

## **Annex 1**

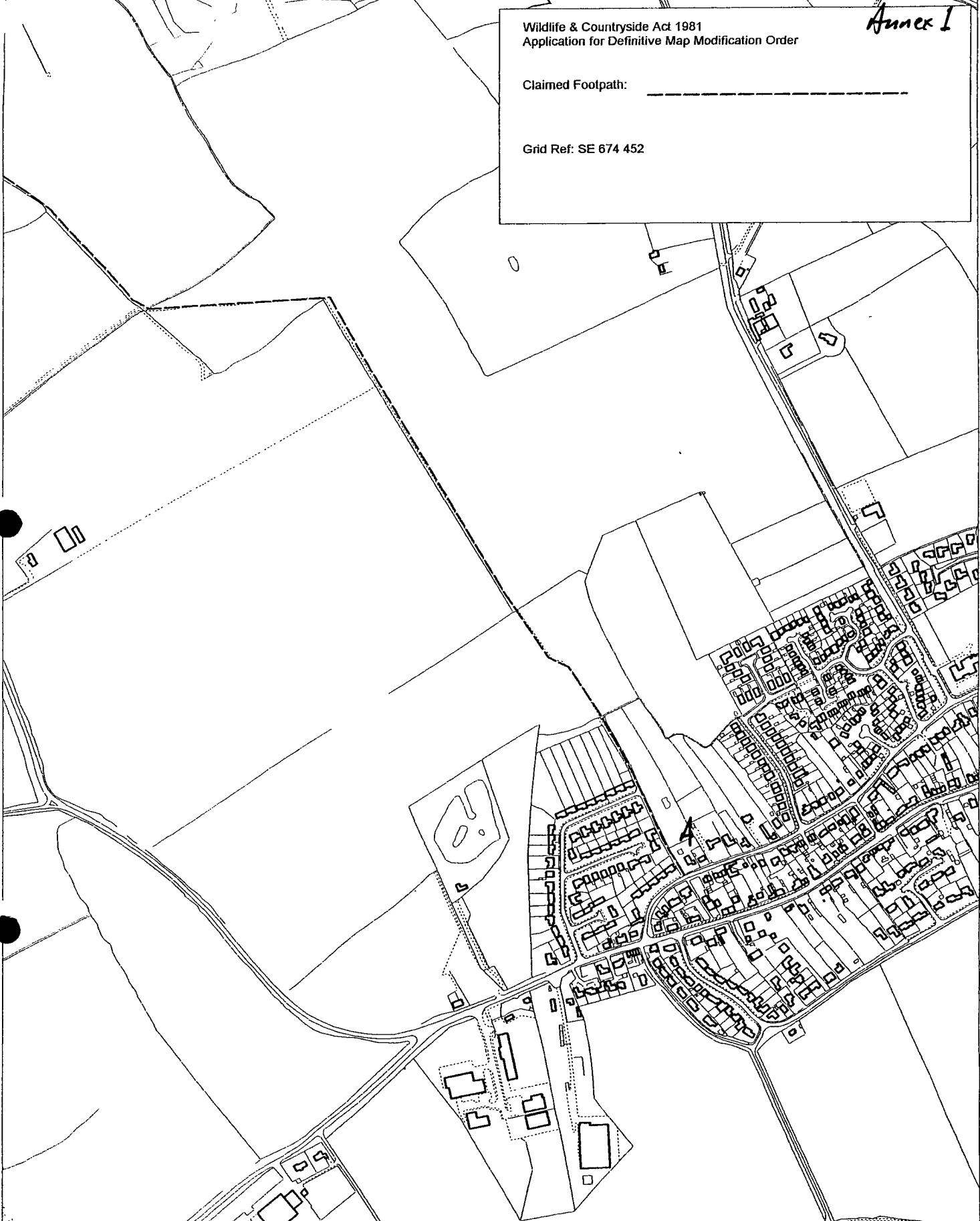
**Plan 1: Claimed Public Footpath, Main Street to Sparrow Hall,  
Wheldrake**

Annex 1

Wildlife & Countryside Act 1981  
Application for Definitive Map Modification Order

Claimed Footpath: \_\_\_\_\_

Grid Ref: SE 674 452



Claimed Public Footpath Main Street to Sparrow Hall  
Map 1

Scale 1:5000      Drawn By:      Date: 6 August 2003

Originating Group:      Project:      Drawing No.

Public Rights of Way



9 St. Leonards Place, York, YO1 2ET  
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PLAN 1a

Wildlife & Countryside Act 1981  
Application for Definitive Map Modification Order

Claimed Footpath: 

Existing Definitive Footpath: 

Existing Definitive Bridleway: 

Grid Ref: SE 663 459

Sparrow Hall Farm



B



Claimed Public Footpath Main Street to Sparrow Hall, Wheldrake  
Map 2

Scale 1:5000 Drawn By: Date: 6 August 2003

Originating Group: Project: Drawing No. Public Rights of Way



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PLAN 16

## **Annex 2**

### **List of documents consulted**

*Annex 2*

**Documents Consulted**

Enclosure Award, Map and Act  
Tithe Plan and Apportionment  
1910 Finance Act records  
Ordnance Survey Maps  
Rights of Way Act 1932 Depositions  
NPACA 1949 Maps and Documents  
Local Authority Files  
Quarter Sessions records  
Parish Council Records  
Other Highway Authority records  
Local Historical Maps  
Deposited Plans  
Estate Records  
Deeds  
Aerial Photographs

## **Annex 3**

### **Summary of Documentary Evidence**

**Summary of Documentary Evidence**

Tab	Doc	Description	Document Content	Comments
		Enclosure Award	The Enclosure Award for Wheldrake sets out the path along what is now known as Chapel Lane and Low Well Lane, for access to the well. No continuation of the route is set out.	Enclosure awards provide very strong evidence of the existence of the ways set out within them. The sections of the claimed route included in the enclosure award are not, however, particularly contentious. The disputed sections of the claimed path which cross the open fields are not included within the award.
5		Ordnance Survey Maps	Ordnance Survey maps show the physical existence of the route, annotated as a footpath.	Ordnance Survey maps carry a disclaimer to the effect that the showing of any path track or way is not evidence of the existence of public highway rights. The surveyors were however required to make reasonable enquiries with regard to the status of things they showed on their maps. These documents therefore provide very good evidence of the physical existence of the topographical features they show.
6	4,9,10,11-14 & 19-22	1910 Finance Act records	Part of the route, where it is known as Chapel Lane and Low Well Lane are excluded from the adjacent land holdings and are not subject to valuation. It would appear that the landowners have claimed relief in respect of parts of the remainder of the route.	The exclusion of the application route suggests that it was considered to be in the ownership of a Rating Authority (e.g. the Highway Authority) and provides good evidence in support of highway status of some sort.  The fact that there are claims for tax relief in respect of the route where it crosses the open fields is good evidence of the acceptance of the existence of the way in 1910 by the land owners. The fact that one section/landowner did not claim, does not diminish the value of the remaining claims that were made.
7	1 - 5	Deposited Railway Plans	The plans and their accompanying book of reference show the route, where it crossed the line of the proposed railway as a public right of way.	These documents were prepared as part of a Parliamentary process, and were also open to public comment and scrutiny. There are therefore of very good evidential value in determining the existence of public rights of way, and should not be disregarded lightly.

## **Annex 4**

### **Summary of User Evidence**



Summary of User Evidence

Tab	Page	Name	User Evidence Form	Witness Interview	Other Correspondence	Period of Use	No of Years Use	Member of Public	User As of Right	User without Interruption	Other Information
14	1	J Cleal	✓	✓		1967 - 1993	26	✓	✓	✓	Only used the Chapel Lane and Low Well Lane sections of the application route.
14	2	T K Halstead	✓	✓		1968 - 1993	25	✓	✓	✓	The path was obvious but was ploughed and cropped at times. Was never stopped or prevented from using the path.
14	3	B W Hairsing	✓			1947 - 1993	46	✓	✓/?	✓	Previously owned land crossed by part of the path, and considered it to be public. The general public used it quite often, and without challenge.
14	4	C Burgess	✓	✓		1967 - 1993	26	✓	✓	✓	Used to live on Low Well lane, near the southern end of the path. The path across the fields was never obvious on the ground but there was a trodden path as far as the (now dismantled) railway and beyond.  There was a proper gated crossing at the railway before it was dismantled.  Only used the path beyond the end of Low Well Lane for about 16 years, the rest of the path he used for 26 years
14	5	J Burgess	✓	✓		1967 - 1993	26	✓	✓	✓	The path across the fields was never obvious on the ground but there was a trodden path as far as the (now dismantled) railway.  There was a proper gated crossing at the railway before it was dismantled.  Only used the path beyond the end of Low Well Lane for about 16 years, the rest of the path he used for 26 years

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Tab	Page	Name	User Evidence Form	Witness Interview	Other Correspondence	Period of Use	No of Years Use	Member of Public	User As of Right	User without interruption	Other Information
14	6	F Fairburn	✓			1920 - 1950	30	✓	✓ / ?	✓	User form completed April 1973. Used the path regularly, and on a daily basis if/when under taking building work at Sparrow Hal Farm. There was a proper gated crossing at the railway before it was dismantled.
14	7	PJ Botting	✓			1971 - 1993	22	✓	✓	✓	Only used the Chapel Lane and Low Well Lane sections of the application route.
14	8	S Etchells	✓			1987 - 1993	6	✓	✓	✓	Only used the Chapel Lane and Low Well Lane sections of the application route.
14	9	D C Dick	✓	✓		1961 - 1993	32	✓	✓	✓	Only used the Chapel Lane and Low Well Lane sections of the application route. It is a well known path, and he was never stopped or prevented from using it.

## **Annex 5**

**Graph showing Periods of Claimed User**



## **Annex 6**

### **Summary of Objector's Evidence/Comments**

*Annex 6*

**Summary of Objector's Evidence/Comments**

Tab	Page	Name	Objection	Comments
20	29	F Shepherd of Sparrow Hall Farm, letter dated 6 <sup>th</sup> October 1993	The path was extinguished in 1967 and subsequently removed from the Definitive Map	There is no evidence to support the theory that the path was extinguished in 1967, or indeed at any other time. This belief appear to arise from the fact that, as a result of a Ministerial direction, in order to enable the Definitive Maps to be published, paths shown on the Provisional Map, which were subject to objections, were removed from the process at that time, with a view to their status being investigated at a later date. In no way does this constitute evidence of the extinguishment of the path.
			Nobody has ever attempted to use the path	There is no suggestion of modern use of the path, however there is good evidence of its historic existence.
			There are suitable alternative routes via Broad Highway or Wheldrake Lane	The availability of alternative routes is not a matter that can lawfully be taken into account as part of the decision making process.
20	28	F Shepherd of Sparrow Hall Farm, letter dated 26-09-2003	The matter was discussed and rejected in 1993	This is incorrect. The DMMO application was made in 1993, but the matter was never concluded. That is the process currently underway.
			Nobody has walked the path between 1936 and 2003, and anyone claiming to have walked it was trespassing	It is unclear how anyone, even a landowner can make such a categorical assertion. There is evidence of the use of the claimed path in relatively modern times, and evidence of its historic existence. If a person uses a path without permission, a landowner may consider that to be trespass, however if the way is used without permission, force or secrecy, such use may equally be considered to be user "as of right".
			The 1854 map of Sparrow Hall does not show the path	It is unclear which map the witness is referring to because the path is shown on early OS maps, as attested to by other objectors. It is certainly recorded as existing by the end of the Nineteenth Century, in the Deposited Railway Plans.

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Tab	Page	Name	Objection	Comments
20	33	David Hill, Oswald Lister & Son on behalf of Mr A Park of Low Well Farm. Letter dated 25 <sup>th</sup> November 1993	There is no footpath across the land	The existence or otherwise of a public right of way, is the matter to be determined through the current process. Any decision will be based upon matters of fact and evidence, not mere assertion.
			No-one has crossed the land	It is unclear how anyone, even a landowner can make such a categorical assertion. There is evidence of the use of the claimed path in relatively modern times, and evidence of its historic existence.
			There is no defined path	Whilst it is agreed that currently there is not a defined path across the fields, there is clear documentary evidence, by way of the Ordnance Survey Maps that a path did physically exist in the past. Notwithstanding this, a public right of way is not a physical entity, but a legal right to pass and re-pass over private land. There is therefore no requirement for a path to physically exist, although where one does, or did, as in this instance, it adds further weight to a case.
20	30	Mr A Park of Ribston Lodge, Letter dated 19 <sup>th</sup> September 2003	Purchased Low Well Farm in March 1987 and his solicitors made the usual enquiries, and were advised that there were no public rights of way across the land. Refers back to previous letter (above)	When conducting a search as part of a property purchase a Solicitor can ask questions relating to public rights of way. They are however optional. If these optional questions were asked, and a negative response was received, it would not mean that there were no public rights of way across the land, as Mr Park may have been advised by his solicitor. At most the negative response can be interpreted as there being no public rights of way recorded on the Definitive Map. This is, of course, without prejudice to the possible existence of unrecorded rights.
20	11	National Farmers Union on behalf of Mr Hugill of Haggwood Farm. Letter dated 30 <sup>th</sup> December 1993	Mr Hugill's Father applied to have the path deleted from the map in the 1960's. Correspondence enclosed with the letter should have ensured the path was closed forever.	It is accepted that Mr T W Hugill objected to the inclusion of this path on the Provisional Map, and this is believed to be the "application" referred to by the objector.  The fact of the matter are that, as a result of a Ministerial direction, the above application/objection was never determined. It was deferred with a view to the issue being considered at a latter date. This never happened, and is essentially the process now being undertaken. The correspondence attached to the objector's letter confirms the situation.

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Tab	Page	Name	Objection	Comments
20	22	Mr T W Hugill, formerly of Haggwood Farm. Letter dated 18 <sup>th</sup> January 1994	Occupied Hagg Wood Farm from 1939 to 1985 and never saw anyone using the claimed path, and there was no visible evidence through any crops	The fact that Mr Hugill did not see anyone use the application route does mean that such use did not take place. It is not suggested that this path was heavily used but there is evidence of its existence in the early part of the Twentieth Century (OS Maps, Railway Plans, 1910 Finance Act records)
			The hedgerows were securely fenced and the bridge over the Hall Drain was unsafe, until recently, and was therefore gated and chained.	This may have been the case in more recent years, but as previously mentioned there is significant historical evidence to support the existence of a public right of way.
			In 1967 a Definitive Map was prepared and it was proved that there was no public right of way along the application route	It was not proved that the route was not a public right of way in 1967. As a result of a Ministerial direction, any decision over the existence of the route was deferred for consideration at a later date. The matter has never been determined until now.
20	9	Mr J P Hugill of Haggwood Farm. Letter dated 7 <sup>th</sup> March 1994	The path is in two parts, firstly the section from the Main Street to the edge of the Village (Chap Lane and Low Well Lane). This is a well used old path. The path across the fields is not used and unproven	The current process is an assessment of the evidence to determine whether or not the alleged rights exist. The fact that the path across the fields is not currently used, does not preclude the possible existence of historic rights.
			Has never seen people walking the path, nor have the farm workers or game keepers.	The fact that they did not see anyone use the application route does mean that such use did not take place. It is not suggested that this path was heavily used but there is evidence of its existence in the early part of the Twentieth Century (OS Maps, Railway Plans, 1910 Finance Act records)
			Has asked people to leave the land when he has encountered them, and placed "Private" signs where such trespass has taken place.	This presumably relates to areas other than the route under investigation because the objector has just previously stated that he has never seen anyone using the path. Such signs and actions other than on the path will be of little or no evidential value.
			In 1967 his parents proved that the path was not used and did not exist.	It was not proved that the route was not a public right of way in 1967. As a result of a Ministerial direction, any decision over the existence of the route was deferred for consideration at a later date. The matter has never been determined until now.



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Tab	Page	Name	Objection	Comments
		Mr J P Hugill of Haggwood Farm. Letter dated 7 <sup>th</sup> March 1994  ...cont	In 1964/5 a white painted gate was closed and chained across the path where it crosses Hallwood Drain. This was to stop people wandering onto the land	This may suggest that the path was subject to some use after all. Notwithstanding this, the locking of a gate in 1964/5 does not detract from the fact that documentary evidence shows that a public right of way already existed some 50 – 60 years prior to this. In the absence of a formal Extinguishment Order such rights would continue to exist today even if the path has not been used for many years.
			If the path was a known public right of way it would already be shown on the Definitive Map.	The Definitive Map provides conclusive evidence of the existence of the rights recorded upon it, but this is without prejudice to the existence of any other unrecorded rights. The omission of this path from the legal record is not evidence that the alleged rights do not exist. In fact research has suggested that there are many thousands of unrecorded paths throughout England and Wales. This may be one such path.
			OS Maps from 1856, 1910 and 1972 show the path at its northern end running on different alignments	OS maps carry a disclaimer to the effect that the showing of any path, track or way is not evidence of the existence of public rights. They do however provide evidence of the existence of topographical features, such as paths, at the time of the survey.
20	2	Harland & Co Solicitors on behalf of Mr Hugill, letter dated 8 <sup>th</sup> October 2003	Mr Hugill's father tenanted Haggwood Farm from 1939 and there was no evidence of any path.	The reference to no evidence presumably refers to physical evidence, as there was definitely documentary evidence to support the existence to a public right of way from the late 1900's.
			No reference to the existence of a public right of way was included in the 1948 sales particulars for the farm, however there was a reference to another right of way for the owners (i.e. a private right of way)	The fact that the existence of the path was not declared in the sales particulars is not evidence that the rights did not exist. A comparison cannot be drawn with the inclusion of details relating to private rights of access as these are completely different.
			In 1967 the path was extinguished	It is accepted that Mr T W Hugill objected to the inclusion of this path on the Provisional Map, and this is believed to be the "application" referred to by the objector.  The fact of the matter is that, as a result of a Ministerial direction, the above application/objection was never determined. It was deferred with a view to the issue being considered at a latter date. This never happened, and is essentially the process now being undertaken.

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Tab	Page	Name	Objection	Comments
20	4	J P Hugill Statutory Declaration dated 9 <sup>th</sup> October 2003	Mr JP Hugill was born in 1948 at Haggwood farm and has known the farm and immediate surroundings for over fifty years	
			On 7 <sup>th</sup> March 1994 Mr Hugill wrote to NYCC, and the comments made then remain true.	See comments above in response to issues raised in this letter
			Having owned and/or occupied Haggwood Farm for over 50 years Mr Hugill is in a unique position to know whether or not the claimed path has been used. There has been no evidence of such use taking place.	The fact that Mr Hugill did not see anyone use the application route, or evidence of such use, does mean that such use did not take place. It is not suggested that this path was heavily used but there is evidence of its existence in the early part of the Twentieth Century (OS Maps, Railway Plans, 1910 Finance Act records)
20	23	Mr J Scutt of Swallow Hall. Letter dated 19 <sup>th</sup> January 1994	Between 1960 and 1980 Mr Scutt spent a considerable amount of time contracting at Low Well Farm, and never saw anyone using the application route.	The fact that Mr Scutt did not see anyone use the application route does mean that such use did not take place. It is not suggested that this path was heavily used but there is evidence of its existence in the early part of the Twentieth Century (OS Maps, Railway Plans, 1910 Finance Act records)
			Between 1970 and 1976 Mr Scutt was a member of the Blackwoods shoot, and recalls having to climb over gates on the application route (presumably because they were locked) and never saw anyone using the path.	See comment above.
20	24	CRG McNeil of Thorganby Lodge. Letter dated 9 <sup>th</sup> March 1994	Is the tenant (past 2 years) of part of the land (Mr Hugill's land) crossed by part of the application route, and supports Mr Hugill's objections	See comments on Mr Hugill's objections
			Inconvenience of having to erect warning signs when using chemicals; the risk of spreading disease; and uncontrolled dogs causing damage to crops and game birds.	These are not matters that can be taken into account as part of the decision making process
			Has never seen any evidence of people using the route	The fact that Mr McNeil did not see anyone use the application route does mean that such use did not take place. It is not suggested that this path was heavily used but there is evidence of its existence in the early part of the Twentieth Century (OS Maps, Railway Plans, 1910 Finance Act records)

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Tab	Page	Name	Objection	Comments
20	26	L Hammond of Wheldrake. Letter received by NYCC on 10 <sup>th</sup> March 1994	Worked at Haggwood Farm from 1941 until 1992. Does not recall there ever being a footpath and never saw anyone walk it. From the mid 1960's to the late 1070's there was a gate across the bridge over the dyke.	The fact that Mr Hammond did not see anyone use the application route does mean that such use did not take place. It is not suggested that this path was heavily used but there is evidence of its existence in the early part of the Twentieth Century (OS Maps, Railway Plans, 1910 Finance Act records).
20	25	E A Rooke of Heslington Letter received by NYCC don 10 <sup>th</sup> March 1994	During 1990 and 1991 was a contractor at Haggwood Farm and during that time never saw any evidence of a path or anyone using it.	The fact that Mr Rooke did not see anyone use the application route does mean that such use did not take place. It is not suggested that this path was heavily used but there is evidence of its existence in the early part of the Twentieth Century (OS Maps, Railway Plans, 1910 Finance Act records).

## **Annex 7**

### **Legal Tests**

## Legislative Tests

### Test to be Applied

1. When considering an application for a DMMO to add a public right of way to the Definitive Map the burden of proof initially rests with the applicants to prove their case. If a *prima facie* case in favour of the application is established, the onus then falls upon anyone opposing the application to provide evidence in rebuttal. The standard of proof is the civil test of 'on the balance of probability'.
2. If, having taken into account all of the available relevant evidence, the Authority is satisfied that, the alleged rights subsist or are reasonably alleged to subsist the Authority has a duty to make a DMMO. Such an Order can however, only be confirmed if, on the balance of probability, the alleged rights can be shown to actually subsist.

### 3. Evidential Tests

#### Highways Act 1980, Section 31

Section 31 of the Highways Act 1980 states:

*"(1) Where a way over land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."*

*"(2) The period of twenty years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question whether by notice, such as is mentioned in subsection (3) below or otherwise."*

*"(3) Where the owner of the land, which any such way as aforesaid passes has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and has maintained the notice after the first January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway"*

4. Section 31(1) has two 'limbs' the first provides that proof of twenty years continuous user "as of right" endorses a claim that a highway exists; the second (sometimes referred to as 'the proviso') provides that proof of a lack of intention to dedicate the way as a highway defeats the claim.
5. Section 31 is further supplemented by Section 32 of the Highways Act 1980, which states:

*“A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document, which is tendered in evidence, and shall give weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or complied, and the custody in which it has been kept and from which it is produced.”*

6. Common Law

- Before public rights can be asserted under the Common Law, a landowner must be shown to have intended to dedicate the right of way over his land. The question of dedication is purely one of fact and public user is no more than evidence, which has to be considered in the light of all available evidence. Public use will not, therefore, raise the inference of dedication where the evidence, in its totality, shows that the public right of way status was not intended.
7. At Common Law, there is no specified period of user, which must have passed before an inference of dedication may be drawn. It is necessary to show, in order that there may be a right of way established, that the route has been used openly, “as of right”, and for so long a time that it must of come to the knowledge of the owners of the fee that the public were so using it as of right.
8. If the landowner has done exactly what would be expected from any owner who intended to dedicate a new highway, the time may be comparatively short. However, as a matter of proof at Common Law, the greater the length of user that can be demonstrated, the stronger the inference of dedication will (usually) be.
9. Factors such as desirability, suitability, financial viability, need or even public safety, whilst genuine concerns cannot lawfully be taken into account, when making a decision. Therefore, whilst there may be some genuine concerns about the anti-social behaviour occurring along part of the alleged public right of way, it cannot lawfully be taken into account when determining the application to modify the Definitive Map.