

Application to be determined – 202304 Haxby Crookland Lane

DMMO application to upgrade Haxby public footpath 1 to a public restricted byway (between Point B C D on the map below) and record A to B as a public restricted byway

Evidence supporting the application	Evidence not supporting the application
<p>OS maps record the physical existence of a route matching the application route on the 1854 6 inch, 1858 one inch, 1892 6 inch, 1893 25 inch, 1898 one inch, 1911 25 inch, 1913 6 inch, 1930 6 inch and 1930 25 inch, 1936 25 inch, 1952 6 inch, 1958 1:10000 scale.</p> <p>The application route is consistently shown as an inclosed way from Point A-B-C then as a single or double dashed line from Point C to D. However, as the existence of the route on the ground is not in dispute, the OS map evidence is of little value in ascertaining a status.</p>	<p>A route following Point A-B-C-Z on the enclosed map was awarded as a private road with a width of 20 and 30 feet in the 1771 Haxby Inclosure Award. The Inclosure Award does not have an accompanying map but the route description has been cross referenced with OS maps which also show Point A-B-C-Z as an inclosed way.</p>
<p>Point C to D of the application route was diverted in 1973 and this diverted route is shown on OS maps in 1977 25 inch, 1982 1:10000, 1989 1:10000, 1991 1:10000 and 1993 25 inch.</p>	<p>The 1771 Haxby Inclosure award includes information on the maintenance of public and private roads explaining that private roads that 'were or were proposed to be laned or fenced' should be maintained in the same way as the public highways were. There is no information within the Award to say that Point A-B-C-Z of the route was laned or fenced meaning this section does not apply.</p>
<p>A letter received in 1984 from the relevant Highway Authority (North Yorkshire County Council) by residents near Point A to B of the application route states that 'the public, through general usage, have the right to pass' over the way. A copy of this letter was submitted during the initial consultation period and, although the contents of this letter could be considered as evidence supporting public rights, the statements made related to the maintenance responsibility of the way so therefore cannot be taken as evidence confirming a public right of way.</p>	<p>A 1924 Haxby Manorial Court transfer record and corresponding 1941 land conveyance, with a plan, confirms that the awarded private road ran between Point A-B-C-Z of the route.</p>
<p>Plans and hereditament details created under the 1910 Finance Act show that Point A-B-C-Z was excluded from hereditaments. Public and private roads were usually excluded from land that could be taxed therefore the exclusion of</p>	<p>A plan of Tithe free lands in Haxby from 1817 does not show the application route nor is it mentioned in the apportionments. It was not shown because it was not tithe free land.</p>

part of the route has no evidential weight in ascertaining its status.	
	The application route is not shown on any commercial maps available to the council. These maps were publicly available suggesting that, in the opinion of the mapmaker, the application route was not public. However, this should not necessarily be taken as evidence refuting the route's presence or status.
	During the Definitive Map process in the 1950s, Point B-C-D of the application route was claimed as a footpath and subsequently recorded on the definitive map as public footpath Haxby 1.
	After public footpath Haxby 1 was recorded on the definitive map and statement in the 1950s, part was later diverted by order in 1973. This diversion order stopped up footpath rights and any unrecorded bridleway rights over the old alignment. A new section of public footpath was created between Point C and D and this remains the recorded alignment today.
	The walking schedules used to claim routes to be included in the Definitive Map state that Point C to D of the application route was a well defined footpath 1 ½ to 2 yards wide through fields.

DMO Comment on the evidence as a whole

Point A to B of the application route is not currently recorded on the definitive map meaning the legal test for making an order for this section of the route is a reasonable allegation that public rights exist. Point B-C-D of the application route is already recorded as public footpath Haxby 1. Therefore, the legal test for making an order for this section of the route, as required by S53(3) of the Wildlife and Countryside Act 1981, is that, on the balance of probabilities, the status shown on the definitive map is incorrect.

The walking schedules, which claimed Point B-C-D of the application route as a public footpath, state that no other records or maps were consulted for any of the public rights of way claimed in Haxby parish. The parish surveyors believed Point B-C-D to be public as it had been used by villagers for many years without hindrance.

Public footpath Haxby 1 has been examined twice by statutory processes, the original definitive map creation process and the 1973 diversion order. There has been no indication during either of these processes that higher rights might exist.

As discussed, Point A-B-C-Z of the route was awarded as a private road. It has been suggested that the word 'private' may have had a different meaning to its 21st century meaning. Nevertheless, the fact that the awarded private road terminated at Point Z means it was a cul-de-sac route only giving access to adjacent fields. Further, as set out by the award, it was not liable to be maintained publicly, or to the same standard as public highways.

<p>In conclusion, the OS map evidence and Haxby Inclosure Award constitute a discovery of evidence as required by S53(3) of the Wildlife and Countryside Act 1981. However, this evidence is not sufficient, on the balance of probabilities, to show that Point B-C-D of the application route should be redesignated as a restricted byway. Furthermore, the legal test for making an order for a route that is not currently recorded on the Definitive Map (in this case Point A to B of the application route) is a reasonable allegation that public rights exist. The evidence discussed above, with particular attention paid to the Inclosure Award evidence which actively refutes public rights, is insufficient to meet this legal test. This means that the whole application should be rejected. The applicant has the opportunity to appeal this decision to the Secretary of State.</p>
<p>Consultation responses</p>
<p>An executor of a trust that owns land over which the route runs responded to the consultation supporting a restricted byway on the basis of improving safe access and creating a wildlife corridor.</p> <p>The Ramblers Association supported the application on the basis of Crookland Lane being considered historically a privately maintained public highway (RT) and support the BHS application.</p> <p>The British Horse Society and Byways and Bridleways Trust also responded supporting the application.</p> <p>Several adjacent landowners to Crookland Lane have objected to the application on the basis of the lane surface being unsuitable, traffic disruption and conflicting uses and safety concerns. A directly affected landowner has submitted an objection stating that the inclosure awarded route did not cover the whole application route and that the evidence provided does not meet the higher legal test needed to change the definitive status of the route. The objection was supplied with Haxby Manorial records and a conveyance which shows land described in the Inclosure Award.</p> <p>Haxby Town Council has also objected to the application on the basis of a lack of established use or supporting evidence and the impacts to farms on Crossmoor Lane.</p>

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

Implications				
Crime & Disorder		Equalities		Other

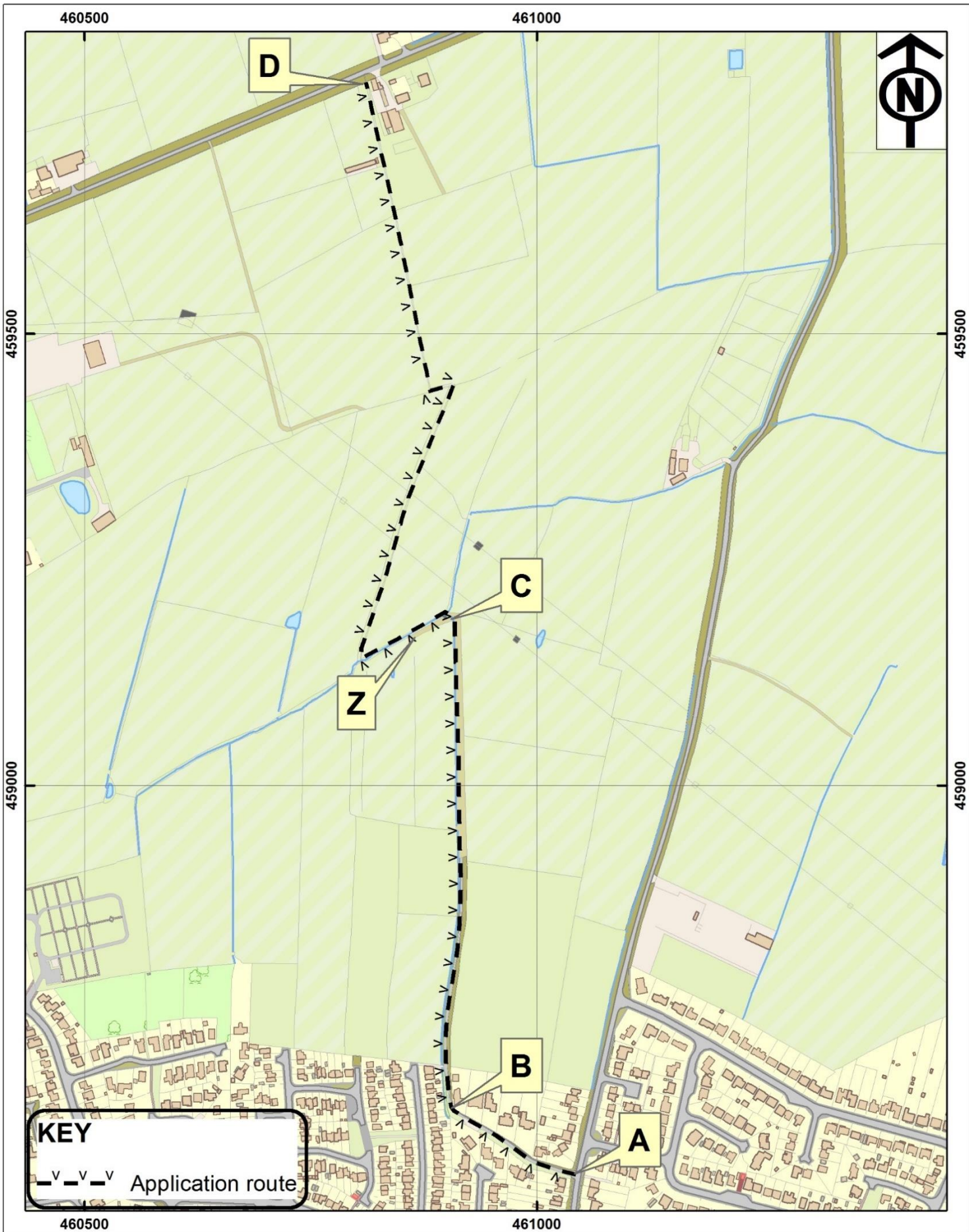
Human Resources		Legal		Highways	✓
Financial		ICT		Property	

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					

Haxby & Wigginton Ward Councillor Comments	
Cllr.	Ian Cuthbertson
No responses were received during the initial consultation period.	
Cllr.	Edward Pearson
No responses were received during the initial consultation period.	
Cllr.	Andrew Hollyer
No responses were received during the initial consultation period.	

Executive Member for Transport Comments	
Cllr.	P. Kilbane

Senior Officer Comments	
James Gilchrist	Director



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Scale 1:5,600 Drawn By: LRG Date: 2/2/24

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