

North Yorkshire County Council

Executive Members

20 August 2021

Restricted Byway no. 15.113/16 & Footpath no 15.113/12 Roecliffe Modification order 2021

Report of the Assistant Director – Travel, Environmental & 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 Member for Access, to authorise that North Yorkshire County Council (NYCC) in its submission of the opposed Modification Order to the SoS will support confirmation of the Order.

2.0 Background

- 2.1 The application for the DMMO to upgrade an existing public footpath to a Restricted Byway was submitted to the County Council in 2003.
- 2.2 The application was supported by a range of historical documentary evidence and user evidence.
- 2.3 An informal consultation was carried out and objections were received. It was determined that the evidence met the required standard to make an Order. A copy of the decision report is included as Appendix A
- 2.4 The Definitive Map Modification Order (DMMO) was made on 16 February 2020 and was advertised, attracting objections 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 (SoS) 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 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 relate to 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 Modification 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 One landowner has submitted an objection to the sealed order which relates to the suitability of the route for the use intended, questioning the widths in the Order and challenges the user evidence.

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

8.5 The user evidence may be subject to a successful challenge but the historical evidence is sufficiently cogent and compelling to support confirmation of the Order.

9.0 Recommendation

- 9.1 That the Director authorises the Authority to support confirmation of the Order within its submission of the opposed Modification Order to the Secretary of State.

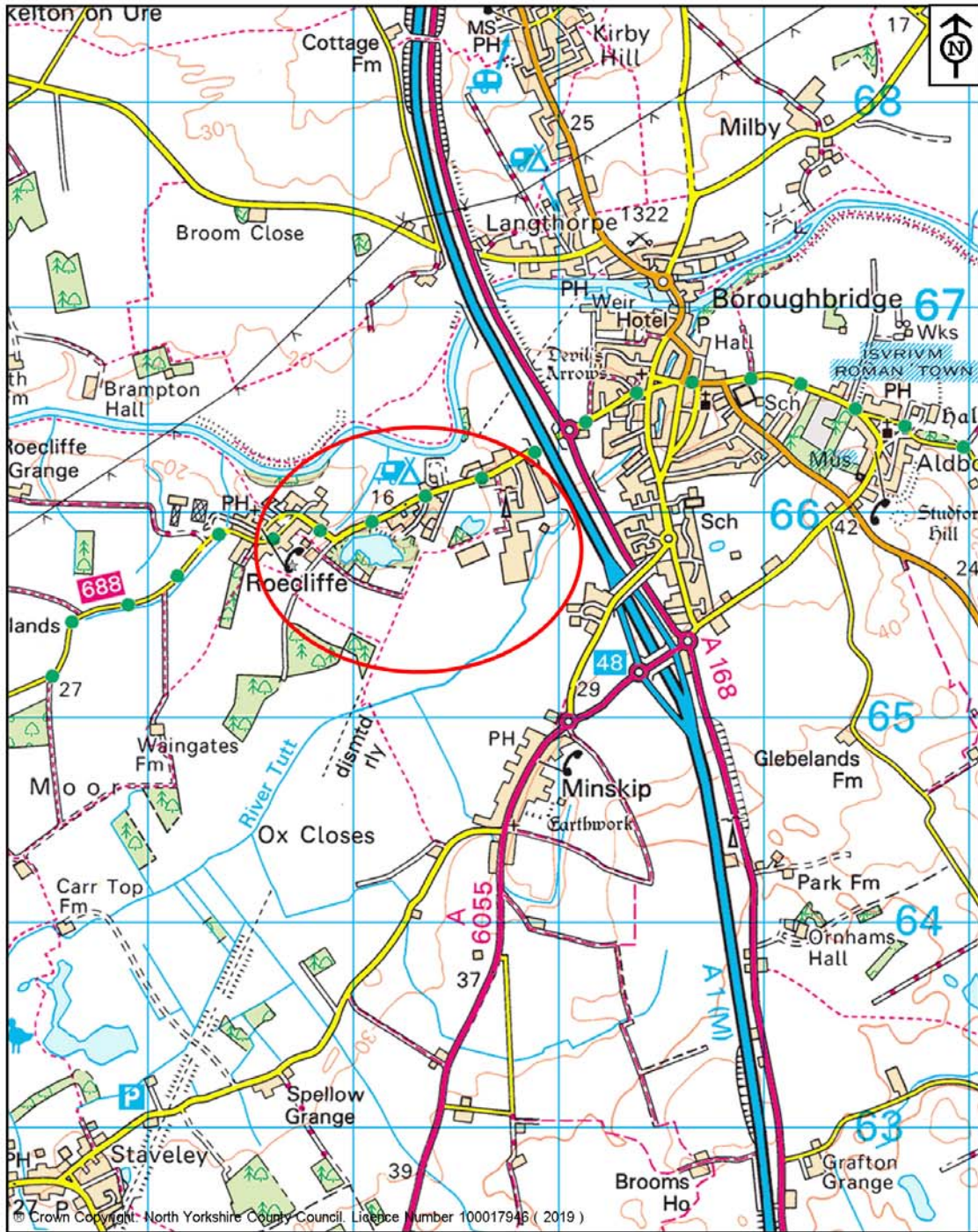
Michael Leah



Assistant Director: Travel, Environmental & Countryside Services

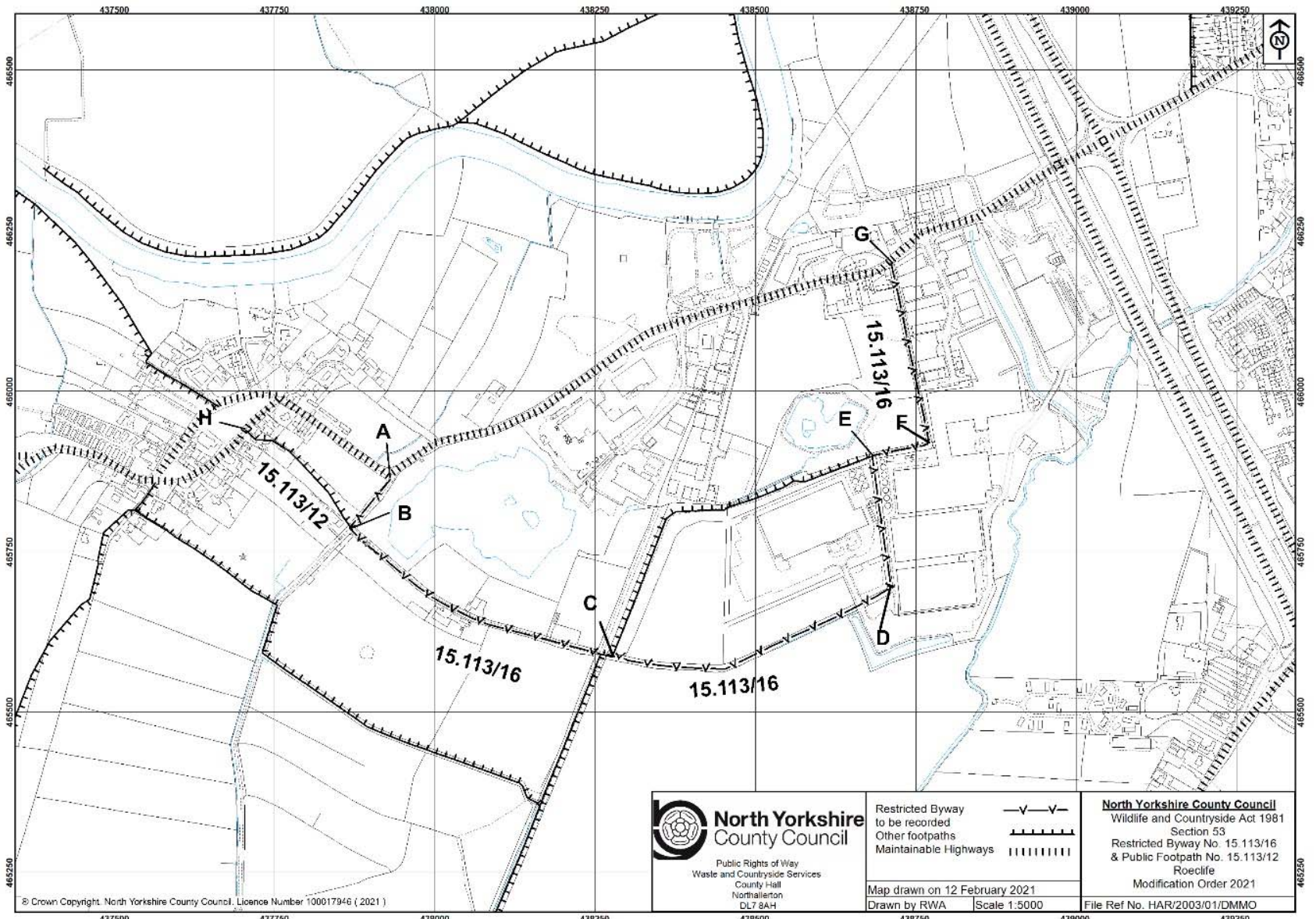
Author of report: Ron Allan

Background papers: File Ref HAR/2003/01/DMMO

Location Plan



 <p>North Yorkshire County Council Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key: Approximate location of route</p> 	<p>North Yorkshire County Council Becklands Lane Location Plan</p>
	<p>Map drawn on 14 November 2019 Drawn by RWA Scale 1:25000</p>	



PLAN 2

NYCC – 20 August 2021- Executive Members
 Restricted Byway no. 15.113/16 & Footpath no 15.113/12 Roecliffe Modification order 2021/5

OFFICIAL

North Yorkshire County Council

Corporate Director - BES

20 August 2021

**Restricted Byway no. 15.113/16 & Footpath no 15.113/12 Roecliffe
Modification order 2021**

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, Environment and Countryside Services

04 May 2021

Application for a Definitive Map Modification Order to upgrade Footpath no. 15.113/12 (part) at Becklands Lane, Roecliffe to a Restricted Byway

1.0 Purpose of the report

- 1.1 To advise the Assistant Director of an opposed application for a Definitive Map Modification Order to upgrade Footpath no. 15.113/12 (part) at Becklands Lane, Roecliffe to a bridleway, and of further evidence that the route may have higher rights. A location plan is attached to this report as Plan 1. The route is shown in detail as A - G on Plan 2.
- 1.2 To request the Assistant Director to authorise the making of a Definitive Map Modification Order to record the Footpath no. 15.113/12 (part) at Becklands Lane, Roecliffe as a restricted byway along the application route, on the basis of the discovery of evidence, during investigation into the application, of existing higher rights than that of bridleway. In addition, to record a section of Thorns Lane as restricted byway on the basis of the same evidence.

2.0 Scheme of delegation

- 2.1 Within the County Council's scheme of delegation, it is delegated to the Assistant Director – Transport, Environment 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:	British Horse Society
Date of application:	17/11/2003
Type of Application	Definitive Map Modification Order
Parish:	Roecliffe
Local Member:	Cllr Robert Windlass (at date of consultation)
Application supported by:	14 Evidence of Use Forms
List of documentary evidence:	1841 Inclosure Award and Map 1844 Hobsons Map 1852 Tithe Map 1852 Map 1940 Map 2 nd War revision 1949 WRCC Parish Schedule Bacons ½ inch Road Map Roecliffe Meadows Map
Applicant's grounds for making the application	To correct alleged error in recording of status.

4.0 Relevant legal criteria

- 4.1 In deciding whether to make a Modification Order to add a route to the Definitive Map, 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 a claimed route.
- 4.2 Where evidence exists which suggests that a route already recorded on the Definitive Map should be shown there but with a different status, the threshold of evidence required is higher, and the test to be met is whether on the “balance of probabilities” a particular status of public right of way subsists along the route in question.
- 4.3 The proposal herein described is to add the section shown A – B on Plan 2 to the Definitive Map as Restricted Byway, and to upgrade the existing footpath (as it was recorded at the time of the application being submitted) and as shown B – C - D – E – F – G on Plan 2 to a restricted byway.
- 4.4 Diversion Order 2012. In 2012 the owners of the land, Reed Bordall, required a diversion of the existing footpath from between points C - D – E to an alignment between points C – H - E to allow for development and security of the Reed Bordall Site.
- 4.5 To facilitate the diversion of the route which was subject of the application for the DMMO, an agreement was reached with Reed Bordall that the Authority would process a Diversion Order for the footpath on the understanding that the landowner was prepared to enter into a conditional Creation Agreement to dedicate rights over C – H – E to match any proven rights over C – D – E, to be implemented only in the event a DMMO was made and was confirmed. As part of the mutual agreement the Authority agreed to attempt to extinguish any rights that became proven to exist over C – D – E.
- 4.6 A conditional Creation Agreement was signed by both Reed Bordall and NYCC to this effect, and is held on the case file. The Diversion Order was unopposed, and was successfully confirmed and completed.
- 4.7 At the conclusion of this process, if the Modification Order is made, and is confirmed without amendment then the Creation Agreement will be implemented, and there will be a restricted byway along the route A-B-C-H-E-F-G.
- 4.8 This would leave a section of restricted byway between points C-D-E which will be attempted to be stopped up by way of an application to the Magistrates Court.
- 4.9 Thorns Lane is not currently recorded with any public status within the County Council’s records. The original application did not include the section of Thorns Lane (formerly known as Junction Road), between Points A – B on Plan 2, as it seems that this was considered to already be highway by the applicant. However, as a result of the research carried out officers believe that there is comparable evidence to indicate highway status along the section A – B, and that this section should also be included in the Order if one is to be made.

5.0 Evidence

- 5.1 As part of the earliest processes towards the production of the Definitive Map Parish Councils were required to record the routes they believed to be public rights of way within their parish onto maps and within written schedules.

Evidence item	Summary	Assessment
1841 Inclosure Map and award	Describes Becklands Lane, Bowlands Lane and Junction Road (now called Thorns Lane) as 'private carriage and occupation ways' which were to be maintained by the people of Roecliffe.	This route is described as to be maintained in effect at public expense therefore must be considered to be public highways. Routes laid out as bridleroads are referred to as such therefore this is good evidence that Becklands Lane, Bowlands Lane and Junction Road were of a higher status than bridleway.
1844 Hobsons Map	Commercially available map which shows the application route	This is a very small scale map, and the fact that the application route is shown is good evidence that the route was of a relatively substantial nature at that time.
1852 Tithe Map and Schedule	Both Becklands Lane and Junction Road allocated number 160 which is described as a "road in the new enclosure" in the Tithe Award 1852	It is unlikely that a bridleway would have been described in the Tithe Award as a road, therefore, read in conjunction with the Inclosure Award of just 11 years earlier this is supportive evidence of public highway of a higher status than a bridleway.
1846 Railway Deposited Plans	Indicates a section of the route as a 'Public Highway', the term also used to describe the main road through the village to Ripon.	The terminology within the schedule makes no distinction between the status of the main village street and the application route, providing good evidence that the application route was of the same status as the village street, being a public vehicular thoroughfare.
1940 Map 2 nd war revision	Shows the application route but no key or title.	Open to interpretation, but is supportive that the route had a substantial physical appearance at the time of the survey for the preparation of the map.
Parish Schedule 1949	The Parish Schedules were part of the first stage of the preparation of Definitive Maps. Within the Schedule the route is described as a "Private carriageway used by the public when Bar Lane becomes flooded".	This is good evidence that by 1949/50 the route was still physically passable in a vehicle and that the public still made occasional use of the route by vehicle. The Parish Council acknowledge the Inclosure Award and record the status of

		the route as shown in the Inclosure Award.
Draft Statement 1953	Shows that by this stage in the process the description of the majority of the route had been amended to read 'bridle road and footpath' (the footpath section is not part of application route). The British Transport Commission objected to the route being shown at all as a public route, but by 1955 BTC admitted existence of footpath rights, and BTC and the PC agreed the route to be recorded as FP within the next stage of the process.	The PC had initially correctly recorded the status of the route but for practical reasons, agreed to bridleway and then when pressed, agreed to the route being recorded as FP. Whilst the agreed status may have been more desirable to the BTC the existing status, initially recorded and acknowledged by the PC, should not have been disregarded.
Roecliffe Meadows Map	Commercially available base map which shows the application route	Provides no evidence towards the status of the application route.
Bacons ½ inch Road Map	Commercially available map which shows the application route	Indicates that the route was of a substantial nature to be shown at such a small scale.
Evidence of Use	11 Qualifying user evidence forms indicating use by horse during the relevant 20 year period (the application date being taken as the date of challenge) and dating as far back as 1959.	Adds evidential weight to the application, and demonstrates the public use of the route on horseback prior to 2003, the date of the application.
Details of any evidence which counters the application evidence		
Old correspondence	Correspondence dated 1953-55 held in Parish File detailing status of route at time the Definitive Map was being prepared. Although the route was initially referred to as a 'private carriageway' by the PC, the recording was later amended to footpath following an objection from British Transport Commission, and was accepted by Parish Council.	Indicates that the British Transport Commission did not want the route crossing the railway at all but later accepted pedestrian rights. The Parish Council accepted this status for practical reasons despite being aware of the content of the Inclosure Award, but also noting that the locals had not specifically identified the route was being used by horses at that time. This explains why the route was recorded on the definitive map as a public footpath only, but also demonstrated disregard of the historic evidence.

6.0 Objections to the application

- 6.1 Two objections were received in response to the informal consultation on the proposal to add a bridleway along the short section of Thorns Lane and Becklands Lane.
- 6.2 Landowner 1, states that Thorns Lane is gated with the gates being locked each night and therefore disputes that Thorns Lane has acquired Highway status.
- 6.3 Landowner 2 states that Thorns Lane cannot have acquired highway status because a gate across the track is locked on a nightly basis for security.

7.0 Conclusions regarding the evidence and objections to the application

- 7.1 The overall weight of the historical evidence combined with the user evidence can be considered to present a strong case that the application route and Thorns Lane should be recorded as a restricted byway.
- 7.2 The inclusion of the route in the Inclosure Award and described as a private carriageway and occupation way, and within the Railway Deposited Plans as a 'highway' is clear evidence of a highway status above that of footpath.
- 7.3 The objection based on the presence of a barrier on Thorns Lane can only be considered in the relation to the modern user evidence. Three users state that they passed through a gap at the side of the barrier on horseback which indicates that the barrier cannot be considered to be an effective challenge or obstruction to use of the route by horse riders. This cannot therefore be considered to be an effective rebuttal of the user evidence along Thorns Lane.
- 7.4 The objections have no effect on the evidential weight of the historical evidence which in itself is sufficient to demonstrate that on the balance of probabilities that the application route was, and therefore still is, a highway with a status greater than footpath status, but where there is no convincing evidence of vehicular rights.
- 7.5 Whilst the level of evidence required for the majority of the application route needs to meet the test whether 'on the balance of probability' public restricted byway rights exist, the level of evidence supporting the section of Thorns Lane, needs only to meet the criteria that the route is 'reasonably alleged' to exist', as this section of route has no recorded status at the moment.
- 7.6 Officers are satisfied that the relevant tests have been met respectively.

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.

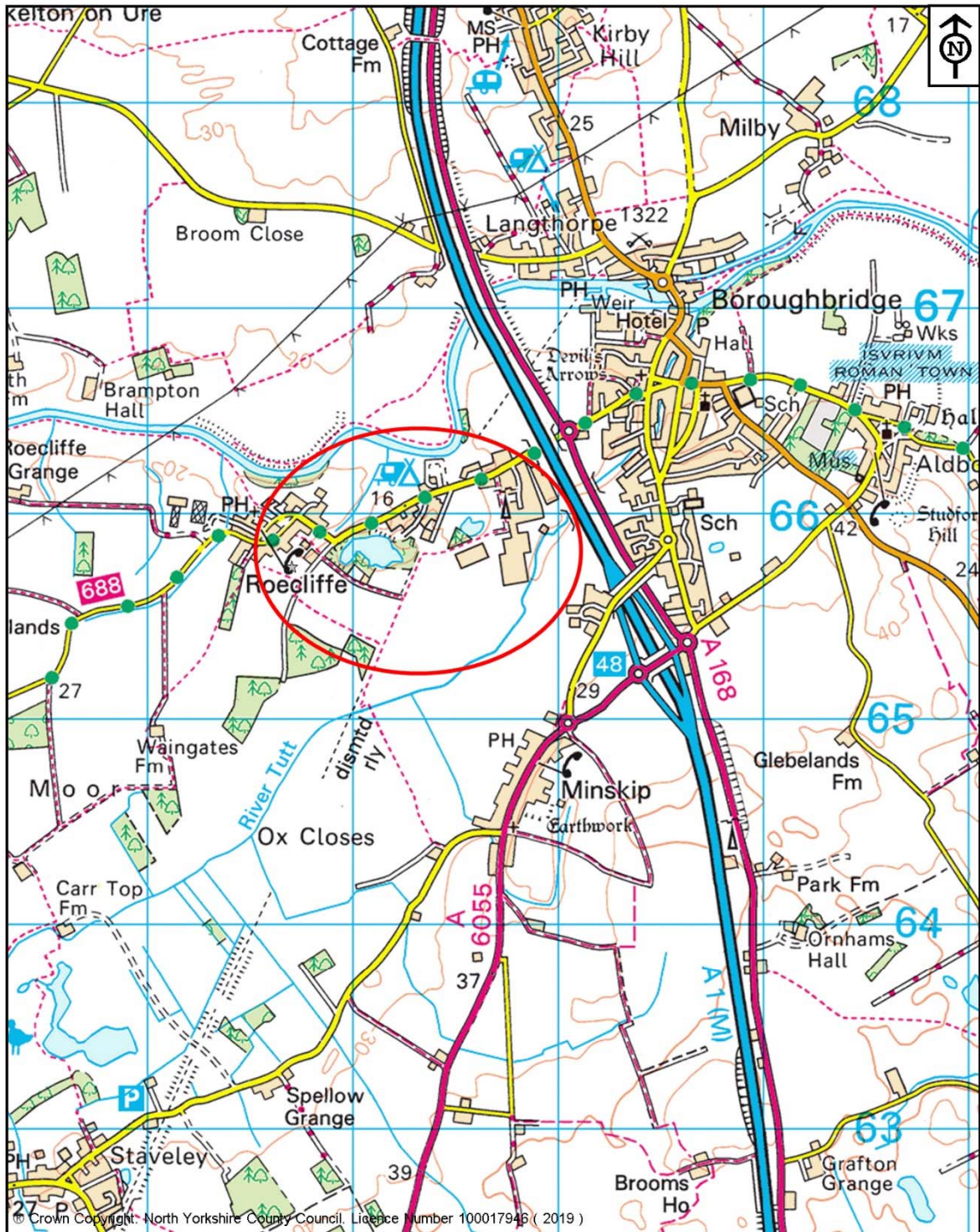
11.0 Recommendation



- 11.1 It is therefore recommended that: the Assistant Director, Transport, Environment and Countryside Services, authorises the making of a Definitive Map Modification Order for the route shown as A B-C-D-E-F-G on Plan 2 of this report to be recorded on the Definitive Map as a Restricted Byway. Further, that in the event that the Order is made and is confirmed also authorises that an application to the Magistrates' Court is made to extinguish the newly proven public rights between points C – D – E.

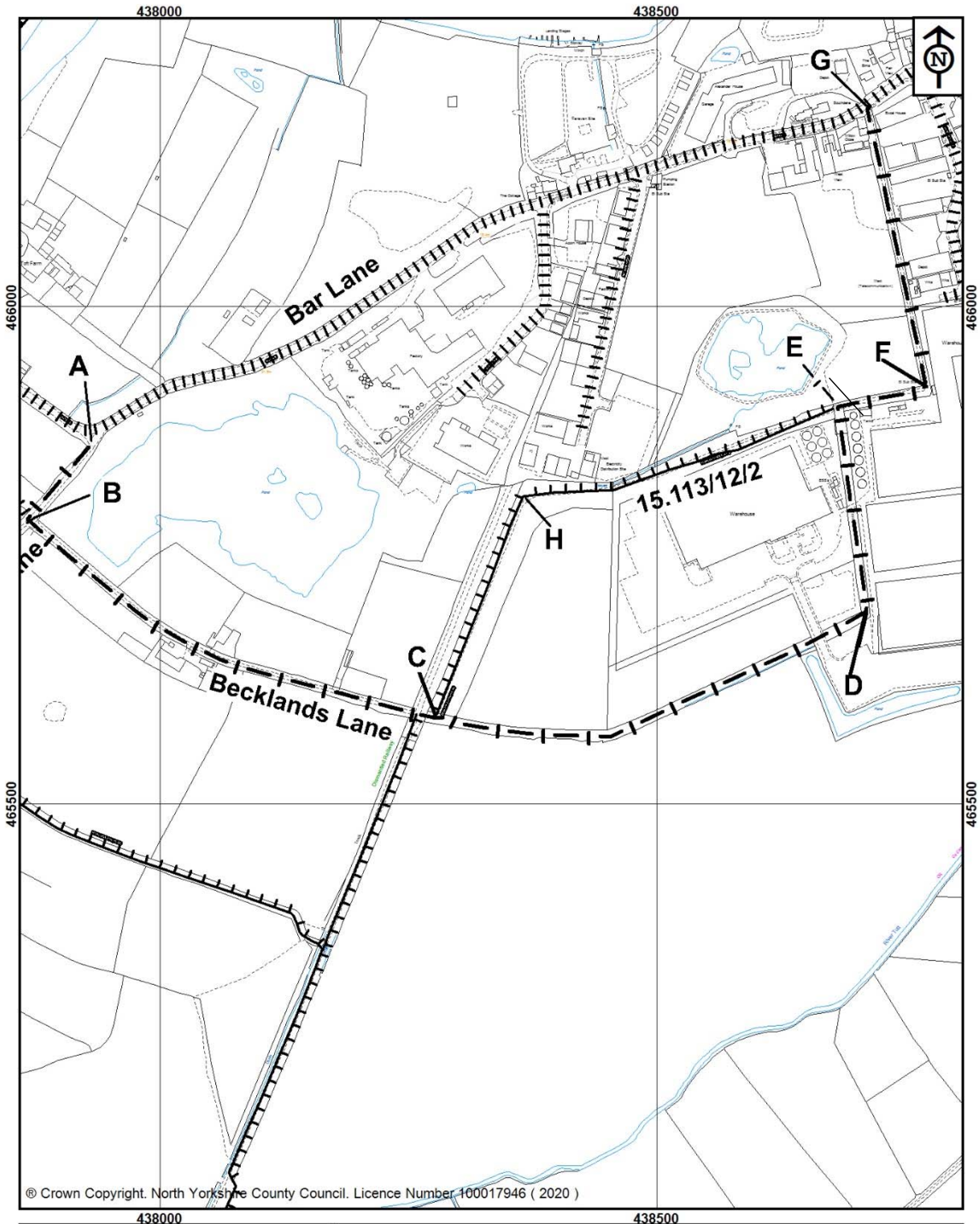
Author of Report: Ron Allan

Background Documents:





DMMO Case file - HAR-2003-01-DMMO Roecliffe (Becklands Ln)



 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key: Approximate location of route</p> 	<p>North Yorkshire County Council</p> <p>Becklands Lane Location Plan</p>
	<p>Map drawn on 14 November 2019 Drawn by RWA Scale 1:25000</p>	



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 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p> <p>Claimed Bridleway </p> <p>Other footpaths </p> <p>Maintainable Highways </p>	<p>North Yorkshire County Council</p> <p>Wildlife and Countryside Act 1981 Section 53</p> <p>Claimed Public Bridleway Becklands Lane Roecliffe.</p>
	<p>Map drawn on 16 January 2020</p> <p>Drawn by RWA</p>	<p>Scale 1:5000</p>