



Order Decisions

Site visit on 28 July 2020

by Mark Yates BA(Hons) MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 23 September 2020

Order Ref: ROW/3215719

Referred to as 'Order A'

- This Order is made under Section 53(2)(a) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Upgrading of Public Footpath No. 05.36/30 to Bridleway, Brockhole Lane, Settle Modification Order 2018.
- The Order was made by the North Yorkshire County Council ("the Council") on 29 August 2018 and proposes to upgrade an existing public footpath to bridleway status, as detailed in the Order Map and Schedule.
- There was one objection and one representation outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed subject to modifications set out below in the Formal Decision.

Order Ref: ROW/3215718

Referred to as 'Order B'

- This Order is made under Section 53(2)(a) of the 1981 Act and is known as the Public Bridleway No. 05.36/30, Brockhole Lane, Settle Modification Order 2009.
- The Order was made by the Council on 27 November 2009 and proposes to upgrade an existing public footpath to bridleway status, as detailed in the Order Map and Schedule.
- There were three objections and one representation outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is not confirmed.

Procedural Matter

1. In light of the restrictions arising from the Covid 19 Pandemic the public inquiry scheduled to be held on 23 June 2020 was cancelled. Following consultation with the interested parties it was decided that the Orders could be determined from the written representations of the parties.

Main Issues

2. The Orders rely on the occurrence of an event specified in Section 53(3)(c)(ii) of the 1981 Act. Therefore, for me to confirm either Order, I must be satisfied that the evidence shows on the balance of probabilities that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
 3. An implication of dedication can arise at common law if there is evidence from which it may be inferred that a landowner has dedicated a public right of way and the public has accepted the dedication. In this case reliance is placed on historical documentary evidence as well as more recent evidence of use of the route by horse riders. Both could support an inference of dedication at common law.
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4. The relevant statutory provision for the dedication of a public right of way is found in Section 31 of the Highways Act 1980. This requires consideration of whether there has been use of the way by the public, as of right and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a highway.
5. It is also asserted that the documentary evidence could be supportive of the route being an ancient vehicular highway. There is nothing to suggest that any of the exemptions found in the Natural Environment and Rural Communities Act 2006 are applicable. Therefore, if I find that the documentary evidence is supportive of the route being a vehicular highway, this Act will have stopped up the public rights for mechanically propelled vehicles and the way should be recorded as a restricted byway.

Reasons

Background matters

6. The Council was directed by the Secretary of State to make an Order following a successful appeal¹ by the applicant. I note that whilst the inspector reached a view on the balance of probabilities that the way was a public bridleway, regard was given to Section 53(3)(c)(i) of the 1981 Act. As outlined above, the upgrading of an existing right of way needs to be determined under Section 53(3)(c)(ii) of the Act. In determining whether either Order should be confirmed, I have had the benefit of receiving further submissions and visiting the site.
7. Both Orders involve the upgrading of the same public footpath to bridleway status ("the claimed route"). In essence, Order A was made to remedy certain technical issues in relation to Order B, including the matters raised in two of the objections. Whatever the outcome of my decision for Order A, it is clear that Order B should not be confirmed. It is nonetheless reasonable to have regard to the objections and representations made in response to both Orders. I shall first consider the documentary and user evidence before addressing the technical issues initially raised in relation to Order B.
8. Although the Council believes that Order A should also not be confirmed, it has not actively pursued a case in opposition to the Order. Further, the two parties who object to the confirmation of the Orders have not provided additional information in support of their objections. The case in support has been made by Ms Bradley on behalf of the British Horse Society. An additional party (Ms Cook) has submitted a statement in support on behalf of the Byways and Bridleways Trust.

Consideration of the documentary evidence

9. The small-scale Fowler Map of 1834 appears to show a short stub leading out of Ingfield Lane at the northern end of the claimed route. It is quite probable that the route continued through to Hoyman Laithe and the connecting bridleway (Lodge Road) in the manner depicted on the contemporaneous tithe map extracts, which are addressed below. In support, Ms Cook highlights that this section is shown on the Fowler map as a cross road.

¹ In accordance with Schedule 14 to the 1981 Act

10. Tithe map extracts, dating from 1841, show the claimed route as an enclosed lane which was open at both ends. It is shown running outside of the tithed parcels of land. Attention is drawn to dashed lines shown within the numbered plots being representative of footpaths, this includes the section of the path that continues to the south of Lodge Road. An additional map of 1841 does not appear to add anything further to the tithe map extracts.
11. The depiction of the claimed route in this way could provide some support for it having higher public rights and possibly being a public road. However, highways were incidental to the tithe process which will serve to limit the evidential weight of these documents. Additionally, there is no annotation on the map extracts to provide any indication regarding the status of the route. The claimed route may well fall within the land recorded in the tithe apportionment as "*Roads and Waste*" but this would only really indicate that the land was unproductive.
12. A number of Ordnance Survey ("OS") maps have been provided from the middle of the nineteenth century onwards. The claimed route is consistently shown running between boundaries and often open to the connecting highways at each end. However, I note that there appears to be a solid line across the route at Hoyman Laithe on the 1894 OS map, which most probably denotes the presence of a gate. This is also applicable to the 1956 OS map.
13. The value of the historical OS maps is that they generally provide a reliable indication of the presence of particular physical features when the land was surveyed. They do not purport to identify the status of the paths or tracks shown. In terms of guidance issued by the OS regarding the representation of rights of way, this has varied over time. The depiction of a way with the annotation "*FP*" or "*BR*" is not necessarily indicative of public status. Likewise, the depiction of an enclosed lane without these initials is of limited value in support of the way being a vehicular highway. The same generally applies to the depiction of the claimed route and Lodge Road on the 1898 OS map as third-class roads that were metalled and fenced. A 1956 OS map depicts the route as poor or unmetalled.
14. Nothing has been provided to substantiate the assertions that the provision of an OS parcel number for the route is indicative of it being a public road. It is also speculation that the verge shown on the 1894 OS map indicates there was a beaten track which is likely to have represented use by public vehicular traffic.
15. Ms Cook draws attention to the presence of a sandstone quarry on the 1847 OS map served by a lane accessed from the claimed route. She asserts that this would have been a public quarry. However, no evidence has been provided to show that this was the case. I find the reference in the OS object name book to the claimed route as a lane to be indicative of its physical character rather than providing any clear indication of the route's status.
16. The 1906 Bartholomew's map depicts the claimed route as an inferior road not recommended for cyclists. This designation only relates to the condition of the route at the time of the survey. There is nothing to suggest that the legal status of the roads shown on this map were subject to investigation and it carries a disclaimer that "*The representation of a road or footpath is no evidence of the existence of a right of way*".

17. The claimed route is consistently shown on the maps as a through route linking two highways. Whilst such evidence could provide some support for the route being a highway, it would not necessarily be supportive of vehicular status. The route links at its southern end with a bridleway and the recorded footpath continues southwards towards Mearbeck. Nothing has been provided to suggest that these rights of way carry higher public rights and therefore it cannot be said that a through route existed between two vehicular highways.
18. The documents provided in relation to the 1910 Finance Act show that the majority of the claimed route was excluded from the surrounding hereditaments. The remainder, towards its southern end, is shown within one of the numbered hereditaments for which no deduction for the presence of a public right of way was claimed. Lodge Road is shown running through the same hereditament and no deduction was also claimed in respect of this way.
19. The exclusion of a way from the surrounding hereditaments can provide a good indication of highway status. It is more likely to be representative of a vehicular highway as footpaths and bridleways were usually dealt with by way of deductions in the accompanying field books. However, it needs to be borne in mind that the existence of highways was incidental to the Finance Act and there may be other reasons for its exclusion. I note that a section of the footpath that crosses the claimed route is also shown excluded from the surrounding hereditaments.
20. In this case, a section of the claimed route is shown within a hereditament and this will lessen the value of the Finance Act map. This will apply particularly to the assertion that the route is a vehicular highway. The absence of a claimed deduction for a right of way over the southern section does not demonstrate that there was no public bridleway or footpath over the land at that time. It only reveals that the landowner did not make a claim for the presence of a right of way.
21. A farm survey map produced during the second World War shows the majority of the claimed route excluded from the surrounding parcels. The survey was undertaken to identify land for the purpose of increasing food production. It was not directly concerned with identifying highways and the depiction of a proportion of the route as unproductive land is not necessarily indicative of highway status. Accordingly, the evidential value of the map will be limited.
22. As part of the process to compile the original definitive map in accordance with the National Parks and Access to the Countryside Act 1949 a draft map was produced showing the ways believed to be public. The initial identification and survey of the alleged public rights of way was generally undertaken by parish councils. In this case, the claimed route is shown coloured green on the draft map to indicate that it was viewed at the time as a public bridleway. It linked at its southern end with a bridleway at Lodge Road and the section of the way that continues southwards towards Mearbeck is also shown as a bridleway². The initials "FG" are annotated on the route at Hoyman Laithe to denote a field gate.
23. The claimed route and the path that continues southwards from Hoyman Laithe were subsequently recorded on the definitive map as sections of the same public footpath. There is no documentation to show what actually happened between the production of the draft and definitive maps. It is not possible to

² The southern continuation of the route is not part of the Order

determine for instance whether there is any substance in the assertion by Ms Bradley that this arose from the two sections either side of Lodge Road being shown as having the same status. However, clearly the claimed route was initially viewed, presumably by the parish council, as a public bridleway. This could point to a locally held belief that it was a bridleway at the time of the draft map.

The user evidence

24. Eleven people originally submitted a user evidence form in support of equestrian use of the claimed route. The application and evidence forms were submitted in response to the erection of a kissing gate and locked field gate which served to prevent access for horse riders on occasions. Some additional people have subsequently provided evidence of personal use on horseback. This evidence of use includes the period between 1954 and the locking of the field gate in around 2003.
25. A letter of June 2007 from the local Ramblers Association representative acknowledges that horse riders had used the route for a period that encompassed the previous twenty years. Further supporting evidence of use by horse riders was provided by the local British Horse Society representative. It is also apparent that one of the objectors (Mr Booth) owns land adjacent to the route and he has previously acknowledged that the route was used by local horse riders. No evidence has been provided to indicate that prior to 2003 the equestrian use was by way of permission or challenged.
26. The points raised by those who objected to the confirmation of the Orders focused largely on matters relating to the suitability of the route being recorded as a bridleway. However, the issue to be determined is whether the evidence is supportive of the claimed route having been dedicated as a bridleway. There is no evidence in support of the use by horse riders constituting a public nuisance for pedestrians.

Conclusions from the evidence

27. The historical maps reveal that the claimed route is a feature of some antiquity. It is shown as a through route between two recognised highways and the map evidence could provide some support for the route being a highway. However, the majority of these maps are of limited evidential value in that they were not produced for the purpose of recording the status of the ways shown.
28. The Finance Act map is supportive of the majority of the claimed route being a highway but a section towards its southern end is included within one of the numbered hereditaments. This issue will lessen the weight that can be attributed to the map and it would not be supportive of the whole of the route being a vehicular highway. Further, the southern end of the claimed route links with a public bridleway. The draft map reveals that the route was considered at the time to be a public bridleway.
29. Although the documentary evidence as a whole could provide some support for the route being a bridleway, the weight of this evidence is not particularly strong. There is less support for it being viewed as a vehicular highway. However, this documentary evidence is bolstered by the user evidence which provides evidence of equestrian use dating back to 1954. A local landowner and others acknowledge that the route has been used by horse riders.

30. When taken together the documentary and user evidence points on balance to the route having been dedicated at some point in the past as a bridleway. I therefore conclude on the balance of probabilities that this footpath ought to be recorded as a bridleway. The uncontested user evidence could also provide support for the dedication of a bridleway under statute, but I do not need to now make a finding on this issue.

Technical issues

31. The Council attempted to resolve the technical issues in respect of Order B when it made Order A. In terms of the varying widths for the route these are set down in Part II of the Schedule by reference to the length of each section of the claimed route. The Order also specifies that it proposes to upgrade the relevant footpath to bridleway status.

32. There is no evidence in support of a gate historically being in place at grid reference 38199 46270. Two OS maps appear to show a gate towards the southern end of the claimed route and a field gate is recorded in the draft map and statement at this point. There could be some doubt regarding whether a gate was in place when the bridleway was dedicated. However, various structures are recorded in the definitive statement in relation to the claimed route and the continuation of the route southwards from Lodge Road. One of the field gates is clearly shown on the definitive map at Hoyman Laithe. I therefore take the view on balance that the Order should record a field gate at this point.

33. I note that Order A makes provision for it to be confirmed by the Council. As the decision now resides with the Secretary of State this text should be removed from the Order.

Overall Conclusions

34. Having regard to these and all other matters raised in the written representations I conclude that Order A should be confirmed with modifications. In the circumstances, Order B is not confirmed.

Formal Decisions

Order A

35. I confirm the Order subject to the following modifications:

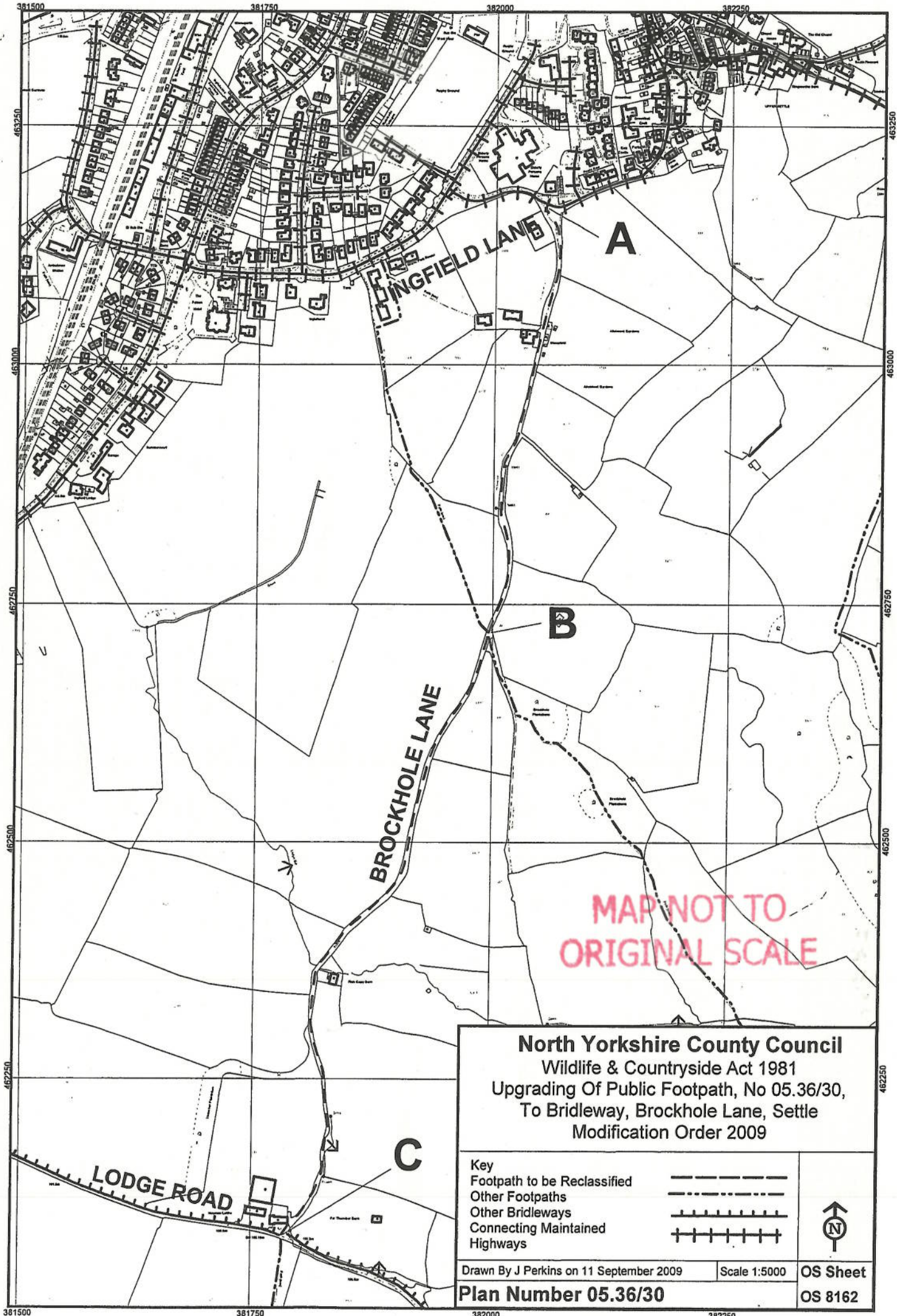
- Delete the limitations listed in Part II of the Order Schedule and insert "*Field gate at GR 38179 46209*".
- Delete the text in relation to the confirmation of the Order by the Council.

Order B

36. I do not confirm the Order.

Mark Yates

Inspector



North Yorkshire County Council
 Wildlife & Countryside Act 1981
 Upgrading Of Public Footpath, No 05.36/30,
 To Bridleway, Brockhole Lane, Settle
 Modification Order 2009

Key	
Footpath to be Reclassified	-----
Other Footpaths	-----
Other Bridleways	-----
Connecting Maintained	-----
Highways	+++++



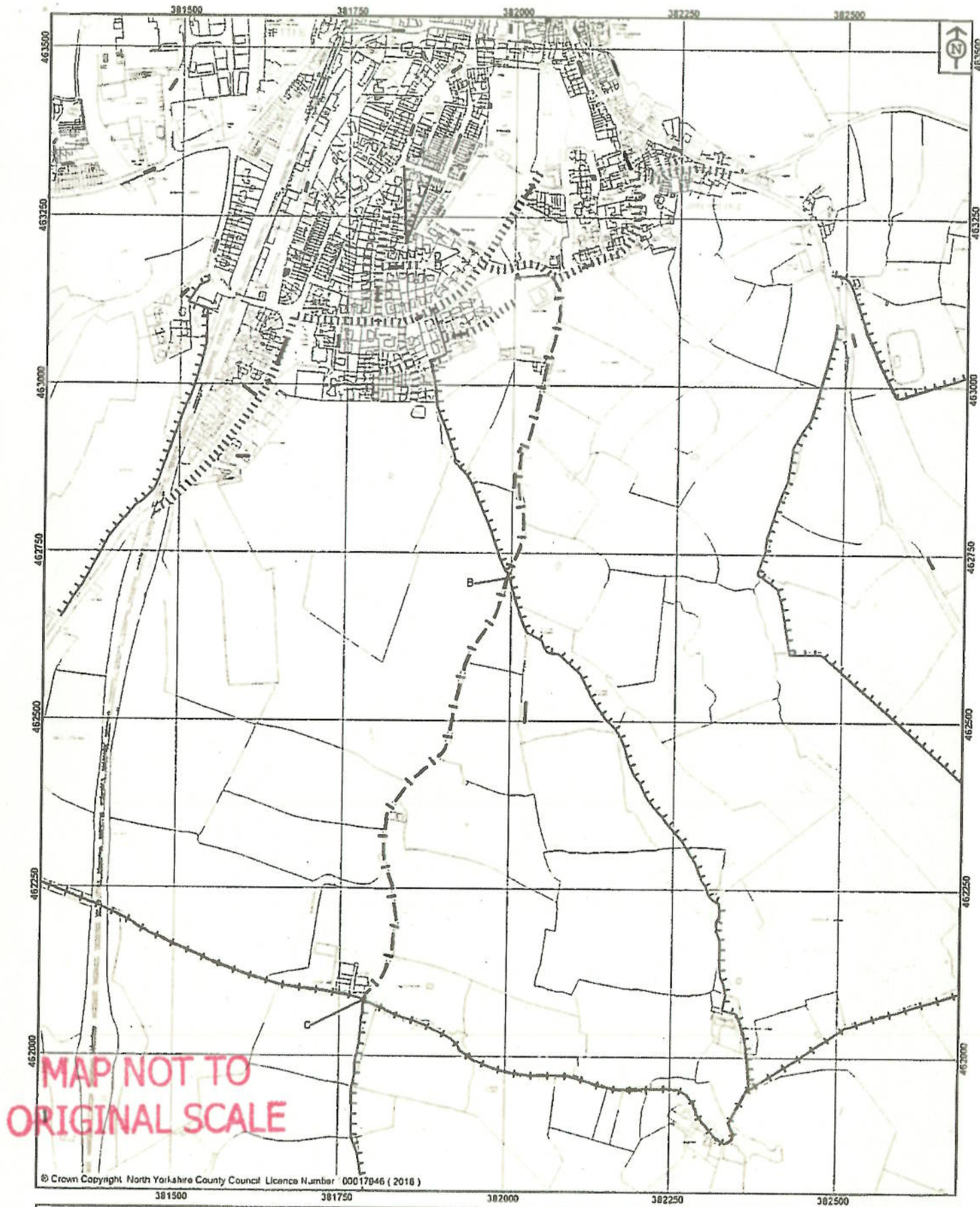
Drawn By J Perkins on 11 September 2009

Scale 1:5000

OS Sheet

Plan Number 05.36/30

OS 8162



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**North Yorkshire
County Council**
Public Rights of Way
Waste and Countryside Services
County Hall
Northallerton
DL7 8AH

Key	
Footpath to be upgraded	— — — —
Other footpaths	— — — — — — — —
Other bridleways	— — — — — — — — — —
Maintainable Highways	— — — — — — — — — — — — — — — —
Map drawn on 28 August 2018	
Drawn by RWA	Scale 1:5000

North Yorkshire County Council
Wildlife and Countryside Act 1981
Section 53
Upgrading of Public Footpath No 05 36/30
to Bridleway, Brockhole Lane, Settle
Modification Order 2018
File Ref No. CRA/2004/01/DMMO