

# North Yorkshire Council

## Environment Executive Members

12 September 2024

### Opposed Definitive Map Modification Order - Restricted Byways 15.75/83, 15.70/56, 15.70/57, 15.75/84, Gillgate Road and Appleby Lane, Kirkby Malzeard and Laverton Modification Order 2022

#### 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). A location plan is attached to this report as Appendix A. The Order routes are shown in Appendices B and C.
- 1.2 An Order Making Authority cannot confirm a DMMO where there are outstanding unresolved objections; the Order must be forwarded to the SoS for determination on whether or not it should be confirmed.
- 1.3 To request the Corporate Director, in consultation with the Local Member and Executive Member for Highways & Transportation, to decide what stance North Yorkshire Council (NYC) will take in its submission of the opposed Order to the SoS.

##### 2.0 BACKGROUND

- 2.1 The application for the DMMO was submitted to North Yorkshire County Council by the British Horse Society on 08 February 2017 to record two sections of Restricted Byway - Gillgate Road and Appleby Lane.
- 2.2 The Order section of Gillgate Road is not recorded in the List of Streets (LoS) or on the Definitive Map. It runs for approximately 709 metres from a junction with the C372/U2960/2 road in Laverton village (point A on the plan at Appendix B), generally westwards to the end of the tarmacked section of Gillgate Road (recorded on the LoS as U2956/2) north of Bucks House (point C on the plan at Appendix B). The route is enclosed between hedges and fences. The western section of Gillgate Road is predominantly earth and grass and the eastern section is predominantly crushed stone.
- 2.3 The section of Appleby Lane affected by the Order is also not recorded in the LoS or the Definitive Map. It runs for approximately 229 metres from the end of the tarmacked section of Appleby Lane (recorded as highway U2955/2 on the LoS) near Beckmeetings Farm (point D on the plan at Appendix C), south-westwards to a ford at Carlesmoor Beck and terminates at a junction with the unsurfaced unclassified road (UUR) U2954/2, Belford Lane/Drift Lane (point F on the map at Appendix C). It is a grass and earth route enclosed between hedges.

- 2.4 The application was supported by an extensive range of historical documentary evidence:
- Laverton Township map (circa 1780)
  - Kirkby Malzeard Inclosure Act (1787), extract
  - Kirkby Malzeard Inclosure Award (1789) [*Richmond Estate Copy c1789*], Extracts of Transcription and extracts of original award
  - Kirkby Malzeard Boundary Map (1730), extract
  - Analysis of Inclosure Award & maps by Sue Hogg, Pennine Packhorse Trails Trust
  - Kirkby Malzeard Township Map (c1790), extracts
  - Plan of Allotments on Kirkby Moor (1788), extracts
  - Plan/Map of Kirkby Malzeard, Laverton, Grewelthorpe (1832) showing Mrs Lawrence Estate, extracts
  - Plan of Land. Laverton & Ripon (1860). Estate map drawn by Robert Telford, extracts
  - Plan of Estate of Earl de Grey of Ripon (1869), extracts
  - Tithe Map and Extract of Award for Kirkby Malzeard (1840)
  - Laverton Tithe Award and map (1840), extracts
  - Finance Act (1910), extracts: Register of Entries, Finance Act 1910 Maps, Finance Act 1910 Field Book entry
  - Leeds Corporations Water Works Act (1910), extracts of plans
  - Ordnance Survey (1890s) Object Names Book entries
  - Correspondence from North Yorkshire County Council Highways Department (1999)
  - UK Government Land Registry Data on ownership
  - A paper on the value of Ordnance Survey maps for proving rights of way
  - Extracts of Ordnance Survey (OS) maps: 1861 1 inch to 1 mile, 1925 1 inch to 1 mile, 1897 6 inch to 1 mile
  - Extracts of Commercial Maps: Jeffrey's map of Yorkshire (1771), Greenwood's map of Yorkshire (1817, 1834), Cary's map of Yorkshire (1825), JH Frank's map of Yorkshire (1840), Story's Motoring and Cycling map (1926)
  - Copy of PINS Order Decision FPS/P2745/7/46
- 2.5 On the basis of the evidence submitted, officers believed that the relevant evidential standard had been met for the making of an Order i.e., 'reasonably alleged'.
- 2.6 An informal consultation was carried out and no objections were received and so the Principal DMO determined to proceed to make an Order under delegated powers.
- 2.7 The Order was sealed by NYCC on 01 April 2022 and was subsequently advertised, attracting 10 objections. However, it was found that there was a technical error on the Order plans which meant that the Order was flawed and would have to be remade. The Order was remade in an amended form on 05 July 2022 and was subsequently advertised. This attracted 8 objections of which all 8 remain outstanding. The Council cannot confirm a DMMO where there are outstanding objections; the Order must be forwarded to the Secretary of State for resolution.
- 2.8 Any comments received from local Members are provided below. In accordance with the constitution requirements protocol for reports to the Corporate Director, Environment and the Environment Executive Member, the relevant local Member, has been provided with access to a copy of this report and has been invited to the meeting on 12 September 2024.
- 3.0 CURRENT DECISION TO BE MADE**
- 3.1 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.

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

#### 4.0 COMMENTS ON THE EVIDENCE

4.1 The following is a summary of, and comment on, the evidence presented to date:

##### 4.2 Evidence Supporting Confirmation of the Order:

- 4.2.1 The 18<sup>th</sup> Century evidence suggests that the sections of Order route were ways which pre-existed the inclosures of the area in the late 1780s. The Laverton Township map (circa 1780) depicts the land where the routes are located prior to the Kirkby Malzeard Inclosure Act (1787) and Award (1789). West of Laverton, there were two ancient enclosures with Kirkby Malzeard Common lying in between them. The first short section of the Gillgate Road Order route can be identified as going to the eastern old enclosure from Laverton village and terminating in a gate/barrier at the edge of the old enclosure. The route is not shown over the old enclosures. It appears that the western end of Appleby Lane (E to F on the Order Plan in Appendix C) is shown as an enclosed lane south of the western old enclosure and the Common, although the resolution of the map as submitted is not very clear to define an alignment of D to E.
- 4.2.2 The Inclosure Award evidence suggests that the sections of Order route were ways which already existed, and they are mentioned in relation to the newly set out inclosure roads. The sections of Appleby Lane and Gillgate Road which are recorded as highways on the LoS are those sections that were set out in the Inclosure Award. The section of Appleby Lane now recorded on the LoS was set out in the Award as 'Dallowgill Road' a 27ft carriage and occupation road. The Order section of Appleby Lane was referred to as being an 'ancient lane called Beck Meetings Lane' which Dallowgill Road leads to. The section of Gillgate Road recorded in the LoS is set out in the Award as 'Intack Road' a 27ft carriage and occupation road running from Dallowgill Road to the west side of the old inclosures. The Order section of Gillgate Road is referred to as being a [pre-existing] 'road' which the newly set out Gelgate Public Carriage Road ran to and into, in Laverton village.
- 4.2.3 The newly set out roads were carriage and occupation roads of 27ft in breadth. They are not specifically denoted as public, but neither are they denoted as being restricted to the use of certain individuals. The award sets out three types of carriage roads: public carriage roads (over 40ft wide) to be maintained by the parish, carriage roads less than 40ft wide, also to be maintained by the parish (these appear to be local roads rather than the more major public carriage roads), and private carriage roads of various widths for use by specific individuals named in the award e.g. Anthony Proctor and Thomas Weatherhead, who were stated to be responsible for maintenance. A previous PINS decision case submitted by the Applicant also makes reference to the Kirkby Malzeard Inclosure Act/Award. This decision states that this Award would appear to specifically name individuals in instances where the use of a route was restricted to use only by private individual occupiers rather than the wider public. As the Award states that inclosure roads were to be for the same uses as previously used, it can be inferred that the status of the newly set out routes is the same as any existing connecting section.

- 4.2.4 The Kirkby Malzeard Township (1790) map is contemporaneous with the inclosures and shows the situation after the changes had occurred. The Order section of Appleby Lane is shown as enclosed and uncoloured and with the label 'to Dallowgill' indicating it is a public route. The area around the eastern end of the Order section of Gillgate Road (A to B) is not covered by the map. The western section of Gillgate Road is just discernible as an enclosed route where it enters the old Common east of C, but it is not clearly shown as a defined route leading to the Intake Road inclosure road.
- 4.2.5 The Kirkby Malzeard Tithe Map and Apportionment (1840) suggests that the Order sections of the routes were regarded as public highways. Appleby Lane is shown on its current alignment enclosed from the surrounding land parcels and it is labelled 'to Dallagill' [Dallowgill] indicating that it was a public through route. The applicant suggests that the route is coloured sienna, which was a convention in tithe maps for showing public roads, however the colour reproduction as submitted is quite poor. Gillgate Road is depicted as an enclosed route with the exception of south of parcel 222 where its northern boundary is shown as a dotted rather than solid line. In the Apportionment, 222 is listed as 'Road pasture'. It is similarly apparently coloured sienna, as other current public roads. This is supportive that the Order (and the LoS) routes were public highways, most likely carriageways, at the time of the Kirkby Malzeard tithe.
- 4.2.6 19<sup>th</sup> Century estate maps, commercial maps and OS maps submitted mostly depict the routes as defined tracks and are generally consistent with other public roads in the area. This supports the conclusion that the routes were regarded as public highways/carriageways.
- 4.2.7 In the Finance Act (1910) assessments, the western section of Gillgate Road is shown as a white road, excluded from the surrounding hereditaments. This suggests that it was a public road. The remaining part of the route is shown as going through hereditament 244 and is not depicted separately. However, a deduction has been made in parcel 244 for a 'right of way on Lane'. There is no other right of way in the parcel which this deduction could have been for. This supports that section of Gillgate Road being a right of way, although it is not conclusive as to status. Appleby Lane is not shown as a separate white road and is within a very large parcel of land (358) owned by the Leeds Water Corporation. It appears from the relevant submitted documentation that the Leeds Water Corporation did not make any claims for any rights of way over its land in the vicinity, therefore the fact that Appleby Lane is not claimed as a right of way cannot be taken as an indication that it was a private rather than public road.

#### 4.3 Evidence Against Confirmation of the Order:

- 4.3.1 None of the evidence put forward by the applicant contradicts the assertion that the Order routes were ancient carriageways although some of the submitted evidence offers only weak support or no support. Several objections have been made countering the evidence; these are raised in the objections section below.

### 5.0 **OBJECTIONS TO THE MADE ORDER**

- 5.1 A number of objections were received. The grounds for these objections are summarised below, together with Officer responses. Objection grounds 1 to 8 were submitted by various objectors, including representatives from the Trail Riders Fellowship (TRF) who stated that the routes should be recorded as Byways Open to All Traffic since they believe that public rights for MPVs (Mechanically Propelled Vehicles) exist over both routes. Objection grounds 9 to 12 were submitted by a representative of the Yorkshire Dales Green Lanes Alliance (YDGLA) objecting to the recording of Appleby Lane as a Restricted Byway, instead asserting that it should be recorded as a Bridleway. This objector did not object to the proposal to record Gillgate Road as a Restricted Byway.

- 5.2 **Objection 1:** (Raised by a number of objectors)  
The Order routes appear to have been recorded on the NYCC List of Streets maintainable at public expense as Appleby Lane and Gillgate Road on the 02 May 2006. The public right for mechanically propelled vehicles is therefore preserved by the engagement of the exemption set out in section 67(2)(b) Natural Environment and Rural Communities Act 2006 (NERC Act).
- 5.2.1 Officer Comment/Response:  
The sections of route affected by the Order are only the unsurfaced sections i.e. A-B-C and D-E-F as shown on the Order plans. Neither of these unsurfaced sections has any legally recorded status, as they are not recorded on the Definitive Map and appear never to have recorded in the List of Streets/Highway Records. Note: This fact has been confirmed by NYC Highways in documentary evidence we have submitted to objectors to rebut this point of objection. However, none were prepared to withdraw this objection.
- 5.3 **Objection 2** (Raised by two objectors)  
The Order routes appear to be ordinary roads, used by the public mainly for the purposes of carriageway, that are outwith the scope of definitive map legislation, and would retain their rights for vehicles that existed prior to the NERC Act.
- 5.3.1 Officer Comment/Response:  
We do not consider that these unsurfaced routes (which are not recorded on NYC Highways Records/the List of Streets) could be considered “ordinary” highways. It is not disputed that recreational motor vehicles have used the routes to some extent, whether lawfully or not, together with pedestrians, cyclists and horse riders. However, officers believe it unlikely that the use by MPVs is of such frequency/volume that the unsurfaced sections are part of the ‘ordinary road network’ which would have exempted extinguishment of MPV rights by section 67 of the NERC Act.
- 5.4 **Objection 3** (Raised by two objectors)  
No new discovery under section 53(3)(c)(i) Wildlife and Countryside Act 1981 has occurred to engage powers to make a definitive map modification order.
- 5.4.1 Officer Comment/Response:  
Officers consider that the application contained new evidence which merits an investigation and Order under section 53 of the Wildlife & Countryside Act.
- 5.5 **Objection 4:** (Raised by one objector)  
The objector states it does not make any sense that there is not a continuous road from Beckmeetings Farm to Drift Lane and that the road/route is continuous from Appleby Lane-Gillgate Road to Bedford/Drift Lane. This is one continual road as shown on the map previously supplied. The objector states they have also used this road for many years and they see no reason to effectively close the middle section of the road as it makes no sense.
- 5.5.1 Officer Comment/Response:  
It is indisputable that the Order route sections and the tarmac NYC-maintained sections on the List of Streets can be used as continuous through-routes for vehicles. The routes set out at inclosure and pre-existing routes have been differently recorded in Highway records and with consequent different maintenance responsibilities, even though it seems likely historic carriage rights existed over both the now tarmacked and unsurfaced sections. As a result of this difference, it appears that the NERC Act will have extinguished motor vehicle rights over the unrecorded unsurfaced sections which are subject to this Order. This is a consequence of statutory law, whether or not it seems sensible or fair.

- 5.6 **Objection 5:** (Raised by two objectors)  
Part II of the Order schedule lists 'field gates' as limitations. The field gates appear to be unlawful obstructions rather than lawful limitations. The gates are not recorded in the inclosure award. The objector can find no evidence that these gates were present at the date of dedication of the highway.
- 5.6.1 Officer Comment/Response:  
The sections of Order route are not included in the inclosure award. The gates listed are currently in existence on the route and appear to be of some antiquity. Therefore, it appears to be reasonable to include them in the Order, but should an Inspector wish to remove them as lawful limitations, we would have no objection to this.
- 5.7 **Objection 6:** (Raised by one objector)  
This objector states he has personally used the route on a motorcycle and has not seen any damage that could be attributable to motorcycle use.
- 5.7.1 Officer Comment/Response:  
The condition of the routes and their suitability or otherwise for use by MPVs are not a material consideration. The only issue to be decided for the purposes of a DMMO decision is what public rights of way exist over the routes.
- 5.8 **Objection 7** (Raised by the Trail Riders Fellowship)  
Appleby Lane and Gillgate Road are shown on the Definitive Map as named routes. Appleby Lane and Gillgate Road are referred to in the Definitive Statement with further information to suggest they are county roads.
- 5.8.1 Officer Comment/Response:  
The Ordnance Survey base map on which the Definitive Map has been drawn shows the physical existence of the enclosed tracks named Appleby Lane and Gillgate Road. The depiction of a route on an OS map is not proof of any public rights over that route. The Definitive Map issued in 1973 by the former West Riding County Council does not show any public rights of way existing over the sections marked as A-B-C and D-E-F on the Order plans. References in the Definitive Statement to 'the County Road known as Appleby Lane' refer to a tarmac section of the road which is recorded on current NYC Highways Records as U2955/2/50. U2955/2/50 does not include the Order route section of Appleby Lane (D-E-F as shown on the Order plans).
- 5.9 **Objection 8** (Raised by one objector)  
Part II of the Order schedule states that where proposed RB 15.70/57 crosses a ford, to the north of the ford, the width of the way is 2.8 metres, but the rest is 4.8 metres. The objector states they can find no documentary indication that such a pinch point existed historically.
- 5.9.1 Officer Comment/Response:  
There is no documentary indication of the width of the route D-E-F as it is not recorded in the Definitive Map or Highways Records and was not set out in the inclosure award (it appears to be a pre-existing ancient road called Beck Meetings Lane). This pinch point between walls and banks physically exists on the ground as the route enters the ford. It is likely that it existed historically although we cannot exclude the possibility that the local hydrology has gradually changed, and part of the bank has been increased over the years due to deposition of material. In the absence of historical evidence that the situation used to be different, we have recorded the widths which exist currently, but should an Inspector wish to amend the recorded width, we would have no objection to this.
- 5.10 **Objection 9** (raised by YDGLA)  
Appleby Lane appears to be shown as part of a non-turnpike road running west from the village of Laverton on Thomas Jefferys' large scale map of Yorkshire, a map based on surveys in 1767-70. The Planning Inspectorate's Definitive Map Orders Consistency

Guidelines provide guidance on the interpretation of non-turnpike roads shown on 18th and 19th century maps in paragraphs 2.24 to 2.30, suggesting that such roads could be either a public bridleway or a highway for vehicles. Appleby Lane was described in 1789 as an “ancient lane (...) called Beck Meetings Lane”, the westward continuation (from D) of a carriage and occupation road with a width of 27 feet, by the commissioners of the inclosure award for Kirkby Malzeard and Laverton. At F, the Order route terminated on a way described by the inclosure commissioners as a private carriage and occupation road, with a width of 27 feet, the route which is now U2954. The fact that the eastward continuation of section D-E-F was specified as an occupation road, the westward continuation of section D-E-F was specified as a private carriage and occupation road, and that both continuations of D-E-F had a width less than that (40 feet) required for public carriage roads by the Act which enabled the inclosure, show that section D-E-F of the Order route did not have public vehicular rights at the end of the 18th century. Together these pieces of evidence indicate that these sections of the Order route had public bridleway rights at the end of the 18th century.

5.10.1 Officer Comment /Response:

As neither of the Order route sections were set out in the inclosure award, we do not consider this to be an entirely relevant objection. We think it more persuasive that the description of Appleby Lane as an ‘ancient lane’ is suggestive of carriage rights and also that Gillgate Lane was run into by a public carriage road set out in the Award. In relation to the inclosure sections of Appleby Lane and Gillgate Road, we concur with other PINS interpretations of this Inclosure award when considered by the Planning Inspectorate is that the important fact in determining whether the routes set out therein were public or not was not whether they met the width of 40 ft stated in the enabling Act, but instead whether they were stated to be for the use of specified individuals, and the fact that the routes were to be maintained by the parish rather than by individual occupiers.

5.11 **Objection 10** (YDGLA)

Later evidence does not demonstrate the subsequent dedication of public vehicular rights over this section of the Order route. For example: Greenwood’s map of 1817 shows section D-E-F of the Order route and its continuation over the southern section of what is now U2954 as crossroads, i.e. roads which were not turnpike roads. As above, the Planning Inspectorate’s Definitive Map Orders Consistency Guidelines indicate that a crossroad could be either a public bridleway or a highway for vehicles, so this evidence is not conclusive of public vehicular rights.

5.11.1 Officer Comment/Response:

As stated above, we believe that it is likely that the ‘ancient lane’ of Beck Meetings Lane as i.e. what is now D-E-F on the Order plan, probably was a highway for vehicles historically.

5.12 **Objection 11** (YDGLA)

The Laverton tithe map, drawn in 1838, shows section E-F of the Order route, and the section of what is now U2954 on which it terminates, as a single plot of land, numbered 432. The eastern continuation from E of the Order route in Kirkby Malzeard is indicated by the label “fr[om] Kirkbymalzeard”, confirming the evidence from Burdett’s map that it was a highway of some sort. Plot 432 is described in the Laverton tithe apportionment of 1840 as “Road”, owned by John Bacon Sawrey Morrith and occupied by Thomas Barker, and subject to tithe. Highways which were set out as public vehicular roads in the inclosure award are not numbered. The Laverton tithe award therefore indicates that section E-F (and U2954) was a private vehicular road with lesser public rights in 1838/40, as it was in the 18th century.

5.12.1 Officer comment response:

We do not consider that this evidence negates the Order section of Appleby Lane from being a public rather than private highway at the time.

### 5.13 **Objection 12 (YDGLA)**

The book of reference for a reservoir proposed by Leeds Corporation in 1901 describes section E-F of the Order route, and its continuations west and south from F (i.e. what is now U2954), as occupation roads owned by the Marquess of Ripon. This description indicates that public vehicular rights had not been dedicated over this section of the Order route at the beginning of the 20th Century.

#### 5.13.1 Officer comment/Response:

It is our conclusion from the inclosure evidence that the routes were occupation roads but were also local public roads, maintainable by the Parish and were not restricted to use only by private individuals/occupiers.

## 6.0 **CONCLUSIONS ON THE EVIDENCE**

6.1 The Applicant asserts that the application/Order sections of Gillgate Road and Appleby Lane are part of an ancient highway network predating the inclosures in 1780s.

6.2 Those sections of Appleby Lane and Gillgate Road which are recorded on the List of Streets (i.e., those not the subject of the Order), appear to have been set out in the Kirkby Malzeard Inclosure Award of 1789 as a class of local carriageways not restricted to use by private individuals, and were maintainable by the Parish. It is reasonable to allege that these ancient roads linked to the inclosure roads would also have had carriageway rights historically. Other submitted evidence is generally suggestive that the Order route sections have been regarded as public carriageways/roads from the 19<sup>th</sup> Century onwards, but for some reason they were never recorded as publicly maintainable roads, unlike the inclosure roads.

6.3 As the Order sections are not recorded on the List of Streets it is most likely that rights for motor (mechanically propelled) vehicles were extinguished by section 67 of the NERC Act (2006). Various objectors have stated that they believe that the Order routes did in fact meet at least one exception named in the NERC Act, and thus that extinguishment would not have occurred (and that therefore the routes should be recorded as Byways Open to All Traffic). However, we have seen no cogent evidence that any such exception to extinguishment of MPV rights under NERC Act has occurred and therefore that is appropriate to record the application routes as Restricted Byways.

6.4 We consider that taken together, the historical evidence put forward by the Applicant meets the evidential standards of 'reasonably alleged' to make an Order and 'on balance of probabilities' to confirm the Order. Overall, it currently appears that there is sufficient evidence to conclude that the Definitive Map should be amended in accordance with the current Order, and therefore that, of the options outlined in paragraph 3.1, in this instance, the Council should support confirmation of the Order in its submission to the SoS.

## 7.0 **REPRESENTATIONS BY LOCAL MEMBER**

7.1 In the informal and the formal consultation, we received no response from the local Member in post at the time (Cllr Atkinson).

## 8.0 **EQUALITIES IMPLICATIONS**

8.1 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 there are no significant equalities implications arising from this report.



## **9.0 FINANCIAL IMPLICATIONS**

9.1 As the Authority is obliged to refer all opposed DMMOs to the Secretary of State there would be a cost to the Authority in preparing a submission to the Secretary of State and responding to any queries raised, and these costs would be for officer time which would be met by the respective staffing budgets. If the Inspector representing the Secretary of State chose to hold a Public Inquiry or Local Hearing, the costs of arranging, hosting and supporting the Inquiry/Hearing would unavoidably fall to the Council, which excluding any external advocacy, would be unlikely to exceed £1,000. Any such costs would be met from existing service budgets. If an Inquiry were to be held the Authority would be likely to appoint external advocacy in this instance. In cases where the Authority appoints external advocacy to represent it in any proceedings, the associated cost implications are estimated to be no more than £3,000, which would be met from existing service budgets.

## **10.0 LEGAL IMPLICATIONS**

10.1 The Council as an Order Making Authority has a legal duty under Section 53 of the Wildlife & Countryside Act 1981 to keep the Definitive Map and Statement under continuous review. In doing so it shall modify the Definitive Map and Statement by means of legal Orders as a consequence of certain prescribed events which are set out in Section 53 of the Act, one of which is the discovery of evidence which shows that a right of way not shown on the definitive map and statement subsists or is reasonably alleged to subsist and should be shown.

10.2 An Order Making Authority cannot confirm a DMMO where there are outstanding unresolved objections; the Order must be forwarded to the Secretary of State for determination on whether or not it should be confirmed. Determination is by way of either a Public Inquiry, Local Hearing or written representations.

## **11.0 CLIMATE CHANGE IMPLICATIONS**

11.1 This decision would have no positive or negative impact on climate change.

## **12.0 CONCLUSIONS**

12.1 The test that needs to be considered at this stage in the process is whether, 'on the balance of probabilities' the available evidence adequately supports the assertion that the routes shown in the Order should be recorded as Restricted Byways.

12.2 Overall, it appears that there is sufficient evidence to conclude that the above test has been met and that objections raised are not sufficiently relevant or factually accurate to rebut this, and that the Definitive Map should be amended in accordance with the current Order. Therefore, of the options outlined in paragraph 3.1, officers consider that the Authority should support confirmation of the Order to add two sections of Restricted Byway as shown A-B-C and D-E-F on the Order plans at Appendix B and C.

## **13.0 RECOMMENDATION**

13.1 It is recommended that the Corporate Director, in consultation with the Local Member and Executive Member for Highways & Transportation support confirmation of the Order within its submission of the case to the SoS.

**APPENDICES:**

Appendix A - Location Plan and Order Plans.

Appendix B – Order Plan – Gillgate Road

Appendix C – Order Plan – Appleby Lane

**BACKGROUND DOCUMENTS:**

File Ref: HAR/2017/05/DMMO

PAUL THOMPSON



Assistant Director - IPT, Licensing, PROW and Harbours

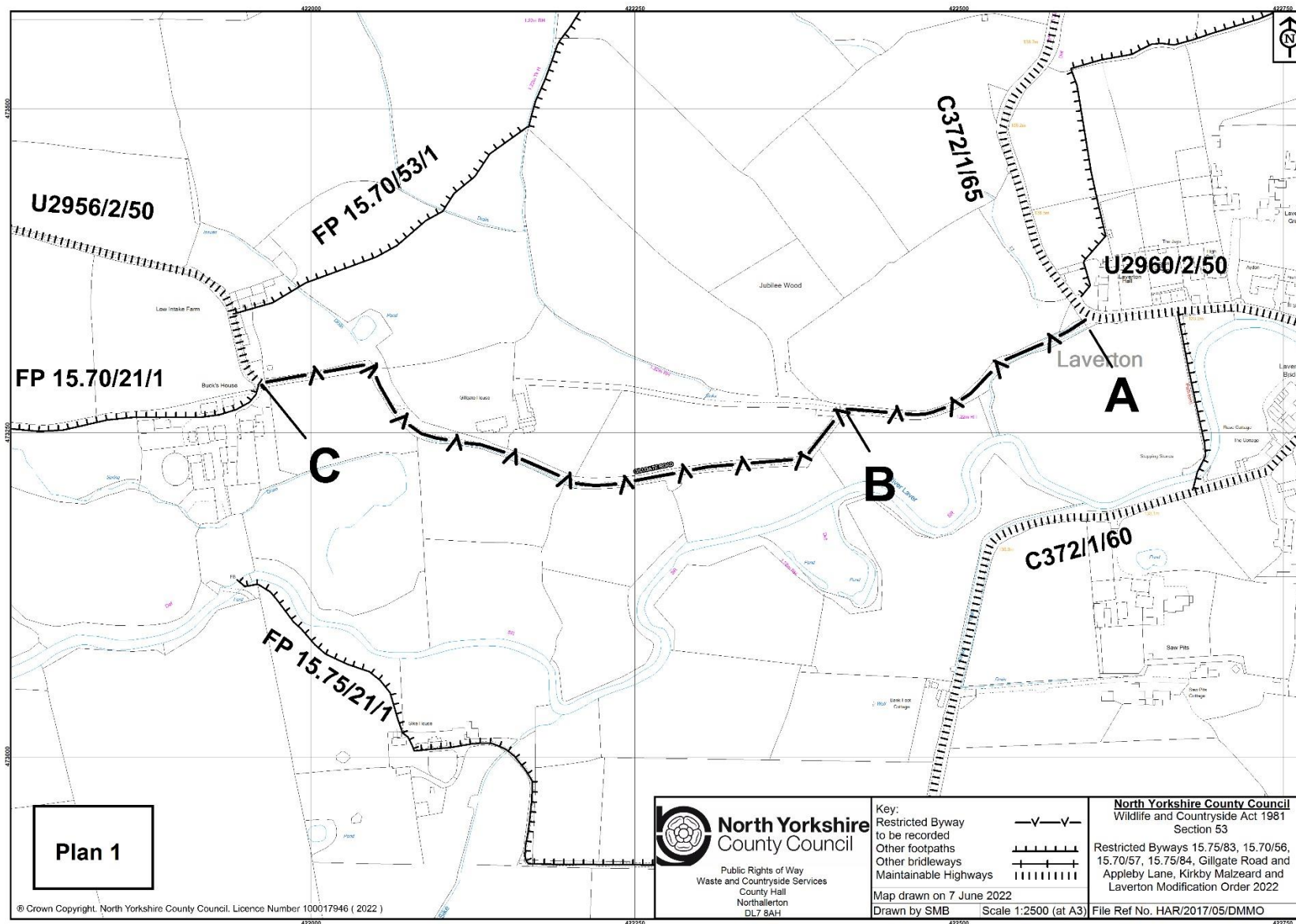
Report Author: Sarah Blakemore - Definitive Map Officer

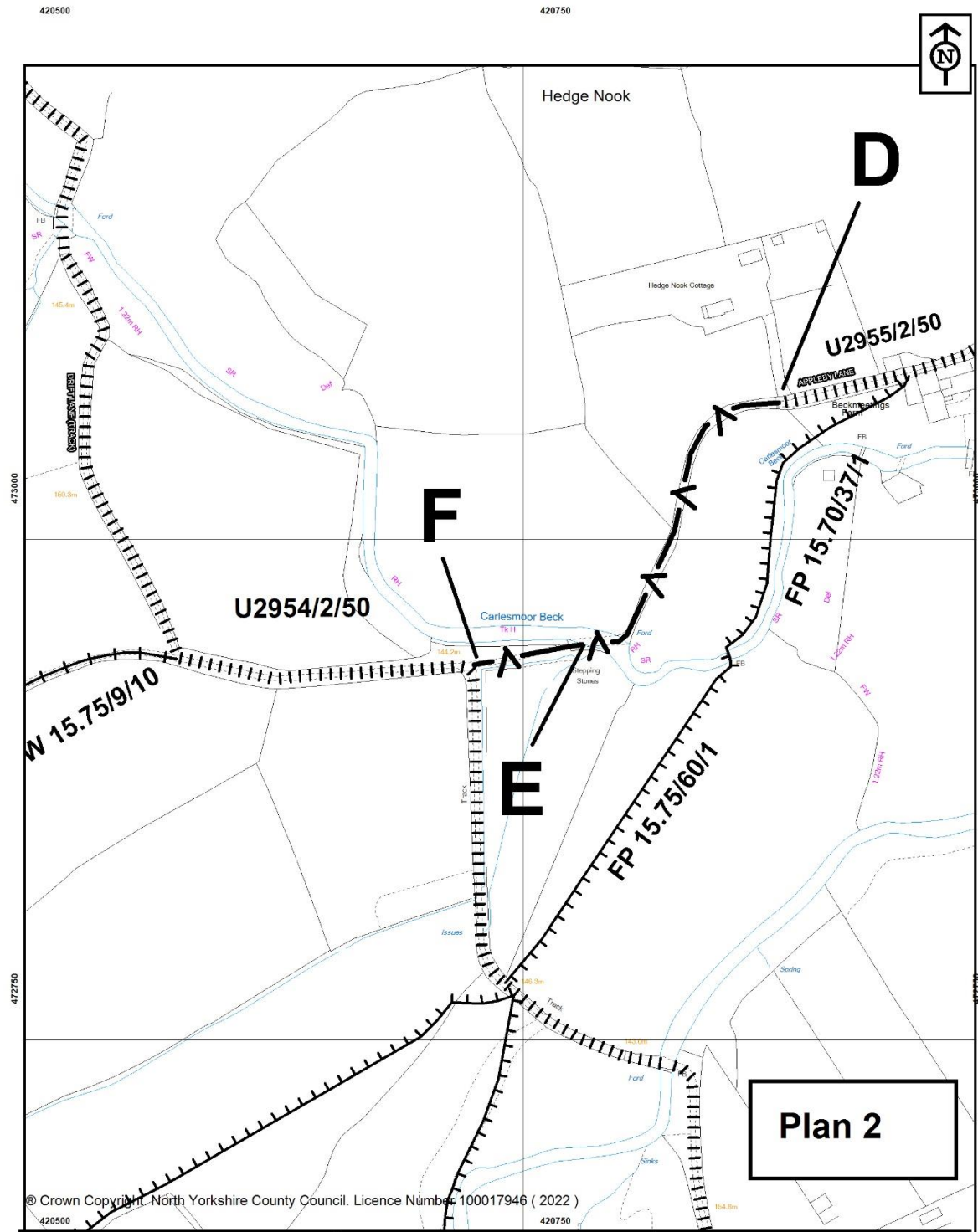
Presenter of Report: Beth Brown – Principal Definitive Map Officer

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




 <p><b>North Yorkshire County Council</b></p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p>  <p><b>Location</b></p>	<p><b>North Yorkshire County Council</b></p> <p>Gillgate Road &amp; Appleby Lane Outline Location Map</p>
	<p>Map drawn on 25 January 2022 Drawn by SMB</p>	<p>Scale 1:15000</p>





**Plan 2**

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 <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>Key:</b></p> <p>Restricted Byway to be recorded —v—v—</p> <p>Other footpaths ————</p> <p>Other bridleways —+—+—</p> <p>Maintainable Highways    </p>	<p><b>North Yorkshire County Council</b> Wildlife and Countryside Act 1981 Section 53 Restricted Byways 15.75/83, 15.70/56, 15.70/57, 15.75/84, Gillgate Road and Appleby Lane, Kirkby Malzeard and Laverton Modification Order 2022</p>
	<p>Map drawn on 7 June 2022</p> <p>Drawn by SMB</p>	