

**North Yorkshire County Council**

**Business and Environmental Services**

**Executive Members**

**21 May 2021**

**Opposed DMMO-Carlesmoor Road, Kirkby Malzeard**

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

**1.0 Purpose of the report**

- 1.1 To advise the Corporate Director of Business and Environmental Services (BES) of the proposed submission to the Secretary of State (SoS) of an opposed Definitive Map Modification Order (DMMO).
- 1.2 To request the Corporate Director, in consultation with the Executive Members, to authorise that North Yorkshire County Council (NYCC), in its submission of the opposed Order to the SoS will support confirmation of the Order.

**2.0 Background**

2.1 The application for the DMMO was submitted to the County Council in January 2017

2.2 The application was supported by

- 1787 Kirkby Malzeard Enclosure Award Act
- 1789 Award and Township Map
- 1730 Kirkby Malzeard Boundary Map
- Analysis of Enclosure award by Sue Hogg
- Planning Inspectorate Decision 2015 FPS/P2745/7/46
- Plan of Mrs Lawrence Estate 1832
- Plan of earl De Grey Estate 1869
- Tithe Award and Map for Grewelthorpe – outlying township of Carlesmoor 1840
- 1840 Tithe Map for Kirkby Malzeard
- 1838 Tithe Map for Laverton
- 1910 Finance Act Maps, Register and Field Books for area
- 1900-1904 Ripon Rural District Council Highways Committee Minutes relating to area
- 1901 Leeds Corporation Water Works Act and Engineering Drawings
- 1949 NPAC Act Walking Schedule and Draft Map
- 19c Ordnance Survey Object Names Book entry
- Paper by Catriona Cook of significance of OS Maps
- Greenwoods Map 1817 & 1834
- C & J Cary Map 1817 & 1834
- Charles Fowler Map 1834
- JH Franks Map 1840
- Story's Motoring and Cycling Map 1826

- OS Maps –
  - 25" to 1 mile 1929
  - 25" to 1 mile 1909
  - 1" to 1 mile 1858
  - 1" to 1 mile 1920
  - 1" to 1 mile 1953
  - 6" to 1 mile 1854

2.4 Taken together, this body of evidence without any contradictory evidence, suggests that on the balance of probabilities the Order should be confirmed.

2.4 Attached to this report as Appendix A is a copy of the report submitted to the Assistant Director – Transport, Waste and Countryside Services dated 18 August 2020

2.5 The Assistant Director – Transport, Waste and Countryside Services approved the making of a DMMO which was subsequently advertised, attracting objections from two landowners which remain outstanding. The County Council cannot confirm a DMMO where there are outstanding objections; the Order must be forwarded to the Secretary of State for resolution.

### **3.0 Representation made by the local member**

3.1 No formal representations were received from the local councillor in response to the consultations regarding the Diversion Order.

### **4.0 Financial implications**

4.1 As the evidence submitted consists only of documentary evidence, not user evidence, it is probable that the Order would be resolved by written representations.

4.2 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. These costs would be officer time which would be met by the respective staffing budgets.

### **5.0 Equalities Implications**

5.1 It is the view that the recommendations do not have an adverse impact on any of the protected characteristics identified in the Equalities Act 2010.

### **6.0 Legal Implications**

6.1 The opposed Diversion Order would be determined by an Inspector appointed by the SoS, and, as stated above, determination will most likely be by way of written representations.

6.2 The Inspector, on the basis of the evidence and the legal criteria will decide whether or not to confirm the opposed Modification Order. If he/she decides to confirm the Order, the routes will be amended on the Definitive Map and statement in accordance with the details within the Modification Order.

## **7.0 Climate Change Implications**

7.1 The proposal is to alter the status of routes already recorded as public routes within the County Council's records. The confirmation of this order would have no positive or negative impact on climate change.

## **8.0 Current Decision to be made**

8.1 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.

8.2 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.

8.3 Both objectors have expressed concern about the suitability of the route for the claimed status and the effect on land management. These are not issues that either the Authority or an inspector can take into account.

8.4 In the absence of any evidence countering the evidence in support of the Order there is no reason for the Authority not to support the confirmation of the Modification Order.

## **9.0 Recommendation**

9.1 That the Director approve that the Authority should support confirmation of the Order.

MICHAEL LEAH  
Assistant Director: Travel, Environmental & Countryside Services

Author of report: Ron Allan

Background papers: HAR-2017-02-DMMO Laverton (Carlesmoor Road)

**North Yorkshire County Council**

**Corporate Director - BES**

**21 May 2021**

**Opposed Bridleways no's 15.70/9 Kirkby Malzeard & 15.75/2 Laverton  
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**

**18 August 2020**

**Application for a Definitive Map Modification Order to upgrade an existing public footpath to a public bridleway and to record a new section of bridleway at Carlesmoor Road, Kirkby Malzeard, Laverton and Dallowgill.**

**1.0 Purpose of report**

- 1.1 To advise the Assistant Director of an opposed application for a Definitive Map Modification Order to upgrade an existing public footpath to a public bridleway and to record a new short section of bridleway at Carlesmoor Road, Kirkby Malzeard, Laverton and Dallowgill. A location plan is attached to this report as Plan 1. The route is shown in detail as A - M on Plan 2.
- 1.2 To request the Assistant Director to authorise the making of a Definitive Map Modification Order to upgrade an existing public footpath to a public bridleway and to record a short new section of bridleway along part of the application route, on the basis of evidence suggesting the existence of the higher rights.

**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.
- 2.2 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.

**3.0 The application**

Applicant:	The British Horse Society
Date of application:	02/01/2017
Type of Application	Definitive Map Modification Order
Parish:	Kirkby Malzeard, Laverton and Dallowgill
Local Member:	Cllr Margaret Atkinson
Application supported by:	9 Evidence of Use Forms
List of documentary evidence:	<ul style="list-style-type: none"> <li>• 1787 Kirkby Malzeard Enclosure Award Act</li> <li>• 1789 Award and Township Map</li> <li>• 1730 Kirkby Malzeard Boundary Map</li> <li>• Analysis of Enclosure award by Sue Hogg</li> <li>• Planning Inspectorate Decision 2015 FPS/P2745/7/46</li> <li>• Plan of Mrs Lawrence Estate 1832</li> <li>• Plan of earl De Grey Estate 1869</li> </ul>

	<ul style="list-style-type: none"> <li>• Tithe Award and Map for Grewelthorpe – outlying township of Carlesmoor 1840</li> <li>• 1840 Tithe Map for Kirkby Malzeard</li> <li>• 1838 Tithe Map for Laverton</li> <li>• 1910 Finance Act Maps, Register and Field Books for area</li> <li>• 1900-1904 Ripon Rural District Council Highways Committee Minutes relating to area</li> <li>• 1901 Leeds Corporation Water Works Act and Engineering Drawings</li> <li>• 1949 NPAC Act Walking Schedule and Draft Map</li> <li>• 19c Ordnance Survey Object Names Book entry</li> <li>• Paper by Catriona Cook of significance of OS Maps</li> <li>• Greenwoods Map 1817 &amp; 1834</li> <li>• C &amp; J Cary Map 1817 &amp; 1834</li> <li>• Charles Fowler Map 1834</li> <li>• JH Franks Map 1840</li> <li>• Story’s Motoring and Cycling Map 1826</li> <li>• OS Maps –             <ul style="list-style-type: none"> <li>25” to 1 mile 1929</li> <li>25” to 1 mile 1909</li> <li>1” to 1 mile 1858</li> <li>1” to 1 mile 1920</li> <li>1” to 1 mile 1953</li> <li>6” to 1 mile 1854</li> </ul> </li> </ul>
Applicant’s grounds for making the application	To record rights consistent with historical evidence.

**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 on the “balance of probabilities” a public right of way subsists along the claimed route.

4.2 In the context of Section 53 of the Act, where there is evidence of use by the public of a claimed route, the requirements of Section 31 of the Highways Act 1980 are relevant and these are:

- a) a required date on which the status/use of the claimed route was brought into question; and
- b) whether the claimed route was used by the public as of right (without secrecy, force or permission) and without interruption for a period of not less than 20 years ending on the date on which the route was brought into question; and
- c) whether there is sufficient evidence that during the 20-year period there was no intention to dedicate the claimed route as public by the landowner or anyone with an interest in the land e.g. trustees

## 5.0 User evidence and documentary evidence

5.1 Nine user forms were submitted indicating use over a period of 19 years which is insufficient to satisfy the criteria within Section 31 of the Highways Act, therefore they are not considered to have any evidential value.

5.2 A substantial body of historical evidence has been submitted by the applicant which is considered to be cogent and compelling:

- The 1787 Kirkby Malzeard Enclosure Award Provision for the repair of Roads section lists a series of roads, including the Carlsmoor Road and states that they will be “repairable by the Inhabitants of the Township of Kirkby Malzeard by such means and ways... as other public highways are by the laws of this Realm now repaired and kept in repair.” This is clear evidence of the route having public highway status at the time of Inclosure.
- 1730 Kirkby Malzeard Boundary Map & 1789 Award and Township Map shows the eastern end of the route depicted as a road and is annotated “To Carlsmoor” which would indicate that it was a route used to travel between townships rather than purely for access to allotments along the route.
- The route is described in the Inclosure Award as a “Carriage road or Highway 30 feet in breadth”. At an Inquiry in 2015 (Planning Inspectorate Decision 2015 FPS/P2745/7/46) in regard of another route covered by the same Inclosure Award the Inspector stated that if there had any restriction on use of a way that it would have been specified was satisfied. No restriction is specified for the Carlsmoor Road and as such it can be assumed to be available for public use.
- The Plan of Earl De Grey Estate 1869 shows the eastern end of the route annotated with the words, “From Carlsmoor” which would indicate a route used by the public.
- The Tithe Award and Map for Grewelthorpe 1840, the 1840 Tithe Map for Kirkby Malzeard and the 1838 Tithe Map for Laverton all clearly depict the route and use the annotation, “From” and “To” near-by settlements which is accepted to mean that the route was used by the public to travel between settlements.
- The 1910 Finance Act Maps, Register and Field Books for area record the route but do not record any deduction from tax liability as a result of status as a public highway. However, this cannot be construed to be conclusive proof that the route lacked highway status because the landowner, The Leeds Corporation, did not claim a deduction for any roads or highways within its considerable land holdings which covers all of the route and the land surrounding.
- 1900-1904 Ripon Rural District Council Highways Committee Minutes relating to area clearly show that at that time at least part of the route was maintained at public expense and this could only have been done legally if the route was open for use by the public.
- The 1901 Leeds Corporation Water Works Act and Engineering Drawings show the route and name it as a “Public Road”. Such documents were enabled by an Act of Parliament and would have been used in subsequent Court proceedings thus can be considered to add some evidential weight to the application.

- The NPAC Act Parish Schedule and Draft Map produced as part of the preparation of the Definitive Map, record the application route as a footpath. However, the basis of the DMMO application is that an error was made in recording the status of the route on the Definitive Map, and given that the route covers three parishes it is necessary to consider the historical evidence from a number of sources in order to gain an understanding of the existing status of the route. Paths were surveyed at Parish level and it is not uncommon to find examples where the surveyors have not considered the broader evidential landscape when determining the status of a route.
- The C19<sup>th</sup> Ordnance Survey Object Names Book entry specifically names Kirk Bridge at the eastern end of the route as a bridge repairable at public expense which suggests that the road was public.
- The route is shown on the commercially available Greenwoods Map of 1817 which was published to advise the public which routes were available for them to use, i.e. which were public highways.
- C & J Cary Map 1825, Greenwoods Atlas 1829-1834, Charles Fowler Map 1834, JH Franks Map 1840 and Story's Motoring and Cycling Map 1926 all depict the route in a manner suggesting it was a public highway.
- A series of OS Maps (25" to 1 mile 1929, 25" to 1 mile 1909, 1" to 1 mile 1858, 1" to 1 mile 1920, 1" to 1 mile 1953, 6" to 1 mile 1854) consistently depict the route in the same manner as other public roads in the area.

## 6.0 Objections to the application

6.1 One landowner has submitted an objection during the Informal Consultation and stated that –

- The claimed route is a single track road being the only means of access on foot or by vehicles to Low Farm and Stock Beck House with limited opportunities for passing.
- The track is privately owned and is maintained by the current land/property owners without contribution from the public purse.
- A varying number of vehicles use this track on a daily basis ranging from private cars to farm/agricultural machinery to delivery vehicles ranging from vans to articulated wagons.
- There are logistical issues in moving livestock on foot to/from different land parcels without the addition of horse/cyclists when clearly they would be unaware in advance of their presence.
- Taking into account any possible risks/health and safety fears they would not be happy with this upgrade to essentially what is their private road.

6.2 Kirkby Malzeard, Laverton and Dallowgill Parish Council submitted an objection in which they stated –

- That they have some reservations about the suitability of Carlesmoor Road as a bridleway because, whilst there is less traffic using it than a public road, it is



still regularly used by farm vehicles, feed wagons, milk tankers etc. as well as cars belonging to residents, and in parts there are no suitable passing places for such vehicles and for horses were they to meet one another.

- Pedestrians can normally take avoiding action but they are uncertain that horses and their riders would be able to safely do so.
- They felt that they could not unreservedly support any proposal which might ultimately lead to an accident.
- They sought assurance that residents matter across whose land the bridleway would run should not have to bear any additional expenditure such as higher insurance premiums or increased costs in respect of improved track maintenance, provision of gates suitable for horse riders or any other related matter as a result of the proposed upgrading.

6.3 Planning Inspectorate Advice Note 9 entitled “General Guidance on public Rights of Way Matters “, provides the following advice on what matters can be considered by an Inspector and hence by an OMA –

*It is important to note that the purpose of definitive map modification orders and reclassification orders is to ascertain what rights exist. It is not, for example, to determine the suitability of a way for particular types of traffic or whether use of a way may result in loss of amenity or environmental damage.*

6.4 The effect of that guidance is to limit what the Authority can consider strictly to weighing up the evidence submitted by the applicant against any evidence submitted by the objectors which undermines or refutes that of the applicant.

6.5 In this case the objections submitted do not challenge the applicant’s evidence but rely on matters which fall outside those which can be considered by the Authority or by an Inspector should the matter go to appeal and as such have no evidential value.

6.6 The objections therefore have no material effect on the application.

## **7.0 Conclusions regarding the evidence and objections to the application**

7.1 The evidence submitted in support of the application indicates that it is probable that the route has a higher public status than merely footpath, although whether the status should be a public bridleway or a restricted byway is unclear. The evidence is sufficient to justify the making of an Order to record a bridleway.

7.2 The representations made against the proposal to record the route as a bridleway do not provide any evidence or information to rebut the evidence submitted with the application.

## **8.0 Representation made by the local member**

None

**9.0 Financial implications**

9.1 In the event that an Order were to be made and was then opposed, there may be financial implications for the authority in covering any cost associated with any subsequent public inquiry. Such costs cannot be avoided where the Planning Inspectorate decides that a public inquiry should be held to resolve an application. If an Inquiry were to be held the Authority may need to appoint external advocacy.

**10.0 Equalities implications**

10.1 There is a statutory requirement to investigate applications for Definitive Map Modification Orders, regardless as to whether the outcome would benefit or prejudice owners, occupiers or members of the general public, and as such it is considered that equality and diversity issues are not relevant to the outcome of the process. In any event it is considered that the outcome would have no impact on the protected characteristics identified in the Equalities Act 2010.

**11.0 Recommendation**

11.1 It is therefore recommended that: the Assistant Director, Transport, Waste and Countryside Services, authorises the making of a Definitive Map Modification Order for the route shown as A – M on Plan 2 of this report to be recorded on the Definitive Map as a Public Bridleway.

Author of Report: Ron Allan

Background Documents:

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