

# **North Yorkshire County Council**

## **Executive Members**

**17 December 2021**

### **Opposed Public Bridleways No.s 10.19/28 & 10.110/43, Scot Pit Lane, Brompton and Northallerton Modification Order 2021**

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

##### **1.0 Purpose of the 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).
- 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 Modification Order to the SoS will take a neutral stance in relation to confirmation of the Order.

##### **2.0 Background**

- 2.1 The application for the Definitive Map Modification Order (DMMO) to add a public bridleway over Scot Pit Lane was submitted to the County Council in May 2019.
- 2.2 An earlier DMMO application for the same route was made in 1994 based on user evidence. This was rejected when it was considered in 2004 on the grounds that no legal date of challenge to use had been established by the applicant.
- 2.3 The current application was supported by a range of historical documentary evidence and photographic evidence of physical features. It also made reference to the 24 evidence of use forms submitted in the previous application but did not submit any new user evidence. A plan showing the application route is attached to this report as Plan 2.
- 2.4 An informal consultation was carried out and several objections were received. After consideration of the available evidence, it was determined that the evidence was insufficient to justify the making of an Order. Consequently the authority rejected the application in May 2020.
- 2.5 The Applicant appealed to the Secretary of State (SoS) under Schedule 14 of the Wildlife and Countryside Act against the Council's decision not to make an order. An Inspector considered the case and allowed the appeal, directing the Council to make the Order as applied for within the application [see **Appendix A** for a copy of the Appeal Decision].
- 2.6 The DMMO was sealed on 21 May 2021 and was advertised as statutorily required. An objection was received from the landowner, and this remains outstanding. The County Council cannot confirm a DMMO where there are outstanding objections; the Order must be forwarded to the SoS for resolution.

### **3.0 Representations made to the Order**

- 3.1 The landowner has submitted an objection to the sealed order based on the validity of the historical evidence.
- 3.2 During the formal consultation we received several representations in support of the order and the addition of the route as a public bridleway, from:
- Brompton Town Council
  - the local representative of the Byways and Bridleways Trust
  - the applicant (on behalf of the BHS)
  - 'Brompton Villagers' – a bundle of letters from 21 individuals submitted without any covering information using a pro-forma letter of support (the majority of these did not give any contact details or state their full names).
- 3.3 Although support for the addition of the bridleway to the Definitive Map was received, no further evidence was submitted.

### **4.0 Representation made by the local members**

- 4.1 No formal representations were received from the local councillors in response to the consultation regarding the Order.

### **4.0 Financial implications**

- 5.1 As the evidence submitted consists only of documentary evidence, not user evidence, it is probable that the Order would be resolved by written representations.
- 5.2 There would be an unavoidable cost to the Authority in preparing a submission to the SoS, and responding to any queries raised by the SoS. These costs would relate to officer time which would be met by the respective staffing budgets.

### **6.0 Equalities Implications**

- 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 Legal Implications**

- 7.1 The opposed Modification 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 will decide whether or not to confirm the opposed Modification Order. If he/she decides to confirm the Order, the routes will be added to the Definitive Map and statement in accordance with the details within the Modification Order.

### **8.0 Climate Change Implications**

- 8.1 The DMMO, if confirmed, would add a bridleway that is not currently recorded as a public right of way within the County Council's records. However this is not a route for mechanically propelled vehicles so confirmation of the order it is not likely to have a positive or negative impact on climate change.

## **9.0 Current Decision to be made**

- 9.1 In submitting an opposed Order to the SoS the County Council must express its stance in relation to confirmation of the order.
- 9.2 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 and needs to decide whether, on the basis of the 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.
- 9.3 The authority was not satisfied in 2020 that there was sufficient evidence submitted to warrant the making of an Order, however, on appeal the arguments put forward by the Authority for refusing to make the Order were rejected by the Inspector who directed the Authority to make the Order. Following the making of the Order, no further evidence has been put forward to change officers' initial view on the matter, therefore it is officers' opinion that there are no grounds to support the confirmation of the Order.
- 9.4 Where an authority has been directed to make an order after an appeal by an applicant has been upheld, the Planning Inspectorate (PINS) Guidance Note No. 1 states that:  
*'In such circumstances, where an OMA [order making authority] has previously assessed the facts of the case and decided the making of an order is not justified, it may opt to oppose confirmation of the order or it may choose to adopt a neutral stance whereby it neither supports nor objects to confirmation.'*
- 9.5 Therefore, the current decision still to be made is whether the County Council should actively oppose confirmation of the Order it was directed to make, or take a neutral stance, declining to offer any further interpretation and evaluation of the evidence, or comment on the pertinence of the objection to the Order.
- 9.6 If a stance is taken opposing the confirmation of the Order the County Council will be required to give a statement of case positively demonstrating why the Order should not be confirmed.
- 9.7 If a neutral stance is taken, the responsibility for presenting the case for and against the order to PINS will rest with the applicant and the objector respectively.
- 9.8 Whilst officers retain the view that the available evidence is not persuasive in supporting the confirmation of the Order, nor are they of the view that the evidence can be interpreted to clearly demonstrate that no public rights exist.
- 9.9 In conclusion, it would seem the most appropriate and pragmatic course of action for the Council to adopt a neutral stance in line with the guidance in Guidance Note No.1 when submitting the case to PINS, allowing the Inspector to come to his/her decision based on the cases made by both the applicant and the objector.

**10.0 Recommendation**

- 10.1 That the Director authorises the Authority to adopt a neutral stance in relation to confirmation of the Order within its submission of the opposed Modification Order to the Secretary of State.

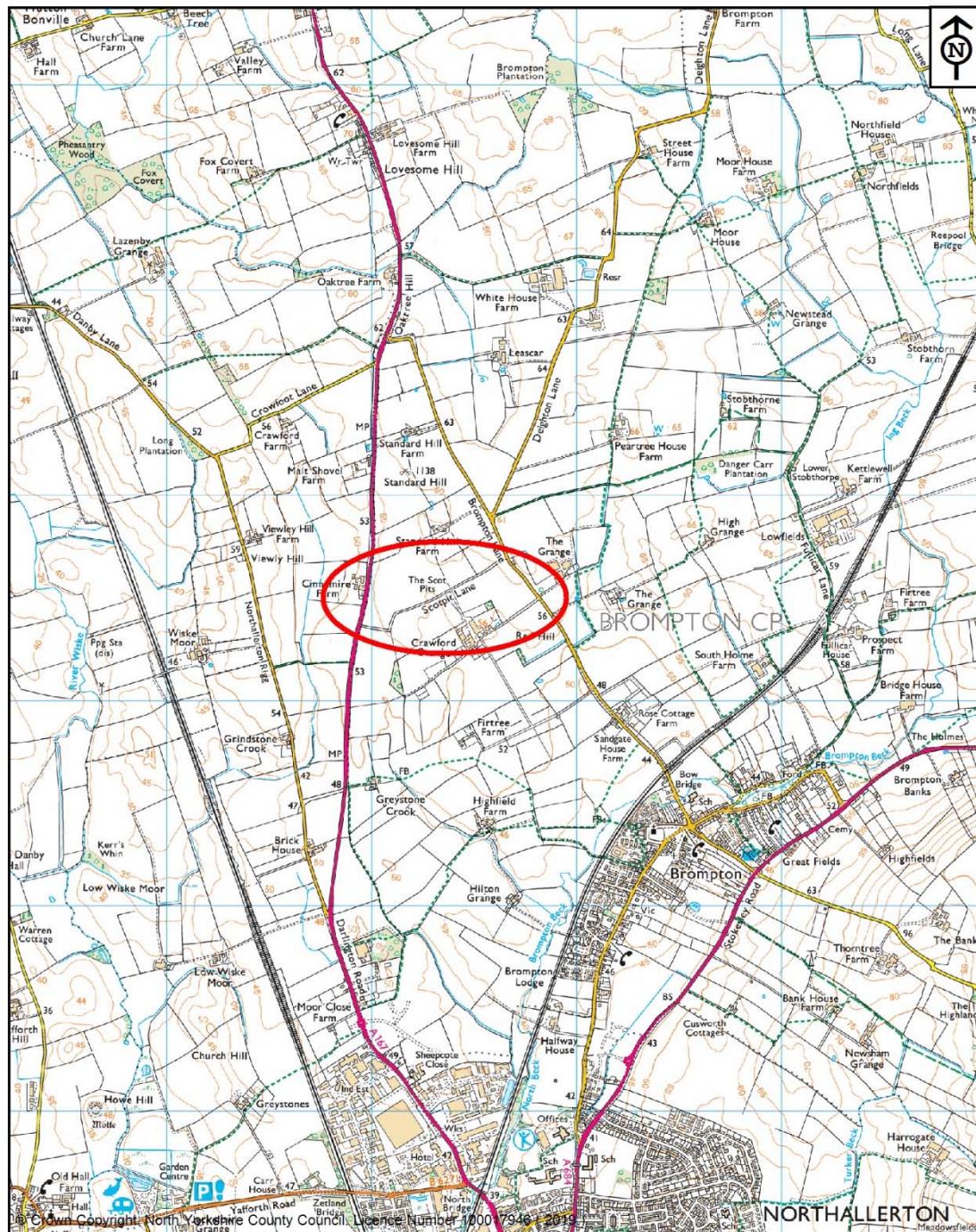
MICHAEL LEAH



Assistant Director: Travel, Environmental & Countryside Services

Author of report: Sarah Blakemore

Background papers: File Ref HAM/2019/06/DMMO

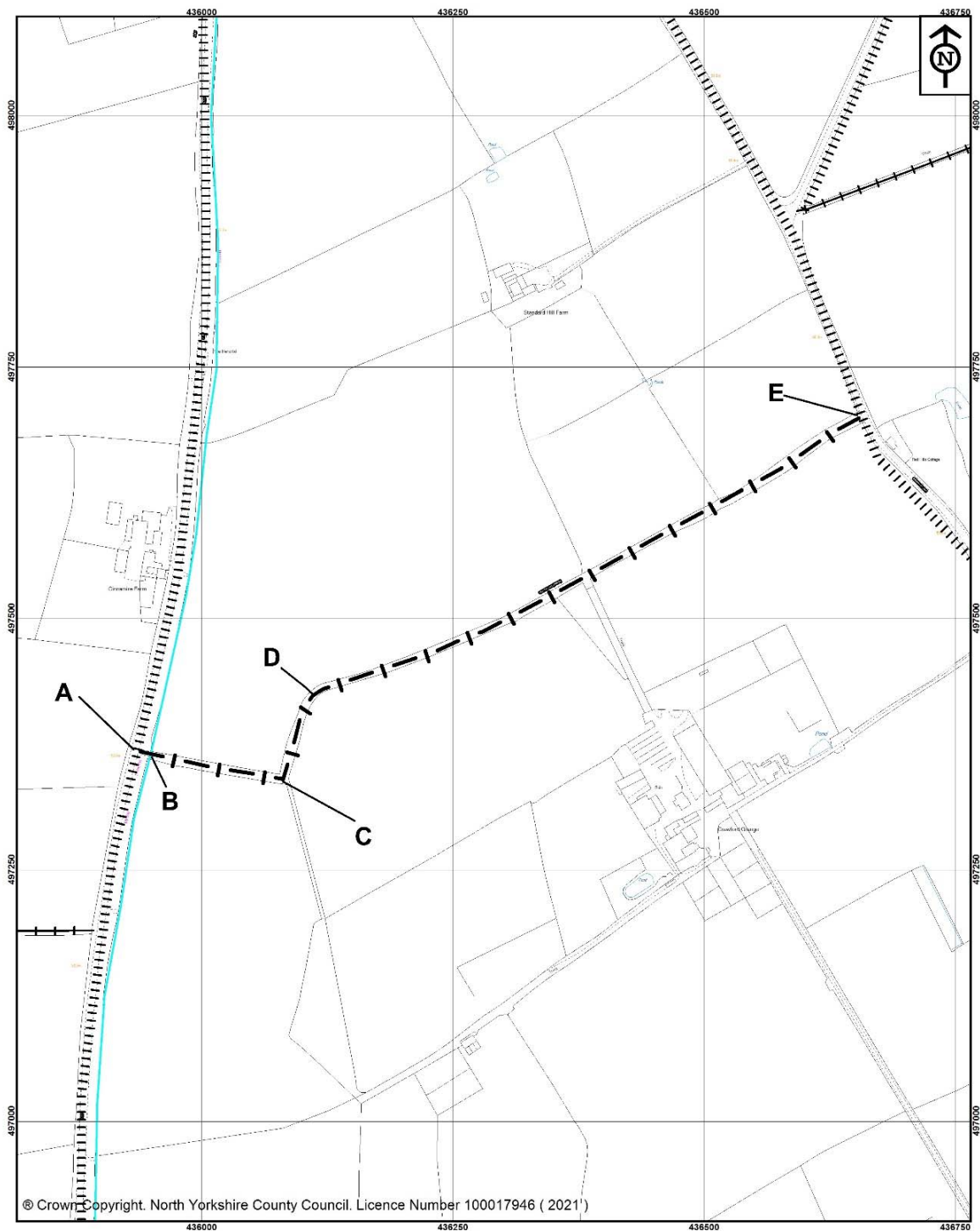
## PLAN 1 - Location Plan




 <p><b>North Yorkshire County Council</b></p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p><b>Location</b></p>  <p>Map drawn on 20 November 2019 Drawn by RWA      Scale 1:25000</p>	<p><b>North Yorkshire County Council</b></p> <p><b>Scot Pit Lane Location Plan</b></p> <p>File Ref No. HAM/2019/06/DMMO</p>
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### PLAN 2 – Plan showing the detail of Scot Pit Lane



 <p><b>North Yorkshire County Council</b></p> <p>Public Rights of Way Travel, Environmental &amp; Countryside Services County Hall Northallerton DL7 8AH</p>	<p><b>Key:</b> Bridleway to be recorded —   —   —   —  Other bridleways + + + + + Maintainable Highways      </p>	<p><b>North Yorkshire County Council</b> Wildlife and Countryside Act 1981 Section 53</p> <p>Public Bridleways No.s 10.19/28 &amp; 10.110/43, Scot Pit Lane, Brompton and Northallerton Modification Order 2021 File Ref No. HAM/2019/06/DMMO</p>
	<p>Map drawn on 17 May 2021 Drawn by SMB Scale 1:5000</p>	

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Brompton and Northallerton Modification Order 2021**

**AUTHORISATION**

I approve / do not approve the recommendation set out above

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ANY ADDITIONAL RECOMMENDATION or COMMENT:

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Karl Battersby  
Corporate Director - BES

Signed: .....Date: .....

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# Appeal Decision

**by Edward Cousins BA, BL, LL.M, Barrister**

an Inspector on the direction of the Secretary of State for Environment, Food and Rural Affairs

**Decision date: 23 March 2021**

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## **Appeal Ref: FPS/P2745/14A/7**

- This appeal is made under section 53(5) and paragraph 4(1) Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of North Yorkshire County Council ('the County Council') not to make an Order under section 53(2) of that Act.
- The application dated 27 May 2019 ('the Application') made by Mrs Caroline Bradley, as Applicant, for and on behalf of the British Horse Society was refused by way of notice from the County Council dated 11 May 2020.
- The Appellants claim that a public bridleway along Scot Pit Lane, Brompton, North Yorkshire should be recorded in the Definitive Map and Statement for the area.

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## **SUMMARY OF DECISION: The Appeal is allowed**

### **PRELIMINARY MATTERS**

1. I have been directed by the Secretary of State for the Environment, Food and Rural Affairs to determine an appeal ('the Appeal') under Section 53(5) of, and Paragraph 4(1) to, Schedule 14 of the Wildlife and Countryside Act 1981 ('the 1981 Act').
2. I have not visited the site. However, I am satisfied that I can make my decision without the need to do so.
3. The Appellant relies upon historical documentation in support of the Appeal, to which reference will be made below.

### **The Appeal**

4. The Appeal is made against the County Council's decision not to make an order in respect of the Application to add a public bridleway from the A167 to Brompton Lane along a route known as Scott Pit Lane, North Yorkshire ('the Application Route'), and thereby should be recorded on the definitive map and statement for the area.

### **The Application Route**

5. The Application Route is identified on the Location Map and Order Plan contained in Appendices 1 and 2 to the statement of reasons ('the Statement of Reasons') filed by the County Council in support of the refusal to make a Definitive Map Modification Order ('a DMMO') to add the bridleway identified
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as commencing from the A167 at Grid Reference 4359 4973 along Scot Pit Lane to Brompton Lane (C40) at Grid Reference 4366 4976.1.

## MAIN ISSUES

### Summary

#### ***The Definitive Map and Statement***

6. Insofar as definitive maps and statements are concerned, local authorities are required, subject to the determination of objections, to maintain definitive maps and statements of public footpaths and bridleways in their areas. These maps are conclusive as to the rights shown. However, the local authority is under a duty to keep them under continuous review and to amend them accordingly. It therefore follows that the definitive map is always subject to modification under section 53 of the 1981 Act.

#### ***The Tests***

7. Section 53(3)(c)(i) of 1981 Act specifies that an order should be made following the discovery of evidence which, when considered with all other relevant evidence, shows that '*a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist...*'.
  - (1) Test A: Does a right of way subsist on the balance of probabilities?
  - (2) Test B: Is it reasonable to allege that a right of way subsists? For this possibility to arise it will be necessary to demonstrate that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist. If there is a conflict of credible evidence, but no incontrovertible evidence that a right of way could not be reasonably alleged to subsist, then it is reasonable to allege that one does.<sup>2</sup>
9. Thus, for the purposes of this Appeal Decision, and having regard to the legal principles and evidential base which I analyse below, in my judgment, I need only be satisfied that the evidence meets Test B - the lesser test.
10. For the purposes of this Appeal Decision, I also find that any historic user evidence referred to by the Appellant is not relevant to support dedication in accordance with Section 31 of the 1980 Act.<sup>3</sup> However, I am satisfied that

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<sup>1</sup> 27 May 2019 HAM/201906DMMO Scot Pit Lane, Brompton. The Application Route is delineated as lying between points A-B-C-D on the Order Map.

<sup>2</sup> See the judgment of Owen J in *R v Secretary of State for the Environment, ex p. Bagshaw and Norton* (1994) 68 P&CR 402. Also see *Todd v The Secretary of State for Environment, Food and Rural Affairs* [2004] 1 WLR 2471 per Evans-Lombe J. Thus, the test to be applied under Test B is not whether the evidence establishes that a right of way exists, but whether a right of way can from the evidence reasonably be alleged to exist. If it can, the authority must make the DMMO notwithstanding that it may not consider that the evidence is sufficient to establish that the right of way in fact does exist.

<sup>3</sup> On 10 May 2004 the County Committee for Hambleton met to determine an application for a DMMO relating to the bridleway based upon user evidence. Item 277 of the Committee Report it was resolved that the application be not pursued for the reasons stated in the Officer's Report to the Director of Environment Services. This decision was not the subject of any appeal made following this decision.

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user evidence may support documentary evidence in relation to a claim for a public right of way at common law.

## THE EVIDENCE AND ITS ASSESSMENT

11. In this contextual framework the common law rule is "*Once a highway always a highway*". There is no extinctive presumption or prescription arising from the non-exercise of rights of passage, save only when this arises from natural causes such as inroads of the sea or landslips. In order to extinguish or even vary a right, intervention by statute has always been necessary.<sup>4</sup> If it can be demonstrated that a way is an ancient highway the fact that it has fallen into disuse, for example because another more convenient highway has been dedicated, does not cause it to cease to be a highway.

*'Mere disuse of a highway cannot deprive the public of their rights. Where there has once been a highway no length of time during which it may not have been used would preclude the public from ever resuming the exercise of the rights to use it if and when they think proper'*<sup>5</sup>

In *Dawes v Hawkins*<sup>6</sup> Williams J stated that:

*'It is also an established maxim, once a highway always a highway: for, the public cannot release their rights, and there is no extinctive presumption or prescription'*.<sup>7</sup>

12. Thus, in essence, it is necessary to consider whether the documentary and other evidence is sufficient to support the dedication of a public right of way under common law, or whether such evidence merely indicates that a way existed, but its status was no more than a private right of way. This requires consideration of three main issues: whether the owner of the land had the capacity to dedicate a highway, whether there was express or implied dedication by the landowner and whether there has been acceptance of the dedication by the public.<sup>8</sup>

### At Common Law

#### Introduction

13. In support of her case, the Appellant provides a detailed analysis of the mapping evidence relied upon, together with physical features said to be of relevance to her case. It is submitted by her that for the purposes of Test B there is sufficient evidence to support the case that it is reasonable to allege that a right of way subsists and has subsisted over the Application Route.
14. The County Council having determined not to make an Order, has led the case as to why they say they should not be directed to do so. They have produced a comprehensive Statement of Reasons dated 16<sup>th</sup> June 2020 in

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<sup>4</sup> See *Eyre v New Forest Highway Board* (1892) 56 JP 517.

<sup>5</sup> See *Harvey v Truro Rural District Council* [1903] 2 CH 638, at 644, per Joyce J.

<sup>6</sup> (1860) 8CB (NS) 848.

<sup>7</sup> See also *Robinson Webster (Holdings) Ltd v Agombar* (2002) 1 P & CR 20.

<sup>8</sup> See *The Secretary of State for the Environment, Transport, and the Regions v Baylis* [2000] EWCA Civ. 361 where there can be acceptance by the local authority on behalf of the public.

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response. The County Council acknowledges that physically a lane has historically existed on the ground which follows the line of the Application Route. It is also acknowledged that the mapping evidence depicts the presence of a way. However, it is submitted that these facts cannot in themselves be interpreted as implying the existence of public rights. The County Council therefore seeks to refute the analysis promoted by the Appellant on the basis that it is not possible to draw the conclusions that the Appellant seeks to do, and that the photographs and other evidence fail to address its highway status.

15. It is further asserted by the County Council that no single piece of evidence submitted is sufficiently strong to meet the evidential test, i.e., there is not sufficient 'synergy of evidence' which allows disparate strands of evidence be woven together to create a single body of evidence.<sup>9</sup> Nor do the documents when viewed together provide sufficient evidence to satisfactorily and reasonably allege the existence of public rights so as to justify the making of a DMMO. It is therefore submitted that there is insufficient evidence to demonstrate that the Application Route is and has always been a public right of way.
16. Other responses have also been made in opposition to the Appeal from a number of interested parties.

***Historical Mapping and other documentation***

17. The historical mapping and other evidence led by the parties for the purposes of this Appeal Decision is as follows:
18. *The 1717 Jeffries map; the 1817 Greenwood's map; and the 1822 Langdale's map* - those opposing the Appeal submit that the Application Route is not depicted on these maps. It is contended that such commercially produced maps were sold to the public and would only show routes that would only be available to the public to use. Thus, Scot Pit Lane would have been included if it had been an established public highway at the time that each map was drawn.
19. I consider that this contention in itself, when considered in the context of other evidence, does not provide conclusive evidence that the Application Route did not have the status of a public highway. This is a factor to weigh in the balance when drawing the appropriate conclusions based upon the 'synergy of evidence'.
20. *Mr Croffield's Estate Plan 1765*<sup>10</sup> - This plan was prepared for the owner of the Estate to enable the Estate to be managed, and to identify the boundaries of the land holding. The Application Route is identified as a through route labelled Scot Pit Lane. It is submitted by the Appellant that it is shown in the same manner as other contemporary public roads, such as Brompton Lane C4. It is also identified as being open at both ends, thereby depicting it as a road for the use of the public and noted as such by Mr Croffield as the owner

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<sup>9</sup> The County Council relies upon the concept of 'synergy of evidence' as not being sufficiently present in this case. This was a phrase adopted by Evans-Lombe J in the case of *Todd v The Secretary of State for Environment, Food and Rural Affairs* [2004] 1 WLR 2471.

<sup>10</sup> NYCRO ref. ZEK 1/10

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of the Estate. It is further contended that the Estate Plan shows the Application Route separated and fenced or walled off from the properties on either side for its entire length and continuous with the public highway network.

21. It is acknowledged by the County Council that Mr Croffield's Estate Plan of 1765 does record Scot Pit Lane, together with the former Turnpike Road. However, it is contended that this was a privately produced map which was not intended for the public to use, so there would be no requirement to indicate whether or not the lane was a highway. Indeed, it is said that it appears to have been produced to record the landowner's holdings. It is therefore submitted by the County Council that this plan has no evidential value.
22. I disagree with that contention and I note that the Application Route is identified as a through route labelled Scot Pit Lane, and apparently open at both ends. I find that the Plan provides evidential value in support of the Appellant's case when viewing the overall effect of the mapping evidence as a whole.
23. *Highways Act 1773, Section 69* – Named Roads – the Appellant relies upon this section as supporting the interpretation that common highways had to be named before an indictment for obstruction or disrepair could be pursued. However, it is contended by the County Council that although the Pins Consistency Guidelines address this issue, and conclude that although the statutory element is probably correct, it is a matter of fact that nowadays many public highways are not named, and some private roads are. Again, it is contended by the County Council that this evidence has no evidential value.
24. I find that the fact that Application Route has borne a name ('Scot Pit Lane') through the centuries, together with other evidential factors, provide support for the proposition that the way historically has had the status a public highway.
25. *Quarter Sessions Records 1809 for Northallerton* – In the Records for year 1809 there is a reference to a request made asking for an adjournment. This related to a charge made against the Inhabitants of Northallerton arising from the non-maintenance of a certain road known as 'Scot Pit Lane'. The request for the adjournment states that "*Mr Dixon the overseer of the Highways will prove that a great deal has been done to make the Road good and that he hopes the Defendants will be prepared against the next Sessions to get the Indictment discharged*".<sup>11</sup>
26. It is submitted by the Appellant that these Records provide evidence that the Application Route was considered at that time to be a public road with vehicular access, and its status is a legal Court record. However, those objecting to the Appeal take issue as to the accuracy of these Quarter Sessions Records of 1809. It is contended that the Report is not a plea, nor does it constitute a finding of legal fact, but is a mere administrative entry.

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<sup>11</sup> NYCRO Reference QSB 1809/1/9/8.

27. I disagree with that interpretation. It does appear that these Records provide evidence in support of the proposition that as far back as 1809 Scot Pit Lane was treated as a public highway for maintenance purposes.
28. *Tithe Map for Brompton 1839* – The Appellant relies upon this map as identifying the Application Route for its entire length. It bears the apportionment number – 235 and is depicted as a ‘Lane’ with a land area, but no value apportioned for the Tithe. It is submitted by the Appellant that this depiction of the Application Route on the Tithe Map and its description, and the lack of any Tithe value being apportioned, is consistent with the Application Route being a maintained vehicular highway used by the public at the time of the assessment.<sup>12</sup> It is further contended by the Appellant that the Application Route is depicted in the same way as the public vehicular highways such as Brompton Lane C4, and that it connects to what are now public routes such as Fullicar Lane which bears the apportionment number - 975. A minor lane off Fullicar Lane also has an apportionment number - 592 and is listed in the apportionment record as a ‘lane’ in the same manner of depiction as the Application Route, with no value apportioned for Tithes.
29. Again, issue is taken by those objecting to the Appeal as to the accuracy of the Tithe Map and the inclusion of the Scot Pit Lane. Apportionment as No. 235 appears to allocate Scot Pit Lane as a private holding of a named individual. It is said that the Application Route does not appear on the list of Public Highways at the time, which all commence with the number ‘9’. This is said to be conclusive evidence that Scot Pit Lane was a private, and not a public way. It is contended that its apparent omission from the list of public highways negates much of the remaining evidence. In essence, it is submitted that the evidence relied upon by the Appellant in the form of the Tithe Map fails to provide clear and cogent evidence that the Application Route is a public highway. Indeed, it is asserted that there is evidence which suggests a contrary interpretation.
30. I find that the depiction of the Application Route on the Tithe Map with an apportionment number and its description, and the lack of any Tithe value being apportioned, is supportive of the Application Route having public rights of access at the time. I find that the fact that the number ‘9’ is omitted is not conclusive evidence in itself that Scot Pit Lane was a private, and not a public right of way.

### ***OS Mapping***

31. The establishment of the Ordnance Survey (“the OS”) in England and Wales was in response to a military need in the early part of the 19<sup>th</sup> century for detailed accurate mapping arising from the threat of invasion. Prior to that mapping was produced on a more haphazard basis reflecting a variety of individualistic historical needs, commercial or otherwise. Over the decades since then the OS has developed a variety of maps to meet the growing need for accurate and up-to-date revisions of the United Kingdom. The production of maps for sale to the public became an activity of increasing importance

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<sup>12</sup> National Archives IR30/42/55, and IR29/42/55. It is said that it was common for no Tithes to be payable in respect of roads as such areas were deemed to be unproductive.

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from the early part of the 20<sup>th</sup> century. The more recent OS surveys and mapping provide an accurate representation of routes on the ground at the time of survey – historically by means of trigonometry and latterly by means of satellite technology.

32. Reliance is placed by the Appellant upon the following maps -
33. *Ordnance Survey - 1<sup>st</sup> Edition 1:10560 - 6 inch to 1 mile maps.*<sup>13</sup> The Appellant relies upon the fact that the Application Route existed as an enclosed lane named as 'Scotpits Lane'. She contends that this is clearly demonstrated as a road and through route identified in the same manner as other contemporary public roads. Reference is made by the County Council to the fact that the Application Route appears to be shown as gated at each end. However, it is submitted by the Appellant that this does not preclude it from being a public route as gates were not uncommon on minor public routes. In addition, the fact that a gate may be shown at the junction of the Application Route with the Durham Turnpike Road (the current A167), is likely to be on the basis that a turnpike road attracted a toll or charge for use - hence adjoining public roads were usually gated.
34. *Ordnance Survey - County Series 1:2500 - 25 inch to 1 mile maps 1894-1898* – It is said by the Appellant that this series contains valuable extra information. Although the Books of Reference (otherwise known as "Area Books") were no longer published from the mid 1880's, at the time that Yorkshire was surveyed for the 25 inch maps the area of individual land plots were still shown on the maps. The land area is shown on the public maps indicating that they were distinct and separate from the surrounding fields or hereditaments. The Appellant contends that the Application Route is identified on this map with a reference number 419<sup>14</sup> identified as Scotpit Lane. This indicated, so it is contended, that this is identified as a separate and distinct route with public rights.
35. *Ordnance Survey revised New Edition - 1-inch map 1898* – The Appellant relies upon this edition of the Ordnance Survey as being of value in relation to the recording of roads. Map sheet 42 Northallerton identifies the Application Route by reference to the Map Key as an enclosed third-class metalled road (fenced) as a through route and open at both ends. Again, this, so it is said, provides evidence that the Application Route was a public carriage road.
36. *OS 1:25,000 (2½ inch) Maps of Great Britain 1937-1961*<sup>15</sup> – OS Map Sheet SE39 published in 1952 shows the Application Route as a vehicular route in the same manner as other contemporary public vehicular roads. It is identified as 'The Scot Pits'. Also, it is not labelled with the designation 'FP' for 'footpath' indicating, so it is said by the Appellant, that this demonstrates that Application Route was an ancient roadway with higher user rights.
37. However, it must be reiterated that the depiction of a way on an OS map is not, of itself, evidence of a highway. Similarly, the lack of depiction of a

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<sup>13</sup> Yorkshire Sheets 55 and 56 published in 1857.

<sup>14</sup> It is to be noted that this number is the OS field numbering system – not to be confused with the Tithe Apportionment No 235. Both relate to what is now described as the Application Route.

<sup>15</sup> Otherwise known as the 1:25,000 is known as the 'Provisional Edition' or 'First Series' and was the forerunner of the modern Explorer and Outdoor Leisure maps.

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route on the OS mapping cannot necessarily be relied upon as an indication that there was not a publicly used way on the ground. The County Council in general seeks to discount such evidence on the mantra that the depiction of a way on an OS map is not, of itself, evidence of a highway. I agree with this interpretation. However, they provide strong evidence of an existing route on the ground throughout the last two centuries.

### ***Land ownership***

38. *Land Registry Mapping Inspire 2019* – The Appellant contends that this shows the Application Route as unregistered and separate to the surrounding land holdings. It is said that this conforms with Mr Croffield's Estate Plan dated 1765 and supports the public nature of the route. The Appellant also relies upon the fact that the Application Route links east/west to a corresponding public route which is now a current day public bridleway.
39. The further point is made by the Appellant that the Application Route remains unregistered at HM Land Registry. She acknowledges in her Final Comments that the land on each side of the Application Route has recently been registered to the same owner but contends that it is therefore doubtful that there is an existing owner. Further the Appellant asserts that the fact it remains unregistered supports the view that it is a public right of way.
40. I agree that it is somewhat odd that the land forming the Application Route remains unregistered, but the simple explanation may be that no-one could prove title to it. However, I find that in itself this does not provide the inference that the Application Route therefore is a public right of way, but merely that there is no known owner of the land. In the absence of such evidence of ownership, the land belongs to the owners on either side under the *ad medium filum* presumption if the route is in fact a highway.

### ***The Dropped Kerb***

41. In addition, an issue has arisen over the presence of a dropped kerb ('the Dropped Kerb') on the main A167 road at the junction with the western end of the Application Route. This can be seen from the photographs included as part of the evidence. It is submitted by those opposing the Appeal that had the Application Route been historically a public route the expectation would be that there should be no kerb – dropped or otherwise, across its end. Dropped kerbs may be authorised by the Highway Authority where the landowner may require vehicular access to private land, so it is argued.
42. For her part, the Appellant submits that this is an irrelevant consideration as to whether the Application Route is a public thoroughfare, or not. This evidence should be disregarded due to the presence of other similar features where public access is allowed from public roads. Indeed, it could be argued that the presence of the Dropped Kerb is intended in fact to facilitate access by the public to the Application Route, similar to a pavement cross over. I therefore discount this evidence as being supportive of the case presented by the County Council, and other interested parties.

### ***Level of the Application Route***

43. As to the submission that the level of the Application Route is physically higher than the surrounding land, it is said by the County Council that this aspect has not been investigated due to the Covid-19 restrictions. However, it is stated that this could only be interpreted that the landowner wished to ensure that the Application Route remained dryer, and more accessible as part of the requirement for private access to the surrounding fields. This, so it is submitted by the Council, in itself cannot be interpreted to the effect that the Application Route was therefore necessarily available for public use.
44. I reject this submission as having little relevance as to the determination of the status of Application Route.

### ***Direct Access***

45. A further submission is made by the Appellant to the effect that the Application Route would have served as a direct access to Brompton township is rejected by the County Council for the reasons set out in paragraph 8.5 of the Statement of Reasons. Based upon the measurements set out, it is submitted that the effect that any use made of Scot Pit Lane would have to shorten journeys in fact would result in longer journeys.
46. Without being able to conduct a detailed physical assessment on site owing to Covid-19 restrictions, I do not propose to consider this point as part of the analyse of this Decision.

### ***User Evidence***

47. In relation to user evidence the County Council states in its letter dated 17 November 2020 that there has not been any change in circumstances such that the user evidence can be relied upon in this Appeal. I have not dealt with the user evidence in detail but consider that at face value the evidence, some of which dates back to the 1920's, is supportive of the documentary evidence in showing continued use over the claimed route.

### ***Other Interested Parties***

48. Letters of Objection have also been received from Mr T Howard, Mr Mark Corner, and Ms Gill Evans, together with a detailed letter from Mr Paul Langthorne, who lives at Crawford Grange, Brompton. Mr Langthorne makes specific and detailed reference to the Brompton Tithe Maps and Schedules dated 1839 to demonstrate that Scot Pit Lane is not included as a public highway. He also makes reference to the various other points that have already been raised by the County Council relating to the fact that the Application Route is gated at both ends, and that there is evidence of the Dropped Kerb which, so it is said, provides evidence that it is not a public roadway.
49. Issue is also taken as to the mapping evidence relied upon by the Appellant. Mr Langthorne rejects such evidence as not being supportive of the claim that the Application Route is, and historically has been, a public highway. He submits that such evidence is insufficient for such a finding to be made. He also relies upon the fact that the original Committee decision of the County

Council in 2004 referred to the fact that Scot Pit Lane was not shown as excluded from the Finance Act 1910 Assessment. Mr Langthorne submits that if it had been shown as excluded, then this Assessment would have indicated that Scot Pit Lane at the time was believed to be a public way maintainable at public expense. Therefore, in such circumstances, the implication to be made is that it was in private ownership at the time.

50. I find that these submissions do not take the matter much further for the reason that they broadly repeat the submissions made by the County Council. These I have already considered in my findings, above.

## **SUMMARY**

51. Drawing together the various strands, and taking into account the competing submissions, I remind myself that the test to be applied under Test B is not whether the evidence establishes that a right of way exists, but whether a right of way can from the available evidence reasonably be alleged to exist. If it can, the authority must make the DMMO notwithstanding that it may not consider that the evidence is sufficient to establish that the right of way in fact does exist.
52. In my judgment, for the purposes of the Appeal there is sufficient available evidence of the historical existence of a long-standing dedicated physical route to support the proposition that a public right of way on the ground along the line of the Application Route can reasonably be alleged to have arisen for the use of the public.
53. My reasons are as follows:
- (1) With three exceptions, the balance of the historical mapping evidence on successive maps since at least 1765 until the most recent edition of the OS map, together with other documentary evidence, is strongly suggestive of the fact that there has been a through route dedicated for the use of the public along the Application Route;
  - (2) Further, although it is not conclusive evidence in itself, I consider the fact that the Application Route is a lane identified within the local community by name i.e., 'Scot Pit Lane' is also a matter of some significance;
  - (3) The fact that the County Council acknowledges that the mapping evidence has consistently depicted the existence of the Application Route, and that there is no dispute that it exists as a way on the ground, is also of some significance;
  - (4) I do not accept the significance of the apparent depiction of gated ends to the Application Route on the maps as demonstrating the lack of public access. There are many public routes throughout England and Wales which are gated, the purpose of to prevent straying animals;
  - (5) I also do not accept the challenges made by the County Council to the accuracy of the evidence provided by the 1809 Quarter Sessions Record, or the 1839 Tithe Map for Brompton;

- (6) I further reject the suggestion that the Dropped Kerb provides any or any sufficient evidence that the Application Route is a private way. In fact, I find that the evidence of the Dropped Kerb, if anything, is supportive of the Appellants' case in that it could be construed as providing an easier method of access from other public highways to and through the Application Route;
- (7) Finally, I disagree with the County Council's submission that when the various pieces of evidence when viewed together fail to provide overall a sufficiency of evidence to support the Appellant's case.

## **CONCLUSIONS**

- 54. I therefore conclude that in all the circumstances there has been discovery of sufficient evidence upon which it is reasonable to allege that a right of way subsists in accordance with Test B. In other words, a reasonable person having considered all the relevant evidence available could reasonably allege a right of way to subsist.
- 55. Thus, having regard to these and all other matters raised in the written representations I conclude that the Appeal should be allowed.

## **FORMAL DECISION**

- 56. In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act North Yorkshire County Council is directed within 12 months of the date of issue of this Appeal Decision to make an order under Section 53(2) and Schedule 15 of the Act to modify the Definitive Map and Statement for the area to add a public bridleway identified as commencing from the A167 at Grid Reference 4359 4973 along Scot Pit Lane to Brompton Lane (C40) at Grid Reference 4366 4976 identified in the Application dated 27 May 2019, and more particularly delineated as lying between points A-B-C-D on the draft Order Map contained in Appendix 2 to the Statement of Reasons.
- 57. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act.

*Edward Cousins*

**Inspector**