

# North Yorkshire County Council

## Executive Members

22 October 2021

### Opposed Definitive Map Modification Order: Restricted Byways 14 (South Ings Lane) & 207 (Back Lane) Appleton Le Moors Definitive Map Modification Order 2014

#### 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) 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 Order to the SoS **will support confirmation of the Order.**

#### 2.0 Background

- 2.1 Two applications were submitted to North York Moors National Park Authority (NYMNP) by Ryedale Bridleway Group in respect of two routes in Appleton le Moors, to be recorded as public bridleways. South Ings Lane is currently recorded on the Definitive Map as a public footpath whilst Back Lane is not recorded. The routes subject of the 2 applications are shown on Plan 2 attached to this report.
- 2.2 The application was supported by 17 user evidence forms in respect of the use of South Ings Lane, and 20 user evidence forms in respect of the use of Back Lane.
- 2.3 The evidence was supportive of use by the public at large; and that use had been continuous throughout the relevant time-period (20 years preceding the erection of a DEFRA Countryside Walks Notice in 2003/4)
- 2.4 Following the pre-order consultation and consideration of further evidence, it appeared that on the balance of probabilities, public vehicular rights existed over both routes before being suspended by the NERC Act in 2006 and that both ways should therefore be recorded on the Definitive Map as restricted byways.
- 2.5 Attached to this report as Appendix 1 is a copy of the report submitted to the NYMNP Access and Rights of Way Panel dated 7 January 2014 in which the case for making a Definitive Map Modification Order to record restricted byways was outlined. The Panel approved the making of a DMMO.
- 2.6 The Order was made by the NYMNP in February 2014 and subsequently advertised, attracting representations from 4 people, one of which is clearly an objection and 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 Responses to the sealed order

- 3.1 Of the 4 responses made to the making of the order 3 people responded concerned that the proposed recording of the routes as restricted byways would affect their existing access to their land from the lanes with motor vehicles and machinery. The

correspondents were assured by the NYMNPA that if the routes were recorded as restricted byways that there would be no effect on any private rights of access they may already have, with vehicles.

3.2 The fourth response was a clear objection to the Order from one household in the village. Their comments are that:

- The proposal to ban motor bikes and motorised vehicles is a waste of money,
- The few motor bikers using the route are very courteous to walkers and riders,
- The motorised vehicles are usually owned by landowners accessing their land,
- Horse riders damage the verges, causing mud to wash onto the track, and making them uneven to walk on,
- Overuse by horse riders are making it almost untenable for walkers,
- These byways have been used for very many years by anyone and everyone and this should not now be changed purely to suit the equestrian fraternity who cause more damage to the byways than anyone else.

3.3 The response that clearly objects to the Order suggests grievance that motor bike and motor vehicle rights of access will be taken away by the Order, however public motor vehicle rights were extinguished by the NERC Act 2006. As it seems unlikely that the exceptions within the Act apply, the highest public status that these routes can now be, are as restricted byways.

3.4 No evidence was put forward by any of the 4 correspondents to suggest that restricted byway rights do not exist

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

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

#### **5.0 Equalities**

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 Finance**

6.1 As the evidence submitted consists mainly of user evidence, it is probable that the Order would be resolved by public inquiry.

6.2 There would be unavoidable costs to the Authority in preparing a submission to SoS and holding an Inquiry. These costs would relate to officer time which would be met by the respective staffing budgets

#### **7.0 Legal**

7.1 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 a public enquiry.

7.2 The Inspector, on the basis of the evidence and legal criteria will decide whether or not to confirm the opposed Modification Order. If the Inspector 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.

## **8.0 Climate change**

8.1 The proposal is to alter the status of a route already recorded as a public right of way and to record a right of way along an unrecorded route. The confirmation of this Order would have no positive or negative impact on climate change.

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

9.1 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.

9.2 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.

9.3 From all the available evidence, there is sufficient evidence of use and documentary evidence to support confirmation of the Order.

9.4 The objectors have not provided any evidence that would successfully challenge the Order. The objectors seem to be more concerned about a perceived loss of private rights of access with motor vehicles by the landowners, than a belief that restricted byway rights do not exist. Several objectors use the route(s) to access their property and have queried the effect the Order would have on their vehicular access to property, but as the Order relates to public rights, any private rights of access to property would remain unaffected.

## **10.0 Conclusion**

10.1 Overall, it currently appears that there is sufficient documentary evidence to suggest that the routes were historically public carriageways but that any public motor vehicle rights have been extinguished, and public use of the routes by horse riders is additional evidence suggestive of at least bridleway status of the routes. To conclude it seems that on the balance of probabilities these routes should be recorded as restricted byways on the Definitive Map, and therefore of the options outlined in 9.1, that in this instance, the Order should be confirmed.

## **11.0 Recommendation**

11.1 The application is supported by documentary evidence and additional user evidence which has not been countered by evidence from the objectors provided to date, and which indicates that on the balance of probabilities restricted byway rights exist.



11.2 It is recommended that the Authority support confirmation of the Order.

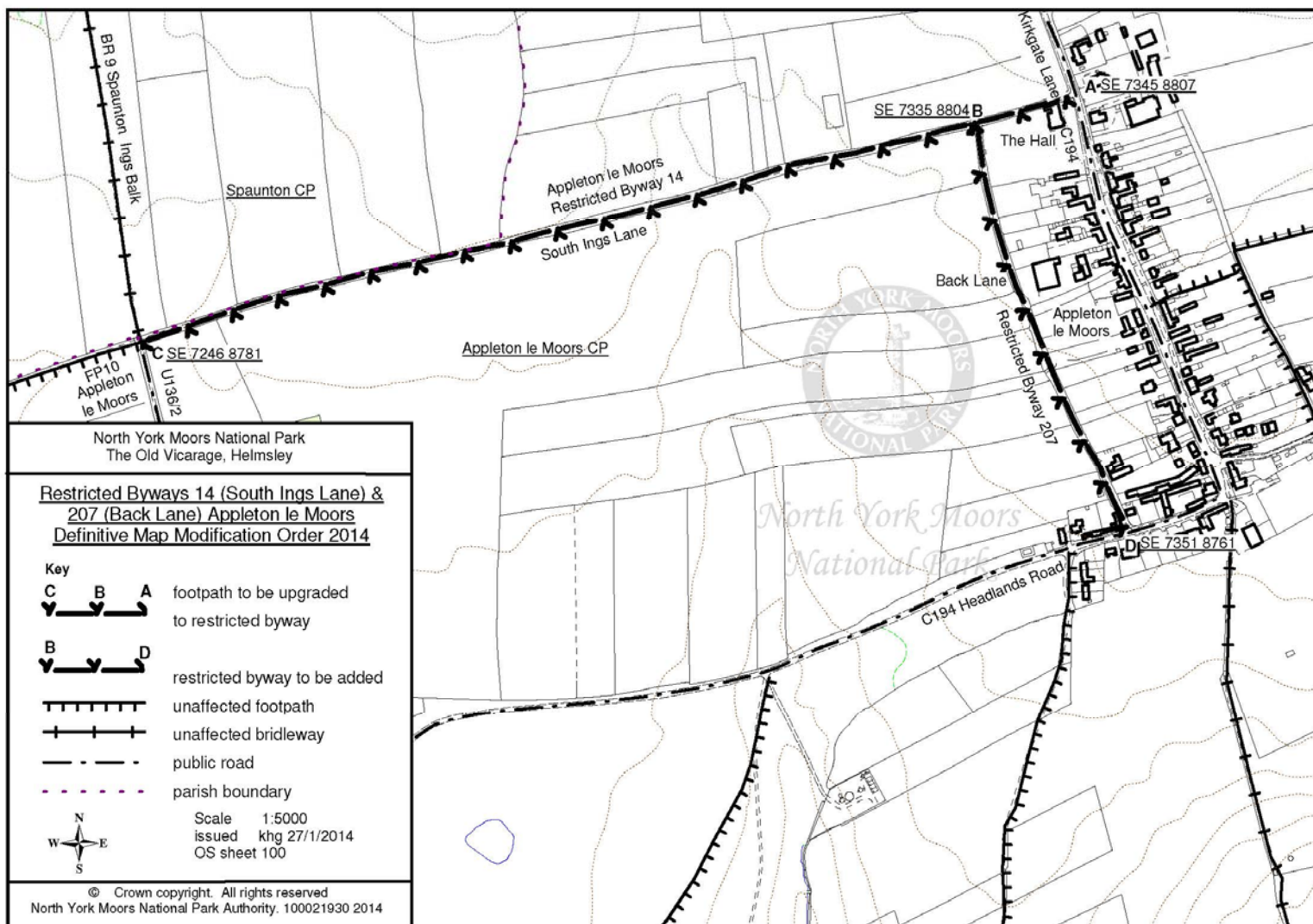
MICHAEL LEAH  
Assistant Director - Travel, Environment and Countryside Services

Author of report: Andrew Hunter

Background Documents: File Ref NYM/2014/03/DMMO



 <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: Approximate location of routes</p>  <p>Map drawn on 23 September 2021 Drawn by AWH Scale 1:50000</p>	<p><b>North Yorkshire County Council</b></p> <p>Location Plan Appletton le Moors</p> <p>File Ref RYE/2014/03/DMMO</p>
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**North Yorkshire County Council**

**Corporate Director - BES**

**22 October 2021**

**Opposed Definitive Map Modification Order:  
Restricted Byways 14 (South Ings Lane) & 207 (Back Lane) Appleton Le Moors  
Definitive Map Modification Order 2014**

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

**AUTHORISATION**

I approve / do not approve the recommendation set out above

.....

ANY ADDITIONAL RECOMMENDATION or COMMENT:

.....

.....

Karl Battersby  
Corporate Director - BES

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

## North York Moors National Park Authority

Item 5

## Access and Rights of Way Panel

7 January 2014

Proposed Definitive Map Modification Orders - Back Lane and South Ings Lane,  
Appleton le Moors

## 1. Purpose of the Report

- 1.1 To set out the circumstances relating to proposed Definitive Map Modification Orders (DMMOs) in respect of two claimed public bridleways, in light of objections having been received.
- 1.2 To seek Members' refusal of the applications for bridleways.
- 1.3 To seek Members' approval to:
  - 1. make a DMMO to upgrade Appleton le Moors Footpath 14 (South Ings Lane) to Restricted Byway and add Back Lane as Restricted Byway and
  - 2. to submit the matter to the Secretary of State for determination if objections are received or remain un-withdrawn.

## 2. Legal Introduction

- 2.1 The National Park Officer has delegated responsibility to authorise the making of a definitive map modification order under section 53(3)(c) of the Wildlife and Countryside Act 1981 unless a statutory consultee objects to the proposal.
- 2.2 In this case, the relevant test under S53 (c) that the Access and Rights of Way Panel needs to consider is:
  - (i) *"that a public right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates"*
- 2.3 If an order is made and any remaining objections are not withdrawn, the matter would probably be resolved by a public inquiry at which an inspector must weigh up whether on the balance of probabilities restricted byways subsists over the claimed routes.
- 2.4 A comprehensive explanation of the Authority's duties as "Surveying Authority" and of the legislative context appears in the consultant's report: "Consideration of the Status of South Ings Lane and Back Lane in the parish of Appleton le Moors" **Appendix 1** sections 2 and 3 respectively.

## 3. Background

- 3.1 Applications dated 1 October 2012 have been received from Ryedale Bridleway Group in respect of two routes in Appleton le Moors to be recorded as public bridleways as shown on the plans in the **Evidence Bundle Tab 1**. South Ings Lane is currently recorded on the definitive map as public footpath whilst Back Lane is not recorded at all.

**North York Moors National Park Authority**

- 3.2 The applications were made in accordance with the required procedures, landowners and tenants were notified and certificate of service of this notice has been received by the NPA. No documentary evidence was submitted with the applications, but considerable user evidence was provided in support.
- 3.3 South Ings Lane runs west from C194 Main Street Appleton le Moors (Point A, Plan 1 **Tab 1**) between enclosed fields to Ings Balk where it meets an un-metalled road U 136/2; a Bridleway, number 9 Spaunton and a footpath, No. 10 Appleton le Moors. Photographs taken on 18 April 2012 appear in **Tab2**
- 3.3 Back Lane runs south from South Ings Lane (Point B Plan 2 **Tab 1**) behind all the properties on the western side of Main Street to the tarmac surfaced C194 Headlands Road near the south-western corner of the village (Point D). The width varies from 5 to 9 metres between boundaries through which private access is available through hand or field gates. Photographs taken on 18 April 2012 appear in **Tab3**
- 3.4 A selection of photographs of both routes will be presented at the meeting.

**4. Ownership**

- 4.1 Despite extensive research, it has not been possible to confirm ownership of the land crossed by either route. An Open Land Registry Search conducted in May 2012 **Tab 8** revealed no records in respect of the property. A deposit made by Spaunton Estate in 1996 under Highways Act 1980 section 31(6) for the purpose of showing an intention not to dedicate public rights of way shows both routes to lie beyond the extent of the Estate's land holding. Direct contact was therefore made by letter dated 4 January 2013 with all frontagers and with Spaunton Estate which, despite the declaration referred to above, may retain remnant manorial rights.
- 4.2 It is likely that all frontagers have the benefit of vehicle access to their property, but this private right is not inconsistent with public rights of way co-existing along both ways.

**5. Initial Investigations**

- 5.1 Site inspections by the Head of Recreation and Access Officer in April and May 2012 confirmed the ways to have the appearance of public rights of way, connecting with other highways and running between long established enclosures; neither had any gates or stiles restricting access in any way. South Ings Lane, had a wooden public footpath sign at each end, where there was also a defra Conservation Walks Notice **Tab7**. This identified several permissive bridleways in the area, including South Ings Lane and Back Lane under the terms of a Countryside Stewardship Scheme and stated. "Existing rights of way are unaffected." "Access ends in September 2012".

**6. Consultations**

- 6.1 Informal consultation to obtain the views of statutory consultees and other interested parties began on 2 January 2013 July 2012 with the letters and plans at **Tab 14.1-4**

**7. Observations of Consultees**

- 7.1 No objections were received from statutory undertakers, Natural England North Yorkshire County Council or Appleton le Moors Parish Meeting. No reply was received from the Cyclists' Touring Club, Ryedale District Council, the Open Spaces Society or Ryedale Walkers are Welcome Group.



## North York Moors National Park Authority

- 7.2 The Ramblers', **Tab 14.5** raised concern at the increased risk of surface damage to the existing footpath if it were to be used by horses and commented that they would have expected more evidence regarding Back Lane
- 7.3 Byways and Bridleways Trust **Tab 14.6** supported the proposed Bridleway orders, but questioned whether Restricted Byway would be the more appropriate status.
- 7.4 Mrs C Cook for the British Horse Society objected **Tab 14.7**, saying the ways should be recorded as restricted byways and subsequently provided documentary in support of this hypothesis: Documents already considered in the Consultant's Report appear at **Tab 9**, the remainder, were supplied later by Mrs Cook and appear in chronological order at **Tab 15**.
- 7.5 For South Ings Lane, two landowning frontagers replied in support of upgrading of the footpath to bridleway because that is how they have known the way to be used.
- 7.6 For Back Lane, three frontagers replied seeking clarification of the continuance of their private vehicle access rights. One supported bridleway status whilst two others suggested Restricted Byway status would be preferable – one saying that this would protect the pre-existing access rights of occupiers which were protected by the 2006 Natural Environment and Rural Communities Act.

### 8. Comment and response

- 8.1 Brief assessment of the user evidence submitted by the applicant in support of both claims indicated there to have been sufficient for public bridleways to have arisen through presumed dedication.
- 8.2 The NPA has a duty to thoroughly investigate all rights of way claims, and so a contractor was appointed to carry out research into documentary evidence in order for a fair assessment of all available evidence to be made before deciding whether or not to make the Bridleway Orders applied for. His Report, **Appendix 1** included the Evidence Bundle Tabs 1 – 13 only. Tabs 14 on have been added after receipt of his Report.

### 9.0 User Evidence

- 9.1 This is contained in **Tabs 5 and 6**; explained and summarised in the Contractor's Report **Appendix 1**. It concludes at 6.4 that there is a reasonable amount of user evidence in support of both lanes; the evidence is supportive of use by the public at large; and, at 6.6, that use has been continuous throughout the relevant time period (20 years preceding the erection of the defra Countryside Walks Notice in 2003/4)

### 10. Documentary Evidence

- 10.1 The Contractor's Report Introduces numerous items of documentary evidence at 4.7 – 4.15 **Tabs 9-13** and at section 7 considers the value of each in determining the status of South Ings Lane and Back Lane.
- 10.2 The NPA needs to consider all the available evidence in reaching a conclusion, so in addition to the documents considered in the Contractor's Report, attention needs to be given to the documents provided by the objector, Mrs Cook at **Tab 15**. Mrs Cook has provided a brief summary of the relevance of her documents to the claimed routes at **Tab 14.7 a** and **b**. Of particular interest is Bacon's half inch road map at

## North York Moors National Park Authority

**Tab 15.6** which depicts South Ings Road as a “best cycling road”. These documents support the Contractor’s view that both ways were public carriageways.

- 10.3 Additional documents appearing at **Tab 16**. Have been discovered by the Authority and these are summarised below:
- 10.4 1818 Tuke’s Map has the Main Street through Appleton, but does not show either of the claimed ways.
- 10.5 1929/32 Highways County Roads map. Neither way is shown as an adopted highway but other roads in Appleton are recorded as currently appear on the list of Streets. This is evidence of the way not having been considered at the time to be a public vehicular highway.
- 10.6 1948 Batholomew’s Map shows both routes as “other roads and tracks” though much of South Ings Lane is obscured by the village name.
- 10.7 1954 OS National Grid Plan SE78 denotes Roads, subdivided by Ministry of Transport Class I and Class II and Other roads (not classified by the Ministry of Transport) then Footpaths. No bridleways appear on this map at all. The claimed routes are shown as “other roads; poor or unmetalled” the same as ways currently on the list of streets and others which are private. This gives a good indication of the physical existence of the route, without offering much indication of its status.

### 11. **Comment**

- 11.1 The additional evidence shows the physical existence of both routes consistently in almost all documents. Of particular interest is the OS Object Names Book describing Back Lane as a District Road in 1910, but 20 years later the Handover Map of Highways going to the North Riding Council from the Rural District Council omits both routes.

### 12. **Action to Negate a Right of Way Arising**

- 12.1 Enquiries have revealed that no deposit under section 31(6) of the Highways Act has been made for any of the land crossed by the claimed bridleway. No private signs have been erected, no gates appear to have been placed across the way and no evidence has come forward of anybody having been stopped from using the way.
- 12.2 The defra Conservation Walks Notice referred to in 5.1 above could be taken to be a challenge to the public wishing to use South Ings Lane and Back Lane on horse-back or pedal cycle, but this carries little weight, as it is without prejudice to existing rights of way and in any event it is doubtful whether there is actually a landowner with the capacity to challenge public use of the ways.

### 13 **Conclusion**

- 12.3 The Contractor’s Report concludes at 6.10 that the prima facie case in support of the establishment of bridleway rights based on the user evidence should stand.
- 13.1 Weighing all the additional documentary evidence it still appears as though the conclusion in the Contractor’s Report at 8.0 holds true – that on the balance of probabilities public vehicle rights existed over both routes before being suspended by the NERC Act in 2006 and that both ways should therefore be recorded on the Definitive Map as Restricted Byways.

**North York Moors National Park Authority**

**14. Financial and Staffing Implications**

- 14.1 The likely cost of making, confirming and advertising both Orders is in the region of £1500, plus a further £1,000 if the orders are opposed and need to be sent to the Secretary of State for confirmation. This is available from existing budgets. There are no staffing implications.

**15. Contribution to National Park Management Plan**

- 15.1 Policy U3: The public will be able to enjoy the National Park using the rights of way network - achieved through the Delegation Agreement with NYCC and with reference to the Rights of Way improvement Plan.
- 15.2 Policy E1: The landscape character of the National Park will be maintained by greater protection being afforded to Back Lane.
- 15.3 Policy C3: Community involvement with the project comes from the application and user evidence submitted by Ryedale Bridleway Group and consultation with all frontagers.

**16. Legal Implications**

- 16.1 The NPA has a duty to determine DMMO applications within 12 months of receipt. This time period has already expired and so it would be prudent to avoid further unnecessary delay in determination.

**17. Recommendation**

- 7.1 That Members refuse the applications for bridleways.
- 17.2 That Members give authorisation to:
1. make a DMMO to upgrade Appleton le Moors Footpath 14 (South Ings Lane) to Restricted Byway and add Back Lane as Restricted Byway and
  2. submit the matter to the Secretary of State for determination if objections are received or remain un-withdrawn.

Contact Officer

Karl Gerhardsen Head of Recreation and Access

Tel No 01439 772700

**Background papers to this Report**

**File ref**

- |  |                   |
|--|-------------------|
| 1. Application of 1 October 2012 re Back Lane                      | 5050/5/02/MOD 207 |
| 2. Certificate of serving notice 1 October 2012 re Back Lane       | "                 |
| 3. Application of 1 October 2012 re South Ings Lane                | 5050/5/02/MOD 14  |
| 4. Certificate of serving notice 1 October 2012 re South Ings Lane | "                 |
| 5. Letter of 4 December 1996 re Section 31 (6) deposit             | 5050/5/02/MOD 207 |
| 6. Letter of 11 Feb 2013 seeking Restricted Byway                  | "                 |
| 7. E-mail of 15 Feb 2013 suggesting Restricted Byway               | "                 |

**North York Moors National Park  
The Old Vicarage, Helmsley**

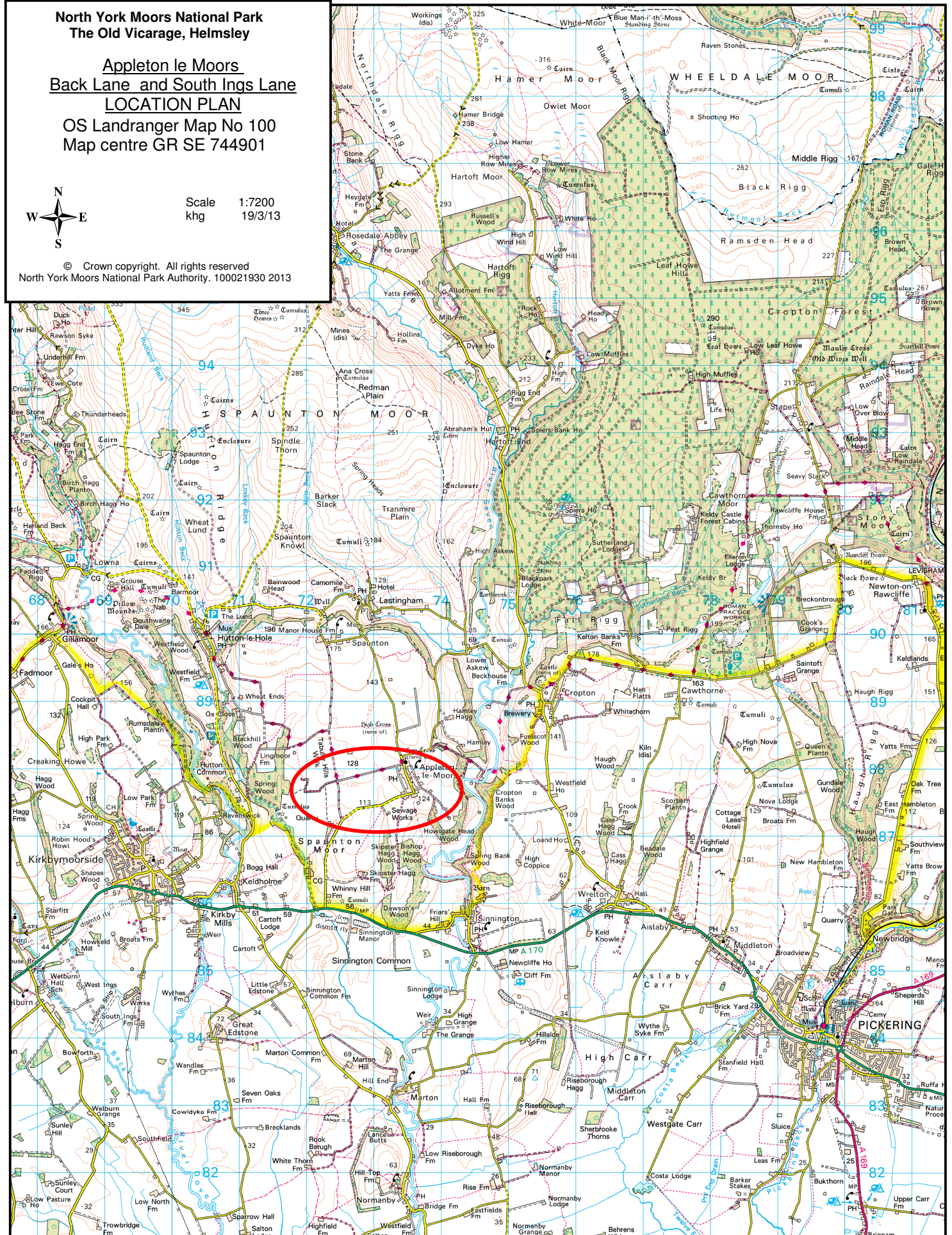
Appleton le Moors  
Back Lane and South Ings Lane  
LOCATION PLAN

OS Landranger Map No 100  
Map centre GR SE 744901







Scale 1:7200  
kgg 19/3/13

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**Proposed Bridleway 207 Appleton le Moors  
(Back Lane West)**  
**Definitive Map Modification Order 2013**

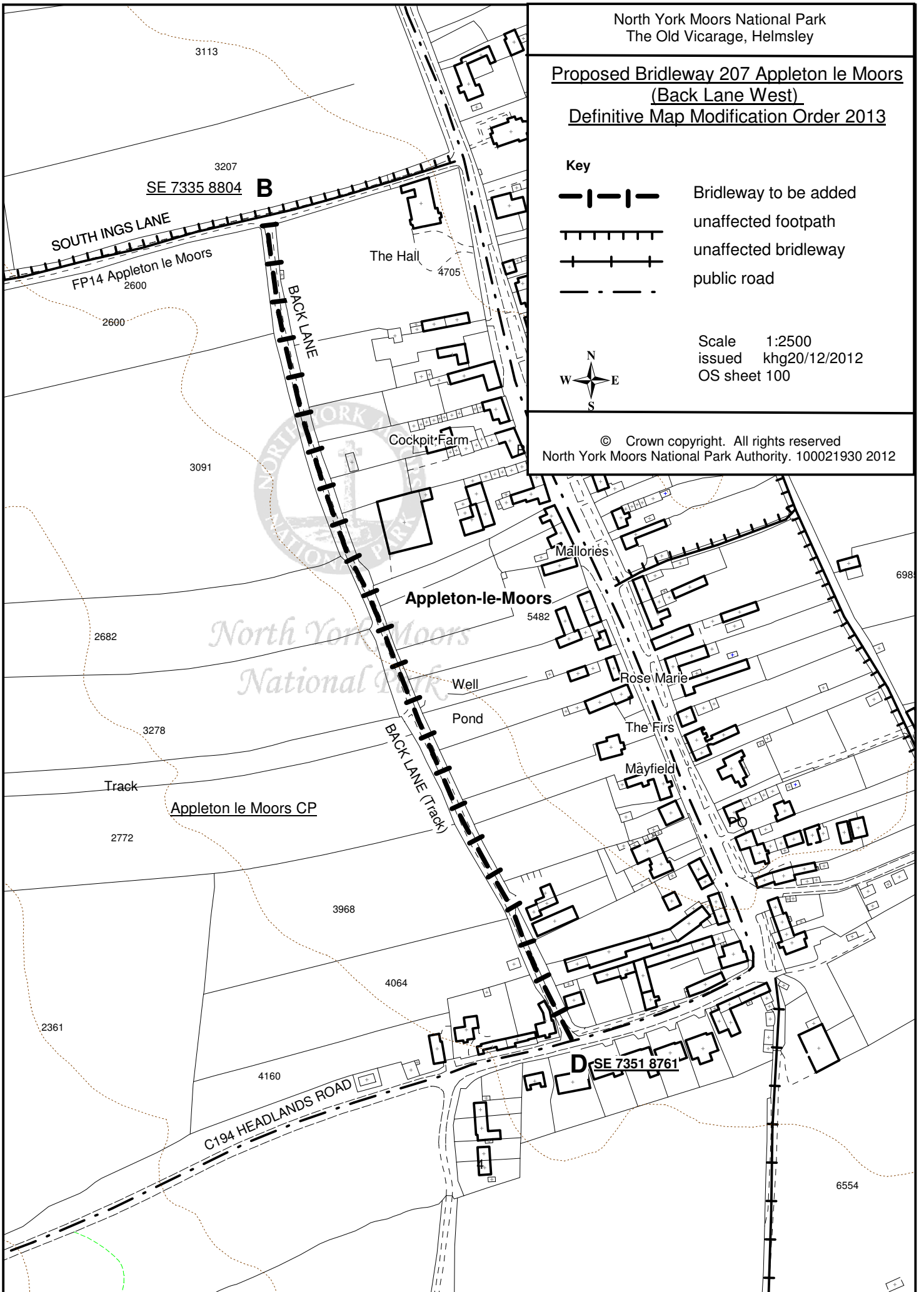
**Key**

-  Bridleway to be added
-  unaffected footpath
-  unaffected bridleway
-  public road



Scale 1:2500  
issued khg20/12/2012  
OS sheet 100



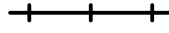
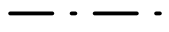

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North York Moors National Park  
The Old Vicarage, Helmsley

Proposed Bridleway 14 Appleton le Moors  
(South Ings Lane)  
Definitive Map Modification Order 2013

**Key**

-  footpath 14 to be upgraded to bridleway
-  unaffected footpath
-  unaffected bridleway
-  public road
-  parish boundary

Scale 1:5000  
issued khg20/12/2012  
OS sheet 100



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