

**Application to be determined – 202304 Piker Thorn Lane and Vengeance Lane**

**DMMO application to record as public restricted byway A-B-C-D on Map 1 below**

Evidence supporting the application	Evidence not supporting the application
<p>On Jeffery's commercial maps of 1772 and 1775 a junction is shown as an 'inclosed road' leading off Bad Bargain Lane (near Point D of the application route). On Tuke's 1787 map a junction is shown again as an 'other road' near Point D. Although a junction is shown, the continuation of the application route is not shown on the above-mentioned maps.</p>	<p>The application route is not shown on Bartholomew's 1903 map which shows driving and cycling roads or on White's 1840 map of the East and North Ridings of Yorkshire, but this may be due to the scale and reason for producing these maps which must be considered. Also, this absence cannot necessarily be taken as evidence refuting the route's presence.</p>
<p>The full application route (both Piker Thorn Lane and Vengeance Lane) is depicted on commercial maps as a 'cross road' on Greenwood's 1817 and 1834, Teesedale's 1828, Fowler's 1834 map, and as a 'Parochial Road' on Cary's 1825 map.</p> <p>The full route is depicted as 'Lanes and Bridle Ways' and named as 'Pickham Lane' and 'Vengeance Lane' on Bryant's 1829 map. The full route is also depicted on Bacon's 1920s Road Map.</p> <p>These maps were available to the public for a fee suggesting these routes may have been public in the opinion of the mapmaker.</p>	<p>During the definitive map process in the 1950s, Point A to B of the application route, known as Vengeance Lane, was claimed by local surveyors on behalf of Murton Parish Council as a bridleway, and subsequently recorded on the definitive map as public bridleway Holtby 6 and Murton 7. When claiming Vengeance Lane as a bridleway the surveyors stated in the walking schedules that it was the width of a cart road.</p>
<p>OS maps record the physical existence of a route matching the application route showing both Piker Thorn Lane and Vengeance Lane on the 1853 6 inch, 1858 one inch, 1892 25 inch, 1893 6 inch, 1898 one inch, 1906 one inch, 1910 25 inch, 1911 6 inch, 1924 one inch, 1930 25 inch, 1931 6 inch, 1938 6 inch and 25 inch, 1947 one inch, 1955 one inch, 1958 6 inch, 1967 one inch and 25 inch, 1971 1:10000 scale, 1984 1:10000 scale and 1995 25 inch.</p>	<p>During the definitive map process in the 1950s Point B to D of the application route, known as Piker Thorn Lane, was not claimed as a public right of way by the respective parish councils. However, this could be due to the parish boundary running along the length of the lane so it was unclear which parish, Murton or Holtby, should have claimed the route.</p>
<p>The map key for the half inch and one inch OS maps depicts the application route (both Piker Thorn Lane and Vengeance Lane) in 1858 as an unfenced road, in 1898 as an unmetalled road, and in 1924 and 1947 as a minor road. However, in 1955 and 1967 the route is depicted by a single dashed line meaning 'footpaths and tracks.' At the time of their</p>	

<p>publication, half inch and one-inch maps would have been widely used by travellers because they were of a small enough scale to be a convenient usable size whilst still maintaining detail and wide geographical coverage.</p>	
<p>The 1838 Holtby Tithe map shows Piker Thorn Lane (Point B to D of the application route) annotated as 'Pikerthorne Lane.' It does not have a plot number meaning there was no tithe rent charged on the land which is sometimes an indication of a public road. The plot numbers for Vengeance Lane (Point A to B) are described as 'Lanes' and the entry for amount of rent charge was left blank.</p>	
<p>The 1843 Murton Tithe map shows the application route as a brown line through the fields rather than excluded from other hereditaments. The plot number (156) for Piker Thorn Lane (Point B to D) has the description of 'road' and there was no tithe rent charged.</p>	
<p>Plans created under the Finance Act 1910 for land taxation purposes show Piker Thorn Lane (Point B to D of the application route) and most of Vengeance Lane (Point A to B) as excluded from field hereditaments. This indicates that Piker Thorn Lane and part of Vengeance Lane comprised land that was outside the scope of the taxation, for example, a public route.</p>	
<p>The 1907 Object Names Book for OS map 17 4NE describes Piker Thorn Lane as a 'Public Road extending SE from a point 3 chains SW from Sandfield House .' The wording 'to its junction with Vengeance Lane' was added in 1937. The description of the routes in the Object Names Book further confirms that, in the opinion of the OS surveyors, the routes were being used by the public or had the appearance of being public.</p>	
<p><b>DMO Comment on the evidence as a whole</b></p>	
<p>The evidence stated above should be taken in two halves as shown on the maps attached to this report.</p> <p><i>Vengeance Lane (Point A to B of the application route on Map 1)</i></p> <p>Vengeance Lane is already recorded on the definitive map as a public bridleway. Therefore, the statutory test for making an order to change the status of a route already shown on the definitive map is that the evidence must show, on the balance of probabilities, that restricted byway rights exist over and above the bridleway rights.</p>	

The walking schedules used to claim routes to be recorded on the definitive map state that Vengeance Lane (Point A to B of the application route) was a cart road. However, as the term cart road has no legal meaning, and because this answer was given referring to the width of the route, it is a physical descriptor of the route rather than how it was being used. The walking schedules also stated that 'old tithe maps' were consulted as part of the creation of the definitive map.

Vengeance Lane (Point A to B) is only shown on some commercial maps. When discussing Bryant's 1826 map of Norfolk, *Norfolk v Mason* (2004) considered a routes' depiction on Bryant's maps to imply a public status. However, it is also discussed that early mapmakers were not concerned with ascertaining the status of routes further than their physical capabilities. An inference of public status may be drawn from the terms used in commercial maps such as 'good cross or diving road' or 'inclosed road' but as these are descriptive terms any inference of public rights must be supported by further evidence.

The 1910 Finance Act records show that the majority of Vengeance Lane was excluded from the hereditaments that were otherwise assessed for tax valuation. Public land, for example highways, was excluded from taxation and, as this route was later claimed and recorded as a public bridleway, these records offer no further information regarding unrecorded higher rights.

In conclusion, with regards to Vengeance Lane (Point A to B of the application route), the Murton Tithe records have previously been considered in recording public rights of way so therefore do not constitute a discovery of evidence as required by S53(3) of the Wildlife and Countryside Act 1981. The remaining evidence, namely the OS and commercial map evidence, are indicative of the route's existence on the ground which is not being questioned. Therefore, the OS and commercial maps are not sufficient, on the balance of probabilities, to show that Vengeance Lane should be redesignated as a restricted byway. Thus, the route of Vengeance Lane will not be included in the order made.

#### *Piker Thorn Lane (Point B to D of the application route on Map 1)*

The legal test in making an order for a route that is not currently recorded on the definitive map (in this case Piker Thorn Lane, shown as Point B to D on Map 1) is a reasonable allegation that public rights exist.

In all OS maps available to the council, except the one-inch maps, Piker Thorn Lane (Point B to D) is named as such. It is often claimed that if a road is named it must therefore be public, an assertion arising from section 69 of the Highways Act 1773 which specified that highways had to be named before an indictment for obstruction or disrepair could take place. Private roads were not liable in this way, so they did not need to be named. However, it must also be noted that many public highways are not named, and some private ones are, and new local names can appear with no legal significance. Therefore, Piker Thorn Lane being named is not sufficient evidence in isolation and any inference of public status must be thoroughly tested.

The 1905 'Instructions to OS surveyors', stated that paths leading to 'any well-defined object of use or interest' and that 'were in obvious use by the public' should be shown on OS maps. Before and after 1905, the application route is shown on OS maps suggesting that, in the opinion of the OS surveyors, it was in use by the public. Likewise, half inch and one-inch OS maps were widely available and showed the route for several decades. This suggests there was no outcry from land owners to have the route removed from OS maps. Similarly, in 1907 the OS Object Names book, which defined the location and extent of named objects and features, described Piker Thorn Lane (Point B to D) as a public road. Considering the instructions given to OS surveyors, the depiction on OS maps and the Object Names Book description of the route, there is sufficient evidence to suggest the existence of public rights and that Piker Thorn Lane had the qualities or appearance of a road.

Piker Thorn Lane (Point B to D of the application route) was depicted on some commercial maps as an inclosed, cross, or parochial road or as a lane or bridleway. Case law has considered the terminology used on commercial maps and have acknowledged that the term 'cross road' may

be evidence of a public road (Trail Riders Fellowship v SSEFRA 2023, Trafford v St Faith's RDC 1910, Fortune v Wiltshire Council 2012). Trafford v St Faith's RDC 1910 discusses, in relation to Bryant's 1826 map of Norfolk, that the map is evidence of a route's reputation and implies that cross roads, in their original meaning, were minor public roads. This suggests that it is reasonable to allege that public rights may exist, especially as the route is sometimes shown linking two public highways.

On the 1838 Holtby Tithe map Piker Thorn Lane is shown as an enclosed way annotated as 'Pikerthorne Lane' which is credible evidence of its status. It is depicted in the same way as public roads such as Bad Bargain Lane and Holtby Lane rather than in the single dashed line style of public footpath Holtby 5 and public footpath Murton 8 which have a junction with the application route at Point C. Similarly, the 1843 Murton Tithe map and apportionment depicts Piker Thorn Lane in the same way as other public highways on the map. Considering the depiction of Piker Thorn Lane and the fact that there were no tithe rents charged on the land is a reasonable allegation that higher public rights existed over Point B to D of the application route.

In conclusion, the Tithe records, Finance Act records, most of the commercial maps and all the OS maps taken together constitute a discovery of evidence as required by S53(3) of the Wildlife and Countryside Act 1981. This is also sufficient evidence to meet the statutory test under S53(3) of the Wildlife and Countryside Act 1981 to make an order to record the route as a public restricted byway, as indicated Point Y to Z on Map 2.

### Consultation responses

Landowners and Holtby Parish Council have submitted comments objecting to the proposal on the basis of the evidence not showing public use, the reliability of the maps, the route being unsuitable and impacts on wildlife and ecology, privacy, safety and crime.

Have the relevant parish councils been consulted?	<b>Yes</b>
Does the current evidence meet the statutory test for making the order?	<b>Yes</b>
Will the order route be the same as the application route? (Attach a map showing the proposed order route)	<b>No</b>
What status will the route have?	<b>Restricted byway</b>
Officer recommended determination	<b>Make the order</b>
Officer recommended stance towards confirmation-	<b>Support confirmation</b>

### Implications

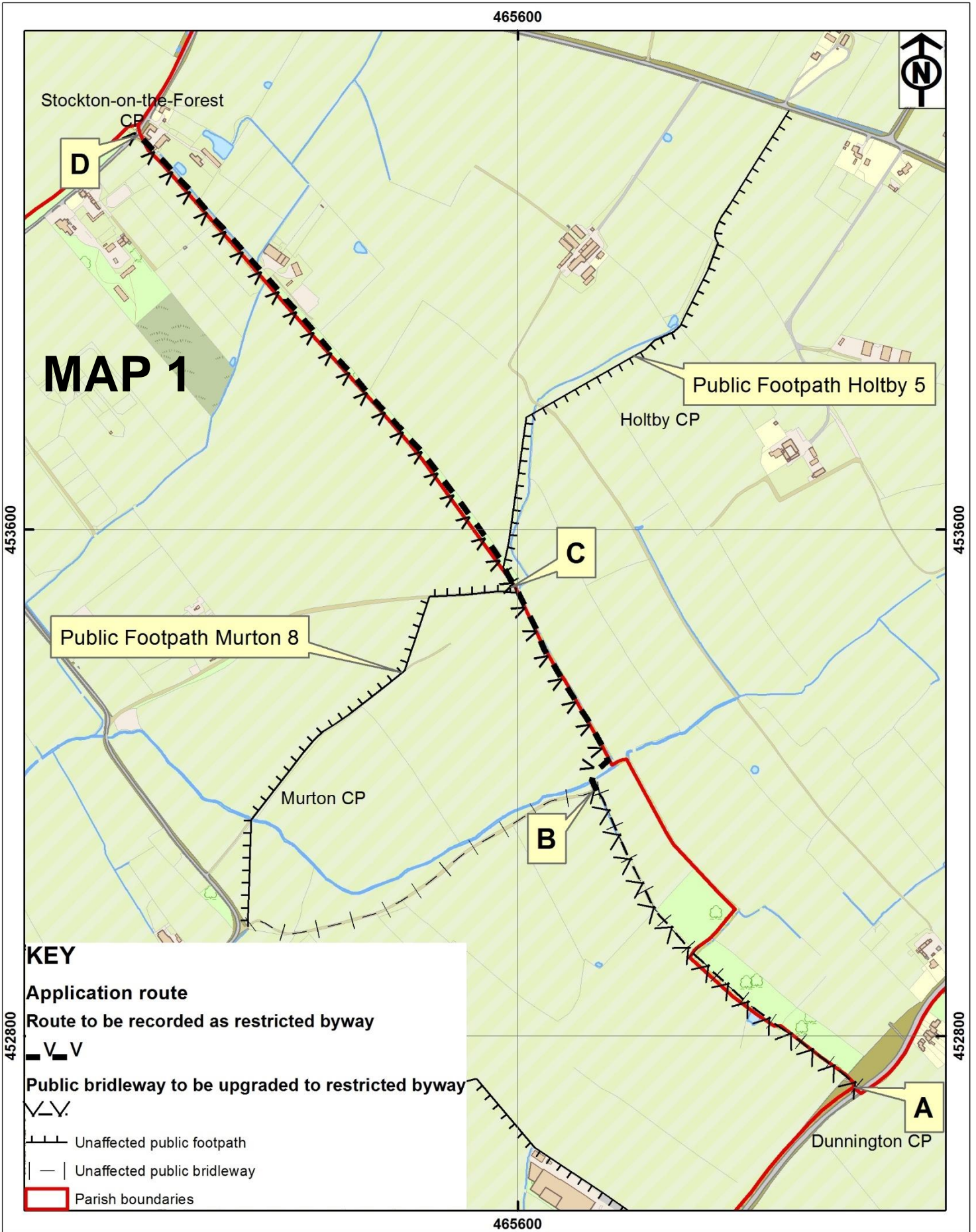
Crime & Disorder		Equalities		Other	
Human Resources		Legal		Highways	✓
Financial		ICT		Property	

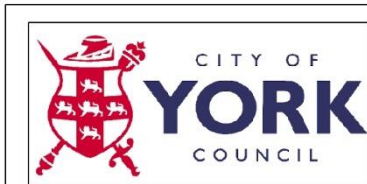
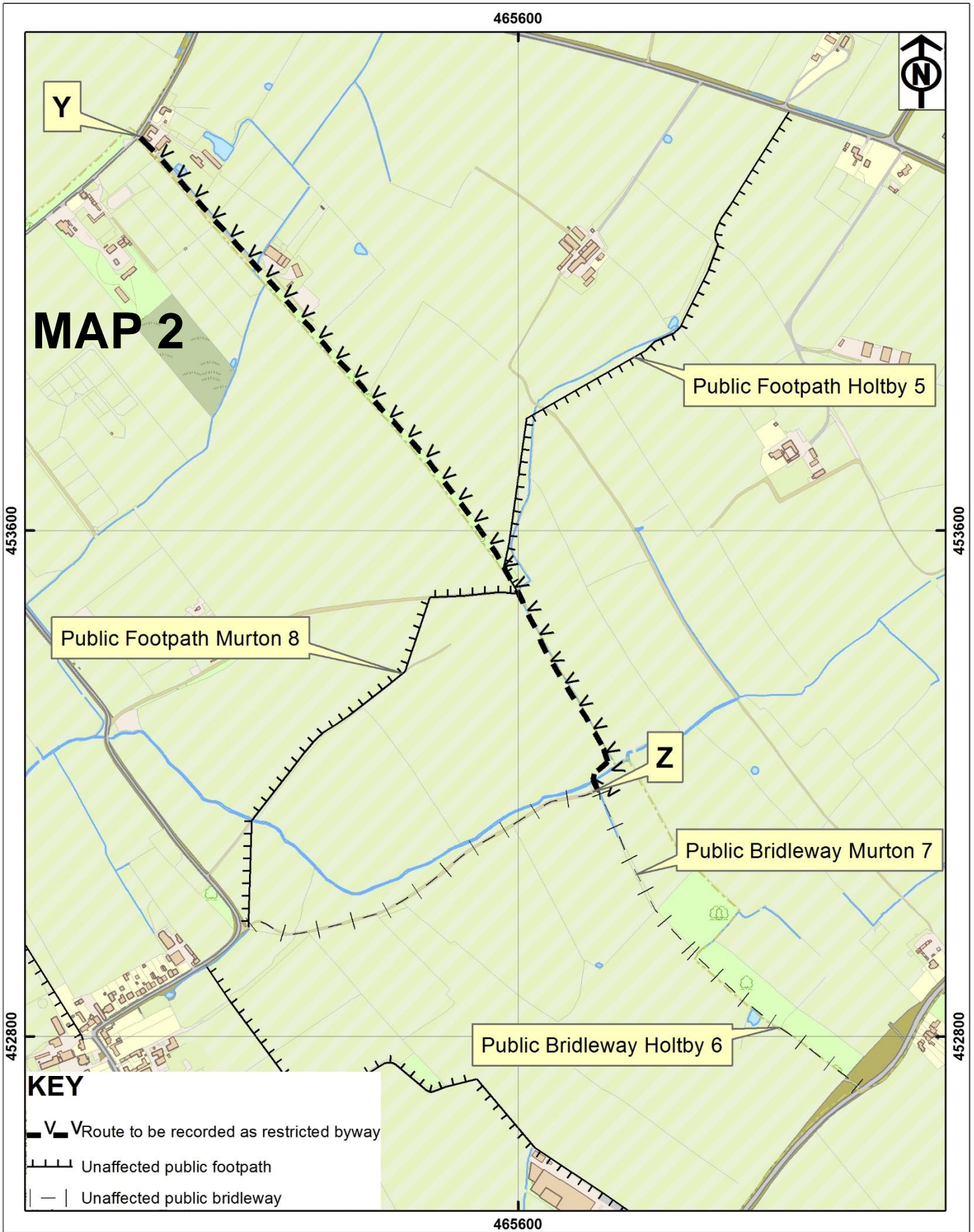
Affected Wards					
All wards		Acomb		Bishopthorpe	
Clifton		Copmanthorpe		Dringhouses & Woodthorpe	
Fishergate		Fulford & Heslington		Guildhall	
Haxby & Wigginton		Heworth		Heworth Without	
Holgate		Hull Road		Huntington & New Earswick	
Micklegate		Osbalwick & Derwent	✓	Rawcliffe & Clifton Without	
Rural West York		Strensall		Westfield	
Wheldrake					

Osbalwick and Derwent Ward Councillor Comments	
Cllr.	Mark Warters
(In response to an email from the Holtby Parish Council Chairman) I hope CYC take on board your submission and the application is rejected which unfortunately will not compensate you for the time expended in refuting this application which is but one of many involving people in considerable concern and similar demands on time.	
Cllr.	Martin Rowley
No comments were received during the initial consultation period.	

Executive Member for Transport Comments	
Cllr.	P. Kilbane
<b>Insert comments here</b>	

Senior Officer Comments	
James Gilchrist	<b>Director</b>
<b>Insert comments here</b>	





West Offices, Station Rise, York,  
YO1 6GA  
Telephone: 01904 551550

## 202304 Holtby and Murton proposed order route

Scale 1:8,000

Drawn By: LRG

Date: 12/2/24

Public Rights of Way

Reference:

Drawing No.

Contains Ordnance Survey data © Crown copyright and database right 2024