week. So the preference is to be safe and only travel in pairs if necessary
- In one area, single crewed inspections have been done in March, to two HOs already planning to do double crewed inspections. A further comment was that one HO is Clinically Extremely Vulnerable (CEV) so would prefer to stay with single crewed, whereas another HO is very eager to return to double crewed
- Elsewhere there is a significant degree of nervousness and reluctance to return to double crewed given a combination of locally known cases, high national rates and one HO who is CEV/at risk.
- In another part of the county there is an almost 50/50 split with half of the HOs preferring to wait another month before transitioning and then others more comfortable sharing a vehicle (and have done throughout March)
- The final area's feedback was that they would welcome the return to double crewed and, juxtaposed to earlier comments about non-NYCC drivers, were asking for a driver that was not a HO (i.e. provided by NYHighways).

Initial equality impact assessment screening form (As of October 2015 this form replaces 'Record of decision not to carry out an EIA')			
This form records an equality screening process to determine the relevance of equality to a proposal, and a decision whether or not a full EIA would be appropriate or proportionate.			
Directorate	BES		
Service area	H&T		
Proposal being screened	Amendment to Highways Safety Inspection Manual V2.0 (HSIM)		
Officer(s) carrying out screening	Nigel Smith		
What are you proposing to do?	Amend the HSIM to allow for single person carriageway inspections during the Covid-19 social distancing protocols		
Why are you proposing this? What are the desired outcomes?	Endorsement of the Recommendations within this report allows NYCC to fulfil its obligations under the Highways Act 1980 whilst complying with the social distancing guidelines set down by Public Health England.		
Does the proposal involve a significant commitment or removal of resources? Please give details.	No		
Is there likely to be an adverse impact on people with any of the following protected characteristics as defined by the Equality Act 2010, or NYCC's additional agreed characteristics?			
As part of this assessment, please consider the following questions:			
<ul style="list-style-type: none"> To what extent is this service used by particular groups of people with protected characteristics? Does the proposal relate to functions that previous consultation has identified as important? Do different groups have different needs or experiences in the area the proposal relates to? 			
If for any characteristic it is considered that there is likely to be a significant adverse impact or you have ticked 'Don't know/no info available', then a full EIA should be carried out where this is proportionate. You are advised to speak to your Equality rep for advice if you are in any doubt.			
Protected characteristic	Yes	No	Don't know/No info available
Age		✓	
Disability		✓	
Sex (Gender)		✓	
Race		✓	
Sexual orientation		✓	
Gender reassignment		✓	
Religion or belief		✓	
Pregnancy or maternity		✓	
Marriage or civil partnership		✓	

NYCC additional characteristic			
People in rural areas		✓	
People on a low income		✓	
Carer (unpaid family or friend)		✓	
Does the proposal relate to an area where there are known inequalities/probable impacts (e.g. disabled people's access to public transport)? Please give details.	No.		
Will the proposal have a significant effect on how other organisations operate? (e.g. partners, funding criteria, etc.). Do any of these organisations support people with protected characteristics? Please explain why you have reached this conclusion.	No		
Decision (Please tick one option)	EIA not relevant or proportionate:	✓	Continue to full EIA:
Reason for decision	The proposed works will have no negative impact on the operation of the highway from the current position. As a consequence no people will be impacted including those with protected characteristics.		
Signed (Assistant Director or equivalent)	<i>Barrie Mason</i>		
Date	<i>19 April 2022</i>		

This page is intentionally left blank