

North Yorkshire Council

Environment Executive Members

23 January 2026

Opposed Definitive Map Modification Order – Restricted Byway No. 20.75/58 Reeth, Fremington and Healaugh & 20.42/9 Marrick, Fremington Edge Modification Order 2025

Report of the Assistant Director – Highways & Infrastructure

1.0 PURPOSE OF THE REPORT

- 1.1 To advise the Corporate Director (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 Plan 1 in Appendix A. The Order route is shown in Plan two in Appendix A.
- 1.2 An Order Making Authority (OMA) 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 SUMMARY

- 2.1 Following receipt of an application under S53(2) of the Wildlife and Countryside Act 1981 on 23 July 2020 to upgrade to Restricted Byway Footpaths No. 20.75/58 and 20.42/9 at Fremington Edge near Reeth, an informal consultation was conducted by the OMA which returned three objections. It was felt that none of these were based on evidence relating to what public rights exist on the route. After this was made clear to the objectors two of the objections were withdrawn (see Appendix A section eight).
- 2.2 Thorough analysis of the evidence submitted by the applicant was subsequently undertaken by the OMA. The evidence included two Inclosure Awards that set out public carriageway rights on the application route by statutory legal process and no evidence has been provided to suggest these rights were subsequently extinguished (see Appendix A section six).
- 2.3 As the application route was not subject to any exceptions to the Natural Environment and Rural Communities Act 2006 (NERCA) a Definitive Map Modification Order was made to upgrade the Footpath to Restricted Byway. The resulting formal confirmation returned two objections. Some limited evidence was submitted in support of the objections however, this was addressed by the OMA and further evidence was requested. No further supporting evidence was forthcoming and the OMA requested the objections be withdrawn. One objector declined and no response was received from the other (See section four below).
- 2.4 As there are outstanding objections, the Order must be referred to the SoS for decision. Officers are recommending that NYC supports confirmation of the Order, as it is felt that the evidence is sufficient to meet the legal test for confirmation.

3.0 BACKGROUND

- 3.1 The application for an Order under S53(2) of the Wildlife and Countryside Act 1981 was submitted to the Council on 23 July 2020 to upgrade to Restricted Byway Footpaths No. 20.75/58 and 20.42/9 at Fremington Edge near Reeth, as shown by A-D on Plan two of the attached AD report at Appendix A.
- 3.2 The application was supported by:
- C Greenwoods Map of the County of York 1817
 - Cary's Maps of the Counties of England 1817 to 1834
 - Charles Fowler's Map of Yorkshire 1834
 - Franks Map of North Riding Yorkshire 1840
 - Ordnance Survey Maps: six-inch 1857, 1 inch First Edition 1858-61
 - Enclosure Award and Plan Fremington Edge or Moor 1778
 - Enclosure Award and Plan Marrick Moor 1841
 - Tithe Map and Apportionment for Reeth 1841
 - Tithe Map for Marrick 1851
 - Finance Act 1910 Maps and Records
- 3.3 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. that on the balance of probabilities public Restricted Byway rights subsist along Footpaths No. 20.75/58 and 20.42/9 at Fremington Edge near Reeth.
- 3.4 Attached to this report as Appendix A is a copy of the report submitted to the Assistant Director - Highways and Infrastructure on 10 June 2025 recommending that based on the evidence an Order should be made.
- 3.5 The report was approved by the Assistant Director and the DMMO was subsequently made and advertised, attracting two duly made objections which 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.
- 3.6 In accordance with the constitution requirements protocol for reports to the Environment Directorate - Corporate Director and Executive Member for Highways & Transportation, the relevant local Member, Yvonne Peacock, has been provided with access to a copy of this report and has been invited to the meeting on 23 January 2026.

4.0 CURRENT DECISION TO BE MADE

- 4.1 The evidential test to be met for the confirmation of a Definitive Map Modification Order is whether the evidence shows that on the balance of probabilities the public rights exist, and the Order should be confirmed. However, the Council cannot confirm a DMMO where there are outstanding duly made objections; the Order must be forwarded to the Secretary of State for resolution.
- 4.2 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.
- 4.3 The current decision to be made is which stance the Council is to take within its submission of this opposed DMMO to the SoS.

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

4.5 Evidence Supporting Confirmation of the Order:

- The evidence supporting confirmation of the Order is set out fully in the report submitted to the Assistant Director - Highways and Infrastructure on 10 June 2025 at Appendix A. It rests primarily on two Inclosure Awards. The 1778 Fremington Edge or Moor Inclosure Award, which sets out a 'Public Carriage Road or a Highway forty feet in Breadth' with a route description and depiction on the accompanying map that match the application route. The 1841 Marrick Moor Inclosure Award sets out a 'public carriage road of the width of thirty-three feet' with a route description and depiction on the accompanying map that match the application route. While the name of the application route in each Inclosure Award differs - the 1778 award calls it Richmond Road while the 1835 award calls it Fell End road - the descriptions and depictions of the route in the associated maps clearly show the application route is the subject of both awards.
- The Inclosure awards provide primary evidence that public vehicular rights were established on the application route by statutory legal process. They are supported by a series of commercial maps from the 18 and 19 century including Greenwoods 1817 map, Charles Fowlers 1834 map and Franks 1840 Map of the North Riding, which all show the route as a 'Cross road' while Cary's 1832 map shows it as a 'Parochial Road'. In each case the route is shown in same manner as other current day public roads in the area and linking up with the wider road network, which suggests it was considered to be a public carriage road at this time.
- The Ordnance Survey mapping is less supportive of the existence of the full route along Fremington Edge. The 1857, 1891, and 1954 six-inch maps all show the route as a doubled dashed track but only between points A and C. This suggests the northwestern section of the route may have become less used by vehicular and equestrian traffic from the middle of the 19 centuries onwards, but once a highway has been established by legal process it can only be extinguished by legal process. The Inclosure Awards strongly suggest public carriageway rights were established along the route in 1778 and 1841 and there appears to be no evidence of any legal process to extinguish these rights.

4.6 Objections to the Sealed Order and Evidence Against Confirmation of the Order:

- An objection to the sealed Order was received from the Agent acting on behalf of one of the affected landowners. The objection initially focussed on technical points concerning the drafting of the Order, which were addressed by the Definitive Map Officer and subsequently retracted by the objector. Further claims were then made by the objector, that the map evidence is not conclusive, the Inclosure Awards set out private rather than public rights and expressing concern over the effect on the countryside if the Order was confirmed. These points have also been addressed by the Definitive Map Officer who referred to the sections of the Inclosure Awards that specifically set out the route as a Public Carriage Road and asked the objector to submit evidence to support their claim that only private rights subsisted on the route. On the final point relating to the effect on the countryside, the officer advised that the legislation does not allow issues such as suitability to be considered when investigating Definitive Map Modification Orders. Officers requested the objection be withdrawn; however, no response or further correspondence was received from the objector.

- Marrick Parish Council objected on grounds that in 1998 the 'Parish Paths Partnership' financed improvements to the route by installing stiles which they were informed in a letter from the NYCC Public rights of Way department would be considered 'in law as part of the public right of way.' The Parish Council argued that as they prevented use on horseback, cycles, and non-mechanically driven vehicles the installation of the stiles indicated the route was a footpath and not a restricted byway. The Parish Council also claimed historically the path was used by lead-mining workers and was not a path open to the public. Officers advised the work on the stiles in 1998 and the current limitation on use did not prejudice the existence of higher rights existing on the route. Officers also requested any evidence the Parish Council held of private rights existing for the lead miners to be submitted and if none was available, asked whether the Parish Council be prepared to withdraw their objection. No evidence relating to the lead miners' usage has been forthcoming and the request to withdraw the objection was declined.

5.0 LOCAL MEMBER ENGAGEMENT

- 5.1 Councillor Yvonne Peacock, Upper Dales Division, was consulted both as part of the pre-Order informal consultation and the Sealed Order consultation. Cllr Peacock did not submit any comments in response to either consultation.

6.0 ALTERNATIVE OPTIONS CONSIDERED

- 6.1 The options available to the Council are as set out in paragraph 4.2 above, i.e. the stance the Council will take when submitting the opposed Order to the Secretary of State, and this decision must be based on the evidence available. The legislation does not allow the Council to abandon or not continue with an opposed DMMO; if the Order is opposed it must be submitted to the Secretary of State for decision on whether or not it should be confirmed.

7.0 LEGAL IMPLICATIONS

- 7.1 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.

8.0 FINANCIAL IMPLICATIONS

- 8.1 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 a Public 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 around £5,000 for a typical two-day inquiry, which would be met from existing service budgets.

9.0 EQUALITIES IMPLICATIONS

9.1 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, following an initial EIA screening, 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.

10.0 CLIMATE CHANGE IMPLICATIONS

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

11.0 CONCLUSION & REASON FOR RECOMMENDATION

11.1 The evidence, especially the Inclosure documentary evidence, strongly supports that the Order route carries public carriageway rights, and that this meets the legal 'balance of probabilities' test. Although claims have been made by objectors that carriageway rights do not exist, or are purely private rights, no evidence has been submitted to support this.

11.2 Overall, it is considered 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 4.2, in this instance, the Council should support confirmation of the Order.

12.0 RECOMMENDATION

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

APPENDICES:

Appendix A - Report to the Assistant Director - Highways and Infrastructure

BACKGROUND DOCUMENTS: File Ref: RICH/2020/13/DMMO

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Report Author: Robert Light - Definitive Map Officer
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