

North Yorkshire County Council

Executive Members

27 May 2022

Opposed Public Footpath 25.114/9, Back Lane, Wrelton Modification Order 2012 – Pins Proposed Amendment to Order

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

1.0 Purpose of the report

- 1.1 To advise the Corporate Director Business and Environmental Services (BES) and BES Executive Members of developments relating to the opposed Definitive Map Order currently being considered by the Secretary of State. A location plan is attached to this report as **Plan 1**. The route is shown on **Plan 2**.
- 1.2 To request that the Corporate Director, in consultation with the Executive Member for Access, to authorise that North Yorkshire County Council (NYCC) **will take a neutral stance** to the Secretary of State's proposal to modify the status of the route within the Order from public footpath to restricted byway.

2.0 Background

- 2.1 The route, known locally as Back Lane, runs from Wrelton Lane to Wrelton Cliff Road, in Wrelton and is not recorded on the definitive map.
- 2.2 The DMMO application to record Back Lane as a public footpath was made in 2007, in response to a local landowner challenging public use of the route.
- 2.3 The DMMO was supported by 76 user evidence forms: 9 were submitted with the application and a further 68 were provided by the Parish Council. A total of 20 forms were rejected as being incomplete or not relevant, leaving a total of 57 supporting forms. No historical documents were submitted with the application.
- 2.4 The evidence was supporting of use by the public at large on foot, with some use on bicycle, horseback and by vehicle, 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 considered that a DMMO should be made to record it on the Definitive Map and Statement as a public footpath.
- 2.6 Attached to this report as **Appendix 1** is a copy of the report submitted to the Planning and Regulatory Committee on 13 January 2012, in which the case for making a Definitive Map Modification Order was outlined. The Committee authorised the making of a DMMO.
- 2.7 The Order was made on 10 April 2012 and advertised on 9 May 2012, attracting two objections. The County Council cannot confirm a DMMO where there are outstanding objections; the Order must be forwarded to the Secretary of State for resolution.

- 2.8 The Order and associated objections were referred to the Secretary of State in August 2019 and subsequently the Planning Inspectorate directed the County Council to re-advertise the Order to ensure that the statutory notification period requirements were sufficiently satisfied.
- 2.9 The Order was re-advertised on 12 February 2020 and three objections were received: Two of the objections were made on the grounds that no public rights exists over the order route and therefore it should not be recorded as a public right of way of any sort. The other objection was made on the grounds that the evidence suggested that the order route carries higher rights than that of footpath and it should therefore be recorded as a Bridleway or Restricted Byway.
- 2.10 The Inspector appointed by the Secretary of State proposed to determine the order through the written representations procedure and accompanied site visit. Following the accompanied site visit, the Inspector proposed to confirm the Order subject to modification to record the route as a Restricted Byway.
- 2.11 The Notice of proposal to modify the DMMO was published by the Planning Inspectorate on 17 November 2021.
- 2.12 The County Council did not make a formal response to the proposed amendment to the Order.

3.0 Responses to the Proposed Modification

- 3.1 The Planning Inspectorate received one objection and three representations to the proposed modification.
- 3.2 The objection was made on the grounds that the order contains flaws and deviates from the relevant legislation, that the advertising process may have been flawed, and that there may be additional evidence not previously considered by the Inspector.

Officer comment

The objector commented on the position of the sealing page contained in the 2012 order, pointing out that Regulations describe that the seal should be placed immediately prior to the schedules. The OMA is aware of this. Many of the Authority's Orders were presented with the seal after the schedules and plan, in the past, but rights of way orders have been correctly drafted in line with the relevant regulations for many years once the error was noted internally, and immediately acted upon. It is suspected that this error would not be considered fatal to an order.

It is accepted that the Notice on the northern end of the route could have been better located, however the other Notice on the route was plain to see. Notices also appeared in the local press, and were provided to the Parish Council to display within the village and the matter would have been discussed at the Parish Council meeting, so there was plenty of opportunity for local awareness of the content of the Notice.

- 3.3 Two of the representations were from user groups in support of the proposed modification. The third representation was from a resident in Holly Close, enquiring about the potential impact on parking.

Officer comment

Representatives from the British Horse Society and the Byways and Bridleways Trust expressed support for the proposed modification.

The resident of Holly Close raised concerns about the potential impact on parking spaces in the Close, and the potential impact of motor vehicles using the order route. The case officer subsequently provided the resident with advice on the matter.

- 3.4 The OMA remained satisfied that there is sufficient evidence to support pedestrian rights and is aware that the evidence for higher rights is less clear.
- 3.5 At the request of the objector, the Inspectorate is to hold a local Hearing in order to consider the objections to the Inspector's intention to confirm the Order to add a restricted byway to the Definitive Map rather than a public footpath. The hearing is to be held at Wrelton Village Hall on 22 July 2022.

4.0 Evidence in support of the Order

- 4.1 The Inspector made the decision to modify the order to Restricted Byway based on examination of the available documentary and user evidence, and on the accompanied site visit. Although Officers are of the view that the evidence of higher rights than those of public footpath is not conclusive, Officers do not disagree with the Inspector's interpretation of the evidence, or his decision to modify the order.

5.0 Representation made by the local member

- 5.1 No formal representations were received from the local councillor in response to the consultations regarding the proposed modified 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 Financial implications

- 7.1 The opposed Modification Order is to be determined by an Inspector appointed by the SoS, by a local Hearing, as stated above in 3.5.
- 7.2 There will be a non-rechargeable cost to the Authority responding to any queries raised by the SoS, and for arranging, hosting, attending and supporting the Hearing. The costs would be largely for officer time which would be met by the respective staffing budgets. The costs to the Authority of a Hearing are unavoidable but are unlikely to exceed approximately £1,000.

8.0 Equalities implications

- 8.1 Consideration has been given to the potential for any equality impacts arising from the recommendations. It is considered that the outcome would have no impact on the protected characteristics identified in the Equalities Act 2010.

9.0 Legal implications

- 9.1 The opposed modified Modification Order is to be determined by the Inspector appointed by the SoS, following the Hearing as stated in 3.5. It is unlikely that he will now decide not to confirm the Order, so it is most probable that the Order will be confirmed with, or without, the proposed changes, meaning that the route will be added to the Definitive Map as either a restricted byway, or a public footpath, respectively.

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

10.0 Climate change implications

10.1 The confirmation of this order would have no positive or negative impact on climate change.

11.0 Current decisions to be made

11.1 When an Inspector proposes to modify an Order, 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

11.2 The current decision to be made is which stance the County Council is to take within the Inspector's decision to modify the Modification Order.

12.0 Conclusion

12.1 The 2012 Order was made to record a public footpath and was based on the available evidence. The County Council considers that whilst there is some evidence in support of the existence of bridleway or restricted byway rights, the evidence is less conclusive and therefore intends to take a neutral stance on the proposed modification.

12.2 Advice was sought from the Planning Inspectorate on the expectation the Inspectorate has of the Order Making Authorities in these circumstances, and it was confirmed that the Inspectorate acknowledged that Order Making Authorities may not wish to comment on proposed amendments to Orders, and therefore that they may prefer to take a neutral stance to any changes proposed by the Inspector.

13.0 Recommendation



13.1 It is therefore recommended that:
Members note the current circumstances regarding this DMMO, and authorise that within the forthcoming Hearing the Authority takes a neutral stance to the amendment proposed by The Planning Inspectorate.

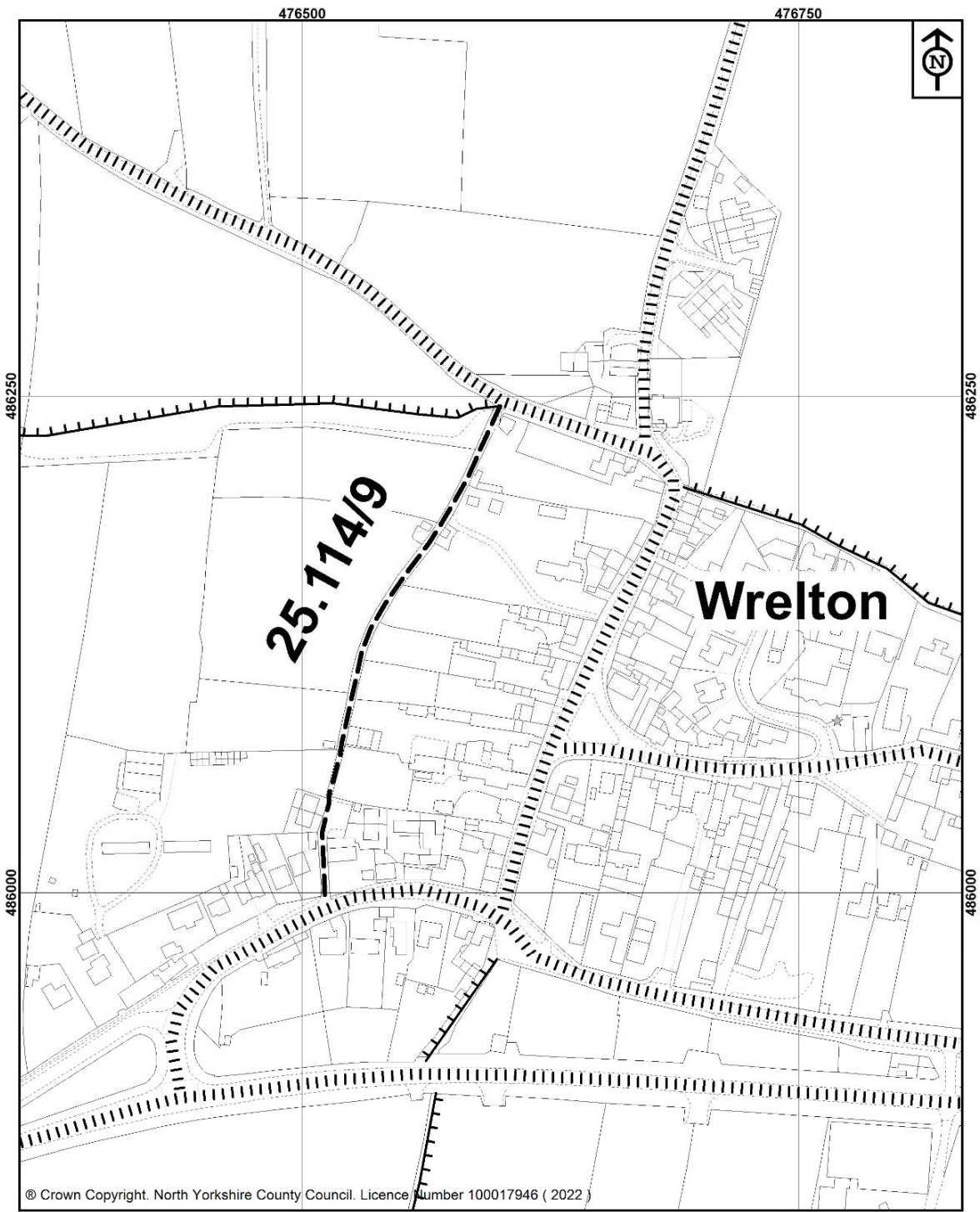

MICHAEL LEAH
Assistant Director - Travel, Environmental and Countryside Services

Author of report: Andrew Hunter, Definitive Map Officer.

Background papers: File Ref RYE/2007/02/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>Wreton </p>	<p>PLAN 1</p> <p>Back Lane, Wreton Location Plan</p>
	<p>Map drawn on 4 May 2022 Drawn by AWH Scale 1:50000</p>	

**North Yorkshire
County Council**

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

Key:
 Footpath to be recorded/
 modified
 Other footpaths
 Maintainable Highways

Map drawn on 4 May 2022
 Drawn by AWH Scale 1:2500

**PLAN 2
Order Route**

Public Footpath 25.114/9,
Back Lane, Wrelton
Modification Order 2012

File Ref No. RYE/2007/02/DMMO

NORTH YORKSHIRE COUNTY COUNCIL
COUNTY COUNCIL'S PLANNING AND REGULATORY FUNCTIONS SUB
COMMITTEE

13 JANUARY 2012

REPORT CONCERNING AN APPLICATION FOR A DEFINITIVE MAP
MODIFICATION ORDER TO RECORD A PUBLIC FOOTPATH ON THE
DEFINITIVE MAP AND STATEMENT AT WRELTON, RYEDALE.

Report of the Corporate Director – Business & Environmental Services

1.0 PURPOSE OF THE REPORT

- 1.1 To advise Members of an application for a Definitive Map Modification Order to record a public footpath from:

Cropton Lane, Wrelton to Wrelton Cliff Road, Wrelton along Back Lane.

A location plan is attached to this report as **Plan 1**. The route referred to, is shown by a bold dashed black line and is marked A – B on the plan attached to this report as **Plan 2**.

- 1.2 To request Members to authorise the Corporate Director of Business and Environmental Services to make a Definitive Map Modification Order.

2.0 THE COMMITTEE'S RESPONSIBILITIES

- 2.1 The Committee in considering the Modification Order Application acts in a quasi-judicial capacity. It is fundamental that consideration and determination of an issue is based on the evidence before the Committee and the application of law. The merits of a matter have no place in this process and the fact that a decision might benefit or prejudice owners, occupiers or members of the general public, or the Authority, has no relevance to the issues which members have to deal with and address.

- 2.2 The Committee's decision whether to "make" an Order is the first stage of the process. If Members authorise an Order being "made", and there are no objections to the Order, the County Council can "confirm" the Order. However, if there is objection to an Order, that is not subsequently withdrawn, only the Secretary of State would have the power to decide if it should be "confirmed". It would then be likely that a Public Inquiry would be held, and the decision whether or not to confirm the Order would rest with the Secretary of State.

NYCC – 13 January 2011- P&RF Sub Committee
Application for DMMO Wrelton, Ryedale/1

3.0 LEGAL ISSUES

- 3.1 Under Section 53 of the Wildlife and Countryside Act 1981 where a Highway Authority discovers evidence which (when considered with all the other relevant evidence available to them) shows that a right of way which is not shown in the Definitive Map and Statement "subsists or is reasonably alleged to subsist" then the Authority should make a Definitive Map Modification Order.
- 3.2 Further, under Section 31 of the Highways Act 1980 a statutory presumption arises that a way has been dedicated as a highway on proof that the way has actually been enjoyed by the public, as of right, and without interruption for a full period of 20 years, unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the claimed right of the public to use the way is brought into question.
- 3.3 At common law a route can be held to have been dedicated as a public right of way on the basis of evidence of use. There is no prescribed period over which it must be shown that use has occurred but an inference of dedication by a landowner must be capable of being drawn. The use relied on must have been exercised "as of right", which is to say without force, without secrecy and without permission. The onus of proof lies with a claimant.

4.0 BACKGROUND TO THE ORDER

- 4.1 An application dated 22 October 2007 was made under the Wildlife and Countryside Act 1981 to add a footpath to the Definitive Map and Statement at Wrelton, Ryedale. The application was supported by user evidence forms from 9 people.
- 4.2 The claimed route lies along a well-defined track that runs behind several properties facing on to the High Street, Wrelton. The way is known locally as Back Lane.
- 4.3 Following the initial consultation with other local councils, user groups, and land owners five objections were received by the County Council.

5.0 EVIDENCE IN SUPPORT OF THE APPLICATION

5.1 User Evidence Forms

- 5.1.1 Evidence forms from a total of 77 people have been submitted in support of this application. Nine were submitted with the application and an additional 68 have been gathered since through the efforts of the Parish Council and other local residents.

NYCC – 13 January 2011- P&RF Sub Committee
Application for DMMO Wrelton, Ryedale/2

- 5.1.2 Reasons given for the use of the route range from leisure walks to driving livestock between the fields around Wrelton.
- 5.1.3 The span of usage covered by the forms is from 1910 to 2007 when the application was submitted. Some witnesses state that they have used the path for over 90 years.
- 5.1.4 No user reports being challenged or seeing any evidence that the route was not a public right of way until 2007.
- 5.1.5 Of the 77 witnesses it is apparent that eleven people used the route under licence for at least part of their usage period. The use under licence was typically accessing agricultural fields either as the owner/tenant or on behalf of the owner/tenant. Such use under licence does not accrue public rights for the purpose of Section 31 of the Highways Act 1980.
- 5.1.6 Of the 77 witnesses seven did not give dates during which they used the route. This means that their evidence cannot be used for the purpose of Section 31 of the Highways Act 1980. One of the seven had also used the route under licence.
- 5.1.7 As a consequence of what is detailed above (see 5.1.5 and 5.1.6) 17 evidence of use forms are not relevant. However this still leaves 60 witness statements` supporting the application.

5.2 Historic Evidence

- 5.2.1 No historical documentary evidence was submitted with the application, however the route does appear on Ordnance Survey Maps from 1892 onward.

6.0 EVIDENCE AGAINST THE APPLICATION

- 6.1 Following the initial application and subsequent consultation five objections have been received by the County Council. They are from people who either own land adjacent to the track or have connections to the owners of land adjacent to the track.
- 6.2 The objections take four forms. First that some of the users of the way have been regularly challenged and informed that they had no right to be there. These challenges were made by the owners of properties adjacent to the route from at least 2002 and may date back even further.
- 6.3 Secondly that signage has been erected and maintained along the route stating that the route was not a public right of way.
- 6.4 Thirdly, that the route was not a through route until 2002 following some drainage work carried out along Back Lane.

NYCC – 13 January 2011- P&RF Sub Committee
Application for DMMO Wrelton, Ryedale/3

- 6.5 Finally, many of the people who have completed evidence of use forms have in fact been given permission to use the track and therefore their usage does not accrue rights for the purpose of claiming a right of way under Section 31 of the Highways Act 1980. From the documentation provided it is evident that at least three people who completed evidence of use forms claiming use “as of right” had in fact received permission from the land owner.
- 6.6 In addition to the reasons for objection above, one objector also states that the Parish Council have accepted that the route is not a public right of way when they were looking for suitable locations for a dog waste bin and that the track shows very little sign of use, not commensurate with that alleged within the evidence of use forms.

7.0 COMMENTS ON THE EVIDENCE IN SUPPORT OF THE APPLICATION

- 7.1 The evidence of use supplied to support the application presents a compelling case that the route has been used as a public right of way for many years. It appears from most of the forms that the route has been considered public for a long period.
- 7.2 Whilst some evidence has been discounted either because the use has been under licence or through the statements not giving sufficient information on the years over which the route has been used, there is still a substantial body of evidence supporting the view that the route is public.

8.0 COMMENTS ON THE EVIDENCE AGAINST THE APPLICATION

- 8.1 The evidence available to the County Council shows that the systematic challenging of users only began in 2007 and lead to the submission of the application to the County Council. Any alleged challenges made before 2007 are not corroborated by the current evidence available.
- 8.2 For an application to meet the statutory test under the Highways Act 1980 a period of 20 years uninterrupted use needs to be shown, calculated back from the date when the public's right to use the route was called into question. If the public's right to use the route was called into question in 2002 when the objectors report that signs were erected rather than 2007 when the application was submitted; then there would still be 34 witnesses that have used the route for in excess of the 20 years required by the 1980 Act.
- 8.3 There is evidence of signage having been present on the site however it is apparent that the wider public only became aware of these signs in 2007 and photographs provided do not give any indication of the date they were taken.

- 8.4 Some people may have indeed been given permission to use the route, but the evidence only clearly shows three people who had completed an evidence of use form had in fact been given permission. Removing their forms from the evidence supporting the application reduces the number of valid forms to 57.
- 8.5 The objectors state that the way was not a through route until 2002, however the evidence of use forms suggest that they way was being used as a through route as far back as 1910. Examination of old Ordnance Survey maps show that there was some sort of barrier across the route to the north of what is now Holly Close which appears to confirm the objectors' position, however Ordnance Survey maps do not show structures such as gates or stiles which would allow the public to pass and re-pass along the way. Therefore it is not possible to determine which position is historically correct.
- 8.6 Finally, acceptance that the route is not public by the Parish Council appears to be contradicted by the actions of the Parish Council in collecting the significant number of evidence of use forms submitted in support of the application. It seems likely that their acceptance was only in terms of locations for dog waste bins rather than being a comment on the alleged status of the way. Also that the track shows little signs of use is unsurprising given that it is approximately five metres wide meaning that users are not constrained to the kind of narrow route that causes wear to appear.

9.0 CONCLUSION

- 9.1 In 2007 the land owners adjacent to the way systematically attempted to stop members of the public using Back Lane by erecting signs and challenging people. Those actions lead to an application for a Definitive Map Modification Order being made because the public's right to use the way was called into question.
- 9.2 Evidence indicating that the activities in 2007 were the continuation of a long running programme of prevention is not sufficiently compelling to prevent reaching a conclusion that a public right of way is reasonably alleged to subsist along Back Lane.
- 9.3 The Ryedale Area Committee Meeting held on the 9 November 2011 made the following comments on this matter.
- i) Councillor Linda Cowling had always considered the route to be a public footpath; she welcomed the report.
 - ii) Councillor Paul Andrews said that he appreciated the report being brought to Committee for their comments.

NYCC – 13 January 2011- P&RF Sub Committee
Application for DMMO Wrelton, Ryedale/5

10.0 RECOMMENDATION

10.1 That the Committee authorise the Corporate Director Business and Environmental Services to make a Definitive Map Modification Order for the route set out in the Application to be shown on the Definitive Map as a public footpath, and in the event that formal objections to that Order are made, and are not subsequently withdrawn, to refer the Order to the Secretary of State for determination and in doing so to exercise powers delegated to him under the County Council's Constitution in deciding whether or not the County Council shall support confirmation of the Order in referring the matter to the Secretary of State.

DAVID BOWE
Corporate Director – Business and Environmental Services

Background Papers:

DMMO application dated 22 October 2007.
Evidence submitted in support of, and against the application.

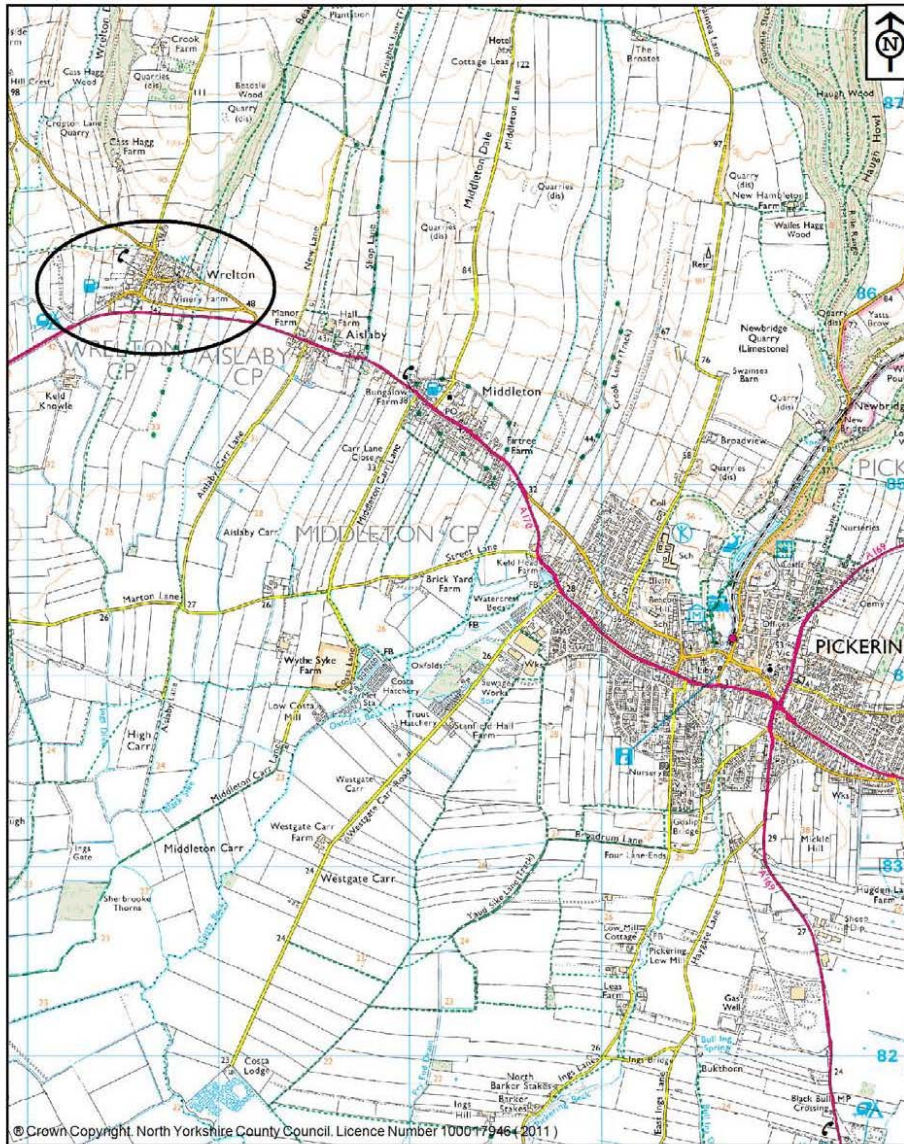
The documents are held in a file marked:
“Back Lane, Wrelton. Report to the Planning and Regulatory Functions Sub Committee, 17 January 2012 – Background Papers” which will be available to the Members at the Meeting.

Author of Report: Russ Varley

NYCC – 13 January 2011- P&RF Sub Committee
Application for DMMO Wrelton, Ryedale/6

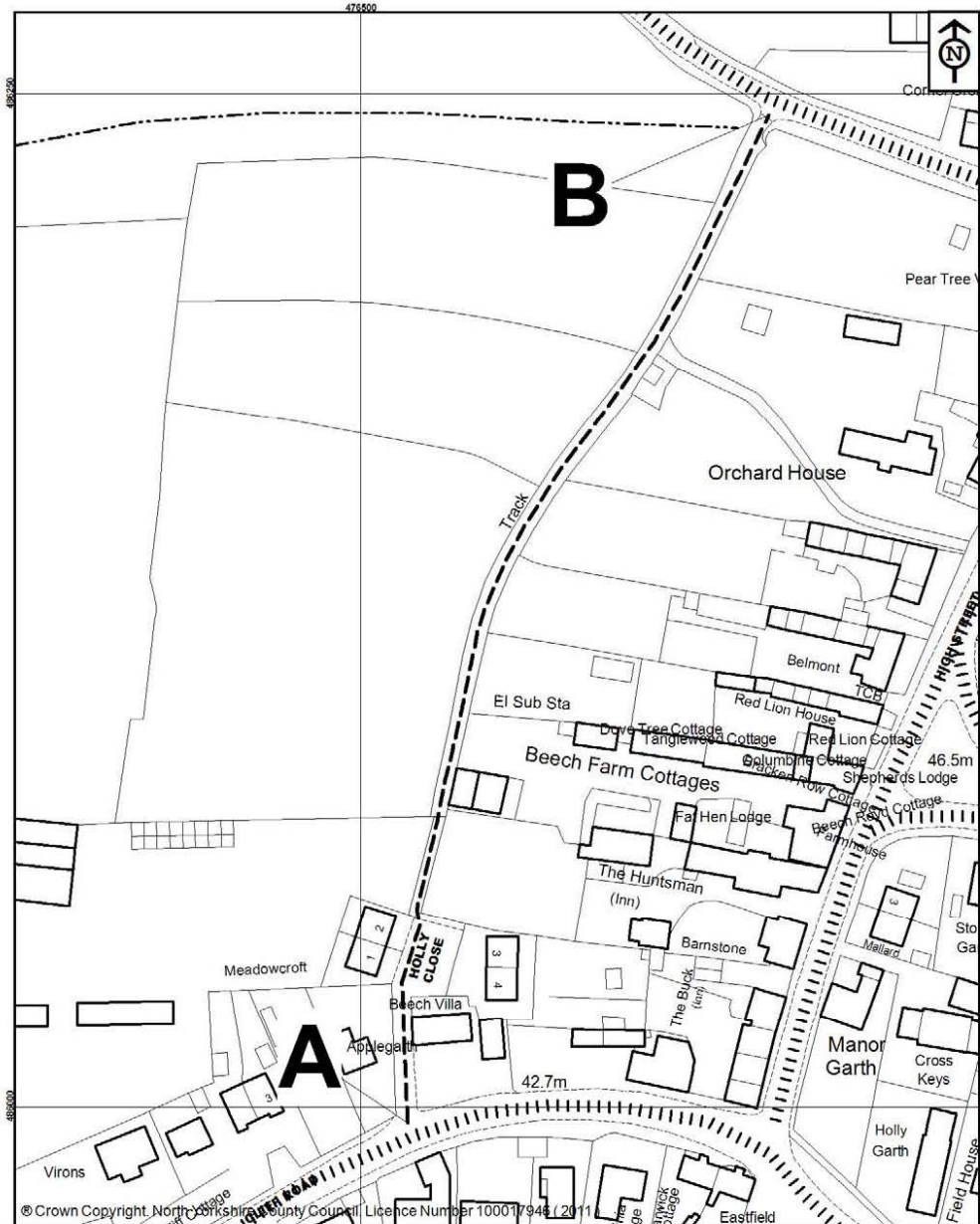
NYCC – 27 May 2022 - Executive Members
Opposed DMMO - Back Lane, Wrelton – PINS Proposed Amendment / 12






OFFICIAL - SENSITIVE



 <p>North Yorkshire County Council Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p style="text-align: center;">Location Plan</p> <p>Map drawn on 23 September 2011 Drawn by RJV Scale 1:25000</p>	<p style="text-align: center;">North Yorkshire County Council</p> <p style="text-align: center;">Plan prepared for the Planning & Regulatory Functions Sub Committee 17 January 2012 Plan 1</p>
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NYCC – 13 January 2011 - P&RF Sub Committee
Application for DMMO Wreton, Ryedale/7



 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p> <ul style="list-style-type: none"> Claimed Route  Other footpaths  Other bridleways  Maintained Highways  	<p>North Yorkshire County Council</p> <p>Plan prepared for the Planning & Regulatory Functions Sub Committee</p> <p>17 January 2012</p> <p>Plan 2</p>
	<p>Map drawn on 23 September 2011</p> <p>Drawn by RJV</p>	<p>Scale 1:1250</p>

NYCC – 13 January 2011 - P&RF Sub Committee
Application for DMMO Wreton, Ryedale/8