

The North Yorkshire Council

Environment Directorate

10 June 2025

Application for a Definitive Map Modification Order to upgrade to Restricted Byway Footpaths No. 20.75/58 and 20.42/9 at Fremington Edge, Reeth

Report to the Assistant Director – Highways and Infrastructure

1.0 PURPOSE OF REPORT

- 1.1 To advise the Assistant Director of an application for a Definitive Map Modification Order: RICH/2020/13/DMMO to upgrade to Restricted Byway Footpaths No. 20.75/58 and 20.42/9 at Fremington Edge near Reeth.
- 1.2 To request the Assistant Director to authorise the making of a Definitive Map Modification Order to record as Restricted Byway Footpaths No. 20.75/58 and 20.42/9 at Fremington Edge near Reeth.

2.0 SCHEME OF DELEGATION

- 2.1 Within the Council's scheme of delegation, it is delegated to the Assistant Director - Highways and Infrastructure 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:	British Horse Society (Caroline Bradley)
Date of application:	23/07/2020
Type of Application	Definitive Map Modification Order
Parish:	Marrick / Reeth, Fremington and Healaugh
Local Member:	Cllr Yvonne Peacock
Application 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: 6 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
Applicant's grounds for making the application:	The applicant submitted evidence which she claims demonstrates that footpaths No. 20.78/58 and 20.42/9 have restricted byway rights on the route along Fremington Edge and should be recorded as Restricted Byway.

4.0 GENERAL DESCRIPTION OF ROUTE

- 4.1 The location of the application routes is shown on Plan 2 attached. It begins at the junction between footpath 20.42/9 and the C109 at grid reference SE0675 9909, point A on plan 2, and runs westwards along Fremington Edge to the parish boundary between Marrick and Reeth, Fremington and Healaugh at point B, grid reference SE0596 9938, from where it continues running west as Footpath 20.75/58 to the junction with Footpath 20.75/10, grid reference NZ0495 0011 at point C, before continuing to its termination at the junction between Footpath 20.78/58 and bridleway 20.75/15, grid reference NZ0310 0218 at point D.
- 4.2 The current status of the application route from Point A – B – C - D is Public Footpath.
- 4.3 (Taken from aerial photos) The first approx. 300 metres of section A to B is a grassed track across fields. The route then becomes a stoned track across open moorland for further approx. 1.6 Km, the remainder of section A to B and the first part of section B to C, then the route becomes a path through a mix of open grassland and moorland for the remaining 2.9 Km of the route terminating at point D.

5.0 RELEVANT LEGAL CRITERIA

- 5.1 In deciding whether to make a Modification Order, the Council must be satisfied that, in accordance with Section 53 of the Wildlife and Countryside Act 1981, the evidence discovered by the 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.
- 5.2 As the application relates to possible carriageway rights, if such rights are shown to exist, consideration must be given to the effect of the Natural Environment and Rural Communities Act 2006 (NERCA). This Act extinguished unrecorded rights for mechanically propelled vehicles (MPVs) and restricted the ability to create new rights of way for MPVs on the basis of historic use by horse and cart. Extinguishment is subject to a number of exceptions, set out in Sections 67(2) and 67(3) of NERCA, broadly covering routes for which an application or determination was made prior to the NERCA cut-off date of 20th January 2005, and routes that were expressly created for MPVs or form part of the ‘ordinary road network’ i.e. routes recorded on the List of Streets (highways maintainable at public expense) or where the main public use is by MPV.

6.0 OFFICER COMMENTS ON THE HISTORIC DOCUMENTARY EVIDENCE

- 6.1 A route running across Marrick Moor in the same area as the application route but not on the exact line is shown as an ‘Open Road’ joining up with other ‘Open Roads’ at either end on Jeffries 1771 map. According to the applicant, this establishes that a route existed in the approximate area of the application route at this time and was part of the wider road network. The full application route is shown from point A to D as a ‘Cross Road’ on Greenwoods 1817 map and Charles Fowlers 1834 map and as a ‘Parochial Road’ on Cary’s 1832 map. Franks 1840 Map of the North Riding also shows a ‘Cross Road’ roughly running on the line of the application route. 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 the applicant argues suggests it was considered to be a public carriage road at this time.

- 6.2 The six-inch Ordnance Survey Maps published in 1857 shows the application route as part single and part double dashed line running from point A to point C but no further. The first edition one inch to one-mile 1858 – 61 OS map shows the route as a double dashed line also running from point A to point C but no further. Although not submitted by the applicant the six inch 1891 OS map published 1895 and six inch Revised 1950 OS map published in 1954 show the route as a double dashed line running from point A to point C but no further.
- 6.3 The 1778 Fremington Edge or Moor Inclosure Award states that a 'Public Carriage Road or a Highway forty feet in Breadth between the Ditches as the same is now Marked and staked out leading Westward from the said Moor Stones at the North East Corner of Fremington Edge to the Boundary Stones next East of Arkman Cragg and to within Eighty Yards of the Northwest Corner of the Seventh Allotment hereinafter made to the said Thomas Elliott which said Road we shall hereafter refer to and call by the Name of Richmond Road.' This description corresponds with a double dashed lane marked on the Award map which follows the application route in full, from point A to point D and is named as 'Richmond Road'.
- 6.4 The Marrick Enclosure Award and Map of 1841 includes an instruction to set out 'Fell End Road: One other public carriage road of the width of thirty three feet called Fell End Road leading Northward out of Richmond and Reeth road over the said Marrick Moor into a road in the Manor of Fremington at or near a Boundary mark called the three Mere Stones'. The award plan, which has an unusual orientation of southwest to north east, shows a double solid line following the line of the application route named 'Fell End Road 33 feet in width'.
- 6.5 The 1839 Tithe map for Reeth in the Parish of Grinton shows the application route as a double dashed line from point B, which was at that time the Township of Reeth in the parish of Grinton parish boundary with Marrick Parish, to point D. There is no apportionment number on any section of the route which indicates no tithe was assessable as was common with highways as they had no economic value. There is also an allowance of 70 acres 3 roods 12 perches for Roads, Rivers and Wastes in the Award documentation on page 62, although no indication of the location of this land is provided.
- 6.6 The 1851 Tithe Map for Marrick shows the eastern section of the application route running from its junction with the present day C109 to point C near Copperthwaite lead mines where the map ends and as the applicant points out the line of the route is left open indicating that it continues onwards. There is no apportionment number on the route. The applicant claims this indicates that no tithe was assessable, and the depiction of the application route is consistent with a public vehicular highway. No accompanying documentation showing details of apportionments and tithe payments has been submitted.

7.0 SUMMARY OF EVIDENCE

- 7.1 When taken together the evidence offers strong support for public vehicular rights existing on the application route. Two documents provide primary evidence that these rights were established by statutory legal process. The Fremington Edge or Moor Inclosure Award indicates the route was established as a public highway with carriageway rights at a width of forty feet by statutory legal process in 1778. These rights were then established for a second time by statutory legal process in 1841 by the Marrick Moor Inclosure Award at a width of 33 feet which surpassed the statutory width for cartways of 20 feet set out in the 1835 Highways Act. 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 on the awards and associated maps clearly show the application route is the subject of both the awards.
- 7.2 In addition to this primary evidence, secondary evidence has also been submitted that supports the existence of public vehicular rights on the route. Both the Reeth and Marrick Tithe award plans show sections of the route which continue beyond the parish boundaries

and are without apportionment numbers, which suggests they were viewed as un-tithable highways which linked with the wider road network. The commercial maps support that the application route was a highway of some significance around the time of the two Inclosure Awards and while the Jeffries and Franks maps depict a route following a different line to that of the application route they show that a highway across Marrick Moor existed from at least 1771. The Greenwood, Fowler and Cary maps all show the application route following its current line as a Cross Road or Parochial Road between 1817 and 1832.

- 7.3 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 19th century 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.

8.0 OBJECTIONS TO THE APPLICATION

- 8.1 The standard informal consultation for the application was carried out in February 2025. Various responses, including three objections were received. The responses were from two landowners, one Parish Council, Richmond Ramblers, the Green Lane Association and the Byways and Bridleways Trust.
- 8.2 Marrick Parish Council objected on the grounds they saw no reason for non-mechanically propelled vehicles to be able to access this land. NYC Officer comment we are unable to take into account issues such as desirability, safety and suitability at this stage. The legislation only allows us to take into consideration the evidence relating to what public rights exist.
- 8.3 Preston Readman Solicitors objected on behalf of their client, landowner Richard Grosvenor Plunkett-Ernlé-Drax. However, after being provided with extended time to review the evidence and submit evidence supporting their objection, it was withdrawn.
- 8.4 Farmoor Services objected on behalf of their client, landowner Dale Ltd. However, after being provided with extended time review the evidence and submit evidence supporting their objection, it was withdrawn.

9.0 OTHER RESPONSES TO THE APPLICATION

- 9.1 Richmond Ramblers broadly offered their support for the application but asked that appropriate arrangements be made to improve and protect the surface from new and more intensive use, and that at the connections the route has with many other public footpaths it is made clear that such footpaths are for pedestrian use only. The Byways and Bridleways Trust also expressed their support for the application.
- 9.2 The Green Lane Association submitted a representation stating they would like consideration to be made of exemptions to the extinguishment of motor vehicle rights on the route under NERC which they believe can be argued under subsections 67(2)(a) and 67(2)(e) of the Act. They claim to have strong anecdotal evidence of use by motor vehicles which pre-dates the NERC Act. However, GLASS have been unable to provide any written user evidence to support their claim and have subsequently withdrawn their representation.

10.0 REPRESENTATION MADE BY THE LOCAL MEMBER - CLLR YVONNE PEACOCK

- 10.1 No comments have been received from the local member.

11.0 LEGAL IMPLICATIONS

- 11.1 The Council as an Order Making Authority has a legal duty under section 53 of the Wildlife & Countryside Act 1981 to keep the Definitive Map and Statement under continuous review. In doing so it shall modify the Definitive Map and Statement by means of legal Orders because of certain prescribed events which are set out in section 53 of the Act.
- 11.2 In the event an Order made by the Council is opposed, the decision on whether the Order will be confirmed rests with the Secretary of State to consider the evidence and decide, by way of either a Public Inquiry, Local Hearing or written representations.

12.0 FINANCIAL IMPLICATIONS

- 12.1 In the event that an Order were to be made and was then opposed, there would be financial implications for the Authority in covering the costs associated with referring the opposed Order 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.
- 12.2 If an Inquiry were to be held the Authority would be likely to appoint external advocacy in this instance. In cases where the authority appoints external advocacy to represent it in any proceedings, the associated cost implications are estimated to be no more than £3,000 for an average two day public inquiry, which would be met from existing service budgets.

13.0 EQUALITIES IMPLICATIONS

- 13.1 There is a statutory requirement to investigate applications for Definitive Map Modification Orders, regardless as to whether the outcome would benefit or prejudice owners, occupiers or members of the general public, and as such it is considered that equality and diversity issues are not relevant to the outcome of the process. In any event it is considered that there are no significant equalities implications arising from this report.

14.0 CLIMATE CHANGE IMPLICATIONS

- 14.1 There are no significant climate change implications arising from this report.

15.0 CONCLUSIONS

- 15.1 The current decision to be made is whether an Order should be made to alter the status of the route.
- 15.2 The evidence submitted with the application points towards the route having carriageway rights and the OMA believes that this evidence meets the “balance of probabilities” test.
- 15.3 Although there were claims of use of the application route by motorised vehicles, no evidence was submitted to support this. The route does not appear to meet any of the NERCA exceptions, and therefore rights for motor vehicles can be assumed to have been extinguished. It is therefore appropriate to record the route as Restricted Byway.

16.0 RECOMMENDATION

16.1 It is therefore recommended that:the Assistant Director - Highways and Infrastructure authorises the making of a Definitive Map Modification Order to record as Restricted Byway Footpaths No. 20.75/58 and 20.42/9 at Fremington Edge near Reeth.

Author of Report: Robert Light

Background Documents: RICH/2020/13/DMMO

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10 June 2025

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to upgrade to Restricted Byway Footpaths No. 20.75/58 and 20.42/9 at
Fremington Edge, Reeth**

Authorisation

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

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ANY ADDITIONAL RECOMMENDATION or COMMENT:

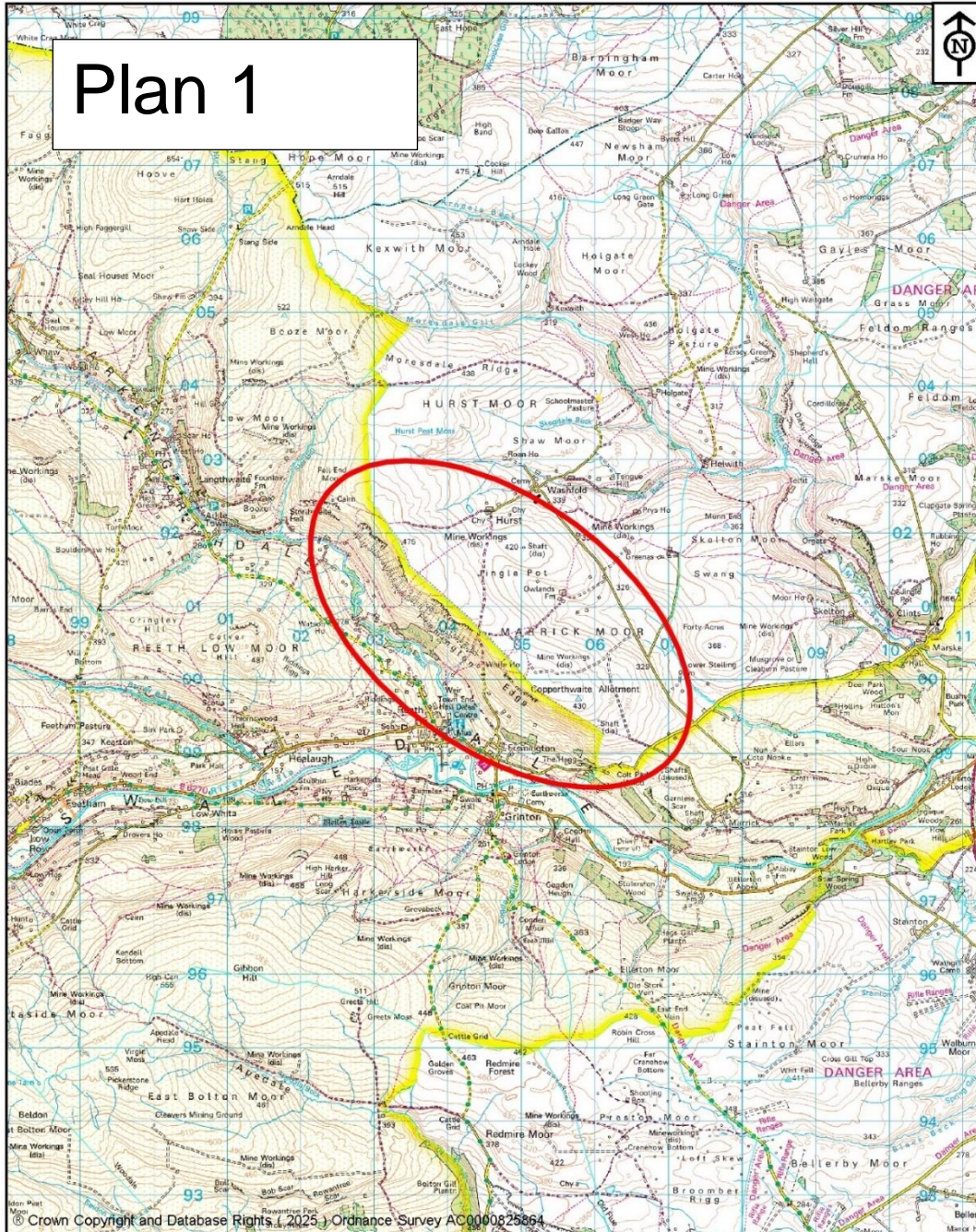
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BARRIE MASON
Assistant Director - Highways and Infrastructure

Date9 June 2025



 <p>NORTH YORKSHIRE COUNCIL</p> <p>Public Rights of Way Countryside Access Service County Hall Northallerton DL7 8AH</p>	<p>General location </p> <p>Map drawn on 5 February 2025 Drawn by RL</p>	<p>The North Yorkshire Council</p> <p>Location plan Proposed footpath upgrade Fremington Edge</p> <p>File Ref No. RICH/2020/13/DMMO</p>
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