

# North Yorkshire County Council

## Executive Members

23 July 2021

### Opposed Definitive Map Modification Order to add Public Footpaths to the Definitive Map at Hackfall Woods, Grewelthorpe

#### Report of the Assistant Director – Travel, Environmental and Countryside Services

#### **1.0 Purpose of the report**

- 1.1 To advise the Corporate Director of Business and Environmental Services (BES) and Executive Members of an opposed Definitive Map Modification Order (DMMO).
- 1.2 To request the Corporate Director, in consultation with the Executive Member for Access, to authorise that North Yorkshire County Council (NYCC), in its submission of the opposed Order to the Secretary of State (SoS) will request that the Order be not confirmed.

#### **2.0 Background**

- 2.1 The application for the DMMO was submitted to the County Council in 1984 by a member of the public to record two public footpaths within the area of Hackfall Woods at Grewelthorpe. See Location Plan and Order Plan in Appendix A.
- 2.2 The application was supported by
  - 25 Evidence of Use Forms

#### **3.0 Responses to the publication of the sealed order**

- 3.1 The Order was made on 25 of March 2021 and following the advertisement of the Order an objection was received from the Woodlands Trust who are the leaseholders of the land crossed by the Order routes.
- 3.2 The basis of the application was user evidence leading up to the submission of the application in 1984.
- 3.3 The public have access to the paths through Hackfall Woods which are not currently recorded as rights of way and there has been no challenge to use by the public of the Order route recorded in our systems since the application was submitted in 1984.
- 3.4 As part of the normal investigative processes a number of attempts were made to contact the Woodlands Trust, and they were included in the pre-order informal consultations, but no response had been received. At the time the Order was made there were no objections to the proposed DMMO.
- 3.5 The Woodlands Trust has now submitted documentary evidence to the effect that the landowner had in place a permit system allowing the public permissive use of paths through the woods.

3.6 The effect of this evidence, coupled with the age of the application and the limited likelihood of now obtaining clear evidence establishing that the public had access to the Order route 'as of right' between 1964 and 1984 means that it would now be very difficult to demonstrate that on the 'balance of probability' the public have acquired public rights of access. It is unlikely that any cogent and effective challenge could be made to the assertion the public had use of the paths, but only with permission.

3.7 Had this evidence been brought forward during the informal consultation period then it is probable that the application would have been rejected at an early stage, and no Order would have been made.

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

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

#### **5.0 Financial implications**

5.1 Should the Authority pursue any course of action other than asking for the Order to not be confirmed there would be resource implications involved in seeking out and interviewing any users who may still be able to give evidence of use up to 1984.

5.2 There will be an unavoidable minimal cost to the Authority in preparing a submission to the SoS requesting that the order not be confirmed and responding to any queries raised by the SoS. These costs would be officer time, which would be met by the respective staffing budgets.

#### **6.0 Equalities Implications**

6.1 The investigation and resolution of Definitive Map Modification Order applications is a statutory process which has no regard 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 the view that the recommendations do not have an adverse impact on any of the protected characteristics identified in the Equalities Act 2010.

#### **7.0 Legal Implications**

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

7.2 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 Order.

#### **8.0 Climate Change Implications**

8.1 The proposal is to record formally within the County Council's records, a route alleged to have acquired public rights of access. The confirmation or non-confirmation of this order would have no positive or negative impact on climate change.

## **9.0 Current Decision to be made**

- 9.1 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. 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.

## **10.0 Conclusions**

- 10.1 Had this matter been investigated at an earlier date, and the rebuttal evidence been submitted by the Woodlands Trust, then there would have been an opportunity for the Authority to have investigated the alleged permit system and establish more clearly the effect on the alleged acquisition of rights by the public.
- 10.2 However, that opportunity is lost and there is little prospect of the Authority being in a position to support the confirmation of this opposed order in the light of the documented evidence submitted by the Woodlands Trust, and the evidential difficulties associated with dealing with such an old application. It is considered that the relevant criteria, namely that on the balance of probabilities the public have acquired a right of access along the route, is not met.

## **11.0 Recommendation**

- 11.1 That the Director authorises the Authority, in its submission to the SoS, to request that the SoS declines to confirm the Order.

MICHAEL LEAH  
Assistant Director Travel, Environmental and Countryside Services

Author of report: Ron Allan

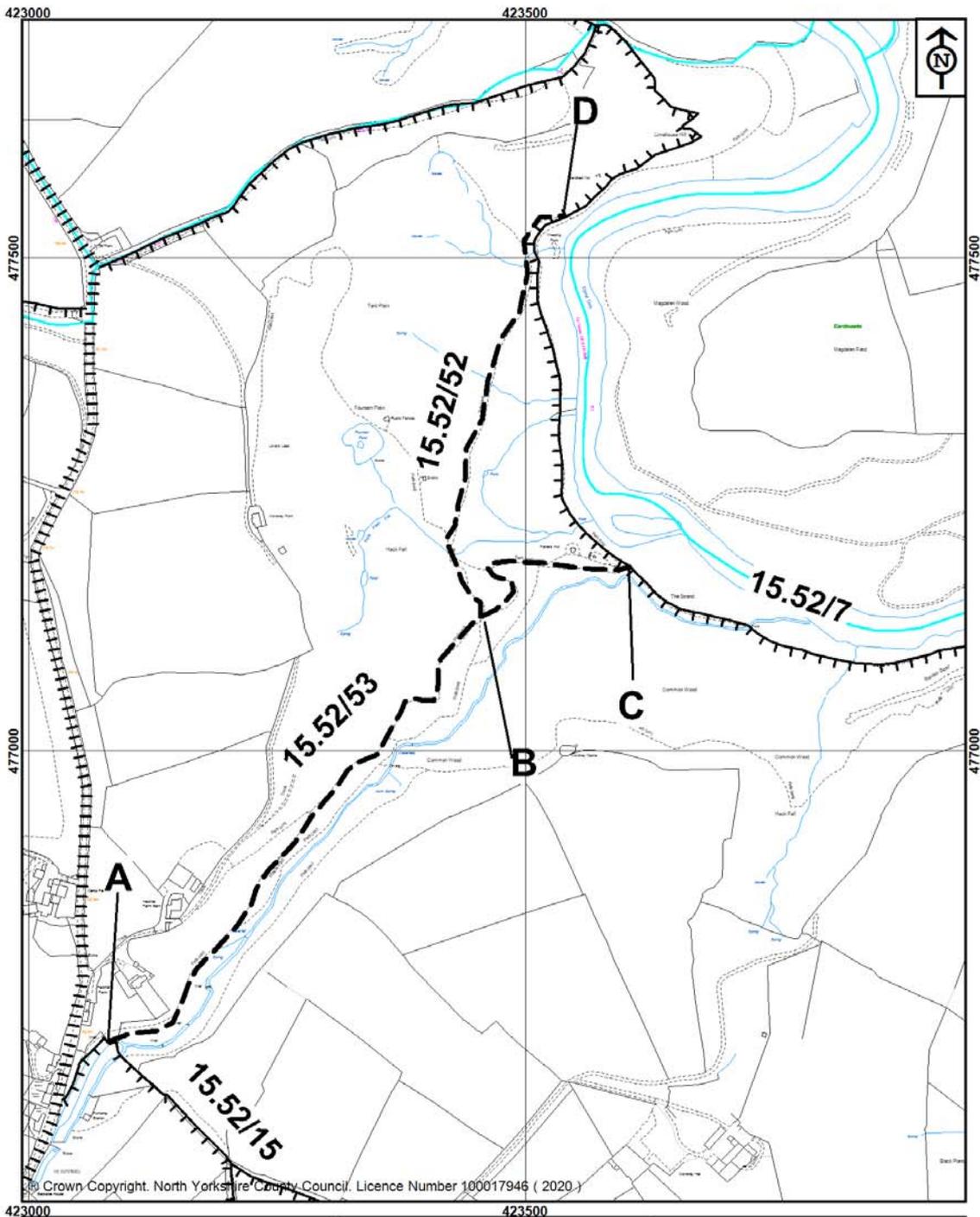
Background papers: HAR/1984/01/DMMO Grewelthorpe (Hackfall Woods)

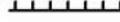
Location Plan



 <p><b>North Yorkshire</b> County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p><b>LOCATION PLAN</b> <b>Hackfall Woods,</b> <b>Grewelthorpe</b></p>		<p><b>North Yorkshire County Council</b></p>
	<p>Map drawn on 25 June 2020</p> <p>Drawn by RWA</p>	<p>Scale 1:40000</p>	<p>File Ref No. HAR/1984/01/DMMO</p>

Order 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>Key:</p> <p>Footpaths to be recorded </p> <p>Other footpaths </p> <p>Maintainable Highways </p>	<p><b>North Yorkshire County Council</b></p> <p>Wildlife and Countryside Act 1981 Section 53 Public Footpaths no.s 15.52/3 &amp; 15.52/2 Grewelthorpe Modification Order 2020</p>
	<p>Map drawn on 19 November 2020</p> <p>Drawn by RWA      Scale 1:5000</p>	<p>File Ref No. HAR/1984/01/DMMO</p>

**North Yorkshire County Council**

**Executive Members**

**23 July 2021**

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to the Definitive Map at Hackfall Woods, Grewelthorpe**

**AUTHORISATION**

I approve / do not approve the recommendation set out above

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ANY ADDITIONAL RECOMMENDATION or COMMENT:

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Karl Battersby  
Corporate Director - BES

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