

# North Yorkshire County Council

## Executive Members

26 March 2021

### Opposed Definitive Map Modification Order:

#### Restricted Byway No. 10.177/132 Fangdale Beck to B1257 near Low Mill Modification Order 2020

#### Report of the Assistant Director – Transport, Waste and Countryside Services

##### 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 not support confirmation of the Order.

## 2.0 Background

- 2.1 An application was made by Mr W. Tait on behalf of the Ryedale Bridleways Group for an Order to modify the Definitive Map and Statement of public rights of way by recording a Restricted Byway between the B1257 road at Low Mill and Fangdale Beck, shown as A-B-C-D on Map 2 of the Report to the Assistant Director (Appendix A).
- 2.2 The entire route A-B-C-D is currently included on the List of Streets (highways maintained at public expense) as Unclassified Road U3121. The section A-B is also recorded on the Definitive Map as part of Public Footpath 10.177/084 and the section C-D is also recorded on the Definitive Map as part of Public Bridleway 10.177/085.
- 2.3 The application included various old maps, extracts from Highways records (from both the former North Riding County Council and NYCC) and documents from the time of the first production of the Definitive Map. Only two user evidence forms were submitted, both from riders who had used or attempted to use the route on only one occasion, together with letters and a list of signatures from people expressing support for the application. The letters and list of signatures did not provide any evidence of use but merely support for the applicant, and details about equestrian road safety. The letters of support and road safety details do not constitute relevant evidence and so were given no weight by NYCC in determining whether or not a DMMO should be made.
- 2.4 Following the informal consultation process, submissions of evidence were received from local residents, including evidence statements from landowners and occupiers, maps and correspondence with NYCC Highways team. Responses from the British Horse Society (BHS), Dr John Sugden and the Trail Riders Fellowship (TRF) included their interpretations of the evidence and legal issues, but supplied no further documentary or user evidence. Bilsdale Midcable Parish Council and the Mexborough Estate responded to the consultation but had no further evidence to add.

- 2.5 The evidence was considered at a meeting of the Assistant Director (Transport, Waste and Countryside Services) on 22 November 2019. On 19 December 2019 the County Council reached a formal decision that a Definitive Map Modification Order should not be made, as the evidence alleging the application route to have any particular status higher than that which is currently accepted to already exist by virtue of the route being recorded on the List of Streets is weak. The applicant was formally notified of this decision on 8 January 2020. A copy of the Report to the Assistant Director and formal decision record is attached as Appendix A. A supplementary note to accompany the Report is attached as Appendix B.
- 2.6 The applicant subsequently appealed to the Secretary of State (SoS) against the County Council's decision.
- 2.7 There are 2 tests involved in the making and resolving of DMMOs. The first test is whether, in the light of the available evidence, it is reasonably alleged that rights not recorded on the Definitive Map subsist, and if so, an Order should be made. An Inspector appointed by the SoS determined that the evidence met the 'reasonably alleged' test and therefore directed the County Council to make a DMMO to record the route as a Restricted Byway.
- 2.8 An Order was made and advertised in October 2020, and three objections were received, from the Bilsdale Midcable Parish Council, Fangdale Beck Residents and the owners of Low Mill. The County Council cannot confirm a DMMO where there are outstanding objections; the Order must be forwarded to the Secretary of State (SoS) for resolution.
- 3.0 Current decision to be made**
- 3.1 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.
- 3.2 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.
- 3.3 There was no further evidence submitted with the three objections; all referred back to evidence which had been considered by the County Council previously, when deciding whether or not to make an Order. This evidence is detailed in the Report to the Assistant Director (Appendix A).
- 3.4 The County Council's stance is that the extent of public rights over UURs in North Yorkshire must as a minimum extend to pedestrian user though higher public rights may well exist, and that determining the extent of any higher public right is a matter for assessment on a route by route basis. As mentioned in paragraph 2.5 above, the County Council considered that the evidence alleging the application route to have any particular status higher than that which is accepted to already exist by virtue of the route being recorded on the List of Streets is weak.

- 3.5 In considering whether or not an Order should be confirmed the more stringent second test applies; i.e. whether 'on the balance of probabilities' a particular status of public right of way subsists. In the absence of any further evidence demonstrating the status of public rights over the route, officers maintain the view that there is insufficient evidence to determine the extent of rights along the route, aside from those already accepted to exist through the route's inclusion in the List of Streets and the parts of the route's inclusion in Definitive Map. Therefore, the view is that the second test cannot be met, and the Order cannot be confirmed.
- 3.6 The conclusion is that of the options outlined in paragraph 3.1 above, the Council should not support confirmation of the Order to record a Restricted Byway due to the lack of any persuasive evidence to support the existence of any rights higher than those already acknowledged to exist, i.e. pedestrian rights.

#### **4.0 Financial Implications**

- 4.1 The County Council has no option but to send an opposed DMMO to the SoS for resolution.
- 4.2 In forwarding an opposed Order to the SoS there would be the usual unavoidable financial implications for the Authority in covering any costs associated with any subsequent public inquiry. If the SoS elects to hold a 'live' public inquiry over 2 days the costs to the Authority in this instance, without the need for advocacy support, would be in the region of £1,000.00, including the preparation of a Statement of Case, officer travel and attendance, and hire of a venue.
- 4.3 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. This would be considerably less if the matter is dealt with by a virtual public inquiry due to the current pandemic restrictions.
- 4.4 It is also possible in this instance, as there is negligible user evidence and the resolution will rely on the documentary evidence, that the SoS will choose to resolve the matter by written representations.

#### **5.0 Legal Implications**

- 5.1 There is a statutory requirement to investigate applications for Definitive Map Modification Orders, and come to conclusions entirely on the basis of the available evidence, regardless as to whether the outcome would benefit or prejudice owners, occupiers or members of the general public. Whilst the threshold of the initial test relied upon for deciding whether or not to make an Order is very low, the decision now to be made requires the evidence to demonstrate on the balance of probabilities what public rights exist. If the Order is confirmed the route will be added to the Definitive Map, if the Order is not confirmed the route will remain as it is, recorded on the List of Streets and accepted as carrying pedestrian rights as a minimum.

#### **6.0 Equalities Implications**

- 6.1 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.

## 7.0 Climate Change Implications

- 7.1 The route is already in existence on the ground, although it is currently little-used and overgrown. It may require some clearance of overgrown surface and overhanging vegetation, but this would be done sensitively so as not to disturb wildlife. The outcome of this Order therefore, whether confirmed or not, would have no overall impact on climate change.

## 8.0 Recommendation

- 8.1 Officers are of the view that the evidence in support of the route being any particular status beyond that which exists by virtue of its inclusion in the List of Streets is weak. Although the Inspector believed it met the 'reasonably alleged' test sufficient to warrant the making of the Order, officers are of the view that it is unlikely on the 'balance of probabilities', which is the criteria which now needs to be met, that the evidence shows the route has Restricted Byway status.
- 8.2 Therefore, it is recommended that the County Council **does not support confirmation of this Order** in the submission to the SoS.

MICHAEL LEAH  
Assistant Director, Transport, Waste and Countryside Services

Author of Report – Beth Brown

Background Documents to this Report: File Ref: HAM/2016/01/DMMO

**North Yorkshire County Council**

**Executive Members**

**26 March 2021**

**Opposed Definitive Map Modification Order:**

**Restricted Byway No. 10.177/132 Fangdale Beck to B1257 near Low Mill  
Modification Order 2020**

**AUTHORISATION**

I approve / do not approve the recommendation set out above

.....

ANY ADDITIONAL RECOMMENDATION or COMMENT:

.....

.....

Karl Battersby  
Corporate Director - BES

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

## North Yorkshire County Council

## Report to the Assistant Director – Transport, Waste and Countryside Services

22 NOVEMBER 2019

## DEFINITIVE MAP MODIFICATION ORDER APPLICATION TO DETERMINE THE STATUS OF UUR U3121 FROM LOW MILL, BILSDALE TO FANGDALE BECK

**1.0 Purpose of the report**

- 1.1 To advise the Assistant Director of an opposed Definitive Map Modification Order (DMMO) application to record a Restricted Byway from Low Mill, Bilsdale to Fangdale Beck. The application route is currently recorded on the List of Streets as Unclassified Road U3121 (formerly U1850), and this application seeks to determine the status of public rights along this route. A location plan is attached to this report as **Map 1**. The route is shown as a line of dots A-B-C-D on **Map 2**.
- 1.2 To request the Assistant Director to authorise the making of a Definitive Map Modification Order to add a Byway Open to All Traffic along the application route, on the basis of documentary evidence.

**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**

Applicant:	Ryedale Bridleways Group
Date of application:	24 <sup>th</sup> March 2016
Type of Application	Definitive Map Modification Order
Parish:	Bilsdale Midcable (Hambleton District)
Local Member:	Councillor Bryn Griffiths
Application supported by:	<ul style="list-style-type: none"> <li>• Jeffery's Map 1771</li> <li>• Calvert's Map 1782</li> <li>• Tuke's and Ayer's Manuscript Map of Bilsdale 1826</li> <li>• OS 1st Edition Map 1857</li> <li>• OS Map 1890</li> <li>• David &amp; Charles' Map 1859-61</li> <li>• OS Map 1912</li> <li>• OS Tourist Map 1966</li> </ul>

	<ul style="list-style-type: none"> <li>• Highways Handover Map 1930</li> <li>• Correspondence between the applicant and North Yorkshire County Council Highways Dept</li> <li>• Documents from 1958 Chop Gate Inquiry into Definitive Map objections</li> <li>• Applicant’s research on Low Mill and other mills in Bilsdale</li> <li>• 1910 Finance Act documents</li> <li>• Other supporting documents were sent but not taken into account (accident statistics, user evidence not covering 20 years, letters and list of signatures in support of application)</li> </ul>
Applicant’s grounds for making the application	Challenged by owners of Low Mill when trying to ride the route

**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.

- 4.3 Section 67 of the Natural Environment and Rural Communities Act 2006 (NERCA 2006) extinguished rights for motor vehicles over routes which immediately before commencement of the Act (2 May 2006) were not shown in a Definitive Map and Statement, or were shown in a Definitive Map and Statement as a footpath, bridleway or restricted byway. The extinguishment of motor vehicular rights is subject to exceptions, one of which is where prior to commencement of the Act a route was not included in the Definitive Map but was recorded in the List of Streets.

## 5.0 Background

- 5.1 The application under consideration is for an Order to modify the Definitive Map and Statement of public rights of way by recording a Restricted Byway between the B1257 road at Low Mill and Fangdale Beck, shown as A-B-C-D on Map 2. The entire route A-B-C-D is currently included on the List of Streets (highways maintained at public expense) as Unclassified Road U3121. The section A-B is also recorded on the Definitive Map as part of Public Footpath 10.177/084 and the section C-D is also recorded on the Definitive Map as part of Public Bridleway 10.177/085.
- 5.2 Although the whole of the application route is recorded on the List of Streets as Unclassified Road U3121, the County Council's Highways Department stance is that the status of UURs is unclear, and that whilst there is no doubt that they are public, and that there are at least pedestrian rights, the extent of higher rights (horseback, motor vehicle etc) is not stated in the List of Streets, and that each must be determined on a case by case basis before any enforcement action against challenges to use can be taken. The County Council's suggested mechanism for clarifying the status of a route is through the DMMO process.
- 5.3 In April 2014 when Definitive Map duties were handed back to the County Council from the North York Moors National Park Authority, we were informed that officers from the National Park Authority had undertaken some informal investigations into this route, following a challenge to horse riders attempting to use it, by the owners of Low Mill.
- 5.4 National Park Authority officers informed us that no formal DMMO application had been made, and that their approaches to the landowners at Low Mill had not been met favourably, as the landowners were unhappy for the route to be used by horse riders.
- 5.5 A while later, when the Applicant approached North Yorkshire County Council to ask about the route, he was advised to collect evidence and submit a DMMO application, which he did, the application being received by the County Council on 24 March 2016.

## 6.0 The DMMO Application and supporting evidence

- 6.1 The application was supported by various old maps, extracts from Highways records (from both the former North Riding County Council and NYCC) and documents from the time of the production of the Definitive Map. Also submitted were two user evidence forms, both from riders who had used or attempted to use the route on only one occasion, letters and a list of signatures from people expressing support for the application but not including any evidence, and details about equestrian road safety. The letters of support and road safety details do not constitute valid evidence for a DMMO so have not been taken into consideration, leaving the application relying solely on documentary evidence.



## **7.0 Applicant Schedule 14 request for direction by Secretary of State**

7.1 In September 2018 the applicant applied to the Secretary of State for a direction to determine the DMMO. At the end of March 2019 the County Council was directed by the Secretary of State to determine the application within 6 months.

## **8.0 Pre-Order Consultation**

8.1 The standard pre-order consultation was carried out in June 2019. Requests for extensions to the response deadline were received from Bilsdale Midcable Parish Council and the residents of properties at Fangdale Beck, to allow time for archive research and to take account of summer holidays / Parish Council meeting schedules. Responses from these parties were received in early September 2019.

8.2 The residents' group response highlighted that one landowner and two occupiers had not been identified and served Notice at the time of the original application. The applicant therefore served Notice in September 2019, and time was given to allow them to submit any comments or evidence.

8.3 Responses from the BHS, John Sugden and the TRF supported the recording of the route as a vehicular highway (BOAT or Restricted Byway, depending on the effect of NERCA 2006).

8.4 A joint response from the Fangdale Beck residents supported the route being recorded as a public footpath. The owners of Low Mill also support the route being recorded as a footpath. Both the owners of Low Mill and Fangdale Beck residents object to it being recorded with higher status (bridleway, Restricted Byway or BOAT).

8.5 The Parish Council did not express an opinion on the status of the route, but after analysing the supporting evidence resolved that they had no further evidence to submit.

8.6 NYCC Highways Area 2 team responded that they had no evidence to submit. Later in the process the NYCC Highways & Transportation Senior Technical Officer was contacted by the Fangdale Beck residents with a number of queries about the route and its recording as an unclassified road. The Senior Technical Officer copied us in to his reply.

8.7 The Mexborough Estate have confirmed that they own a section of the application route, have no objections to it being used as a bridleway or other public right of way, but have some concerns over maintenance liability should its use increase.

## **9.0 Authority comments on the evidence: User evidence**

9.1 There is no valid user evidence in support of the application. The applicant was stopped at Low Mill while trying to use the route on horseback in August 2014. One other horse rider used the route on one occasion in the 1990s.

9.2 Eleven local residents and farmers completed landowner evidence statements (WCA Form E), and two further farmers submitted written statements. Apart from those who had challenged the applicant, all stated that the route is only used by local residents and farmers accessing their property (none using the entire route), and all say they have never known the public to use the whole route, only the adjoining PROWs.

**10.0 Authority comments on the evidence: Old maps and documentary evidence**

10.1 Various maps have been submitted with the application or in response to the informal consultation, as follows:

- W. Calvert's map 1781-2 - application route shown as an enclosed track (southern section) and an unenclosed track through fields and loaning (northern section). The B1257 is shown in a similar way, part enclosed and part unenclosed.
- Thomas Jeffrey's map 1771 – application route not shown.
- Tukes and Ayers map 1826 – shows only the southern enclosed section.
- David and Charles Sheet 13 Helmsley 1859 – shows the application route.
- OS maps: first edition 1857, 1890 edition, 1912 edition, 1:25,000 first edition and 1966 tourist map – all show the route but with no status (eg FP, BR) indicated.
- 1910 Finance Act records show the central section of the application route as separate from the adjacent hereditaments, which may be evidence that it was considered public, but is not conclusive. Hereditament 26 lists a £5 deduction for "Footpath", but it is not clear if this is the application route or Footpath 10.177/562 (formerly FP 62) which also crosses the land. There is no reduction for right of way shown on the other hereditaments crossed by the application route.
- Bartholomew's map 1940-47 – application route not shown.

10.2 There are no Tithe or Inclosure documents which cover the area in which the application route lies.

10.3 Whilst the old maps confirm the physical existence of the application route since 1781, none give any conclusive evidence of status.

**11.0 Authority comments on the evidence: Highways records**

11.1 The application route is shown on the 1930 Highway Handover map as U1850 (see Map 3). The accompanying Schedule of Unclassified Roads gives its description as "Low Mill on B1257 – Fangdale Beck".

11.2 The northern section of U1850 is shown on the 1930 map on an alignment crossing the River Seph near the weir instead of via the bridge at Low Mill. This alignment has been crossed out in pencil, with the annotation "no road here" and a pencil line drawn along the alignment through Low Mill to the B1257. There is no indication of when this note was added or by whom.

11.3 The whole length of U1850 is also shown crossed out in red pen, annotated "deleted Feb 1937". Again there is no indication of who added this annotation, however there are other examples of similar text elsewhere on the 1930 Highway Handover maps. There do not appear to be any archived Highways records from this time to explain these annotations.

- 11.4 Correspondence between the Ramblers and NYCC Highways shows that the existence of public rights along U1850 was questioned in 1994. Research by NYCC Highways at the time could find no formal Stopping Up Order, so the decision was made to amend the List of Streets to include this route. The route became unclassified road U3121, and was initially shown running from Fangdale Beck to Low Mill, but was later extended through Low Mill to meet the B1257 (the date of this extension is unknown, but was confirmed in email correspondence between local horse riders and NYCC Highways, 10 June 2013). This has led to a period of time, between 1937 and 1994, when the route was not shown as a public highway on Council records, and a further period of time (1994 to sometime prior to 2013) when the route was shown on highway records but shown terminating at the junction with the public footpath at Low Mill (Point B on Map 2). It is only prior to 1937 and since the extension referred to in 2013 email mentioned above that the entire route (A-B-C-D on Map 2) has been shown on Council records as a publicly maintainable highway.
- 11.5 There is some anecdotal evidence that there was a packhorse bridge across the river at Low Mill which was washed away or collapsed sometime around 1935 (file note of NYMNP Officer following site visit to Low Mill 10 October 2013), but no other evidence has been found to support this. Correspondence between the DMMO applicant and NYCC Highways confirmed that the County Council's bridges team have no record of ever carrying out any maintenance on a bridge at Low Mill.
- 11.6 Archive research has failed to uncover any formal Stopping Up Order for U1850. There is also no mention of the route, or of any stopping up of rights along it, or any reference to the bridge at Low Mill in the minutes of the North Riding County Council Highways and Bridges Committee (1934-1937) or in the Stokesley Rural District Council Minutes (1928-1937).

## **12.0 Authority comments on the evidence: Definitive Map records**

- 12.1 The application route is not included on the current Definitive Map of Public Rights of Way (North York Moors), the North Riding Definitive Map, or on any of the early stages of Definitive Map preparation (Parish Survey, Draft and Provisional Maps), except for the sections which form part of Bridleway 10.177/085 and Footpath 10.177/084 (Points C-D and A-B on Map 2). It is not shown coloured yellow on the Parish Survey maps, as other public roads are, probably because at this time (1951) it was not included in Council highway records.
- 12.2 A short section of Bridleway 10.177/085 (BW 85) runs concurrently with the end of U3121, through The Forge at Fangdale Beck to the junction with Footpath 10.177/562. On the Parish Survey map (see Map 4) the black line depicting this bridleway stopped where it meets the enclosed section of what is now U3121, suggesting the Parish thought this was where it met the road. The green line (added by the County Council to define proposed status after the addition of the yellow "road" lines) extends the bridleway to its current end point, presumably to meet with what was considered at the time the maintainable highway.
- 12.3 A short section of Footpath 10.177/084 (FP 84), where it passes through Low Mill to join the B1257, runs concurrently with U3121. The black line drawn on the Parish Survey map for FP 84 extends to the B1257.

- 12.4 A footpath numbered FP 73A is included on the Parish Survey map, and is described as running from “road near Fangdale Beck” to “Path 62”. Path 62 is current footpath 10.177/562 and the “road near Fangdale Beck” is part of U3121. Footpath 73A was deleted at an early stage of the Definitive Map process (before Draft Map stage), but it does give some indication that at least the southern section of U3121 was considered a public road as otherwise Path 73A would not link to a public highway.
- 12.5 An objection was raised at Draft Definitive Map stage, by the Bilsdale Hunt, suggesting that the footpath from Crookleth to Fangdale Beck via Beacon Guest, Stable Holme and Low Mill be amended to bridleway. This covers FP87 and FP84, but it is not clear if it also included the route now known as U3121 to Fangdale Beck. The objection was considered at Inquiry at Chop Gate Village Hall on 10 December 1958, where it was noted that the route may have been part of an ancient highway from Chop Gate to Helmsley, however, the decision was made to retain it as a footpath based on use at the time.
- 12.6 Following a request by local landowners, a sign saying “No Horses” was put up by NYMNPA at Low Mill in approx. 2003. At this point in time this part of the application route (Points A-B on Map 2) was not included in Highways records, but was only recorded on the Definitive Map as a footpath.

### **13.0 Status of Highways**

- 13.1 There is little doubt the application route is a public highway, due to its inclusion in the 1930 Highway Handover records and later inclusion in the List of Streets. It has been shown that it was removed from Highways records in error, as it was never legally stopped up, and can therefore be considered to have always been a public highway, even if there was a period of time when it was missing from the records.
- 13.2 While the List of Streets (and 1930 Highways Handover records) do not have to specify a status for routes, it can be argued that on the balance of probabilities routes are likely to be vehicular unless otherwise stated. The vast majority of routes included are vehicular, and the current List of Streets does tend to state if a route is something other than vehicular (eg a footpath). A study of the over half of the routes included in the 1930 Highway Handover Schedule of Unclassified Roads from Stokesley Rural District Council (37 routes around the Kildale, Ingleby Greenhow, Swainby and Chop Gate area) shows that the vast majority of these are vehicular routes today (33 routes are either C-roads, tarmac U-roads, unsurfaced U-roads, BOAT or a mix of two or more categories). Only one of the 37 routes is today recorded as a bridleway, one is recorded as part bridleway and part U-road, and one is mostly U-road with a short section of dual status footpath and U-road. The only other exception is one route at Easby which is currently unrecorded but is subject to a DMMO (to be recorded as Restricted Byway).
- 13.3 A three-year study of the unclassified roads in North Yorkshire by John Sugden, submitted to the County Council in October 2019, has concluded that the “unclassified roads” handed over to the North Riding County Council in 1930 are vehicular highways.

**14.0 The Effect of NERCA 2006**

- 14.1 The Natural Environment and Rural Communities Act 2006 extinguished rights for motor vehicles on certain classes of route, including on routes which at commencement of the Act were recorded on the Definitive Map as footpaths or bridleways. Extinguishment of motor vehicular rights is subject to exceptions, one of which is where prior to commencement of the Act a route was not included on the Definitive Map but was recorded on the List of Streets.
- 14.2 It has been shown that the removal of the application route from highway records was an error, so it can be argued that U3121 meets the criteria for exception under NERCA S.67, in that the majority of the route was recorded on the List of Streets at the relevant date, and the short northern section should also have been recorded at the time.
- 14.3 The effect of NERCA on the two ends of U3121, where the route is recorded both on the List of Streets and as a footpath / bridleway on the Definitive Map, has been considered. The intention of NERCA was not to create isolated stretches of motor vehicular highway by extinguishing motor vehicle rights from short sections of such routes where they cross or meet footpaths or bridleways, but to extinguish motor vehicle rights on whole routes which were never considered to be motor vehicular highways.
- 14.4 Both Footpath 10.177/084 and Bridleway 10.177/085 are long routes, with only very short sections coinciding with U3121. We have seen from the Parish Survey maps that the concurrent bridleway/U3121 section is likely to have been created because at the time the Parish Survey was carried out U3121 was not shown on public highway records. It is probable that the concurrent footpath/U3121 section at Low Mill arose for the same reason. Whilst we cannot be certain, both the footpath and bridleway would likely have been recorded as terminating at their junctions with U3121 if it was shown on public highway records at the time. It can therefore be argued that extinguishment under NERCA does not apply to these sections.

**15.0 Representation made by the local member**

- 15.1 None

**16.0 Financial implications**

- 16.1 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 may appoint external advocacy.
- 16.2 If an Order is made and is ultimately confirmed, the route would be added to the Definitive Map as a Byway Open to All Traffic. Maintenance responsibility would not change, because the route is currently already recorded on the List of Streets and therefore already a publicly maintainable highway.

## 17.0 Equalities implications

- 17.1 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.

## 18.0 Conclusions

- 18.1 The DMMO application was for a Restricted Byway to be added to the Definitive Map, however, investigations have failed to find any documentary evidence which conclusively proves the status of the route. Any decision on the status of the application route must therefore be based on what status the evidence suggests is most likely on the balance of probabilities. There is no evidence to suggest that the route is either a footpath or bridleway, and based on the study of the other unclassified roads included in the Stokesley Rural District Council 1930 handover documents, the likelihood is that the application route is a vehicular highway. It is considered that the route meets the criteria for exception under NERCA 2006, and that any motor vehicle rights have not been extinguished.

## 19.0 Recommendation

- 19.1 It is therefore recommended that: the Assistant Director, Transport, Waste and Countryside Services, authorises the making of a Definitive Map Modification Order for the route shown as A-B-C-D on Map 2 of this report to be recorded on the Definitive Map and Statement as a Byway Open to All Traffic.

IAN FIELDING


Assistant Director - Transport, Waste and Countryside Services

Author of report: Beth Brown

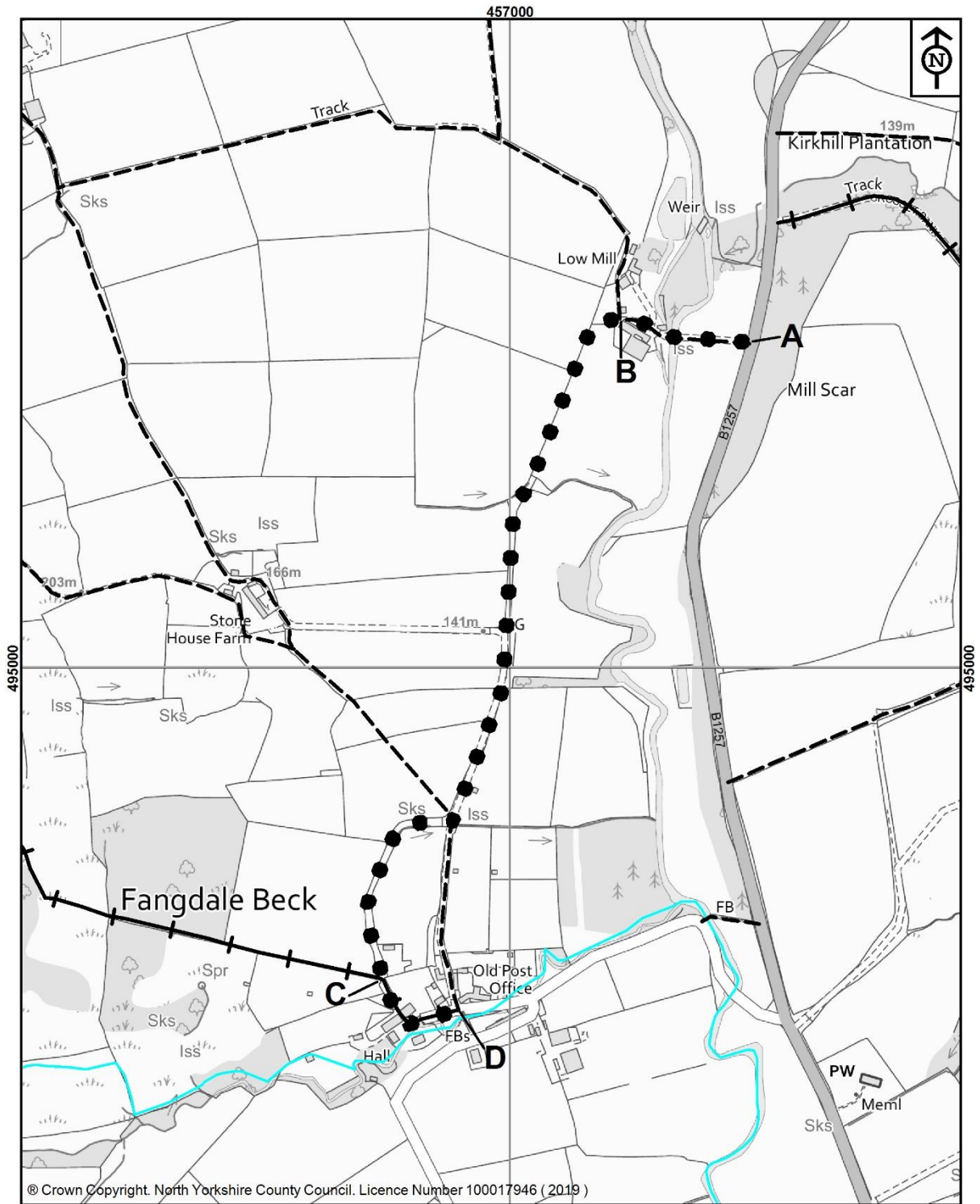
Background papers: File Ref HAM/2016/01/DMMO

Map 1: Location Plan




 <p><b>North Yorkshire County Council</b></p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p><b>LOCATION PLAN</b></p> <p>Map drawn on 12 June 2019 Drawn by BB Scale 1:50000</p>	<p><b>North Yorkshire County Council</b></p> <p>Application to record Restricted Byway from Low Mill to Fangdale Beck, Bilsdale Midcable</p> <p>File Ref No. HAM/2016/01/DMMO</p>
---	--	---

Map 2: Report Plan

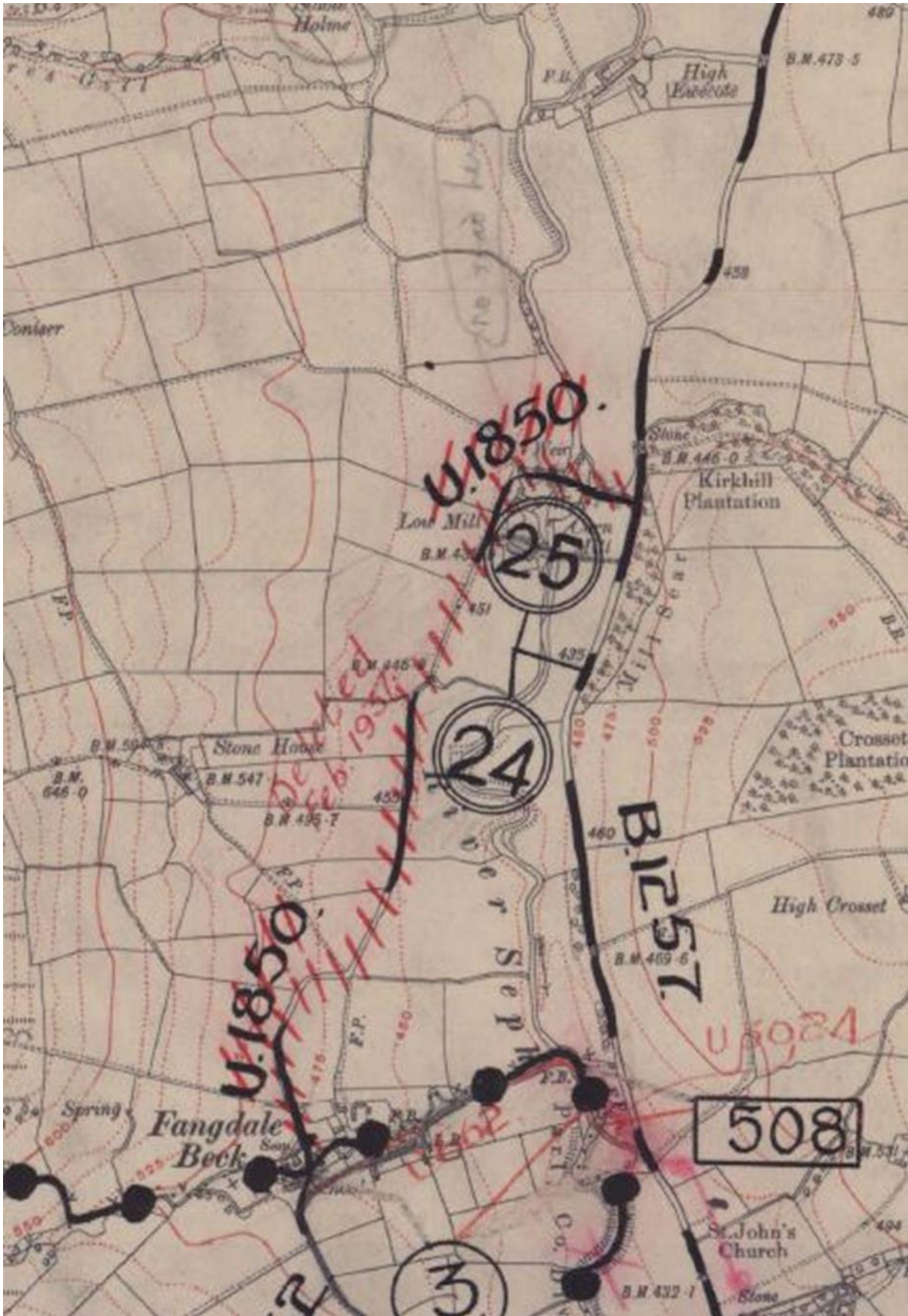


© Crown Copyright. North Yorkshire County Council. Licence Number 100017946 (2019)

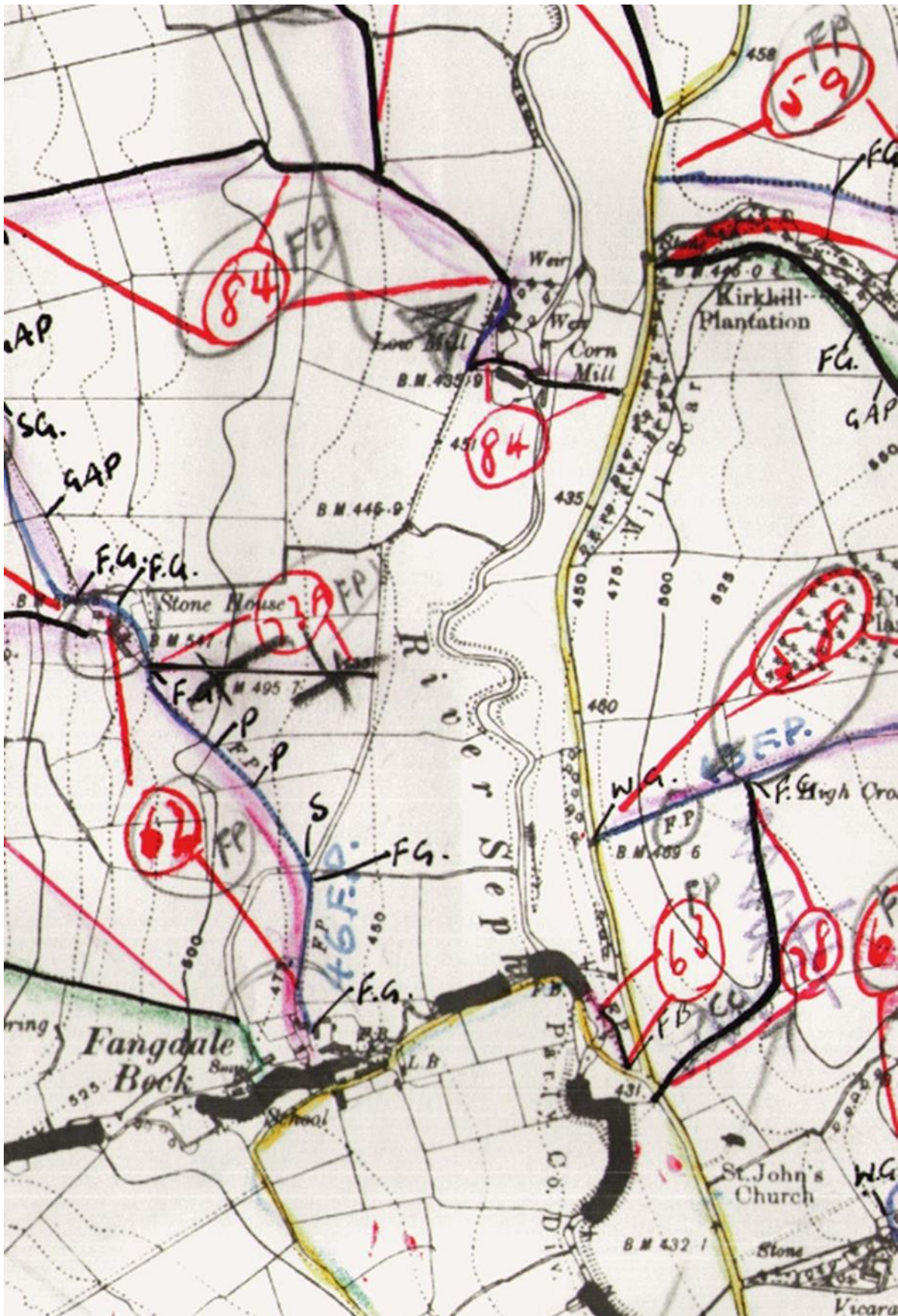
 <p><b>North Yorkshire County Council</b> Public Rights of Way Wildlife and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p> <ul style="list-style-type: none"> <li>Application route <span style="display: inline-block; width: 1em; height: 1em; background-color: black; border-radius: 50%; margin-right: 0.5em;"></span></li> <li>Footpaths <span style="display: inline-block; width: 1em; border-bottom: 1px dashed black; margin-right: 0.5em;"></span></li> <li>Bridleways <span style="display: inline-block; width: 1em; border-bottom: 1px solid black; margin-right: 0.5em;"></span></li> </ul>	<p><b>North Yorkshire County Council</b> Wildlife and Countryside Act 1981 Section 53</p> <p>Application to record Restricted Byway from Low Mill to Fangdale Beck, Bilsdale Midcable</p>
	<p>Map drawn on 12 June 2019 Drawn by BB      Scale 1:5000</p>	



Map 3: Extract from 1930 Highway Handover Map



Map 4: Extract from Bilsdale Midcable Parish Survey Map (Surveyed 1951)



**Report to the Assistant Director, Waste and Countryside Services****22 NOVEMBER 2019****DEFINITIVE MAP MODIFICATION ORDER APPLICATION TO DETERMINE THE STATUS OF UUR U3121 FROM LOW MILL, BILSDALE TO FANGDALE BECK****AUTHORISATION**

I do not approve the recommendation set out in the report.

**ANY ADDITIONAL RECOMMENDATION or COMMENT:**

Discussion on this application involved Officers from the Definitive Map, Highways and Legal teams. Definitive Map Officers had received the DMMO application and considered the evidence with regard to the potential recording of the route on the Definitive Map. Over the past few years, Officers from Highways teams have been reviewing the status of UURs in response to requests and submissions from various parties. The decision making meeting brought together the views from both the Definitive Map team research and the Highways team review.

The County Council's stance is that the extent of public rights over UURs in North Yorkshire must as a minimum extend to pedestrian user though higher public rights may well exist, and that determining the extent of any higher public right is a matter for assessment on a route by route basis. Further to this, in a reply to a submission in 2017 by the group Riders and Cyclists for UURs, the Assistant Director for Highways and Transportation had advised that the status of UURs would continue to be considered on a case by case basis, and that examples of the evidence which the County Council would require to prove status included legal documents such as Inclosure Awards, Tithe Awards, turnpike, railway and canal deposited plans, legal orders and creations, landowner dedications and evidence that a route had been adopted under the Agriculture (Improvement of Roads) Act 1955.

The DMMO application was not supported by any legal evidence included in this list, and subsequent research by Definitive Map Officers also failed to find any evidence of this type. The user evidence submitted was minimal and was deemed insufficient to demonstrate any establishment of rights from usage. The comparative exercise set out briefly at paragraph 13.2 of the report, whilst indicative of the likely status of the route, was not considered reflective of the type of evidence or assessment the Council has to date indicated it would accept as a demonstration of public vehicular rights existing over a route.

The meeting therefore considered that as there was no conclusive evidence of the status of the route, a decision on how the route should be recorded on the Definitive Map could not be made and that the application should be rejected.

Signed:

Ian Fielding  
Assistant Director of Waste and Countryside Services

Date: 19 December 2019.....

**North Yorkshire County Council****Report to the Assistant Director – Transport, Waste and Countryside Services****DEFINITIVE MAP MODIFICATION ORDER APPLICATION TO DETERMINE THE STATUS OF UUR U3121 FROM LOW MILL, BILSDALE TO FANGDALE BECK****Supplementary Note**

To accompany the Report to the Assistant Director dated 22 November 2019 regarding the above application.

This report was prepared by the Definitive Map Officer after investigation of the evidence submitted by the applicant in support of the application, together with evidence submitted by those people opposed to the application, as is the normal DMMO investigation and internal reporting process. After the report was initially presented to the Assistant Director liaison was undertaken with Legal Services to clarify matters raised in discussion of the report. Legal Services explained that they had earlier this year been advising officers within the Highways Department regarding a submission made by an external party regarding the status of the County Council's routes recorded as Unsurfaced Unclassified Roads (UURs).

There had therefore been detailed examination of that submission also entailing an analysis of further documentation held by the Highways Department, subsequently a considered response was made on behalf of the County Council to the external party. This response dealt with many of the same principles that are inherent within the consideration of the evidence relevant to the current Definitive Map Modification Order but had made reference to more extensive documentation. Although the response was made on behalf of the County Council as a whole, the author of the current report was unaware of that formal response made by the County Council.

The conclusions reached in relation to the wider examination of the status of UURs have now been taken into consideration in determining the County Council's response to the application for the DMMO.

In essence, after the initial consideration of the evidence submitted with the DMMO, presented with the report, it was proposed that the application be rejected due to the lack of sufficient evidence positively supporting any particular status higher than the current public status, i.e. that pedestrian rights exist as a minimum. With the benefit of reference to the analysis of the further documentation considered for the purposes of the Highways Department's response to the earlier submission the conclusion is reinforced that there is insufficient evidence which, on the balance of probabilities, supports any particular status above that which is accepted to already exist. i.e. a minimum of pedestrian rights.

**18 December 2019**