

Committee: ACCESS
Date: 14 JANUARY 2010

Report: DEFINITIVE MAP TEAM QUARTERLY REPORT

Purpose of this Report

1. The purpose of the report is to:
 - Keep Members informed of progress towards attainment of Definitive Map Team actions;
 - Provide a breakdown of casework;
 - Identify other work of the team.

Strategic Planning Framework

2. The information and recommendation(s) contained in this report are consistent with the Authority's statutory purposes and its approved strategic planning framework.
 - **Corporate Plan Objective**
 - c) work towards the production of an up-to-date working copy of the Definitive Map so that 80% of the network follows the exact definitive line and is correctly recorded on the Definitive Map by 2012.

Background

3. This is the quarterly report for the third quarter of 2009/10, identifying Definitive Map work and progress for the period **1 October 2009 – 31 December 2009**

Casework Up-date

4. The appendices give outline details of current active casework.

Appendix 1	Current Definitive Map Modification Orders.
Appendix 2	Current Public Path Orders.
Appendix 3	Maps for new casework (where they are available).
Appendix 4	Completed matters e.g. Order Confirmed - file awaiting Legal Event Order and up-dating of the Definitive Map. Once these stages have been completed the file will be closed and removed from the appendices.
Appendix 5	Pending matters.
Appendix 6	Applications received but not yet being actively progressed.

Actions and Casework

5. The actions that the Definitive Map Team expect to achieve this year (2009/10), and the progress towards them, are shown in the table below:

Financial Year	Action 2009-10	Actual 31 December	Revised 2009-10
Anomalies Resolved	40	31	
Opposed Orders to the Secretary of State	1	3	
Matters to Decision including Outstanding DMMO App'tions	8	3	

6. The reporting of case-work remains unchanged;

Casework breakdown (see appendices)	Definitive Map Modification Orders	Public Path Orders
No. of active cases @ 30 September 2009	8	4
New cases 1 October – 31 December 2009	1	0
Cases completed 1 October – 31 December 2009	1	0
No of active cases @ 31 December 2009	8	4

Matters submitted to the Secretary of State

7. The diversion of part of FP 16 Flasby-with-Winterburn has now been confirmed by the Inspector without modification.
8. The two DMM Orders relating to the BOATs at Cam High Road have now been submitted to the SoS (see appendix 1).
9. The Diversion of FPs 7&8 Coverham-w-Agglethorpe and the diversion of FPs 25 & 28 Bainbridge have been confirmed by the Secretary of State.

Matters awaiting submission to the Secretary of State (2009-10)

10. There are currently six outstanding opposed Definitive Map Modification Orders awaiting submission to the Secretary of State for confirmation:

- One DMM Order relating to the BOAT application at Thwaite Lane, Clapham;
- Two DMM Orders relating to the re-alignment of FP 12 Buckden and FP 30 Grassington respectively;

- One DMM Order relating to the deletion of BW 28 Marrick at Marrick Priory (see appendix 1);
- One DMM Order relating to BW 12 Horton-in-Ribblesdale (Harber Scar Lane);
- One DMM Order relating to BW 20 Malham Moor / BW 3 Malham (Monk's Road).

Legal Event Order

11. The Omnibus Legal Event Order for the outstanding Craven Path Orders is now being prepared and will be completed in the New Year. The Omnibus Orders for Richmondshire and Cumbria will then follow.

Emergency and Temporary Closures

Emergency Closures

12. Two emergency closures were made in this period.

	Routes Affected	Period	Reason
1	Footpath No.53 (part) Arkengarthdale & 17 (part) Reeth	2 to 22 December 2009	Flood damage to the footbridge at Slei Gill.
2	Footpath No.21 Buckden	4 to 24 December 2009	A landslip after heavy rain and ground saturation.

Temporary Closures

13. Three temporary closures were made in this period.

Orders Still in Force

	Routes Affected	Status	Reason
1	Unclassified County Road No. U7028 (part) Hawes	Ends 12 January 2010	The Order is necessary to carry out works whilst maintaining public safety, because several sections of the route have become eroded and it is proposed to construct appropriate drainage infrastructure, comprising of, side ditches, stone and piped culverts beneath the surface, stone fords and stone humps to deflect surface water.

	Routes Affected	Status	Reason
2	Footpath No.7 (part) Bainbridge	Ends 1 Feb 2010	Works are being executed on or near the route, namely road surfacing and marking.
3	Footpath No.4 (part) Burnsall	Ends 4 April 2010	Repairs to the bridge, namely taking down a section of the eastern abutment wall for rebuilding.
4	Footpath No.516040 (part) Dent	Ends 3 March 2010	Emergency closure continuation – tree felling.
5	Footpath No.33 (part) Horton-in-Ribblesdale	Ends 13 June 2010	To allow the safe conversion of a barn adjacent to the footpath.
6	Footpath No.53 (part) Arkengarthdale & 17 (part) Reeth	Ends 1 June 2010	Emergency closure continuation - to allow work to be carried out to replace the footbridge at Slei Gill.
7	Footpath No.21 Buckden	Ends 3 June 2010	Emergency closure continuation - repairs to the footpath.

Pennine Bridleway

14. The two Orders at Farmoor Common have been confirmed by the Authority as unopposed Orders. They have been advertised in the usual way and no challenge has been received. The Orders are now operational.

RECOMMENDATION

15. It is recommended that members that Members note the report.

John Dwyer
Senior Definitive Map Officer

Date : 31 December 2009

Background papers

None

CURRENT CASEWORK

Appendix 1

Wildlife & Countryside Act 1981 - Current Definitive Map Modification Orders		
Description of Matter	Previous Position 30 September 2009	Current Position 31 December 2009
<p>Application for BOATs from Hetton via Moor Lane and Weets Top to Hawthorn Lane, Malham and from Hetton via Moor Lane to Boss Moor Lane. Up-grade to BOAT BWs 7 & 4(part) Hetton, BW 6 Calton, BW 21 Malham, & BW 2 (part) Rylstone File Ref:- E214302 Application Received:- 28 September 2005 Initiation Received:- Work Commenced:- 1 September 2006 Sealed:- Confirmed:-</p>	Pending case.	Research now in progress.
<p>Initiated by YDNPA. Addition of BOAT at UCR No. 215G Ingleton and Addition of BOAT at UCR No. 1007 Buckden and Upgrade to BOAT at Footpath No. 4 Horton in Ribblesdale all at Cam High Road Order No.1 Addition of BOAT in the Parishes of Ingleton, Horton & Buckden due to alleged higher rights. File Ref:- E214403a Application Received:- Initiation Received:- 6 June 1989 Work Commenced:- 14 March 1991 Sealed:- 19 March 2003 Confirmed:-</p>	Correspondence sent to both objectors giving further details of new evidence found and explaining the proposed modification of the Orders to record a Restricted Byway on the unsealed section. One objection withdrawn, awaiting response from remaining objector. TRO in place.	Orders sent to Secretary of State with request to confirm Order No.2 as a BOAT and to modify Order No.1 to record a Restricted Byway instead of BOAT along the (unsealed) section currently recorded as a Footpath, due to the effects of NERC. One outstanding objection by a landowner on the grounds of insufficient evidence of public vehicular rights.
<p>Initiated by YDNPA. Addition of BOAT at UCR No. 1007 Bainbridge & Hawes all at Cam High Road Order No.2 Addition of BOAT in the Parishes of Bainbridge & Hawes due to alleged vehicular rights. File Ref:- E214403b Application Received:- Initiation Received:- 6 June 1989 Work Commenced:- 14 March 1991 Sealed:- 19 March 2003 Confirmed:-</p>	Correspondence sent to both objectors giving details of additional supporting evidence found and explaining the proposed modification of the Orders to record a Restricted Byway on unsealed section of Cam High Road. One objection withdrawn, awaiting response from remaining objector.	Orders sent to Secretary of State with request to confirm Order No.2 as a BOAT and to modify Order No.1 to record a Restricted Byway instead of BOAT along the (unsealed) section currently recorded as a footpath, due to the effects of NERC. One outstanding objection by a landowner on the grounds of insufficient evidence of vehicular rights.

Wildlife & Countryside Act 1981 - Current Definitive Map Modification Orders		
Description of Matter	Previous Position 30 September 2009	Current Position 31 December 2009
<p>Upgrade of Bridleway No. 12 Horton in Ribblesdale to BOAT from Horton village along Harber Scar Lane to Buckden parish boundary. Upgrade Bridleway No. 12 Horton in Ribblesdale to Restricted Byway and record a BOAT on the UCR from Horton/Buckden parish boundary to High Greenfield based on documentary evidence. File Ref:- E214407 Application Received:- 18 January 2005 Initiation Received:- Work Commenced:- 8 February 2005 Sealed:- 4 June 2009 Confirmed:-</p>	<p>Two objections to the Order received. Corresponded with one objector giving details of the evidence which supports the Order and asking whether objection is still maintained; awaiting response. Second objector to be contacted on their return from a trip abroad; will meet to discuss the evidence.</p>	<p>First objection withdrawn following correspondence. Second objector maintaining their objection on the grounds that enclosure awards setting out a public carriage road on the route are not legally valid. Order to be sent to Secretary of State with the objection once current priority cases are processed.</p>
<p>High Birkwith to Cam End Application for upgrade to BOAT of Footpath No.1 & No.10 Horton-in-Ribblesdale due to alleged higher rights. File Ref:- E214408 Application Received:- 18 January 2005 Initiation Received:- Work Commenced:- 5 December 2005 Sealed:- Confirmed:-</p>	<p>This is a high priority matter that will be started as soon as the Cam High Road orders have been submitted to the SoS.</p>	<p>Application was affected by the Winchester case. Historical evidence indicates that the route was a public carriage route. Clarification regarding all current landowners under way. A report to be written for legal services with a recommendation to publish an Order to upgrade the Footpath to Restricted Byway.</p>
<p>Application for BOATs at Top Mere Road and Starbotton Cam Road, Kettlewell. Up-grade to BOAT of BWs 6,7 & 33 Kettlewell and BW 1 Carlton Highdale File Ref:- E214602 Application Received:- 24 October 2005 Initiation Received:- Work Commenced:- 1 September 2006 Sealed:- Confirmed:-</p>	<p>Research now completed. A report has been sent to the Solicitor . LATE APPLICATION</p>	<p>Decision made 12 November not to make an Order for BOAT or to change the status of the claimed routes to Restricted Byway. The status of the claimed routes will therefore remain as bridleway. The applicant and interested parties have been informed. The applicant has 28 days to appeal the decision.</p>

Wildlife & Countryside Act 1981 - Current Definitive Map Modification Orders		
Description of Matter	Previous Position 30 September 2009	Current Position 31 December 2009
<p>Upgrade Bridleway No. 3 Settle & Nos. 11 & 12 Malham to BOAT at Stockdale Lane Application for upgrade of BW 3 Settle, BWs 11, & 12 Malham (including link to Gorbeck Road) to BOAT at Stockdale Lane to Malham Cove Road due to alleged higher rights. File Ref:- E216201 Application Received:- 29 November 2004 Initiation Received:- Work Commenced:- 3 October 2005 Sealed:- Confirmed:-</p>	<p>Govt Office North East is still considering the appeal. Further comments are still awaited from the appellant and the impact of the Winchester judgement is being considered. Letter sent 9th June 2009 requesting most up to date information. No reply as yet. Further letter requesting an up-date was sent 1 September 2009.</p>	<p>No reply to either letters as yet.</p>
<p>Bridleway No. 28 in the Parish of Marrick at Marrick Priory Research to investigate whether the Bridleway is on the correct alignment through the Priory, or whether it was shown on the definitive map in error. File Ref:- E220401 Application Received:- Initiation Received:- Work Commenced:- 22 November 2007 Sealed:- 9 December 2008 Confirmed:-</p>	<p>Advertisement period ended 13 February, 2009, with four objections received. Correspondence ongoing with objectors..</p>	<p>Preparation of submission documents for referral to Secretary of State.</p>
<p>Bridleway 82 Sedbergh at Hebblethwaite Hall Possible deletion / addition of part of Bridleway - apparent anomaly. Initiated by the Authority. File Ref:- E230314 Application Received:- Initiation Received:- 1 October 2008 Work Commenced:- 1 October 2008 Sealed:- Confirmed:-</p>	<p>Evidence appears to indicate that the route immediately past Hebblethwaite Hall has always been used and recognised as the public right of way. The definitive map shows a different alignment in adjacent yard. Further consultation to be carried out with previous residents to confirm.</p>	<p>Responses to consultation & evidence received so far indicate that the definitive line was recorded in error. Current landowners have been consulted. Awaiting further evidence & responses.</p>

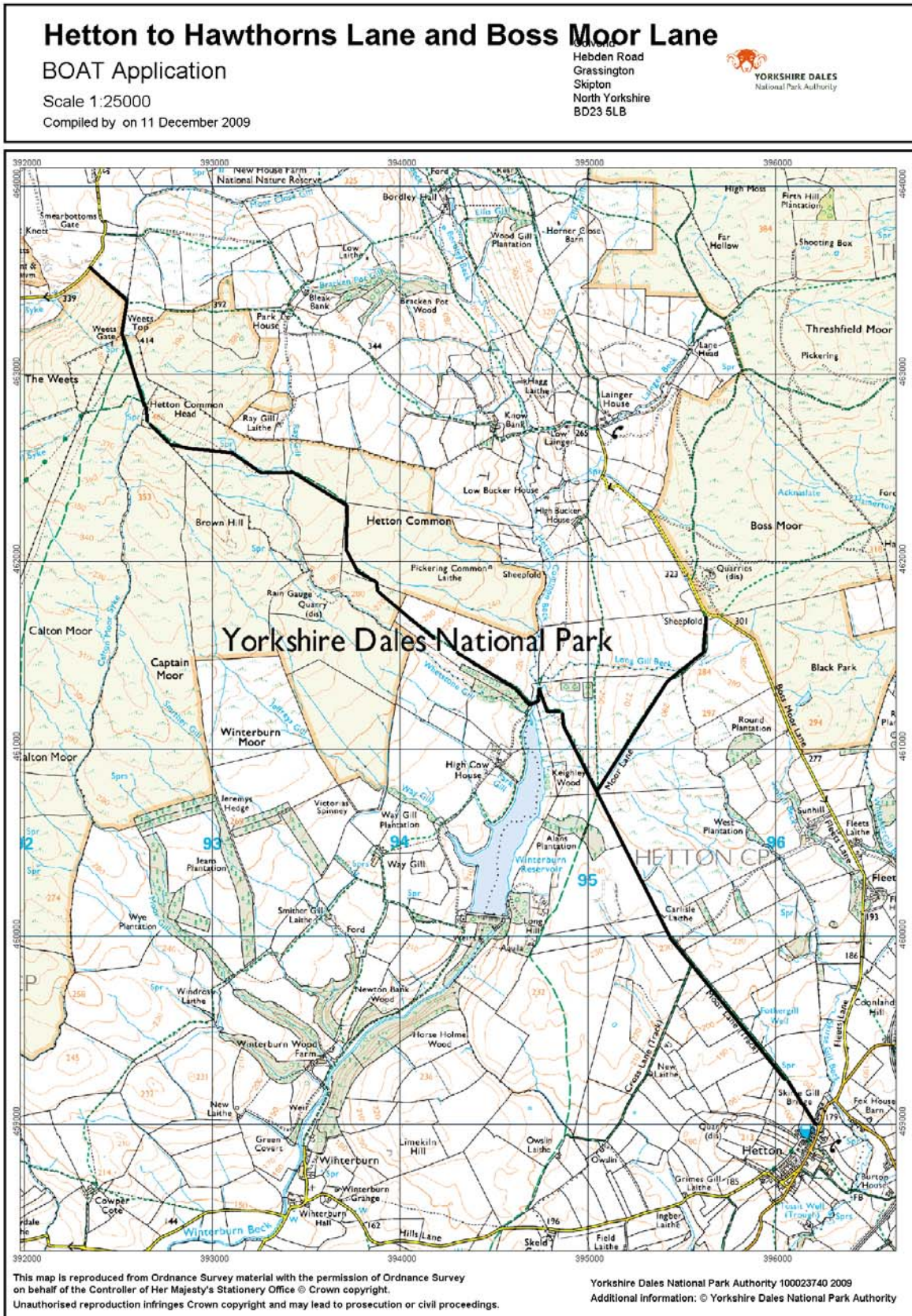
Highways Act 1980 & Town & Country Planning Act 1990 Current Public Path Orders and Agreements		
Description of Matter	Previous Position 30 September 2009	Current Position 31 December 2009
<p>Diversion of Footpath No 16 Flasby-w-Winterburn at Cowper Cote Farm Diversion of the path away from the farmhouse to improve privacy and security HA 1980 S119 File Ref:- E112910 Application Received:- 14 December 2007 Initiation Received:- Work Commenced:- 14 December 2007 Sealed:- 25 November 2008 Confirmed:- 1 December 2009</p>	<p>Exchange of Statements of Case has taken place. It is anticipated that the Inspector will make an unaccompanied site visit in early November.</p>	<p>Inspector made a site visit in November. Decision now received - Order confirmed without modification. Confirmed Order will now be advertised.</p>
<p>Diversion of Footpath No.25 & 28 Bainbridge at Low Blean Farm To divert two footpaths that run in close proximity of each other within the farmstead. One weaving between buildings of a narrow working yard and the other alongside and through the garden of the farmhouse, onto an alignment through open fields approx. 30 metres further south. HA 1980 S119 File Ref:- E125208 Application Received:- 15 November 2005 Initiation Received:- Work Commenced:- 27 January 2006 Sealed:- 22 March 2007 Confirmed:- 11 November 2009</p>	<p>Accepted by PINs to hold a Public Hearing, date set for 20 October, 2009.</p>	<p>Following the outcome of the Public Hearing, the Secretary of State for the Environment confirmed the Order on the 11 November, 2009. Advertisement period until 08/01/2010.</p>
<p>Diversion of Footpath No. 102 at Hawes To divert Footpath No. 102, Hawes with minimum disturbance to the public onto a parallel line along the eastern boundary wall of the property at Westfield, Snaizeholme, to allow the development of a conservatory which was granted planning permission on the 15/08/2008. TCPA 1990 S257 File Ref:- E125623 Application Received:- 20 March 2009 Initiation Received:- Work Commenced:- 5 May 2009 Sealed:- 23 July 2009 Confirmed:- 30 September 2009</p>	<p>Authority to make Order 02/07/09. Order made 23/07/09 and advertised until 21/09/09.</p>	<p>Order confirmed 30 September, 2009 and advertised until 20/11/2009. Works completed and the Order is now in operation.</p>

**Highways Act 1980 & Town & Country Planning Act 1990
Current Public Path Orders and Agreements**

Description of Matter	Previous Position 30 September 2009	Current Position 31 December 2009
<p>Diversion of Footpath Nos. 7 & 8, Coverham-with-Agglethorpe at Thorngill To divert two public footpaths away from the front driveway, and from between the house and buildings of a racehorse training yard. HA 1980 S119 File Ref:- E126003 Application Received:- 14 February 2007 Initiation Received:- Work Commenced:- 31 May 2007 Sealed:- 10 October 2007 Confirmed:- 24 November 2009</p>	<p>Accepted by PINs to be dealt with by the written representation procedure. Exchange period now ended, Inspector to make site visit.</p>	<p>The Secretary of State for the Environment confirmed the Order on 24 November, 2009. Advertisement period until 15/01/2010.</p>

New Matters

Hetton to Hawthorns Lane via Weets Top



Completed Matters (i.e. Order Confirmed)			
Description of Matter	Order Confirmed or Appeal Rejected	Current Position 30 December 2009	File Closed
<p>Diversion of Footpath No. 5 Horton-in-Ribblesdale at Nether Lodge To divert the footpath away from the buildings of a working farm at a point where four footpaths merge into the farmyard on the busy three peaks route. HA 1980 S119 File Ref:- E114425 Application Received:- Initiation Received:- Work Commenced:- 23 May 2005 Sealed:- 2 September 2005</p>	Confirmed:- 3 November 2005	Legal Event to be made and records to be updated.	
<p>Creation of Footpath at Arcow Quarry, Helwith Bridge Horton-in-Ribblesdale. Creation Agreement to dedicate new Public Footpath adjacent to quarry access road. HA 1980 S25 File Ref:- E114426 Application Received:- Initiation Received:- 5 April 2007 Work Commenced:- 1 June 2007 Sealed:- 26 November 2007</p>	Confirmed:-	Legal Event Order being prepared	
<p>Creation of new footpath in the parish of Malham Creation Agreement for new path at Malham to provide a safe alternative to the main village road. HA 1980 S25 File Ref:- E115410 Application Received:- Initiation Received:- 10 March 2008 Work Commenced:- 14 March 2008 Sealed:-</p>	Confirmed:- 25 February 2009	Notice of Creation Agreement advertised 4/10/2009. Path opened Easter 2009.	

Completed Matters (i.e. Order Confirmed)			
Description of Matter	Order Confirmed or Appeal Rejected	Current Position 30 December 2009	File Closed
<p>Creation of New Footpath No31 Threshfield at Grisedale Farm . Application for the creation of new Footpath No31 Threshfield by way of Creation Order . Order to be made concurrently with Extinguishment Order (see also application reference E117114) HA 1980 S26 File Ref:- E117113 Application Received:- 19 September 2006 Initiation Received:- Work Commenced:- 14 November 2006 Sealed:- 11 April 2007</p>	<p>Confirmed:- 15 June 2007</p>	<p>Legal Event Order required to update the Definitive Map.</p>	
<p>Extinguishment of Footpath 14 (part) at Grisedale Farm Threshfield Application for the extinguishment of Footpath 14(part) Threshfield, at Grisedale Farm. This is a cul-de sac path that does not give a connection to any other PRow. See also Creation Order at reference E117113. HA 1980 S118 File Ref:- E117114 Application Received:- 19 September 2006 Initiation Received:- Work Commenced:- 14 November 2006 Sealed:- 11 April 2007</p>	<p>Confirmed:- 15 June 2007</p>	<p>Legal Event Order required to update the Definitive Map</p>	
<p>Diversion of Footpath No. 33, Marrick Diversion around cattlegrids that have been installed across the track at Marrick Park. HA 1980 S119 File Ref:- E120402A Application Received:- 1 June 2006 Initiation Received:- Work Commenced:- 1 June 2006 Sealed:- 7 February 2007</p>	<p>Confirmed:- 30 May 2007</p>	<p>Legal Event to be made and records to be updated.</p>	

Completed Matters (i.e. Order Confirmed)			
Description of Matter	Order Confirmed or Appeal Rejected	Current Position 30 December 2009	File Closed
<p>Diversion of Footpath No.8 Melbecks Where the definitive line goes through two houses and the garden of a third property. HA 1980 S119 File Ref:- E120505 Application Received:- Initiation Received:- Work Commenced:- 23 October 2006 Sealed:- 7 February 2007</p>	Confirmed:- 22 March 2007	Legal Event to be made and records to be updated..	
<p>Creation of Footpath No. 61 Muker Creation Agreement to add a footpath linking two county roads via a snicket behind the church in the village and Parish of Muker. HA 1980 S25 File Ref:- E120607 Application Received:- Initiation Received:- Work Commenced:- 3 November 1999 Sealed:- 28 July 2008</p>	Confirmed:- 28 July 2008	Legal Event to be made and records to be updated.	
<p>Diversion of Footpath No. 23, Hudswell To divert the footpath currently passing through a childrens play area to a line a few metres distant within the same field boundary, which would enable the enclosure of the play area for the protection of the children and exclusion of dogs. HA 1980 S119 File Ref:- E122701 Application Received:- 4 October 2006 Initiation Received:- Work Commenced:- 6 November 2006 Sealed:- 19 March 2007</p>	Confirmed:- 20 June 2007	Legal Event to be made and records to be updated.	

Completed Matters (i.e. Order Confirmed)			
Description of Matter	Order Confirmed or Appeal Rejected	Current Position 30 December 2009	File Closed
<p>Diversion of Footpath No. 516012 Dent at Dan's Croft To divert a footpath that the public confuse as passing through a gate north east but in fact passes to south in front of Dan's Croft. The diversion taking it out of an area to be enclosed onto a more gradual easterly rise that provides, in part, improved long distance views while also avoiding an area of wet ground. HA 1980 S119 File Ref:- E130113 Application Received:- 24 August 2006 Initiation Received:- Work Commenced:- 29 August 2006 Sealed:- 11 April 2007</p>	<p>Confirmed:- 17 September 2007</p>	<p>Legal Event to be made and records to be updated.</p>	
<p>Application for BOAT from Buckden to Cray at Buckden Rakes Up-grade to BOAT of BW 4 Buckden (Buckden Rakes) WCA 1981 S53 File Ref:- E211306 Application Received:- 25 November 2005 Initiation Received:- Work Commenced:- 1 September 2006 Sealed:-</p>	<p>Confirmed:-</p>	<p>Applicant informed of decision 23 September. We have not been notified of an appeal so the matter is now completed.</p>	
<p>Claimed Restricted Byway at Swineley Cowm in the parishes of Dent & Hawes To confirm the true status of Bridleway No.516056 in Dent and a missing link at Swineley Cowm, Hawes to facilitate the Pennine Bridleway National Trail. WCA 1981 S53 File Ref:- E225622 Application Received:- Initiation Received:- 8 May 2007 Work Commenced:- 8 May 2007 Sealed:- 2 January 2008</p>	<p>Confirmed:- 5 June 2009</p>	<p>Period for challenging the Order expired without a challenge being made. The Order is now in effect. The amendment to the Definitive Map remains to be completed .</p>	

Pending Casework 2009-10

<u>Pending Matters</u>	<u>Requirement</u>
• Thwaite Lane - Clapham to Austwick BOAT application	Opposed Order to be submitted to SoS
• Footpath 12 Buckden - Re-alignment DMMO	Submit opposed Order to SoS
• Footpath 30 Grassington - Re-alignment DMMO	Submit opposed Order to SoS
• BW 20 Malham M; BW 3 Malham (Monk's Rd) Downgrade to FP	Opposed Order to be submitted to SoS.
• BW 2 Calton & BW 21 Malham Late application for BOAT	Some research carried out More required.
• BW 5 Threshfield & BW 2/B Rylstone Late application for BOAT	Research not yet started
• Long Lane - Clapham to Selside - BOAT application	Order not yet made
• BW 52 (part) addition to Definitive Map In Hawes and High Abbotside	Further research required
• BW 7 Newbiggin – deletion and addition	Further research to be carried out before an Order can be made.
• FP 568077 Sedbergh - diversion at Dovecote Gill	Further liaison with landowners required
• BW 14 Ingleton – diversion, exting., creation	Further liaison with landowners required.
• FP 37 H-in-R Dub Cote - up-grade to BOAT	Further research required
• BWs 1&2 Bordley (Lainger Hse) – up-grade to BOAT . Late application for BOAT	Research not yet started
• BW 11 Buckden (Raisgill) – up-grade to BOAT Late application for BOAT	Research not yet started
• BW 4 Bordley & BW 9 C-w-K - up-grade to BOAT Late application for BOAT	Research not yet started
• FP 3 Halton Gill - deletion and addition (re-alignment)	Further research required

Wildlife & Countryside Act 1981 Definitive Map Modification Order Applications not yet being dealt with BOAT APPLICATIONS	
Description of Matter	Affected by NERC / Winchester ? (See footnote for explanation of terms)
Upgrade of Bridleways No. 21 Austwick & No. 2 Lawkland at Bark House Lane BW upgrade to BOAT File Ref:- E210402 Application Received:- 06/07/2005	Affected by NERC - late application
Upgrade Bridleway Nos. 25 Horton in Ribblesdale & No. 4 & 5 Halton Gill to BOAT at Foxup Road & Hesleden Bergh Upgrade BW 25, 4 & 5 to BOAT File Ref:- E213503 Application Received:- 18/01/2005	Affected by Winchester
Upgrade of Bridleways No. 2 Ingleton & No. 516045 Dent at Cravens Way Upgrade to BOAT File Ref:- E214503 Application Received:- 24/10/2005	NERC - late application
Upgrade Bridleway No. 3 Langcliffe at Winskill Rd to Stainforth Parish Boundary Upgrade of Bridleway No. 3 to BOAT File Ref:- E214803 Application Received:- 09/02/2005	“ “ “
Upgrade Bridleway Nos. 5 & 6 Lawkland and Bridleway Nos. 26 & 27 Austwick to BOAT Upgrade of Bridleways to BOAT Austwick to Feizor File Ref:- E214901 Application Received:- 01/02/2005	“ “ “
Upgrade of Bridleways No. 10 Malham & No. 6 Malham Moor at Dean Moor Upgrade of Bridleway 10 & 6 to BOAT File Ref:- E215402 Application Received:- 29/11/2004	Affected by Winchester
Arncliffe Cote to Great Close Gate Upgrade of BW to BOAT Upgrade BW 29 & 30 Bordley BW 16 & Arncliffe BW 5 to BOAT File Ref:- E215503 Application Received:- 29/11/2004	Affected by Winchester
Upgrade Bridleway Langber, Dacre & Haw Lanes Settle to Otterburn Addition & Upgrade to BOAT File Ref:- E215801 Application Received:- 06/07/2005	NERC - late application

**Wildlife & Countryside Act 1981
Definitive Map Modification Order
Applications not yet being dealt with
BOAT APPLICATIONS**

Description of Matter	Affected by NERC / Winchester ? (See footnote for explanation of terms)
Upgrade Bridleway No. 10 Settle to BOAT at Lodge Road Upgrade of Bridleway 10 to BOAT File Ref:- E216202 Application Received:- 09/12/2004	Affected by Winchester
Upgrade Bridleway No. 7 Settle to BOAT at Lambert Lane Upgrade of Bridleway 7 to BOAT File Ref:- E216203 Application Received:- 28/01/2005	NERC - late application
Upgrade BW 13, Carlton Town & BW30, Burton-cum-Walden to BOAT Upgrade of bridleways from Carlton in Coverdale via Howden Lodge to Walden Cote (Thupton Gill) File Ref:- E226709 Application Received:- 18/10/2005	NERC - late application
Upgrade of Bridleway No. 2 Ingleton & No. 516045 Dent at Black Rake Road Up-grade to BOAT File Ref:- E230103 Application Received:- 24/10/2005	NERC - late application
Upgrade Bridleway No. 516029 Dent to BOAT at Occupation Road Upgrade to BOAT File Ref:- E230104 Application Received:- 25/11/2005	NERC - late application
Upgrade Bridleway No. 516027 Dent to BOAT at Flintergill Outrake Upgrade to BOAT File Ref:- E230105 Application Received:- 25/11/2005	NERC - late application
Upgrade Bridleway No. 516043 Dent to BOAT at Nun House Outrake Upgrade to BOAT File Ref:- E230106 Application Received:- 25/11/2005	NERC - late application

Wildlife & Countryside Act 1981 Definitive Map Modification Order Applications not yet being dealt with
NON-BOAT APPLICATIONS
Description of Matter
Windy Pike Lane, Hanlith Addition of bridleway over Windy Pike Lane from Hanlith to the Calton Parish boundary File Ref : E213701 Application Received : 15/06/2009
Nursery Hill, Hellifield. Addition to the Definitive Map of two claimed footpaths File ref : E214201 Application rec'd 15/07/2009
Town Head, Kettlewell. Addition to the Definitive Map of a claimed footpath between Town Head and Leyburn Road Kettlewell File Ref: E214606 Application rec'd 27/07/2009

Footnote

“NERC” The ‘NERC’ Act is the Natural Environment and Rural Communities Act 2006. The effect of s.67(1) of the Act was to extinguish rights for mechanically propelled vehicles (MPVs) over routes that were either not recorded on a Definitive Map or were recorded only as footpath, bridleway or restricted byway. In other words, where the rights for vehicles were unrecorded, the Act extinguished MPV rights. One of the exceptions in the Act, that saved MPV rights from extinguishment was if an application for a BOAT had been made prior to 20 January 2005. In that event any existing rights for MPVs were not extinguished and a BOAT could result. However, if the application was late (i.e. after 20 January 2005) it did not save MPV rights and in order to achieve a BOAT the applicant would need to rely on one of the other exceptions in the Act.

For the purposes of this report therefore, when reference is made to an application being affected by NERC it means that a BOAT application was made after the relevant date and in order to be successful it must rely on one of the exceptions in s.67(2) of the 2006 Act.

The exceptions in s.67(2) of the Act are listed below. Where one (or more) of the exceptions is successfully invoked its effect is that rights for MPVs are not extinguished by s.67(1) and BOAT status is still a possibility. Nevertheless, it is still necessary to show that rights for MPVs actually exist by proving historic carriageway status.

Exceptions in s.67(2)

Statutory Provision	Requirement	Effect of the Provision
S.67(2)(a)	The main lawful use of the way in question by the public for 5yrs up to commencement was use for mechanically propelled vehicles	This was intended to protect the general road network which otherwise would have been adversely affected by the provision. It has been invoked by applicants but with limited success. It is up to the applicant to show that the provision applies by establishing a balance of use in favour of MPVs.
S.67(2)(b)	At commencement i.e. 1 st May 2006 the way in question was not shown in the Definitive Map & Statement but was shown on the List of Streets	The List of Streets is the list of publicly maintainable highways that the Highway Authority is required to keep by s.31(6) Highways Act 1980. Where a way is recorded on the List of Streets, MPV rights are not extinguished. The list of streets does not record public status. This exception was intended to exempt highways little used by vehicular traffic but likely to be part of the ordinary road network.
S.67(2)(c)	The way in question was created expressly to provide a right of way for MPVs	Express dedication of a public right of way for MPVs will save such rights from extinguishment
S.67(2)(d)	The way in question was created by the construction, in exercise of statutory powers, of a road intended for MPVs	Construction of all purpose road intended for use by MPVs would save such rights from extinguishment
S.67(2)(e)	Way created before 1/12/30 by virtue of use by MPVs	This relies on Implied Dedication at common law as evidenced by use by MPVs. After this date it became a criminal offence to drive a motor vehicle on a footpath or bridleway without lawful authority.

‘Winchester’. This was the case that decided the issue of whether or not an application, where it was made before the 20 January 2005, was in fact a valid application. Schedule 14 to the Wildlife and Countryside Act 1981 prescribes how applications for DMMOs must be made. Section 67(6) of the 2006 Act (NERC) requires that applications be made in accordance with schedule 14. However, Authorities, prior to NERC, had taken a flexible approach to these requirements. The Winchester case decided that if an application is to save MPV rights it must have been made strictly in accordance with the requirements of schedule 14.

For the purposes of this report therefore, if a case is referred to as being affected by Winchester it means that the Authority has determined that the application was not made strictly in accordance with the requirements of schedule 14 and therefore cannot be regarded as a valid application. Therefore it does not have the effect of saving MPV rights.