

North Yorkshire Council

Environment Executive Members

18 December 2023

Opposed Definitive Map Modification Order: Public Footpath No. 05.13/34 Moorfoot Lane Cononley Modification Order 2023

Report of the Assistant Director – Integrated Passenger Transport, Licensing, Public Rights of Way and Harbours

1.0 PURPOSE OF THE REPORT

- 1.1 To advise the Corporate Director of Environment of the proposed submission to the Secretary of State (SoS) of an opposed Definitive Map Modification Order (DMMO).
- 1.2 A location plan is attached to this report as Plan 1, and more detailed plan showing the order routes is attached as Plan 2.
- 1.3 To request the Corporate Director, in consultation with the Local Member and Executive Member for Highways and Transportation, to decide what stance the Authority should take in its submission to the SoS, regarding the confirmation of the opposed DMMO.

2.0 BACKGROUND

- 2.1 A DMMO may be applied for where an applicant believes that the Definitive Map and Statement requires modification, and the applicant can provide evidence to support that assertion. Proposed modifications may consist of the addition of a route, the deletion of a route or the amendment to the recorded status e.g. 'upgrading' a footpath to a bridleway. All DMMO applications must be supported by evidence. If a DMMO once made, is opposed, it must be referred to the Secretary of State (SoS) for resolution. There are separate processes for amending the network for reasons such as convenience to a landowner, or for benefit of the public.
- 2.2 The application was submitted to North Yorkshire County Council by Cononley Parish Council on 14/02/2020 to add a public footpath to the Definitive Map along Moorfoot Lane, Cononley, as shown by A - B on the attached Plan 2.
- 2.3 The route which is surfaced in a mixture of tarmac and compacted aggregate, with a width of at least 3.6 metres throughout, commences at the south-east end of Meadow Lane (formerly known as Back Lane) in the village and proceeds generally north-eastwards over a railway bridge to a junction with two existing recorded public footpaths. The route also provides vehicular access to properties along Moorfoot Lane, and to the field at the north end. Photographs of the route are attached to this report within Appendix A at page 19 onwards.
- 2.4 Despite the physical nature of this route, and the fact that 2 public footpaths adjoin the northern end of it, Moorfoot Lane is not currently recorded as having any public status within Council records. No owner has been identified for any section of the Lane subject to the application.

2.5 The application was brought about due to a perceived, but unfounded, concern that the granting of Planning Permission to Candelisa Homes of Skipton for a large development on land to the southeast of the lane, would result in Moorfoot Lane losing its character and become a busy vehicular access to these homes, adversely affecting enjoyment of it on foot. By raising the concern, it transpired that the lane is not recorded on either the Definitive Map and Statement as a public right of way, or on the Council's List of Streets as a publicly maintained highway.

3.0 THE APPLICATION FOR THE DMMO

3.1 The application was supported by:

- Written testimony from a former Parish Clerk
- Approximately 46 Evidence of Use forms all demonstrating use on foot only, 44 of which reference use over 20+ years on foot.
- Photograph of pedestrian stone stile next to a gateway - gate now absent (pre-1995)
- Photograph (2022) of 'Private - No Right of Way' sign
- 1813 'Swire' Map showing entire route coloured as the abutting farmland.
- Cononley Tithe Map 1842 - Gives owner / occupier and Titheable value.
- 6 in. O.S. Map - 1848 Survey
- 25 in. O.S. Map - 1889 (later annotated, from Parish Council website)
- Leeds & Bradford Railway Act Plan and Book of Reference, 1845 – Describes the route as an Occupation Road, and names the occupiers.
- Sale Plan of farm holding with numbered lots and Moorfoot Lane named in the same hand though the lane was not part of the sale.
- Other historical maps and photographs.
- Incomplete 1910 Finance Act Plan (Book of Reference not found), which has the lane and certain blocks of properties around it not accounted for, approximately equating to the holdings of the said farm's previous owners.

3.2 The usual informal consultation was undertaken which attracted a small number of objections to the application, however it was considered that the relevant evidential test had been met, i.e. that a public right of way on foot had been reasonably alleged to subsist along Moorfoot Lane, and that the objections raised did not alter the evidential position.

3.3 Attached to this report as Appendix A is a copy of the report submitted to the Assistant Director – Travel, Environmental and Countryside Services of the former North Yorkshire County Council, on 01 November 2022 recommending that based on the evidence, a DMMO should be made. This was approved by the Assistant Director and the DMMO was made and advertised on 12 January 2023, attracting one objection which remains outstanding.

4.0 RESPONSE TO THE SEALED ORDER

4.1 Although objections from the adjacent landowners were received in response to the informal consultation, no objections were received from them when the DMMO was made and advertised,

4.2 Just one objection was made in response to the making of the Order, received from the Byways and Bridleways Trust (BBT). The objection was made on the basis that they believe higher rights than only pedestrian rights exist, and that the route should be recorded as a restricted byway.

4.3 The formal objection put forward by the BBT can be summarised as stating that:

- The order route is an ancient lane called Moorfoot Lane. It is received wisdom that named lanes formed part of the public transport network.

- The Ordnance Survey (OS) Objects Name Book describes Moorfoot Lane as “A lane leading from Main Street 3 chains West of Wesleyan Meth. Chapel in a NE direction by Howefield for 26 chains”. Roads and lanes are often marked “Tablet” which looks to be referring to a list overseen by an Assistant Overseer, who should have known what was public.

Officer Comment

The naming of a way cannot in itself be evidence that a route was considered to be a highway, and certainly cannot, without a specific description, suggest what public rights exist.

The OS Names Book describes the route as a ‘lane’, 26 chains in length. This would mean the approximate end point gave access into fields. The ‘lane’ was therefore considered a cul-de-sac and provided access to a small number of properties, and to fields. This is not consistent as being a substantial public through route, but does provide a link between 2 footpaths, historically and currently.

We disagree with the BBT’s speculation about the use of the term ‘Tablet’. The term ‘tablet’ is still acknowledged by OS, being similar to a plaque or flat plate, such as would be affixed to a wall for example, and is usually made of metal, wood or stone. It seems there was a name plate on the route giving OS surveyors the assurance of the correct name and spelling of the name for the route on their mapping. This is not evidence that the route was a highway of a particular status, but did provide the properties along it with an address.

4.4 The BBT wished their earlier representation to the informal consultation to also be included within their formal objection to the Order. Within that representation the objections were that:

- in their opinion the Officer had mis-interpreted the Tithe and Railway Act evidence;
- equestrianism was so common that such tracks would automatically have been used by the public on horseback and with carriages even if they were privately maintainable.
- the route provided access to the river for water.
- the 1910 Finance Act Plan shows the Lane open to the public road, Back Lane (now Meadow Lane), at its south end implying it was part of a network of public highways.

Officer comment

The Tithe and Railway Act evidence is more suggestive that the understood use of the route at that time was for private occupation, i.e. providing access to land adjacent to the lane, for owners and tenants of that land.

Whilst it may be true that suitable routes may have been used more freely in the past, it is also true that they would have been used more commonly for work and other practical purposes. This route has no apparent practical link with another community, highway or other place of resort.

It seems unlikely that there would be a need to take horses as far as the river for water as it is some considerable distance from the village, which has two springs with water troughs of great age and a beck running next to the main street. Other springs and wells exist or existed and are mapped on, or near, other paths around, and closer to the village, in the proximity of farms and habitations. No mapping evidence exists for Moorfoot Lane having physically continued to the river-bank, nor of a crossing of that river. The lane’s name relates to the high ground to the west and south, not to the river to the northeast and southeast.

The 1910 Finance Act Map does show the lane separated from and not braced to adjacent land, and open to Main Street and Back Lane, now Meadow Lane. However, in addition to Moorfoot Lane, two large blocks of buildings abutting, and opposite Moorfoot Lane are similarly not apparently included within the taxable assessment for the Act, both of which were previously in the same ownership as the land coloured in the abovementioned farm Sale Plan. These properties; houses, tenements, a garden, the Forge, and a hat manufactory; were tenanted out and privately occupied at the time of the Tithe apportionment and were not public property, and therefore should have been considered to have had a taxable value. The evidence seems therefore that the Finance Act Plan is incomplete and may have been awaiting further research by the surveyors when that Act was so swiftly abandoned.

This is not proof of the existence of bridleway or restricted byway rights along Moorfoot Lane. A non-taxable status for the lane for the purposes of the 1910 Finance Act could be evidence of public 'ownership' and therefore public rights (of some status), but this is not proven on the balance of probabilities, and the Officer contends that such rights as he believes subsist, on foot, have more likely arisen by user since 1955. The Finance Act Plan would in any event not be evidence for the status of the way.

The evidence put forward by the BBT is not specific to this route but is a generalisation on how they believe routes would have been used in the past.

5.0 THE EVIDENCE RELEVANT IN SUPPORT OF, AND AGAINST CONFIRMATION OF THE ORDER

5.1 The following is a summary of, and comment on, the evidence presented to date.

5.2 There is no Inclosure Award for Cononley.

5.3 Evidence submitted in relation to the application

A description follows of what each relevant item states/shows, supported by an Officer Comment on its value in relation to evidence one way or the other.

5.4 Written testimony from a former Parish Clerk

The application form was submitted by the then Parish Clerk. A former Parish Clerk (1999-2010) submitted further evidence gathered by him. He states that the PC approached the residents and occupiers of land along Moorfoot Lane about having it recorded as a Footpath, and the responses were overwhelmingly positive. Such doubts as were expressed were to do with management issues that can be overcome, such as visibility and the use of the lane by farm machinery.

He also supplied detail of the management of the lane and rail-bridge by the railway company when the railway goods yard was located approximately where a new housing estate now is, to the southeast of the Lane and north of the Chapel. It was this housing development that brought about the DMMO application due to fears that the lane might become the housing estate access-road. His evidence included reference to the various historic estate and Tithe Apportionment plans viewable on the Parish Council website, commented on below, and the ownership and dismembering of the farm formerly in the ownership of Laycock. He also submitted a further photograph of the stile referred to below and details of its recent history.

Officer Comment

The items referred to in this evidence are treated individually below.

5.5 Evidence of Use forms were completed by individual members of the public.

28 forms state usage for 20 years or more, and a further 11 for ten years or more.

25 people state they have used the lane at least weekly unchallenged.

There are no reports of any challenge to, or prevention of use, in the period of claimed use. Almost all respondents state they have seen others using the Lane.

Officer Comment

The completed Evidence of Use Forms demonstrate that members of the public have made use of this route on foot for varying periods of time between the late 1940's and late 2019, the date when evidence was being collected to support the application. The evidence of use shows that overall the route has been in regular unchallenged public use on foot over a period in excess of 20 years prior to the date of the application.

Some witnesses state usage over much longer than 20 years e.g. 34, 38, 56, and 72 years. The test that on the balance of probabilities public rights on foot subsist by user, is met. There is no evidence for equestrian or bicycle usage, and the Officer has observed none on various site-visits. Pedestrian use however would seem to be considerable, and is not challenged.

It is to be noted that none of the respondents were customers of the campsite located half-way along the claimed length, although they undoubtedly do use Moorfoot Lane. Having arrived and being based there, they would constitute 'the public' for this purpose but arriving by vehicle along a private vehicular access to reach the business premises with which they had a transaction, would not be evidence for public vehicular rights.

5.6 Photographs: An old stone stile next to a gateway close to Howefield. The stile was substantial stone structure but is now dilapidated as it is no longer required; the adjacent field-gate having been removed (according to local advice) pre-1995. The stile is suspected to be the same age as stone wall.

5.7 'Private' sign of some age, at the far north-eastern end of the lane, but placed beyond the end of the claimed extent of route.

Officer Comment

These imply that public access on foot has been possible and unchallenged to the point the enclosed lane meets the adjoining public footpaths. The positioning of the 'Private' sign, placed beyond the end of the claimed section suggests accepted access thereto, by the occupier of the field, at least. The existence of a gate next to the stile would have facilitated use of the route by equestrians, however no evidence of use of the route by horses has been produced or referred to.

5.8 1813 6" Map ('Swire') – Shows the entire route but it has been coloured the same as the agricultural land abutting it. The map was photographed by the applicant at Bolton Abbey, as it is in the hands of the Duke of Devonshire's Estate. They were major local landowners of the time, succeeding the Dukes of Cumberland, and are listed as an occupier of the lane in the Railway Act Plan Book of Reference from 1845. Swire is the surname of the major land and business owners of Cononley, who presumably commissioned the map.

The map shows the whole Lane, coloured in a green wash the same as the surrounding agricultural land, whereas the recognisable public roads are coloured a brighter pale yellow. Shady / Greaves Lane is shown green as per Moorfoot Lane, the former being now a definitive Footpath on a track with private vehicular rights.

A professionally hand-altered later copy (one assumes from the late 1840s) is viewable on the Parish Council website but with less obvious colouring. That version has been annotated to show the land sold to the Railway Company for the building of the railway.

Officer Comment

This map supports the private occupation status, the colouration strongly suggests that the Lane was considered to relate to the farmland and not to the 'highway' network.

- 5.9 The Cononley Tithe Map and Apportionment 1842 - Refers to the Lane as being in named occupation, described as 'pasture' and Titheable as a private asset. By comparison, Greaves / Shady Lane is listed as a Road and Pasture.

The stated owner / occupier is one of the names in the list of occupiers in the Railway Act Plan and Book of reference from three years later. He also occupies many plots of land and two blocks of buildings – one at the southwest end of the lane and one on the opposite side. Other documents exist confirming this ownership.

Another family member owned the pre-1812 cottages, demolished in the 1960s which stood where the Council car-park now is, along the north edge of this end of the Lane. These blocks of buildings and land including the lane seem to have been part of a coherent but dispersed large farm and property business. The Tithe Apportionment also lists at the end of the document certain 'Roads and Waste' identifiable as the modern-day maintainable highways, in and out of the village. These are given an acreage but no statement of cultivation or rate. They do not include Moorfoot Lane or Greaves / Shady Lane.

Officer Comment

This evidence strongly suggests that the Lane was privately occupied and owned with a named occupier and a 'Titheable' value. It is listed as pasture, not as a 'road and pasture' as was Greaves / Shady Lane. Greaves Lane is also given a Titheable value and has named owners and occupiers responsible for that payment, but the description suggests an element of usage by others than just the occupier(s).

Greaves Lane was recorded as a public footpath following the provisions of the 1949 Act but Moorfoot Lane was not, but it is not clear why not. It may be that it was not acknowledged it was being used by the general public at that time (or was not being used), or it may be that the route was metalled to an extent that it did not have the appearance of a public footpath. It is the Officer's view that at the time it is possible that no public rights subsisted over Moorfoot Lane. This assertion is supported by the interpretation given for the Railway Act Plan and Book of Reference.

- 5.10 Leeds & Bradford Railway Act Plan and Book of Reference, 1845 –

Describes the route as an Occupation Road, and names the occupiers.

These documents (copies provided to the Officer by Network Rail), show the status and ownership of features that would either affect, or be affected by, the construction of the Leeds & Bradford Railway, which ran to Skipton. Network Rail state that they own the bridge which carries Moorfoot Lane over the railway (they improved it, and parts of the surface, about 30 years ago), but that they only occupy the land on which the bridge stands. They assert that private vehicular rights almost certainly subsist along the lane for the several properties, but they would object if higher public rights than footpath were proposed to be recorded.

The 1845 Act states that the Lane is an Occupation Road owned by 'occupiers in common'. These are: The Duke of Devonshire, the Rev. Swire, and several other individuals including one Joseph Laycock. The Laycock family, including Joseph, owned land off Moorfoot Lane, and the three groups of let-out buildings at the southwest end of it and opposite.

Officer Comment

It seems that the surrounding land, the lane, and these buildings and tenements were part of a disparate, and quite large farm and property business, and that other named occupiers had private rights over the lane. Various parts of this holding changed hands at various times, with the agricultural land finally being dismembered in 1955, after which the ownership of the Lane itself became lost in the mists of time.

- 5.11 6in. Map – 1848 (?) Survey with Railway Company alterations –
A professionally hand-altered later copy, (one assumes from the late 1840s) of the 1813 Swire map discussed above, viewable on the Parish Council website with less obvious (faded) colouring and at a low resolution. This version has been adapted to show the land (to be) sold to the Railway Company.

The map shows the whole Lane, coloured in a green wash the same as the surrounding agricultural land, whereas the recognisable public roads are coloured a brighter pale yellow. Shady / Greaves Lane is shown green as per Moorfoot Lane, the former being now a definitive Footpath on a track with private vehicular rights.

Officer Comment

This evidence suggests the believed status of Moorfoot Lane is unchanged from 1813 and that its occupancy and use was considered to relate to the farmland and not to the 'highway' network; it supports the findings in the Railway Act papers.

- 5.12 25 in. O.S. Map - 1889 (annotated with field names; for the Lund Estate) –
This map gives no evidence as to ownership, but it has the south-west end of the Lane closed off with a solid line across its junction with Back / Meadow Lane.

Officer Comment

The OS map provides no evidence of status of the route, but continues to represent it as an enclosed entity. The line across the south-western end of the route may only be a mapping convention to separate parcels of land for area measurement calculation purposes.

- 5.13 Evidence submitted alleging support for the recording of higher rights:

An extract from the 1910 Finance Act Map was submitted by the BBT. The usually associated Book of Reference was apparently not found. The map shows the lane separated from, and not braced in with, adjacent land, and is shown open to Back Lane, now Meadow Lane.

Officer comment

The objector, (the BBT), supposes that the fact that the lane is not shown closed-off at its southwestern end, is evidence for it being part of the public highway network. However, there are a number of properties in two blocks which were in private hands and occupancy in 1842, on the corner of Main St., Back / Meadow Lane and Moorfoot Lane, that are also excluded ie not given parcel numbers or assigned a tax liability. The implications are that the document is apparently incomplete and may not be reliable. Further the map was produced for the purposes of a proposed property tax which was abandoned; it was not designed to show the status of highways.

It is contended therefore that the Finance Act survey is not so complete or precise as to reliably distinguish private (taxable) and 'public' property or the intended usage of 'roads' and other linear features.

Further evidence offered by the BBT is not route-specific but is a generalisation on how they believe similar routes would have been used in the past and is not proof of the existence of bridleway or restricted byway rights along Moorfoot Lane, as explained in 3.3 and 3.4. The Tithe Map etc., and Railway Act Plan and Book of Reference are strongly supportive of historical private occupancy and usage.

6.0 REPRESENTATIONS MADE BY THE LOCAL MEMBER

- 6.1 The Local Member responded to the initial pre-Order consultation by expressing his support for the recording of Moorfoot Lane as a Public Footpath.

7.0 EQUALITIES IMPLICATIONS

7.1 There are no significant equalities implications arising from this report

8.0 FINANCIAL IMPLICATIONS

8.1 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 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.

8.2 If the Inspector were to choose to hold a Public Inquiry, the costs of arranging, hosting and supporting the Inquiry would fall to the Council, and would be unlikely to exceed £1,000, excluding any advocacy support. As in this instance the evidence relies heavily on user evidence, it is probable that the Order would be resolved by Public Inquiry. Any cost of hiring a venue would fall to the Countryside Access budget.

9.0 LEGAL IMPLICATIONS

9.1 The opposed Modification Order will be determined by an Inspector appointed by the SoS, determination will be made by way of a Public Inquiry, a Hearing or written representations, and most likely the latter.

9.2 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.

10.0 CLIMATE CHANGE IMPLICATIONS

10.1 There are no significant climate change implications arising from this report.

11.0 CURRENT DECISION TO BE MADE

11.1 Where an objection has been received to the making of a DMMO the Authority has no option but to refer it to the SoS for resolution. In submitting an opposed Order to the SoS the 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.

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

12.0 CONCLUSION

12.1 The Officer determines that the evidence of use submitted is sufficiently robust to be persuasive that public rights on foot have been established along the Order route. The historical evidence, although confirming that a route has physically existed since at least the mid C19th, it does not provide convincing evidence that the public have had any higher rights of access along the route other than pedestrian rights.

12.2 The Officer does not find that the new evidence from the objector changes the opinion that footpath rights based on usage subsist but that higher rights based on historic evidence are not demonstrated. Therefore, there is no justification for seeking higher rights to be recorded within the submission to the SoS.

12.3 There is no opposition to the recording of footpath rights.

13.0 REASONS FOR THE RECOMMENDATION

13.1 Overall, it currently appears that there is sufficient evidence to conclude that the Definitive Map should be amended by recording a public footpath along Moorfoot Lane, but that no evidence has been put forward to suggest that on the balance of probabilities higher rights exist.

13.2 Therefore, of the options outlined in 11.1, there is no reason why the Council should not support the confirmation of the Order.

14.0 RECOMMENDATION

14.1 It is recommended that the Authority **supports confirmation** of the Modification Order within its submission to the Secretary of State.

APPENDICES

APPENDIX A – Report to the Assistant Director – 01 November 2022 – Including photographs of the route.

BACKGROUND DOCUMENTS: File Ref CRA/2020/01/DMMO

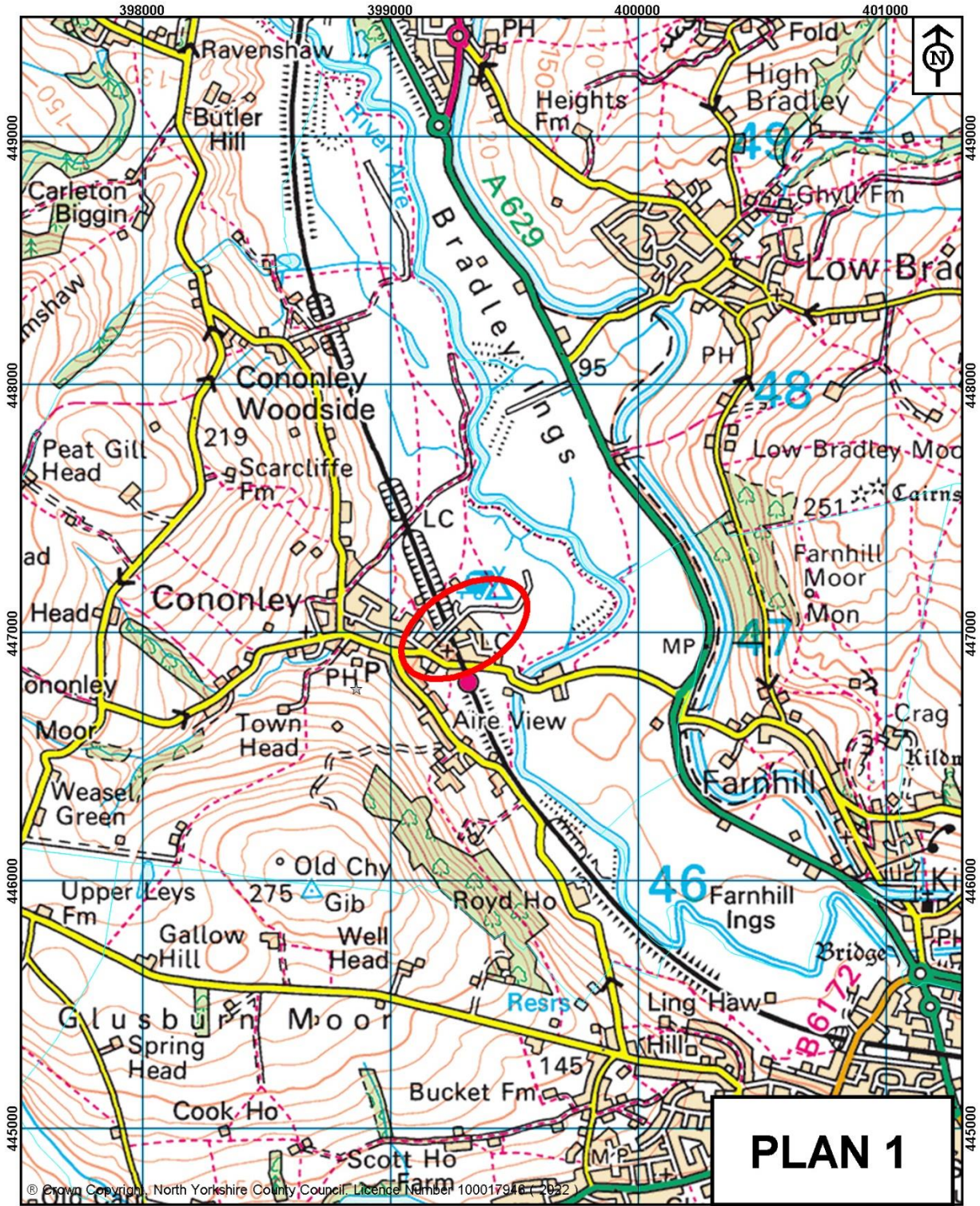
PAUL THOMPSON


Assistant Director – Integrated Passenger Transport, Licensing, Public Rights of Way and Harbours


Author of report: Robin Richardson, Definitive Map Officer

Presenter of Report: Penny Noake, Principal Definitive Map Officer

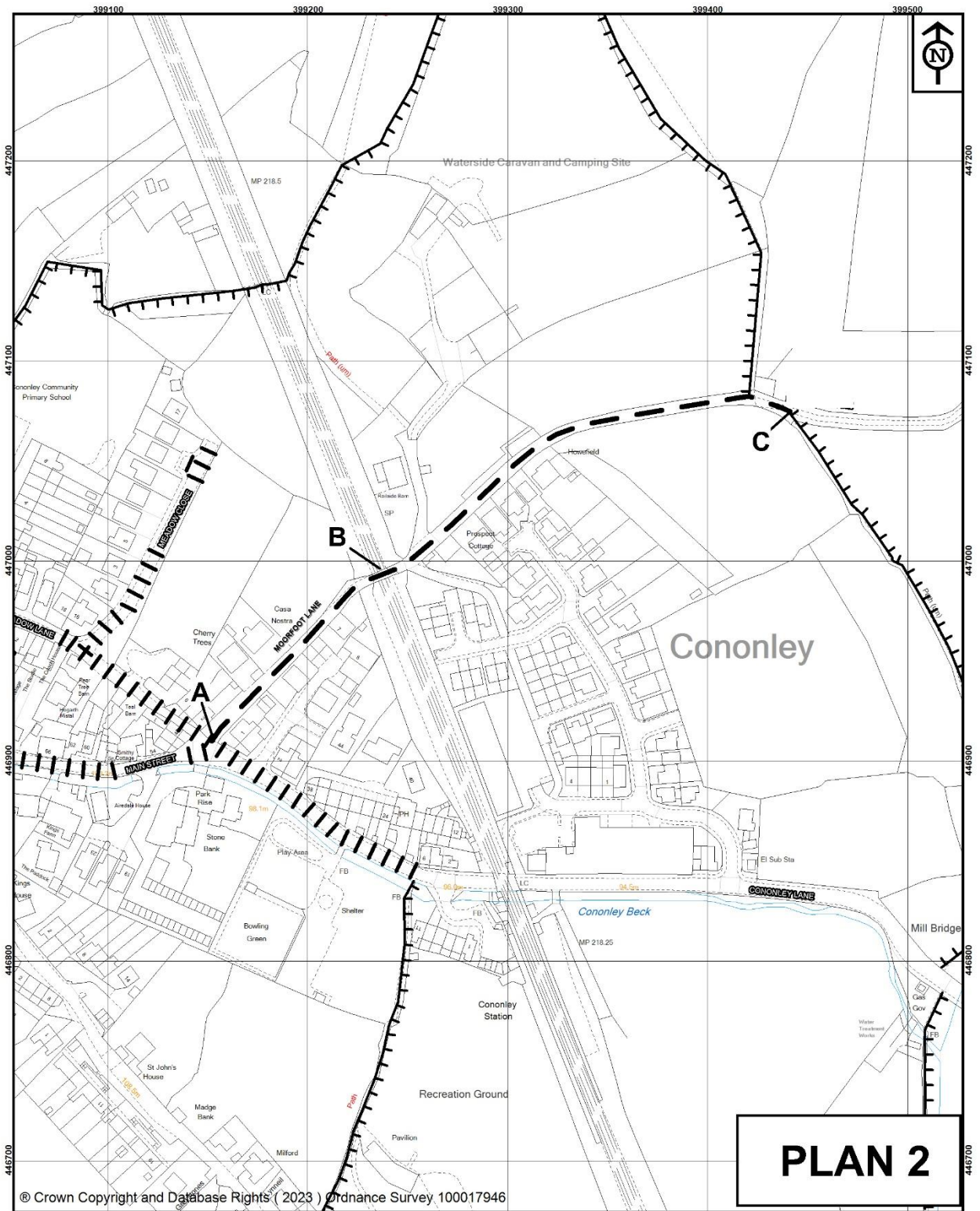
Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.




**North Yorkshire
County Council**
 Public Rights of Way
 Waste and Countryside Services
 County Hall
 Northallerton
 DL7 8AH

Key:
 Location of the application route 
 Map drawn on 27 October 2022
 Drawn by pn Scale 1:20000




North Yorkshire County Council
LOCATION PLAN
 APPLICATION FOR A DMMO -
 MOORFOOT LANE, CONONLEY
 File Ref No. refno



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PLAN 2

NORTH YORKSHIRE COUNCIL
 Public Rights of Way
 Countryside Access Service
 County Hall
 Northallerton
 DL7 8AH

Key:
 Footpath to be added 
 Other footpaths 
 Maintainable Highways 
 Map drawn on 1 December 2023
 Drawn by pn Scale 1:2500

The North Yorkshire Council
 Wildlife and Countryside Act 1981
 Proposed addition of a Public Footpath
 Moorfoot Lane, Cononley
 File Ref No. CRA/2020/01/DMMO

North Yorkshire County Council

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

01 November 2022

Application for a Definitive Map Modification Order to add a Public Footpath along Moorfoot Lane, Cononley

1.0 Purpose of report

- 1.1 To advise the Assistant Director of an opposed application for a Definitive Map Modification Order to add a Public Footpath along Moorfoot Lane Cononley to the Definitive Map and Statement. A location plan is attached to this report as **Plan 1**, and a more detailed plan showing the Application Route is attached to this report as **Plan 2**.
- 1.2 To request the Assistant Director to authorise the making of a Definitive Map Modification Order to record a Public Footpath along the length of Moorfoot Lane, Cononley, as applied for.

2.0 Scheme of delegation

- 2.1 Within the County Council's scheme of delegation, it is delegated to the Assistant Director – Travel, Environmental & 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

3.1

Applicant:	Cononley Parish Council
Date of application:	13/01/2020
Type of Application	Definitive Map Modification Order
Parish:	Cononley
Local Member:	Cllr. A Brown
Application supported by:	41 Evidence of use Forms. The documentary evidence listed in Section 5 below.
Applicant's grounds for making the application:	In 2016 a planning application was made for development at Station Works Cononley Lane. The Parish Council were concerned that these works might affect pedestrian use of Moorfoot Lane.

- 3.2 Description of the route - The route commences on the public road known as Meadow Lane at the junction with Main Street, at Point A on Plan 2, and proceeds north eastwards providing vehicular access to a number of properties. The surface of the route is tarmac. The route crosses over the railway by a road bridge owned and maintained by Network Rail. The tarmac ends by the last residential property and continues as a wide route used as a vehicular access to agricultural land. The application route terminates at the junction with 2 existing public footpaths, at Point C on Plan 2. Although the track narrows and continues as access to fields, there is a field gate across it, with an old sign reading 'Private' attached. There is no evidence of public rights as far as this gate. No part of the application route is recorded on the List of Streets.

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. For routes which are already recorded on the Definitive Map and Statement, but where the application is to amend the status of the route, the evidence required must meet the higher “balance of probabilities” test.
- 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 and documentary evidence

- 5.1 The following evidence was provided in support of the claim:
- Written testimony from former Parish Clerk
 - Photograph of pedestrian stone stile next to a gateway - gate now absent (pre-1995)
 - 1813 Map showing entire route - WYAS Bradford WYB671
 - Cononley Tithe Map 1842 - NYCRO PC-CNN 12 (Names an owner / occupier but see Officer comments below)
 - 6 in. O.S. Map - 1848 Survey
 - 25 in. O.S. Map - 1889 (annotated) - NYCRO PC-CNN 15
 - Photograph (2022) of 'Private - No Right of Way' sign at far end of the lane beyond claimed extent.
 - Leeds & Bradford Railway Act Plan and Book of Reference, 1845 - States Occupation Road (Names occupiers but see Officer comments below)
- 5.2 The standard of evidence required for this application, to determine whether or not an Order should be made, is whether it is ‘reasonably alleged’ that the path subsists, (S31(1) of the Highways Act 1980).
- 5.3 The evidence provided in support of the application is as follows:
- Sufficient Evidence of Use forms over 20+ years have been submitted, some state usage over much longer timescales.
 - An old stone stile next to gateway close to Howefield, and the 'Private' sign at far end beyond the claimed extent of route, imply that a public right over the main part of the lane subsists and is accepted.
- 5.4 The evidence provided which does not positively support the application is as follows:
- The 1910 Finance Act Map shows the lane separated from and not braced to adjacent land, and open to Main Street and Back Lane, now Meadow Lane. However there are a number of properties in two blocks which were in private hands and occupancy in 1842, on the corner of Main St., Back / Meadow Lane and Moorfoot Lane, that are also excluded from the Act survey which include the Forge, several cottages and a 'hat manufactory & shop'. These include the houses with current no's. 1, and 2 to 6, Meadow Lane; and 48 to 54 Main Street as well as the re-built former

forge, 54A Main Street. It is contended therefore that the Finance Act survey is not so precise as to reliably identify private and 'public' property, and in this instance, provides no helpful information towards whether or not public rights exist along the route.

6.0 Objections to the application

6.1 An informal consultation was undertaken in May 2022 and objections were received to the proposal to add a section of footpath to the Definitive Map along Moorfoot Lane.

6.2 The objections received and the officer's comments on the objections are as follows:

- Four individual objectors, who represent one householder whose property opens onto Moorfoot Lane, and three businesses or occupiers of farmland off the lane; all believe it is entirely private, although no evidence of any substance is offered for this supposition. None of the above is a freehold owner of the lane: no owner has been discovered.
- Initially both the BHS and the BBT objected to the proposal to add a footpath, both believing that higher rights exist. They have attempted to rebut the Tithe and Railway Act evidence for private occupation, on the basis that equestrianism was so common that such tracks would automatically be public to riders and carriages even if privately maintainable. The BHS has since withdrawn their objection.

7.0 Support for the application

7.1 Support for the proposal was received from the Division Member (who is also the District Council's Ward Member), and the Ramblers Association.

8.0 Representation made by the local Member - Cllr. A Brown

8.1 The local Member supports the application for a Footpath.

8.2 Craven District Council owns a very small part of the lane at the south-west end, and does not object to the application.

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 would be likely to appoint external advocacy in this instance.

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 Climate Change Implications

11.1 The route has already been being used by the public on foot, therefore the making of a Definitive Map Modification Order would have no positive or negative impact on climate change.

12.0 Conclusions

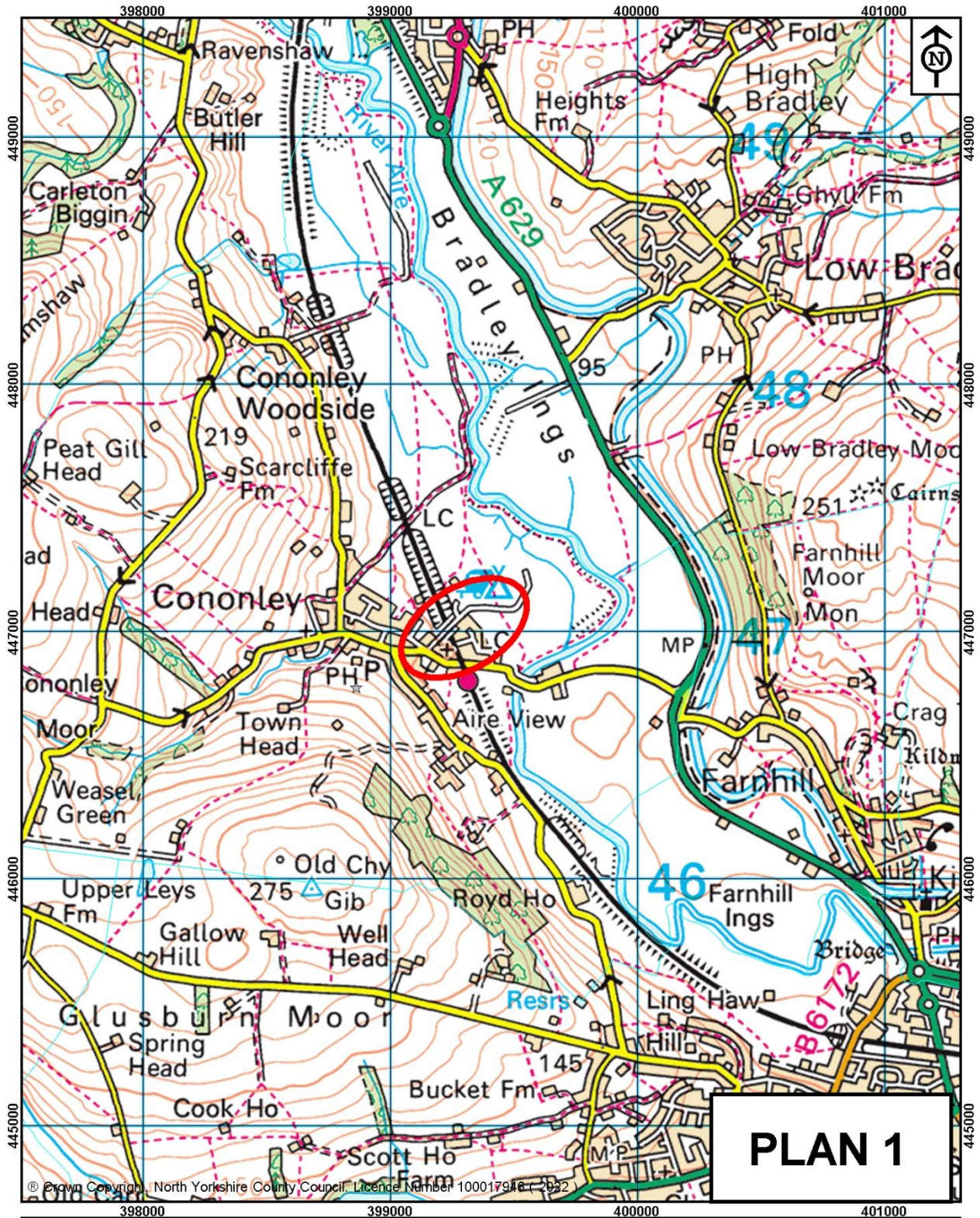
- 12.1 The evidence of use clearly demonstrates the public have made use of the route on foot for in excess of 20 years to gain access to the 2 existing public footpaths. The historical evidence is supportive of the existence of public rights but is not sufficient to reasonably allege any higher right than that of a public footpath. The historic mapping is open to several interpretations and there are two convincing pieces of evidence for access by vehicles but this more likely constitutes private occupation access, namely the Tithe Apportionments of 1842, and the 1845 Railway Plan and Book of Reference.
- 12.2 The Officer concludes that the substantial amount of evidence of use of the route is sufficient to satisfy the test that it is 'reasonably alleged' that public rights exist along this route, and that those rights are consistent with the route being recorded as a public footpath.

13.0 Recommendation

- 13.1 It is therefore recommended that: the Assistant Director – Travel, Environmental & Countryside Services **approves** the making of an Order to record a Public Footpath along the length of Moorfoot Lane applied for.

Author of Report: Robin Richardson


Background Documents: File Ref CRA-2020-01-DMMO



PLAN 1

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

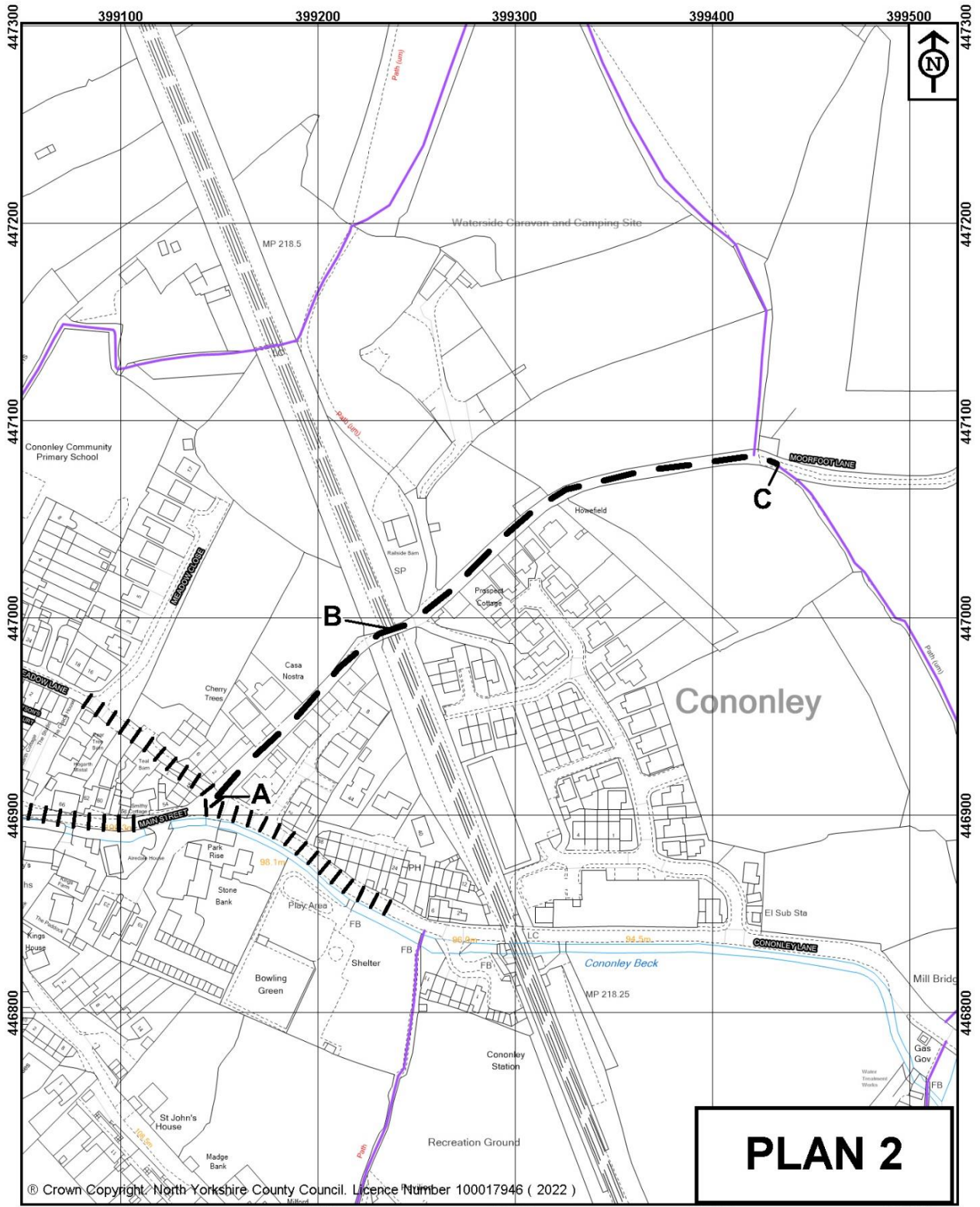
Key:
 Location of the application route



Map drawn on 27 October 2022
 Drawn by pn Scale 1:20000

North Yorkshire County Council
LOCATION PLAN
 APPLICATION FOR A DMMO -
 MOORFOOT LANE, CONONLEY

File Ref No. refno



PLAN 2

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

Key:
 Application route ————
 Other footpaths ————
 Maintainable highways |||
 Map drawn on 27th October 2022
 Drawn by pn Scale 1:2500

North Yorkshire County Council
 DECISION REPORT PLAN
 1st November 2022
 APPLICATION FOR DMMO
 MOORFOOT LANE, CONONLEY
 File Ref No. CRA/2020/01/DMMO

Photographs of Moorfoot Lane, Cononley:



1. Junction with Meadow Lane – Point A



2. From Point A on Meadow Lane, looking north east towards the railway bridge



3. Bridge over the railway – Point B



4. Looking north east from on the railway bridge at Point B



Eastern end of application route – Point C



6. Existing FP from the north – Point C



7. Existing FP from the south – Point C



8. 'Private' sign on gate beyond end of application route

North Yorkshire County Council

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

01 November 2022

**Application for a Definitive Map Modification Order
to add a Public Footpath along Moorfoot Lane, Cononley**

Authorisation

I approve the recommendation set out above.

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ANY ADDITIONAL RECOMMENDATION or COMMENT:

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MICHAEL LEAH
Assistant Director Travel, Environmental & Countryside Services

Date1 November 2022.....