

North Yorkshire County Council

Executive Members

14 June 2021

Opposed Bridleway no. 15.29/78 and Restricted Byway 15.29/79 Heyshaw to Lanes Foot Road, Dacre. Modification Order 2020

Report of the Assistant Director – Travel, Environment 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). A location Plan 1 and a more detailed Plan 2 are attached to this report within Appendix A.
- 1.2 To request the Corporate Director, in consultation with the Executive Member for Open to Business, 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 December 2017.
- 2.2 The application was supported by
 - OS Maps
 - Sheet 136 Yorkshire: 6" to mile 1854
 - Sheet 136 – 13 Yorkshire: 25" to mile 1909
 - Sheet 61: 1" to mile 1898
 - Sheet SE 16:
 - 2 ½ inch to mile 1952
 - Dacre Pasture Inclosure Award and Map 1844
 - Dacre Heyshaw moor and Braithwaite Moor Inclosure Award and Map 1876
 - Dacre Parish Tithe Map 1843
 - Dacre Parish Township Map 1852
 - NPAC Process Correspondence – Dacre PC letter & Annexe 5/12/1970
 - Draft DM Map Sheet 136SW
 - Ordnance Survey Object Names Book for 136SW 1907-1909
 - Bartholomew's ½ inch Map Sheet 6 1906
 - Inland Revenue Valuation Maps 1910
 - Highways Handover Map 1919/30 for West Riding now in North Yorkshire
 - Storey's Motoring Map c1926
 - Extract from NYCC online PROW map showing roads accessed Dec 2017
- 2.3 Objections were received during the Informal Consultation Process.
- 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 15 September 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 Modification 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 The two objections received challenge the interpretation of the evidence submitted by the applicant, on the basis that that they do not believe that it has been shown on the balance of probabilities the Order should be confirmed.
- 8.4 However, no evidence has been provided to satisfactorily counter the evidence in support of the Order.

9.0 Recommendation

- 9.1 That the Corporate Director – BES, in consultation with the Executive Member for Open to Business approves that the Authority should support confirmation of the Order in its submission to the SoS.

MICHAEL LEAH

Assistant Director Travel, Environment and Countryside Services

Author of report: Ron Allan

Background papers: File Ref : HAR-2017-15-DMMO Dacre (Lanes Foot Rd to Heyshaw)

North Yorkshire County Council

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14 June 2021

**Report of the Assistant Director – Travel, Environment and
Countryside Services**

**Opposed Bridleway no. 15.29/78 and Restricted Byway 15.29/79 Heyshaw to Lanes
Foot Road, Dacre. 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

15 September 2020

Application for a Definitive Map Modification Order to upgrade Footpath No. 15.29/42 (part) to a Bridleway, upgrade Footpath No. 15.29/42 (part) to a Restricted Byway and to upgrade Bridleway No 15.29/38 (part) to a Restricted Bridleway, Heyshaw to Lanes Foot Road, Dacre.

1.0 Purpose of the report

- 1.1 To advise the Assistant Director of an application for a Definitive Map Modification Order to; upgrade Footpath No. 15.29/42 (part) to a Bridleway, upgrade Footpath No. 15.29/42 (part) to a Restricted Byway and to upgrade Bridleway No 15.29/38 (part) to a Restricted Bridleway Heyshaw to Lanes Foot Road, Dacre. A location plan is attached to this report as **Plan 1**. The route is shown in detail as A - H on **Plan 2**.
- 1.2 To request the Assistant Director to authorise the making of a Definitive Map Modification Order to upgrade an existing footpath and an existing bridleway to a restricted byway along the application route based on evidence of existing higher rights than Footpath and Bridleway, discovered during investigation into the application.

2.0 Scheme of delegation

- 2.1 Within the County Council's scheme of delegation, it is delegated to the Assistant Director – Transport, Waste and Countryside Services to exercise the functions of the Council under Part III of the Wildlife and Countryside Act 1981 in relation to the power to make and advertise Definitive Map Modification Orders, including where an objection has been received from any person or body.

3.0 The application

Applicant:	The British Horse Society
Date of application:	20/12/2017
Type of Application	Definitive Map Modification Order
Parish:	Dacre
Local Member:	Councillor Stanley Lumley
Application supported by:	OS Maps <ul style="list-style-type: none"> • Sheet 136 Yorkshire: 6" to mile 1854 • Sheet 136 – 13 Yorkshire: 25" to mile 1909
List of documentary evidence:	<ul style="list-style-type: none"> • Sheet 61: 1" to mile 1898 • Sheet SE 16: • 2 ½ inch to mile 1952 Dacre Pasture Inclosure Award and Map 1844 Dacre Heyshaw Moor and Braithwaite Moor Inclosure Award and Map 1876 Dacre Parish Tithe Map 1843 Dacre Parish Township Map 1852

	NPAC Process Correspondence – Dacre PC letter & Annexe 5/12/1970 Draft DM Map Sheet 136SW Ordnance Survey Object Names Book for 136SW 1907-1909 Bartholomew's ½ inch Map Sheet 6 1906 Inland Revenue Valuation Maps 1910 Highways Handover Map 1919/30 for West Riding now in North Yorkshire Storey's Motoring Map c1926 Extract from NYCC online PROW map showing roads accessed Dec 2017
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 a public right of way subsists or is reasonably alleged to subsist along the claimed route.
- 4.2 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.
- 4.3 The Natural Environment and Rural Communities Act 2006 (NERCA 2006), Parliament legislated to extinguish certain unrecorded rights of way for mechanically propelled vehicles (motor vehicles) by a blanket provision, with a commencement date for the Act of 2 May 2006, subject to certain exceptions referred to below but acknowledged that there were inevitably applications for BOATs waiting to be investigated by highway authorities. Therefore, Section 67(3) allowed that any motor vehicular rights had not been extinguished by the blanket provision if:
 "(a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic".
- 4.4 The "relevant date" given within the Act was 20 January 2005. This, in effect, provided a backdated cut-off date for existing applications to provide rights for mechanically propelled vehicles, namely a BOAT.
- 4.5 This application was submitted after the relevant date of 20 January 2005, therefore, once investigated, if vehicular rights were proved to exist the route could only be recorded as a restricted byway (which excludes motor vehicle rights), unless it could be demonstrated that one of the exceptions as set out under Section 67(2) of the NERCA 2006 was applicable.

- 4.6 The only exception that was considered as potentially relevant to the application route is Section 67(2)(a). This provides that any motor vehicular right had not been extinguished by the Act if:
“(a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles”.
- 4.7 “Commencement” is the date at which the Act became effective, that is, 2 May 2006.
- 4.8 After consideration of the evidence provided to the County Council it was considered that the application did not present evidence that that public use of the application route during the relevant period was predominantly by motor vehicle.
- 4.9 Officers concluded therefore, that the highest rights that could exist on the application route were those of restricted byway.

5.0 User evidence and documentary evidence

- 5.1 The applicant has submitted a substantial body of historical documentary evidence as listed above which, when taken together, is sufficient to justify on the balance of probabilities that the route subsists with the status claimed by the applicant.
- The Yorkshire: 6” to mile 1854 and 25” to mile 1909 OS maps both show the route in a manner consistent with the claimed status.
 - The OS 1” to mile 1898 map shows the application route depicted as a Third Class Metalled Road consistent with rights higher than currently recorded.
 - The OS 2 ½ inch to mile 1952 shows the route without any annotation. A footpath to the north is marked as FP and the lack of any annotation indicates that the route was of higher status than a footpath (the FP annotation being used to describe those routes that were only suitable for pedestrian use).
 - The Dacre Pasture Inclosure Award and Map 1844 shows an occupation road between Points F and H and mentions an “ancient gate” where the track continues towards Heyshaw, which would support the claim for a route continuing to Heyshaw.
 - The Dacre Heyshaw Moor and Braithwaite Moor Inclosure Award and Map 1876 sets out a public carriage road in Heyshaw village which shows an opening at the eastern end of the village where the current footpath joins the highway, this would indicate that the public carriage road continued eastwards out of the village.
 - The Dacre Parish Tithe Map 1843 does not show the route.
 - Dacre Parish Township Map 1852 shows the route in a manner consistent with the claimed status, namely as a Bridleway from Point A to Point F and thence to Point H as an enclosed Highway.
 - The NPAC Act 1949 process documents refer to correspondence between Dacre Town Council and the West Riding County Council in which the Town Council queried the recording of the route on the draft map as a footpath and it was agreed that this would be addressed at a later stage. The implication here is that the route was wrongly recorded as a footpath but due to the local authority re-organisation in 1974 the planned review of the Definitive Map did not occur and the status was not corrected.
 - The Ordnance Survey Object Names Book for 136SW 1907-1909 records the section of Lane Foot Road between points F and H as a “Road” which would support a higher status than bridleway.

- Bartholomew's ½ inch Map Sheet 6 1906 shows the entire claimed route as an "Indifferent Road" being a road available for use by cyclists who did not at the time of publication have the right to use bridleways and which supports the claimed higher rights on the route.
- The Inland Revenue Valuation Maps of 1910 does not show the section of the route between Points A and F, it does show the section between Points F and H, which the applicant claims, are shown as "white roads" and hence public highways.
- The Highways Handover Map 1919/30 for West Riding now in North Yorkshire shows the Lanes Foot Road section of the route between Points F and H shaded in brown whilst the continuation of the route west from Point F is not shown. Monk Ings Road is shown without colour, whilst Dacre Lane to the south is shown in yellow, this would appear to indicate that this section of the application route had a status above that of the remainder of the route but also different to that of Dacre Lane. The section of the route to the south of Point H and nearby School Lane at Dacre Banks are also shown in Brown and which are today recorded as unclassified public roads.
- Storey's Motoring Map c1926 which was a commercially available map and designed to indicate the routes that the public could use shows the route along its full length.

5.2 No user evidence relating to the way has been submitted.

6.0 Objections to the application

6.1 Two objections have been submitted; one by the primary landowner and one by the owners of a property adjacent to the route.

6.2 The primary landowner states that:

- he has lived on the property for most of the last 84 years and in that time has never seen a horse being ridden along any part of the route.
- the route of the footpath to be upgraded passes through a dry stone wall via a stile which has been in place for seventy years thus precluding equestrian use.
- he acknowledges that the 1854 OS map depicts part of the route as a Bridle Road but that this is not repeated on later editions and that the OS map included the disclaimer regarding public rights of way.
- in 1984 both Dacre Parish Council and NYCC in correspondence regarded that the section between A and F had footpath status only.
- the section F – I is shown as an occupation road in the Dacre Enclosures Award but that this does not imply public rights because an occupation road was only for those landowners which the road was intended to access.
- the footpath section of the route was confirmed by the 20th century legal processes (*it is assumed that by this statement he is referring to the Definitive Map processes in the 1950s*).
- he disputes that the section A – F is an Ancient Highway as described in the Dacre Enclosure Award.

6.3 The adjacent property owners state that they maintain part of the lane at their own expense, that increased use will lead to increased costs and there will be a detrimental effect on their privacy.

7.0 Conclusions regarding the evidence and objections to the application

- 7.1 The application is based on historical evidence, most of which predates the period that the landowner has observed the route. No user evidence has been submitted regarding the application so the comments regarding observed lack of use are not relevant.
- 7.2 As the objector claims, there is a stile in a dry stone wall at the end of Heyshaw Lane and this would appear to be used by the public to access the current walked route which avoids a farmyard. However, that stile is not on the definitive line (which is some 24 metres away) and is of no relevance to this application.
- 7.3 It is correct that the route is named as a 'bridle road' on only the earliest OS map. In later editions the route is depicted but is not allocated any status. It should be noted that OS naming protocols changed over time and that in subsequent editions *footpath* or *FP* are the only notations used in order to distinguish them as routes not suitable for horses; the implication being that if the FP designation was absent, then the route was suitable for use by horses. Bridleways are not specifically named on most historic OS maps but undoubtedly existed.
- 7.4 The correspondence dated 1984 confirms the status of the footpath section as recorded on the Definitive Map. No other information has been included on the decision making process which would shed further light on this matter.
- 7.5 The term "occupation road" is normally used to describe a road laid out for the benefit of named occupiers of adjoining properties and may not necessarily be a public highway. However, in this case there are no named occupiers but the applicant points out that where a specifically private road has been laid out elsewhere in the Enclosure Award, the occupiers are named. This may a view that this occupation road was not specifically designated as private access only.
- 7.6 It is correct that the route was considered during the preparation and production of the Definitive Map, and it was determined at that time that it was a footpath, there is no record of any objections or revisions being made. However, the status recorded on the Definitive Map does not preclude the possibility of the existence of higher rights.
- 7.7 An Enclosure Award is considered to be an authoritative record of all matters which are contained within it. The reference to an 'ancient lane' is limited in clarifying historic rights and the route is not described or laid out as part of the Enclosure Award, therefore it may well be that the evidential value of that description is open to interpretation, but it is nevertheless an indication of a pre-existing route of a reasonably substantial nature.
- 7.8 The Finance Act 1910 Map shows the route between Points F and G separately from the adjoining agricultural land and are not assigned to an owner. Because this section of the route is excluded from the assessment in the same manner as the main roads the implication is that the route a highway, whilst this is not conclusive evidence it is reasonably persuasive that this was not part of an agricultural holding, was continuous with the road network and was considered to be so at the time the map was drawn up.

- 7.9 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.
- 7.10 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.
- 7.11 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 be forwarded to the SoS, and as such have no evidential value.
- 7.12 The objections raised therefore have no material effect on the application.
- 7.13 In conclusion, whilst the documentary evidence is not conclusive as to the extent of public rights, on the balance of probabilities it seems more likely than not, that the route between points A – F has higher rights than only footpath.
- 7.14 No single piece of evidence relating to the application route between Points F and H can be considered conclusive but it seems likely that public vehicular rights would have existed between points F – H.

8.0 Representation made by the local member

- 8.1 None

9.0 Financial implications

- 9.1 In the event that an Order were to be made and was then opposed, there may be financial implications for the authority in covering any cost associated with any subsequent public inquiry. Such costs cannot be avoided where the Planning Inspectorate decides that a public inquiry should be held to resolve an application. 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 to record a bridleway between Points A – F and for a Restricted Byway to be recorded between Points F –H as shown on Plan 2.

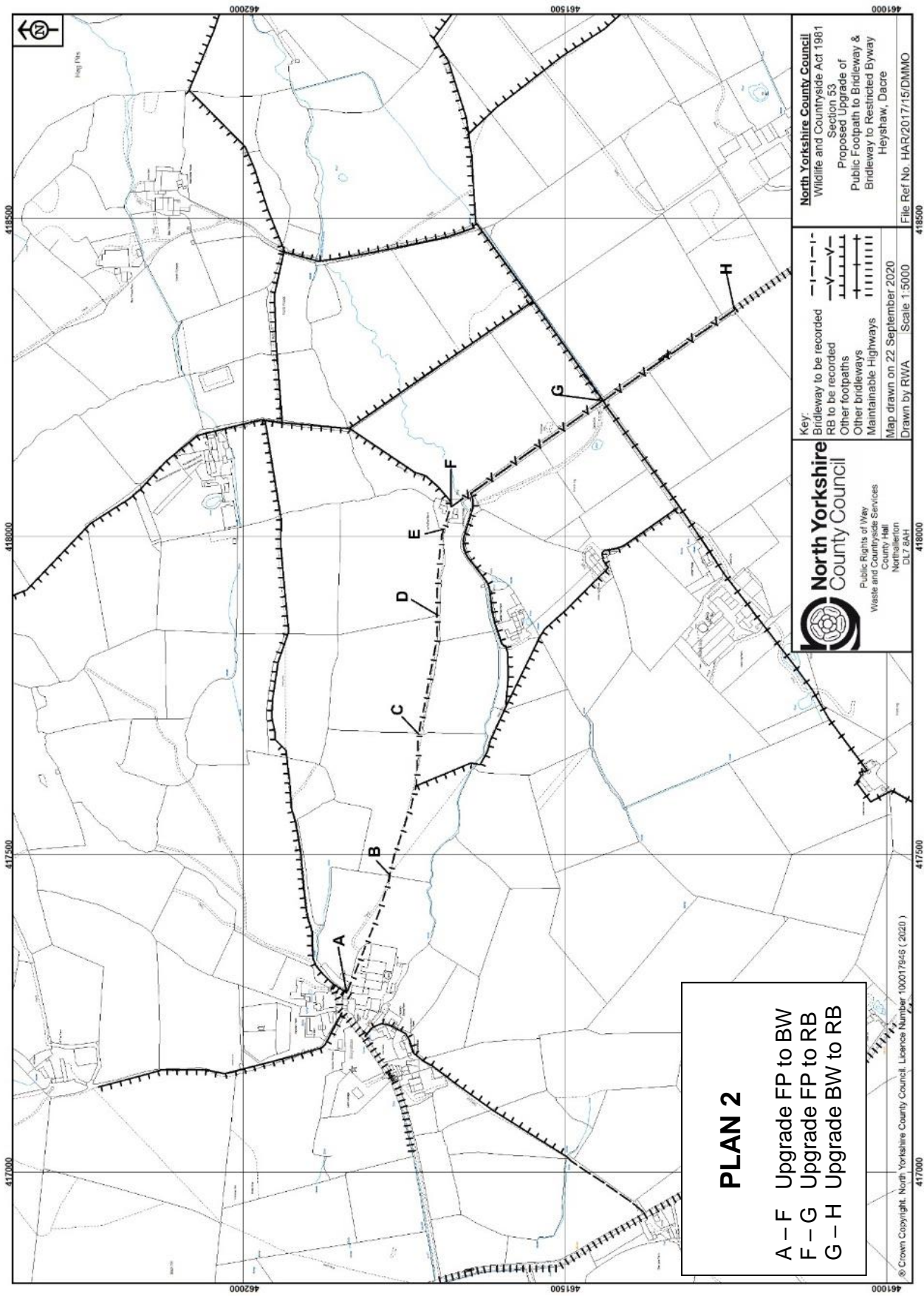
Author of Report: Ron Allan

Background Documents:

DMMO Case File: HAR/2017/15 DMMO Dacre (Lanes Foot Rd to Heyshaw)



 North Yorkshire County Council Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH	General Location 	North Yorkshire County Council Location Plan Heyshaw, Dacre
	Map drawn on 6 June 2019 Drawn by RWA Scale 1:40000	



North Yorkshire County Council

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

15 September 2020

Application for a Definitive Map Modification Order to upgrade Footpath No. 15.29/42 (part) to a Bridleway, upgrade Footpath No. 15.29/42 (part) to a Restricted Byway and to upgrade Bridleway No 15.29/38 (part) to a Restricted Bridleway, Heyshaw to Lanes Foot Road, Dacre.

Authorisation

I approve / ~~do not approve~~ the recommendation set out above.

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ANY ADDITIONAL RECOMMENDATION or COMMENT:

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Ian Fielding

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IAN FIELDING

Assistant Director Transport, Waste and Countryside Services

Date 18 September 2020