

North Yorkshire County Council

Executive Members

27 March 2023

Opposed Restricted Byways No.s 10.171/16, 10.171/17, 10.171/18, 10.171/19, 10.171/20 Whorlton & 25.122/718 Hawnby Modification Order 2022

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 Members, 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 Four applications were submitted to the County Council in 2018 to record a series of Restricted Bridleways around the valley of Scugdale, near Swainby. The four applications concerned six routes, with considerable crossover between routes, applications and evidence. A decision was made to deal with all the applications within one order. A plan showing the proposed routes is attached to this report as Plan B.
- 2.2 The applications were supported by a very large number of evidence of use forms completed by people who had made use of the routes mainly on foot and on bicycles, with some lesser use on two routes by horse.
- 2.3 The evidence showed that all the routes had been used in excess of the required minimum 20 year period.
- 2.4 Four landowners are represented by ETL Landnet who submitted an objection based on challenges made to users of the routes by estate staff, the presence of a number of locked gates on some of the routes and that some of the paths were covered by a S31 Highways Act deposit.
- 2.5 Attached to this report as Appendix A is a copy of the report submitted to the Assistant Director – Transport, Waste and Countryside Services dated 18 June 2019 in which the case for making a Definitive Map Modification Order to record six Restricted Byways was outlined.
- 2.6 The Assistant Director – Transport, Waste and Countryside Services approved the making of a DMMO which was subsequently advertised, attracting objections from the landowners which remain 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.
- 2.7 On 27 November 2020 that report was included with a report to the Corporate Director – BES and Executive Members, and approval was given for the Order to be submitted to the SoS and for NYCC to support confirmation of the Order.

- 2.8 The Order was duly submitted to the SoS and arrangements were in hand for a Public Inquiry to take place to determine whether or not the Order should be confirmed.
- 2.9 Before the Inquiry could take place it was established that there was an error on the Order plan, and this was communicated to the SoS who subsequently rejected the submission.
- 2.10 On 29 November 2022 a new order was made and sent out for formal consultation to all interested parties who repeated their objections to the original Order.

3.0 Equalities

- 3.1 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.

4.0 Finance

- 4.1 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 advocacy support, would be in the region of £1,000.00, including the preparation of 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.

5.0 Legal

- 5.1 The opposed Modification Order will be determined by an Inspector appointed by the SoS and as stated above, determination is likely to be by way of a Public Inquiry.
- 5.2 The Inspector, based on 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.

6.0 Climate Change

- 6.1 The proposal is to record public rights of access along existing tracks. The confirmation of this Order would have no positive or negative impact on climate change.

7.0 Current Decision to be made

- 7.1 In submitting an opposed Order to the SoS the County Council needs to express 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.
- 7.2 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.

- 7.3 Deposits can be made by landowners under Section 31 of the Highways Act to protect their land from public rights of access being acquired. However, to be successful the lawful procedure needs to be complied with fully. Examination of records held by the Authority reveals that whilst a series of Sec 31 Highways Act deposits have been made which may affect the claimed routes, only one is relevant to the period of claimed use, and in that instance the required statutory declaration, which is part of that formal legal process, was not duly submitted to the Authority at the relevant time. Therefore, the legal requirements of the Act were not complied with, and consequently it is considered that the objection relying on this document cannot be valid.
- 7.4 A number of users have stated that they were challenged by estate staff and have seen notices indicating that the land was private, however, the dates when the notices were seen and the challenges made, are not sufficiently clear to negate all of the user evidence. There remains a sufficient body of evidence to support that there was public use of the route over the relevant period of time to satisfy that on the balance of probabilities the public have acquired rights on the Order routes.
- 7.5 The objector has yet to submit a full account of their objections and has indicated that this will be done via a Statement of Case to the Secretary of State at the appropriate juncture.
- 7.6 The evidence in relation to this Order is complex, due to the number of routes involved, the variety of means of use of these routes and the lack of clarity relating to the evidence of challenge on different sections of route. The inevitable public inquiry will provide the opportunity to test the evidence further.

8.0 Conclusion

- 8.1 Overall, and without the further expansion on the objections from the landowners, it currently appears that there is sufficient evidence of public use of the routes on foot and by pedal bicycles to conclude that these routes should be recorded as Restricted Byways on the Definitive Map, and therefore that of the options outlined in 3.1, in this instance, the Order should be confirmed.

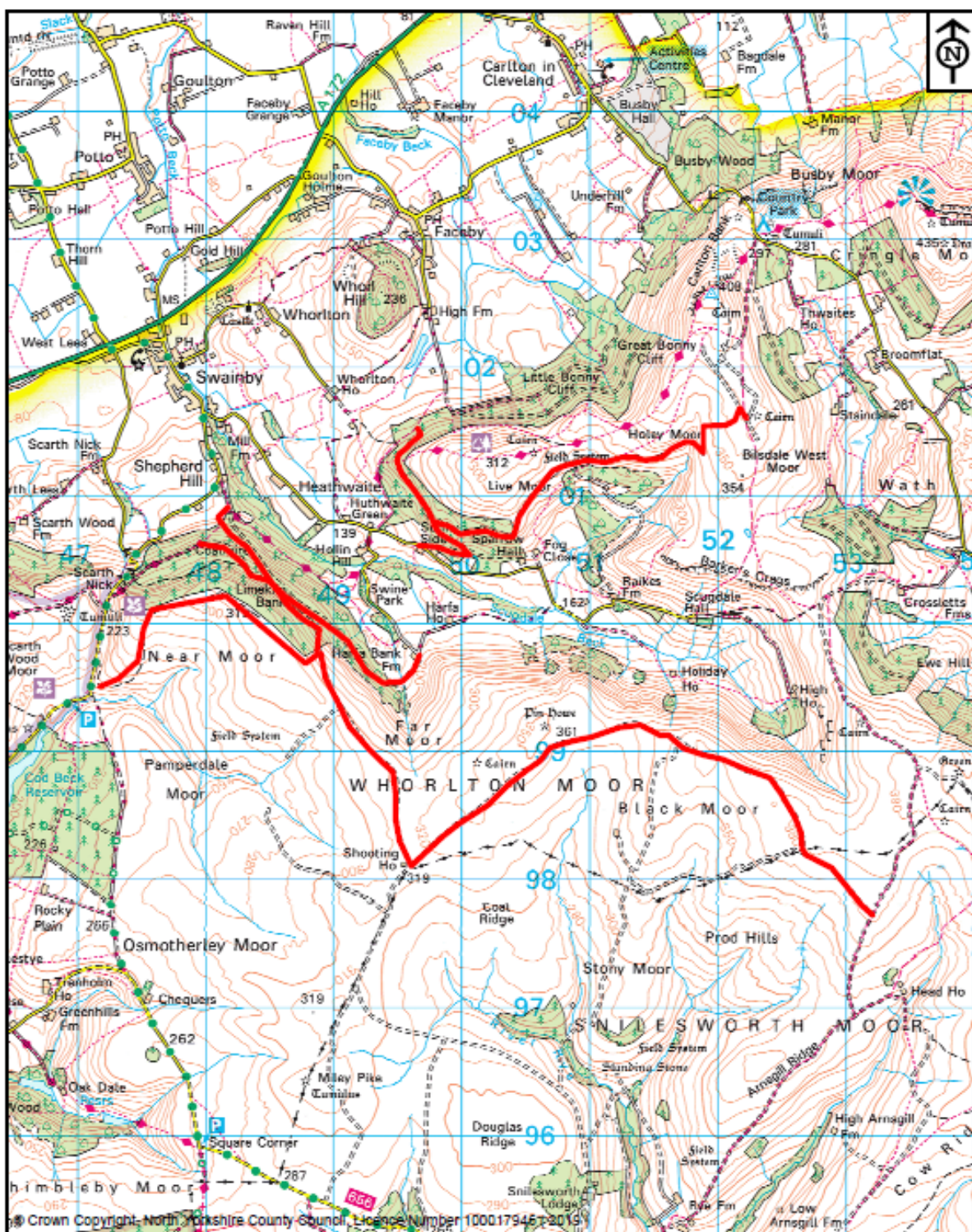
9.0 Recommendation

- 9.1 The application is supported by strong user evidence which outweighs the evidence from the objectors provided to date, and which indicates that on the balance of probabilities Restricted Byway rights exist.
- 9.2 It is recommended that the Authority re-affirm the stance approved on 27 of November 2020 and support confirmation of the Order.

MICHAEL LEAH
Assistant Director Travel, Environmental and Countryside Services

Author of report: Ron Allan

Background papers: File Ref HAM/2018/05/DMMO



SCUGDALE AREA

Map drawn on 4 April 2019

Drawn by RWA

Scale 1:40000

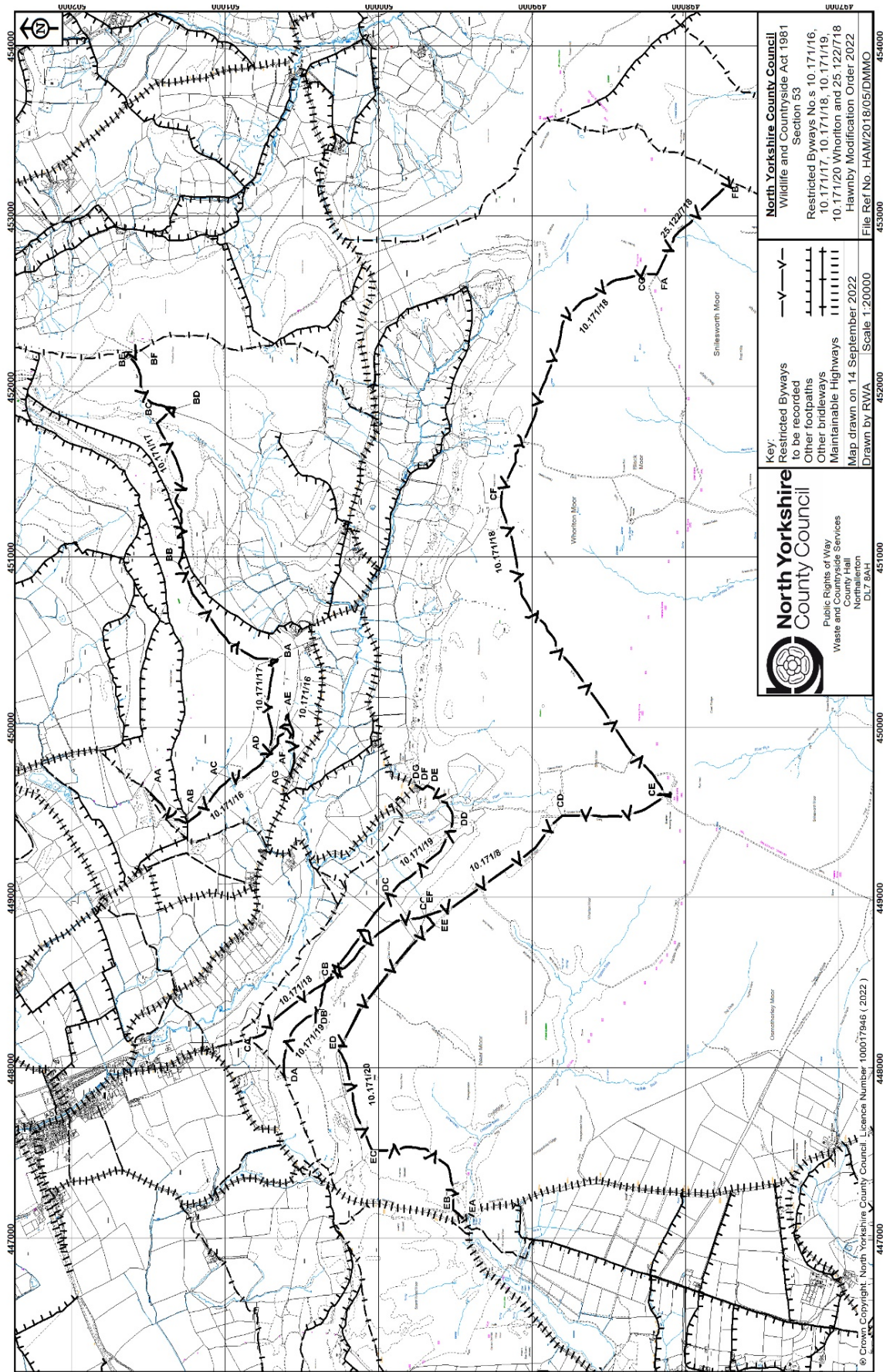
North Yorkshire County Council

LOCATION PLAN ONLY

APPROXIMATE POSITION OF
CLAIMED ROUTES
SHOWN IN RED

File Ref No.

PLAN B



North Yorkshire County Council

Report to the Assistant Director – Transport, Waste and Countryside Services 18 June 2019

Applications for Definitive Map Modification Orders to record a number of Restricted Byways, Scugdale in Whorlton and Hawnby Parishes

1.0 Purpose of report

- 1.1 To advise the Assistant Director of an application for a Definitive Map Modification Order to record a number of Restricted Byways at Scugdale in Whorlton and Hawnby Parishes. This is a complex combination of four applications into one order to record a routes to the north and south of the valley of Scugdale. A location plan is attached to this report as **Plan 1**. The routes are shown in detail on the attached **Plan 2**.
- 1.2 To request the Assistant Director to authorise the making of a Definitive Map Modification Order to record a number of Restricted Byways, Scugdale in Whorlton and Hawnby Parishes, on the basis of user evidence submitted with the application.

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 the power to make and advertise Definitive Map Modification Orders, including where an objection has been received from any person or body.

3.0 The application

Applicants:	Alun Pearson and Whorlton Parish Council
Date of application:	29/3/2018
Type of Application:	DMMO
Parishes:	Whorlton, Hawnby
Local Member:	Cllr Bryn Griffiths, Cllr Val Arnold
Application supported by:	102 Evidence of use forms
Applicant's grounds for making the application	The recent death of the owner of the estate prompted local concern that the unrecorded public access may be prevented by a new landowner.

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 public right of way subsists or is reasonably alleged to subsist along the claimed route.
- 4.2 In the context of Section 53 of the Act, where there is evidence of use by the public of a claimed route, the requirements of Section 31 of the Highways Act 1980 are relevant and these are:
- a) a required date on which the status/use of the claimed route was brought into question; and
 - b) whether the claimed route was used by the public as of right (without secrecy, force or permission) and without interruption for a period of not less than 20 years ending on the date on which the route was brought into question; and
 - c) whether there is sufficient evidence that during the 20-year period there was no intention to dedicate the claimed route as public by the landowner or anyone with an interest in the land e.g. trustees

5.0 User evidence

- 5.1 Four separate claims were submitted, one by Alun Pearson and three by Whorlton Parish Council. Two claims relate to routes to the north of Scugdale valley and two to the south. Some users have provided evidence in relation to more than one route and some claims overlap, i.e. there is more than one claim for certain sections of multiple routes.
- 5.2 In order to deal with this complexity, all four applications have been combined for the purposes of the investigation of the applications, and all the routes broken down into sections, each of which have been given a specific path number. An analysis has been carried out to establish which user forms provide evidence for each individual section of route claimed.
- 5.3 **Appendix 1** contains detail of the evidence of use for each new path extracted from the forms submitted.
- Public use of all routes occurred regularly between the early 1970s and 2018.
 - Path No. 10.171/16 – a total of 12 users within the 20 year period, 1 of 30 years
 - Path No. 10.171/17 – a total of 17 users within the 20 year period, 3 of 30 years and 1 of 44 years
 - Path No. 10.171/18 – a total of 19 users within the 20 year period, 1 of 30 years
 - Path No. 10.171/19 – a total of 20 users within the 20 year period, 1 of 47 years and 2 of more than 30 years.
 - Path No. 10.171/20 – a total of 21 users within the 20 year period, 1 of 44 years and 2 of more than 30 years.
 - Path No. 25.122/18 – a total of 19 users within the 20 year period, 2 of more than 30 years.

- 5.4 The forms demonstrate that use of the route has been predominantly on bicycles, hence the claimed status for the routes is as restricted byways, as shown in **Appendix 1**.

6.0 Objections to the application

- 6.1 The landowners have objected to the Order. The objection is based on challenges made to users of the routes by estate staff, and the presence of a number of locked gates on some of the routes. The legal representative for the landowners has indicated that they anticipate that an Order will be made and are prepared to put forward their evidence at any subsequent public inquiry where a higher level of proof will operate. As such, no detailed rebuttal evidence has been put forward in objection to the application as yet, and therefore the current objection does not constitute sufficient evidence at this stage to suggest that the Order should not be made. Any further objection made to a sealed Order will be considered as part of the second stage of the legal process when it will be decided whether or not an Order should be confirmed.

7.0 Conclusions regarding the evidence and objections to the application

- 7.1 At this stage 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 public right of way subsists or is reasonably alleged to subsist along the claimed route.
- 7.2 The evidence submitted in support of the evidence suggests that the routes have been used freely by the public for in excess of 20 years, and in the absence of significant evidence to the contrary, at this stage the criteria has been met that the routes are reasonably alleged to exist.

8.0 Representation made by the local members

- 8.1 None

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.

10.0 Equalities 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.

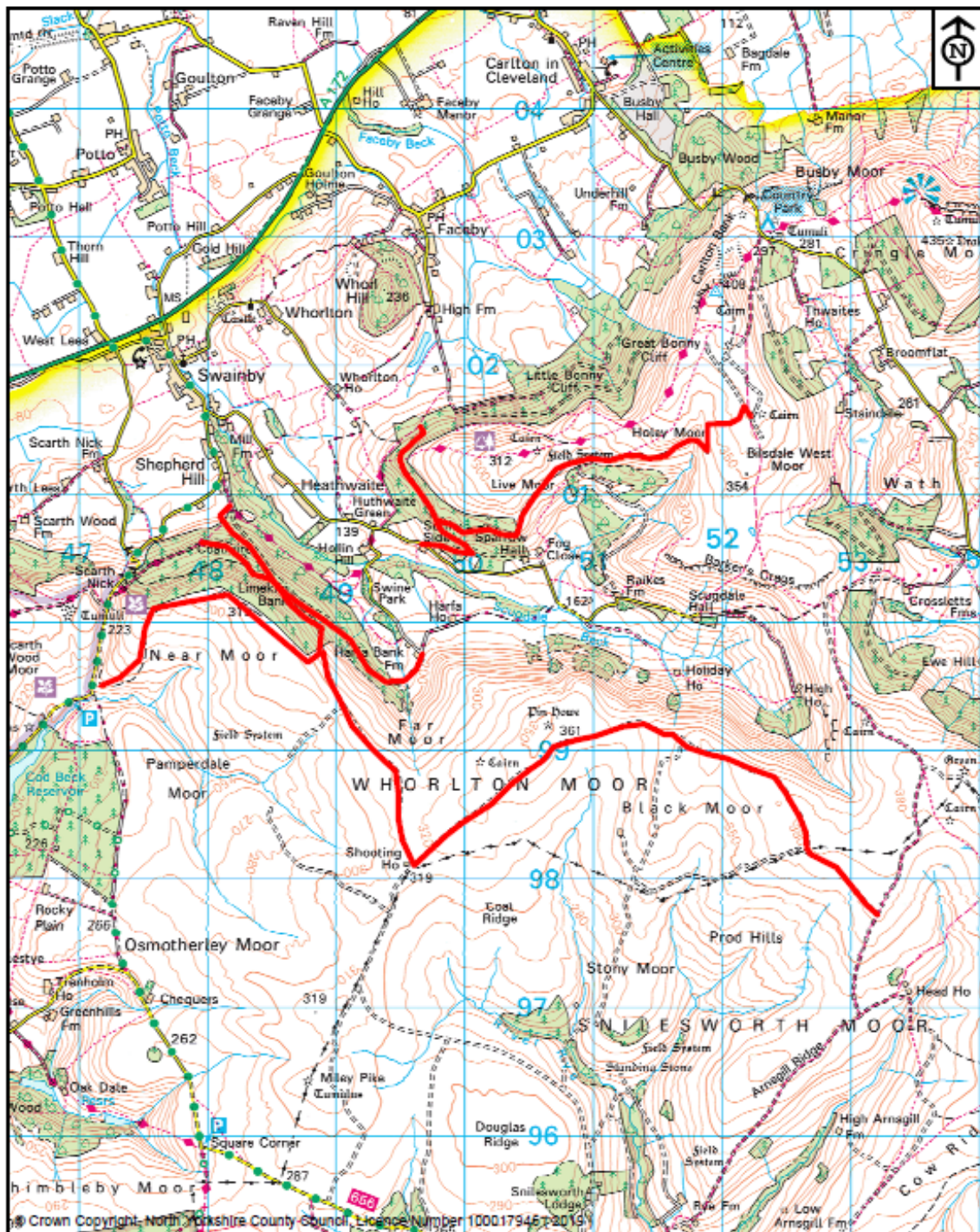
11.0 Recommendation


- 11.1 It is therefore recommended that: the Assistant Director, Transport, Waste and Countryside Services, authorises the making of a Definitive Map Modification Order, or Orders, for the routes shown in the plan attached to this report to be recorded on the Definitive Map as Restricted Byways.

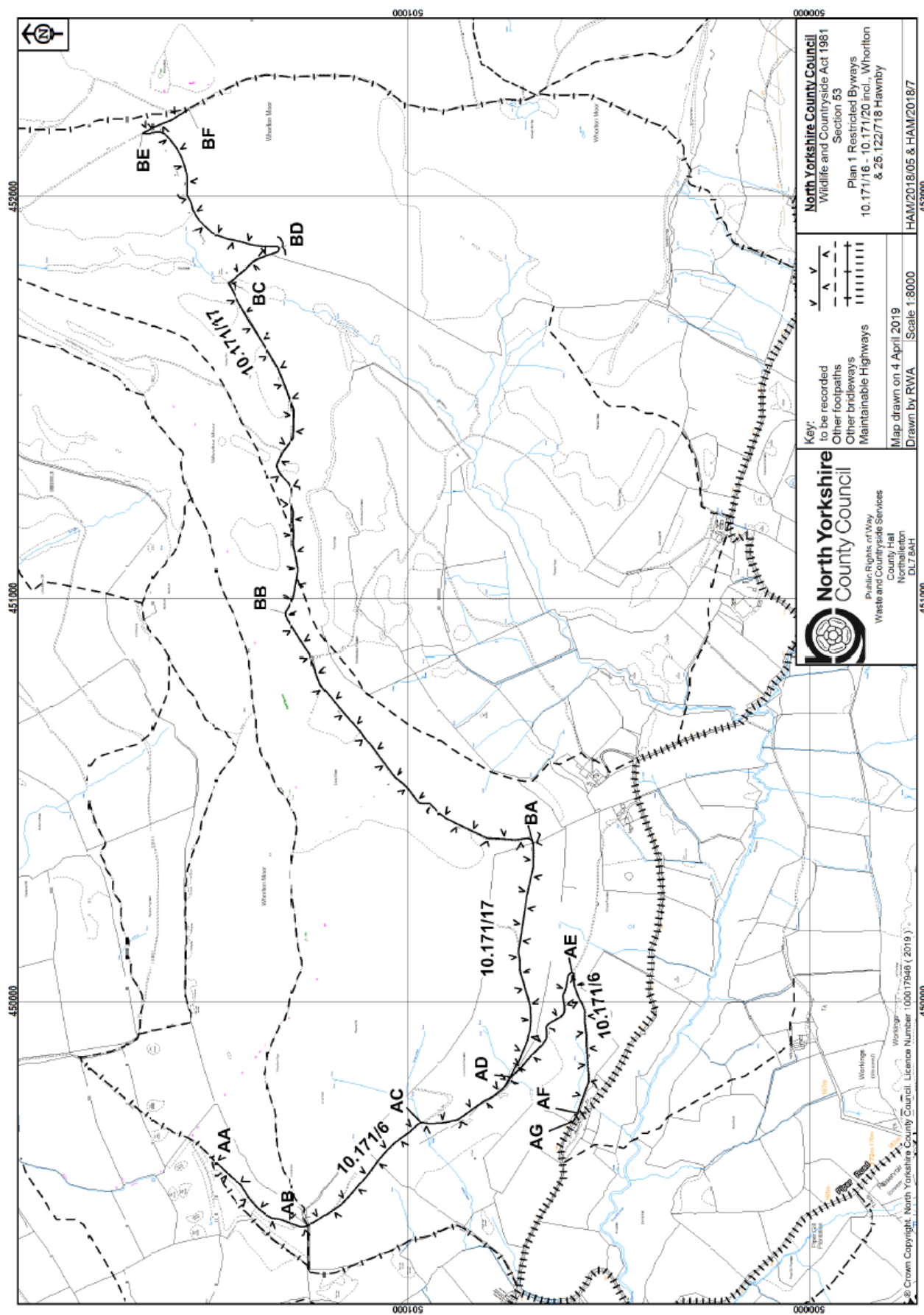
Author of Report: Ron Allan

Background Documents: File Ref HAM//2018/05/DMMO
 HAM//2018/06/DMMO
 HAM//2018/07/DMMO
 HAM//2018/08/DMMO

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 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>SCUGDALE AREA</p> <p>Map drawn on 4 April 2019 Drawn by RWA</p>	<p>North Yorkshire County Council LOCATION PLAN ONLY</p> <p>APPROXIMATE POSITION OF CLAIMED ROUTES SHOWN IN RED</p> <p>Scale 1:40000 File Ref No.</p>
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Appendix 1

