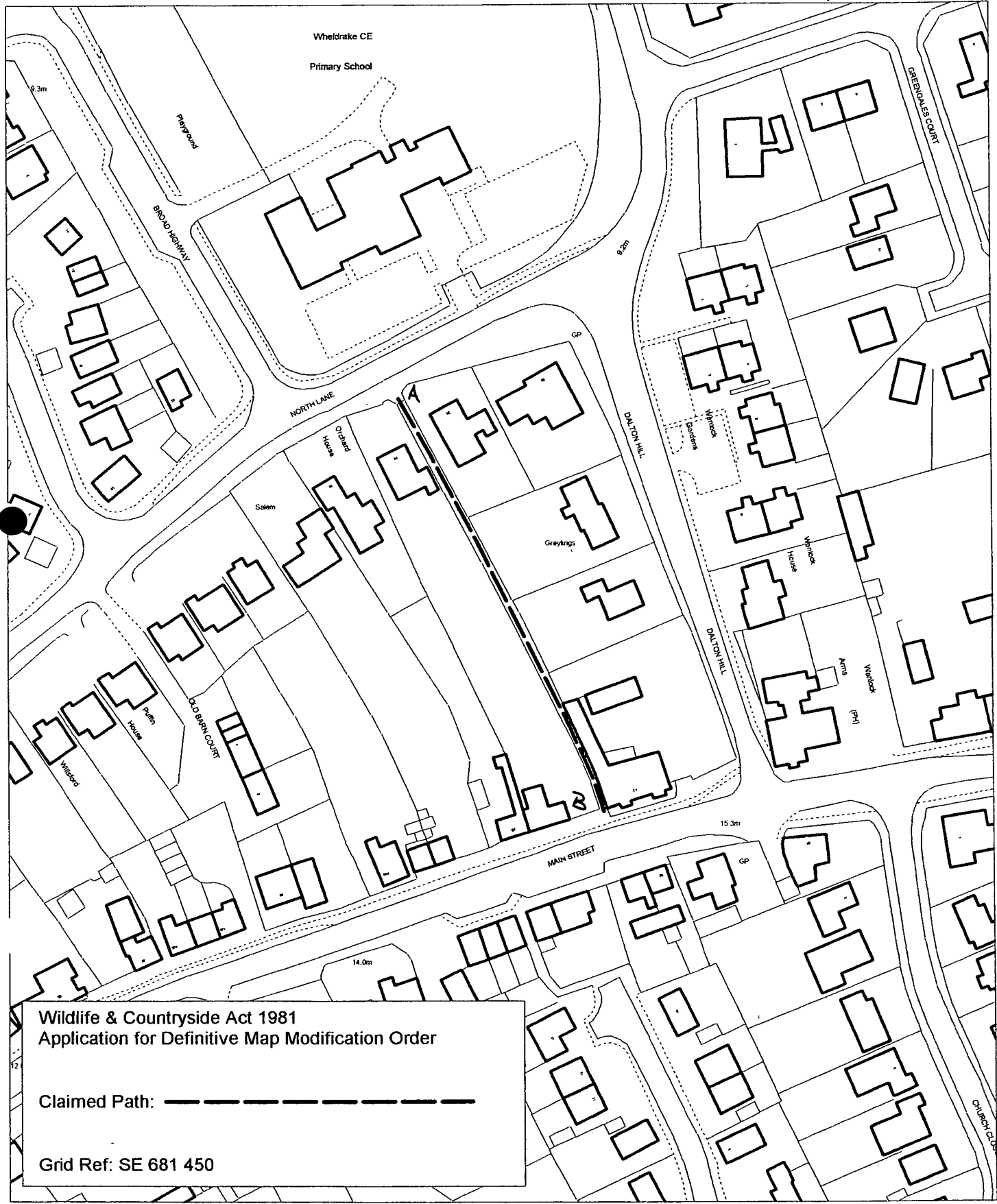


Annex 1

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



Wildlife & Countryside Act 1981
 Application for Definitive Map Modification Order

Claimed Path: -----

Grid Ref: SE 681 450



Claimed Public Footpath, Main Street to North Lane, Wheldrake (Love Lane)		
Scale 1:1250	Drawn By:	Date: 6 August 2003
Originating Group:	Project:	Drawing No.
Public Rights of Way		



9 St. Leonards Place, York, YO1 2ET
 Telephone: 01904 613161

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Annex 2

List of documents consulted

Annex 2

Documents Consulted

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

Annex 3

Summary of Documentary Evidence

Summary of Documentary Evidence

Tab	Page	Description	Document Content	Comments
5		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 is 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.
6	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.

Annex 4

Summary of User Evidence

Annex 4

Summary of User Evidence

Tab	Page	Name	User Evidence Form	Witness Interview	Other Correspondence	Period of Use	No of Years Use	Member of Public	User As of Right	User without Interruption	Other Information
11	1	J Moonie	✓			1934 - 1993	59	✓	✓	✓	Used the path to get to the playing fields and to get from Main Street to North Lane avoiding Dalton Hill.
11	2	L O G Munns	✓	✓		1974 - 2002	28	✓	✓	✓	Interviewed as part of 2002 investigations Owns No 71 Main Street, which is adjacent to the path and regards it to be public.
11	3	C Burgess	✓	✓		1966 - 2002	36	✓	✓	✓	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.
11	4	J Burgess	✓	✓		1966 - 2002	36	✓	✓	✓	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 from using the path, and there were never any notices.
11	5	J Cleal	✓	✓		1967 - 2002	35	✓	✓	✓	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 Wheidrake

Tab	Page	Name	User Evidence Form	Witness Interview	Other Correspondence	Period of Use	No of Years Use	Member of Public	User As of Right	User without Interruption	Other Information
11	6	M Bielby	✓			1939 - 1973	34	✓	✓	✓	User Evidence Form completed in 1973 Used the path occasionally, for access and convenience, and believed it to be a footpath
11	7	F Fairburn	✓			1920 - 1973	53	✓	✓	✓	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.
21	7	Dr T K Halstead			✓	1967 - 2008	41				The path is marked on the 1 st 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.

Annex 5

Graph showing Periods of Claimed User

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Annex 5

Periods of Claimed User

Tab	Page	Name	Period of Use	1920	1930	1940	1950	1960	1970	1980	1990	2000	2008
11	1	J Moonie	1934 - 1993	[Horizontal line from 1934 to 1993]									
11	2	LOG Munns	1974 - 2002	[Horizontal line from 1974 to 2002]									
11	3	C Burgess	1966 - 2002	[Horizontal line from 1966 to 2002]									
11	4	J Burgess	1966 - 2002	[Horizontal line from 1966 to 2002]									
11	5	J Cleal	1967 - 2002	[Horizontal line from 1967 to 2002]									
11	6	M Bielby	1939 - 1973	[Horizontal line from 1939 to 1973]									
11	7	F Fairburn	1920 - 1973	[Horizontal line from 1920 to 1973]									
21	7	Dr TK Halstead	1967 - 2008	[Horizontal line from 1967 to 2008]									

Annex 6

Legal Tests

Legislative Tests

Test to be Applied

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

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.