

PRESS NOTICE

**NOTICE OF PUBLIC INQUIRY, Wildlife and Countryside Act 1981, Notice is hereby given that an Inspector will be appointed by the Secretary of State for Environment, Food and Rural Affairs to determine: North Yorkshire County Council, Restricted Byways 10.171/16, 10.171/17, 10.171/18, 10.171/19, 10.171/20 Whorlton & 25.122/718 Hawnby Modification Order 2022** and will attend at: County Hall, Northallerton, DL7 8AD On 14 May 2024 at 10.00am. To hold a public local inquiry into the Order: The effect of the Order, if confirmed without modifications, will modify the definitive map and statement by adding the following Restricted Byways:

No 10.171/16 Commences at GR NZ 4961 0148 and runs generally south-south west for approximately 308 metres to a GR NZ 4944 0124 then generally south-east for approximately 980 metres to GR NZ 5007 0058, then generally west for approximately 371 metres to join the Scugdale Road at GR NZ 4971 0057.

No 10.171/17 Commences at GR NZ 4981 0074 and runs generally north-east for approximately 3114 metres to a junction with Bridleway no. 10.177/081 at GR NZ 5221 0154.

No 10.171/18 Commences at GR NZ 4816 0085 and runs generally south-east for approximately 3207 metres to GR SE 4959 9813, then generally north-east for approximately 2120 metres to GR SE 5134 9920, then generally south-east for approximately 1760 metres to the Parish Boundary at GR SE 5266 9825.

No 10.171/19 Commences at GR NZ 4794 0061 and runs generally south-east for approximately 2343 metres to meet the maintainable highway at GR SE 4966 9976.

No 10.171/20 Commences at the County road at GR SE 4711 9945, then north-east for approximately 1505 metres to GR NZ 4810 0026, then south-east for approximately 1049 metres to GR SE 4889 9969.

No 25.122/718 Commences at the Parish Boundary at GR SE 5266 9825, then runs south-east for approximately 812 metres to a junction with bridleway no.25.122/703 at GR SE 5320 9770.

Any person wishing to view the statement of case relating to this Order may do so by appointment at Stokesley Library, North Road, Stokesley, TS9 5DH. Contact North Yorkshire Council: Ron Allan Tel: 01609 532558 E-mail [Ron.Allan@northyorks.gov.uk](mailto:Ron.Allan@northyorks.gov.uk) Planning Inspectorate Reference: ROW/3319513 Contact point at the Planning Inspectorate: Mike Edwards, Rights of Way Section, Room 3/A, Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN. Tel: 0303 444 5344 Email: [rightofway2@planninginspectorate.gov.uk](mailto:rightofway2@planninginspectorate.gov.uk)

This document relates to the Statement of Case submitted to the Planning Inspectorate by North Yorkshire Council in relation to an Order to record a series of Restricted Byways around the Scugdale Valley.

This document should be placed on public display until the 31<sup>st</sup> of May 2024.

The Appendix mentioned in the submission amounts to over 900 pages and has not been included in this document.

Should anyone wish to see the Appendix, they should contact Ron Allan, Principal Definitive Map Officer via e mail at [ron.allan@northyorks.gov.uk](mailto:ron.allan@northyorks.gov.uk) and an electronic version can be made available.

**THE NORTH YORKSHIRE COUNCIL**

**STATEMENT OF CASE**

**RESTRICTED BYWAYS NO.s 10.171/16, 10.171/17, 10.171/18,  
10.171/19, 10.171/20 WHORLTON AND 25.122/718 HAWNBY  
MODIFICATION ORDER 2022**

**PLANNING INSPECTORATE REFERENCE: ROW/3319513**

**D R A F T STATEMENT OF CASE REGARDING:****RESTRICTED BYWAYS NO.s 10.171/16, 10.171/17, 10.171/18, 10.171/19,  
10.171/20 WHORLTON AND 25.122/718 HAWNBY  
MODIFICATION ORDER 2022****PLANNING INSPECTORATE REFERENCE: ROW/3319513****Introduction**

This document comprises the Statement of Case of The North Yorkshire Council (“the Council”) for the confirmation of Restricted Byways 10.171/16, 10.171/17, 10.171/18, 10.171/19, 10.171/20 WHORLTON AND 25.122/718 HAWNBY Modification Order 2022 (“DMMO”). The Council is the Order Making Authority (“OMA”).

A location plan is included in the Appendix at **Page 1**

At the time of the application (see Appendix **Pages 2-18**) for an Order to amend the Definitive Map and Statement to record claimed routes, North Yorkshire County Council (NYCC) was the Order Making Authority. By the North Yorkshire (Structural Changes) Order 2022 on 1<sup>st</sup> of April 2023 North Yorkshire County Council became The North Yorkshire Council (“the Council”). Due to the process spanning some considerable time, references to both NYCC and NYC as the Council will be found in the documentation.

The DMMO is subject to three objections. Consequently, it has been referred to the Secretary of State for determination. An Inspector has been appointed by the Secretary of State who has directed that a Local Public Inquiry be held to assist in determining whether or not the DMMO is to be confirmed.

**1. BACKGROUND TO THE ORDER**

1.1 On 16<sup>th</sup> January 2001 a Section 31(6) Highways Act 1980 Deposit was lodged with the North York Moors National Park by the Landowner of land in Scugdale and Church House Farm, Whorlton the extent of which is shown on the Plan to the Deposit in the Appendix, **Pages 19-20**. The Deposit Statement recognised only those ways coloured purple being footpaths or green being bridleways on the Plan as public rights of way, and no intention to confirm any further ways to

- public use. The ways shown on the plan deposited are the ways shown on the Order Plan as Other Rights of Way (See Appendix, **Page 43**)
- 1.2 On 1<sup>st</sup> February 2001 a Section 31(6) Highways Act 1980 Deposit was lodged with the North York Moors National Park by the Landowner of land in Scugdale and at Atkinson's Wood Farm Easby the extent of which is shown to the Plan to the Deposit in the Appendix, **Pages 21-22**. The Deposit Statement recognised only the ways coloured purple being footpaths or green being bridleways, and no intention to confirm many further ways to public use. The ways shown on the plan deposited are the ways shown in the Order Plan as Other Rights of Way (See Appendix, **Page 43**).
  - 1.3 However the OMA understand that in order for a landowner to protect land from being subject to any Order being made, for the intention of the landowner not to dedicate land as highway to be protected from an Order being made, the making and lodging of a (then) statutory declaration under the Highways Act 1980 is required for each statement within the (then) period of 6 years from the lodging of the Statement by virtue of section 31(6). The OMA has enquired and has been unable to locate any such statutory declaration being made by the landowners in respect of the Statements lodged in 2001 in accordance with the HA 1980 either within the timeframe of 6 years, or under an amendment to the HA 1980 in 2004 to a period of 10 years.
  - 1.4 Four applications were subsequently submitted in March / April 2018 to record a series of Restricted Byways on the Definitive Map and Statement around the valley of Scugdale, near Swainby (**Location plan & copies of applications; Appendix pages 2-18** )
  - 1.5 The applications were supported by user evidence indicating use by the public over the requisite period. The OMA is taking the submission of the applications as being the date of challenge. One application was dated 29/3/2018 and the other three were dated 17/4/2018. The OMA will therefore consider the later date to be the date of challenge and that the relevant period is from 1998 to 2018
  - 1.6 Two of the applications cover routes on the north side of the Scugdale Valley and two on the south side of the valley. In total 48 users submitted 131 evidence of use forms across the four applications. There is overlap between the routes

described within the two applications covering the north side of the valley and within the two covering the south side of the valley.

#### The Making of the Order:

- 1.7 Having followed established procedures, on the 18<sup>th</sup> of June 2019 the OMA determined that an Order should be made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of the occurrence of an event specified in Section 53(3)(c)(i) of that Act. All four applications have been amalgamated into a single order (**Appendix, pages 19-31**).
- 1.8 The order was sealed on 30 August 2019 and advertised accordingly from 27 September 2019 until 8 November 2019 following which two objections were received.
- 1.8 The objected Order was subsequently submitted to PINS in September 2021 and a decision was made to hold a Local Inquiry in January 2023. Shortly before the Inquiry date the OMA contacted PINS to inform them that there was a fault on the Order map in that an incorrect line style had been used to denote the Order routes.
- 1.9 PINS consequently rejected the submission.
- 1.10 The OMA made a new Order dated 29 November 2022 (**Appendix, Pages 36-43**) which was then advertised in the usual manner from 16<sup>th</sup> December 2022 to 10<sup>th</sup> February 2023 . The parties who had objected to the original order re-submitted their objections and the OMA accepts the objections as being valid for the 2022 Order.

## 2. OBJECTION TO THE ORDER

### 2.1 Brief Outline objections

- That the evidence will not meet the necessary evidential test for the Order to be confirmed.
- That any use was not “as of right” due to the presence of locked gates and signs prohibiting access.
- That users on bicycles were challenged by estate staff and that fencing was in place which prevented access on certain routes

- That no account had been taken of S31 deposits which covered some of the claimed routes **(Appendix , Pages 32-33)**.
- An objection from Lady Ingliby which related to increased use of the routes which pass her property leading to disturbance and also increased maintenance costs for the National Park Authority **(Appendix , Page 34)**.
- A further objection to the 2022 Order was received from the Trustees of The Raisdale Estate **(Appendix, Page 35)**

### 3. SUPPORT FOR THE ORDER

3.1 The application is supported by 131 evidence of use forms plus 6 additional submissions in the form of letters, five of which refer to the section EE-X:

3.2 The network of claimed routes has been divided into discrete sections and the evidence of use for each individual section collated and analysed. The applications were all for Restricted Byways and that is reflected in the Order, however, many users provided evidence of use on foot therefore for completeness that detail has also been included.

3.3 For each individual section of path, the following are available **(Appendix pages 45- 78)**

- Notes on the data **(page 44)**
- Four separate applications were submitted to record a series of routes around the Scugdale valley.
- A total of 131 evidence of use forms were submitted.
- Some users have submitted multiple forms to cover use of multiple routes.
- In order to provide clarity, all the routes have been divided up into discrete sections as per the Order Plan and evidence presented for each discrete section.
- In some cases evidence of use for one particular section is recorded on multiple forms submitted by the same user. For example, a user on

section CA – CB, from Point CB might continue on one of four different routes and may have submitted a form to cover each of those individual routes. In such circumstances only one example of use of CA-CB has been counted.

- Although the applications were to record Restricted Byways, a significant amount of evidence has been submitted regarding use on foot and to a lesser extent on horseback and this has been included in order to provide a complete picture of the user evidence. There are instances where individual users have used sections of path both on cycle and foot.
- The OMA believes that the user evidence in relation to horse riders is insufficient to lead to support any conclusion that bridleway rights might have been acquired (which, if the Restricted Byway evidence was to fail, may have given cyclists the right to use the routes) but has included the User Evidence forms on the basis that the users may have evidence to give regarding signs, challenges, etc.
- A few instances of motor vehicle use have been recorded and whilst this is captured on the graphs, it is of no significance.

For each discrete section of path the following can be found in the appendix at the pages indicated in the table below

- A graph showing the overall years of Cycle user against relevant Evidence of Use form numbers
- A graph showing the overall years of Foot user against relevant Evidence of Use form numbers.
- A graph showing the frequency of Cycle user
- A graph showing the frequency of Foot user
- A graph showing the incidence of comments relating to the following:
  - Stiles
  - Gates
  - Obstruction
  - Whether use was prevented
  - The presence of signs
  - If users were challenged



If use was with Permission

If others were seen using the route

If users were told it was not public

If users were stopped or turned back

If users were told by others that they had been prevented from using the route

- A table correlating comments to Users

<b>Path Section AA-AD</b>	<b>Appendix Page Number(s)</b>
Overall years of Cycle user against relevant Evidence of Use form numbers	45
Overall years of Foot user against relevant Evidence of Use form numbers	45
Frequency of Cycle user	46
Frequency of Foot user	46
Frequency of Horse User	47
Incidence of comments	46
<b>Path Section AD-AG</b>	<b>Appendix Page Number(s)</b>
Overall years of Cycle user against relevant Evidence of Use form numbers	49
Overall years of Foot user against relevant Evidence of Use form numbers	49
Frequency of Cycle user	50
Frequency of Foot user	50
Incidence of comments	50-51
<b>Path Section AD- BE or BF</b>	<b>Appendix Page Number(s)</b>
Overall years of Cycle user against relevant Evidence of Use form numbers	52
Overall years of Foot user against relevant Evidence of Use form numbers	52
Frequency of Cycle user	53
Frequency of Foot user	53
Frequency of horse User	53
Incidence of comments	54-55
<b>Path Section CA-CB</b>	<b>Appendix Page Number(s)</b>
Overall years of Cycle user against relevant Evidence of Use form numbers	56
Overall years of Foot user against relevant Evidence of Use form numbers	56
Frequency of Cycle user	57
Frequency of Foot user	57
Incidence of comments	57-58
<b>Path Section CB-CE or EF</b>	<b>Appendix Page Number(s)</b>

Overall years of Cycle user against relevant Evidence of Use form numbers	59
Overall years of Foot user against relevant Evidence of Use form numbers	59
Frequency of Cycle user	59
Frequency of Foot user	60
Frequency of Horse User	60
Incidence of comments	60-62
<b>Path Section CB-DG</b>	<b>Appendix Page Number(s)</b>
Overall years of Cycle user against relevant Evidence of Use form numbers	63
Overall years of Foot user against relevant Evidence of Use form numbers	63
Frequency of Cycle user	64
Frequency of Foot user	64
Frequency of Horse User	64
Incidence of comments	65-66
<b>Path Section CC-CG-FB</b>	<b>Appendix Page Number(s)</b>
Overall years of Cycle user against relevant Evidence of Use form numbers	67
Overall years of Foot user against relevant Evidence of Use form numbers	67
Frequency of Cycle user	68
Frequency of Foot user	68
Frequency of Horse User	68
Incidence of comments	69-70
<b>Path Section DA-CB</b>	<b>Appendix Page Number(s)</b>
Overall years of Cycle user against relevant Evidence of Use form numbers	71
Overall years of Foot user against relevant Evidence of Use form numbers	71
Frequency of Cycle user	72
Frequency of Foot user	72
Frequency of Horse User	72
Incidence of comments	73-74
<b>Path Section EA-EF</b>	<b>Appendix Page Number(s)</b>
Overall years of Cycle user against relevant Evidence of Use form numbers	75
Overall years of Foot user against relevant Evidence of Use form numbers	75
Frequency of Cycle user	76
Frequency of Foot user	76
Incidence of comments	77-78

### **3.4 Summary of the evidence relating to complete path numbers.**

#### **3.5 Section AA – AD**

- 33 years user by 24 users on cycle
- Reasonably evenly distributed across weekly, monthly and every few months frequency
- 27 users identify gates present on the route (mainly at AD), of which state that they were unlocked or only sometimes locked
- 10 users identify signs but state that they were recent
- 6 users say they were told it was not public
- 1 states that measures prevented their use of the route
- 4 state that they were told by others that they had been prevented from using the route.

#### **3.6 Section AD-AG**

- 34 years use by 22 users on cycle
- Reasonably evenly distributed across weekly, monthly and every few months frequency
- 28 users identify gates present on the route, some report locked gates
- 10 users report recent signs
- 6 users say they were told it was not public
- 2 state that measures prevented their use of the route
- 4 state that they were told by others that they had been prevented from using the route.

#### **3.7 Section AD-AG**

- 34 years use by 38 users on cycle
- Reasonably evenly distributed across weekly, monthly and every few months frequency
- 21 users (includes those on foot) identify gates present on the route, some report locked gates, one for 10 years
- 9 users report signs with comments indicating that they are recent

- 4 users say they were told it was not public
- No users state that measures prevented their use of the route
- 5 state that they were told by others that they had been prevented from using the route.

### **3.8 Section AD-BE or BF**

- 34 years use by 17 users on cycle
- Reasonably evenly distributed across weekly, monthly and every few months frequency
- 21 users (includes those on foot) identify gates present on the route, most who comment say they were locked
- 6 users report signs with comments generally indicating that they are recent..
- 6 users say they were told it was not public
- No users state that measures prevented their use of the route
- No users state that they had permission
- 2 state that they were told by others that they had been prevented from using the route.
- No users state that they were challenged.

### **3.9 Section CA - CB**

- 38 years use by 18 users on cycle
- Reasonably evenly distributed across weekly, monthly and every few months frequency
- 27 users (includes those on foot) identify gates present on the route, most who comment say they were locked
- 19 users report signs with comments generally indicating that they are recent. S31 notices mentioned.
- 6 users say they were told it was not public
- 9 users state that measures prevented their use of the route
- 6 state that they had permission
- 15 state that they were told by others that they had been prevented from using the route.

- 4 were challenged, and 4 state that they were turned back

### **3.10 Section CB - CC / EF**

- 38 years use by 21 users on cycle
- Reasonably evenly distributed across weekly, monthly and every few months frequency
- 25 users (includes those on foot) identify gates present on the route, most who comment say they were locked
- 21 users report signs with comments generally indicating that they are recent. S31 notices mentioned
- 7 state that they were told it was not public
- 2 users state that measures prevented their use of the route
- 1 states that they had permission
- 4 were challenged, and 6 state that they were turned back
- 13 state that they were told by others that they had been prevented from using the route.

### **3.11 Section CB -DG**

- 42 years use by 20 users on cycle
- Frequency of use is split between weekly and every few months.
- 30 users (includes those on foot) identify gates present on the route, most who comment say they were locked
- 13 users report signs with comments generally indicating that they are recent. S31 notices mentioned
- 8 state that they were told it was not public
- 8 users state that measures prevented their use of the route
- 3 were challenged and 3 state that they were turned back
- 8 told by others it was not public
- 8 state that they were told by others that they had been prevented from using the route.

### 3.12 Section CC-CG-FB

- 38 years use by 22 users on cycle
- Most common frequency of use is every few months with lower numbers reporting weekly and monthly use.
- 15 users (includes those on foot) identify gates present on the route, most who comment say they were locked
- 10 users report signs with comments generally indicating that they are recent. S31 notices mentioned
- 4 state that they were told it was not public
- 2 users state that measures prevented their use of the route
- 1 states that they had permission
- 2 were challenged and 3 state that they were turned back
- 7 state that they were told by others that they had been prevented from using the route.

### 3.13 Section DA - CB

- 43 years use by 18 users on cycle
- Most common frequency of use is weekly and every few months and monthly use.
- 27 users (includes those on foot) identify gates present on the route, most who comment say they were locked
- 14 users report signs with comments generally indicating that they are recent. S31 notices mentioned
- 8 state that they were told it was not public
- 7 users state that measures prevented their use of the route
- 5 state that they had permission (see comments below at Page 14)
- 3 were challenged and 5 state that they were turned back
- 7 told by others it was not public
- 7 state that they were told by others that they had been prevented from using the route.

### 3.14 Section EA –EF

- 38 years use by 18 users on cycle
- Frequency of use is mainly split between weekly and every few months.
- 18 users (includes those on foot) identify gates present on the route, most who comment say they were locked
- 15 users report signs with comments generally indicating that they are recent. S31 notices mentioned
- 5 state that they were told it was not public
- 2 users state that measures prevented their use of the route
- 1 states that they had permission
- 2 were challenged and 4 state that they were turned back
- 5 told by others it was not public
- 10 state that they were told by others that they had been prevented from using the route.

3.15 A complete set of the data has also been included at **Appendix 1 Pages 79-90**). Please note when referring to the data set the figure “1” in the columns has no numerical value, it is simply an entry which indicates a positive response contained in the relevant section of a user evidence form.

Some users mention the presence of gates, signs, being challenged and using the paths with permission.

3.16 **Gates.** Where gates were reported by users only a minority (between 25 and 35%) made any further comment regarding whether or not they were locked (see UE form numbers for those which describe locked gates in some form; 7, 9, 10, 17, 27, 36, 38, 41, 47, 49, 54, 58, 59, 62, 64, 65, 66, 82, 83, 84, 85, 87, 88, 89, 90, 92, 95, 96, 97, 99, 103, 107, 110, 111, 112, 113, 115, 118, 128, 129)

3.17 **Signs.** Thirty users report seeing signs at some points on the routes. (See UE form numbers; 8, 11, 20, 23, 25, 30, 34, 35, 36, 42, 49, 54, 55, 64, 65, 68, 69, 95, 98, 102, 107, 110, 112, 113, 115, 116, 117, 125, 126, 127, 128)

- A total of 14 users report that these measures prevented their use of the route. The OMA believes that this low figure indicates that the presence of gates, not all of which were permanently locked or closed, and the signs were not sufficient to prevent the public using the routes and hence acquiring rights.

**3.18 Permission.** Eight users ticked the box on the form to indicate that they had permission to use the routes. In all cases, those indicating that they had permission make the comment that they met the late Lord Ingleby (at the time the landowner) whilst on the route and that he indicated that he was content for the routes to be used. There is no report of any conditions being placed on that use, it being time limited or restricted in any way. It is the view of the OMA that this does not constitute the granting of permission to use the routes but amounts to acquiescence to their use and cannot be considered to demonstrate that there was no intention dedicate the route. **(See UE form numbers;)**

The OMA also take the view that regardless of any consideration of the validity of the permission granted, eight users reporting that they had permission out of a total of 131 would not be sufficient to conclude that use by the public was permissive.

**3.19 Challenge.** Ten users report being challenged, 26 were told a route was not public and 13 were stopped or turned back. This represents a minority of the users **(See UE form numbers; 25, 27, 37, 36, 46, 54, 55, 58, 62, 81 )**

**3.20** The OMA believes that the user evidence graphs provide clear evidence of use sufficient to show that the public have acquired the rights to use the route and that on the balance of probabilities the order should be confirmed

## **4. SUMMARY OF THE OBJECTIONS**

4.1 ETL Landnet on behalf of -

- The Hon. Sarah Hervey-Bathurst,
- The Hon. Katie Freeman,



- The Hon. Henrietta McNeile,
- The Snilesworth Trustees,
- Mr David Williams and The Snilesworth Estate
- Rob Close on behalf of the Trustees of Raisdale Moor.
- Lady Ingilby

**(Appendix Pages 32-35)**

## 4.2 **Objections**

### **Objection 1.**

No account has been taken of the Section 31(6) Map and Statement Deposits by Henrietta McNeile dated 1 February 2001 and Sarah Hervey-Bathurst dated 16 January 2001 held by the County Council on its Statutory Register, which deposits affect the Order Routes. These set the date of challenge back to 2001 requiring qualifying evidence of use from 1981. There is insufficient evidence of user for that period.

### **OMA Comment**

A s31 Highways Act 1980 Deposit was made by the Hon Mrs SR Hervey-Bathurst dated 16/1/2001. The area of land included in the deposit includes path sections BA – BB – BC – BD.

A s31 Highways Act 1980 Deposit was made by the Hon Mrs H McNeile dated 1/2/2001. The area of land included in the deposit includes path sections EE- EF, EF-X, a section of CB- DC, DC – DD – DE – DF – DG.

(Copies of both at **Appendix pages 19-22**)

In neither case was a Statutory Declaration submitted to North Yorkshire County Council within the requisite period.

The OMA believe that failure to submit the Statutory Declaration as required by s31(6) of the Highways Act 1980 renders the deposits null and void and that on that basis they cannot be used as evidence of an intention not to dedicate the claimed paths.

S31(6) of the Highways Act 1980 states –

An owner of land may at any time deposit with the appropriate council—

(a) a map of the land ..., and

(b) a statement indicating what ways (if any) over the land he admits to have been dedicated as highways;

and, in any case in which such a deposit has been made, ... declarations made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time—

(i) within the relevant number of years from the date of the deposit, or

(ii) within the relevant number of years from the date on which any previous declaration was last lodged under this section.

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

## **Objection 2**

The land subject to this Order has been managed as a sporting estate for decades (and certainly within the period in which the user witnesses claim their use). Accordingly, gamekeepers have been employed on a permanent basis to manage the Estate and central to that management has been the exclusion of the public, which is wholly inconsistent with the rearing of game birds and the exercise of the sporting rights over the land.

## **OMA Comment**

See Below

## **Objection 3.**

Gamekeepers patrol the land continuously and any person found on the land without a right to be there (for example someone not exercising a right on foot to enjoy open access on the Moors) has been verbally challenged. Some challenges have been noted in social media providing corroboration to the

challenges made by the Estate. This will be a matter for evidence at the point of determination of the Order.

**OMA Comment**

The OMA do not dispute that there have been challenges to the use of some routes on behalf of the landowners. However the OMA believe that within the context of the large scale of the overall user that those challenges did not provide sufficient challenge to the public as a whole to deter or prevent continued use of the routes.

**Objection 4.**

The management of the land including the need to exclude the public has also required the closing and locking of gates across the routes and the erection of signs prohibiting access. Signs have been damaged and gates have been climbed so any use in such circumstances has been contentious and constitutes user by force and cannot be user as of right.

**OMA Comment**

The OMA do not dispute that users have encountered gates on limited sections of the claimed routes which at times were locked. However the OMA believe that within the context of the large scale of the overall user that those locked gates did not provide sufficient challenge to the public as a whole to deter or prevent continued use of the routes.

**Objection 5.** Any claimed use by cyclists is a relatively recent occurrence and there is no basis for a finding that such use is longstanding.

**OMA Comment**

Although the use of mountain bikes is a relatively recent development, the OMA believes that within that context there is sufficient user evidence to show that public rights have been acquired. In addition, there is user evidence dating back to 1976 which the OMA consider adds substantially to the weight of evidence.

**Objection 6.** Despite now being claimed by the Parish Council, there is no evidence that the Parish Council have ever claimed these routes as public rights of way at any stage in the preparation of the Definitive Map under the stages prescribed by National Parks and Access to the Countryside Act 1949

or the Countryside Act 1968. They were plainly not regarded as public rights of way and the application appears to coincide with changes in ownership of parts of the Estate and an attendant change in the relationship between some members of the Parish Council and the landowners

**OMA Comment**

This objection does not comment on the evidence.

**Objection 7**

**(Raisdale Estates)**

States that anyone using the sections of the route within their ownership prior to the CROW Act was challenged and that anyone using the route on a bicycle has also been challenged. In addition the section of woodland to the west has been fenced off.

**OMA Comment**

The OMA do not dispute that there have been challenges to the use of some routes on behalf of the landowners. However, the OMA believe that within the context of the large scale of the overall user that those challenges did not provide sufficient challenge to the public as a whole to deter or prevent continued use of the routes.

**Objection 8**

(Lady Ingilby)

The objector comments on how increased use of the route will lead to an increased maintenance requirement and may have a detrimental effect on her property which stands alongside one of the routes.

**OMA Comment** This objection does not address any issues that the Inspector can consider

Lady Ingilby –

The basis of Lady Ingilby's objection is that the proposal to create definitive paths would automatically increase usage of Limekiln Lane bridle path running alongside her residence. She considers that this risks indeterminate disruption

and would incur increased maintenance and resurfacing costs to the National Parks Authority, which could mean additional disruption.

**(Appendix Page 34)**

Rob Close on behalf of the Trustees of Raisdale Moor.

The basis of the objection is that any walkers seen using the route prior to the CROW Act were challenged and anyone using the route on a bicycle has always been challenged. It should also be noted that until the 1980's the woodland to the west was fenced off from the moor owned by my clients.

No evidence has been submitted to support this objection and the OMA believe that the comments made above regarding the effectiveness of such measures would also apply in this case.

**(Appendix Page 35)**

- 4.3 There are a number of comments recorded in relation to the presence of gates, signs and challenges and the OMA acknowledge that the landowners have taken some steps to prevent the acquisition of rights. A number of users who comment on these challenges indicate that they were relatively recent, not all users provide dates but those who do refer to 2-3 years before submission of the applications. The claimed routes cover a very extensive area of forestry and open moorland, the north side of the valley has an existing network of public rights of way whilst the southern side is CROW access land above the forestry. This is a very popular area for both walkers and riders within easy reach of an urban area. The OMA believe that there is insufficient evidence of a systematic and sustained effort appropriate to the size of the area, taking account of the potential and actual users, to make known to the general public that they did not consider use to amount to the acquisition of rights.
- 4.4 There are 7 entry points to the new path network on the north side of the valley and 4 on the path network to the south; most can be accessed via open access

land. No evidence has been presented by the objectors of an effective network of signs indicating private land/ no access.

4.5 Twenty eight users state that they have seen signs on a route 8, 11, 20, 23, 25, 30, 34, 35, 36, 42, 49, 54, 55, 64, 65, 68, 69, 95, 98, 102, 107, 110, 112, 113, 115, 116, 117, 125, 126, 127, 128). Most do not provide any further detail but of those who do the signs are described as being seen on Path No. 10.171/20, Path no.10.17/18 & Path No. 10.17/19. Only one user (form no127) provides a detailed description of the signs.

Where users give any information on how long the signs are in place; user no. 127 describes a National Park sign which has been in place for 10 years but all other descriptions state that the signage is “recent” and/or in the last two years (being around 2016).

4.6 The OMA believes that the high volume of user recorded on the evidence shows that public use continued throughout the relevant period unabated and unaffected by those measures which the landowners put in place; and that use continued because the measures were ineffective.

## 5. LEGAL FRAMEWORK

5.1 Section 53(2) of the Wildlife & Countryside Act 1981 (“WCA 1981”) requires surveying authorities to keep definitive maps under review. This provision states as follows:

*“As regards every definitive map and statement, the surveying authority shall –*

- (a) *as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence,*

*before that date, of any of the events specified in subsection (3);  
and*

- (b) *as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.”*

The OMA is the relevant “surveying authority”.

- 5.2 The DMMO was made on the grounds that an event set out in Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 Act had occurred. This provision states as follows:

*“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.”*

- 5.3 As regards to relevant evidence section 31(1) of the Highways Act 1980 (“HA 1980”) states:

*“Where a way over any land, other than a way of such a 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 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”*

5.4 Section 31(9) expressly states that a highway (and so a restricted byway) can be established at common law, as well as pursuant to the statutory test in section 31(1):-

*“Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years, or being presumed or proved in any circumstance in which it might have been presumed or proved immediately before the commencement of this Act”*

5.5 Therefore, in relation to user evidence, the requisite period for the purpose of meeting the requirements of s53(3)(c)(i) WCA 1981 can be either of the following:

- i. 20 years, such that the relevant tests set out in section 31 of the HA 1980 have been met (the “Statutory Test”)
- ii. A period of use such that an intention to dedicate the land as a public right of way can be demonstrated (the “Common Law Test”)

5.6 The OMA believes that both the Statutory Test and the Common Law Test are met by the user evidence.

5.7 Section 32 of the HA 1980 requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant documents which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.

5.8 In this case the only documentary evidence that the OMA is aware of which might be considered are the S31(6) submissions which have been discussed above.

## **6 Application of the User Evidence to the relevant tests:**

### **6.1 Force**

A total of 14 users report that these measures prevented their use of the route. The OMA believes that this low figure indicates that the presence of gates, not



all of which were permanently locked or closed, and the signs were not sufficient to prevent the public using the routes and hence acquiring rights.

None of the users report having to use force to deal with any locked gates and there are no reports from the landowners of damage to gates.

## 6.2 **Secrecy**

There is no suggestion either by users or landowners that the use of the routes has been anything other than during the day without any recourse to secrecy or concealment of the activity.

## 6.3 **Permission**

Eight users ticked the box on the form to indicate that they had permission to use the routes. Those users who relate interaction with the late Lord Inglyby detail conversations which the OMA believe do not amount to explicit or implied permission in relation to specific routes but do imply an acceptance of use of the routes by the public amounting to common law dedication.. In all cases, those indicating that they had permission make the comment that they met the late Lord Inglyby (at the time the landowner) whilst on the route and that he indicated that he was content for the routes to be used. There is no report of any conditions being placed on that use, it being time limited or restricted in any way.

It is the view of the OMA that this does not constitute the granting of permission to use the routes but amounts to acquiescence to their use and cannot be considered to demonstrate that there was no intention dedicate the route. No users have provided any details of any explicit or implied permission to use any of the routes (**See UE form numbers; 83, 85, 87, 88, 89, 97, 103, 113**).

The OMA also take the view that regardless of any consideration of the validity of the permission granted, eight users reporting that they had permission out of a total of 131 would not be sufficient to conclude that use by the public was permissive.

## 6.4 **Challenge.**

Ten users report being challenged, 26 were told a route was not public and 13 were stopped or turned back. This represents a minority of the users (**See UE form numbers; 25, 27, 37, 36, 46, 54, 55, 58, 62, 81**)

- 6.5 The OMA believes that the user evidence graphs provide clear evidence of use sufficient to show that the public have acquired the rights to use the route and that on the balance of probabilities the order should be confirmed

## **7 Statutory Test under section 31 of the HA 1980:**

- 7.1 The relevant period of inquiry under section 31 of the HA is 1998 to 2018. Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 Act states that a Modification Order should be made on the discovery by the authority of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land to which the map relates.

Section 31(9) of the Highways Act 1980 ("the 1980 Act") provides:-

*"Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years, or being presumed or proved in any circumstance in which it might have been presumed or proved immediately before the commencement of this Act"*

On the basis of the user evidence submitted, the OMA were satisfied that it was reasonably alleged that a right of way subsists on each of the claimed routes and accordingly determined to make an Order

- 7.2 Section 32 of the 1980 Act requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant documents which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.

## **8 Common Law test:**

- 8.1 The user evidence indicates use of all routes beyond the 20 year relevant period, specifically:
- Section AA-AD – 32 years total, therefore common law dedication from 1986 to 1998

- Section AD-AG – 34 years total, therefore common law dedication from 1984 to 1998
- Section AD-BE – 33 years total, therefore common law dedication from 1985 to 1998
- Section CA-CB – 38 years total, therefore common law dedication from 1980 to 1998
- Section CB-CC/EF – 38 years total, therefore common law dedication from 1980 to 1998
- Section CB-DG – 42 years total, therefore common law dedication from 1976 to 1998
- Section CB-CG-FB – 38 years total, therefore common law dedication from 1988 to 1998
- Section DA-CB – 43 years total, therefore common law dedication from 1975 to 1998
- Section EE-EF – 38 years total, therefore common law dedication from 1985 to 1998

The usage detailed above also significantly pre-dates the 2001 S31 submissions.

- 8.2 The OMA therefore consider that this use amounts to an acceptance of the use of the routes by the public and hence is an inference of dedication at common law.

## **9 CONCLUSION**

- 9.1 The body of evidence contained in the 131 evidence of use forms shows that there has been a considerable use of the claimed routes both on cycles and on foot sufficient to establish user over the requisite period of 20 years.
- 9.2 The OMA acknowledges that signs and gates in place to prevent access at certain points and that some users were challenged and turned back but only in the very late stages of the relevant period and this was not sufficient to prevent the public continuing to use all of the claimed routes.

- 9.3 The OMA submits that the Inspector can confirm the DMMO on the grounds that the event specified in section 53(3)(c)(i) has occurred in any one of the following ways:
- 9.4 That there is a statutory inference of deemed dedication from the use which took place for the 20 years prior to the challenges that occurred in 2018
- 9.5 That there is an inference of dedication at Common Law through use which took place between 1975 and 1998.
- 9.6 For the reasons set out in this statement, the OMA respectfully submits that the Inspector confirms the DMMO

North Yorkshire Council

January 2024