

Application to be determined – Dunnington Priest Lane

DMMO application to record as public restricted byway between A and B on the map below

Evidence supporting the application	Evidence not supporting the application
<p>The application route is depicted in the line style used for 'Lanes and Bridle Ways' on Bryant's 1829 map. The route is depicted as a 'cross road' on Hobson's 1843 map. The route is shown in full on Bacon's 1920 road map and Story's 1926 Road and cycling map, both maps without keys. These maps were available to the public for a fee suggesting that, in the opinion of the mapmaker, these routes may have been open to the public.</p>	<p>A route following the application route was awarded as a private carriage and driving way with a width of thirty feet in the 1772 Dunnington Moor Inclosure Award. The Inclosure Award does not have an accompanying map, but the route description has been cross referenced with OS maps. The Inclosure Award states, with regards to maintenance, that all private ways were to be maintained by and at the expense of all the landowners mentioned within the award.</p>
<p>On Greenwood's 1817 and Teesedale's 1828 maps a junction is shown at point B of the application route but without a key indicating a status for the route. On Fowler's commercial map of 1834 a junction is shown as a 'cross road' leading off Common Lane at Point B. 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 White's 1840 map of the East and North Ridings of Yorkshire or on Bartholomew's 1903 map of driving and cycling roads. However, this absence cannot necessarily be taken as evidence refuting the route's presence.</p>
<p>OS maps record the physical existence of a route matching the application route, labelled as Priest Lane on the 1854 6 inch, 1892 25 inch, 1893 6 inch, 1910 25 inch, 1911 6 inch, 1953 6 inch, 1958 1:10000 scale, 1970 25 inch, 1971 1:10000 scale, 1984 1:10000 and 1995 25-inch OS map. The route is also shown on the following OS maps but not named (likely due to the scale): 1858 one inch, 1898 one inch, 1907 one inch, 1924 one inch, 1947 2 and a half inch, 1955 one inch, 1967 one inch.</p>	<p>A Mission Room was situated adjacent to the application route between 1866 until its removal in 1911 which was authorised under the Ecclesiastical Dilapidations Act 1871. Prior to its removal a 1910 Church Inventory stated the Mission Room was "situated at a considerable distance from any inhabited house or cottage" and had "not been in use as a Mission Room for a considerable number of years."</p>
<p>The map key for the half inch and one inch OS maps depicts the application route in 1858 as an enclosed road, in 1898 and 1907 as a fenced unmetalled road, in 1924 and 1947 as a minor road, and in 1955 and 1967 as an unmetalled minor road. At the time of their 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>During the definitive map process in the 1950s the application route was not claimed as a public right of way nor is there any evidence to indicate the route was provisionally marked on the maps and subsequently considered by Dunnington Parish Council.</p>

<p>Plans created under the Finance Act 1910 for land taxation purposes show the entire route of Priest Lane as excluded from field hereditaments. This indicates that Priest Lane comprised land that was outside the scope of the tax. For example, it could mean it was a public route.</p>	
<p>DMO Comment on the evidence as a whole</p>	
<p>The application route, known as Priest Lane, is not recorded on the Definitive Map. In this case, the statutory test for making a definitive map modification order is a reasonable allegation that public rights exist.</p>	
<p>The 1772 Dunnington Moor Inclosure Award set out the application route as a private carriage and driving way to be maintained by the landowners stated in the award. This route links Elvington Lane and Common Lane, however, it does not offer access to destinations which could not also be reached by using Elvington Lane and Common Lane which were set out as public highways in the Inclosure Award.</p>	
<p>A mission room is depicted adjacent to the application route on OS maps from the 1892 25-inch until its removal in 1911 under the Ecclesiastical Dilapidations Act 1871. Bulmer's Directory of 1892 refers to this Mission Room as Grimston Mission Chapel, erected in 1866 and a service was held there on Sunday afternoons. However, persons attending the Mission Chapel for a weekly service may not have been using the application route 'as of right', they could instead have been using it by implied license to access the chapel only. There is a distinct lack of evidence referring to the Mission Room in the available archives. For example, the 1910 Church Inventory refers to it as a "(so called) Mission Room built on glebe lands not consecrated or licensed" which had been out of use for many years before 1910. The register of services records does not reference services being held there and the churchwardens accounts do not note any expenses being paid out for its upkeep. Therefore, the presence of a Mission Room adjacent to the application route is not sufficient evidence in isolation to infer dedication to the public of the private road previously set out by the Inclosure Award.</p>	
<p>In contradiction to the above, the route is depicted as a cross road on Hobson's 1843 commercial map. Case law has acknowledged that the term 'cross road' may be evidence of a public road used between two places (Trail Riders Fellowship v SSEFRF 2023, Hollins v Oldham 1995 and Fortune v Wiltshire Council 2012). Trafford v St Faith's RDC 1910 discusses, regarding Bryant's 1826 map of Norfolk, that the map is evidence of reputation and implies that cross roads, in their original meaning, were minor public roads. Considering the depiction of the route, or a junction of the route, on Bryant's, Hobson's, Bacon's, Story's, Fowler's, Teesedale's and Greenwood's maps, it is reasonable to allege that public rights may exist, especially as the route is shown linking two public highways.</p>	
<p>The OS maps record the physical existence of a route matching the application route in the 19th and 20th centuries. In all OS maps available to the council except the one-inch maps the application route is named and annotated as Priest Lane. In 1847 the manor of Dunnington was vested in the Ecclesiastical Commissioners who later sold 77 acres of land to Reverend E. Prest. Hence, it is possible that Reverend Prest owned the land where Priest Lane is situated and 'Prest' was misconstrued as 'Priest's Lane'. 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 local names can appear with no legal significance. Therefore, the fact that Priest Lane is named is not sufficient evidence of public status.</p>	

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 the maps. The application route is depicted on OS maps from 1854 indicating that, in the opinion of the OS surveyors, it was in use by the public.

Plans created under the 1910 Finance Act show the application route as excluded from taxable hereditaments. This is credible evidence that the local surveyors viewed the route as public land which was not liable for taxation which corresponds with the contemporaneous OS maps where the route is shown as an unmetalled or minor road.

In conclusion, the Dunnington Moor 1772 Inclosure award, 1910 Finance Act plans and the OS maps taken together constitutes a discovery of evidence as required by S53(3) of the Wildlife and Countryside Act 1981. There 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. However, as the application route was originally set out as a private carriage and driving way, for it to have become a public right of way it is necessary for there to be some evidence of dedication to the public or long public use. The presence of the mission room, which was presumably open to the public at specified times, may indicate public access over the application route. However, if Priest Lane was only ever used to access the mission room, then that use would be by implied licence. No evidence has been found that suggests there was ever wider use by the public. As such it is recommended that the council adopts a neutral stance towards the confirmation of the order.

Consultation responses

No responses were received regarding this application from the Parish Council or statutory consultees. The landowner, who had family knowledge dating back to 1941, stated that the western end of the application route had been gated since 1911 and has not been a through route since at least 1941 and was solely a field access track.

Have the relevant parish councils been consulted?	Yes
Does the current evidence meet the statutory test for making the order?	Yes
Will the order route be the same as the application route? (Attach a map showing the proposed order route)	Yes
What status will the route have?	Restricted byway
Officer recommended determination-	Make the order
Officer recommended stance towards confirmation-	Take a neutral stance

Implications

Crime & Disorder		Equalities		Other	
Human Resources		Legal		Highways	✓

Financial		ICT		Property	
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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
No responses were received during the initial consultation period.	
Cllr.	Martin Rowley
No responses were received during the initial consultation period.	

Executive Member for Transport Comments	
Cllr.	P. Kilbane

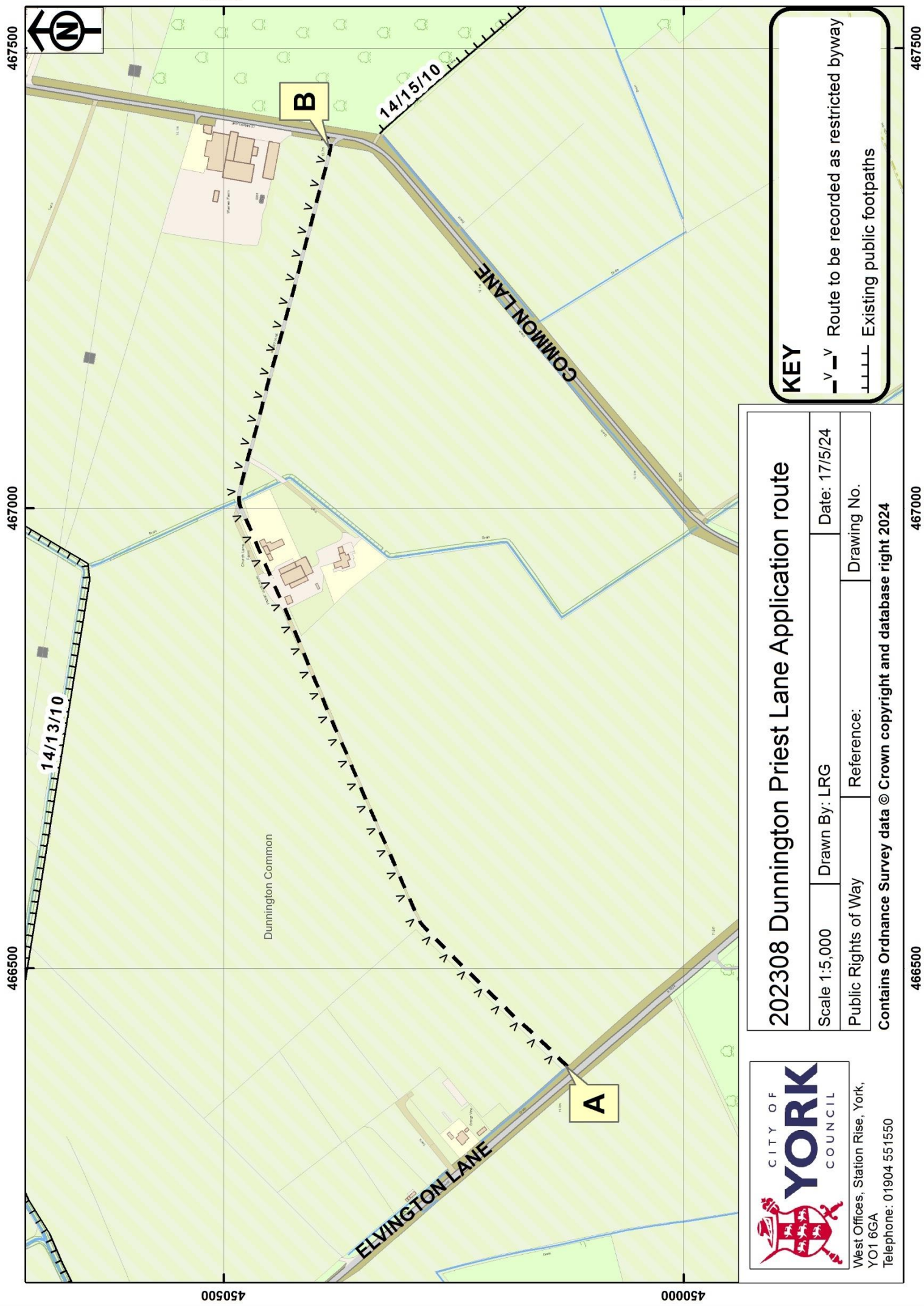
Senior Officer Comments	
	Director

Senior Officer Decision	Make the order Reject the application
Decision Date:	

Decision made by:	Insert name here		
Contact details:			
On behalf of:	Neil Ferris, Corporate Director of Economy and Place		
To be implemented by:	Russell Varley, Definitive Map Officer		
On completion- signed off by:	Date:		
<p>Neil Ferris <i>or</i> James Gilchrist</p> <p>Corporate Director, Economy & Place <i>or</i> Assistant Director Transport, Highways and Environment</p>			

Officer responsible for the report:

Name:	Russell Varley	Telephone No.	01904 553691
Position:	Definitive Map Officer	e-mail	russell.varley@york.gov.uk
Team:	Transport Service		



202308 Dunnington Priest Lane Application route

Scale 1:5,000	Drawn By: LRG	Date: 17/5/24
Public Rights of Way	Reference:	Drawing No.
Contains Ordnance Survey data © Crown copyright and database right 2024		



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