



### Notice of meeting of

### **Decision Session - Executive Member for City Strategy**

**To:** Councillor Steve Galloway (Executive Member)

**Date:** Tuesday, 2 February 2010

**Time:** 4.00 pm

**Venue:** The Guildhall, York

### AGENDA

### **Notice to Members – Calling In**

Members are reminded that, should they wish to call in any item on this agenda, notice must be given to Democracy Support Group by:

**10.00 am on Monday 1 February 2010** if an item is called in before a decision is taken, or

**4.00pm on Thursday 4 February 2010** if an item is called in after a decision has been taken.

Items called in will be considered by the Scrutiny Management Committee.

Written representations in respect of items on this agenda should be submitted to Democratic Services by 5.00pm on Friday 29 January 2010.

### 1. Declarations of Interest

At this point Members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.



### 2. Public Participation - Decision Session

At this point in the meeting, members of the public who have registered their wish to speak at the meeting can do so. The deadline for registering is **5:00pm** on **Monday 1 February 2010** 

Members of the public may register to speak on:-

- an item on the agenda;
- an issue within the Executive Member's remit;
- an item that has been published on the Information Log No reports have been published on the Information Log since the last session.
- 3. Public Rights of Way Application for Definitive Map Modification Order, Alleged Public Footpath, Church Lane to Carr Lane, Wheldrake (Pages 3 28)

This report seeks to assist the Executive Member in determining whether or not to make a Definitive Map Modification Order (DMMO) to add this route to the Definitive Map, as a Public Footpath.

- 4. Public Rights of Way Application for Definitive Map Modification Order, Alleged Public Footpath, Ings Bridge to Storwood, Wheldrake (Pages 29 66)
  - This report seeks to assist the Executive Member in determining whether or not to make a Definitive Map Modification Order (DMMO) to add this route to the Definitive Map, as a Public Footpath.
- 5. Public Rights of Way Application for Definitive Map Modification Order, Alleged Public Footpath, Main Street to North Lane (Love Lane), Wheldrake (Pages 67 88)
  This report seeks to assist the Executive Member in determining whether or not to make a Definitive Map Modification Order (DMMO) to add this route to the Definitive Map, as a Public Footpath.

6. Public Rights of Way - Application for Definitive Map Modification Order, Alleged Public Footpath, from Main Street to Sparrow Hall Farm, Wheldrake (Pages 89 - 118)

This report seeks to assist the Executive Member in determining whether or not to make a Definitive Map Modification Order (DMMO) to add this route to the Definitive Map, as a Public Footpath.

7. Public Rights of Way - Application for Definitive Map Modification Order, Alleged Public Footpath, Thorganby Lane to Lawn Closes (Public Footpath No.7), Wheldrake (Pages 119 - 144)
This report seeks to assist the Executive Member in

This report seeks to assist the Executive Member in determining whether or not to make a Definitive Map Modification Order (DMMO) to add this route to the Definitive Map, as a Public Footpath.

8. A19/A1237 Roundabout Improvements - Consultation Results and Detailed Design (Pages 145 - 178)

This report provides the Executive Member with the results of the consultation undertaken on proposed improvements to the A19/A1237 roundabout. The report concludes that, subject to approval, the amended scheme can be constructed within a revised budget allocation in the summer/autumn of this year.

- 9. Orbital Cycle Route Scheme Proposals for the Remaining Three Sections (Pages 179 206)
  This report advises the Executive Member about initial proposals for the three sections of this route together with the best option to take forward each section.
- 10. Any other business which the Chair considers urgent under the Local Government Act 1972

### **Democracy Officer:**

Name: Jill Pickering Contact details:

- Telephone (01904) 552061
- E-mail jill.pickering@york.gov.uk

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports

Contact details are set out above

### **About City of York Council Meetings**

### Would you like to speak at this meeting?

If you would, you will need to:

- register by contacting the Democracy Officer (whose name and contact details can be found on the agenda for the meeting) no later than 5.00 pm on the last working day before the meeting;
- ensure that what you want to say speak relates to an item of business on the agenda or an issue which the committee has power to consider (speak to the Democracy Officer for advice on this);
- find out about the rules for public speaking from the Democracy Officer.

A leaflet on public participation is available on the Council's website or from Democratic Services by telephoning York (01904) 551088

### Further information about what's being discussed at this meeting

All the reports which Members will be considering are available for viewing online on the Council's website. Alternatively, copies of individual reports or the full agenda are available from Democratic Services. Contact the Democracy Officer whose name and contact details are given on the agenda for the meeting. Please note a small charge may be made for full copies of the agenda requested to cover administration costs.

### **Access Arrangements**

We will make every effort to make the meeting accessible to you. The meeting will usually be held in a wheelchair accessible venue with an induction hearing loop. We can provide the agenda or reports in large print, electronically (computer disk or by email), in Braille or on audio tape. Some formats will take longer than others so please give as much notice as possible (at least 48 hours for Braille or audio tape).

If you have any further access requirements such as parking close-by or a sign language interpreter then please let us know. Contact the Democracy Officer whose name and contact details are given on the order of business for the meeting.

Every effort will also be made to make information available in another language, either by providing translated information or an interpreter providing sufficient advance notice is given. Telephone York (01904) 551550 for this service.

যদি যথেষ্ট আগে থেকে জানানো হয় তাহলে অন্য কোন ভাষাতে তথ্য জানানোর জন্য সব ধরণের চেষ্টা করা হবে, এর জন্য দরকার হলে তথ্য অনুবাদ করে দেয়া হবে অথবা একজন দোভাষী সরবরাহ করা হবে। টেলিফোন নম্বর (01904) 551 550।

Yeteri kadar önceden haber verilmesi koşuluyla, bilgilerin terümesini hazırlatmak ya da bir tercüman bulmak için mümkün olan herşey yapılacaktır. Tel: (01904) 551 550

我們竭力使提供的資訊備有不同語言版本,在有充足時間提前通知的情況下會安排筆譯或口譯服務。電話 (01904) 551 550。

Informacja może być dostępna w tłumaczeniu, jeśli dostaniemy zapotrzebowanie z wystarczającym wyprzedzeniem. Tel: (01904) 551 550

### **Holding the Executive to Account**

The majority of councillors are not appointed to the Executive (40 out of 47). Any 3 non-Executive councillors can 'call-in' an item of business from a published Executive (or Executive Member Decision Session) agenda. The Executive will still discuss the 'called in' business on the published date and will set out its views for consideration by a specially convened Scrutiny Management Committee (SMC). That SMC meeting will then make its recommendations to the next scheduled Executive meeting in the following week, where a final decision on the 'called-in' business will be made.

### **Scrutiny Committees**

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

### Who Gets Agenda and Reports for our Meetings?

- Councillors get copies of all agenda and reports for the committees to which they are appointed by the Council;
- Relevant Council Officers get copies of relevant agenda and reports for the committees which they report to;
- Public libraries get copies of **all** public agenda/reports.



## **Decision Session Executive Member for City Strategy**

2 February 2010

Report of the Director of City Strategy

## PUBLIC RIGHTS OF WAY – Application for Definitive Map Modification Order, Alleged Public Footpath Church Lane to Carr Lane, Wheldrake

### **Summary**

1. This report seeks to assist the Executive Member in determining whether or not to make a Definitive Map Modification Order (DMMO) to add the route (shown by a broken black line on Plan 1 (Annex 1)) to the Definitive Map, as a Public Footpath. In determining this issue it is important to consider the available evidence against the requirements of the legislation (see Annex 7: Legislative Tests).

### Recommendation

2. It is recommended that the Executive Member approves Option A and authorises the making of a DMMO to add the route as a Public Footpath to the Definitive Map.

### Reason

3. All the available relevant evidence suggests that this has probably never been a heavily used path, but that it is nonetheless a public right of way, which has been subject to use from the mid Nineteenth Century until the latter part of the Twentieth Century. As there is evidence in support of the existence of a public right of way over the application route the authority is required to make the order under the provisions of the Wildlife and Countryside Act 1981, Section 53(3)(c)(i).

### **Background**

4. In September 1993 Wheldrake Parish Council submitted, to North Yorkshire County Council, an application for a DMMO, to add the footpath shown by a broken black line (the application route) on Plan 1 (**Annex 1**). Then, in 1996, as a result of Local Government Reorganisation the application, which had still to be determined and remained outstanding, was passed to City of York Council as the newly appointed Surveying Authority for the area.

- 5. In 2002 the Council commenced preliminary investigations into this application and a number of other similar applications, made by Wheldrake Parish Council. Whilst these investigations were substantially completed at that time, the applications were never formally determined. Therefore, more recently, and in order to bring these matters to a close, the previously considered evidence was checked and ratified so as to allow the matter to be brought to a conclusion.
- 6. A section of the alleged path has now been subject to development and is obstructed by housing. In the event of it being determined that a public right of way does exist, this issue will have to be addressed, probably by way of a public path order to divert the path onto an alignment which preserved through the development process. The fact that the alleged path may now be obstructed is not a lawful consideration in the determination of the application. It is a matter to be dealt with at a later date if it is shown that public rights exist.

### **Summary of Evidence**

### **Historical Documents**

7. As part of the investigations a range of documents have been consulted, and these are listed in **Annex 2** of this report. Where the documents are considered to have some evidential value in this case, they are further summarised within the report, with more detailed comments included in **Annex 3**. Copies of the documents discussed in **Annex 2** are included in the bundle of evidence attached to this report and referenced accordingly.

### **Ordnance Survey Maps**

8. Ordnance Survey maps for the area consistently show the application route annotated as a footpath.

### **1910 Finance Act Records**

9. The Ordnance Survey base map, used to prepare the 1910 Finance Act documentation shows the physical existence of the application, and that it runs along the northern boundary of (and within) Hereditament No. 84. The accompanying Field Book entry for Hereditament No 84 (Wheldrake Hall) includes, in the notes for Charges, Easements and Restrictions etc, the following "Footpath across north side of farm. Not much used". A deduction of £20 was sought in respect of public rights of way.

### **Original Definitive Map Process**

10. The application route appears to have been claimed, in the 1950's, by the Parish Council, under Part IV of the National Parks and Access to the Countryside Act 1949. The route was however subject to objections at the provisional stage of production. Due to the number of outstanding objections in the East Riding area the County Council, at that time were directed to proceed to the Definitive Mapping stage by omitting paths subject to objections, with a view to them being considered at a later stage.

### User Evidence

11. The application was supported by two user evidence forms claiming use during the period 1917 – 1957. These forms are summarised in **Annex 4** of this report, and the periods of claimed use summarised on the User Graph in **Annex 5**.

### Representations made by and on behalf of the Landowner

12. The landowners claim that the path was extinguished in the 1960's and that there is no evidence of the establishment of public rights since that time. The submissions made on their behalf are summarised and commented upon in **Annex 6** of this report.

### **Comments on Evidence**

### **Historical Evidence**

13. The combination of Ordnance Survey maps and 1910 Finance Act documents provide good evidence of the existence of a public right of way in the late Nineteenth and early Twentieth Centuries.

### **User Evidence**

14. There is only a limited amount of user evidence, albeit spanning a considerable number of years. This is perhaps understandable as the path was described in 1910 as being "not much used". There is certainly insufficient user evidence to pursue a case based upon modern user either under common law or the provisions of Section 31 of the Highways Act. The user evidence should however still be taken into account along with the historic documentary evidence.

### Representations made by and on behalf of the Landowner

15. The submissions made on behalf of the landowners add little to the case either way. They appear to rely upon the false premise that the path has been extinguished, arising out of a lack of understanding of the processes undertaken, and their effect, at that time.

### Assessment of Evidence

### **Historical Evidence**

- 16. The Ordnance Survey maps show that the path physically existed from the mid Nineteenth Century, and whilst such maps carry a disclaimer regarding public rights of way, they still provide some evidence of the repute of the way as a footpath.
- 17. The 1910 Finance Act records clearly identify a path along the northern boundary of the farm, and this is consistent with the application route. These documents suggest that the landowner accepted the existence of the footpath at that time.

### **User Evidence**

18. As there are only two user witnesses, their evidence is insufficient to be considered to satisfy the "public user" tests under either common law or Section 31 of the 1980 Act. There is therefore no benefit in testing this evidence against

the other legislative criteria. This evidence should however be considered in the context of it being supportive of the reputation of the route being a public right of way. The earliest user, dating back to the 1920's is consistent with the Finance Act records of 1910, suggesting that both landowners and the public shared the view that the route was public at that time.

### Representations made by and on behalf of the Landowner

- 19. The representations made on behalf of the landowner appear to be based upon the false premise that the path was extinguished in the late 1960's. This was not the case, and indeed, the processes being undertaken at that time (production of the Definitive Map) were not capable of extinguishing public rights. This would have required a completely separate legal process, for which no evidence has been discovered.
- 20. If, as appears to be accepted by the landowners (i.e. for rights to have been extinguished, as they claim, they would first have had to exist), public rights existed prior to the 1960's, in the absence of evidence of lawful closure, those rights will continue to exist today.

### Consultation

- 21. Consultations have been carried out in accordance with the Parliamentary Rights of Way Review Committee's Code of Practice on consultation, which includes consultation with user groups etc. The Parish Council and landowners have also been consulted.
- 22. The landowners have consistently maintained an objection to the existence of this path. Any evidence submitted in support of these objections has been included in this report: see above.

### **Ward Councillors**

23. Cllr C Vassie - No comments received.

### **Political Parties**

24. Cllr S Galloway (Lib Dem) – No comments received.

Cllr R Potter (Labour) – 'Happy to support the modifications', comments received 30 December 2009.

Cllr I Gillies (Conservative) – No comments received.

Cllr A D'Argone (Green Party) – No comments received.

### **Options**

25. Option A: If, having considered all of the available evidence the Executive Member decides that public rights are reasonably alleged to exist, the Executive member should resolve that:

- (a) The Director of City Strategy be authorised to instruct the Head of Legal Services to make a Definitive Map Modification Order to add a public footpath, along the route A B on Plan 1 attached to this report, to the Definitive Map;
- (b) If no objections are received, or any objections that are received, are subsequently withdrawn, the Head of Legal Services be authorised to confirm the Order made in accordance with (a) above; or
- (c) If any objections are received, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.
- 26. Option B: If, having considered all of the available evidence, the Executive Member decides that the alleged public rights do not exist, he should resolve that:
  - (a) The application to modify the Definitive Map be refused.
  - (b) The applicant be advised of their right to appeal.

### **Corporate Priorities**

27. If it is determined that the available relevant evidence shows that a right of way subsists or is reasonably alleged to subsist and is added to the map the benefits of doing so would link into the Council's Corporate priorities. A public right of way is sustainable, car free and provides access to health and recreation opportunities thus contributing to the priorities of making York a Sustainable and a Healthy City.

### **Implications**

### **Financial**

- 28. If it is determined to progress a DMMO it will have to be advertised in the local press. The cost of advertising the order would be in the region of £1500. If an order is made, and no objections are received the order will be confirmed and re-advertised, again at a cost of £1500.
- 29. If objections to the order are received, and not withdrawn, the outcome of the order will be decided by the Secretary of State, possibly by means of a Public Inquiry. The cost of a Public Inquiry being approximately £5000.
- 30. If the order is confirmed by either the Council or the Secretary of State the authority has to accept that the route is maintainable at the public expense. Acceptance is not as such a new obligation but is part of the Council's statutory duty to keep that map up to date and formally record the rights of the public where those rights exist but are not yet shown and recorded in the definitive map and statement.

### **Human Resources**

31. There are no human resource implications.

### **Equalities**

32. There are no equalities implications.

### Legal

- 33. City of York Council is the surveying authority for the purposes of the Wildlife and Countryside Act 1981, and has a statutory duty to ensure that the Definitive Map and Statement for its area is kept up to date.
- 34. If, and when, the Authority discovers evidence to suggest that the Definitive Map and Statement needs updating, it is under a statutory duty to make the necessary changes. A DMMO enables any changes to the map and statement to be made.
- 35. Before the Council can make a DMMO to add a route to the definitive map, as is the subject of this report, it must be satisfied that, taking into account the available evidence, a right of way can reasonably be alleged to exist. If it can, the authority must make the order. If objections are received during the process and not withdrawn the order must be forwarded to the Secretary of State. The Secretary of State will appoint an Inspector who will test the evidence and determine the outcome of this application.
- 36. DMMO's do not create any new public rights of way they seek to record those already in existence but not formerly recorded in the definitive map and statement. Issues for example such as safety, security and desirability whilst being genuine concerns cannot be taken into consideration. The DMMO process requires an authority to look at all the available evidence, both documentary and user, before making a decision.

### **Crime and Disorder**

37. There are no crime and disorder implications.

### **Information Technology**

38. There are no IT implications.

### **Property**

39. There are no property implications.

### Other

40. If the DMMO process concludes that public rights do exist the public footpath becomes maintainable at the public expense and should be recorded as such on the List of Streets Maintainable at Public Expense. The Council, as the highway authority for public rights of way, has a duty to maintain the public footpath to a standard that allows use by lawful traffic, in this case the right of way is on foot only.

### **Risk Management**

41. In compliance with the Council's Risk Management Strategy, Options A is subject to internal budgetary pressures (financial). There are no risks associated with Option B.

### Page 9

### **Contact Details**

Author:
Joanne Coote
(Definitive Map Officer)
Network Management
(City Development & Transport)
Tel No: 01904 551442

Chief Officer Responsible for the report: Damon Copperthwaite, Assistant Director City Development and Transport

Report Approved ✓ Date

22.01.2010

All

Wheldrake

For further information please contact the author of the report.

### **Background Papers:**

Evidence evaluated and background report prepared by Consultant: Robin Carr Associates, Public Rights of Way Management and Consultancy Services. Highways Act 1980.

Wildlife and Countryside Act 1981

Rights of Way: A Guide to Law and Practice, Fourth Edition, by John Riddall and John Trevelyan.

England and Wales Court of Appeal (Civil Division) Decisions: R v Secretary of State for Wales ex parte Emery (1997)

### Annexes:

Annex 1: Plan 1: Claimed Public Footpath, Church Lane to Carr Lane, Wheldrake.

Annex 2: List of documents consulted.

Annex 3: Summary of Documentary Evidence.

Annex 4: Summary of User Evidence.

Annex 5: Graph showing Periods of Claimed User.

Annex 6: Summary of Objector's Evidence/Comment.

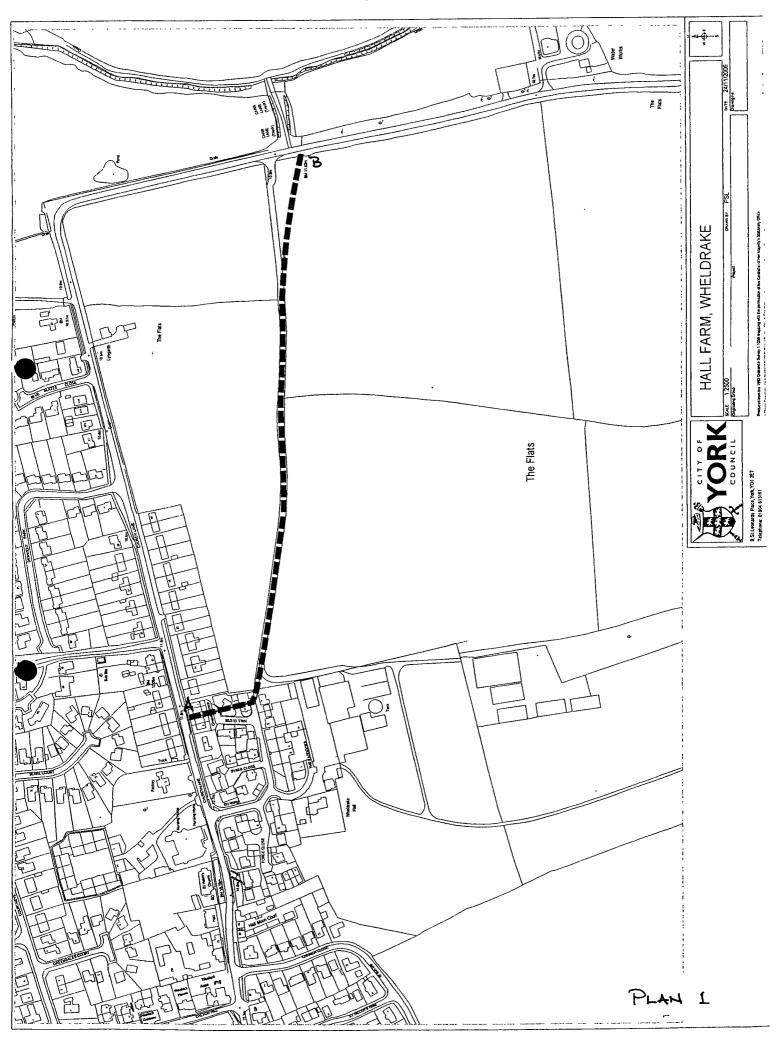
Annex 7: Legal Tests

This page is intentionally left blank

### Annex 1

Plan 1: Claimed Public Footpath, Church Lane to Carr Lane, Wheldrake

Page 12



### Annex 2

List of documents consulted

### Page 14

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** 

# Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Church Lane to Carr Lane, Wheldrake

# Summary of Documentary Evidence

3
×
5
3
4

Tab	Page	Description	Document Content	Comments
ĸ		Ordnance Survey Maps	Ordnance Survey maps show the physical existence of the route, annotated FP or Foot Path.	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.
ဖ	1.2, 15-18	1910 Finance Act records	The route is included in hereditament No 84  The Filed Book for hereditament No 84 includes a claim for a reduction of £20 in respect of public rights of way or user and the notes refer to the path subject to the claim being "across the northern end of the farm, not much used".	The OS base maps, upon which the Finance Act information is transposed, show that the application route runs along the northern boundary of the land holding. This would suggest that the route that is the subject of claim for tax relief is the current application route. This is good evidence in support of the existence of public rights of way in 1910.  The fact that the path is noted as being "not much used" in 1910 does not detract from its status. If rights existed in 1910 they will still exist today, unless extinguished through due legal process. Public rights cannot simply lapse as a result of a lack of use. If the path was "not much used" in 1910, and if use did not increase, or perhaps even decreased over time, it may however explain why the current landowners are not aware of its existence.
თ		Records relating to the original Definitive Map process	The application route appears to have been claimed, in the 1950's, by the Parish Council, under Part IV of the National Parks and Access to the Countryside Act 1949.  It was then subject to objections at the provisional stage of production.  Due to the number of outstanding objections in the East Riding area the County Council, at that time were directed to proceed to the Definitive Mapping stage by omitting paths subject to objections, with a view to them being considered at a later stage.	The fact that the application route was claimed by the Parish Council in the 1950's provides good evidence that the route was considered to be a public right of way at that time by local people. This is good evidence in support of the existence of public rights. The landowner's objection to the recording of the route at Provisional stage clearly indicates that he/she disagreed with the Parish Council's view on this matter.  The fact that the Council omitted the route from its Definitive Map, as a result of the direction issued by the Minister, is NOT evidence that public rights do not exist. The matter was never actually brought to any conclusion, and technically speaking still remains outstanding.

### Annex 4

**Summary of User Evidence** 

## Summary of User Evidence

Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Church Lane to Carr Lane, Wheldrake

Other Information	Used the path about twice a month during the summer months as part of a recreational walk	Used the path every Sunday to go to the Ings to fish or to swim. There was a stile at the corner of Wheldrake Hall Farm; at the Carr Lane end of the path; and a hand gate on Church Lane.  The path was used by the whole village for pleasure and was probably the most commonly used path in the village. It was	used get to the higs to cohect think hoth the cows kept there.
User without	٢	7	
User As of Right	7	7	
Member of Public	7	7	
9sU siseY to oM	40	30	
esU to boineq	1917 – 1957	1920 - 1950	
Other Correspondence	7		
weivres Interview			
User Evidence Form	7	7	
Name	G G Beilby	F Fairburn	
Page	-	т	
Тар	12	12	

Annex 5

**Graph showing Periods of Claimed User** 

Wildlife & Countryside Act 1981
Application for Definitive Map Modification Order
Church Lane to Carr Lane, Wheldrake

Annex 5						
	1960	ı				
	1950					
d User	1940		-			
Periods of Claimed User	1930					
Period	1920					
	1910					
_	Period of Use	G G Beilby 1917 - 1957	F Fairburn 1920 - 1950			-
	Name	G G Beilby	F Fairburn			
	Page Name	-	ო			
	Tab	12	12			

### Annex 6

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

# Summary of Objector's Evidence/Comments

Wildlife & Countryside Act 1981
Application for Definitive Map Modification Order
Church Lane to Carr Lane, Wheldrake

Tab	Page	Name	Objection	Comments
18	23	J V Gratton & Sons Letter from JV Gratton & Sons to NYCC received August 1993	Has farmed the land for 37 years (prior to 1993) and during that time has never seen anyone walk the route	The fact that the landowners have not seen anyone using the path, does not mean that such use has not taken place. However the evidence in this particular case suggests that rights were in existence, and the path was used, albeit only lightly, before the current, owners specified time period. Of perhaps greater evidential value are th e1910 finance records where it would appear the landowners claimed tax relief in respect of the path.
			Anyone who has strayed from acknowledged paths on to the internal system of farm roads has been asked to leave	If the landowners have not seen anyone using the application route, they cannot have turned them back and asked them to leave. It is therefore doubtful whether this can be considered to be evidence of interruption or lack of intention to dedicate.
			Old residents of the village, who have lived there for over 50 years cannot remember the path being used.	This appears to be contradicted by the user evidence, which suggests that certainly some older residents were aware of, and used the path.
			Have a large dairy heard and allowing public access to field would be unacceptable and users would have to negotiate 2 gates and 14 electric fences	This is not a relevant consideration and cannot be take in tot account as part of the decision making process. If public rights exist access provisions will have to be made.
18	2	Acorus Rural Property Services on behalf of J V Gtarron & Sons Ltd	The footpath has never been used in living memory of the owners	There must be some uncertainty as to the accuracy of this statement because the Grattons only acquired the farm in 1957, which is within living memory. Furthermore there is evidence that the path was used in the 1950's.
			The footpath, by anecdotal evidence, was extinguished in the 1960's following a village meeting and this is confirmed by its exclusions form subsequent OS maps.	For the path to have been extinguished, it must have existed in the first instance. There is no evidence of actual or lawful extinguishment of the path, and therefore if rights did exist historically, which appears to be accepted by the landowners, then they will still exist today. The so called extinguishment in the 1960's is, in all probability the removal of the path form the Provisional Map, its status to be investigated at a later date, so as to allow the Definitive Map process to proceed. If this is the case, then the removal of the path would not have extinguished any pre-existing rights.

Tab	Page	Name	Objection	Comments
			Mr E Brown, aged 75 has lived in the village for the majority of his life and is a founder member of the local historical society. He recalls the footpath being removed from the Definitive Map in the 1960's because it was not being used.	This witness is clearly mistaken because the path has never been recorded on the Definitive Map. It was claimed by the Parish Council, and was shown on the Draft and Provisional Maps. It was removed from the provisional map due to objections, over its existence being lodged. These objections were however, never resolved, the matter being left to be dealt with at a later date, which until now it never has been.
				There is no evidence to support the "extinguishment" theory. It is a misunderstanding of the actual processes which took place.
			Mr & Mrs C Gratton and their family moved to Garth Cottage in 1958and shortly after this (1957) Mr JV Gratton purchased Wheldrake Hall. They occupied the cottage until 1988.	See comments above
			During that 30 year period they never saw or heard of anyone trying to use the path. They also recall the village meeting when the path was extinguished.	
			Mr T Johnson was employed at Wjeldrake Hall Farm between 1988 and 1994. He does not recall seeing anyone using the application route.	There is no suggestion of any claim based upon modern user. The claim is based upon the historical existence of the path, which the landowners appear to acknowledge.
			Other former employees who worked at the farm between 1990 and 1999 do not recall seeing anyone using the application route.	See comments above
			The present owner Mr Johnathen Gratton and his wife do not recall having ever seen anyone trying to use the path.	See comments above
			Historical evidence, which the landowners suggests confirms the existence of the path prior to its extinguishment may be found on a variety of Nineteenth & Twentieth Century maps. The path is not shown on maps post 1960 when it was extinguished.	The landowners appear to accept that a public rights of way existed prior to 1960. If this is the case, which is a mater they do not appear to dispute, but actually rely upon, then in the absence of any legal extinguishment, those rights will still exist today.
				estanding of the actual processes which took place.

Wildlife & Countryside Act 1981
Application for Definitive Map Modification Order
Church Lane to Carr Lane, Wheldrake

Robin Carr Associates Public Rights of Way Management & Consultancy Services

Wildlife & Countryside Act 1981
Application for Definitive Map Modification Order
Church Lane to Carr Lane, Wheldrake

	T
Comments	the path in the last 40 years they would There is no suggestion of any claim based upon modern user. The claim is various obstacles relating to the based upon the historical existence of the path, which the landowners appear to acknowledge.
Objection	If anyone had walked the path in the last 40 years they would have encountered various obstacles relating to the management of the land
Name	
0	
Tab Page	

### Annex 7

**Legal Tests** 

### **Annex 7 - 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 facia 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.

### **Evidential Tests**

Highways Act 1980, Section 31

- 3. 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."

### Common Law

- 6. 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.

This page is intentionally left blank



## **Decision Session Executive Member for City Strategy**

2 February 2010

Report of the Director of City Strategy

Public Rights Of Way – Application for Definitive Map Modification Order, Alleged Public Footpath, Ings Bridge to Storwood, Wheldrake

### **Summary**

This report seeks to assist the Executive Member in determining whether or not to make a Definitive Map Modification Order (DMMO) to add the route (shown by a broken black line on Plan 1 (Annex 1)) to the Definitive Map, as a Public Footpath. In determining this issue it is important to consider the available evidence against the requirements of the legislation (see Annex 7).

### Recommendation

2. It is recommended that the Executive Member approves Option A and authorises the making of a DMMO to add the route as a Public Footpath to the Definitive Map.

### Reason

- 3. Taking the evidence as a whole there is a prima facie case in favour (i.e. there is a reasonable allegation) of the establishment of public footpath rights over the application route
- 4. The depositions made by the landowners in 1975 and 1992 would appear to be incomplete because they were not followed up by the required Statutory Declarations. Clarification on whether such declarations were made has been sought, on numerous occasions from the landowners, but no information has been forthcoming. It is therefore only reasonable to conclude that they were not made. As a result the 1975 and 1992 depositions do not serve to have their desired effect, and do not demonstrate sufficient lack of intention to dedicate public rights to overturn the prima facie case made in their favour.
- 5. No other evidence demonstrating sufficiently overt acts, demonstrating a lack of intention to dedicate, on the part of the landowner, during the period 1946 1966 has been submitted, by or on behalf of the landowners.

6. All the available relevant evidence shows that Public Footpath rights are reasonably alleged to exist thus requiring the authority to make the order (Wildlife and Countryside Act 1981, Section 53(3)(c)(i)).

### **Background**

- 7. The existence or otherwise of public rights over the application route has been ongoing for some considerable time, and at least since the mid 1970's when the issue was the subject of discussions by Cottingwith and Wheldrake Parish Council's. This resulted in the collection and submission of user evidence forms with a view to the matter being considered as part of a future review.
- 8. In 1983 the Definitive Map review procedure was overhauled and replaced by new procedures introduced by the Wildlife & Countryside Act 1981.
- 9. In May 1988 Wheldrake Parish Council submitted, to North Yorkshire County Council, an application for a Definitive Map Modification Order, to add the bridleway, shown by a broken black line (the application route) on Plan 1 (Annex 1). Then in 1996, as a result of Local Government Reorganisation, the application, which had still to be determined, and which remained outstanding, was passed to City of York Council as the newly appointed Surveying Authority for the area.
- 10. In 2002 the Council commenced preliminary investigations into this, and a number of other similar applications made by Wheldrake Parish Council. Whilst these investigations were substantially completed at that time, the applications were never formally determined. Therefore, more recently, and in order to bring these matters to a close, the previously considered evidence was checked and ratified so as to allow the matter to be brought to a conclusion.

### **Summary of Evidence**

### **Historical Documents**

20. As part of the investigations a range of documents have been consulted, and these are listed in **Annex 2** of this report. Where the documents are considered to have some evidential value in this case, they are further summarised within the report, with more detailed comments included in **Annex 3**. Copies of the documents discussed in **Annex 2** are included in the bundle of evidence attached to this report and referenced accordingly.

### **Ordnance Survey Maps**

21. The Ordnance Survey maps for the area show the existence of an embankment along the side of the old course of the River Derwent, which appears to also coincide with the application route. Some maps also show paths or tracks leading onto the embankment

### The Swing Bridge at Storwood

22. In a letter dated 8 December 1977 the British Waterways Board wrote to Humberside County Council regarding the Swing Bridge at Storwood. This letter suggests that the bridge was crossed by a public right of way, and problems

were encountered with the bridge being "frequently swung over onto the Storwood bank so that pedestrians approaching Storwood from Wheldrake Ings are unable to cross the canal"

23. The letter goes on to confirm that this particular bridge was actually paid for by the County Council at a cost of approximately £15,000.

### **User Evidence**

- 24. The application was supported by 45 witnesses who completed user evidence forms claiming use during the period 1920 1994. Some of these witnesses completed forms in the 1970's others in the 1980's. These forms are summarised in **Annex 4** of this report, and the periods of claimed use summarised on the User Graph in **Annex 5**.
- 25. It has not been possible to undertake any form of substantive witness interview due the length of time that has passed since the forms were completed. By and large they provide evidence of long uninterrupted use of the application by the public.

### **Evidence of Previous Landowners/Occupiers**

26. Various members of the Popplewell family who previously tenanted and owned land on the Ings have submitted user evidence forms, and state that they always considered the route to be a public right of way. Sir John Dunnington-Jefferson who also previously had a landowning interest in the Ings also filled out a user evidence form confirming that the way was considered to be public. This evidence is summarised in **Annex 4** along with the user evidence.

### Representations made by and on behalf of the Current Landowners

27. The current landowners deny the existence of any public right of way along the Order Route. They refer to depositions, made pursuant to Section 31 (6) of the Highways Act 1980 and its predecessor legislation, denying the existence of public rights in 1975 and again in 1992. They have also provided evidence of the erection of signs and of challenges to users etc, mainly in the 1980's and 1990's. Various issues are also raised with regard to the conservation status of the land. The submissions made by, and on behalf of the landowners are summarised in **Annex 6**.

### **Comments on Evidence**

### **Historical Documents**

- 28. Caution must be exercised when considering the Ordnance Survey maps in this particular case because of the co-existence of the embankment on the same alignment. The correspondence from the British Waterways Board, combined with the fact that public funds were expended on providing the Swing Bridge at Storwood, would strongly suggest that the path "approaching Storwood from Wheldrake Ings" was considered, at that time to be public.
- 29. There is however insufficient documentary evidence to pursue a purely documentary based case, however this evidence should still be taken into consideration along with the user evidence.

### **User Evidence**

30. In common with many cases of this nature across the country, the fact that the application is being determined some nineteen years after it was made, is problematic so far as the continued availability of witnesses is concerned. The evidence of the four witnesses who were interviewed should be given more weight than that of the witnesses who were not, which can only be taken as read.

### Representations made by and on behalf of the former landowners

31. Use of the application route, by the former landowners, and occupiers, during their periods of ownership/occupancy, is unlikely to constitute user that is "as of right" and should not therefore be taken into account, in such a context, when considering the user evidence. It is however, very good evidence to show that during their periods of occupancy, and perhaps more importantly their periods of ownership the application route was considered to be, and accepted as, a public right of way. This is quite significant evidence.

### Representations made by and on behalf of the current landowners

- 32. Issues such as nature conservation, suitability and the practicalities of land management etc, whilst genuine concerns, are not matters that can lawfully be taken into account as part of the decision making process.
- 33. The depositions, made in 1975 and 1992 would appear to be incomplete because they were not followed up by the required Statutory Declarations. As a result they do not serve to have their desired effect, and do not therefore demonstrate sufficient lack of intention to dedicate public rights.
- 34. The assertion that signs were erected on the Ings Bridge, circa 1966, has been substantiated by the landowners, by the production of various pieces of correspondence. These signs would appear to challenge public user and would, in all probability call into question the existence of public rights. If this is the case the relevant 20 year period under Section 31 of the Highways Act 1980 would be 1946 to 1966.
- 35. No other evidence of sufficiently overt acts, on the part of the landowners, to demonstrate any lack of intention to dedicate during the period 1946 to 1966 has been forthcoming. The landowners have however suggested that there was no bridge at the end of Ings land prior to circa 1966, but this has not been substantiated, despite requests to that effect. The 1911 Ordnance Survey Map shows a bridge at this location as do the 1767 navigation plans.

### Assessment of Evidence

### **Historical Documents**

36. There is insufficient historical documentary evidence available in this case to support the making of a Definitive Map Modification Order. The evidence which is available should therefore be considered in context to the user evidence.

User Evidence Common Law 37. The user evidence forms suggest continued public pedestrian user, as of right, and without any interference from circa 1920 until about circa 1966, when use may have first been challenged, by the erection of signs. Use over such a long period of time must have come to the attention of the landowners, and indeed they confirm not only that such was taking place, but that they accepted that the route was a public right of way. Under such circumstances, unless there is any evidence of contrary intention, it may be possible to infer dedication on the part of the landowners. The second part of the equation, public acceptance is demonstrated again by the user evidence and the public expenditure on the Swing Bridge.

### Highways Act 1980 Section 31

### Calling into question and 20 year period of user

38. From the available evidence it would appear that the existence of public rights was called into question by the erection of signs on the Ings (Wheldrake) Bridge circa 1966. The relevant twenty year period would therefore be 1946 - 1966.

### Actual use and enjoyment by the public

39. A substantial amount of user evidence (Appendix 3) has been submitted in support of this application, although it is more supportive of footpath, rather than bridleway rights. This evidence, which has to be taken as read, due to most witnesses no longer being available to confirm their evidence, suggests actual use and enjoyment of the route by the public, throughout the period discussed above.

### Use "As of Right" and without interruption

- 40. For use of a path or way to be "as of right", it must be use without force, without secrecy and without permission. There is no need for the user to believe they are exercising a public right of way. The evidence submitted in support of the application would appear to meet this test for both of the periods (1920 to 1966 and 1946 to 1966) discussed above.
- 41. There is no evidence to suggest that use of the route has ever been interrupted (within the meaning of the legislation) during the relevant twenty year period. Interruptions to user as a result of flooding do not fall within the meaning of interruption (within the meaning of the 1980 Act) due to there being no intent to prevent usage.
- 42. References to users being challenged and possibly turned back by, or on behalf of the landowners, during the relevant periods, have not been substantiated by the production of actual evidence.

### Consultation

- 43. Consultations have been carried out in accordance with the Parliamentary Rights of Way Review Committee's Code of Practice on consultation, which includes consultation with user groups etc. The Parish Council and landowners have also been consulted.
- 44. The landowners have submitted objections and representations. These are discussed, and any evidence considered, within the report.

### **Ward Councillors**

Cllr C Vassie – No comments received.

### **Political Parties**

Cllr S Galloway (Lib Dem) – No comments received.

Cllr R Potter (Labour) – 'Happy to support the modifications': comments received 30<sup>th</sup> December, 2009.

Cllr I Gillies (Conservative) – No comments received.

Cllr A D'Argone (Green Party) - No comments received

### **Options**

- 45. Option A: If, having considered all of the available evidence, and in the absence of any evidence to the contrary the Executive Member decides there is sufficient evidence to raise a reasonable allegation in support of the existence of public footpath rights:
  - a) under common law based upon user between 1920 and 1966
  - b) under the provisions of Section 31 of the Highways Act between 1946 and 1966

that the alleged public rights do exist, the Executive Member should resolve that:

- a) The Director of City Strategy be authorised to instruct the Head of Legal Services to make a Definitive Map Modification Order to add a public footpath, along the route A B on Plan 1 attached to this report, to the Definitive Map;
- b) If no objections are received, or any objections that are received, are subsequently withdrawn, the Head of Legal Services be authorised to confirm the Order made in accordance with (a) above; or
- c) If any objections are received, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.
- d) The East Riding of Yorkshire Council be invited to make a corresponding Order for the section of the route within their area.
- 46. Option B: If, having considered all of the available evidence, the Executive Member may decide that the alleged public rights do not exist, the Executive Member should resolve that:
  - a) The application to modify the Definitive Map be refused.
  - b) The applicant be advised of their right to appeal.

### **Corporate Priorities**

47. If it is determined that the available relevant evidence shows that a right of way subsists or is reasonably alleged to subsist and is added to the map the benefits of doing so would link into the Council's Corporate priorities. A public right of way is sustainable, car free and provides access to health and recreation opportunities thus contributing to the priorities of making York a Sustainable and a Healthy City.

### **Implications**

### **Financial**

- 48. If it is determined to progress a DMMO it will have to be advertised in the local press. The cost of advertising the order would be in the region of £1500. If an order is made, and no objections are received the order will be confirmed and re-advertised, again at a cost of £1500.
- 49. If objections to the order are received, and not withdrawn, the outcome of the order will be decided by the Secretary of State, possibly by means of a Public Inquiry. The cost of a Public Inquiry being approximately £5000.
- 50. If the order is confirmed by either the Council or the Secretary of State the authority has to accept that the route is maintainable at the public expense inclusive of the existing bridge (metal frame and wood decking spanning in excess of 20 metres) that crosses the River Derwent. Acceptance is not as such a new obligation but is part of the Council's statutory duty to keep that map up to date and formally record the rights of the public where those rights exist but are not yet shown and recorded in the definitive map and statement.

### **Human Resources**

51. There are no human resource implications.

### **Equalities**

52. There are no equalities implications.

### Legal

- 53. City of York Council is the surveying authority for the purposes of the Wildlife and Countryside Act 1981, and has a statutory duty to ensure that the Definitive Map and Statement for its area is kept up to date.
- 54. If, and when, the Authority discovers evidence to suggest that the Definitive Map and Statement needs updating, it is under a statutory duty to make the necessary changes. A Definitive Map Modification Order (DMMO) enables any changes to the map and statement to be made.
- 55. Before the Council can make the a DMMO to add a route to the definitive map, as is the subject of this report, it must be satisfied that, taking into account the available evidence, that a right of way can reasonably be alleged to exist. If it can, the authority must make the order. If objections are received during the process and not withdrawn the order must be forwarded to the Secretary of

- State. The Secretary of State will appoint an Inspector who will test the evidence and determine the outcome of this application.
- 56. DMMO's do not create any new public rights of way they seek to record those already in existence but not formerly recorded in the definitive map and statement. Issues for example such as safety, security and desirability whilst being genuine concerns cannot be taken into consideration. The DMMO process requires an authority to look at all the available evidence, both documentary and user, before making a decision.

### **Crime and Disorder**

57. There are no crime and disorder implications.

### **Information Technology**

58. There are no IT implications.

### **Property**

59. There are no property implications.

### Other - Maintenance implications

60. If the DMMO process concludes that public rights do exist the public footpath becomes maintainable at the public expense and should be recorded as such on the List of Streets Maintainable at Public Expense. The Council, as the highway authority for public rights of way, has a duty to maintain the public footpath to a standard that allows use by lawful traffic: the right of way is on foot only.

### **Risk Management**

61. In compliance with the Council's Risk Management Strategy, Options A is subject to internal budgetary pressures (financial). There are no risks associated with Option B.

### **Contact Details**

Author: Joanne Coote (Definitive Map Officer) Network Management	Damon Copp	Responsible ferthwaite, Assinent and Trans	stant Director,
(City Development & Transport) Tel No: 01904 551442	Report Approved	<b>✓</b> Date	22.10.2010
Wards Affected: Wheldrake			All

For further information please contact the author of the report.

### **Background Papers:**

Evidence evaluated and background report prepared by Consultant: Robin Carr Associates, Public Rights of Way Management and Consultancy Service Wildlife and Countryside Act 1981

Highways Act 1980

Rights of Way: A Guide to Law and Practice, Fourth Edition, by John Riddall and John Trevelyan.

England and Wales Court of Appeal (Civil Division) Decisions: R v Secretary of State for Wales ex parte Emery (1997)

### Annexes:

Annex 1: Plan 1: Claimed Public Footpath, Ings Bridge to Storwood, Wheldrake

Annex 2: List of documents consulted

Annex 3: Summary of Documentary Evidence

Annex 4: Summary of User Evidence

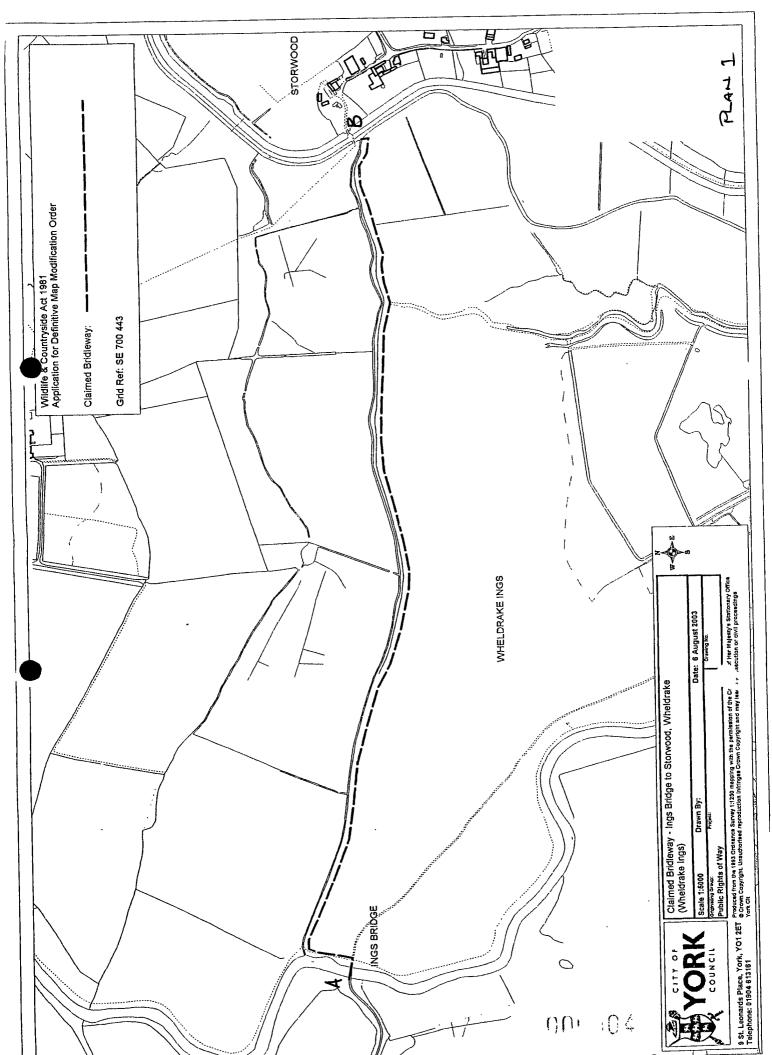
Annex 5: Graph showing Periods of Claimed User

Annex 6: Summary of Objector's/Landowners Evidence/Comments

Annex 7: Legal Tests

This page is intentionally left blank

Plan 1: Claimed Public Footpath, Ings Bridge to Storwood, Wheldrake



List of documents consulted

Annex2

### **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** 

Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Wheldrake Ings, Wheldrake

# Summary of Documentary Evidence

Tab	Doc	Description	Document Content	Comments
ري ا	ഗ	Ordnance Survey Maps	The Ordnance Survey maps for the area show the existence of an embankment along the side of the old course of the River Derwent, which appears to also coincide with the application route. Some maps also show paths or tracks leading onto the embankment  The 1911 edition shows lngs Bridge, and also the swing bridge at Storwood	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.  In this particular instance the claimed path co-exists with an embankment. The embankment is shown on the mapping, and in some instances is shown with paths running into it, suggesting that a path may also exist along the bank top.
7	6-9	Derwent Navigation Plan and Notes 1767	Plan and notes relating to works proposed in respect of making the River Derwent navigable. Wheldrake ("Ings) Bridge is shown at the end of Ings Lane. The swing bridge at Storwood is not mentioned	These documents provide little information about the Application Route as they are [principally concerned with the new alignment of the navigation. Notwithstanding this, they do suggest that there was no requirement for a bridge at Storwood when the proposals were drawn up. It is however clear, form the OS maps that the bridge was in place by 1911.
တ	19	Letter dated 8th December 1977 from British Waterways Board to Humberside County Council.	Letter relates to the swing bridge at Storwood being left open so that walkers approaching from Wheldrake encounter problems, and that maintenance of the bridge was paid for by HCC. The letter also refers to a permit system along the towpath.	This letter suggests public use of the application route during the 1970's, and is headed "Public Rights of Way. It is also significant that the County Council funded the cost of the bridge, which in itself is indicative of public status. The permit system mentioned relates to the tow path and not the application route

**Summary of User Evidence** 

## Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Wheldrake Ings, Wheldrake

# Summary of User Evidence

Tab

Page	Name	User Evidence From	Witness Interview	Other Correspondence	esU to boine¶	No of Years Use	Member of Public	theiR to sA tesU	User without interruption	Other Information
_	Walter Aiden	>			1965-1994	29	7	7	7	Form completed 1974 States that he used the path for work.
2	Mr and Mrs Barker	7			1939-1970	31	7	>	7	Route was used by the hunt and also by the Prisoners of War
ю	James Beal	7			1920-1975	52	7	7	7	Form completed 1975
4	Albert Beevers	7			1954-1974	20	7	7	7	Form completed 1974
2	Joseph Alan Beilby	٨	٨		1950-1980	30	7	٤	٨	Form completed 1988. Used the path when fishing
ဖ	Mabel Bielby	7			1940-1942	2	7	>	7	Form completed 1973. Route often flooded in winter
_	Mary Beibly	>			1920-1988	89	7	7	7	Form completed 1988
ω	N.L Brown-Bolton	7			1925-1947	22	7	7	٨	Form completed 1987
တ	Ann Carr	7	٨		1948-1988	40	٨	٨	٨	Form completed 1988
10	Don Carr	٨	٨		1943-1988	45	٨	٨	٨	Form completed 1988
11	Peter Dicker	7			1934-1974	40	7	٨	٨	Form completed 1974

5

5

9

5

5

5

5

5

5

9

0

Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Wheldrake Ings, Wheldrake

John George Alfred Dunn John Dunnington-Jefferson Gillian Elmhirst	Form Witness Interview	Other Corresponder	esU to boineq	No of Years Use	Member of cubic	User As of Righ	User without interruption	Other Information
John Dunnington-Jefferson Gillian Elmhirst			1916-1987	7.1	7	7	7	Form completed 1987
Gillian Elmhirst			1900-1976	76				Former Landowner who believes the route to be a public right of way Form completed 1976
			1940-1960	20	7	7	7	Form completed 1987
15 Charles Edward Exton			1930-1933	3	7	7	7	Form completed 1975
16 Frank Fairburn			1920-1973	53	7	7	7	Form completed 1973
17 Frank Floyd			1972-1974	2	7	٨	7	Form completed 1974
18 George Sydney Gosley √			1937-1987	50	٨	٨	7	Form completed 1987
19 Amy Gowthorpe					7	^	7	Form completed 1973
20 Gilbert Harrass			1899-1939	40	ċ	خ	7	Form completed 1987 Some references to driving cattle and working for landowners
21 Dorothy Harriman			1948-1988	40	7	7	7	Form completed 1988
22 Edith Harrison			1910-1975	65	7	٨	7	Form completed 1975
23 Maud Harriman			1908-1988	80	7	٧	٨	Form completed 1988

Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Wheldrake Ings, Wheldrake

	Form completed 1975 References to connections with land	Form completed 1976	Form completed 1987 References to driving cattle	Form completed 1974	Form completed 1975	Form completed 1974	Form completed 1988	Understood to be a former tenant or related to one, but believes the way to be public Form completed 1974	Understood to be a former tenant or related to one, but believes the way to be public Form completed 1975	Understood to be a former tenant or related to one, but believes the way to be public
	Form cor Reference	Form cor	Form cor Reference	Form cor	Form cor	Form cor	Form cor	Understo one, but Form cor	Understo one, but Form cor	Understo one, but
User withoul interruption	7	7	7	7	7	7	7			
User As of Right	خ	7	c	7	7	٨	7			
Member of Public	خ	7	¢.	7	7	7	7			
No of Years Use	46	28	25	63	49	51	40	43	45	30
esU to boined	1929-1975	1927-1955	1923-1948	1911-1964	1926-1975	1925-1976	1948-1988	1932-1975	1930-1975	1940-1970
Other Corresponder										
Witness Interview										
User Evidence Form	7	7	7	7	7	7	7	7	7	7
ЭшвИ	William Hudson Hairsine	Arthur Henry Harvey	Frances E Holdsworth	L Houseman	Frederick Houseman	Lance Moore	Ian William Myers	A P Poppleweil	D Popplewell	E Popplewell
Page G	24	25	56	27	28	29	31	32	35	38
Тар	10	5	5	5	5	10	10	10	10	10

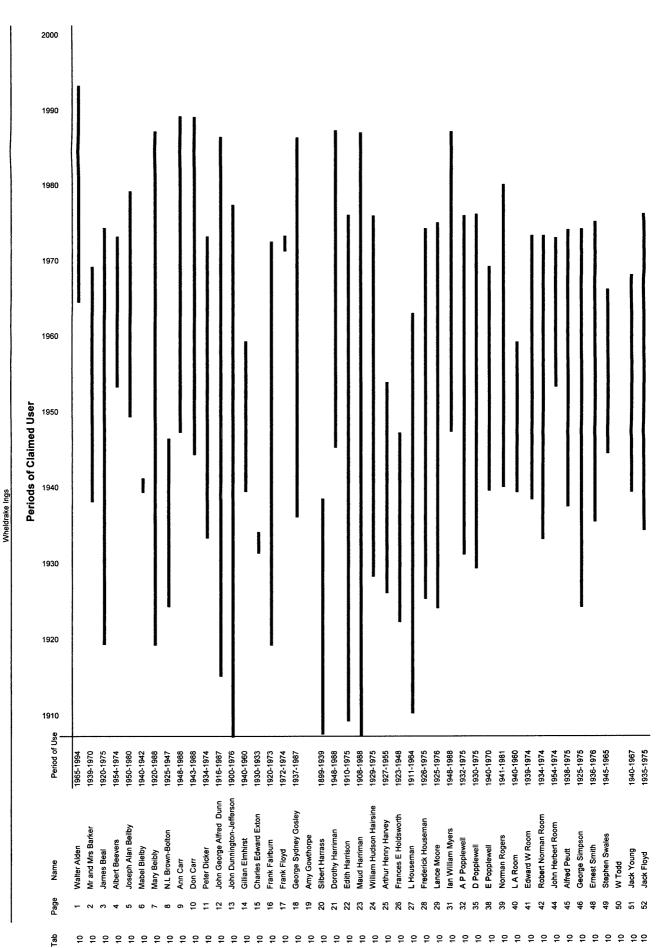
Page 49

Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Wheldrake Ings, Wheldrake

Tab	Page	Name	User Evidence Form	szentiW weivretni	Other Correspondence	esU to bolieq	esU siseY to oN	Member of Public	User As of Right	User without interruption	Other Information
5	39	Norman Rogers	>			1941-1981	40	7	7	7	Form completed 1981
10	40	L A Room	7			1940-1960	20	٨	٨	٨	Form completed 1987
10	41	Edward W Room	٨			1939-1974	35	٨	7	7	Form completed 1974
10	42	Robert Norman Room	٨			1934-1974	40	٨	٨	٨	Form completed 1974
10	44	John Herbert Room	٨			1954-1974	20	٨	۲	٨	Form completed 1974
10	45	Alfred Peutt	7			1938-1975	37	۸ .	7	۲	Form completed 1975
10	46	George Simpson	7			1925-1975	50	٨	۴	٨	Form completed 1975 & 1987
10	48	Ernest Smith	7			1936-1976	40	7	7	٧	Form completed 1976
10	49	Stephen Swales	7			1945-1965	20	٨	۲	۲	Form completed 1976?
10	50	W Todd	7					٨	٨	4	
10	51	Jack Young	7			1940-1967	27	٨	۲	Ų	Form completed 1988
10	52	Jack Floyd	۲			1975-1935	45	٨	٨	7	Form completed 1975

**Graph showing Periods of Claimed User** 

Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order



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

## Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Wheldrake Ings Wheldrake

## Annexo

# Summary of Objector's / Landowners Evidence/Comments

Name Comments	Submission of map and statements denying dedication of public rights (presumably Section 34(6) Highways Act 1980 Section 31(6) provision)  There is no evidence that this submission was subsequently supplanted by the required Statutory Declaration, and therefore there is some doubt that, due to the construction of Section 31(6) and it is not been tested by the courts, it is commonly thought that, due to the construction of Seatons and statutory Declaration the deposit	The Yorkshire Wildlife Trust Ltd  Letter dated 6 <sup>th</sup> November 1986  Letter dated 6 <sup>th</sup> November 1986	The Yorkshire Wildlife Trust Acknowledges receipt of the Notice of Application served by the Wheldrake Parish Council and requests a plan showing the alleged route. Also states a number of issues:	The former East Riding County Council confirmed in 1971 that the County Council were able to support this contention, or indeed how there were no public rights of way over Wheldrake Ings at most they would have been able to confirm that nothing was recorded on the Definitive Map, which is significantly different.	The previously statements have been submitted confirming the Trust's lack of intention to dedicate.	There has been a notice on the bridge for many years informing the public that access to the nature reserve is confined to members of the Trust from 1st April to 30th June
Name	Yorkshire Naturlists' Trust I Submission 15 <sup>th</sup> December 1975	The Yorkshire Wildlife Tri Letter dated 6 <sup>th</sup> Novembe	The Yorkshire Wildlife Trust Letter dated 22 <sup>nd</sup> August 190			
Tab Page	81-82	80	78			

Comments	These are not matters that can lawfully be taken into account during the decision making process.	No information is provided as to how the alleged permissive access provisions are transmitted to the public or indeed how such access is controlled, or indeed whether such measures are cites along the alleged path.  This statement would need to be substantiated by evidence. Such consideration being locked in the mind of the landowners is insufficient.	There are no proposals to create any new public rights of way. The application seeks to recorded a right of way that already exists albeit not recorded on the Definitive Map. Issues surrounding current land use and status (i.e. SSSI) are not matters that can be taken into consideration in the decision making process.	Whilst there is no doubt that that the initial deposits were made in 1975, there is no evidence to suggest that they were followed by the required Statutory Declarations, and as such they are deemed to be of insufficient evidential value to overturn any prima facie case in support of dedication.	There no information to confirm upon what basis or investigation such a statement would have been made. If it was a simple check of the Definitive Map it would not be possible to draw such a conclusion.	Issues surrounding current land use and status (i.e. SSSI) are not matters that can be taken into consideration in the decision making process.	The evidence does suggest the existence of a sign from circa 1966, in which case this would be the date at which the existence of the path was called into question. There is significant evidence of user prior to this date.
3	These are not matters that can la decision making process.	No information is provided as to P provisions are transmitted to the I controlled, or indeed whether suc path.  This statement would need to be consideration being locked in the	There are no proposals to create application seeks to recorded a ri recorded on the Definitive Map. It status (i.e. SSSI) are not matters decision making process.	Whilst there is no doubt that that there is no evidence to suggest the Statutory Declarations, and as su evidential value to overturn any p	There no information to confirm upon what basis or investatement would have been made. If it was a simple che Map it would not be possible to draw such a conclusion.	Issues surrounding current land uthat can be taken into considerati	The evidence does suggest the e which case this would be the date called into question. There is sign
Objection	The land over which the claimed route runs is a SSSI of international importance and a statutory sanctuary.  Arrangement are underway to have it designated a National Nature Reserve	Public access to the reserve is permissive and controlled. Despite this trespass and damage occurs. The existence of a PROW would increase these problems	The NCC would be opposed to the creation of a new public right of way as it passes through a SSI	Confirms that a deposit was made pursuant to predecessor legislation to Section 31(6) of the Highways Act 1980 in 1975, and encloses copies.	The former East Riding County Council confirmed that there were no public rights over the Ings in 1971	The claimed path is through a SSSI	There has been a notice on Ings bridge for a considerable time and any use has been permissive.
Name	The Yorkshire Wildlife Trust Letter dated 22 <sup>nd</sup> August 1988 continued		Nature Conservancy Council Letter dated 24th August 1988	Yorkshire Wildlife Trust (YWT) Letter dated 21st May 1992			
Page	82		85-87	77-17			
Tab	91		16	5			

Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Wheldrake Ings Wheldrake

Robin Carr Associates Public Rights of Way Management & Consultancy Services

Comments	No evidence either for or against the application ten but be	The possible existence of a link to Storwood is a matter for East Riding of Yorkshire Council as it lies within their area, and not that of the Coty of York Council. As such a link is not under investigation by City of York, it has not been included in any plans. This is the only reason for its exclusion.	Mapping evidence suggests the existence of a bridge at the end of lngs lane since the early 1900's. The YWT have been asked to clarify this matter, but they have not done so as of the date of this report. Whilst land in the ownership of the Crown, which includes Government Departments etc, may be exempt from the provisions of the Highways Act 1980, the principles of Common Law dedication still apply therefore there is no bar to the establishment of public rights.	Whislt it is true that there s nothing recorded on the Definitive Map, this does not preclude the possible existence of such rights, and this it a matter that has yet to be investigated by East Rising of Yorkshire Council, if a DMMO is confirmed that that part of the route within the City of Yorks Council area it is highly probable that a similar order, adding the said link would succeed in the East Rising of Yorkshire Council, indeed it would probably rely upon the same evidence.	This would be a matter of interpretation. Nowhere within the letter doe sit refer to use of the bridge as being permissive. Quite to the contrary it is headed "Public Rights of Way" and confirms that the bridge was installed/repaired at public expense. This would be supportive of any case in favour of the route being public. There is no bar to dedication over the bridge	It is agreed that the route is not in the enclosure award, and indeed no evidence has been discovered to suggest the existence of rights at such an early date. This does not however prevent the establishment of rights at a later date. The case in favour of ithe establishment of public rights in this instance is based upon 20th Century public user.
Objection	Has no knowledge of the application route Acknowledges that conservation interests etc cannot be taken into consideration as part of the decision making process, but that appropriate management measure may need to be implemented if an Order is made	There is no eastern link, beyond the Ings to Storwood.	The route goes across lngs bridge, which has only existed since 1967. The bridge is there by license from the Crown estate and its successors who do not have capacity to dedicate	Consultation with the owner of Storwood Manor has revealed that there is no public right of way across his property	The letter from British Waterways in 1977 confirms the Swing Bridge is used by permission only	The 1777 Enclosure award is inconsistent with there being a public right of way over the route.
Name	Natural England Letter dated 7 <sup>th</sup> October 2003	Yorkshire Wildlife Trust (YWT) Submission dated 18 <sup>th</sup> December 2008				
Page	8	38-50 & 52-66				
Tab	16	16				

Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Wheldrake Ings Wheldrake

Robin Carr Associates Public Rights of Way Management & Consultancy Services

Tab	Page	Name	Objection	Comments
	83	Natural England Letter dated	See comments above	See comments above
	5-18	Yorkshire Wildlife Trust (YWT) Submission dated 15 <sup>th</sup> May 2009	The Yorkshire Wildlife Trust asserts that there is no public right of way across its land for the following reasons:	
			The YWT bridge over the River Derwent did not exist before 1966 and there was no bridge there previously.	Maps from the early to mid part of the Twentieth Century, pre-dating 1966 show the existence of, and name, a bridge over the River Derwent at the end of lngs Lane. This statement would therefore appear to be incorrect.  This apparent error has been raised with the YWT and they have been offered the opportunity to comment and/or clarify their original statement further. The YWT has responded and chosen not to comment at this time. A decision over the accuracy of the YWT's submission on this point must therefore be made based upon the available evidence, the options being a) that a bridge did previously exist, but not immediately prior to 1966, or b) that the YWT statement is simply in error. The user evidence would suggest the latter, the evidence of the Trust, the former.
			A sign stating "Private Bridge – No Unauthorised Use" was in place on the bridge over the River Derwent from 1966 to at least the late 1970's.	This assertion is supported by a copy of correspondence relating to the order of the sign in 1966 and a photograph alleged taken in 1978 showing the existence of the signs on the bridge.  Whilst no evidence has been produced to substantiate the date of the photograph, these documents do provide good evidence of the existence of the sign.  The wording of the sign is however far from ideal for the purposes of demonstrating a lack of intention to dedicate public rights, and may be considered somewhat ambiguous. For instance, if users believed the way to be public, they may equally have believed that their use was "Authorised" by virtue of exercising a public right. It is for the decision maker to consider all of the relevant factors and decide whether such a signs has the necessary effect. If it does, then the erection of the sign in 1966 would constitute a calling into question for the purposes of Section 31 of the Highways Act 1980, requiring a period of user 1946 – 1966.

conclusion that can be drawn is that no such Statutory Declarations were

made. If this is the case the 1975 deposit would appear to have no effect, and does not constitute qualifying evidence of lack of intention to dedicate.

users of the alleged path. The Courts of rules (Godmanchester in House of Lords) that acts such as writing a letter to the Authority are insufficient to

demonstrate a lack of intention to dedicate.

Once again, this deposition does not appear to have been supported by a subsequent Statutory Declaration, and would therefore not appear to have

In 1992 the YWT again submitted a plan and statement under the provisions of Section 31 (6) of the Highways Act 1980.

the desired effect. (See comments above)

Whilst the YWT suggest that these depositions and letters were accepted

been the case, if the criteria of the

still have no effect

evidence of lack of intention to dedicate public rights. It certainly does not fall within the requirements of Section 31 (6) of the Highways Act 1980, and any other qualifying act would have to be sufficiently overt, and directed at

There is no doubt that this letter was sent by the YWT and subsequently received by the Authority. Such a letter does not, however qualify as

The Trust's position was re-asserted by way of a letter to the then Highway Authority ion 1986

### numerous occasions whether the required Statutory Declarations were No details of what this alleged challenge comprised of is provided by the YWT, unless it refers to the depositions made under the predecessor including that of Counsel (from other unrelated cases), and that of many other Local Authorities, that, due to the wording of the legislation, unless This issue has been raised with the YWT and they have been asked on made. Whilst the Trust did finally respond on this matter they have chosen provisions of Section 31(6) of the Highways Act 1980, which is considered There is no doubt that this deposition was made, however there is doubt the initial deposit does not take effect, and does not therefore demonstrate In the absence of any evidence to show that the deposition was followed by YWT when directly questioned on this matter, the only reasonable over whether it has any effect. There is a substantial body of opinion, such depositions are followed up with the required Statutory Declaration, a Statutory Declaration, and the lack of any co-operative response from the lack of intention to dedicate, nor does it provide the protection claimed. C mments not to comment. Application for Definitive Map Modification Order In 1975 the YWT submitted a plan and statement using the predecessor provisions of Section 31(6) of the Highways Act 1980 denying the existence of any public rights of way across The YWT formally challenged the existence of a public right of Wheldrake Ings Wheldrake Objecti

×

9

Page

Tab

Wildlife & Countryside Act 1981

	without question, which may well have I legislation has not been met, they will s
Robin Carr Associates Public Rights of Way Management & Consultancy Services	Services

Tab	Page	Name	Objection	Comments
		ΥWΤ	Since the early 1970's the interests of YWT have been vigorously protected through signs, restrictions on access, fences, gates published materials. These are substantiated in the sworn statements of Messrs Dixon, Ralston and Hargreaves	See comments and summary etc of the sworn statements (below)
			Witnesses state that there were never any signs (some until YWT took ownership), yet all who claim to have used the path appear to have failed to see, ignored or forgotten that such signs were in existence since 1966.	There is certainly evidence that the signs on the bridge were ordered in 1966, and it may only be reasonable to conclude that, in the absence of any evidence to the contrary, the signs were erected shortly after they were made.
			There is no evidence of any reaction to the erection of the signs	With the majority of witnesses in this case being no longer available to clarify their user evidence forms it is impossible to say why they do not recall any signs. It may be because as the signs did not physically prevent their continuing use, they simply did not register in their minds; it may be because, as they considered the way to be public, the signs did not apply to them; or that they simply did not take any notice of them. This is, of course all speculation.  Comments regarding the wording of the signs have already been made
				ароче.
			The lack of any prior claim or objection between 1966 and 1975, couple with the way not being claimed under the 1949 Act original Definitive Map procedures questions whether the way has always been considered a public right of way. It is more probable that it was considered to be a private easement.	The fact that the alleged route was not previously claimed does not, in any way, preclude the possible existence of public rights. There are many instances where ancient, and very obvious paths were not claimed, often because to the local people they were "so obviously public rights of way" that they didn't consider it necessary to claim them. The Trust's assertion is purely speculative and contrary to the body of user evidence before the Authority, which does, of course include the evidence of previous land owners who say that the way was public.
			There is no PROW over the Ings as set out by City of York Council.	City of York Council is investigating an application for a Definitive Map Modification Order in accordance with its Statutory Duties. Until such a time as it's investigations are complete, the Authority remains impartial, its role being to determine, based upon the evidence before it, whether or not there is a case to promote the requested Order. The route has not therefore been set out, or asserted by the Council.

	- Carroll		7
rag	Naria	Objecti n	
19-23 T St	T E Dixon Statutory Declaration dated 8 <sup>th</sup> May 2009	Works for Natural England as a Senior Reserve Manager. Has worked or NE and it's predecessors since 1982. Between 1975 and 2000 visited Wheldrake Ings on many occasions, most weekends and most summer weekday evenings.	
		Until 1978 the owners had a full time warden, and after that a group of voluntary wardens took over. The duties of the wardens included enforcing access restrictions.	
		Access to the reserve was, at that time, restricted to members of the Trust during bird breading season, and access throughout the year was restricted to a permissive riverside path as far as the northern boundary of North Hills Ings	The permissive path runs southwards from the bridge, alongside the river. Clearly to access this path, it must have been possible to cross the bridge. It is understood that this was facilitated by a pedestrian gate located next to the locked vehicular gate.
		In 1980 Mr Dixon was involved in writing the Trust's management plan for the Ings. This included various provisions relating to land management and access. This includes details of the vehicular gate at the bridge being locked but the adjacent pedestrian gate being left unlocked.	The inclusion of provisions, suggesting no intention to dedicate, within an internal management plan would be insufficient to demonstrate a lack of intention to dedicate within the meaning of the legislation. Such acts must be directed at the users of the way in question (Godmanchester Case in the House of Lords)
<u> </u>		The management plan also states that the reserve is to be open all year round except on Christmas Day and during the period 1st April to 21st June, access is to be restricted to Trust Members only.	The YWT have been asked how these provisions were enforced in practical terms, and they have responded that the reserve was "closed" but not stated any physical means of closure, simply that wardens would challenge users at any time
		Between 1984 and 2000 Mr Dixon was the Reserve Warden and during that time access was rigourously controlled by a combination of signs, locked gates, electric fences and wardening.	If it is accepted that the signs erected in 1966 were sufficient to all into question the existence of the alleged path, then all of these actions took place after the relevant reckoning period had ended, and as such their evidential value is limited.
		On occasions people were encountered away form the permissive path. Often they were walking along the hay hauling route or along the river bank southwards along North Hills Ings. Hardly ever met anyone walking between Storwood and Wheldrake. Always told people there was no public right of way and asked them to turn back.	Incidents and use away from the application route are not relevant to the investigation.  This evidence confirms that some use of the application route was taking place, but that it was challenged when encountered. Such challenges may be sufficient to demonstrate a lack of intention to dedicate public rights, and the turning back of users, if they did indeed turn back may constitute and interruption to user, providing that these events occurred during the relevant time period.

Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Wheldrake Ings Wheldrake

## Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Wheldrake Ings Wheldrake

Tab	Page	Name	Objection	Comments
16	24-26	C S Ralston Statutory Declaration dated 14 <sup>th</sup>	Mr Ralston has been a visitor to the Ings on an almost daily basis since 1982., first as a visitor and later as a volunteer warden.	The relevant period of user pre-dates the period to which this witness gives evidence. It certainly provides useful background information about events between 1982 and 1989, but is of limited value in determining this
		May 2009	From 1982 – 1989 access to the Ings was on a permit only basis.	application.
			Since 1989 the Ings have been open all year round with signs on the riverbank confirming that visitors must stick to the riverside path.	
			Due to the amount of time spent on the site it is unlikely that anyone using the application route would not have been seen and challenged.	
			On only one occasion was anyone seen trying to use the application route	
16	27-30	D P Hargreaves Statutory Decrlaration dated 13 <sup>th</sup> May 2009	Mr Hargeaves is an Ecologist in the employ of the Yorkshire wildlife Trust as Head of Reserves and has been in that position since 1998. Has worked in nature conservation for 25 years.	The relevant period of user pre-dates the period to which this witness gives evidence. It certainly provides useful background information about events from 1998 onwards, but is of limited value in determining this application.
			Between 1998 and 2007 he was directly responsible for the Ings site which involved regular visits both week days and weekends.	
			During the time spent on the Ings he has only ever seen two sets of people walking other than on the permissive path, neither appear to have been on the application route. Anyone found using routes other than the permissive path would be turned back.	
			In 1975 and 1992 the Trust deposited plans with the Highway Authority denying the existence of public rights. In 1986 the Trusts position as stated in 1975 was reinforced by a further letter.	There is not dispute that these documents were submitted however in the absence of the required Statutory Declarations they do not have the required effect, nor do they, in themselves constitute sufficient evidence of lack of intention to dedicate.

Tab	Page	Name	Objection	Comments
			The Trusts records show that people were challenged if found anywhere other than the permissive path, but are remarkably silent regarding challenges to users of the application route given the level of use.	The lack of challenges to people on the application could be because it was accepted locally as being a public right of way and therefore no such challenges were issued.  Alternative it may be because the levels of user had dropped off following acquisition of the site by the YWT. There is a substantial body of user evidence which predates their ownership, and if rights were established during that time, no amount of later challenges would result in the loss of those rights.
			The Trust has published various articles, leaflets and membership cards which state that access to the Ings in via the permissive path only.	No examples of such documents have been provided but their effect will be dependant upon their target audience and when they were produced. It would appear that they would have had to be produced in the mid 1960's for them to have any effect on the outcome of this case.
			In 1994 the Yorkshire Evening Press published an article which stated that there were no public rights of way over the Ings.	There is no information as where the author got this onformation, however had he/she consulted the Highway Authority at the time no doubt he/she would have been advised that there was a long standing dispute over the existence of public rights. This is not evidence that rights do not exist.
			In 1981 a local resident was challenged when found on the Ings, but not on the permissive path. This is documented as a letter was written to him	It is not disputed that this challenge took place however it appears to post date the relevant time period under consideration.
			On two occasions: 1982 (Humberside County Council) and 1999 (East Riding Council) have made approaches about creating paths over the Ings. These requested were refused	These actions do not preclude the possible existence of public rights over the application route, nor does it suggest that the Authority's concerned considered that no rights did exist. It is a common practice for Authority's to seek dedication agreements as an alternative to the Definitive Map process where agreement can be reached as it is quicker and more cost effective. Both of these approaches also appear to post date the relevant time period under consideration
			In 1983 the Trust received a letter advising that their sign stating "Please keep to riverside path" had been removed. In 19889 the Trust ordered new signs relating to access restrictions.	Both of these approaches appear to post date the relevant time period under consideration, and would therefore be of little evidential value if rights had already been established.
			Since at least 1998 the gate on the Bailey Bridge has been locked	This appears to post date the the relevant time period under consideration, and would therefore be of little evidential value if rights had already been established.

Tab	Page	Name	Objection	Comments
16	4	YWT letter dated 26th May 2009 Note: This letter is on response to queries arising form the YWT s previous submissions.	The date of challenge is no later than 1975	Whilst this is agreed, by virtue of the signs erected in circa 1966, the 1975 date appears to be based upon the deposits made under the predecessor legislation of the Highways Act 1980 Section 31(6), however, there is some doubt as to whether such a deposit does call into question the existence of the rights, and in the absence of a subsequent Statutory Declaration they are insufficient to overturn any prima facie case in favour of the establishment of rights.
			The absence of any structure on the route prior to 1966 seems to be determinative of the matter.	The existence of a bridge (Wheldake Bridge or Ings Bridge) has been mapped since at least 1911 therefore it is unclear upon what basis the claim that no bridge existed prior to 1966 has been made. Clarification has been sought form YWT but no answer has been forthcoming.
			The management plan dated 1980 is of little relevance due to its date of preparation but it provides that the reserve is closed.	No details of how such a closure is physically implemented has been provided despite a request to that effect. In fact it appears that the closure is principally reliant upon wardens monitoring and controlling access in person.
			The majority of the rest of the letter relates to Whooper Swans visiting the site	This is not relevant to the decision making process.

**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 facia* 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.

### **Evidential Tests**

- 3. <u>Highways Act 1980, Section 31</u> 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.

This page is intentionally left blank



### **Decision Session Executive Member for City Strategy**

2 February 2010

Report of the Director of City Strategy

Public Rights Of Way – Application for Definitive Map Modification Order, Alleged Public Footpath from Main Street to North Lane (Love Lane), Wheldrake

### **Summary**

1. This report seeks to assist the Executive Member in determining whether or not to make a Definitive Map Modification Order (DMMO) to add the route (shown by a broken black line on Plan 1 (Annex 1)) to the Definitive Map, as a Public Footpath. In determining this issue it is important to consider the available evidence against the requirements of the legislation (see Annex 6).

### Recommendation

2. It is recommended that the Executive Member approves Option A and authorises the making of a DMMO to add the route as a Public Footpath to the Definitive Map.

### Reason

3. There is evidence in support of the existence of a public right of way over the application route thus requiring the authority to make the order: Wildlife and Countryside Act 1981, Section 53(3)(c)(i).

### **Background**

- 4. In September 1993 Wheldrake Parish Council submitted, to North Yorkshire County Council, an application for a DMMO to add the footpath, shown by a broken black line (the application route)on Plan 1 (Annex 1). Then in 1996, as a result of Local Government Reorganisation, the application which had still to be determined and remained outstanding, was passed to City of York Council as the newly appointed Surveying Authority for the area.
- 5. In 2002 the Council commenced preliminary investigations into this, and a number of other similar applications made by Wheldrake Parish Council. Whilst these investigations were substantially completed at that time, the applications were never formally determined. Therefore, more recently, and in order to

bring these matters to a close, the previously considered evidence was checked and ratified so as to allow the matter to be brought to a conclusion.

### **Summary of Evidence**

### **Historical Documents**

6. As part of the investigations a range of documents have been consulted, and these are listed in **Annex 2** of this report. Where the documents are considered to have some evidential value in this case, they are further summarised within the report, with more detailed comments included in **Annex 3**.

### **Ordnance Survey Maps**

7. The physical existence of a path or track is shown on the Ordnance Survey Maps for the area, but they do not attribute any status to the route.

### 1910 Finance Act Maps and Field Books

8. The 1910 Finance Act Plan shows that the application route was excluded from the valuation of the adjoining hereditaments (land holdings). As a result of the path being excluded form valuation there is no corresponding Field Book entry.

### Plan of Wheldrake Village

9. A plan entitled "Part of Village of Wheldrake" dated 20.8.46 (presumably 1946) shows the existence of the application route, but is silent as to status.

### **User Evidence**

- 10. The application was supported by five user evidence forms, and an additional two forms were located in the Parish Files. These user witnesses claim use of the application route during the period 1920 2002 (82 years). The forms are summarised in **Annex 4** of this report, and the periods of claimed use summarised on the User Graph in **Annex 5**.
- 11. All of the witnesses claim to have used the route, "as of right" and without interruption. One of the witnesses lives alongside the path and has always considered it to be public. Four of the witnesses were interviewed over the telephone as part of the 2002 investigations.

### **Comments on Evidence**

### **Historical Documents**

12. The Ordnance Survey Maps certainly confirm the physical existence of the path as being a feature in the village for some considerable time, however such 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 1910 Finance Act documents provide good evidence in support of the application route enjoying public highway rights.

### **User Evidence**

13. In common with many cases of this nature across the country, the fact that the application is being determined some sixteen years after it was made, is problematic so far as the continued availability of witnesses is concerned. The

evidence of the four witnesses who were interviewed should be given more weight than that of the witnesses who were not, which can only be taken as read. Notwithstanding this problem there is a clear indication of long uninterrupted use and acceptance of the application route as a public right of way.

### **Assessment of Evidence**

### **Historical Documents**

14. The recording and depiction of the application route on the available documentary evidence is consistent with it being a public right of way however, on its own it is probably insufficient to meet the legislative tests. This evidence should however be considered alongside, and in support of the user evidence to demonstrate the use and reputation of the route as a public right of way.

### **User Evidence**

- 15. There is no evidence to suggest that the existence of the application route has ever been called into question (challenged), and prior to 2006 this would have precluded consideration of this case under the provisions of Section 31 of the Highways Act 1980. However the Natural Environment & Rural Communities Act 2006 amended the legislation so that where such a challenge does not exist, the date of the submission of an application for a Definitive Map Modification Order may be used instead. The reckoning date for calculating any twenty year period of user is therefore, in this case, 1993; the relevant twenty year period being 1973 to 1993.
- 16. The user evidence suggests uninterrupted user, "as of right" and by the public throughout the whole of the period, and for quite some time before it. Furthermore the route continues to be open and available for use. There would therefore appear to be a prima facie case in favour of the establishment of public rights over the application route.
- 17. No objections to the registration of this route as a public footpath have been received, nor has any evidence been discovered to suggest any lack of intention to dedicate such rights, on the part of a landowner.

### Consultation

- 18. Consultations have been carried out in accordance with the Parliamentary Rights of Way Review Committee's Code of Practice on consultation, which includes consultation with user groups etc. The Parish Council and landowners have also been consulted. No objections have been received.
- 19. The Parish Council commented, along with the original application that:

"This "snicket" is a long established short cut between Main Street and North Lane and has always been considered a village lane. In former times it was used for access to the village pump and playing fields. Its position opposite the village store in Main Street and opposite the village school in North Lane generates consistent use today by shoppers and school children wishing to avoid the hazards of the road at Dalton Hill."

### **Ward Councillors**

Cllr C Vassie - No comments received.

### **Political Parties**

Cllr S Galloway (Lib Dem) - No comments received.

Cllr R Potter (Labour) – 'Happy to support the modifications': comments received 30<sup>th</sup> December, 2009.

Cllr I Gillies (Conservative) – No comments received.

Cllr A D'Argone (Green Party) – No comments received.

### **Options**

- 20. Option A: If, having considered all of the available evidence the Executive Member decides that the alleged public rights do exist, the Executive member should resolve that:
  - a) The Director of City Strategy be authorised to instruct the Head of Legal Services to make a Definitive Map Modification Order to add a public footpath, along the route A – B on Plan 1 attached to this report, to the Definitive Map;
  - b) If no objections are received, or any objections that are received, are subsequently withdrawn, the Head of Legal Services be authorised to confirm the Order made in accordance with (a) above; or
  - c) If any objections are received, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.
- 21. Option B: If, having considered all of the available evidence, the Executive Member may decide that the alleged public rights do not exist, the Executive Member should resolve that:
  - a) The application to modify the Definitive Map be refused.
  - b) The applicant be advices of their right to appeal.

### **Corporate Priorities**

22. If it is determined that the available relevant evidence shows that a right of way subsists or is reasonably alleged to subsist and is added to the map the benefits of doing so would link into the Council's Corporate priorities. A public right of way is sustainable, car free and provides access to health and recreation opportunities thus contributing to the priorities of making York a Sustainable and a Healthy City.

### **Implications**

### **Financial**

- 23. If it is determined to progress a DMMO it will have to be advertised in the local press. The cost of advertising the order would be in the region of £1500. If an order is made, and no objections are received the order will be confirmed and re-advertised, again at a cost of £1500.
- 24. If objections to the order are received, and not withdrawn, the outcome of the order will be decided by the Secretary of State, possibly by means of a Public Inquiry. The cost of a Public Inquiry being approximately £5000.
- 25. If the order is confirmed by either the Council or the Secretary of State the authority has to accept that the route is maintainable at the public expense.
- 26. Acceptance is not as such a new obligation but is part of the Council's statutory duty to keep that map up to date and formally record the rights of the public where those rights exist but are not yet shown and recorded in the definitive map and statement.

### **Human Resources**

27. There are no human resource implications.

### **Equalities**

28. There are no equalities implications.

### Legal

- 29. City of York Council is the surveying authority for the purposes of the Wildlife and Countryside Act 1981, and has a statutory duty to ensure that the Definitive Map and Statement for its area is kept up to date.
- 30. If, and when, the Authority discovers evidence to suggest that the Definitive Map and Statement needs updating, it is under a statutory duty to make the necessary changes. A DMMO enables any changes to the map and statement to be made.
- 31 Before the Council can make the a DMMO to add a route to the definitive map, as is the subject of this report, it must be satisfied that, taking into account the available evidence, that a right of way can from the evidence reasonably be alleged to exist. If it can, the authority must make the order. If objections are received during the process and not withdrawn the order must be forwarded to the Secretary of State. The Secretary of State will appoint an Inspector who will test the evidence and determine the outcome of this application.
- 32. DMMO's do not create any new public rights of way they seek to record those already in existence but not formerly recorded in the definitive map and statement. Issues for example such as safety, security and desirability whilst being genuine concerns cannot be taken into consideration. The DMMO process requires an authority to look at all the available evidence, both documentary and user, before making a decision.

### **Crime and Disorder**

33. There are no crime and disorder implications.

### Information Technology

34. There are no IT implications.

### **Property**

35. There are no property implications.

### Other

36. If the definitive map modification order process concludes that public rights do exist the public footpath becomes maintainable at the public expense and should be recorded as such on the List of Streets Maintainable at Public Expense. The Council, as the highway authority for public rights of way, has a duty to maintain the public footpath to a standard that allows use by lawful traffic: the right of way is on foot only.

### **Risk Management**

 In compliance with the Council's Risk Management Strategy, Options A is subject to internal budgetary pressures (financial). There are no risks associated with Option B.

### **Contact Details**

Author: Joanne Coote (Definitive Map Officer) Network Management	Damon Copp	r Responsible for the contract of the contract	stant Director,
(City Development & Transport) Tel No: 01904 551442	Report Approved	√ Date	22.10.2010
Wards Affected: Wheldrake			All

For further information please contact the author of the report.

### **Background Papers:**

Evidence evaluated and background report prepared by Consultant: Robin Carr Associates, Public Rights of Way Management and Consultancy Services Highways Act 1980

Wildlife and Countryside Act 1981

Rights of Way: A Guide to Law and Practice, Fourth Edition, by John Riddall and John Trevelyan.

### Page 73

England and Wales Court of Appeal (Civil Division) Decisions: R v Secretary of State for Wales ex parte Emery (1997)

### Annexes:

Annex 1: Plan 1: Claimed Public Footpath, Main Street to North Lane (Love

Lane), Wheldrake

Annex 2: List of documents consulted

Annex 3: Summary of Documentary Evidence

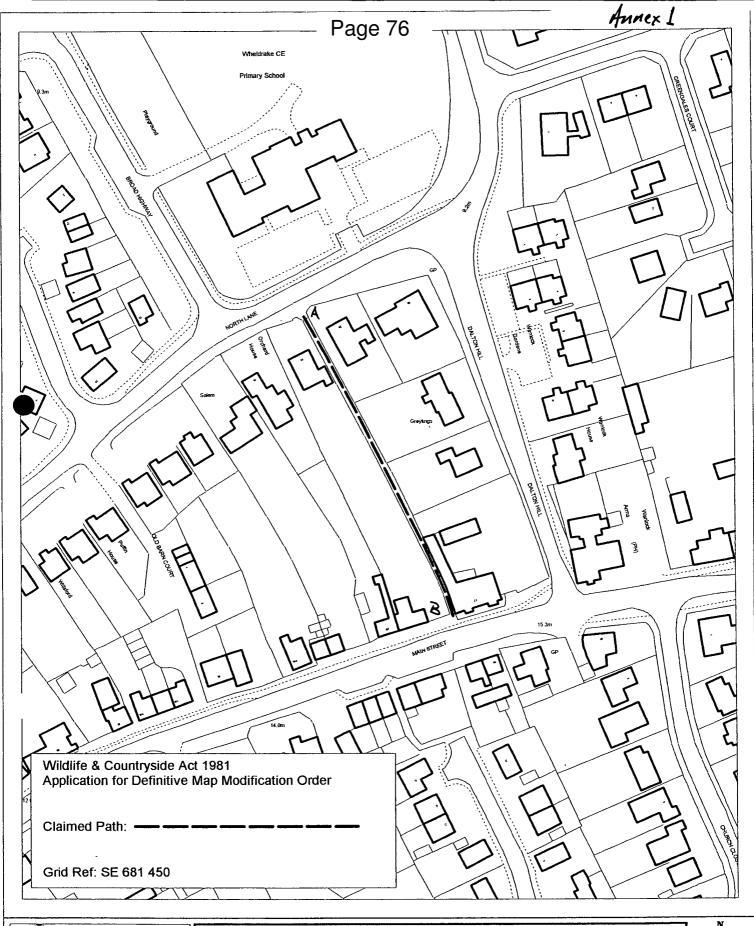
Annex 4: Summary of User Evidence

Annex 5: Graph showing Periods of Claimed User

Annex 6: Legal Tests

This page is intentionally left blank

Plan 1: Claimed Public Footpath, Main Street to North Lane (Love Lane), Wheldrake





Claimed Public Footpath, Main Street to North Lane, Wheldrake (Love Lane)

Scale 1:1250 Drawn By: Date: 6 August 2003 Public Rights of Way

9 St. Leonards Place, York, YO1 2ET

Produced from the 1993 Ordnance Survey 1:1250 mapping with the permission of the Controller of Her Majesty's Stationary Office
© Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings
York Cit

List of documents consulted

### Page 78

Wil 981
Application for Definitive Map Modification Order Love Lane: Main Street to North Lane Wheldrake

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	Page	Description	Document Content	Comments
S.		Ordnance Survey Maps	Ordnance Survey maps show the physical existence of the route, but do not attribute it any specific status.	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.
				It this particular case it seems to be commonly accepted that this path is part of the historic village network, and this theory is supported by these documents.
9	4	1910 Finance Act records	The route is excluded from the adjacent land holdings and is not subject to valuation	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.
8		Plan of Part of the Village of Whedrake	The route is shown bounded by two solid lines on this plan	This document does not attribute any status to the route, but does confirm its physical existence at the time the map was produced. This is not however a matter that is in dispute.

**Summary of User Evidence** 

### Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Love Lane: Main Street to North Lane Wheldrake

## Summary of User Evidence

Tab	Page	<b>Мате</b>	User Evidence Form	weivress interview	Other Correspondence	esU to boine	esU anseY to oM	Member of Public	Jaet As of Right	tuoritiw seeU notiqurietni	Other Information
=	-	J Moonie	7			1934 - 1993	59	٨	٨	٨	Used the path to get to the playing fields and to get from Main Street to North Lane avoiding Dalton Hill.
-	2	L O G Munns	7	7		1974 - 2002	28	٨	۲	>	Interviewed as part of 2002 investigations  Owns No 71 Main Street, which is adjacent to the path and regards it to be public.
-	ო	C Burgess	7	7		1966 - 2002	36	*	7	7	Interviewed as part of 2002 investigations.  Always known the path since moving into the village. It is one of the most used village paths especially by school children. Everyone knows it is a public path. There have never been any notices and nobody would ever be stopped.
=	4	J Burgess	7	7		1966 - 2002	36	٢	٢	۶	Interviewed as part of 2002 investigations Always known the path. Her children used it to go to school, and to the shops etc. Never stopped or prevented form using the path, and there were never any notices.
-	က	ا Cleai	7	7		1967 - 2002	35	7	7	7	Interviewed as part of 2002 investigations  Has known the path since moving to the village in 1967.  Always considered it part of the path system, and was never stopped. Path is mainly used by school children.  Half barriers were installed before 1967 at the North Lane end of the path.

Wildlife & Countryside Act 1981
Application for Definitive Map Modification Order
Love Lane: Main Street to North Lane Wheldrake

	Page	<b>Мате</b>	User Evidence Form	weivnethl esentiW	Other Correspondence	Period of Use	No of Years Use	Member of Public	JugiA to eA resU	User without noitquriani	Other Information
ဖ	1	M Bielby	7			1939 - 1973	34	7	7	7	User Evidence Form completed in 1973 Used the path occasionally, for access and convenience, and believed it to be a footpath
7		F Fairburn	7			1920 – 1973	53	7	7	7	User Evidence Form completed in 1973 Used the path on a daily basis, to get to the shops and on the way to work. Believed it to be public.
-		Dr T K Halstead			7	1967 – 2008	14				The path is marked on the 1st edition OS map.  Has used the path since 1967 and seen many other people using it. The Parish Council recently undertook maintenance work on the path.

**Graph showing Periods of Claimed User** 

Wildlife & Countryside Act 1981
Application for Definitive Map Modification Order
Love Lane: Main Street to North Lane Wheldrake

	į									
•	2008									
AnnexS	2000									
	1990									
	1980									
	1970		•							
d User	1960									
Periods of Claimed User	1950									
Period	1940									
	1930	I								
	1920									
	Period of Use	1934 - 1993	1974 - 2002	1966 - 2002	1966 - 2002	1967 - 2002	1939 - 1973	1920 - 1973	1967 - 2008	_
	Page Name	J Moonie	LOG Munns	C Burgess	J Burgess	J Cleal	M Bielby	F Fairburn	Dr TK Halstead	
	Page	1	7	က	4	2	9	7	7	
	Tab	1	Ξ	=	7	=	7	7	2	

**Legal Tests** 

### **Legislative Tests**

### Test to be Applied

- 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 facia 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.

### **Evidential Tests**

Highways Act 1980, Section 31

- 3. 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."

### Common Law

- 6. 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.



### **Decision Session Executive Member for City Strategy**

2 February 2010

Report of the Director of City Strategy

PUBLIC RIGHTS OF WAY – Application for Definitive Map Modification Order, Alleged Public Footpath from Main Street to Sparrow Hall Farm, Wheldrake

### **Summary**

This report seeks to assist the Executive Member in determining whether or not to make a Definitive Map Modification Order (DMMO) to add the route (shown by a broken black line on Plan 1 (Annex 1)) to the Definitive Map, as a Public Footpath. In determining this issue it is important to consider the available evidence against the requirements of the legislation (see Annex 7).

### Recommendation

2. It is recommended that the Executive Member approves Option A and authorises the making of a DMMO to add the route as a Public Footpath to the Definitive Map.

### Reason

- There is a good case in support of the existence of public rights based upon historic evidence, in addition there is a *prima facie* case in favour of their establishment of such rights under Section 31 of the Highways Act 1980.
- 4. Whilst evidence has been submitted alleging that people were turned off the land and that signs deterring use were erected, these incidents have not been substantiated and indeed are, to a certain extent, contradicted by the statements that nobody was ever seen using the route.
- 5. Taking into account all of the available evidence there is a good case in support of the existence of public rights over the application route based both upon historic documentary evidence and modern user thus requiring the authority to make the order (Wildlife and Countryside Act 1981, Section 53(3)(c)(i)).

### **Background**

- 6. In September 1993 Wheldrake Parish Council submitted, to North Yorkshire County Council, an application for a Definitive Map Modification Order, to add a footpath, shown by a broken black line (the application route) on Plan 1 (Annex 1) attached to this report to the Definitive Map. In 1996, as a result of Local Government Reorganisation, the application, which had still to be determined, and remained outstanding, was passed to City of York Council as the newly appointed Surveying Authority for the area.
- 7. In 2002 the Council commenced preliminary investigations into this, and a number of other similar applications made by Wheldrake Parish Council. Whilst these investigations were substantially completed at that time, the applications were never formally determined. Therefore, more recently, and in order to bring these matters to a close, the previously considered evidence was checked and ratified, so as to allow the matter to be brought to a conclusion.

### **Summary of Evidence**

### **Historical Documents**

8. As part of the investigations a range of documents have been consulted, and these are listed in **Annex 2** of this report. Where the documents are considered to have some evidential value in this case, they are further summarised within the report, with more detailed comments included in **Annex 3**.

### **Ordnance Survey Maps**

9. From the mid - late nineteenth century onwards, Ordnance Survey maps of the area show the physical existence of the application route, annotated "FP" (Footpath). The most northerly section of the path is however shown running along the field edge rather than diagonally across the field as per the application.

### **1910 Finance Act Documents**

- 10. The Finance Act Maps show that Low Well Lane and Chapel Lane were excluded from the valuation survey. The remainder of the application route is shown on the Ordnance Survey base map.
- 11. The accompanying Field Book entries for hereditament 37, in the notes on the second page under "Charges, Easements, and Restrictions......" reference is made to a footpath running through "fields 173, 174 etc". These are fields crossed by the application route. The entry for hereditament 131 (Haggwood Farm), under the same section refers to a "footpath up west side of farm". The application route is situated on the western boundary of the hereditament. Sums of £30 & £18 are claimed respectively in relation to the existence of above mentioned public rights of way.

### **Deposited Railway Plans**

12. The deposited plans for the Derwent Valley Light Railway, dated May 1899, and their accompanying books of reference record the physical existence of the application route, identifying it as a public footpath in the ownership of Wheldrake Parish Council.

### **Wheldrake Enclosure Award**

13. 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.

### **Original Definitive Map Process**

14. The application route appears to have been claimed, in the 1950's, by the Parish Council, under Part IV of the National Parks and Access to the Countryside Act 1949. The route was however subject to objections at the provisional stage of production. Due to the number of outstanding objections in the East Riding area the County Council, at that time were directed by the Minister of Housing and Local Government to proceed to the Definitive Mapping stage by omitting paths subject to objections, with a view to them being considered at a later stage.

### **User Evidence**

The application was supported by nine user evidence forms claiming use during the period 1920 - 1993 These forms are summarised in **Annex 4** of this report, and the periods of claimed use summarised on the User Graph in **Annex 5**.

### Submissions made on behalf of the Landowner

16. Various submissions have been made both by and on behalf of landowners affected by the application. The landowners and objectors refer to having never seen anyone using the route and that if it was used then those users were trespassing. They also refer to proceedings during the late 1960's in respect of the provisional maps discussed above. None of the submissions provide evidence of acts which would constitute a lack of intention to dedicate on behalf of the landowners. These submissions are summarised and commented upon in **Annex 6**.

### **Comments on Evidence**

### **Historical Documents**

17. The enclosure award provides near conclusive evidence of the existence of the Chapel Lane and Low Well Lane sections of the application route. The 1910 Finance Act records are quite specific as to the routes upon which tax relief was sought, and provides strong evidence that the landowners, at the time considered the routes to be public rights of way. These are then further supported by the deposited railway plans, which, as documents forming part of a parliamentary process and having been open to public scrutiny are also of significant value.

### **User Evidence**

18. In common with many cases of this nature across the country, the fact that the application is being determined some sixteen years after it was made, is problematic so far as the continued availability of witnesses is concerned. The evidence of the five witnesses who were interviewed should be given more weight than that of the witnesses who were not, which can only be taken as read.

### Submissions made on behalf of the Landowner

- 19. The fact that the landowners, and their supporters, claim to have never seen anyone using the application route, does not mean that such use did not take place, indeed there is a body of evidence that confirms that it did. Furthermore if the rights existed historically, which appears to be the case in this instance, then those rights would still exist today, even if subject to little or no use.
- 20. The objector's reliance upon the proceedings which were undertaken in the 1960's (at provisional map stage) is based upon a misunderstanding of what actually happened at the time. The objections that had been lodged were withdrawn and never determined at that time. In other words no decision was made as to whether or not the claimed public rights existed. That was a matter to be decided at a later date and forms part of the process now under consideration.

### Assessment of Evidence

### **Historical Documents**

21. The historical documents, taken as a whole, provide a compelling argument in favour of the existence of a public right of way along the application route. These alone should be sufficient to trigger the Authority's duty to promote a Definitive Map Modification Order.

### **User Evidence**

### Common Law

22. If the user evidence and historic documentary evidence are considered together a picture of long uninterrupted use is provided, with dedication of the public rights occurring some time prior to 1899. Dedication by the landowner, and acceptance by the public may therefore be inferred.

### Highways Act 1980, Section 31

23. The historic evidence, combined with the more modern user evidence suggests that public rights have existed over the application route for at least 100 years and therefore it should not be necessary to consider the establishment of rights under Section 31 of the 1980 Act. For completeness the issue is however considered below.

### Calling into question and 20 year period of user

24. The existence of pubic rights over the application route does not appear to have been challenged at any particular time, and therefore there is no act of calling into question. Under such circumstances it is possible to calculate the 20 year period of user from the date of the submission of the application for the Definitive Map Modification Order. The relevant period of user would therefore be 1973 to 1993.

### Actual use and enjoyment by the public

25. The user evidence forms provide evidence of the use and enjoyment of the route for well in excess of the required twenty years.

### Use "As of Right" and without interruption

- 26. For use of a path or way to be "as of right", it must be use without force, without secrecy and without permission. There is no need for the user to believe they are exercising a public right of way. The evidence submitted in support of the application would appear to meet this test.
- 27. There is no evidence to suggest that use of the route has ever been interrupted during the relevant twenty year period.

### Consultation

28. Consultations have been carried out in accordance with the Parliamentary Rights of Way Review Committee's Code of Practice on consultation, which includes consultation with user groups etc. The Parish Council and landowners have also been consulted.

### 29. Ward Councillors

Cllr C Vassie – No comments received.

### 30. Political Parties

Cllr S Galloway (Lib Dem) - No comments received.

Cllr R Potter (Labour) – 'Happy to support the modifications': comments received 30<sup>th</sup> December, 2009.

Cllr I Gillies (Conservative) – No comments received.

Cllr A D'Argone (Green Party) – No comments received.

### **Options**

- 31. Option A: If, having considered all of the available evidence the Executive Member decides that public rights are reasonably alleged to subsist, the Executive Member should resolve that:
  - (a) The Director of City Strategy be authorised to instruct the Head of Legal Services to make a Definitive Map Modification Order to add a public footpath, along the route A – B on Plan 1 attached to this report, to the Definitive Map;
  - (b) If no objections are received, or any objections that are received, are subsequently withdrawn, the Head of Legal Services be authorised to confirm the Order made in accordance with (a) above; or
  - (c) If any objections are received, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.
  - (d) A decision be made regarding the Authority's position in respect of the confirmation of the Order (i.e. support, or seek non-confirmation)

- 32. Option B: If, having considered all of the available evidence, the Executive Member decides that the alleged public rights do not exist, they should resolve that:
  - (a) The application to modify the Definitive Map be refused.
  - (b) The applicant be advised of their right to appeal.

### **Corporate Priorities**

33. If it is determined that the available relevant evidence shows that a right of way subsists or is reasonably alleged to subsist and is added to the map the benefits of doing so would link into the Council's Corporate priorities. A public right of way is sustainable, car free and provides access to health and recreation opportunities thus contributing to the priorities of making York a Sustainable and a Healthy City.

### **Implications**

### Financial

- 34. If it is determined to progress a Definitive Map Modification Order (DMMO) it will have to be advertised in the local press. The cost of advertising the order would be in the region of £1500. If an order is made, and no objections are received the order will be confirmed and re-advertised, again at a cost of £1500.
- 35. If objections to the order are received, and not withdrawn, the outcome of the order will be decided by the Secretary of State, possibly by means of a Public Inquiry. The cost of a Public Inquiry being approximately £5000.
- 36. If the order is confirmed by either the Council or the Secretary of State the authority has to accept that the route is maintainable at the public expense. Acceptance is not as such a new obligation but is part of the Council's statutory duty to keep that map up to date and formally record the rights of the public where those rights exist but are not yet shown and recorded in the definitive

### **Human Resources**

37. There are no human resource implications.

### **Equalities**

38. There are no equalities implications.

### Legal

- 39. City of York Council is the surveying authority for the purposes of the Wildlife and Countryside Act 1981, and has a statutory duty to ensure that the Definitive Map and Statement for its area is kept up to date.
- 40. If, and when, the Authority discovers evidence to suggest that the Definitive Map and Statement needs updating, it is under a statutory duty to make the necessary changes. A DMMO enables any changes to the map and statement to be made.

- Before the Council can make the a DMMO to add a route to the definitive map. as is the subject of this report, it must be satisfied that, taking into account the available evidence, that a right of way can reasonably be alleged to exist. If it can, the authority must make the order. If objections are received during the process and not withdrawn the order must be forwarded to the Secretary of The Secretary of State will appoint an Inspector who will test the evidence and determine the outcome of this application.
- DMMO's do not create any new public rights of way they seek to record those already in existence but not formerly recorded in the definitive map and statement. Issues for example such as safety, security and desirability whilst being genuine concerns cannot be taken into consideration. process requires an authority to look at all the available evidence, both documentary and user, before making a decision.

### **Crime and Disorder**

43 There are no crime and disorder implications.

### Information Technology

44 There are no IT implications.

### **Property**

45. There are no property implications.

### Other

46. If the definitive map modification order process concludes that public rights do exist the public footpath becomes maintainable at the public expense and should be recorded as such on the List of Streets Maintainable at Public Expense. The Council, as the highway authority for public rights of way, has a duty to maintain the public footpath to a standard that allows use by lawful traffic: the right of way is on foot only.

### Risk Management

In compliance with the Council's Risk Management Strategy, Options A is subject to internal budgetary pressures (financial). There are no risks associated with Option B.

### **Contact Details**

Author: Joanne Coote (Definitive Map Officer) Network Management	Damon Copp	r Responsible to perthwaite, Assiment and Trans	istant Director,
(City Development & Transport) Tel No: 01904 551442	Report Approved	√ Date	22.01.2010
Wards Affected: Wheldrake			All

### For further information please contact the author of the report.

### **Background Papers:**

Evidence evaluated and background report prepared by Consultant: Robin Carr Associates, Public Rights of Way Management and Consultancy Services Highways Act 1980

Wildlife and Countryside Act 1981

Rights of Way: A Guide to Law and Practice, Fourth Edition, by John Riddall and John Trevelyan.

England and Wales Court of Appeal (Civil Division) Decisions: R v Secretary of State for Wales ex parte Emery (1997)

### Appendices:

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

Annex 2: List of documents consulted

Annex 3: Summary of Documentary Evidence

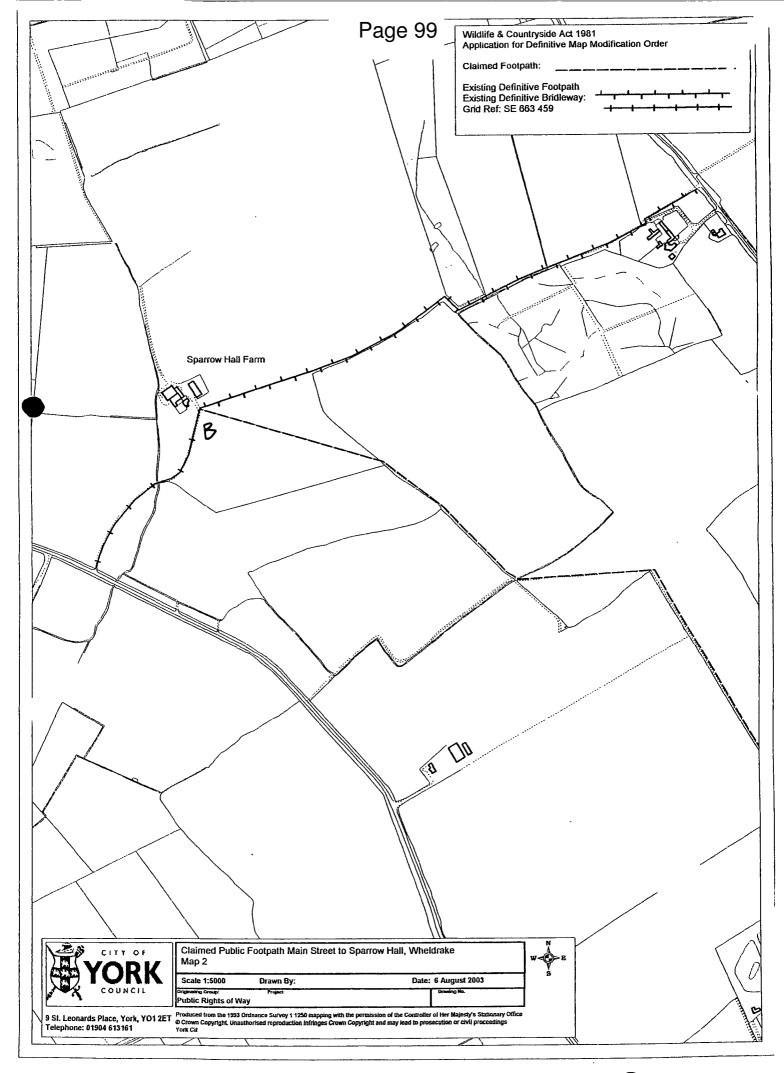
Annex 4: Summary of User Evidence

Annex 5: Graph showing Periods of Claimed User
Annex 6: Summary of Objector's Evidence/Comments

Annex 7: Legal Tests

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





List of documents consulted

### Page 101

Wil 981 Application for Definitive Map Modification Order Main Street to Sparrow Hall Farm Wheldrake

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

**Summary of Documentary Evidence** 

Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Main Street to Sparrow Hall Farm Wheldrake

# 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.
ဟ		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.
ဖ	4,9,10 8 11-14 22 29	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.
2	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 shouldnot be disregarded lightly.

**Summary of User Evidence** 

## Summary of User Evidence

Tab

4

4

4

4

Application for Definitive Map Modification Order Main Street to Sparrow Hall Farm Wheldrake

Wildlife & Countryside Act 1981

#### The path was obvious but was ploughed and cropped at times. Was never stopped or prevented from using the path 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. The path across the fields was never obvious on the ground but there was a trodden path as far as the (now dismantled) Only used the Chapel Lane and Low Well Lane sections of Previously owned land crossed by part of the path, and considered it to be public. The general public used it quite There was a proper gated crossing at the railway before it There was a proper gated crossing at the railway before it was dismantled. Only used the path beyond the end of Low Weil Lane for about 16 years, the rest of the path he used for 26 years 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 often, and without challenge. the application route. Other Information was dismantled. noitqumetion User without > > > 7 > 4/3 User As of Right > > 7 Member of Public 26 26 25 46 26 No of Years Use 1968 - 1993 967 - 1993 1967 - 1993 1967 - 1993 1947 - 1993 Period of Use Correspondence Witness Interview Form User Evidence > 7 B W Hairsing T K Halstead C Burgess J Burgess J Cleal Name Page

S

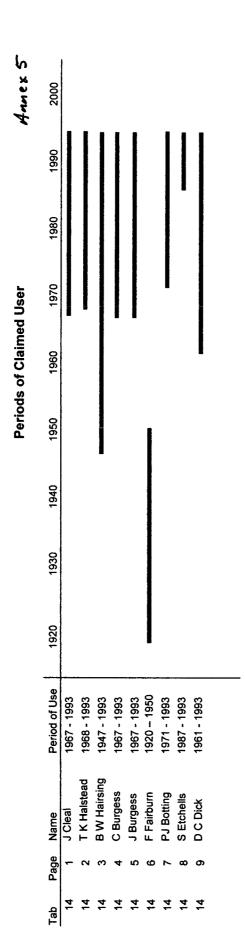
7

Tab	Page	Name	User Evidence Form	weivress Interview	Other Correspondence	eal to boine	No of Years Use	Member of Public	User As of Right	User without interruption	Other information
44	9	F Fairburn	7			1920 – 1950	30	7	6/1	7	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	7			1971 - 1993	22	7	>	7	Only used the Chapel Lane and Low Well Lane sections of the application route.
14	80	S Etchells	>			1987 - 1993	9	7	7	7	Only used the Chapel Lane and Low Well Lane sections of the application route.
14	6	D C Dick	7	7		1961 - 1993	32	7	7	7	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 form using it.

Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Main Street to Sparrow Hall Farm Wheldrake

**Graph showing Periods of Claimed User** 

Wildlife & Countryside Act 1981
Application for Definitive Map Modification Order
Main Street to Sparrow Hall Farm Wheldrake



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

# Summary of Objector's Evidence/Comments

Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Main Street to Sparrow Hall Farm Wheldrake

Tab	Page	Name	Objection	Comments
50	59	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 modem 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 mad ein 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 categoric 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.

Comments	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.	It is unclear how anyone, even a landowner can make such a categoric assertion. There is evidence of the use of the claimed path in relatively modern times, and evidence of its historic existence.	Whilst it is agree 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.	were ask questions relating t 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.	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.
Objection	There is no footpath across the land	No-one has crossed the land	There is no defined path	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)	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.
Name	David Hill, Oswald Lister & Son on behalf of Mr A Park of Low Well Farm. Letter dated 25 <sup>th</sup> November 1993			Mr A Park of Ribston Lodge, Letter dated 19thSpetember 2003	National Farmers Union on behalf of Mr Hugill of Haggwood Farm. Letter dated 30th December 1993
Page	33			30	E
Tab	20			50	50

Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Main Street to Sparrow Hall Farm Wheldrake

	ation route does d that this path was sarly part of the toe Act records)	s previously ort the existence of	vay in 1967. As a stence of the route has never been	determine whether ss the fields is not f historic rights.	route does mean his path was sarly part of the ce Act records)	ler investigation ss never seen i on the path will	vay in 1967. As a stence of the route has never been
Comments	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)	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.	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.	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, doe not preclude the possible existence of historic rights.	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)	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.	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.
Objection	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 hedgerows were securely fenced and the bridge over the Hall Drain was unsafe, until recently, and was therefore gated and chained.	In 1967 a Definitive Map was prepared and it was proved that there was no public right of way along the application route	The path is in two parts, firstly the section form 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	Has never seen people walking the path, nor have the farm workers or game keepers.	Has asked people to leave the land when he has encountered them, and placed "Private" signs where such trespass has taken place.	In 1967 his parents proved that the path was not used and did not exist.
Мате	Mr T W Hugili, formerly of Haggwood Farm. Letter dated 18 <sup>th</sup> January 1994			Mr J P Hugill of Haggwood Farm. Letter dated 7th March 1994			
Page	22			თ			
Tab	20			20			

Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Main Street to Sparrow Hall Farm Wheldrake

# Robin Carr Associates Public Rights of Way Management & Consultancy Services

Comments	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 form 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.	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 form 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 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.	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.	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.	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.
Objection	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	If the path was a known public right of way it would already be shown on the Definitive Map.	OS Maps from 1856, 1910 and 1972 show the path at its northern end running on different alignments	Mr Hugill's father tenanted Haggwood Farm form 1939 and there was no evidence of any path.	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)	In 1967 the path was extinguished
Name	Mr J P Hugiil of Haggwood Farm. Letter dated 7th March 1994 cont			Harland & Co Solicitors on behalf of Mr Hugill, latter dated 8 <sup>th</sup> October 2003		
Page				2		
Тар				20		

Wildlife & Countryside Act 1981
Application for Definitive Map Modification Order
Main Street to Sparrow Hall Farm Wheldrake

Robin Carr Associates Public Rights of Way Management & Consultancy Services

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) 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) These are not matters that can be taken into account as part of the decision 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 The fact that Mr Hugill did not see anyone use the application route, or See comments above in response to issues raised in this letter Comments See comments on Mr Hugill's objections Plans, 1910 Finance Act records) See comment above. making process 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 the claimed path has been used. There has been no evidence Having owned and/or occupied Haggwood Farm for over 50 years Mr Hugill is in a unique position to know whether or not Between 1960 and 1980 Mr Scutt spent a considerable amount of time contracting at Low Well Farm, and never saw 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. 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. Mr JP Hugill was born in 1948 at Haggwood farm and has known the farm and immediate surroundings for over fifty years Has never seen any evidence of people using the route On 7th March 1994 Mr Hugill wrote to NYCC, and the comments made then remain true. Objection anyone using the application route. of such use taking place. CRG McNeil of Thorganby Lodge. Letter dated 9th March1994 Mr J Scutt of Swallow Hall. Letter dated 19th January 1994 Statuory Declaration dated 9th Name October 2003 J P Hugill Page 23 24 4 Tab 20 8 2

Application for Definitive Map Modification Order Main Street to Sparrow Hall Farm Wheldrake

Wildlife & Countryside Act 1981

Robin Carr Associates Public Rights of Way Management & Consultancy Services

Tab	Tab Page	Name	Objection	Comments
20	26	L Hammond of Wheldrake. Letter received by NYCC on 10th 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 Hammon 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 iot.	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).

Wildlife & Countryside Act 1981
Application for Definitive Map Modification Order
Main Street to Sparrow Hall Farm Wheldrake

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 facia* 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.



#### **Decision Session Executive Member for City Strategy**

2 February 2010

Report of the Director of City Strategy

### PUBLIC RIGHTS OF WAY – Application for Definitive Map Modification Order, Alleged Public Footpath from Thorganby Lane to Lawn Closes (Public Footpath No 7), Wheldrake

#### **Summary**

This report seeks to assist the Executive Member in determining whether or not to make a Definitive Map Modification Order (DMMO) to add the route (shown by a broken black line on Plan 1 (Annex 1) to the Definitive Map, as a Public Footpath. In determining this issue it is important to consider the available evidence against the requirements of the legislation (see Annex 7).

#### Recommendation

2. It is recommended that the Executive Member approves Option A and authorises the making of a DMMO to add the route as a Public Footpath to the Definitive Map.

#### Reason

3. Taken at face value, the tests set out within Section 31 (see page 3, Evidential Tests) of the Highways Act 1980 would appear to have been satisfied, at least to the extent of there being a reasonable allegation over the existence of the alleged footpath. In addition there would appear to be a *prima facie* case in favour of the establishment of public rights over the application route. No evidence has been submitted by, or on the behalf of, the landowners to demonstrate sufficiently overt acts, directed at users of the application route, which constitute a lack of intention to dedicate.

#### **Background**

4. In September 1993 Wheldrake Parish Council submitted, to North Yorkshire County Council, an application for a Definitive Map Modification Order, to add the footpath, shown by a broken black line on Plan 1 attached to this report (the application route). Then in 1996 as a result of Local Government Reorganisation the application, which had still to be determined and remained outstanding, was passed to City of York Council as the newly appointed Surveying Authority for the area.

5. In 2002 the Council commenced preliminary investigations into this, and a number of other similar applications made by Wheldrake Parish Council. Whilst these investigations were substantially completed at that time, the applications were never formally determined. Therefore, more recently, and in order to bring these matters to a close, the previously considered evidence was checked and ratified, so as to allow the matter to be brought to a conclusion.

#### **Summary of Evidence**

#### **Historical Documents**

6. As part of the investigations a range of documents have been consulted, and these are listed in **Annex 2** of this report. Where the documents are considered to have some evidential value in this case, they are further summarised within the report, with more detailed comments included in **Annex 3**.

#### **Ordnance Survey Maps**

7. Ordnance Survey maps for the area show the physical existence of Susscars Lane, which is shown as a bounded lane and named. The remainder of the application route is not shown.

#### **User Evidence**

8. The application was supported by eight user evidence forms, and a further form was submitted during the current investigation. These forms claim use during the period 1963 – 2000. These forms are summarised in **Annex 4** of this report, and the periods of claimed use summarised on the User Graph in **Annex 5**.

#### Submissions made on behalf of the Landowner

9. In 2003 a submission was made on behalf of the landowners. The submission claims that the application routes not shown on various maps; reports that numerous people with knowledge of the area have never seen anyone using the application route, or have never known it to be a footpath; and that the route has been impassable for many years. The submission concludes that this evidence demonstrates that public rights do not exist. The submission is summarised, with comments in **Annex 6** of this report.

#### **Comments on Evidence**

#### **Historical Evidence**

10. The Ordnance Survey Maps certainly confirm the physical existence of the Susscars Lane section of the application route as being an historic feature in the landscape, however such 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.

#### **User Evidence**

11. In common with many cases of this nature across the country, the fact that the application is being determined some sixteen years after it was made, is problematic so far as the continued availability of witnesses is concerned. The evidence of the four witnesses who were interviewed should be given more weight than that of the witnesses who were not, which can only be taken as

read. Caution must also be exercised in the interpretation of the user evidence forms as some witnesses state how long they have known the path, but then have not gone on to say during which years they actually used it.

#### Submissions made on behalf of the Landowner

12. The submissions made on behalf of the landowner are of minimal evidential value. The fact that various maps do not show the application route does not preclude its existence; nor does the fact that various people have not seen the application route used, preclude such use actually taking place. In addition the seasonal ploughing and cropping of the route would not prevent the establishment of public rights. Finally, and perhaps of most importance, the submission provides no evidence of any acts demonstrating a lack of intention to dedicate.

#### **Assessment of Evidence**

#### **Historical Evidence**

13. The recording and depiction of the Susscars Lane section of the application route on the Ordnance Survey mapping may be considered to be consistent with it being a public right of way however, equally as an apparent cul-de-sac lane, in a rural location, this may suggest otherwise. This evidence, on its own, is certainly insufficient to meet the legislative tests. It should however be considered alongside, and in support of the user evidence to demonstrate the use and reputation of the route as a public right of way.

#### **User Evidence**

#### Common Law

14. The user evidence suggests public user, "as of right" over a long period of time (1963 to 2000), but the extent of the use is only occasional. Whist this would not prevent an implication of dedication arising, pursuing a case under common law dedication is not recommended.

#### Highways Act 1980, Section 31

#### Calling into question and 20 year period of user

- 15. Three of the user witnesses claim to have been challenged, by the landowner, when using the application route during the period 1991-3, the latter date of which coincides with the submission (1993) of the application for the Definitive Map Modification Order. The Parish Council also noted, at the time of the application that notices prohibiting use of the route had recently been installed.
- 16. Direct and personal challenges by a landowner are perhaps the most difficult to pin point because, unlike fencing a path off, each challenge requires effort on the part of the landowner, and is often only witnessed by the two parties involved. The erection of notices, which appears to have occurred circa August/September 1993, is a far more effective means of challenging use.
- 17. The application route does not appear to have been subject to high levels of use, nonetheless half those who claim to have used it were challenged during the period 1991 3.

18. If the earliest of these dates is accepted, then the required 20 year period of user would be 1971 – 1991; if the latter (which includes the erection of notices) is accepted, then the period will be 1973 – 1993. The evidence submitted in support of the application covers the full twenty year period in both instances.

#### Actual use and enjoyment by the public

19. All of the witnesses who submitted evidence in support of the application claim to have actually used the path, and would fall within the general definition of being members of the public. Whilst the user evidence that has been submitted represents the minimum level of user, it still only gives a picture of occasional use. Such levels of use may however, still be acceptable in relatively rural locations such as this.

#### Use "As of Right" and without interruption

- 20. For use of a path or way to be "as of right", it must be use without force, without secrecy and without permission. There is no need for the user to believe they are exercising a public right of way. The evidence submitted in support of the application would appear to meet this test.
- 21. Whether use of the route has been subject to "interruption" is open to question. In this context the term "interruption" does not mean a short period of time where nobody used the route, it refers more to acts of interruption by a landowner, such a preventing use, or turning people back. There must also be the necessary intent on the part of the landowner. If the earlier challenge date of 1991 is accepted, then there is no evidence of interruption, however of the latter date of 1993 is accepted, then the witnesses who claim to have been challenged, if they did not then continue with their use, in 1991 and 1992 would have been interrupted in their use, thus not fulfilling the full period of 20 years user.

#### Consultation

22. Consultations have been carried out in accordance with the Parliamentary Rights of Way Review Committee's Code of Practice on consultation, which includes consultation with user groups etc. The Parish Council and landowners have also been consulted, and the latter indicated an objection to the application. Any evidence arising from the consultations has been included in this report.

#### **Ward Councillors**

Cllr C Vassie - No comments received.

#### **Political Parties**

Cllr S Galloway (Lib Dem) – No comments received.

Cllr R Potter (Labour) – 'Happy to support the modifications': comments received 30<sup>th</sup> December, 2009.

Cllr I Gillies (Conservative) – No comments received.

Cllr A D'Argone (Green Party) - No comments received

#### **Options**

- 23. Option A: If, having considered all of the available evidence the Executive Member decides that public rights are reasonably alleged to subsist, the Executive Member should resolve that:
  - (a) The Director of City Strategy be authorised to instruct the Head of Legal Services to make a Definitive Map Modification Order to add a public footpath, along the route A B on Plan 1 (Annex 1) attached to this report, to the Definitive Map;
  - (b) If no objections are received, or any objections that are received, are subsequently withdrawn, the Head of Legal Services be authorised to confirm the Order made in accordance with (a) above; or
  - (c) If any objections are received, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.
  - (d) A decision be made regarding the Authority's position in respect of the confirmation of the Order (i.e. support, or seek non-confirmation)
- 24. Option B: If, having considered all of the available evidence, the Executive Member decides that the alleged public rights do not exist, they should resolve that:
  - (a) The application to modify the Definitive Map be refused.
  - (b) The applicant be advised of their rights of appeal.

#### **Corporate Priorities**

25. If it is determined that the available relevant evidence shows that a right of way subsists or is reasonably alleged to subsist and is added to the map the benefits of doing so would link into the Council's Corporate priorities. A public right of way is sustainable, car free and provides access to health and recreation opportunities thus contributing to the priorities of making York a Sustainable and a Healthy City.

#### **Implications**

#### **Financial**

26. If it is determined to progress a Definitive Map Modification Order (DMMO) it will have to be advertised in the local press. The cost of advertising the order would be in the region of £1500. If an order is made, and no objections are received the order will be confirmed and re-advertised, again at a cost of £1500.

- 27. If objections to the order are received, and not withdrawn, the outcome of the order will be decided by the Secretary of State, possibly by means of a Public Inquiry. The cost of a Public Inquiry being approximately £5000.
- 28. If the order is confirmed by either the Council or the Secretary of State the authority has to accept that the route is maintainable at the public expense. Acceptance is not as such a new obligation but is part of the Council's statutory duty to keep that map up to date and formally record the rights of the public where those rights exist but are not yet shown and recorded in the definitive

#### **Human Resources**

29. There are no human resource implications.

#### **Equalities**

30. There are no equalities implications.

#### Legal

- 31. City of York Council is the surveying authority for the purposes of the Wildlife and Countryside Act 1981, and has a statutory duty to ensure that the Definitive Map and Statement for its area is kept up to date. If, and when, the Authority discovers evidence to suggest that the Definitive Map and Statement needs updating, it is under a statutory duty to make the necessary changes. A Definitive Map Modification Order (DMMO) enables any changes to the map and statement to be made. DMMO's do not create any new public rights of way they seek to record those already in existence but not formerly recorded in the definitive map and statement. Issues for example such as safety, security and desirability whilst being genuine concerns cannot be taken into consideration. The DMMO process requires an authority to look at all the available evidence, both documentary and user, before making a decision
- 32. Before the Council can make the a DMMO to add a route to the definitive map, as is the subject of this report, it must be satisfied that taking into account the available evidence, that a right of way can reasonably be alleged to exist. If it can, the authority must make the order.
- Taken at face value, the provisions of Section 31 (see page 3, Evidential Tests) of the Highways Act 1980 would appear to be satisfied, and there would appear to be a prima facie case in favour of the establishment of public rights over the application route. Where there is possible evidence of lack of intention to dedicate, it appears to coincide with the dates of challenge and it may therefore be outside the relevant time periods. The matter is further compounded by the limited number of witnesses who are still available to confirm their evidence. No evidence has been submitted by, or on the behalf of, the landowners to demonstrate sufficiently overt acts, directed at users of the application route, which constitute a lack of intention to dedicate. The only evidence of such acts is contained within the user evidence forms relating to challenges, and the submission by the Parish Council, which refers to deterrent signs. However these are the same acts that appear to call into question the existence of the alleged rights, thus triggering the provisions of Section 31 of the Highways Act 1980. If this is the case, these acts may have occurred too late to prevent public rights being established.

34. An Order cannot however be confirmed unless those rights are shown, on balance of probability to subsist. A situation can therefore arise where an Authority is obliged to make an Order, even though that Order may not be capable of confirmation. Despite such a situation arising, if the rights are reasonably alleged to subsist, the Authority cannot refuse to make an Order despite knowing that it will be incapable of confirmation. This would appear to be such a situation.

#### **Crime and Disorder**

35. There are no crime and disorder implications.

#### **Information Technology**

36. There are no IT implications.

#### **Property**

37. There are no property implications.

#### Other

38. If the definitive map modification order process concludes that public rights do exist the public footpath becomes maintainable at the public expense and should be recorded as such on the List of Streets Maintainable at Public Expense. The Council, as the highway authority for public rights of way, has a duty to maintain the public footpath to a standard that allows use by lawful traffic: the right of way is on foot only.

#### **Risk Management**

39. In compliance with the Council's Risk Management Strategy, Options A is subject to internal budgetary pressures (financial). There are no risks associated with Option B.

#### **Contact Details**

Author: Joanne Coote (Definitive Map Officer) Network Management	Chief Officer R Damon Coppe City Developme	rthwaite, Assi	stant Director
(City Development & Transport) Tel No: 01904 551442	Report Approved	✓ Date	22.01.2010
Wards Affected: Wheldrake			AII

For further information please contact the author of the report

#### **Background Papers:**

Evidence evaluated and background report prepared by Consultant: Robin Carr Associates, Public Rights of Way Management and Consultancy Services Highways Act 1980

Wildlife and Countryside Act 1981

Rights of Way: A Guide to Law and Practice, Fourth Edition, by John Riddall and John Trevelyan.

England and Wales Court of Appeal (Civil Division) Decisions: R v Secretary of State for Wales ex parte Emery (1997)

#### Appendices:

Annex 1: Plan 1: Claimed Public Footpath, Thorganby Lane to Lawn Closes (Public Footpath No.7), Wheldrake

Annex 2: List of documents consulted

Annex 3: Summary of Documentary Evidence

Annex 4: Summary of User Evidence

Annex 5: Graph showing Periods of Claimed User
Annex 6: Summary of Objector's Evidence/Comments

Annex 7: Legal Tests

Plan 1: Claimed Public Footpath, Thorganby Lane to Lawn Closes (Public Footpath No.7), Wheldrake

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

Ann x 3

**Summary of Documentary Evidence** 

## Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Susscars Lane, Thorganby Lane to Lawn Closes Wheldrake

## Summary of Documentary Evidence

Tab	Doc	Tab Doc Description	Document Content	Comments
ĸ		Ordnance Survey Maps	Ordnance Survey maps show the physical existence of part of the route (Suscarrs Lane), but do not attribute it any specific status. The remainder of the route is not shown.	Ordnance Survey maps show the physical existence of part of the fourth of the course it any specific status.  The remainder of the route is not shown.  The remainder of the route is not shown.  The remainder of the route is not shown.  The remainder of 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.

**Summary of User Evidence** 

## Summary of User Evidence

Application for Definitive Map Modification Order Susscars Lane, Thorganby Lane to Lawn Closes Wheldrake

Wildlife & Countryside Act 1981

#### Used the path to get to Wheldrake Ings for bird watching, and saw others using it too. There were field gates on the route, but they were never locked. There was also a stile at the Stopped using the path in the early 1990's when challenged by the son-in-law of the landowner. A no trespassers notice was later erected at the eastern end of the path. There was originally a clear trodden path for much of the way. Knew of the path for 22 years and used it 3-4 times a year. Period of use has been taken from time path was known. Recalls gates on the route and a stile. Witness claims to have known of the path for 7 years and used it 4-5 times a year. Period of use has been taken from time When interviewed the witness had no detailed memory of the path was known. Used the path for pleasure and remembers field gates along the route, but no evidence of them being locked. path but did use it for 17 years and was never stopped or turned back. Period of use has been taken from time path was known Interviewed as part of 2002 Investigations interviewed as part of 2002 Investigations Thorganby Road end. Other Information interruption > **User without** > User As of Right > 7 > > > > Member of Public 25 ^ 17 22 esU snseY to oM 1967 - 1992 1976 - 19931971 - 1993 1986 - 1993 Period of Use Correspondence Other Witness Interview Form User Evidence > > 7 L Ostergaard C Burgess C Mordue Name S Bunt Page 0 က 4 Tab

5

5

5

5

Tab	Page	Name	User Evidence mro7	weivnesnl asentiw	Other	esU to boireq	eaU areaY to oM	Member of Public	User As of Right	User without interruption	Other Information
13	rc.	E Mordue	7			1971 - 1993	22	7	7	7	Knew of the path for 22 years and used it 3-4 times a year. Period of use has been taken from time path was known. Recalls gates on the route and a stile.
£	σ	J Burgess	7	7		1967 – 1992	25	7	7	7	Interviewed as part of 2002 Investigations  The path was easy to use and there were no notices or obstructions. She visited the Ings, usually with her husband and children often.  Stopped using the path in the early 1990's when challenged by the son-in-law of the landowner. A no trespassers notice was later erected at the eastern end of the path.
13	7	G Beilby	7			1963 - 1993	30	7	7	٨	Used the route occasionally for pleasure on both foot and horseback. Was never prevented form using the route and recalls the existence of field gates.
13	80	J Cleal	7	7		1969 – 1991	22	7	7	7	Interviewed as part of 2002 Investigations Used the path form 1969 to 1991, when she was informed by the landowner that there was no right of way. Prior to this, the path had always been open, but not necessarily obvious on the ground.
13	6	R Dawson	7			1991 - 2000	6	7	7	7	Used the path once or twice a year until 2000 when barbed wire was placed across the top of the gate that the stern end.

Wildlif & Countryside Act 1981 Application for Definitive Map Modification Order Susscars Lane, Thorganby Lane to Lawn Closes Wheldrake

Robin Carr Associates Public Rights of Way Management & Consultancy Services

**Graph showing Periods of Claimed User** 

Wildlife & Countryside Act 1981
Application for Definitive Map Modification Order
Susscars Lane, Thorganby Lane to Lawn Closes Wheldrake

Anners											
	2000										
	1995										
	1990										
	1985										
Jser	1980										
Periods of Claimed User	1975										
Periods	1970										
	1965	3									
	1960										
_	Period of Use	1967 - 1992	1986 - 1993	1976 - 1993	1971 - 1993	1971 - 1993	1967 - 1992	1963 - 1993	1969 - 1991	1991 - 2000	
	Name	C Burgess	S Bunt	L Ostergaard	C Mordue	E Mordue	J Burgess	G Beilby	J Cleal	R Dawson	
	Page	<del></del>	7	က	4	5	9	7	œ	တ	
	Tab	13	13	13	13	13	13	13	13	5	

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

## Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Susscars Lane, Thorganby Lane to Lawn Closes Wheldrake

### Annex 6

# Summary of Objector's Evidence/Comments

1			Objection	Comments
<u>a</u>	añe.	Name		
6	4	J V Gratton & Sons Letter from JV Gratton & Sons to NYCC received August 1993	Has farmed the land for 37 years (prior to 1993) and during that time has never seen anyone walk the route	The fact that the landowners have not seen anyone using the path, does not mean that such use has not taken place. However the evidence in this particular case suggests that rights were in existence, and the path was used, albeit only lightly, before the current owners specified time period. Of perhaps greater evidential value are th e1910 finance records where it would appear the landowners claimed tax relief in respect of the path.
			Anyone who has strayed from acknowledged paths on to the internal system of farm roads has been asked to leave	If the landowners have not seen anyone using the application route, they cannot have turned them back and asked them to leave. It is therefore doubtful whether this can be considered to be evidence of interruption or lack of intention to dedicate.
			Old residents of the village, who have lived there for over 50 years cannot remember the path being used.	This appears to be contradicted by the user evidence, which suggests that certainly some older residents were aware of, and used the path.
			Have a large dairy heard and allowing public access to field would be unacceptable and users would have to negotiate 2 gates and 14 electric fences	This is not a relevant consideration and cannot be take in tot account as part of the decision making process. If public rights exist access provisions will have to be made.
6	8	Acorus Rural Property Services on behalf of J V Gtarron & Sons Ltd Submission made December 2003	The footpath has never been used in living memory of the owners	There must be some uncertainty as to the accuracy of this statement because the Grattons only acquired the farm in 1957, which is within living memory. Furthermore there is evidence that the path was used in the 1950's.
			Historical research has not identified the existence of a path on any maps that have been inspected.	With the exception of Suscarrs Lane, which is shown on various maps, this is consistent with the Consultant's findings. Any case in support of an Order is considered to be user based, and not reliant upon documentary evidence
			Mr E Brown, aged 75 has lived in the village for the majority of his life and is a founder member of the local historical society. He has never known the route to be a footpath.	This does not, in any way detract form the fact that people have given evidence of their actual use of the claimed path. It is not evidence that rights do not exist.

Tab	Page	Name	Objection	Comments
			Mr P Wox owns land adjacent to the land through which the claimed path runs and he never recalls seeing people walking the claimed route.	The fact that a neighbouring landowner has not seen anyone using the claimed path does not, by any stretch of the imagination, mean that such use did not take place.
			Mrs A Gratton moved to Garth Cottage in 19858 and lived there until 1988 and never saw anyone using the claimed route	The fact that the landowners and their family do not recall seeing anyone using the path does not mean that such use did not take place. This does not constitute evidence of a landowner's lack of intention to dedicate.
			Mr A Gratton worked on the farm from the 1960's to 1989 and he does not recall seeing people using the path.	See comments above
			Former employees who worked at the farm between 1990 and 1999 do not recall seeing anyone using the application route.	See comments above
			The present owner Mr Johnathen Gratton and his wife do not recall having ever seen anyone trying to use the path.	See comments above

Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Susscars Lane, Thorganby Lane to Lawn Closes Wheldrake 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 facia 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.

#### **Evidential Tests**

Highways Act 1980, Section 31

- 3. 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."

#### Common Law

- 6. 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.

This page is intentionally left blank



# **Decision Session – Executive Member for City Strategy**

2 February 2010

Report of the Director of City Strategy

# A19/A1237 Roundabout Improvements – Consultation Results and Detailed Design

#### Summary

1. This report provides the results of the consultation undertaken on the proposed improvements to the A19/A1237 roundabout. It also updates the Executive Member on the changes which have been made to address the comments and accommodate constraints identified during the design period. The report identifies that, subject to approval, the amended scheme can be constructed within a revised budget allocation in the summer/autumn of this year.

#### Recommendations

- 2. The Executive Member is recommended to:
  - Note the comments raised by the public, Councillors and interested organisations.
  - Note the Officer's response to the comments and the proposed amendments to the design.
  - Approve the further development of the scheme in line with the amended layout to enable the improvements to be tendered and constructed in the summer/autumn of 2010.
  - Approve the inclusion of a total allocation of £1.5m in the City Strategy Capital Programme to construct the proposed scheme.
  - Authorise the removal of the minimum amount of vegetation from the A1237 West landscaped bund in February, to allow the main works to proceed later in the year to minimise the impact on nesting birds.

Reason: To reduce journey times for travellers in the A19/A1237 area whilst maintaining safe crossing points for pedestrians and cyclists.

#### **Background**

#### Overview

- 3. The 2008 Outer Ring Road study confirmed that travellers on the A19 to A59 section of the A1237 Outer Ring Road experience some of the worst journey delays on the entire route. The upgrade of the A59 roundabout is included in the Access York Phase 1 scheme planned for delivery in 2011/12 subject to DfT funding approval. The works proposed in this report will reduce journey times in the A19 area.
- 4. The Executive Member approved the delivery of improvements to the A19/A1237 roundabout using the additional funding from the Regional Funding Allocation at the 21 July 2009 City Strategy Decision Session.
- 5. The outline layout of the improvements was approved at the 20 October City Strategy Decision Session to enable the scheme to be put out for consultation.

#### Consultation

- 6. Following further preparatory work after the confirmation of the preferred option a consultation exercise was undertaken between 27 November and 18 December to ensure the views of the adjacent population, external stakeholders and users of the roundabout were identified to allow incorporation into the final design where possible. The consultation leaflet and layout drawings are included in Annex 1 and 2.
- 7. The consultation included the following elements:
  - Distribution of a leaflet to all households in the Skelton, Clifton Without and Rawcliffe Ward area. (approx. 6,000)
  - Displays at Clifton Library, 9 St. Leonard's Place and Rawcliffe Bar Park & Ride site.
  - A staffed exhibition at the Rawcliffe Bar Park & Ride site on 10 December (9:00 to 20:00)
  - Attendance at the Rawcliffe Parish Council Meeting on 14 December
  - Erection of road signs on the approaches to the roundabout.
  - City of York Council Website
  - Creation of an A19 Roundabout email address
  - Press Release
  - Internal Consultation with Council departments
  - External Consultation with interest groups and the Emergency services

8. The following responses were received:

Source	Number
Email	93
Clifton Library Display	4
9, St Leonards Place Display	3
Rawcliffe Bar P&R Display	4
Rawcliffe Bar Exhibition	4 (22 attendees)
Letters	7
Telephone Calls	4

9. The responses included over 270 comments with approximately 30 unique items. A more detailed list of comments and officer responses is included in Annex 3. The items in order of number of times raised are listed in the following table.

	Number	
General Comment	_	Rank
	Comments	)
Congestion in area is caused by A59 roundabout	26	1
Concerns about merging traffic on A1237	24	2
Concerns about driver behaviour on the roundabout	24	2
Supportive of scheme	23	4
Other sections of A1237 should be upgraded	18	5
Traffic signals would improve capacity/safety	18	5
The A1237 needs to be dual carriageway	16	7
Proposal not considered to be value for money	15	8
Segregated Left Turn Lane would improve capacity	14	9
Pedestrian/cycling issues	13	10
Concerns about congestion on the A19 Northbound out	12	11
of City		
Concerns about affect on landscaped embankment	11	12
Concerns that the scheme will not reduce journey times	11	12
in the area	10	4.4
Concerns about closure of westbound Lay-by	10	14
Concerns about traffic speeds on roundabout	9	15
Concerns about queue lengths since previous upgrade	4	16
Concerns about level of lighting proposed	3	17
Questioned value of existing underpass & use by	3	17
peds/cyclists	0	47
Concerns over access to Ings Cottages/House	3	17
Flyovers are needed	2	20
Concerns about access/ exit to Rawcliffe Bar P&R	2	20
Should spend money on alternative modes of transport	2	20
Problems exiting Manor Lane will be worse	2	20
Misc. Comments (Raised by single resident - 14 items)	14	24

#### **Summary of Comments**

- 10. The main comment areas are listed in the table above and summarised in the subsequent paragraphs. More detailed responses are included in Annex 3 and the changes proposed to the scheme to address the comments are identified in the design section of the report. The comments principally relate to suggestions that different improvements at the roundabout or alternative locations would provide better value for money solutions. Other comments highlight concerns about driver behaviour (speed and lane discipline), concerns about the proposed merge lanes, the consequences of the proposed closure of the westbound lay-by and the impact of the scheme on cyclists and pedestrians.
- 11. The council have undertaken a number of studies into the operation of the A1237 Outer Ring Road which has identified the highest priority junctions for improvement. The latest study was reported to the Executive on 23 September 2008. The studies have shown that for affordability, value for money and environmental impact reasons improving the existing roundabouts is considered to be the most appropriate way forward.
- 12. The busiest section of the A1237 is between the A19 and A59. It is not expected that the full benefit of the A19 upgrade will be realised until the improvements to the A59 roundabout, proposed to be funded through the Access York Phase 1 project, have been completed. However for eastbound A1237 and southbound A19 traffic the proposed A19 roundabout improvements are expected to substantially reduce journey times even in advance of the A59 upgrade.
- 13. The provision of segregated left turn lanes and traffic signalised solutions have been investigated but are not considered to be warranted, feasible or affordable at this location.
- 14. The twin lane straight ahead approaches and exits are a fundamental element of the scheme to achieve the desired increased capacity for the A1237. The layout is similar to the exit onto the A1237 recently constructed at the Hopgrove roundabout but provides a wider hatched central strip between the lanes rather than double white lines. Additional signing and lining will be provided to identify the new road layout. It is anticipated that the increased capacity at the roundabout will reduce the incentive for drivers to use the incorrect lane. It is considered that the traffic islands proposed on the 3 lane approaches will assist in reducing speeds and deter the use of incorrect lanes on the roundabout.
- 15. Closure of the A1237 westbound lay-by is essential to enable the safe operation of the merge lanes proposed on the exit to the roundabout. Following comments made during the consultation period it is now proposed to provide an alternative 24hr parking area in the Park & Ride extension car park to compensate for the loss of this facility.
- 16. A number of amendments are proposed to the scheme to address the safety and accessibility comments raised by local residents, cyclists and the police. It

is proposed to provide an at grade crossing facility of the A1237 East arm for cyclists and pedestrians which can be used when the subway is not available. The widened segregated footway/cycleway is planned to be extended to the riverside cycle route. An additional traffic island is proposed at the access to lngs Cottages.

17. More detail of the main comments in the list above with officer responses is included Annex 3.

#### **Consultation with Outside Bodies**

- 18. The consultation drawings were sent out to the standard list of stakeholders including the Emergency Services, Cycling Groups, North Yorkshire County Council, Skelton & Rawcliffe Parish Councils etc.
- 19. Comments were received back from North Yorkshire Police, North Yorkshire County Council, Rawcliffe Parish Council and the CTC as identified in the following paragraphs.

#### North Yorkshire Police

- 20. North Yorkshire Police have been involved with the independent Safety Audit process and have also commented on the proposed outline design. They raised a number of concerns including the need to address the consequences of removing the westbound lay-by, the lack of ground level pedestrian/cycling facility on the A1237 eastbound approach above the subway and the merging arrangements following the roundabout.
- 21. Constructive discussions have been held with a representative from the police and they are satisfied that, taking into account the layout constraints which apply to the scheme, the proposed revised design adequately addresses their concerns. The scheme will be subject to an independent safety audit later in the project programme which will include review by an independent police team.

#### North Yorkshire County Council

- 22. North Yorkshire County Council supports the proposed improvements to the A19 /A1237 roundabout. They consider that the improvements would improve journeys in / out of York /North Yorkshire and accessibility to key services for residents of both North Yorkshire and York, particularly through the use of the Park and Ride facilities at Rawcliffe Bar.
- 23. They have asked to be kept fully up to date with future plans and any traffic management issues etc throughout the construction and development of the scheme as they will possibly impact upon traffic flows etc within North Yorkshire.

#### Rawcliffe Parish Council

- 24. An Officer from the council attended the Rawcliffe Parish Council meeting on 14 December to enable the scheme to be discussed. Subsequently the Parish Council issued a formal response to the consultation which included the following comments:
- 25. The Parish Council are aware that consultation in 2000 proposed the view that any improvement work on A19/ A1237 would have little effect until extensive improvements were made to the A59 roundabout and would therefore like to question the validity/effectiveness of proposed improvements with this view in mind? Would it not be prudent to defer any improvements to the A19/A1237 roundabout until A59 roundabout has been improved?
- 26. The loss of the lay-by by Rawcliffe Bar Park and Ride amounts to the loss of a well used public amenity and as such the Parish Council strongly objects to this proposal.
- 27. The Parish Council wish to propose that the possibility of a deceleration lane/slip road into Manor Lane is explored to reduce the congestion and assist the flow of traffic in this area.
- 28. The pedestrian refuge (on the west side) is not a safe access and pedestrians should be encouraged to use the underpass.
- 29. The Parish Council feels very strongly that segregated lanes divided by pedestrian refuge will cause confusion to drivers. Inclusion of such in this development should correspond with detailed monitoring of this section of the scheme.

#### Officer Response

- 30. It is anticipated that the A19 improvements will reduce journey times in the area particularly in the eastbound and southbound directions prior to the upgrade of the A59. The full benefit of the A19 improvements is unlikely to be realised until the A59 roundabout is upgraded as well.
- 31. To enable the two lane exit to be provided on the A1237 it is not considered safe to maintain the westbound lay-by in position. In response to the comments made it is proposed to provide a 24 hr parking area in the Park & Ride extension car park.
- 32. Owing to the relatively slow speeds of traffic off the roundabout it is not considered necessary to provide a deceleration lane at the A19/Manor Lane junction location. There is a risk that it would be less safe for vehicles exiting Manor Lane if a deceleration lane was provided on the A19 due to the potential for reduced visibility of vehicles travelling southbound on the A19 behind left turning vehicles.
- 33. The safest crossing point of the A1237 for pedestrians/cyclists is considered to be the subway however this does not cater for all movements. It is therefore considered necessary to provide additional islands on the arms of the roundabout with 3 lane approaches. In addition if the subway is not available

- for use safe crossing points need to be provided for cyclists/pedestrians who still need to gain access to York/Skelton.
- 34. The additional pedestrian crossing islands act as subsidiary deflection islands which are a standard method of reducing traffic speeds at roundabouts.

#### CTC North Yorkshire

- 35. The CTC have concerns about how the proposed scheme fits within an overall sustainable transport policy.
- 36. They identify that the consultation leaflet refers to reducing delays in the locality and improving safety for all road users. It is their view that safety of pedestrians and cyclists, irrespective of their amenity, will not be enhanced by the provision of more traffic lanes. They would like to be assured that this has been modelled or otherwise audited. They would also press for simultaneous safety enhancements to the dedicated cycle links across the bridges, at the very least a parallel cantilevered lightweight bridge of adequate width and of a standard to encourage significant increase of cycle use for the short journeys made between the various housing and employment locations.
- 37. They are convinced that there is significant potential for modal shift towards environmentally friendly modes on the route under consideration, but regret that Cycle City plans do not appear to have been directed towards the need for appropriate and radical measures. It is their view that the council should recognize that meaningful promotion of cycling can tackle congestion and its increased adoption will reduce the oil-dependence of our transport system and be good for our energy security and balance of trade. Economic benefits in another context would come from reduced health-care costs and absenteeism, with improved productivity. Thus the need to abandon this scheme in favour of other measures which could be less socially divisive, and particularly look more closely at individual travel needs/aspirations and target accordingly.

#### Officer Response

- 38. Improvements to the Outer Ring Road are included with the Council's Local Transport Plan which was prepared after widespread consultation with the residents of York. It is anticipated that increased capacity at the A19 will help to reduce traffic levels in residential areas of the city and enable the transfer of road space to more sustainable modes. The upgraded layout has been designed to accommodate cyclist/pedestrian movements wherever possible. No more than two lanes of traffic have to be crossed on all arms of the roundabout. Unfortunately improvements to the cycle route over the river Ouse are outside the scope of this project.
- 39. The promotion of cycling is a key element of the Local Transport Plan with the initial results of the Cycling City programme suggesting significant increase in the numbers of people cycling. The Council is delivering a significant programme of cycling infrastructure works across the city which is prioritised on a value for money basis to achieve higher cycling levels.

#### **Member Views**

40. Officers consulted with Skelton, Rawcliffe and Clifton Without Ward Councillors Waudby, Moore and Watt, plus Councillors D'Agorne, Gillies and Potter on the proposals. Their responses to the consultation layout are summarised below.

#### **Ward Member Views**

- 41. Councillor Watt has the following comments:
  - Considers that the upgrade would be a waste of public money.
  - Does not approve of the removal of the Westbound Lay-by.
  - A major bottle-neck is caused by the island on the A19 at the end of Manor Lane can this not be altered to permit 2 lanes Northbound?
  - Concerned about lane discipline on the roundabout
- 42. Councillor Waudby had the following comment on the option layout, no further comments have been received on the consultation layout:
  - Concerned about the effect on the existing footpath/cycle path over the bridge, particularly in relation to the number of young people going from Rawcliffe to Manor School.
- 43. Councillor Moore had the following comments on the option layout, no further comments have been received on the consultation layout:
  - Opposes the closure of the westbound layby
  - Raises concerns about the need for enforcement of traffic regulations at the roundabout
  - Raises the issue of the capacity of the A59 roundabout restricting flows in the A19 roundabout area.

#### **Other Member Views**

- 44. Councillor D'Agorne raised concerns about the provision of cycling and pedestrian facilities on the outline layout. No further comments have been received on the consultation layout.
- 45. Councillor Gillies had the following comments on the outline layout -- he has no further comments on the consultation layout:
  - Concerned about the possible closure of the westbound layby
  - Raises concerns about traffic speeds and cyclists using the Skelton cycle route.
- 46. Councillor Potter had the following comments on the option layout -- she has no further comments on the consultation layout:
  - Concerned about the possible closure of the westbound layby and suggests that an alternative parking area with access to the river bank should be provided if the layby is closed.

#### **Response to Member Views**

- 47. The majority of the comments have been addressed in the main part of the report and in Annex 3. Other items are addressed in the following paragraphs.
- 48. The traffic island close to the end of Manor Lane provides a dual function of a pedestrian/cycling crossing and protection to the right turn movement into Manor Lane. Alterations would require significant widening of the road into the south verge to allow the facility to be maintained. Further investigation has revealed the presence of services which would be prohibitively expensive to move.
- 49. Cycling movements over Ouse Bridge will continue to be possible from the A19 area throughout the construction works and in the permanent layout. It is proposed to continue the segregated path between the A19 and river Ouse embankment.
- 50. It is proposed to provide a CCTV camera at the roundabout to enable traffic movements in the area to be monitored and allow improved management of the network.
- 51. It is considered unlikely that signalising the roundabout would provide additional capacity unless the roundabout was substantially increased in size to allow the provision of storage capacity in the circulatory area.
- 52. The lane designations will be designed to minimise overall queuing however it may not be possible to allocate lanes to suit all conditions due to variations in the turning movements during different times of the day and week. Lane designations may be amended throughout the life of the roundabout to accommodate changes to the turning movements which may occur in future years.

#### Design

- 53. The proposed detailed design for the roundabout improvements has been prepared by the Council's framework consultant Halcrow to deliver an upgraded roundabout with additional capacity which is safe for all users. The layout has been amended since the option report to meet current design standards, address comments received during the consultation period and minimise the cost of service diversions. The proposed layout is shown in Annex 4.
- 54. The following main changes are proposed from the consultation layout:

#### <u>General</u>

55. It is proposed to include a CCTV camera at the roundabout to enable traffic movements to be monitored. The location is to be confirmed but the current preferred position is between the A19 North and A1237 East arms near the north end of the subway.

56. Destination lane markings (e.g. S'BRO, LEEDS etc.) have been changed on the approaches and circulatory carriageway to simplify and match those used elsewhere on the ring road.

#### A19 North Arm

- 57. An additional traffic and pedestrian island is proposed north of the access to Ings House/Cottages to restrict traffic to a single lane north of this point. This will make the turning movements in and out of the access safer to undertake.
- 58. It is proposed to move the start of the left turn lane southwards owing to the presence of a BT chamber and fibre optic cables in the southbound verge. The cost of moving the chamber was estimated by BT to be over £200k and would have significant impact on the project programme and the communication infrastructure in the area. Transport modelling has been undertaken which indicates that the changes will not have a significant affect on the capacity of this arm of the roundabout.
- 59. The pedestrian crossing position has been moved southwards and the length of the existing traffic island has been reduced to enable the 3 southbound lanes and traffic island to be accommodated.
- 60. The extent of the cycle/pedestrian route has been adjusted on the southbound approach to allow the eastbound A1237 to be joined by cyclists without rejoining the A19. The adjustment will also allow pedestrians to gain access to the ground level crossing point of the A1237 if the subway is not available.

#### A1237 East Arm

61. It is proposed to provide an additional traffic island on the A127 westbound approach to provide a safe at grade crossing position for the 3 lane approach. Consequential adjustments to the cycle and pedestrian routes are proposed which moves them to the east side of the subway.

#### A19 South Arm

62. Adjustments are proposed to the cycle/walking route to accommodate the additional A1237E traffic island.

#### Park & Ride Access

63. No changes.

#### A1237 West Arm

- 64. It is proposed to shorten the central island slightly to enable the approach lanes and cycle route to be accommodated within the highway boundary.
- 65. It is proposed to extend the widened segregated cycle/pedestrian route westwards to the access to the riverside at the start of the river bridge embankment. This will minimise conflict with pedestrians and cyclists on this route.

66. To compensate for the removal of the westbound lay-by facility it is proposed to provide a dedicated section of the Park & Ride extension car park which will be available for use 24hrs. The existing height barrier will be maintained in position and the remainder of the car park gated off for opening when the extension car park was needed for the Park & Ride operation. A route will be provide to enable walkers access to the A1237 footway and thence on to Rawcliffe Ings.

#### Site Clearance

67. To ensure that the scheme can be constructed in the summer/autumn, advance site clearance is required on the embankment on the south side of the A1237 east of the A19. To avoid the bird nesting season between March and October the site clearance must be undertaken in February or the work in the area may need to be delayed which would push the end date of the scheme into one of the busiest periods at the Park & Ride site (St. Nicholas Fayre onwards). The extent of the site clearance will be kept to a minimum to allow the works to be constructed. Replanting of the bund will be undertaken once the scheme is complete.

#### **Programme**

68. The aim of the project is to deliver the improvements by the end of 2010. The following milestones are envisaged.

Activity	Programme	Status
Outline Design	July - October 2009	Complete
Consultation	November -	Complete
	December 2009	
Detailed Design	December 2009 -	Ongoing
	February 2010	
Site Clearance	February 2010	
(Embankment		
Vegetation)		
Tender Process	March – June 2010	
Utility Diversions	April – July 2010	
Main Construction	July – November	
	2010	

69. It is anticipated that the majority of the works will be undertaken whilst maintaining all existing traffic lanes (speed restrictions and lane narrowing may be required) although some of the work, such as resurfacing, will need to be undertaken at night to minimize traffic disruption. This will be kept to a minimum to reduce the impact on local residents. For safety and cost reasons, where possible, the scheme has been designed to minimize the need to undertake major work in the centre of the carriageway.

#### **Estimated Costs**

70. The estimated construction cost for the revised proposed scheme is £1.280m including service diversions, design and supervision. The inclusion of an

allowance for contingencies means that it would be prudent to provide a budget allocation of £1.5m in the Capital Programme. The increase from the £1.4m estimate identified in the October report is principally due to the inclusion of a CCTV camera, additional traffic islands on the A19 and A1237 East, amendments to the A1237 West cycle route and provision of the dedicated parking area in the Park & Ride site.

#### **Corporate Priorities**

- 71. The improvements to the capacity of the A19 roundabout will contribute to the following corporate priorities:
- 72. Thriving City Additional traffic capacity will reduce journey times in the area enabling trips to the adjacent business and retail areas to be undertaken more efficiently. The upgrading of the capacity of the Outer Ring Road is one of the key strategies within the council's Local Transport Plan.
- 73. Sustainable City The improved capacity will contribute to enabling the delivery of developments on the brownfield sites in York Northwest.
- 74. Safer City The projected reduction in traffic travelling along adjacent roads is anticipated to reduce the level of accident risk in residential areas.

#### **Implications**

- 75. The following implications have been reviewed.
  - **Financial** -- It is proposed to fund the £1.5m required for the construction of the A19 roundabout improvements from the 2009/10 and 2010/11 City Strategy Capital Programme. Details of the funding allocations for the entire 2010/11 programme will be submitted for approval to the Executive Member in March. Sufficient funds area available from the supplementary Regional Funding Allocation for the delivery of this scheme in 2010/11. Funds are available in the 2009/10 allocation to complete the design, prepare the tender documents and undertake the site clearance.
  - Human Resources (HR) There are no Human Resource implications.
  - **Equalities** There are no equalities implications
  - Legal There are no legal implications
  - Crime and Disorder There are no crime and disorder implications
  - Information Technology (IT) There are no IT implications
  - **Property** There are no property implications
  - Other There are no other implications

#### **Risk Management**

76. A full risk register for the delivery of the project has been prepared and mitigation measures applied where necessary. In compliance with the

#### Page 157

Council's risk management strategy measured in terms of impact and likelihood, the risk score has been assessed at less than 16. This means that at this point the risks need only to be monitored as they do not provide a real threat to the achievement of the objectives of this report.

#### **Contact Details**

Author: Tony Clarke Capital Programme Manager City Strategy Tel No. 55 1641	Chief Officer Responsible for the report: Damon Copperthwaite Assistant Director City Development and Transport	
Terino. 55 1641	Report Approved	
	Chief Officer's name Title	
	Report Approved tick Date Insert Date	
Specialist Implications Officer(s)		
Wards Affected: Skelton, Clifton Witho	out and Rawcliffe All	

#### For further information please contact the author of the report

#### **Background Papers**

Executive Member for City Strategy Decision Session 21 July 2009: Regional Funding Allocation Proposal Executive Member for City Strategy Decision Session 20 October 2009: Outline

Design Report

#### **Annexes**

Annex 1: Consultation Leaflet Annex 2: Consultation Drawing

Annex 3: Consultation Comments and Officer Responses.

Annex 4: Proposed Layout Drawing.

This page is intentionally left blank



# A19/A1237

# Rawcliffe Roundabout Improvements

# We want your views!

#### **Background**

City of York Council has a strategy to improve capacity on the A1237 outer ring road by upgrading the existing junctions. The route performs an essential function for both longer distance and local journeys in the area. Delays and congestion on the route reduce the economic attractiveness of the city and cause inconvenience and safety concerns for local residents.

This leaflet outlines the proposals being considered to improve the A19/A1237 roundabout, to reduce delays in the area and improve safety for all road users.

# When would the scheme be built?

The council proposes to upgrade the A19 roundabout in the autumn of 2010.

Following this consultation, further design development will be undertaken to complete the details of the proposals, taking into account any feedback received. The proposed final design will be presented to a council decision meeting in early 2010.

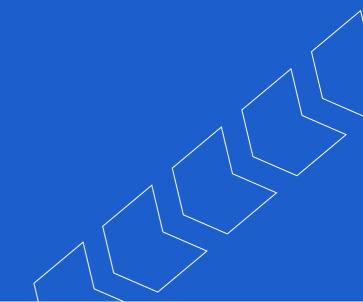
Inevitably, there is likely to be some localised disruption during construction. However, this will be kept to a minimum by careful programming of the works. All entries and exits at the roundabout and all pedestrian and cycle routes will remain open during the day, with some of the most disruptive work, such as resurfacing, being undertaken at night.

# Why do we need to do anything?

Travellers on the section of the ring road between the A19 and A59 experience some of the longest delays on the entire route, with extensive queuing on all approaches to both roundabouts. The A19 roundabout is one of the biggest constraints for eastbound traffic and the A59 roundabout restricts westbound movements. Both roundabouts need to be upgraded for the journey times in all directions and time periods to be significantly improved.

Traffic levels on the ring road are substantially higher than in 2001 when the A19 roundabout was previously improved. The number of vehicles passing through the roundabout each day has risen from approximately 43,000 to 50,000, with longer journey times again being experienced.

There have been 40 recorded accidents which have resulted in personal injuries on or near the roundabout over the last five years. The extensive queuing on the approaches to the roundabout is a contributory factor for many of these incidents.



### What is being proposeur

A draft layout showing the extent of the proposed works is shown opposite. The main elements of the scheme are shown in the box below:

#### Widened entry lanes

A19 north, A1237 east and west approaches widened to three lanes at the roundabout.

#### Widened exit lanes

A1237 east and west exits widened to two lanes merging down to one lane after approximately 250m.

#### Lane markings

Alterations to existing road markings on the roundabout and approaches to accommodate the entry and exit changes.

#### • Pedestrian and cycle crossing points

Provision of additional islands on the A1237 west approach and A19 north approach to ensure pedestrians and cyclists do not have to cross more than two lanes of traffic at a time.

#### Landscaping

Amendments to the existing embankment and landscaping on the A1237 east of the roundabout to enable the road to be widened, retaining as much of the existing vegetation as possible.

#### Removal of A1237 westbound layby

Closure of the layby on the westbound A1237 to the west of the roundabout for safety reasons. Alternative parking is available in Rawcliffe Bar Park & Ride site during opening hours.

#### Additional lighting

Existing lighting to be extended along the A1237 to cover the full extent of the new road layout to improve safety.

The estimated cost of the proposed scheme is £1.4 million, financed from the City of York's grant from central government for local transport schemes.

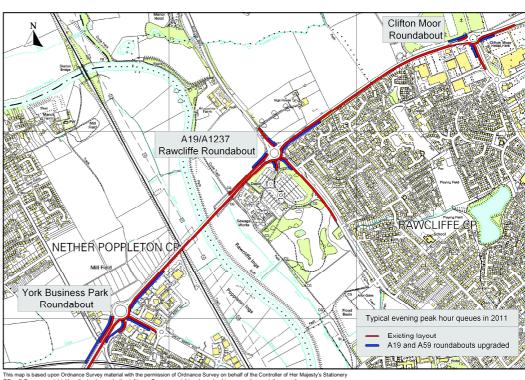
The proposed A19 improvements in isolation will deliver reduced queue lengths and shorter journey times on the approaches to the roundabout. However, significant reductions to the evening queues out of the city on the A19 and on the A1237 westbound from Clifton Moor are dependent on the completion of the proposed A59/A1237 improvements as well. The more extensive and costly A59 improvements are planned for 2011/12 as part of the council's Access York (Phase 1) Park & Ride project, subject to funding approval from the Department for Transport.

On completion of both schemes, it is anticipated that the roundabouts will be capable of handling forecast traffic levels for 10-15 years.

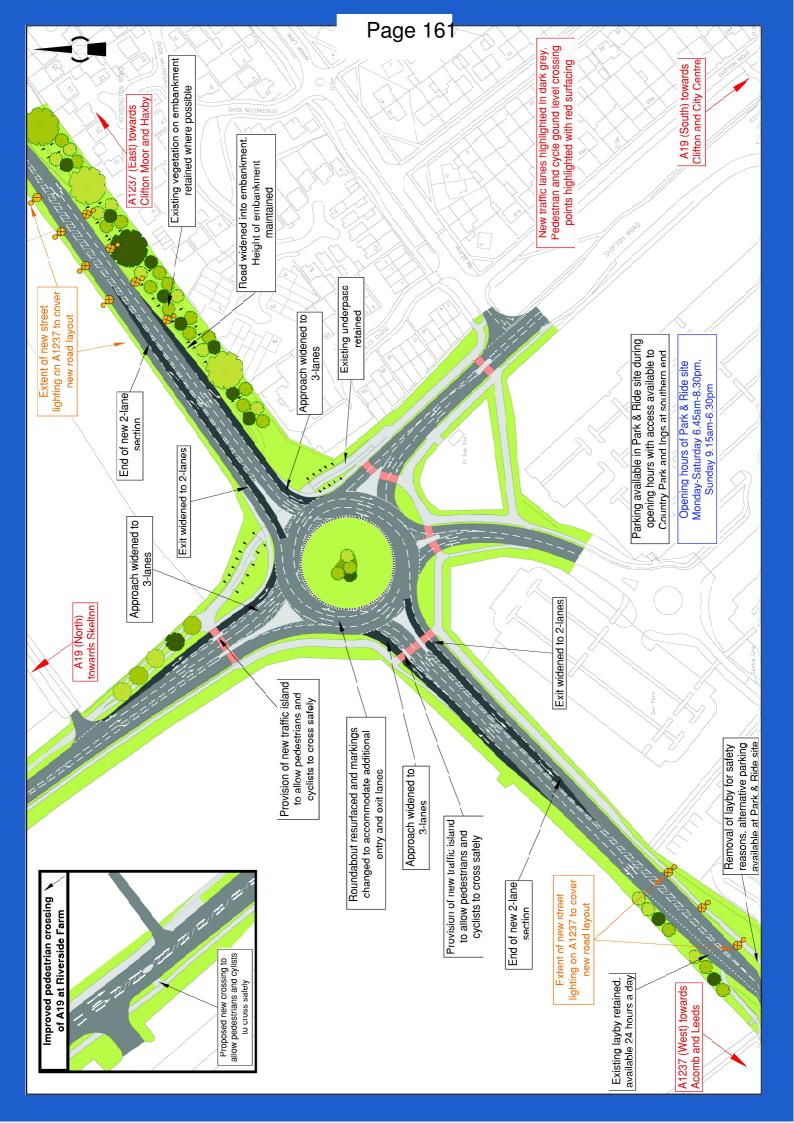
# How would queuing be affected?

Typical evening peak hour queues in 2011 are forecast to change as shown, on completion of both the A19 and A59 upgrade schemes.

The resulting journey time from Clifton Moor to the A59 roundabout is predicted to reduce in the evening peak hour by over 10 minutes.



This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majestly's Statione Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. City of York Council 100019086 2009.



#### How to find out more?

There will be a public exhibition with council officers on hand to answer any questions at:

Rawcliffe Bar Park & Ride Site Thursday 10 December 2009 9.00am to 8.00pm

Unstaffed displays showing larger scale plans of the proposals will be available at the following locations from **Friday 4 December** to **Friday 18 December**, during normal opening hours.

Clifton Library, Rawcliffe Lane, Rawcliffe, York Council Offices, 9 St. Leonards Place, York Rawcliffe Bar Park & Ride Site

Further details and more plans of the proposals are also available on the council's website www.york.gov.uk/A19/A1237Roundabout/

#### We want your views

If you wish to raise any issues or concerns over the proposed improvements there are a number of ways to contact the council:

- By phone 01904 551641 (ask for Tony Clarke)
- **By email** A19roundabout@york.gov.uk
- Online
  see council website for further details
  www.york.gov.uk/A19/A1237Roundabout/
  and email comments to
  A19roundabout@york.gov.uk

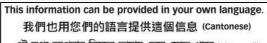
⊠ By post

Tony Clarke
Capital Programme Manager
City Strategy
City of York Council
FREEPOST (YO 239)
York
YO1 7ZZ

To enable your views to be taken into account, please send us your responses by **Friday 18 December 2009**.

Any issues raised will be addressed in the final design of the scheme, where possible.

If you would like this leaflet in an accessible format (for example in large print, on CD, or by email) or in another language, please contact 01904 551641, or email A19roundabout@york.gov.uk



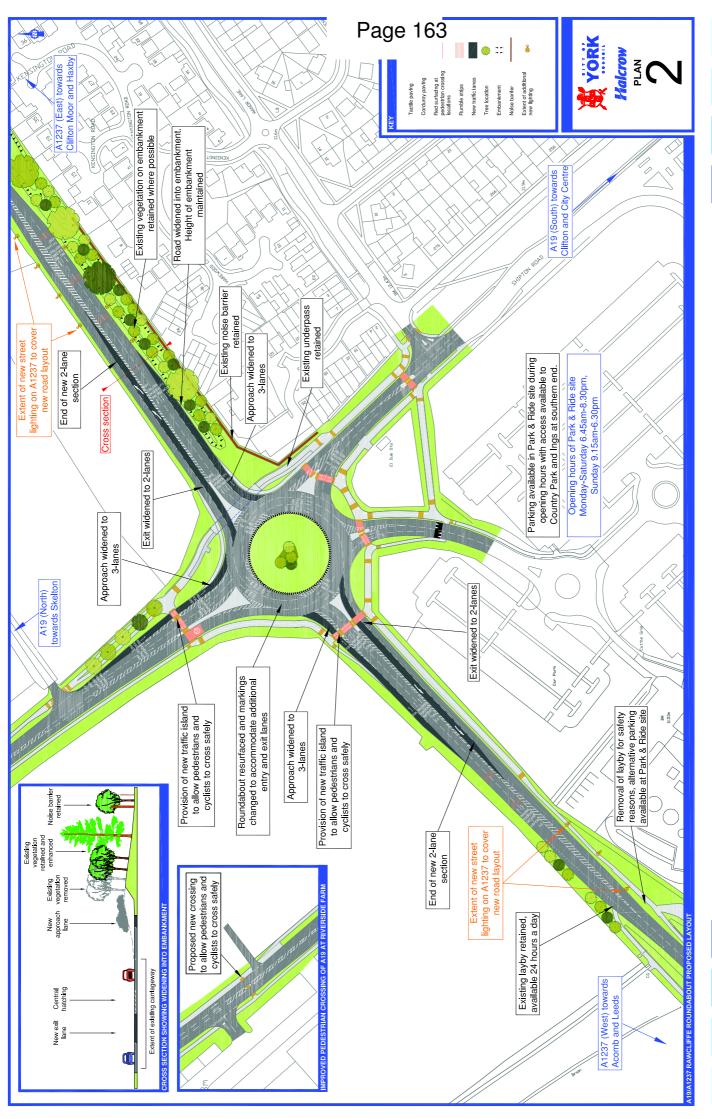
এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali) Ta informacja może być dostarczona w twoim własnym języku.

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

(Urdu) یه معلوات آپ کی اپنی زبان ( بولی) میں ہمی مهیا کی جاسکتی ہیں-

**T** (01904) 551550





# A19/A1237 Rawcliffe Roundabout Improvements Proposed Roundabout Layout

This page is intentionally left blank

#### **Annex 3**: Consultation Comments and Officer Responses

- 1. The consultation included the following elements:
  - Distribution of a leaflet to all households in the Skelton, Clifton Without and Rawcliffe Ward area.
  - Displays at Clifton Library, 9 St. Leonard's Place and Rawcliffe Bar Park & Ride site.
  - A staffed exhibition at the Rawcliffe Bar Park & Ride site on 10 December (9:00 to 20:00)
  - Attendance at the Rawcliffe Parish Council Meeting on 14 December
  - Erection of road signs on the approaches to the roundabout.
  - City of York Council Website
  - Creation of an A19 Roundabout email address
  - Press Release
  - Internal Consultation with Council departments
  - External Consultation with interest groups and the Emergency services
- 2. The following responses were received:

Source	Number
Email	93
Clifton Library Display	4
9, St Leonards Place Display	3
Rawcliffe Bar P&R Display	4
Rawcliffe Bar Exhibition	4 (22 attendees)
Letters	7
Telephone Calls	4

3. The responses included over 270 comments with approximately 30 unique items. A more detailed list of comments and officer responses is included in the following paragraphs. The items in order of number of times raised are listed in the following table.

#### Page 166

#### **Summary of Comments**

	Number	
General Comment		Rank
	Comments	,
Congestion in area is caused by A59 roundabout	26	1
Concerns about merging traffic on A1237	24	2
Concerns about driver behaviour on the roundabout	24	2
Supportive of scheme	23	4
Other sections of A1237 should be upgraded	18	5
Traffic signals would improve capacity/safety	18	5
The A1237 needs to be dual carriageway	16	7
Proposal not considered to be value for money	15	8
Segregated Left Turn Lane would improve capacity	14	9
Pedestrian/cycling issues	13	10
Concerns about congestion on the A19 Northbound out of City	12	11
Concerns about affect on landscaped embankment	11	12
Concerns that the scheme will not reduce journey times	11	12
in the area	10	14
Concerns about closure of westbound Lay-by	_	
Concerns about traffic speeds on roundabout	9	15
Concerns about queue lengths since previous upgrade	3	16 17
Concerns about level of lighting proposed	3	17
Questioned value of existing underpass & use by peds/cyclists	3	17
Concerns over access to Ings Cottages/House	3	17
Flyovers are needed	2	20
Concerns about access/ exit to Rawcliffe Bar P&R	2	20
Should spend money on alternative modes of transport	2	20
Problems exiting Manor Lane will be worse	2	20
Misc. Comments (Raised by single resident - 14 items)	14	24
THIOS. COMMISSION (I CONCORD ) SINGIO TOSICOTO 14 ICOMS)	17	

#### Congestion in the area is caused by the A59 Roundabout

4. The highest ranked comment received was the view that the main cause of the delays in the area is queuing across the A19 roundabout in the westbound direction caused by the lack of capacity at the A59 junction.

#### Officer Response

- 5. One of the main causes of journey delays on the north west section of the ring road is lack of capacity at both the A19 and A59 roundabouts. For the full benefit of the A19 upgrade scheme to be achieved improvements at the A59 roundabout are also required.
- 6. In the morning peak period the A19 junction is not generally affected by the capacity of the A59 therefore significant journey time savings are expected when the A19 roundabout is improved in isolation. However

eastbound traffic is constrained by the capacity of the A19 roundabout and queues can extend as far as the A59 at peak times (particularly Saturday mornings/early afternoons). The proposed improvements to the A19 roundabout will significantly reduce this queuing and reduce the eastbound and westbound journey times.

- 7. In the evening peak period queues from the A59 roundabout extend over the Millfield Lane and A19 roundabouts restricting the capacity of these junctions. This queuing will restrict the benefits which could be achieved from the proposed A19 roundabout upgrade. The council proposes to upgrade the A59 roundabout as part of the Access York Phase 1 (Park & Ride) scheme with the delivery of this scheme subject to the approval of the Department for Transport (DfT). If approval is granted in the next few months it is anticipated that the A59 roundabout will be upgraded in 2011/12. Full consultation with local residents and users of the roundabout will be undertaken on the A59 scheme before the design is finalised once the funding has been confirmed by the DfT. If the A59 was upgraded before the A19 the full benefit of the A59 scheme would not be realised because of queuing from the A19 roundabout.
- 8. It is not anticipated that significant improvements to the journey times of traffic leaving the city in the evening will be achieved without the A59 being upgraded as well.

#### Concerns about merging traffic on A1237

9. Many responses raised concerns that the proposed two lane exit reducing down to a single lane will lead to additional accidents in the area.

#### Officer Response

- 10. The twin lane approaches and exits are a fundamental element of the scheme to achieve the desired increased capacity for the A1237. Turning movements at the roundabout indicate that approximately 70% of traffic approaching the junction on the A1237 at peak times (am & pm) travels straight across. It is anticipated that reduced queuing and journey times will not be achieved without providing additional straight ahead capacity.
- 11. The twin lane exits from the roundabout proposed are based upon the principle that traffic on the roundabout will be travelling at 30mph or less (standard roundabout design practice and supported by surveys of existing traffic at off peak times) and upon leaving the circulatory carriageway will have sufficient time to merge in a safe manner prior to the carriageway narrowing. The arrangement is broadly in line with the design standard for wide single carriageway 2+1 Roads (TD70) amended for the low speed and single carriageway nature of the roads under consideration. The proposed layout moves the merge point away from the roundabout and allows drivers to clear the junction area prior to

- reducing to a single stream of traffic. The lengths allowed in the design take account of expected traffic speeds.
- 12. The layout is similar to the exit onto the A1237 recently constructed at the Hopgrove roundabout but provides a wider hatched central strip between the lanes rather than double white lines. It is proposed to provide additional signage to indicate that traffic should merge in turn and the lighting provision will be extended to the end of the widened carriageway.

#### Concerns about driver behaviour on the roundabout

13. Many respondents commented on the general poor lane discipline on the roundabout and the use of the incorrect approach lane to avoid queues. The concern is that this leads to conflict with other road users increasing the possibility of accidents and reduces the capacity of the junction.

#### Officers Response

- 14. Although behaviour of some drivers at the roundabout is frustrating the lane markings are advisory and it is difficult for the police to enforce the offence of inconsiderate driving. Lane markings have been adjusted in the past on the A1237 approaches which has reduced misuse at the roundabout but it is recognised that the practice still persists.
- 15. It is anticipated that the increased capacity at the roundabout will reduce the incentive for drivers to use the incorrect lane. The left turn lanes generate from the ahead lanes close to the roundabout giving little opportunity to make inappropriate use. The increased capacity by having two lanes on, through and off the roundabout for the ahead movement will reduce the opportunity for vehicles to cut in to these lanes.
- 16. Further design work has been undertaken to develop a layout that will encourage drivers to use the roundabout in accordance with the lane markings. The proposed measures include the provision of:
  - Pedestrian islands on all 3 lane approaches (A1237 (E&W) and A19 N). The islands and markings will be extended so that they operate as subsidiary deflection islands to deter drivers in the left turn lanes from excessive speeds and wilful use of incorrect lanes.
  - Additional lead in lanes across the circulatory markings to ensure that traffic is directed to the correct lane on the roundabout.
  - A CCTV camera to monitor traffic flows in the area.
  - Spiral lane markings on the circulatory carriageway reducing the need for lane changes on the roundabout.

# Other sections of A1237 should be upgraded/ The A1237 needs to be dual carriageway

17. A number of comments were received suggesting that other sections of the A1237 have higher priority or that the route should be dual carriageway.

#### Officers Response

- 18. The council have undertaken a number of studies into the operation of the A1237 Outer Ring Road which has identified the highest priority junctions for improvement. The latest study was reported to the Executive on 23 September 2008.
- 19. The Hopgrove roundabout before the recent upgrade had the highest delays on the entire route. The current section with the longest delays is in the A19 to A59 area due to longer distance traffic using the river and railway crossings mixing with the local distribution traffic. Improvements to this section are planned to be delivered through the proposed A19 project, which is the subject of this report, as part of the Access York Phase 1 project and are also linked to the York Northwest development. The next highest delays are experienced at the Haxby Road roundabout. Outline design work is currently being undertaken to establish a more detailed cost to upgrade the Haxby Road roundabout.
- The studies have shown that for affordability, value for money and environmental impact reasons improving the existing roundabouts is considered to be the most appropriate way forward. It is anticipated that dualling would reduce journey times on the ring road more than just improvements at the roundabouts but the cost is substantially higher principally because of the number of bridges required between the A59 and A19. The estimated cost for improvements to all roundabouts between Wetherby Road and Strensall Road (inclusive) and dualling between Wetherby Road and Clifton Moor is £62m (value for money assessed as medium). The equivalent cost for improvements to roundabouts only is £37m (value for money assessed as good). For comparison the annual Integrated Transport budget for the City is approximately £3m. A bid to the Regional Transport Board for funding for the upgrade of all of the roundabouts was submitted in October 2008 however due to pressure on the budget from other regional schemes it was classified as a reserve scheme to be progressed only if other schemes across the region were delayed.
- 21. The proposed improvements at the A19 roundabout are not incompatible with the introduction of a dual carriageway at a future date.
- 22. An upgrade scheme for the Outer Ring Road which included flyovers has also been investigated by the council and would provide significant journey time savings however the value for money would be low, the cost prohibitive and the environmental impact considerable particularly at the A59 junction. A scheme which included flyovers to all roundabouts

between the A59 and A19 and improvements to all other roundabouts at ground level and dual carriageway between Wetherby Road and Haxby Road would cost £133m (value for money assessed as low). A full end to end (Copmanthorpe to Hopgrove) dual carriageway with flyovers would cost approximately £265m (value for money assessed as very poor). It is considered unlikely that a bid for funding to progress a flyover based scheme would be successful if it represents low or poor value for money when assessed using DfT criteria.

23. The proposed A19 roundabout improvements are unlikely to be fully compatible with any future grade separated solution as the layout would need to substantially changed to accommodate slip roads and structures.

#### Traffic signals would improve capacity/safety

24. Many comments included the suggestion that traffic signals would improve the capacity and safety of the junction. One resident requested that traffic signals should not be provided.

#### Officers Response

25. It is considered that the existing roundabout is not large enough to be signalised and maintain capacity as there is insufficient circulatory carriageway to provide stacking space for waiting traffic. Removal of the roundabout to install conventional signals could lead to a significant increase in accidents at this junction, particularly during quieter traffic periods, as vehicles would be tempted to accelerate towards the signals rather than have to stop. The capacity of the junction is likely to be reduced by the provision of signals due to the need to introduce intergreen periods between signal phases to ensure traffic has time to clear the junction. A standard signal controlled junction would not be in keeping with adjacent junctions on the A1237 and could lead to driver uncertainty. The benefit of a signalised junction would be that traffic flows could be controlled with priority allocated to specific approach arms if required.

#### Proposal not considered to be value for money

26. A number of residents raised concerns about the value for money of the scheme. These comments were mainly suggesting that the scheme would not improve journey times in the area and that either the funds should be saved up to upgrade the A59 roundabout or to provide a dual carriageway. Some correspondents suggested that the funds would be better spent on alternative transport modes to reduce traffic levels.

#### Officers Response

27. Owing to the extent of the existing queuing which the scheme reduces significantly the benefits from the journey time savings is high. The cost of the improvements is relatively low meaning that the scheme is

- considered to represent very good value for money when considered in accordance with the Department for Transport's methodology for evaluating schemes.
- 28. The improvements to the Outer Ring Road are part of the City Council's Local Transport Plan strategy which includes the promotion of sustainable transport modes. Increased capacity on the A1237 will reduce traffic through adjacent residential areas and enable the transfer of road space to bus and cycle routes.

#### Segregated Left Turn Lane would improve capacity

29. Many residents suggested that dedicated left turn lanes would enable turning traffic to avoid the roundabout entirely increasing the capacity of the junction. A number of the comments were accompanied by some very interesting sketches.

#### Officers Response

- 30. Dedicated left-turn slip roads could in principle improve the capacity of the roundabout but are not considered practical for this junction for a number of reasons. Conventional segregated slip roads and merge lanes are not permissible on single carriageway roads under current design standards. Left turn lanes with standard give way markings are permitted but there would be concerns on high flow routes such as the A1237/A19N movement and there would be limited advantage over the proposed layout.
- 31. There would be significant safety concerns to overcome if left turn lanes were proposed due high traffic speeds merging onto a single carriageway route. These could be addressed by the provision of a section of dual carriageway on the exit route but this would have to extend a considerable distance beyond the merge position to enable vehicles to join their destination route safely. Merge lanes raise particular safety concerns for cyclists which would be more expensive to overcome. Sufficient land within the public highway is not available to provide left turn lanes separate to the roundabout on any of the approaches.
- 32. Land outside the highway boundary is not available to the south of the A1237 due to the proximity of existing properties and a left turn lane from the A19 South would have to cross the Park & Ride entrance.

#### Pedestrian/cycling issues

33. A variety of pedestrian and cycling comments were received including suggestions that the route on the south side of the A1237 over the river should be improved and that the crossing points should be wide enough to accommodate tandems. Comments about the subway were also received ranging from requests to deal with the flooding to the suggestion that it should be converted for motorists to use. Other

comments relating to the possible provision of a signalised pedestrian/cyclist crossing of the P&R access were also received. Cyclists also identified that the outline proposal did not provide an at grade option when travelling north on the A19 cycle route and turning east along the A1237.

#### Officers Response

- 34. Unfortunately the majority of the comments relate to items which are outside the scope of this scheme. Providing a compliant cycle route over the Ouse and Railway line is a desirable aspiration but is not affordable within the budget for this scheme. However, it is proposed to extend the widened segregated cycle/pedestrian route to the access to the riverside path at the start of the bridge embankment. It is also proposed to fund improvement works to the subway pumping station as part of the scheme to ensure that it is more reliable. It does not appear that the traffic or pedestrian/cycling numbers warrant the provision of a signalised crossing to the Park & Ride Access and there are safety concerns about placing a controlled crossing close to the roundabout.
- 35. The design has been reviewed to address concerns that the original proposal did not provide an at grade crossing on the A1237 Westbound approach. It is just possible to fit in an island if the cycle/pedestrian route is adjusted to be on the east side of the subway. A narrow path is considered to be acceptable at this location due to the low anticipated usage.
- 36. The subway provides a safe crossing point for pedestrians and cyclists travelling between Skelton and the City. Approximately 200 people use the facility daily. Converting the route to provide a vehicular underpass whilst maintaining the pedestrian/cycling route is not practical.

# Concerns about congestion on the A19 Northbound out of City/Exiting Manor Lane will be worse

37. A number of residents raised the issue of congestion on the A19 out of the city. These included suggestions that the traffic island at Manor Lane should be removed, the lane designation should be remarked and the approach to the roundabout should be widened to three lanes. Other residents were concerned that the exit from Manor Lane would be more difficult.

#### Officers Response

38. The outline scheme did not include any works on the A19 northbound approach because the transport modelling indicates that once the A59 and A19 roundabouts were upgraded outbound queuing would reduce substantially. The lanes are currently marked to even out the approach turning movements between the two lanes as much as possible. The turning counts suggest that at peak times the split between the left turn and straight ahead + right turn movements is closer to an even split than

- a left turn + straight ahead and right turn arrangement. The provision of an additional lane at the roundabout is not considered practical due to the proximity of the Park & Ride entrance arm on the west side and the subway on the east side.
- 39. The traffic island on the A19 southern approach is provided to enable pedestrians/cyclists to safely cross and to protect the right turn lane into Manor Lane. Widening the road to accommodate two northbound lanes at this location could make the crossing less safe and would involve considerable diversion of services in the existing verges. In particular there area a number of BT chambers and fibre optic cables which would be prohibitively expensive to move.
- 40. It is not considered that the scheme will make the exit from Manor Lane more difficult as the layout of this arm of the roundabout is unaffected. It is anticipated that the increased capacity of the A19 roundabout when the A59 is also upgraded will shorten the queues on the A19 at this location. The provision of a widened approach to the junction into Manor Lane from the A19 is not considered justified as the speeds are relatively low off the roundabout and the visibility for vehicles exiting the junction may be hindered.

#### Concerns about affect on landscaped embankment

41. A number of residents have raised concerns about the removal of part of the environmental bund and associated vegetation on the A1237 westbound approach to the roundabout. The principle items raised relate to the concern that there will be increased noise and lighting disturbance. One resident was concerned that the land drainage in the area would be affected. In addition there is concern that the scheme will disturb the existing wildlife in the area.

#### Officers Response

- 42. To enable the carriageway to be widened to accommodate the new lanes within the highway boundary a section of the landscaping and embankment will need to be removed. The existing lighting at this location will be moved southwards and extended eastwards to cover the full length of the widened carriageway. Lights will be fully dark sky compliant and directed and baffled where necessary to avoid light pollution of adjacent properties.
- 43. Noise calculations indicate that the changes in noise levels due to the layout changes can be considered as minor. Changes to noise levels due to increases in speed and flow close to the roundabout increase the impact to moderate. The changes are within the level which is considered, by Planning Guidance, to be the minimum perceptible under normal conditions. The increase in noise levels in the adjacent properties will be reduced by the presence of the existing noise barrier. This fence will be extended where necessary to cover the full length of the widened carriageway. To ensure that an accurate baseline understanding of the

noise levels is available surveys are being undertaken in properties adjacent to the ring road prior to the removal of any vegetation. The removal of the existing rumble strips on the East approach to the roundabout is being considered which may also will reduce the noise levels at the adjacent properties.

44. The countryside officer has investigated the landscaped areas and considers that there is nothing of specific wildlife interest that would be affected by the proposals. The grass verges affected are re-sown species poor grasslands and the screening plantation is relatively new, though very well established, planting. This latter is of the most interest, primarily for birds but has a very limited ground flora as one would expect in a densely shaded area that has been established with herbicide treatment. With the opening up of this planting, the management needs of the whole of this section will be considered including thinning and coppicing. Also, the opportunity will be taken to begin to establish a more interesting ground flora and an appropriate woodland wildflower mix will be undersown to diversify the remaining areas. The removal of the trees and bushes must be timed to avoid the bird nesting season.

#### Concerns about closure of westbound Lay-by

45. A number of residents, the local councillors and the police have raised concerns about the proposed removal of the westbound lay-by on the A1237. This is considered to be a well used facility which needs to be reprovided.

#### Officers Response

46. Closure of the lay-by is essential to enable the safe operation of the merge lanes proposed on the exit to the roundabout. The original proposal was for the displaced vehicles to make use of the Park & Ride site however concerns were raised that the facility would not be available outside the Park & Ride operating hours. To take account of the concerns raised it is now proposed to provide a dedicated parking area in the Park & Ride extension car park. The existing height barrier will remain and a dedicated section of the car park will be gated/bollarded off. Access to the remainder of the car park for Park & Ride users would be opened when the extension car park was in operation. Subject to consultation with the Police Architectural Liaison Officer a path will be provided to connect the car park with the footway running along the south side of the A1237 so that access can be gained to the Ings. A minimum of 10 car park spaces will be provided.

#### Concerns about traffic speeds on roundabout

47. A number of users have raised the issue of traffic speeds on the roundabout making it more difficult to exit from the approaches and increasing the severity of any conflicts which occur.

#### Officers Response

48. The roundabout amendments have been designed in accordance with current design standards to encourage appropriate low speeds. It is anticipated that the provision of the additional traffic islands on the A1237 E & W and A19 N arms will deter drivers from excessive speeds on the approaches.

#### Concerns about queue lengths since previous upgrade

49. A number of comments were received with the view that queuing had not improved since the last changes to the roundabout in 2001.

#### Officers Response

- 50. The changes in 2001 doubled the diameter of roundabout and provided an additional access to the Park & Ride site. Traffic levels have increased substantially since then leading to some of the queuing which is currently experienced. From the traffic counters on the A1237 typical morning levels have increased by approximately 10% and evening levels by 40% at this location. It is estimated that the number of vehicles passing through the junction each day has increased from 43,000 to over 50,000 since 2001. Traffic levels at this key junction are projected to continue to rise.
- 51. One of the main reasons for the length of the queues at the roundabout is the lack of a free exit westbound at peak times due to capacity constraints at the A59 junction. This constraint will be reduced when the A59 roundabout is upgraded as part of the Access York Phase 1 project.

#### Concerns over access to Ings Cottages/House

52. The residents of the properties at Ings House/Cottages have expressed concern about the safety accessing their property. In particular despite the hatched markings on the A19 and ghost island provided for traffic turning into Ings House there are often overtaking vehicles approaching this location.

#### Officers Response

53. It is proposed to provide a traffic island at this location with pedestrian crossing facilities. This will ensure that the traffic from the north is constrained to a single lane and allow safer access/exit to Ings House. It will also provide an additional crossing point away from the roundabout for pedestrians/cyclists who want to use the subway. The island will be positioned to accommodate manoeuvres by large farm machinery.

#### Concerns about access/ exit to Rawcliffe Bar P&R

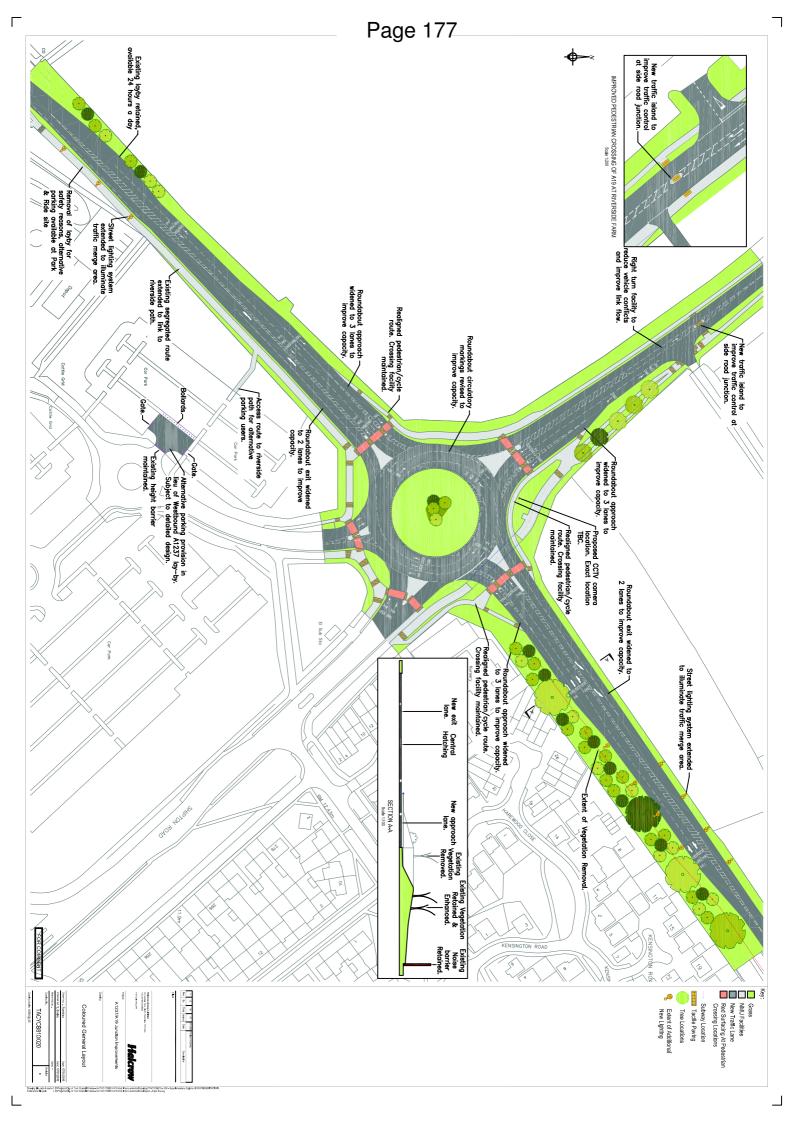
54. A number of comments were made about the access to the Park & Ride site and whether it could be made access only with the exit from the A19 signalised junction only.

#### Officers Response

55. Any changes to the access/exit to the Park & Ride site would affect the operation of the service as car traffic would interfere with the bus operation. The road markings on the roundabout will direct traffic to the Park & Ride site more clearly. The main access and exit to the Park & Ride site will remain from the roundabout. Restricted access and exit is available from the signalised junction on the A19.

#### Supportive of scheme

56. Supportive comments were received from 23 users of the roundabout.





Decision Session – Executive Member for City Strategy

2nd February 2010

Report of the Director of City Strategy

# ORBITAL CYCLE ROUTE SCHEME – PROPOSALS FOR THE REMAINING THREE SECTIONS

## **Summary**

1. As part of York's Cycling City strategy an 'orbital' cycle route is being developed to provide improved links to many destinations including schools, leisure facilities, employment sites, shops and healthcare sites. This report advises the Executive Member about initial proposals for the three sections of the route, which are listed as follows:

Section 1: Clifton Green to Crichton Avenue

Section 2: Hob Moor to Water End

Section 3: James Street to Heslington Road

The report describes the proposed route alignments included in the successful Cycling City bid in 2008, and highlights the key points along each section. The report recommends the best option to take forward on each section for further detailed design and public consultation.

#### Recommendations

- 2. It is recommended that the Executive Member
  - a. Note the proposals for each section;
  - b. Provide in-principle approval for sections 1 and 3 and authorise Officers to undertake further detailed design and public consultation on the schemes shown in **Annexes B and E.**
  - c. Approves a review of a possible alternative route for section 2 to the west through West York and compares this with the current proposed route through Acomb. A further report to be brought back to the Decision Session for route approval.

Reason: The proposals will provide improved facilities for cyclists, completing an orbital route that cyclists will be able to use in accessing a

variety of destinations while avoiding busy radial routes where possible. The proposed measures would also make a significant contribution towards the objectives of the Council in its Cycling City strategy.

## **Background**

- 3. Encouraging more people to cycle has been a long-standing priority for the Council, and this work was given a huge boost by our successful bid to become a 'Cycling City'. One of the key initiatives has been the development of an orbital cycle route to improve cycle access to many employment sites, schools, leisure facilities, healthcare and retail sites. The aim is to connect as many of these destinations as possible, using a combination of; off-road paths, signed routes via quiet less-trafficked streets, some on-road cycle lanes where other alternatives have been investigated but not considered feasible. Where the route crosses many of the main radial routes into the city, improved crossing facilities will also be provided. A plan showing the overall alignment of the orbital route and other significant cycle facilities located nearby is shown in **Annex A**.
- 4. The route generally lies between the busy inner and outer ring roads, and avoids travelling along busy radial routes: both of which were highlighted in city-wide consultation as being a barrier to cycling. The orbital route is located in a position to provide good links to a wide range of destinations including: large employment sites (Nestle, York Hospital, Clifton Moor, Foss Islands Retail Park, University of York, Hospital Fields Road and the former Terry's site); education sites (15 primary schools, four secondary schools and two universities); retail centres such as Clifton Moor Foss Islands and Acomb and several leisure facilities and recreation areas.
- 5. The route could never pass directly into all areas of the city, but aims to serve as the main route of longer trips for as many attractors and destinations as possible. The majority of users will not use the whole route but will find it a useful means to reach many of their destinations by hopping on and off the orbital route as it suits them. Once complete, the orbital route will have a strong influence on the future development of the wider cycle route network. This would include better links to outlaying residential areas, and alternatives to the busy radial routes into the city centre.
- 6. Some sections of the route have been in place for a long time already, such as the University to Hob Moor route, which crosses the Millennium Bridge to the south of the city centre, and the Foss Islands Path between Nestle and James Street to the north of the city centre. More recent additions are the improved facilities along Water End that provided a link across the Ouse river and railway line, and the facilities currently under construction along Crichton Avenue. A further three sections are proposed for potential construction during 2010/11, which will effectively complete the Orbital Route and a key capital project within the Cycling City York programme.
- 7. Officers have examined a variety of possible solutions for the three route sections. From these feasibility investigations outline proposals have been developed and initial consultation with relevant Councillors, the Police, and

Cycling England has taken place. The outcome of this work is described below, issues arising are discussed, and where appropriate alternative proposals are suggested.

#### **Section 1: Clifton Green to Crichton Avenue**

#### **Preliminary Proposals**

8. The preliminary scheme proposals are shown on the plan in **Annex B**. A general overview is given below, followed by a more detailed description of the main scheme.

## **General Overview**

- 9. At the Water Lane end of the scheme, there is little scope to make significant changes due to narrow road and footway widths. The main problem for cyclists here, is that the queues of vehicles extend back from the busy Clifton Green signals to Kingsway North and beyond, hindering progress to Clifton Green and right turns into Kingsway North, leading some cyclists to use the footway. Consideration has therefore been given to reallocating road space to create a feeder lane to the existing advanced stop line at Clifton Green, and crossing cyclists between Water Lane and Kingsway North via either providing junction signalisation or a Toucan crossing facility.
- 10. In Kingsway North, the main problem for cyclists is that parked vehicles effectively narrow the road to a single traffic lane. Cyclists are often then intimidated by following traffic eager to overtake; even though traffic calming is in place. Road widening to allow vehicles to safely pass cyclists would be prohibitively expensive, and therefore on-road facilities have been discounted in favour of constructing an off-road path along the edge of the wide central verge.
- At the roundabout junction with Crichton Avenue, the main problems for cyclists are the perceived dangers and the time it takes to ride around the large carriageway area. In practice many cyclists avoid this by riding across the footway near the shops. It is proposed to formalise this by-pass route by creating a link path to connect the proposed off road path along Kingsway North with Crichton Avenue.

#### <u>Detailed Description</u>

- 12. The detailed description listing below follows the format of the proposals as listed in **Annex A**.
  - Crichton Avenue: convert the existing pelican crossing to a Toucan crossing to allow pedestrian and cyclist usage. A toucan can easily be provided and would provide cyclists with improved access to the recently improved facilities on Crichton Avenue. In particular, northbound cyclists would use the crossing to join a shared area with a ramp to a carriageway level cycle lane.

- Kingsway roundabout: provide an off-road cycle track near the shops.
  This will accommodate two-way cycling to allow cyclists to travel between
  Crichton Avenue and Kingsway North directly, rather than having to ride
  around the sizable roundabout.
- Kingsway North carriageway: introduce parking restrictions at the northern end of the central grassed area to create a safe crossing point for cyclists. The extent of parking restrictions required will be established during detailed design. However, it is likely to be for only a short length sufficient to provide a safe access to the proposed off-road cycle path along the central reserve.
- Kingsway North central island: 600m of 3m wide off-road cycle track along the eastern side of the central grassed area, with improved street lighting on the nearby footway. The appearance of Kingsway North's grassed area has been improved in recent years by the introduction of timber fencing and trees along both sides. The trees are consistently offset 5.4m from the fencing located near the carriageway edges. It is therefore proposed to build a 3m wide, two-way path cycle path within this gap. This path would then have the advantage of being within the fencing, which would keep it clear of vehicles, but not placed centrally in the grassed area to avoid conflict between cyclists and other users such as dog walkers and those playing football. Occasional gaps in the fencing would allow frontagers to utilise the cycle path. Enhanced street lighting would allow cyclists to be seen by nearby residents and road users, and illuminate their path ahead, thereby improving general safety.
- Kingsway North: on-road cycle lanes: At the southern end of the central
  area the cycle path is proposed to return to the eastern carriageway by
  means of a raised table. This gives the opportunity for cyclists to turn into
  the school entrance if needed, and also to establish themselves on the
  carriageway before reaching the relatively busy road of Water Lane.
- Water Lane/Kingsway North junction: given the higher volume of traffic on Water Lane, it is proposed to provide cyclists with a signalised crossing facility. This could comprise a full junction signalisation, or a stand alone Toucan crossing on Water Lane. Further feasibility work is required to establish the best option.
- Water Lane: cycle lane markings on the southeast side of the carriageway to help cyclists access the advanced stop line at the Clifton Green traffic signals. The length of Water Lane between Kingsway North and Clifton Green signals is typically 6.3m wide. This is insufficient to introduce the standard 1.5m wide cycle lanes; even on just one side of the road. However, under the recently approved York Cycling Guidance, the use of 1m wide feeder lanes and narrow traffic lanes to deliver cyclists to an advanced stop line is considered acceptable on roads where traffic regularly queues. Therefore this approach will be adopted on Water Lane.

 Clifton Green junction: the signal arrangement has recently been modified to assist cyclists, and no additional changes are considered necessary as part of this scheme.

#### **Consultation Feedback**

- 13. Ward Councillors:
  - Councillors Douglas, King and Scott no comments received at the time of finalising this report
- 14. Other Member Views:
  - Councillor D'Agorne the feeder lane would be a big improvement for cyclists and reduce the occurrence of footway cycling.
  - Councillor Stephen Galloway no comments at this stage
  - Councillors Gillies and Potter no comments received at the time of finalising this report
- 15. Police support the scheme in principle
- 16. Cycling England are concerned about cyclists riding on the Kingsway North carriageway and therefore particularly welcomed the proposed provision of an off-road path.

#### Section 2: Hob Moor to Water End

#### **Preliminary Proposals**

17. The preliminary scheme proposals are shown on the plan in **Annex C** which reflects the strategy. A general overview is given below, followed by a more detailed description of the main scheme elements.

#### **General Overview**

18. Unlike most other sections of the proposed orbital route, there are several ways which Hob Moor and Water End could be linked together. Officers examined a number of these options before selecting the proposed route, which seeks to maximise the use of quiet streets, with improved road crossings, while being located in a position to provide good links to a wide range of city-wide destinations. However, at the local level, there is need for future cycle route improvements to provide better links between the orbital route and other parts of the outlying cycle network and residential areas, such as Chapelfields, Westfield, Foxwood and Dringhouses and it is proposed that these alternatives are considered before a final decision on the routes is made.

#### **Detailed Description**

- 19. The detailed description listing below follows the format of the proposals as listed in **Annex C**.
  - Water End/ Boroughbridge Road junction: it is proposed to make changes to the traffic lane designations on the Water Lane approach to the junction, to remove conflicts between straight-ahead cyclists and left turning vehicles. To help guide cyclists and vehicles travelling through the junction from Lindsay Avenue to Water End, additional road markings are also proposed to minimise potential conflicts.
  - More significant enhancements to allow less confident cyclists to cross the junction via Toucan crossings are also feasible and will require new refuges, localised road widening, cable ducting and new signal infrastructure. This will be looked at as part of the plans to provide bus priority measures along Boroughbridge Road in support of the proposed new Park & Ride site to the north, as will the addition of cycle lanes on Boroughbridge Road between Carr Lane and Water End.
  - Lindsay Avenue: Lindsay Avenue is an existing quiet road that only requires route signing and further examination of the existing traffic calming to see if it can be improved for the benefit of cyclists.
  - Sowerby Road: the existing footway link between Sowerby Road and Manor Drive South can be improved for use by cyclists by enhanced street lighting, dropped kerbs and localised widening if a segregated path is preferred.
  - Manor Drive South: Manor Drive South is an existing quiet road and therefore only requires route signing. However, localised improvements to the point closure between Manor Drive North and Manor Drive South are also proposed to improve cycle access to these streets.
  - York Road/Acomb Road: Acomb Road is a busy road but riding the short distance between Manor Drive South and Hobgate is considered worthwhile to access the quiet street of Hobgate. In order to help cyclists make the right turns from Acomb Road into Manor Drive South and Hobgate, it is proposed to create right turn havens in the centre of the carriageway, protected by refuges both in front and behind the waiting cyclist. It is also proposed to provide cycle lanes on Acomb Road subject to further feasibility work associated with on-street parking issues.
  - Hobgate, and the southern section of Moorgate that will form part of the route are both quiet roads and therefore require no changes.
  - Hamilton Drive: the section of Hamilton Drive West which would form part
    of the orbital route has a 20mph speed limit supported by traffic calming.
    There is good visibility at the junction to help cyclists turn in/out in safety.
    No significant improvements are considered necessary but the provision of
    on-road cycle lanes will be investigated.

- Green Lane Roundabout: provide a two-way linking path for cyclists to bypass the roundabout between Hamilton Drive West and Green Lane. This will offer a journey time benefit to cyclists and also avoid the need for rightturning cyclists to pass Tudor Road and Green Lane entries to the roundabout. Users of the path will need to be returned to Hamilton Drive West via dropped kerbs or minor modifications to the existing traffic calming measures.
- **Green Lane:** Green Lane is an existing quiet road and therefore requires no changes other than route signing.

#### **Consultation Feedback**

#### 20. Ward Councillors:

- Cllr. A. Waller expressed concerns about: conflicts between left turning vehicles and straight-ahead cyclists from Water End; crossing Acomb Road without a Toucan; turning at the busy Moorgate/Hamilton Drive West junction, and using an off-road path near the roundabout unless the detailed design addresses conflict with vehicles parking near the shops and returning cyclists to the carriageway on Hamilton Drive West in safety. Cllr Waller suggested that using the existing crossing on Acomb Road would be beneficial but accepted that then using Green Lane and Green Lane roundabout thereafter could be challenging but perhaps worthwhile onbalance.
- Councillors Alexander and Crisp no comments received at the time of finalising this report
- Cllr. D. Bowgett no objections and pleased that no changes are proposed on Hob Moor
- Cllr. Stephen Galloway generally agreed with Councillor Waller and also provided a number of suggestions. In particular, the Councillor would like the orbital route to serve the residential areas of Chapelfields, Westfield, Foxwood and Dringhouses; so as to get the best value from the remaining orbital route budget. At the detail level, Cllr Galloway made suggestions for improvement regarding: the Manor Drive North/South point closure, the Acomb Road pedestrian crossing and the Sowerby Road to Hebden Rise linking path. He also expressed concerns about the existing facilities for cyclists in Front Street pedestrian area and in Cross Street, while also mentioning that off-road, segregated facilities in parts of Askham Lane appear feasible.
- Cllr. Susan Galloway happy to support the views of Councillor Waller and Councillor Stephen Galloway.

#### 21. Other Member Views:

- Councillors D'Agorne, Gillies and Potter no comments received at the time of finalising this report
- 22. Police support the scheme in principle
- 23. Cycling England:
  - have suggested that the route through Acomb should be reconsidered with changes in the Acomb Road area. They would prefer the route from Manor Drive South to turn west and use the existing Zebra crossing (upgraded to a Toucan) then south into Severus Street and then east using the snicket to reach Lynden Way and then Hobgate.
  - would like to see the scheme include a spur along Boroughbridge Road between Carr Lane and Water End junction, to help existing cyclists who use Carr Lane to access the wider orbital route.
  - Cycling England have expressed a preference for the route through Acomb with changes.

#### **Issues Arising / Possible Scheme Amendments**

24. The issues arising from consultation fall into three general categories as discussed below:

Detail design comments/suggestions

25. Some useful suggestions were received and will be explored as part of the detailed design process.

Localised changes to the route alignment

- 26. The main issue concerns Acomb Road, where it has been suggested that the route should take advantage of the existing zebra crossing and route cyclists along Severus Street and use the snicket to access Lynden Way, to rejoin the proposed route in Hobgate.
- 27. The existing highway extents of Acomb Road near Manor Drive South are sufficient to provide an off-road link from Manor Drive South to the nearby Zebra crossing. The crossing could be converted to a Toucan to provide a safe place for cyclists to cross Acomb Road, and deliver them into Severus Street via footway widening to create an off-road linking path.
- 28. Severus Street is a quiet road. In the evenings on-street parking is commonplace, but the lack of through traffic due to a point closure offsets this, making Severus Street easy route and safe to cycle along. Therefore, no new infrastructure except for revised signing is required.
- 29. A weakness in this alternative is the use of the snicket between Lynden Way and Severus Street, which is narrow and has anti-motorcycle barriers.

This would require cyclists to dismount, and would not be suitable for use by tricycles or bicycles with trailers without modification. However, the route could be attractive for the majority of cyclists for the journey time saving compared to the current proposal and the safety benefit of using the zebra crossing on Acomb Road.

- 30. On-balance, it is considered beneficial to make this local amendment to the proposed orbital route but continue to develop improvements for cyclists on Acomb Road between Manor Drive South and Hobgate as proposed. This will support cyclists who do not find it possible or attractive to use the Lynden Way snicket alternative. The amended route is shown in **Annex D**.
- 31. Changes to Boroughbridge Road between Water Lane and Carr Lane for the benefit of cyclists will be included in the proposed Park & Ride bus priority improvements works that could take place in the Winter of 2010. For the interim period, the provision of on-road cycle lanes will be explored.
- 32. Moving the route slightly west to join Green Lane would be useful in serving the residential area around Milner Street. However riding along Milner Street itself can be difficult due to parked vehicles on both sides, and impasses between opposing vehicles on the resultant narrow carriageway. The alternative proposal to use Serverus Street as part of the orbital route would provide Milner Street residents with better access to the orbital route.
- 33. An alternative route to Green Lane from Acomb Road, other than via Milner Street, would be to improve Front Street's pedestrian area for cyclists. However, this would require further extensive and lengthy consultation work due to the variety of user groups, and it would also go against the established trend that all vehicles (including cyclists) are banned from the pedestrianised area for most of the day and regulated to just one-way travel at other times.
- 34. Green Lane itself is also difficult to improve for cycling. The road is too narrow for on-road facilities, and creating an off-road path would be problematic due to mature trees and ground level difficulties leading to drainage issues. In addition, cyclists would have to cross the Green Lane roundabout in order to reach Hob Moor.

#### Wider changes to the route alignment

35. This section of the proposed orbital route needs to connect to the existing facilities at Water End and Hob Moor. A route further west through outlying residential areas will increase the section's length and reduce its appeal for those travelling its full extent. For the residents of the outlying areas, the links between each residential area would be improved. However, because these residential areas are all located at a similar distance from the city centre, most residents would actually have less facilities on a direct line between their homes and the Water End/Hob Moor connections than would be the case if the orbital route passed through Acomb.

- 36. The function of a city-wide orbital route could be compromised by weighting its benefits too heavily towards one particular generator of trips. Rather, it would be better to locate it in a neutral position where it can collect both local and city-wide cyclists equitably, and where all cyclists gain the greatest benefit.
- 37. It is recognised that the provision of better connections to the proposed orbital route from the outlying residential areas should be reviewed before a decision is made for section 2. In relation to this section of the orbital route, further feasibility work would be worthwhile to establish the best way to improve connections between Chapelfields, Westfield, Foxwood, Woodthorpe and Dringhouses areas to the proposed orbital route.

## **Section 3: James Street to Heslington Road**

#### **Preliminary Proposals**

38. The preliminary scheme proposals are shown on the plan in **Annex E**. A general overview is given below, followed by a more detailed description of the main scheme elements.

#### **General Overview**

39. James Street is a busy road carrying high levels of HGV and bus traffic. On street parking also takes place that creates poor conditions for cycling onroad. The recently completed James Street extension includes extensive off-road cycle provision. It is therefore proposed to continue this provision along the old section of James Street by widening the eastern footway to create an on off-road shared use path. At the James Street/Lawrence Street junction it is proposed to create a new cycle crossing facility within the traffic signal arrangement to provide a safe link with Regent Street. Both Regent Street and Wellington Street are quiet roads suitable for cycling along without any alterations. On Heslington Road, it is proposed to extend the existing on-road cycle lanes and traffic calming, and provide a refuge to help cyclists to turn right into Wellington Street. The route also uses a former section of Heslington Road, which is now a lightly used service road within the grounds of The Retreat, to provide a link with the University campus cycle facilities.

#### **Detailed Description**

- 40. The detailed description listing below follows the format of the proposals listed in **Annex E.** 
  - James Street: footway widening to extend the existing two-way shared use
    path from Hazel Court to Lawrence Street. The carriageway along the older
    section of James Street is typically 7.3m in width, which is not sufficient for
    on-road cycle lanes to be considered, and road widening would be
    prohibitively expensive. It is therefore proposed to widen the eastern

footway to create a 3m wide off-road shared-use path. This would function as a two-way facility and provide physical separation from HGVs.

James Street/Lawrence Street junction: provision of a Toucan with a
central refuge to help pedestrians and cyclists to cross to/from Regent
Street under signal control. Early indications suggest that a signals solution
to James Street/Lawrence Street junction is feasible and can be
accommodated without a significant loss in current capacity. However,
more detailed design and modelling is required to arrive at an optimum
layout.

As the introduction of the cycle crossing facility will require significant alterations to the junction layout, it will be necessary to upgrade all the signals equipment as part of the scheme.

- Regent Street: Regent Street and the short section of Wellington Street covered by the orbital route are existing quiet roads and therefore no physical changes are required.
- Heslington Road: extend the existing cycle lanes and provide a refuge to help cyclists turn right into Wellington Street Heslington Road has existing, on-road cycle lanes, supported by traffic calming and a 20mph speed limit in places. It is proposed to lengthen this by approx 150m towards Wellington Street to cover the full extents of the orbital route. The use of refuges or build-outs may (subject to detailed design) also be used to assist cyclist in turning.
- The Retreat: this final section of the proposed route utilises the former alignment of Heslington Road, which is now used as an access road within The Retreat's grounds. The access road has an established use by cyclists but it is proposed to improve street lighting and direction signing to make the route more attractive to new users.

#### Consultation Feedback

#### 41. Ward Councillors:

- Councillors Looker, Watson and Jamieson-Ball no comments received at the time of finalising this report
- Cllr. A. D'Agorne commented: keeping the area between Regent Street and the advanced stop line on Lawrence Street clear of waiting vehicles would be of benefit for cyclists who wish to remain on the road. Given the strategic importance of a route in this location, the proposed off-road path in James Street should have priority for cyclists over side road traffic. Councillor D'Agorne expressed concerns about: the limited width for a refuge on this FTR route and the sensitivity local residents feel about the potential loss/change to parking.

- Cllr. D. Taylor Agreed with the comments of Councillor D'Agorne, adding that the Lawrence Street footway across the termination of Regent Street is busy with pedestrians and that careful design will be needed to provide sufficient visibility between pedestrians and cyclists.
- 42. Other Councillors
  - Councillor Gillies, Potter and Galloway no comments received at the time of finalising this report
- 43. The Police support the scheme in principle
- 44. Cycling England no comments at this stage

## **Cycling Evaluation Tool**

45. The Council's Cycling Evaluation Tool is a means of scoring cycling schemes on a range of criteria so that schemes may be ranked and compared against each other. The proposed sections for the orbital route have been evaluated using this tool, and achieve scores of:

Proposed Orbital Schemes	Total points
Section 1 – Clifton Green to Crichton Avenue	+22
Section 2 – Hob Moor to Water End	+22
Section 3 – James Street to Heslington Road	+20

This compares favourably with other, similar projects, as shown in the table below:

Other Cycling Schemes	Total
	points
Jockey Lane – (early feasibility stage)	+14
Beckfield Lane (Stage 1) – completed scheme	+16
Heslington Lane – (early feasibility stage)	+17
Sim Baulk Lane – (early feasibility stage)	+18
Crichton Avenue – (scheme under construction)	+21
Clifton Green – (completed scheme)	+24
Wigginton Road – (proposals approved in principle)	+25
Moor Lane Bridge – (completed scheme)	+26

# **Options on the Way Forward**

- 46. The options for the Executive Member to consider are:
  - Option One progress the three remaining scheme proposals for the orbital cycle route through more feasibility work, detailed design and public consultation. In addition, initiate feasibility work for the Hob Moor to Water

End section to develop improved connections between the outlying residential areas and the orbital route.

- Option Two develop alternate route proposals for the Hob Moor to Water End section that are located within the outlying residential areas and progress them through more feasibility work, detailed design and public consultation. A plan showing the general area of consideration for an alternate route is attached in **Annex F.**
- Option Three abandon plans to provide any further improvements associated with one, two or all three sections of the orbital cycle route.

## **Analysis of Options**

- 47. Option One would allow progress to be made towards completion of the orbital route as set out in the council's cycling city strategy. The schemes will provide improved cycle access to many employment sites, schools, leisure facilities, healthcare and retail sites, leading to an increased number of cycle trips. Initial consultation has indicated general support for the proposals but detailed comments have led to some possible localised changes to the Hob Moor to Water End section. In addition, the consultation has highlighted the need for better connections between outlying areas and this section of the orbital route, hence the proposal to carry out further feasibility work.
- 48. Option Two would respond to the consultation feedback that the outlying residential areas of Chapelfields, Westfield, Foxwood and Dringhouses are not directly served by the orbital route by proposing a relocation of the orbital route into those areas.
- 49. Option Three would not allow the orbital route to be completed, and would compromise the function of previously constructed sections of the orbital cycle route. The opportunity to take advantage of the Cycling City funding to deliver a key part of the Cycling City York programme would also be lost.

# **Corporate Priorities**

- 50. The scheme would contribute to the following Corporate Priorities:
  - Sustainable City the scheme should encourage more residents to join radial routes into the city and in addition, would provide access to many employment sites, schools, leisure facilities, healthcare and retail sites. The creation of this route is thought to have the potential to significantly increase cycling levels across the city, in preference to using motorised forms of transport.
  - Safer City the scheme would make many of the crossings with radial routes easier and safer for cyclists to achieve.

- Healthy City the scheme should encourage more cycling, which would have a beneficial effect upon peoples' health.
- 51. The scheme would also contribute to several of the aims of the Local Transport Plan, namely:
  - Encourage essential journeys to be undertaken by more sustainable modes where possible;
  - Reduce the level of actual and perceived safety problems.

## **Implications**

#### Financial/Programme

- 52. Funding for the Orbital Route is on a matched funding basis, with half coming from the ongoing Local Transport Plan capital programme and half from Cycling City award, which must be spent by April 2011. Therefore, it is important that these three schemes are moved forward quickly to provide sufficient time to construct them all by this deadline.
- 53. The 2009/10 City Strategy capital programme initially included an allocation of £30k to fund the feasibility work for these three sections of the orbital cycle route. This budget is sufficient to cover further feasibility and design work up to the end of 2009/10.
- 54. An allocation of funding for design, consultation, approvals work and construction will need to considered as part of the 2010/11 Capital Programme process.
- 55. Given that all three schemes are at an early stage, only provisional, budgetary cost estimates can be made at present. However, scheme costs are currently expected to be in the order of:
  - Section 1: Clifton Green to Crichton Avenue £370k
  - Section 2: Hob Moor to Water End (including further feasibility work) £190k
  - Section 3: James Street to Heslington Road £600k

#### Alternate Route Proposals – Hob Moor to Water End

- 56. Any alternate route proposal in the Hob Moor to Water End section will need an allocation of funding for feasibility works to be considered as part of the 2010/11 Capital Programme process.
- 57. Subject to feasibility enquiries, delivery of an alternate route maybe challenging in time for the opening of the remainder of the orbital route in February 2011.

#### Human Resources (HR)

58. There are no human resources implications.

#### **Equalities**

59. There are no equalities implications.

#### Legal

60. The Council has powers to implement the proposals under the provisions of the Highways Act 1980 and the Road Traffic Act 1988.

#### Crime and Disorder

61. There are no crime and disorder issues.

#### Information Technology (IT)

62. There are no information technology implications.

### **Property**

63. There are no property implications.

## **Risk Management**

- 64. Physical there is always a potential for new safety issues to arise whenever an existing highway layout is altered, but risks are minimised through careful design and the road safety audit checking process.
- 65. Organisation/Reputation there is a risk of criticism from the public in implementing a scheme to which some people may have objections, but there could also be criticism from potential supporters of the scheme if it is not implemented. Good quality consultation should ensure that well informed decisions are made about the scheme and reduce the risk of public criticism.

Risk Category	Impact	Likelihood	Score
Physical	Medium	Unlikely	6
Organisation/Reputation	Medium	Unlikely	6

66. Measured in terms of impact and likelihood, the risk scores have all been assessed at lower than 16. This means that at this point, the risks need only to be monitored, as they do not provide a real threat to the achievement of the objectives of this report.

#### **Contact Details**

Author: Malcolm McAulay, Engineer Transport & Safety	Chief Officer Responsible for the report: Damon Copperthwaite Assistant Director of City Development & Transport				
	Report Approved   Date   22/01/10				
Specialist Implications Officer(s)					
There are no special implications					
Wards Affected: Holgate, Westfield, Guildhall, Fishergate, Heslington, Clifton					
For further information please contact the author of the report					

## **Background Papers:**

- 1. "York Cycling City" report to the Meeting of Executive Members for City Strategy and Advisory Panel on 8 September 2008
- 2. "Cycling Infrastructure within York Standards, Evaluation Tool, and Cost/Benefit Matrix" report to the Executive Member for City Strategy Decision Session on 20 October 2009.

#### **Annexes:**

**Annex A** – Cycle Network Plan

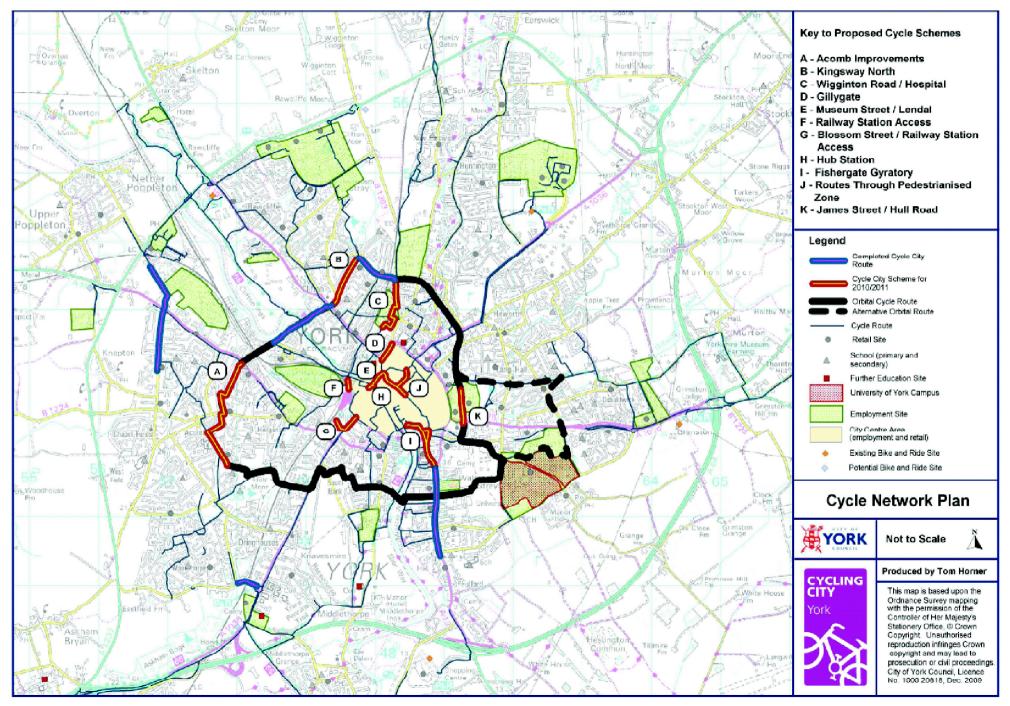
Annex B – Section 1: Clifton Green to Crichton Avenue

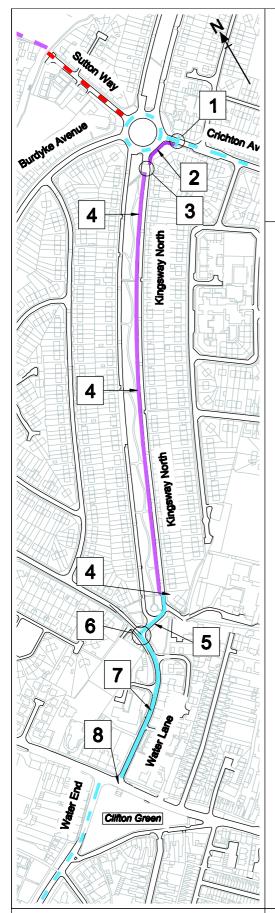
Annex C - Section 2: Hob Moor to Water End

Annex D - Section 2: Hob Moor to Water End- Alternative A

**Annex E** – Section 3: James Street to Heslington Road

**Annex F** – Wider Changes to the Orbital Cycle Route





Route Section Number - see Notes

Existing off-road cycle track
Existing on-road facilities
Existing quiet road route
Proposed on-road facilities
Proposed off-road cycle track path (adopted highway)

#### **Preliminary Proposals:**

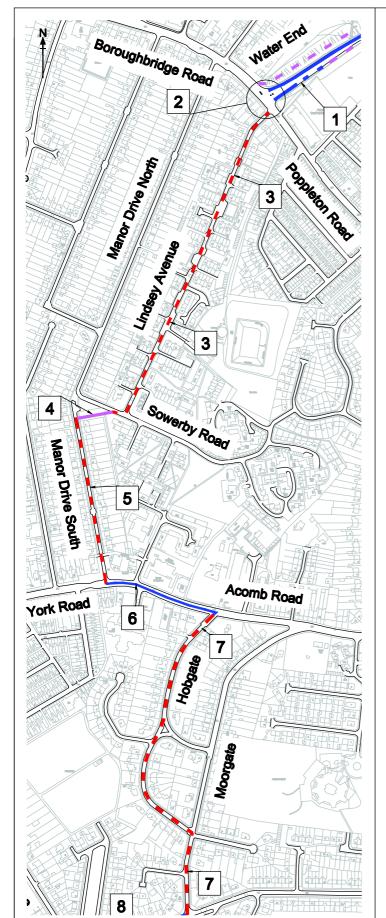
- 1. Crichton Avenue: convert existing pelican crossing to a Toucan crossing to allow pedestrian and cyclist usage.
- 2. Roundabout: provide an off-road cycle track near shops.
- 3. Kingsway North: introduce parking restrictions to help create a safe crossing point for cyclists.
- 4. Kingsway North central island: 600m of 3m wide off-road cycle track along the east side of the central area, with improved street lighting on the nearby footway.
- 5. Kingsway North: on-road cycle lanes
- Water Lane/Kingsway North Junction: traffic signals to support turning cyclists and keep the junction clear of queuing traffic. These would be linked to Water End signals to manage queuing between them. Some minor localised road widening may be needed.
- 7. Water Lane: cycle lane markings on the southeast side of the carriageway to help cyclists access the advanced stop line at the Clifton Green traffic signals.
- 8. Clifton Green juntion: tie in to existing facilities and signal arrangement.

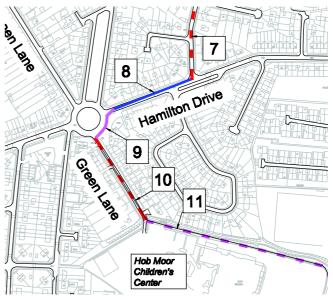


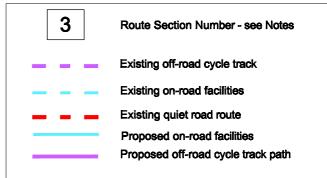


Orbital Cycle Route: Clifton Green to Crichton Avenue

	Drawn	Checked	Date	Scale	Drawing Number
•	PH	ММ	08/01/2010	1: 2500 @ A3	DEC/09010525







#### Preliminary Proposals:

- 1. Water End: provide on-road cycle lanes.
- Water End/Boroughbridge Road junction: minor improvements to make it easier and safer to cycle between Water End and Lindsey Ave.
- 3. Lindsay Avenue: route signing, and possibly modifications to the existing traffic calming for the benefit of cyclists
- 4. Sowerby Road: provide a linking path for use by cyclists and pedestrians.
- 5. Manor Drive South: route signing only.
- York Road/Acomb Road: on-road facilities, such as cycle lanes and refuge islands and/or possibly a Toucan crossing to help cyclists turn right from the main road.
- 7. Hobgate: route signing only.
- 8. Hamilton Drive: on-road cycle lanes.
- 9. Green Lane Roundabout: provide a 2-way linking path for cyclists to bypass the roundabout.
- 10. Green Lane: route signing only.
- 11. Hob Moor: tie into existing off-road facilities.

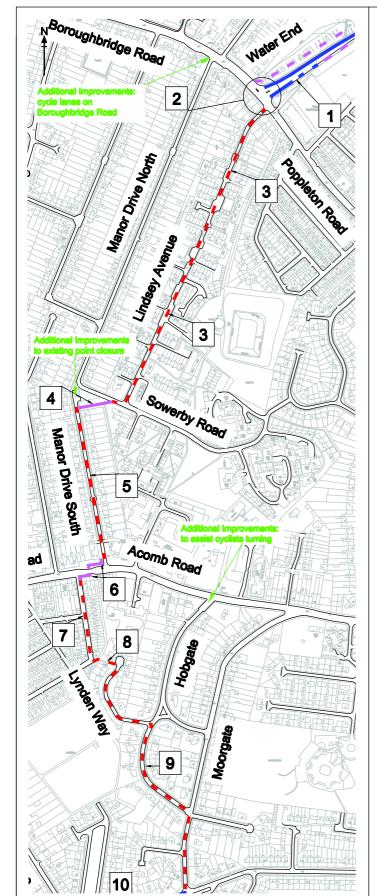


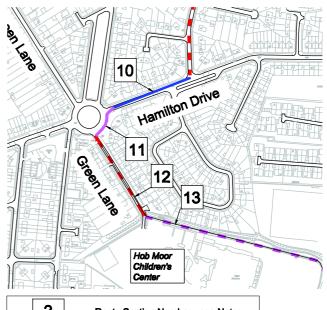


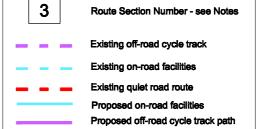
# Orbital Cycle Route: Water End to Hob Moor

IED UPON THE ORDNANCE SURVEY MAPPING WITH THE PERMISSION OF THE CONTROLLER HER MAJESTY'S STATIONERY OFFICE. CROWN COPYRIGHT, UNAUTHORISED	Drawn	Checked	Date	Scale	Drawing Number	
PRODUCTION INFRINCES CROWN COPPRIGHT AND MAY LEAD TO PROSECUTION OR CIVIL ICEEDINGS, City of York Council, Licence No. 1000 20818	PH	MM	08/01/2010	1: 5000 @ A3	DEC/0901526	

## Annex D







#### Preliminary Proposals:

- 1. Water End: provide on-road cycle lanes.
- Water End/Boroughbridge Road junction: minor improvements to make it easier and safer to cycle between Water End and Lindsey Ave.
- 3. Lindsay Avenue: route signing, and possibly modifications to the existing traffic calming for the benefit of cyclists
- 4. Sowerby Road: provide a linking path for use by cyclists and pedestrians.
- 5. Manor Drive South: route signing only.
- York Road/Acomb Road: convert the existing zebra crossing to a Toucan and provide off road paths to link to Manor Drive South and Severus Street.
- 7. Severus Street: route signing only.
- 8. Snicket: improve street lighting and barriers.
- 9. Lynden Way, Hobgate and Moorgate: route signing only
- 10. Hamilton Drive West: on-road cycle lanes
- 11. Green Lane Roundabout: provide a 2-way linking path for cyclists to bypass the roundabout.
- 12. Green Lane: route signing only.
- 13. Hob Moor: tie into existing off-road facilities.





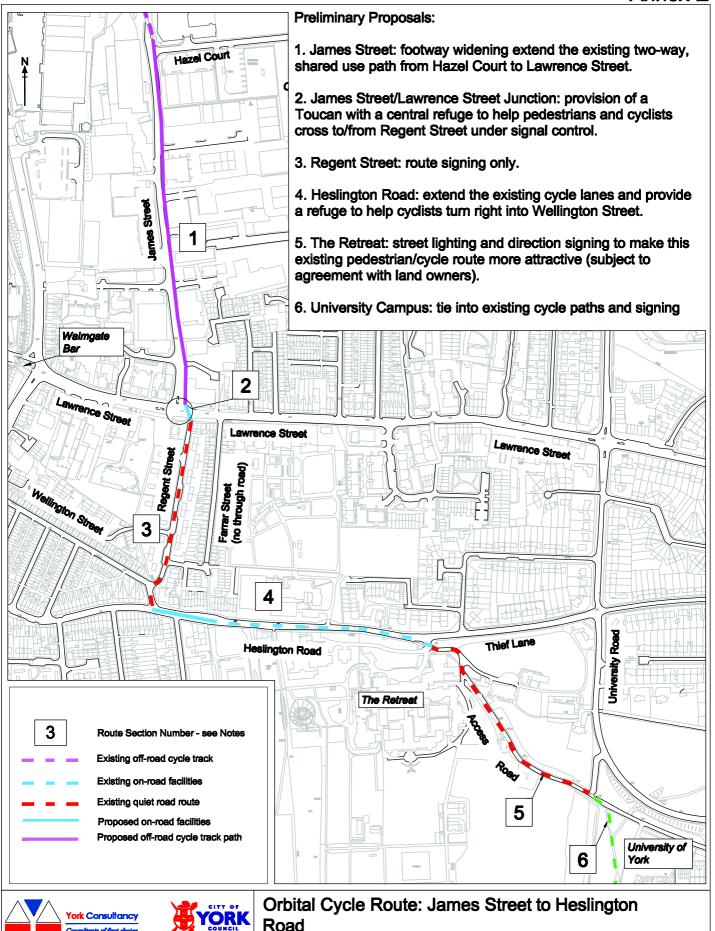
# Orbital Cycle Route: Water End to Hob Moor Alternative A

BASED UPON THE ORDINANCE SURVEY MAPPING WITH THE PERMISSION OF THE CONTROLLER OF HER MAJESTY'S STATIONERY OFFICE. CROWN COPYRIGHT, UNAUTHORISED	Drawn	Checked	Date	Scale	Drawing Number
REPRODUCTION INFRINGES CROWN COPYRIGHT AND MAY LEAD TO PROSECUTION OR CIVIL PROCEEDINGS, City of York Council, Licence No. 1000 20816	PH	MM	08/01/2010	1: 5000 @ A3	DEC/0901526

#### Annex E

Drawing Number

DEC/09010527



Checked

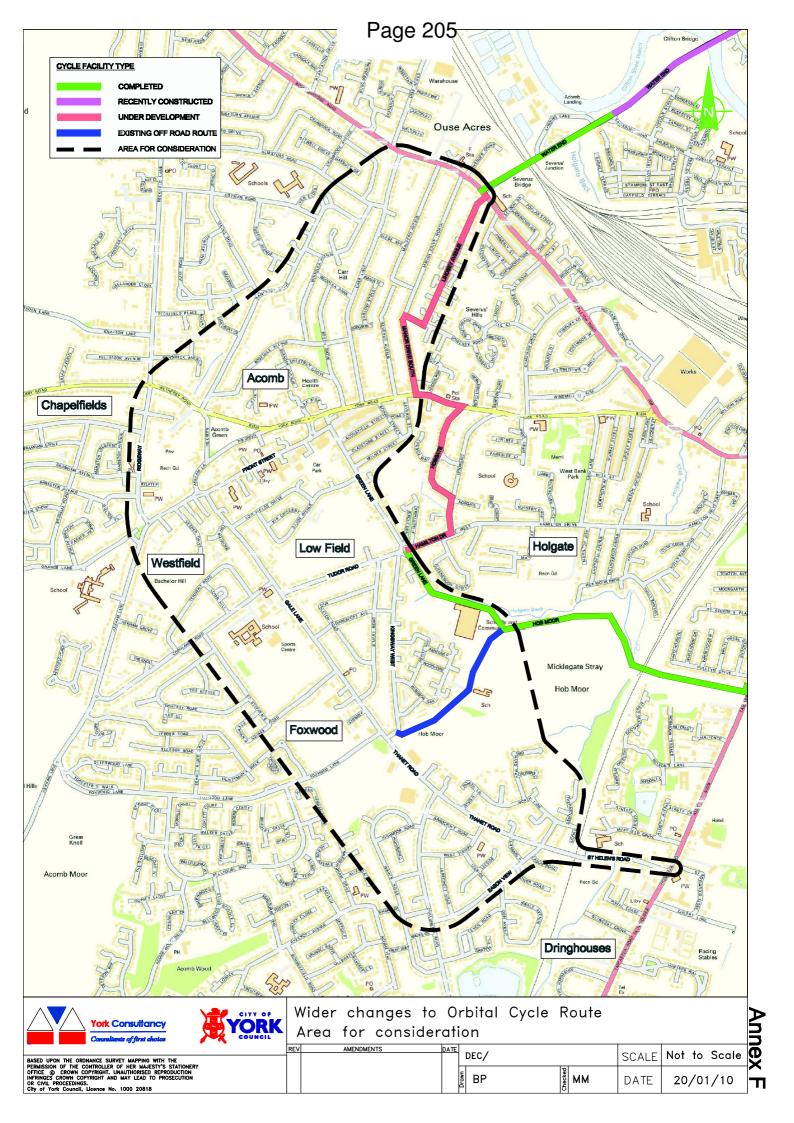
MM

Drawn PH Date

08/01/2010

Scale

NTS



### DECISION SESSION – EXECUTIVE MEMBER FOR CITY STRATEGY

## **TUESDAY 2 FEBRUARY 2010**

Annex of Additional Comments received from Members and residents etc since the agenda was published

AGENDA ITEM	REPORT	RECEIVED FROM	COMMENTS
4	PROW – Application for Definitive Map Modification Order, Ings Bridge to Storwood, Wheldrake (Page 29)	Crombie Wilkinson, Solicitors	See attached PDF files of comments

## Page 209

#### **Decision Session – Executive Member for City Strategy – 3 February 2010**

Submission by Crombie Wilkinson, Solicitors regarding Agenda item 4 PROW – Application for Definitive Map Modification Order, Ings Bridge to Storwood, Wheldrake

# Alleged Public Footpath At Wheldrake

#### Maps and Routes

At a preliminary point, we refer to the fact that there are 5 maps germane to the purported right of way and the bundle of these appears at Annex 1.

Plan 1. This was prepared in 1976 and is with an application for a Modification Order made by the Wheldrake Parish Council in that year. The particularly important points are, first, the route of claim is along the old course of the River Derwent. Secondly, at its western extreme it stops east of the River Derwent and does not cross the river. Thirdly, it stops at the position where the old drawbridge was and not where the new Bailey bridge is. The 1988 application, to be determined, was not accompanied by a map but referred to the 1976 map.

- **Plan 2**. This is a plan sent by North Yorkshire County Council to Yorkshire Wildlife Trust. It neither reflects the 1976 Plan, nor the one that accompanies this Report.
- Plan 3. Yorkshire Wildlife Trust requested a copy of the 1976 plan of North Yorkshire County Council and they were sent Plan 3. The salient differences with Plan 1 are, first, the route is now on the flood bank and not on the old course of the Derwent and, secondly, on the western boundary the route is extended south. Thirdly, the route crosses the river on the new Bailey bridge. Fourthly, the map could not have been produced in 1976 because it is produced on the metric edition, which was first published in 1978.
- Plan 4. This accompanied the City of York Council Report Findings in January 2002.
- Plan 5. This is the plan now referred to in the current Report.

In the Annex, the annotations give more detail of the changes in the Plan but it is safe to say that the plan has been a movable feast for 34 years and certainly, the production of Plan 3 by North Yorkshire County Council to Yorkshire Wildlife Trust was misleading.

#### Why, at law, there is no public right of way.

- 1. The author of the City of York Council Report dated 22<sup>nd</sup> January, 2010, at paragraph 38 concludes that the relevant 20 year "user as of right" period is 1946-1966, which right, according to the Plan, that accompanies the Report, crosses the Bailey bridge owned by Yorkshire Wildlife Trust. This was built in late 1966 and prior thereto there was no bridge on this site (Annex 2). It is impossible, therefore, to have a user period 1946-1966 in respect of a structure that was not built until 1966. The claim must fail.
- 2. A PROW can realistically only be established when it links from highway to highway, cul-de-sac excepted. There is no highway link to the west of the Bailey bridge. Public Footpath No.2 ends approximately 50 m to the north at the western end of where the old drawbridge was. The "road" highway ceases approx 25 metres from the western end of the Bailey bridge. (Annex 2) There is also no highway link at the eastern end (see para. 6) so the route supported by the Report has neither highway access at the west or the east: it is "suspended" as though in mid air.
- 3. The Bailey bridge was built in 1966 over tidal waters, which then vested in the Crown. The Crown granted a licence for this purpose (Annex 3 a new licence was required when YWT bought the land from Forbes-Adam). With the creation of the Barmby Barrage, the bed of the River Derwent was transferred to predecessors of the Environment Agency. No public rights were granted in respect of this licence, either whilst in the hands of the Crown or the Environment Agency. (It is impossible to acquire prescriptive highway rights against Crown land.) The bridge was built by the then landowner, the Forbes-Adam family of Escrick Park. (The author is wrong to suggest this land was owned by Dunnington-Jefferson and this basic inaccuracy is an indicator of the cursory manner in which the author has handled the evidence).
- 4. For the sake of completeness, we refer to the old drawbridge. (Annex 4) The old drawbridge was on a site some 50 metres away to the north and forms no part of the claimed route. The bridge was part of the Navigation. The River Derwent Navigation Act 1702 was revoked by Order of Parliament in 1935. The bridge fell into disrepair in 1960. It was demolished in 1966. The ownership of the bridge was transferred in 1935, without any public rights, to the River Ouse (Yorkshire) Catchment Board, whose successors demolished it without complaint or contention that public rights were being compromised. There is no evidence at all that there was any public right over the bridge, that there was any complaint at the closing of the bridge nor that there was any complaint that access was denied over the bridge. We say all of this by way of background information but it is clear from the claimed route that no claim is made over the site of the old drawbridge.
- 6. The claimed PROW does not reach the highway at Storwood because, at the eastern extremity of the claimed right, Point B on the Council's Plan, it is necessary then to cross, first, British Waterway Board property and, also, farmland, being part of New Farm. Historically, this was occupied by Jim Cooper (since deceased) who was interviewed in 2003 on the point. He confirmed that a "Private" sign was put up in 1949 to protect against a claim of any public right of way. The current occupant of New Farm, Peter Rhodes, has confirmed that when he took over the farm in November 1981, the sign was still in situ. The towpath and the canal have both to be

# Page 211

crossed before the public highway is reached. It is only after the farmland, the towpath and the canal are crossed that the public highway is reached. The canal and its towpath have their origins in the nineteenth century. The bridge was built as an accommodation bridge. Ownership was with the railway companies, then British Transport Commission before passing to British Waterways Board. The use of such towpaths and the canal is permissive and not "as of right".

The comment in respect of a lack of access to the public highway on the eastern terminus remains good and relevant notwithstanding the fact that the County boundary is crossed just beyond point B.

- 7. At paragraph 35, the author has untruthfully reported the landowner's statement concerning the bridge. The landowner truthfully stated there was no bridge at the location of the Bailey bridge prior to its construction and had the author properly examined the mapping she would have readily realised the two bridges were separate and distinct and in different locations. Two aerial photos (Annex 5) from 1962 and 1968 show the respective positions and distances of the two bridges.
- 8. *Ipso facto*, in that there is a c.50m gap between the site of the old bridge and the Bailey bridge (a distance approximately from the Council Chamber to the far side of the River Ouse), and no evidence has been adduced at all of any use of such land, the claim must again fail.

#### Why the Claim must fail consequent on Procedural Flaws

1. The Application of the Wheldrake Parish Council in 1988 was made pursuant to Section 53(3)©(i) of the Wildlife and Countryside Act 1981. The application is regulated by Schedule 14, paragraph 1, which notably, expressly requires an application to:

"Be accompanied by a map drawn to the prescribed scale and showing the way or ways to which the application relates".

Paragraph 2 also requires an applicant to serve a notice stating that the Application has been served on every owner and occupier of any land. The Application was not accompanied by a plan and the Application expressly states that the "map was provided in 1976". In these circumstances, North Yorkshire County Council, the Surveying Authority then dealing with the application, ought to have identified the relevant map with the Parish Council and then required the Parish Council to verify that such was the map referred to in its application by signing a copy accordingly. They did not do that. There is no evidence that this map or any map was ever shown to any of the witnesses. (Annex 6 R (ex p. Winchester) v Hampshire C.C.)

- 2. Under paragraph 2, all owners of the land should have been served. The claimed route is along the Old course of the River Derwent, according to the 1988 application, as shown on the 1976 map to which it refers (Annex 1). The old course is in the ownership of the Yorkshire Wildlife Trust to the south and five owners to the north, including Mr and Mrs Carstairs and, also, the Carstairs Countryside Trust. (Annex 7) Mr and Mrs Carstairs purchased the land prior to 1988 to protect it for nature conservation and were not served with the Application. Carstairs Countryside Trust bought their land from the Crown in 2008. Preliminary enquiries on purchase did not reveal the existence of a notice having been served and, indeed, the Application admits that they were not served. These irregularities render the application void.
- 3. North Yorkshire County Council and the Successor Authority have relied on various plans, all of which differ (Annex 1). There is no evidence that the Surveying Authority went through any proper administrative process in changing the claimed route. Counsel's Opinion states as follows:

"The route can be changed from the claimed route if there is clear and cogent evidence to justify a modified route. However, in such circumstances, clear reasoning would have to be provided by the Surveying Authority. Such reasoning ought to be contained in a Report to the Council's relevant Committee, which, together with the minute of the Committee's decision, should be on the Council's file and available for public inspection. It is not, of course, open to a Council Officer to merely change the route himself or herself to fit the Council's objectives or indeed for any other purpose."

Such procedures have not been met with.

4. In paragraphs 4 and 33 of the Report, the author implies that a failure to provide Statutory Declarations gives rise to the *prima facie* case of the establishment of the public footpath. On the basis that the Council accepts that the signs erected

prohibiting access bring to an end the 20 year period, that which was done post acquisition by Yorkshire Wildlife Trust in 1971 is irrelevant. Such comments, therefore, which seek to portray the Yorkshire Wildlife Trust in a poor light either indicate that the author does not understand the law or are made *mal fides*.

- 5. The Yorkshire Wildlife Trust requested the Council to release details of the Witness Statements. It was refused until post publication of the Report, ostensibly on the basis that there was a breach of the Data Protection Acts. It is submitted that there is no breach at all of such Acts and, further, the landowners are prejudiced by late release of such information. The Councils have had in excess of 22 years to consider the witness position; the landowner has had merely 4 clear working days to do likewise.
- 6. The Council has sought to introduce witness evidence in respect of a completely different footpath. There are 10 Witness Statements, which are purporting to support a claim, which runs from Storwood in a north westerly direction, to a destination well away from the landowner's land, and nothing at all to do with the alleged right over the YWT's property. There is one statement that does not support any right of way but recreational use of the Ings and there is one statement that deals with matters east of Point B. Because the land owner has been compromised by late production of Witness Statements, it has not been possible to identify the names of all 12 witnesses concerned but we can refer to 8 from Annex 5 being: James Beal, Edith Harrison, Arthur Henry Harvey, Fredrick Houseman, Lance Moore, D. Popplewell, Earnest Smith and Stephen Swales. The impression the Council gives in its Report is that there are more witnesses than there actually are supporting a claim for a right of way across the YWTs land to Storwood. It is misleading and *mal fides*.

Paragraphs 1, 2 and 3 in particular relate to substantial administrative failings on the part of the author and are judicially reviewable.

### **Witness Statements**

- 1. Not a single witness has said they used the route during the relevant user period that is now suggested because the bridge in question was not there.
- 2. We have referred above to the grossly inadequate time given for the consideration of statements and, therefore, the following comments are brief.
- 3. The 1988 application did not have a map attached to it and there is no evidence as to which map is inadequately referred to. The fatal flaws of the application are referred to above. There is a reference to a 1976 plan. The only 1976 plan drawn onto a copy of the definitive footpath provided by the NYCC is materially different to the plan annexed to the Report. The route it supports follows the old course of the river and not the flood bank. It does not include the Bailey bridge and stops short of the river. Nor does it go further than few hundred yards to the east. Indeed, it is for a markedly different route to any map, which NYCC or CYC has produced since. Thus, the statement at paragraph 9 is untruthful as is the statement at para 24 that the application is supported by 45 witnesses. The application is supported by 8 witnesses whose evidence is analysed below. An ungainly collection of other witness statements, taken from many years before, are included but they were certainly not given in support of the 1988 application.
- 4. There is no evidence that any witness ever saw any plan. Notwithstanding the provision for a signature of a person taking the statement, no signature is witnessed. 5 forms seem to be substantially completed in the same hand and are remarkably similar in contents.
- 5. The majority of all witnesses gave their statements in the mid 1970s. Those statements cannot be taken into account because they relate to an entirely different route to that which is now being considered. There are no witnesses at all who are supporting the route as claimed.
- 6. There has been a complete and utter failure by the author to give proper analysis to the evidence. In particular, and in accordance with the statutory requirements, the author has:
- a. Failed to analyse which precise route a witness is claiming.
- b. Failed to give consideration to the period of time during which the witness has used the route.
- c. Failed to give consideration to the frequency the witness has used a route.
- d. Failed to give consideration in respect of whether or not a witness was a tenant. (The land in question was strip farmed by many tenants who had rights to cross the Ings.)
- e. Failed to test the veracity of any of the witnesses' evidence.

There are 8 statements, which purport to support the 1988 Application:

### A. Myers

- a. No proper identification of the route. No evidence any plan seen.
- b. No confirmation of type of path.

- c. No statement over what period he has used the path.
- d. No reference to prohibition notice on bridge. Therefore, use must have stopped by 1966.
- f. Has not confirmed path is well defined.

### B. Young

- a. No proper identification of route. No evidence any plan seen.
- b. Says use is between 1940 and 1967 but veracity in question as has not mentioned prohibition sign.

### C. Carr

- a. No proper identification of route. No evidence any plan seen.
- b. Says footpath
- c. Has failed to confirm path is well defined
- d. Contradicts herself; regards the path as public but acknowledges the prohibition notice on the bridge.
- e. Fails to state period of use

### D. Harrison

- a. No proper identification of route. No evidence any plan seen.
- b. Says footpath
- c. Has failed to confirm path is well defined
- d. Contradicts herself; regards the path as public but acknowledges the prohibition notice on the bridge.
- e. Fails to state period of use

### E. Harrison

- a. No proper identification of route. No evidence any plan seen.
- b. Says footpath
- c. Has failed to confirm path is well defined
- d. Contradicts herself; regards the path as public but acknowledges the prohibition notice on the bridge.
- e. Fails to state period of use

### F. Carr

- a. No proper identification of route. No evidence any plan seen.
- b. Says footpath
- c. Has failed to confirm path is well defined
- d. Contradicts himself; regards the path as public but acknowledges the prohibition notice on the bridge.
- e. Fails to state period of use

### G. Beilby

- a. No proper identification of route. No evidence any plan seen.
- b. Use is only occasional.
- c. Veracity is compromised because failed to acknowledge the prohibition notice.

### H. Beilby

- a. No proper identification of route. No evidence any plan seen.
- b. Use has been only occasional.

c. Veracity is compromised because failed to acknowledge the prohibition notice.

Of all of these 8 witnesses, 5 are hopeless. Of the remaining 3, there are serious concerns with their evidence and, in particular, they cannot be relied upon because they have failed to acknowledge the prohibition notice.

For the applicants to succeed, they have to show that the path has been used by the public during the relevant user period. Quite simply, 8 witnesses, who largely say their use is occasional, are not enough. The evidence is wholly insufficient to establish a public right in any event. The author's case is grim and hopeless.

- 7. In contrast, the Statutory Declaration evidence of David Peter Hargreaves, Craig Scott Ralston and Timothy Eric Dickson is consistent and to the effect that during their periods of regular contact with the land trespass use of same has been minimal.
- 8. Whilst witnesses purportedly claim a right of way across the river, no single witness acknowledges the closure of the old drawbridge in 1960 and its demolition in 1966.
- 9. Photographic evidence shows the alleged way simply was not used (Annex 5).
- 10. The veracity of a number of witnesses is called into question. For instance the evidence of William Hudson Hairsine claims to have used the path, as of right yet was a tenant farmer. He was part of the Ings Management Committee, which in 1950. erected a fence on the flood bank, thus, compromising access and egress along same. (Annex 4 and 8) It is believed he was also a member of the Wheldrake Parish Council, which submitted the application, in 1976. Thus, here is a witness, who could not have exercised any right as of user, was party to the erection of a fence to compromise the use of such alleged rights and who then was party to an application to record such alleged rights. And there lies the nonsense of this application.

### Why Does It Matter?

- 1. It is submitted that, *prima facie*, if a public right of way exists, notwithstanding the quality of the land over which it passes, it is right and proper to make an order.
- 2. It is, however, vitally important to note that if any error is made the consequences on an extremely sensitive site are absolutely diabolical. Annex 9 illustrates the Ings.
- 3. Wheldrake Ings is one of the top 5 bird inland wetlands in the country. It is part of the SSS1 and is internationally recognised as an SPA. Recent reports have listed the site as nationally/internationally important for, amongst others: Whooper Swan, Wigeon (9<sup>th</sup> highest in the UK), Gadwell, Teal (9<sup>th</sup> in UK), Pintail, Shoveler, Blacknecked Grebe, Golden Plover, Lapwing, Moorhen (5<sup>th</sup> in UK), Ruff (3<sup>rd</sup> in UK), Snipe (2<sup>nd</sup> in UK) and Whimbrel (7<sup>th</sup> in UK). It has to be born in mind that even extremely modest human presence in the locality can have catastrophic results. These are compounded if dogs are allowed to roam. The application route cuts through the deepest sanctuary part of the Nature Reserve, across the full view from the bird watching hides.
- 4. The Yorkshire Wildlife Trust is committed to affording public access and, via a path around the southern area of the site, both members of YWT and non-members can walk through a large area of the site and, moreover, enjoy the hides, specifically provided, for bird watching as illustrated in Annex 9. The site is an exemplar of its kind but the value of the site is only as it is because of proper management. It is York's prime environmental asset of renowned international standing.

### **Conclusions**

Taking all matters into account, there is wholly insufficient evidence to establish on a balance of probabilities that a PROW between points A and B is reasonably alleged to subsist.

The above comments have been considered by leading counsel who endorses the views expressed.

Crombie Wilkinson York January, 2010 This page is intentionally left blank

### The Maps

The images below are the range of maps produced during the lifetime of this claim. It is to be remembered this claim is solely about what Wheldrake Parish Council lodged in the 1988 Claim. The variations might seem subtle, but they are extremely significant.

# Plan 1 6 January 1976 Wheldrake Parish Council Claim to NYCC (1976 and 1988)

This is the map, which accompanied Wheldrake Parish Council's claim.

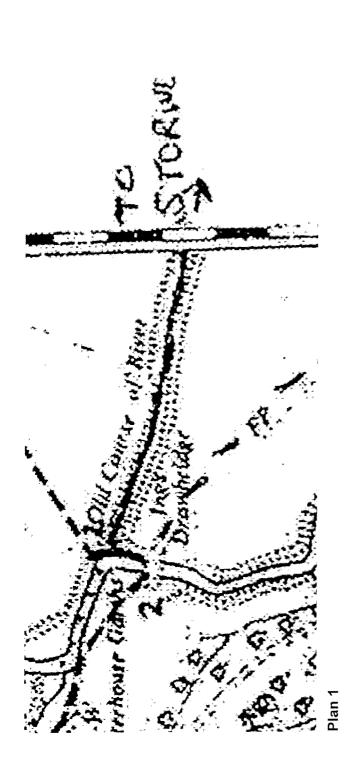
Note: The spur to the marsh

The route follows the bed of the old course of the Derwent

It does not cross Ings draw-bridge

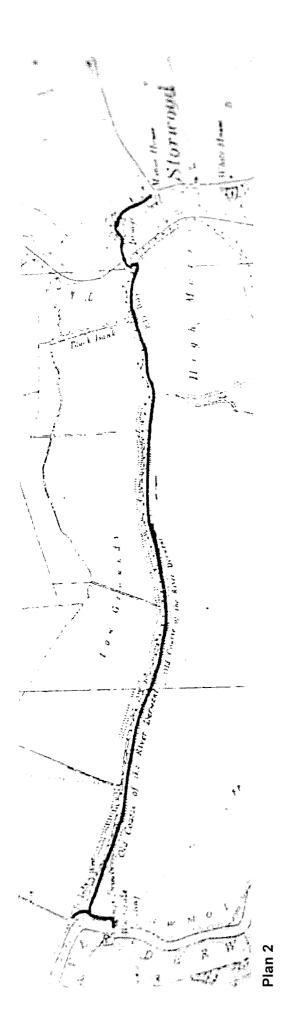
The claimed way ends at the edge of the map to the east

The base map (Copy of Definitive Map) was provided by North Yorkshire County Council



### Plan 2 23 January 1976 NYCC

This map was sent to the YWT as being the route of the claimed way. It appears to be a composite produced probably by NYCC. It is inaccurate in relation to submissions of WPC. Note the way shown is now along the flood bank. It does not reflect the Wheldrake claim along the course of the old Derwent to the bridge. The eastern route from Storwood is not shown. This suggests that this map was probably produced by NYCC - It was NYCC who sent it to



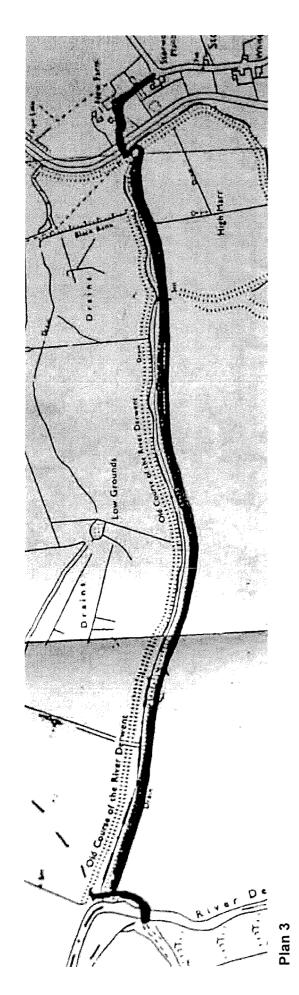
### Plan 3 15 September 1988 NYCC to YWT

North Yorkshire County Council produced this map in reply to YWT's request for a copy of the map, which should have accompanied the 1988 The map referred to was said to have been sent in 1976.

It differs from the WPC 76 claim map in that it:

- Extends all the way across the ings to Storwood
- is placed on the floodbank and not in the land between the floodbanks along the old course of the Derwent
- has been extended south to and across the YWT's Bailey Bridge

It is similar to the composite map produced on 23 January 1976, though extends further south to cross the Bailey bridge. It is metric and could not have been produced before 1978.



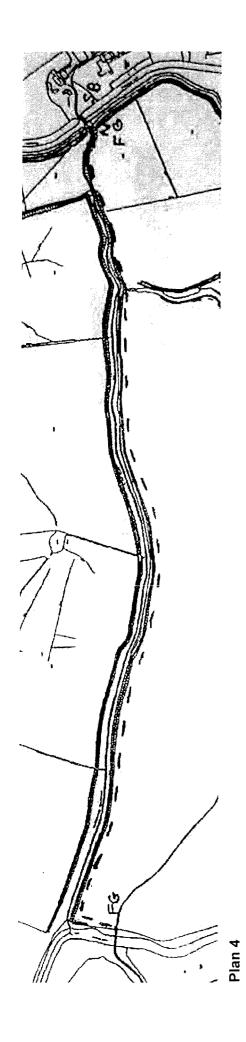
## Plan 4 29 January 02 CYC Report of Findings

This map shows the route assessed in the Report of Findings

It appears to show the route just south of the floodbank, there is no spur to the Marsh and it ends at the CYC boundary in the east.

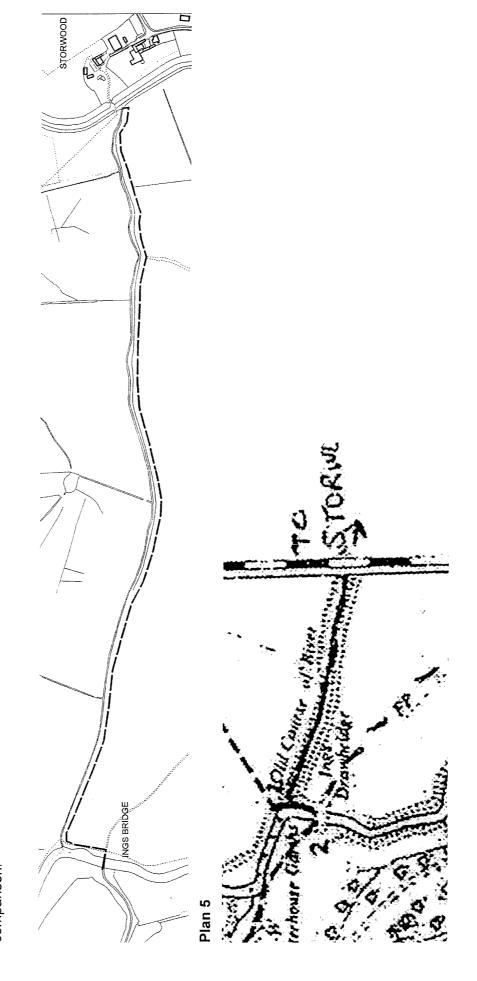
It too now appears to extend the way to (and over - unclear??) the Bailey Bridge.

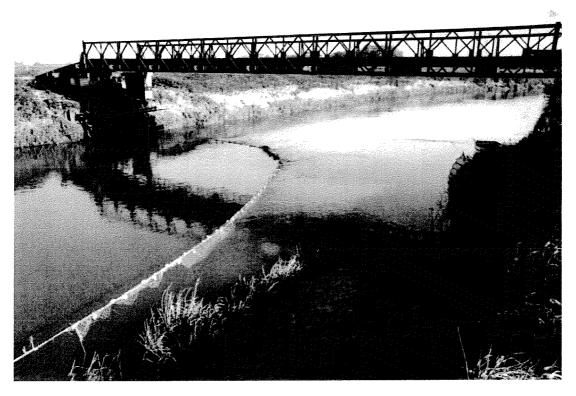
\ \



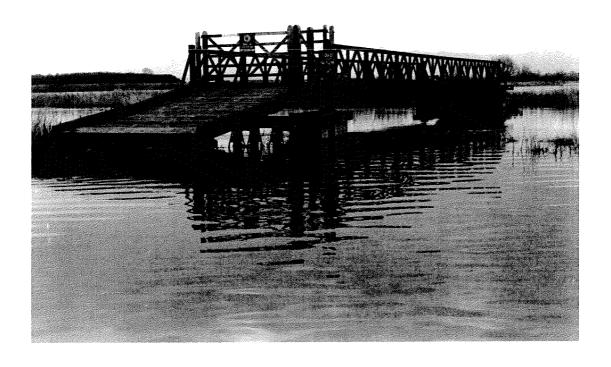
This is the map sent by CYC to YWT when the Claim was first assessed.

claim stops at Ings draw-bridge and does not cross the river. There is no spur to The Marsh and no eastern section to Storwood. It is wholly across the meadows (EC) It ends at the eastern boundary of Wheldrake Ings. It extends to and over the Bailey Bridge, whereas the original different in extent and detail to the original 76 Map which was the map to support the claim in 88. The 76 map is shown again below for It is similar to the Report of Findings map. It places the route firmly along the floodbank, not on the course of the old Derwent (WPC), nor comparison.

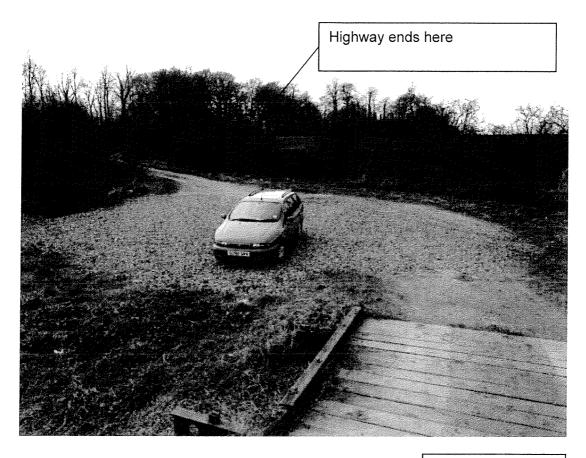


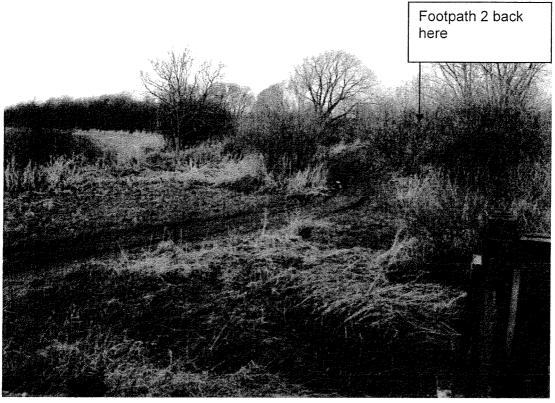


Netting under the Bailey Bridge during research for the now possibly extinct Burbot -



The van Bailes bridge built 1966





Made the Twenty wighth day of warch one thousand nine hundred and seventy two BETWEEN THE QUEEN'S MOST EXCELLENT MAJESTY of the first part THE CROWN ESTATE COMMISSIONERS on behalf of Her Majesty acting in exercise of the powers of the Crown Estate Act 1961 (hereinafter called "the Commissioners") of the second part and THE YORKSHIRE NATURALISTS TRUST LIMITED whose registered office is at Clifford Chambers 4 Clifford Street in the City of York (hereinafter called "the Licensee") of the third part WITNESSETH as follows :--IN consideration of the annual sum hereinafter made payable and of the covenants by the Licensee and conditions hereinafter contained the Commissioners HEREBY GIVE to the Licensee LICENCE AND PERMISSION during the continuance of this Licence to maintain over the foreshore and bed of the River Derwent at Wheldrake Ings in the County of York the span of a bailey bridge (hereinafter called "the said works") in the position shown by red colour on the plan hereto annexed and from time to time to enter upon the said foreshore and bed of the river and inspect repair or renew the said works PAYING THEREFOR during the continuance of this Licence on the Sixth day of October in every year to the Queen's Majesty and Her Successors the annual sum of TEN POUNDS the first payment thereof to be made on the execution of these presents (the said sums to be paid to the Commissioners at their Office for the time being) -IN consideration of the Licence hereby given the II. Licensee HEREBY COVENANTS with the Queen's Majesty and Her Successors and as a separate covenant with the Commissioners as follows :-To pay the said annual sum on the days and in manner aforesaid

- (2) To pay all present and future rates taxes charges impositions assessments outgoings and duties (if any) whatsoever payable in respect of the said works
- (3) At all times during the continuance of this Licence



N. S.: It is chard off on the left-hand side into which is the 1850 fema built on the Goodbank

ANNEX
-------

### **AERIAL PHOTOGRAPH** 16 October 1962

### **AUTHENTIFICATION**

ENGLISH HERITAGE

NATIONAL MONUMENTS RECORD

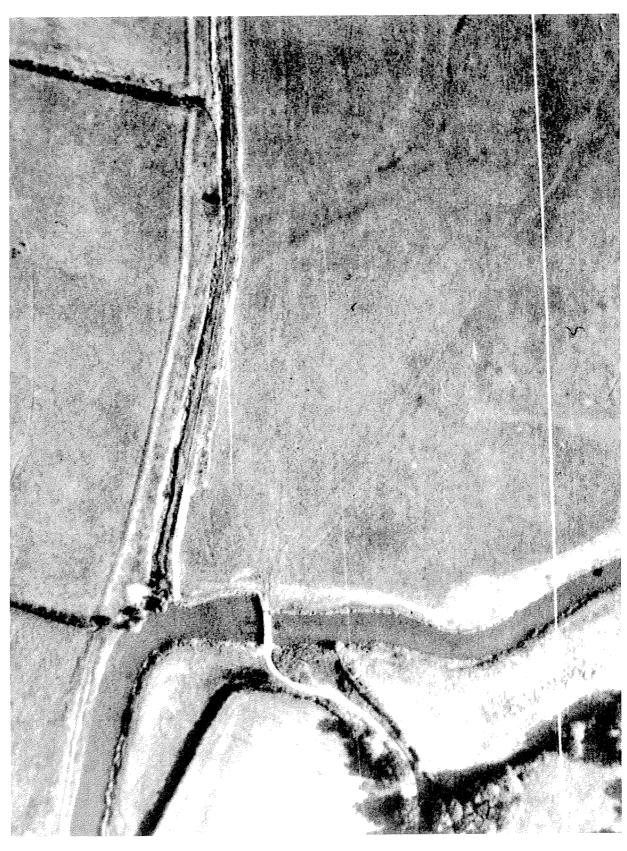
Reference: RAF/S8/SSIS F21 FA: 0,05.

OCCOBER 1962. Date taken:

© Crown copyright. MOD

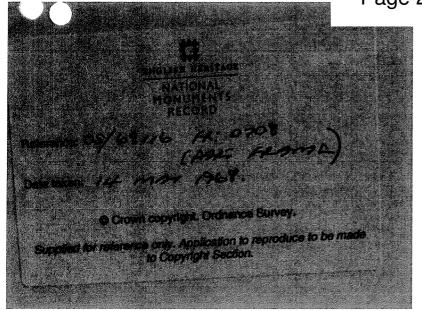
Supplied for reference only. Application to reproduce to be made to Copyright Section.

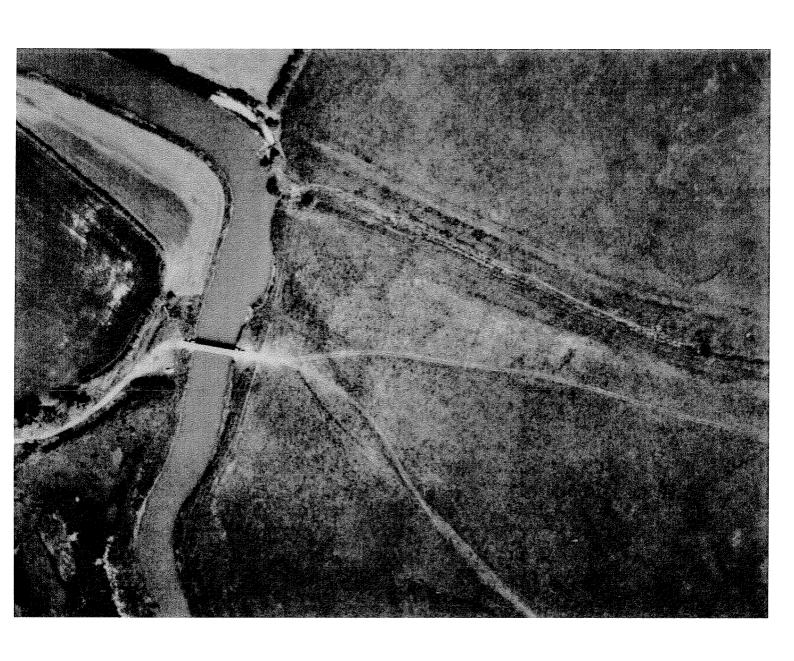




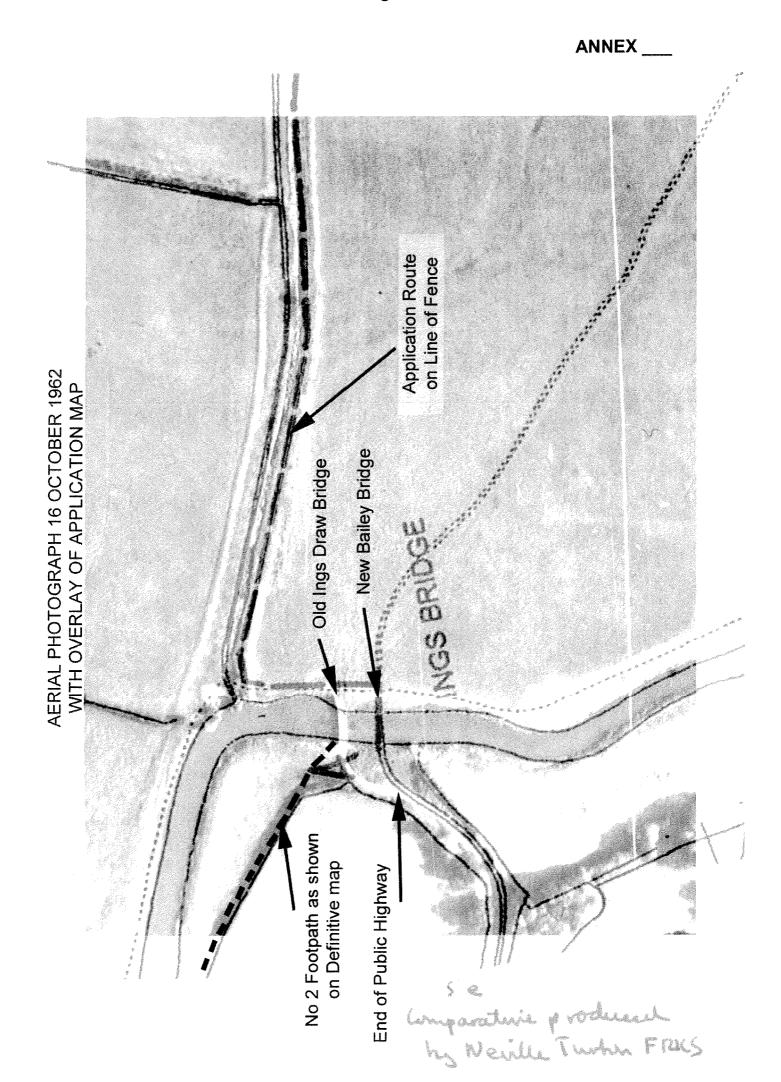
ou bandre

5





1468 Billy brek





Home | WLR Daily | ICREs | Publications | Mooting | Search | Prices | About ICLR
WLR D Menu - Latest Cases | Subject Matter Search | Monthly Archive | Court Reference

### 7he WLR Daily

Abbreviations | About WLR Daily

HIGHWAY — Right of way — Definitive map — Rights for mechanically propelled vehicles — Local surveying authority determining to upgrade to byway open to all traffic — Application to modify definitive map and statement — Whether failure to comply with statutory requirements as to making of such applications rendering application invalid — Whether invalidity of such application preventing operation of saving provision relating to extinguishment of existing rights — Wildlife and Countryside Act 1981, s 53(5), Sch 14, paras 1, 3 — Natural Environment and Rural Communities Act 2006, s 67

R (Warden and Fellows of Winchester College and another) v Hampshire County Council [2008] EWCA Civ 431; [2008] WLR (D) 132

CA: Ward, Dyson and Thomas LJJ: 29 April 2008

The formal requirements governing the making of an application to modify a definitive map and statement under s 53(5) of, and para 3 of Sch 14 to, the Wildlife and Countryside Act 1981, which were contained in para 1 of Sch 14, had to be adhered to strictly. Where such an application was found to be invalid, certain rights ostensibly extinguished under s 67(1) of the Natural Environment and Rural Communities Act 2006 were not apt to be saved by virtue of s 67(3) of the 2006 Act since the latter provision was predicated upon a valid application.

The Court of Appeal so held when allowing the appeals of the claimants, the Warden and Fellows of Winchester College, and Humphrey Feeds Ltd, from a decision of George Bartlett QC, sitting as a Deputy Judge of the High Court in the Queen's Bench Division on 28 November 2007 [2007] EWHC 2786 (Admin), refusing their claim for judicial review of the refusal by the defendant, Hampshire County Council, to reconsider decisions made on 22 March 2006, as surveying authority for Hampshire, to make an order modifying the definitive map and statement by upgrading two rights of way to the status of byways open to all traffic.

The decisions had followed upon separate applications by two members of the public: first, to upgrade a bridleway; and, second, to upgrade a road used as a public path. The judge held, inter alia, that such rights for mechanically propelled vehicles as existed over the two rights of way on 2 May 2006 were not extinguished by s 67(1) of the 2006 Act when it came into force. He held that the rights had been saved from s 67(1) extinguishment under s 67(3)(b) by virtue of the defendant's decisions on 22 March 2006, which he found to have been valid determinations of the various applications to modify the definitive map and statement under s 53(5) of, and para 3 of Sch 14 to, the 1981 Act. In the case of the bridleway, the judge further held that the applicable rights had been saved from extinguishment under s 67(3)(a) of the 2006 Act by virtue of a valid application under s 53(5) of, and para 1 of Sch 14 to, the 1981 Act. The grounds of appeal were that the applications should have been found to be invalid in light of failures to comply with the formal requirements governing such applications, and the judge should therefore have found that the relevant rights had not been saved from extinguishment.

S 53(5) of the 1981 Act provides: "Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection."

S 67 of the 2006 Act provides: "(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—(a) was not shown in a definitive map and statement, or (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway. But this is subject to subsections (2) to (8) ... (3) Subsection (1) does not apply to an existing public right of way over a way if—(a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 ... for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic, (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application ... (4) 'The relevant date' means—(a) in relation to England, 20 January 2005 ... (6) For the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act."

DYSON LJ said that the principal issue of law was: what was meant by "an application made in accordance with paragraph 1 of Schedule 14 to the 1981 Act" within the meaning of s 67(6) of the 2006 Act, where the claimants contended that neither of the applications in issue was a qualifying application? Construing the applicable provisions, for any of the three exceptions identified in s 67(3) to apply a s 53(5) application had to have been made in accordance with all the requirements of para 1 of Sch 14, viz it had to have been: made in the prescribed form; accompanied by a map drawn to the prescribed scale and showing the way(s) to which the application related; and accompanied by copies of any documentary evidence (including statements of witnesses) which the applicant wished to adduce in support of the application. Those words were expressed in clear and ordinary language and were to be given their plain and ordinary meaning, and an application which was not accompanied by a map (para 1 (a)), or by copies of any documentary evidence (including statements of witnesses) which the applicant wished to adduce in support of the application (para 1 (b)), was not made in accordance with para 1 of Sch 14 to the 1981 Act. On the facts, for the purposes of the saving provision within s 67(3) of the 2006 Act, the applications were not made in accordance with para 1 of Sch 14 to the 1981 Act, so that neither was a qualifying application. It followed that the relevant rights had not been saved from extinguishment.

THOMAS and WARD LJJ agreed.

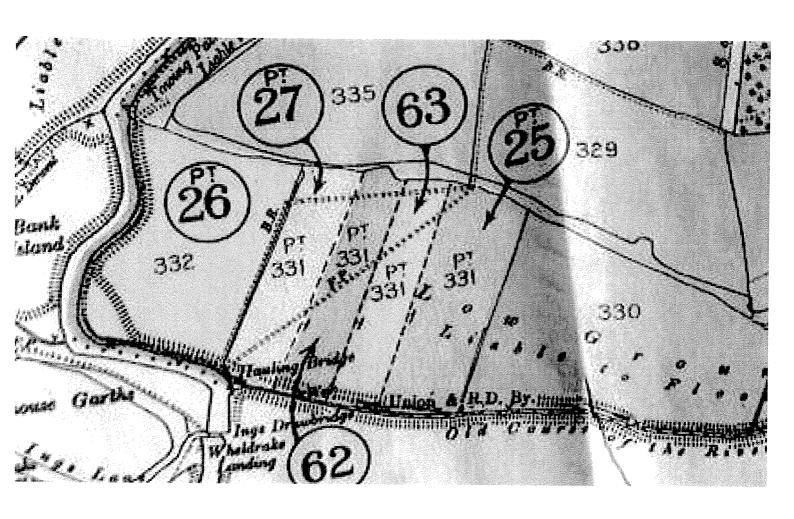
**Appearances**: George Laurence QC and Ross Crail (Knights, Tunbridge Wells) for the claimants; Timothy Mould QC (Head of Legal Services, Hampshire County Council, Winchester) for the defendant; John Litton (Solicitor, DEFRA) for the Secretary of State for Environment, Food and Rural Affairs, an interested party.

Reported by: Matthew Brotherton, barrister

Subscribe now for full text reports

Brought to you as part of The Daily Law Notes service by the reporters to The Incorporated Council of Law Reporting for England and Wales, in association with JustCite who provide the cross-reference links.





Fight 330 - Contrain Contraint Trute
(1266) Fight 331 - My + My Contraint

### 

A meeting of the Committee was held at Mr. Heirsine's house on Friday, the 7th July, 1980.

Present. Mr. Geo. Brown in the Chair. Mesers. W. F. Hight.
A. Kendall, J. Harriman, W. H. Heirsine, D. Lofthouse

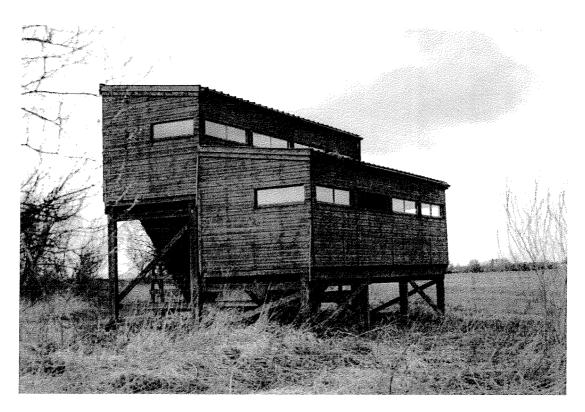
After a long diseasoion it was oursed:-

- (1) That the most important drain to be done at once is the Middle Drain. This is about 71 chains long, and the cost Of doing t is would be 6140. Taking into consideration the most a net cost to be paid by the Estate this would be man a net cost to the Contites of FAR.
- An regards the femolog, the longitude throught that the iron state of the investment of the investment
- (3) It was arranged that Mr. S. Adthouse should get out the exact cost of the dyking and fencing, and submit same to the Committee in about a fortnight's time.
- (4) It was agreed that a rate of not exceeding 7/- per more should
- (5) The Committee suggest that the following clause should be added to the Regulations:-

"Any unlet entage to be reported to the Committee, who shall have power to stock the screage".

All the above is subject 100% of the femants returning their forms agreeing to the proposals.

It was suggested that a further letter be sent to those who have not returned their forms, asking them to do so as soon as possible, so that the Committee can get to work.



Hide for vistors looking out across towards the claimed floodbank top way



A sanctuary for tens of thousands of bird – one of the top international wetlend sites in the UK . *Below:* Alleged route shown by red arrow seen from a visiotrs' hide



This page is intentionally left blank