

NYMNP

27/04/2020

4/20/2020

Planning Statement - Application for Lawful Development Certificate

For: Mr D Pattinson

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1.0 Introduction

- 1.1 Cheryl Ward Planning has been instructed to submit an application for a Certificate of Existing Lawful Use Development (CELUD) to lawfully establish a series of farm tracks for uses in connection with land at Hogarth Hill Farm, Boggle Hole road, Fylingdales, Whitby, YO22 4QW.
- 1.2 The extent of these tracks is highlighted in blue (Plan 1) and yellow (Plan 2) together with a location plan prepared by BHD Partnership Ltd.
- 1.3 The application is supported with evidence to show that the tracks are complete and have been in situ for a period in excess of 4 + years before the date of the application.
- 1.4 In order to keep the tracks fully serviceable repair, maintenance and remedial work is needed to take place every so often and this has also recently taken place.
- 1.5 The Statement demonstrates that there is a breach of planning control through the established siting of the tracks which are immune from enforcement action due to the passage of time and on these grounds a lawful development certificate should be granted.
- 1.6 It is confirmed that previously remedial track work was last completed in April 2005 and took just short of two years to complete (Jul 2003 – Apr 2005). While the tracks have historically been in situ long before this the applicant is able to demonstrate the works that he has carried out is to these same tracks to the extent shown on **Plan 1** and **Plan 2**.
- 1.7 Accompanying OS Mapping data identifies the tracks in situ from a far earlier period and together with Sworn Statements and a Statement of Truth provide an account of what has taken place and when (**Appendix A**).
- 1.8 This Statement is prepared by Cheryl Ward Planning who holds an MSc in Town Planning and is a Chartered Member of the Royal Town Planning RTPI) and associated ICN and PERN networks.

2.0 Relevant planning history

- 2.1 A search of the North York Moors National Park's online planning records has been undertaken and no planning history for trackwork is identified with the site.
- 2.2 There are however several planning applications on the Authority's planning register which confirm Hogarth Hill Farm is an active agricultural unit and they commenced from the late 1970's through to the present day.



Fig 1. – Source: <https://www.northyorkmoors.org.uk/planning/planning-applications/application-search-map> – for illustrative purposes only – shows Hogarth Hall in red circle. Tracks shown in situ.

3.0 The Site

Site context and surroundings

- 3.1 Hogarth Hill Farm is predominantly a hill farm from which a livestock business is in operation. It consists of a 55-hectare unit with 280 ewes (40 replacement 2018), 10 tups and 250 lambs.
- 3.2 Hogarth Hill Farm is situated 240 metres south of Bridge Holm Lane and is well screened from the local road network.
- 3.3 The local landscape is characterised as a 'rolling coastal hinterland' with nearby deep valleys lined with deciduous woodland much of which is ancient semi-natural woodland.
- 3.4 For planning purposes the application site falls within the NY Moor's planning jurisdiction and is deemed to be within the open countryside within the parish of Fylingdales.
- 3.5 Hogarth Hill Farm is centrally located within the unit at the top of the hill which overlooks the land holding. It takes in panoramic views of the east coast and the moors and over to the Flask Inn and further south down the coastal plain.
- 3.6 The majority of grass fields at Hogarth Hill Farm are used for grazing livestock for which there is a need to access. The applicant uses existing farm access tracks already in situ.

- 3.7 It is confirmed that these are essentially tracks which have evolved with the farm and farming practices over time and had probably started out as horse and cart tracks. They are established roadways which have been in existence for a long time and as farm machinery has advanced and become larger the tracks too have developed over time.
- 3.8 The tracks have been maintained to keep up with the demands and capabilities of the farm unit i.e. such as a tanker needing to access the septic tank which is located in the lower fields to the east of the farmhouse and properties. Their continued use, upkeep and maintenance is deemed to be essential for the day to day functioning of the farm.
- 3.9 The outer track shown on **Plan 1** (blue) skirts around the farm's perimeter at a total distance of 2.34 km (1.45 miles) and links up with another farm track on the east side of Hogarth Hill.
- 3.10 **Plan 2** (yellow) shows the extent of internal tracks in situ within the farm unit. These tracks have also been in situ and completed in their entirety since 2005 but also established long before this.

Access

- 3.11 Hogarth Hill Farm is accessed off Boggle Hole Road via a wide farm track, just over 800 metres east from the junction with the main A171 Scarborough to Whitby Road at Pond Hill.
- 3.12 The establishment of tracks within the unit has not led to an increase in activity levels of the adjacent publicly maintained highway that has led to an unsatisfactory level of highway safety.
- 3.13 To anyone not in the knowledge of the existence of these tracks their visual presence and/or impact is negligible – see **Plan 1** and **Plan 2** for their location.

4.0 Assessment – Describing the works

- 4.1 The applicant, Mr D Pattinson has owned the land (55 hectares) continuously for the last 47 years. Planning consent was not obtained for the tracks as they were already in existence when he took ownership of the unit in 1973.
- 4.2 During this time the Local Planning Authority have not sought consent for the tracks and neither to the applicant's knowledge has the LPA received complaints about them. One of the Authority's planning officers believed to be still working at the National Park is aware of their existence (Mrs H Saunders).
- 4.3 The tracks are well established and integrated within the landscape and are well screened from the surrounding landscape by mature vegetation, the sites natural topography and hedgerows which surrounds the land holding.
- 4.4 The majority of tracks follow closely to the existing field boundaries and at the lower levels of the farm they run alongside the woodland edge. Essentially, they follow historic patterns of land use and movement and movement of stock between one farm and another which were often in the same ownership.
- 4.5 There are no other properties within a 750 metre radius of the site.
- 4.6 Evidence is relied upon from OS Mapping data resources that are available together with sworn statements from people with whom the applicant called upon for help with remedial works to repair and maintain the tracks (in 2003 – 2005) and are therefore able to verify the case.
- 4.7 Photographic evidence is also shown of the existing tracks at the site.
- 4.8 The current owner Mr Pattinson (applicant) can verify the tracks in situ for a period in excess of 4 years or more.
- 4.9 Cheryl Ward Planning acts on behalf of Mr D Pattinson to ascertain a Lawful Development Certificate to regularise the lawful siting of the tracks in their current form.

Summary of Evidence

4.10 The evidence in support of the Lawful Development Certificate application comprises:

- OS Map Extracts which show the tracks and historic patterns of land use from as early as 1885 – **Appendix A.**
- Sworn statement from Mr D Pattinson – **Appendix B**
- Sworn statement from P Helm of Garth Cottage, Ugthorpe – **Appendix C**
- Statement of Trust from I Spenceley of No. 1 Hogarth Hill, Boggle Hole Road, Fylingdales – **Appendix D**
- Photograph Evidence – **Appendix E**
- Sales invoice from RMC Northern – **Appendix F**
- Farm accounts (2004/2005) – **Appendix G**
- Plant hire – **Appendix H**
- Goods to site from Marcus Richardson (Waste Transfer) – **Appendix I**
- Murray Brown and Son – Lime and Stone Merchant – **Appendix J**

Tracks

4.11 An examination of the tracks at **Plan 2** confirms the remedial track works that have taken place more recently on the north east side of the farm. A brief outline of those works is noted below together with up to date photographs at **Appendix E**:

- Remedial works to shore up existing tracks on the hill side which have collapsed and become impassable. The land has de-stabilised and slippages have resulted due to water migration.
- As demonstrated above the tracks were last upgraded similarly to this in 2003 - 2005 by Marcus Richardson of Whitby (paperwork provided at **Appendix F to J**).
- The track is confirmed as existing farm access tracks already in situ (see attached Plan 1 and Plan 2).
- Essentially they are historic tracks which have evolved over time with the farm and farming practices from old horse tracks which have been in existence for centuries. The recent works are for deemed to be essential repair and maintenance to existing tracks.
- The length of the track is approximately 100 metres (Plan 2 – Yellow line).
- Approximately 50 - 80 loads of clean, hard, predominantly clay soil has been brought to the site – **deliveries have now ceased.**
- The soil brought to the site has come from building sites and has been subject to inspections and authenticated in agreement with the Environment Agency.
- The work has been planned over a 2-year period.
- The material has been placed on the land and used to shore up the existing tracks to prevent further slippages and land movement.
- Exemption certificate is available at **Appendix K.**

Continued ...

- The soil has been used to in-fill and shore up the banking and contoured to match the existing land and track profile – **this work is now complete.**
- The tracks have been levelled, rolled and the embankments have been re-seeded – **this work is now complete.**

The above provides a brief outline of the essential works that have taken place recently and is therefore included in this application for a Lawful Use Development Certificate.

5.0 Analysis

- 5.1 The 1991 Act amended the 1990 Act by substituting new ss 191 to 194. Sub-section (1) of s 191 provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful; any operations which have been carried out in, on, over or under land are lawful; or any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful; he may apply to the local planning authority specifying the land and describing the use, operations or other matter.
- 5.2 In this case the applicant wishes to prove the lawfulness of the tracks in existence for a period in excess of 4 + years and for remedial, repair and maintenance works development which took place between 2003 – 2005 and in 2020. The applicant acknowledges that the relevant test of proving the lawfulness of existing development rests with them.
- 5.3 The Courts have held that the applicant’s own evidence does not need to be corroborated by ‘independent’ evidence in order to be accepted (although it has been witnessed by Thorpe and Co Solicitors). Additionally, the applicant has obtained a sworn statement and a statement of truth from two people who helped to carry out remedial works to the tracks and others who have brought in materials (soil and stone) for use in repairing the land.
- 5.4 The Council’s aerial photography is likely to corroborate that this evidence is sufficiently precise and unambiguous to justify the grant of approval of the Certificate.
- 5.5 The available evidence provides a proportionate yet detailed account for proving that the tracks are well established on the unit and that the works carried out to those constitutes repair and maintenance.



Fig 2. – Source: <https://www.northyorkmoors.org.uk/planning/planning-applications/application-search-map> – for illustrative purposes only – shows Hogarth Hall and black dash line is the tracks shown in situ. – Hybrid map.



Fig 3. – Source: <https://www.northyorkmoors.org.uk/planning/planning-applications/application-search-map> – for illustrative purposes only – shows Hogarth Hall and black dash line is the tracks shown in situ. – Aerial 2009.



Fig 4. – Source: https://maps.northyorks.gov.uk/connect/analyst/mobile/#/main?mapcfg=Out_and_About – for illustrative purposes only – shows Hogarth Hall and black dash line are confirmed tracks shown in situ.

6.0 Conclusion

- 6.1 On the basis of the evidence included as part of the application, it is submitted that the breach of planning control, proves that the tracks are well established and integrated within the landscape and are well screened from the surrounding landscape by mature vegetation, sites natural topography and hedgerow which surroundings the land holding.
- 6.2 It proves that the works carried out to the tracks between 2003 – 2005 and 2020 (of recent) are remedial, repair and maintenance works to roadways that are already well established. The tracks were therefore complete more than 4 years before the date of this application. As such these works are therefore immune from enforcement action.
- 6.3 It is therefore submitted that the available evidence clearly supports the applicants claims regarding the timing of the remedial works; and that the tracks were already previously established in the landscape before these works were carried out; and finally are wholly associated with the farms agricultural and land management practices.
- 6.4 The relevant test relating to the balance of probability is therefore satisfied and we would invite the Authority to approve the application for a Lawful Development Certificate with immediate effect.



Cheryl Ward Planning

Offering a high quality, technical and locally focused Planning and Development Consultancy service. With a pragmatic and conscientious approach to all projects our core aim is to achieve the best possible outcome for our clients.

1Accompanied by an in-depth knowledge of the local area and a deep-rooted understanding of local authority planning requirements the business is well equipped to deal with all-encompassing planning matters specialising in planning applications (all types) – town and rural i.e. residential, rural and equine planning projects whether it be traditional or contemporary in design.

Our planning services are continually developing to keep up with the changing dynamics of the UK planning system. This helps to widen our knowledge so that our clients are furnished with the most up to date planning criteria.

Operating to a multidisciplinary approach means we are accomplished at working with a range of stakeholders including private individuals, Estate Directors, farmers, landowners, private and public organisations/groups, Parish Councils, other professionals, clients and applicants.

Our services include:

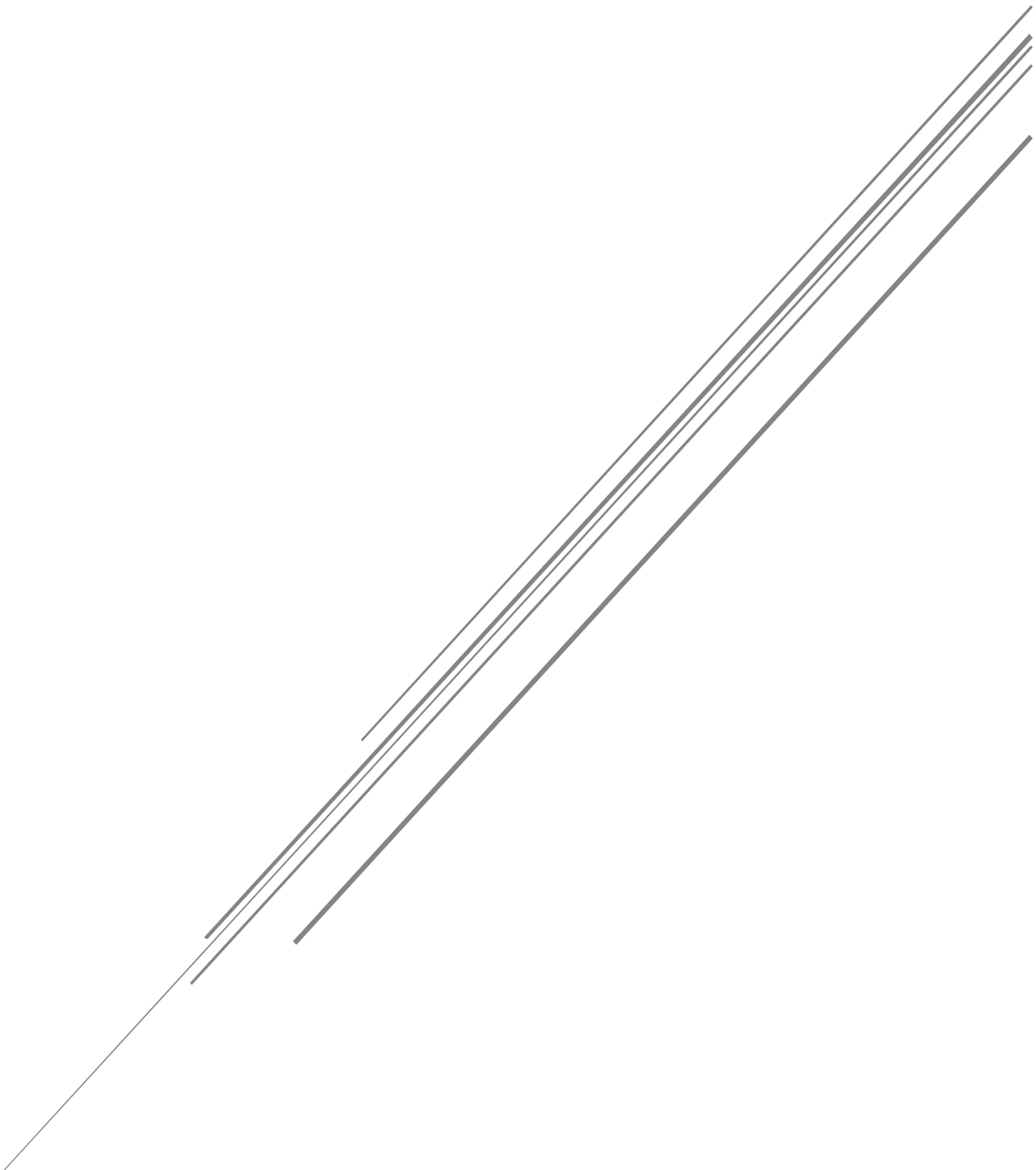
- Pre and post planning advice
 - Appraising sites for development potential
 - Agricultural and Forestry Notifications
 - Planning Supporting Statements
 - Discharge planning conditions
 - Check and send service – Cheryl Ward Planning can check forms, plans and other documents etc to make sure your application will be validated by the Council. Finally, we will submit your application via the Planning Portal on your behalf.
- Planning Enquiries
 - Planning Applications (all types)
 - Design and Access Statements
 - Variations/amendments to planning approvals
 - Prepare and submit planning appeals

NYM Moors, Yorkshire Dales, Whitby, Scarborough, Ryedale, Hambleton, Redcar and Cleveland, Selby, Wolds, North Lincolnshire, North East

OS MAPPING DATA

Hogarth Hill Farm, Boggle Hole Road, Fylingdales

NYMNPA
27/04/2020



**For: Mr D Pattinson
Hogarth Hill Farm, Boggle Hole Road, Fylingdales**

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**For: Mr D Pattinson
Hogarth Hill Farm, Boggle Hole Road, Fylingdales**

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Hogarth Hill Farm, Boggle Hole Road, Fylingdales**

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For: Mr D Pattinson
Hogarth Hill Farm, Boggle Hole Road, Fylingdales

1.0 Hogarth Hill Farm, Boggle Hole Road, Fylingdales

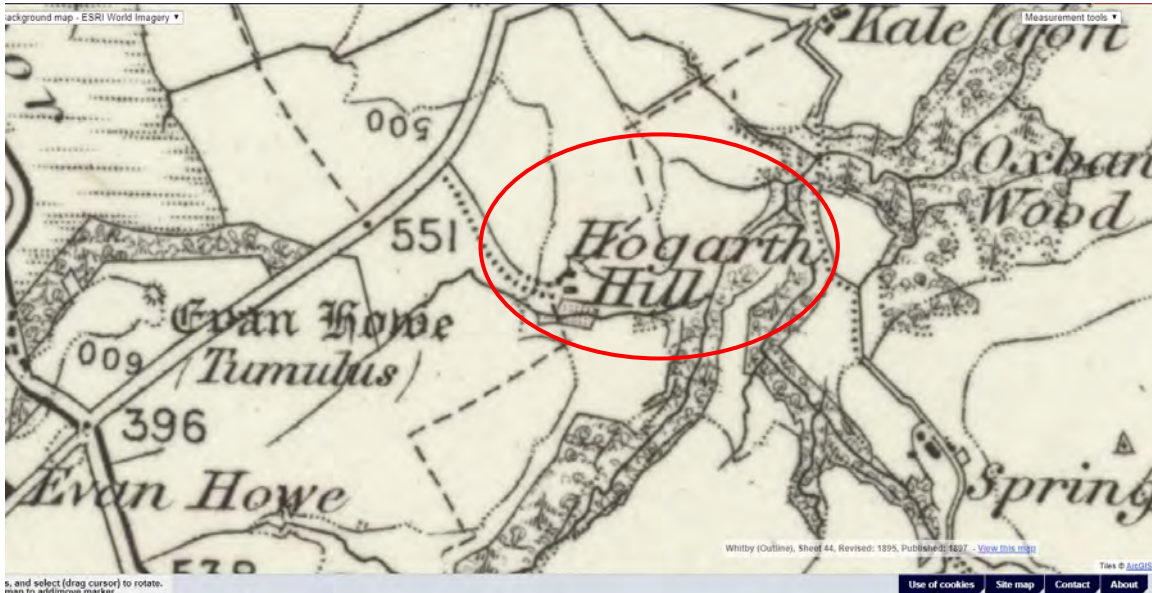


Fig 1. – Black dash line indicates tracks - Source: National Library of Scotland: OS One Inch, 1885 – 1900 - Outline



Fig 2. – Source: National Library of Scotland: OS One Inch, 1885 – 1903 – Hills

For: Mr D Pattinson
Hogarth Hill Farm, Boggle Hole Road, Fylingdales

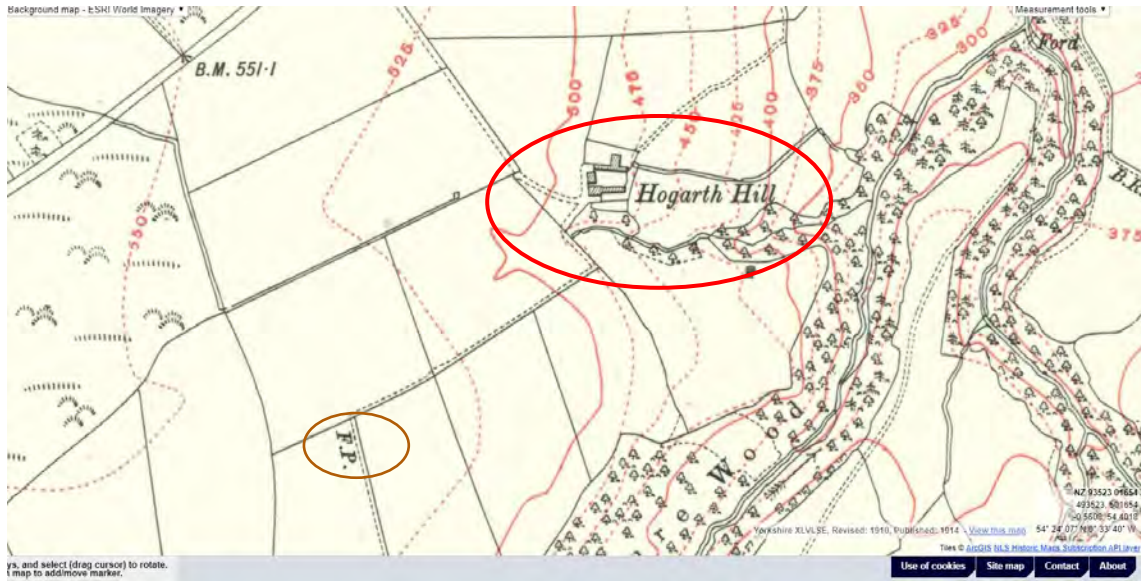


Fig 3. — Source: National Library of Scotland: OS Six Inch, 1888 – 1913.



Fig 4. — Source: National Library of Scotland: OS 25 Inch 1892 - 1914

For: Mr D Pattinson
Hogarth Hill Farm, Boggle Hole Road, Fylingdales

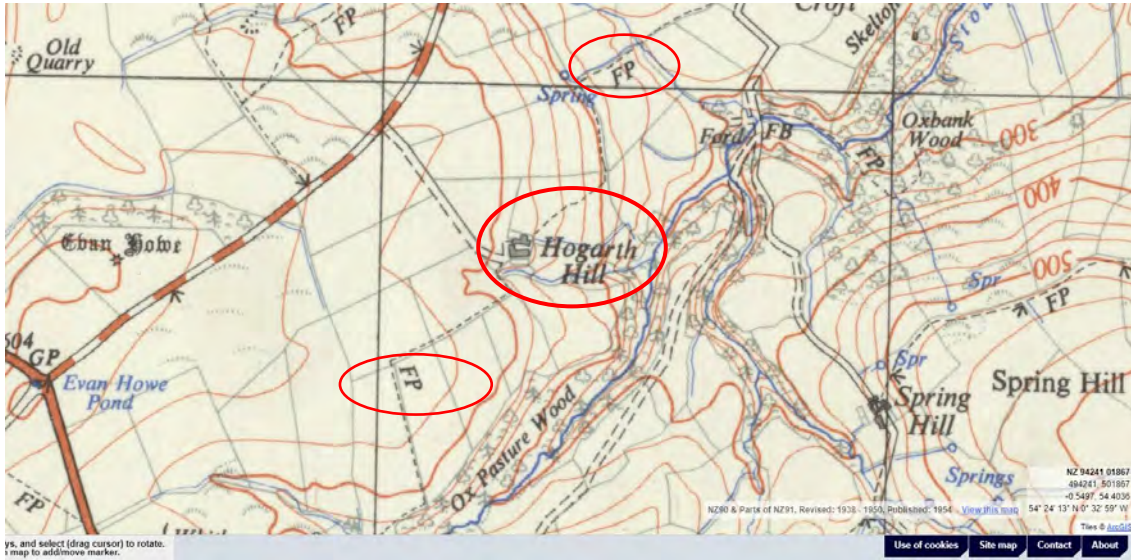


Fig 5. -- Source: National Library of Scotland: OS 1: 25,000 – 1937 – 1961

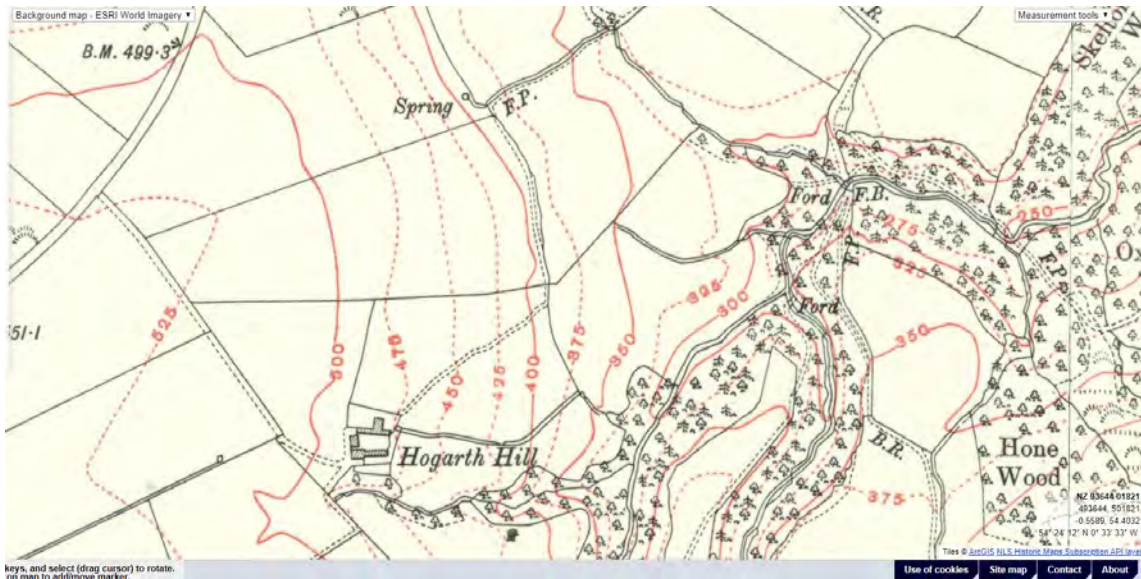


Fig 6. -- Source: National Library of Scotland: OS 1: 1 million – 1: 10k – 1900's

For: Mr D Pattinson
Hogarth Hill Farm, Boggle Hole Road, Fylingdales

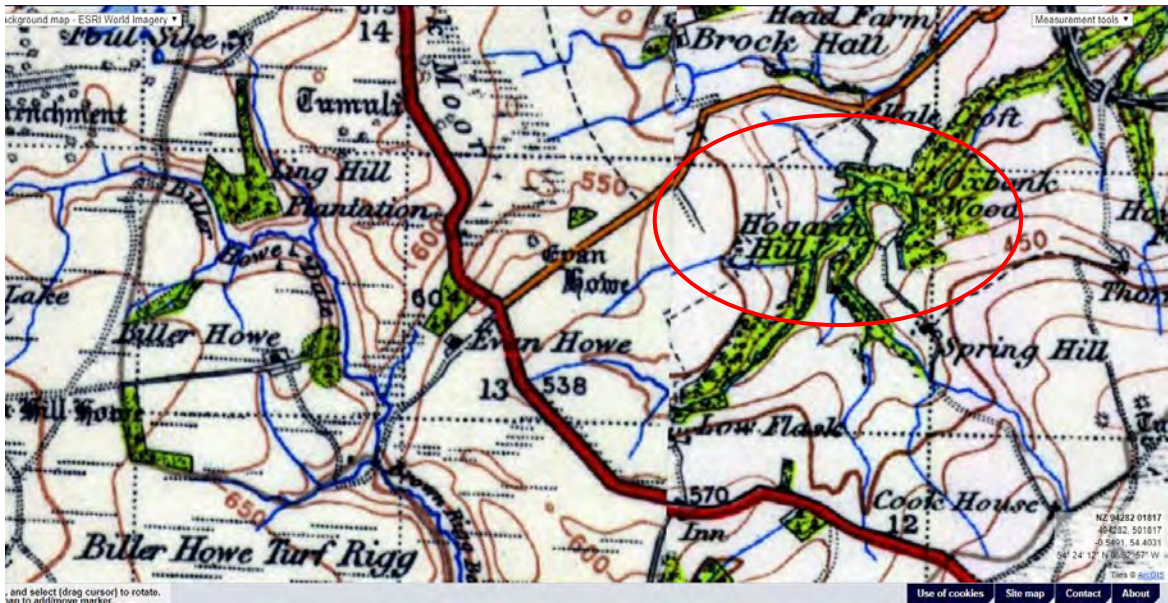


Fig 7 - Source: National Library of Scotland: OS 1: 1 m to 1;63K, 1920s – 1940s

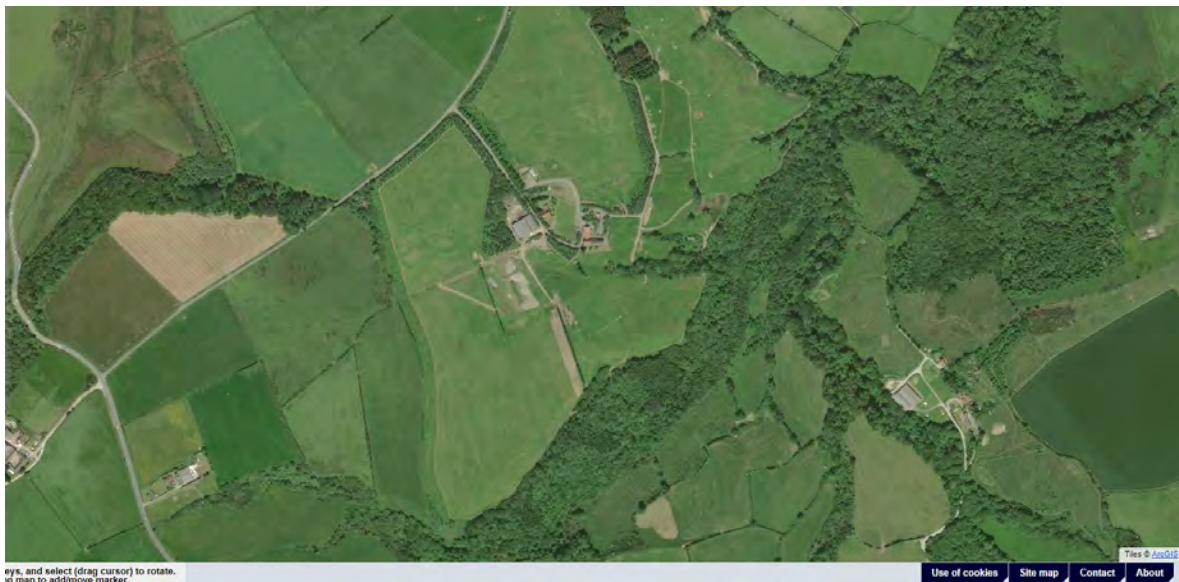


Fig 7. — Source: National Library of Scotland: OS 1:1,250/1:2,500- 1944 - 1969

For: Mr D Pattinson
Hogarth Hill Farm, Boggle Hole Road, Fylingdales



Fig 7a. -- Source: National Library of Scotland: OS 1:1,250/1:2,500- 1944 – 1969 –
same map as above zoomed in to show tracks in existence (50m)



Fig 8. - Source: National Library of Scotland: OS 1:10,560 – 1949 – 1969

For: Mr D Pattinson
Hogarth Hill Farm, Boggle Hole Road, Fylingdales



Fig 9. - Source: National Library of Scotland: OS One Inc 7th series 1955 - 61

2.0 Conclusion

The above mapping data confirms that tracks have formed an established part of the local landscape around Hogarth Hill Farm since the 1885 to the present day.

The routes are clearly defined on the plans and have been designed having regard to the movement of farm machinery and stock around the farm.

In the main the tracks are routed close to existing field boundaries and follow the land contours. From these maps early historic patterns of land use and movement on farms can be identified. The tracks are shown to take advantage of the existing landscape features such as trees, slopes and hills to mitigate any visual impacts.

NYMNP

27/04/2020

SWORN STATEMENT

I, David Pattinson of Hogarth Hall Farm, Boggle Hole Road, Fylingdales, Whitby, YO22 4QW hereby confirm that I instructed the construction of the road on the attached map in yellow at Hogarth Hill Farm, Fylingdales.

The road is used by me (as the owner) and staff, tenants and for agricultural purposes as a means of accessing the farm and farmland.

This work was carried out between July 2003 and April 2005.

I drove a digger and vibrator roller alternately during this time with Paul Helm.

I declare that to the best of my knowledge and belief, the information herein is true, correct and complete.

David Pattinson: _____

Declared at: WHITBY, NORTH YORKSHIRE

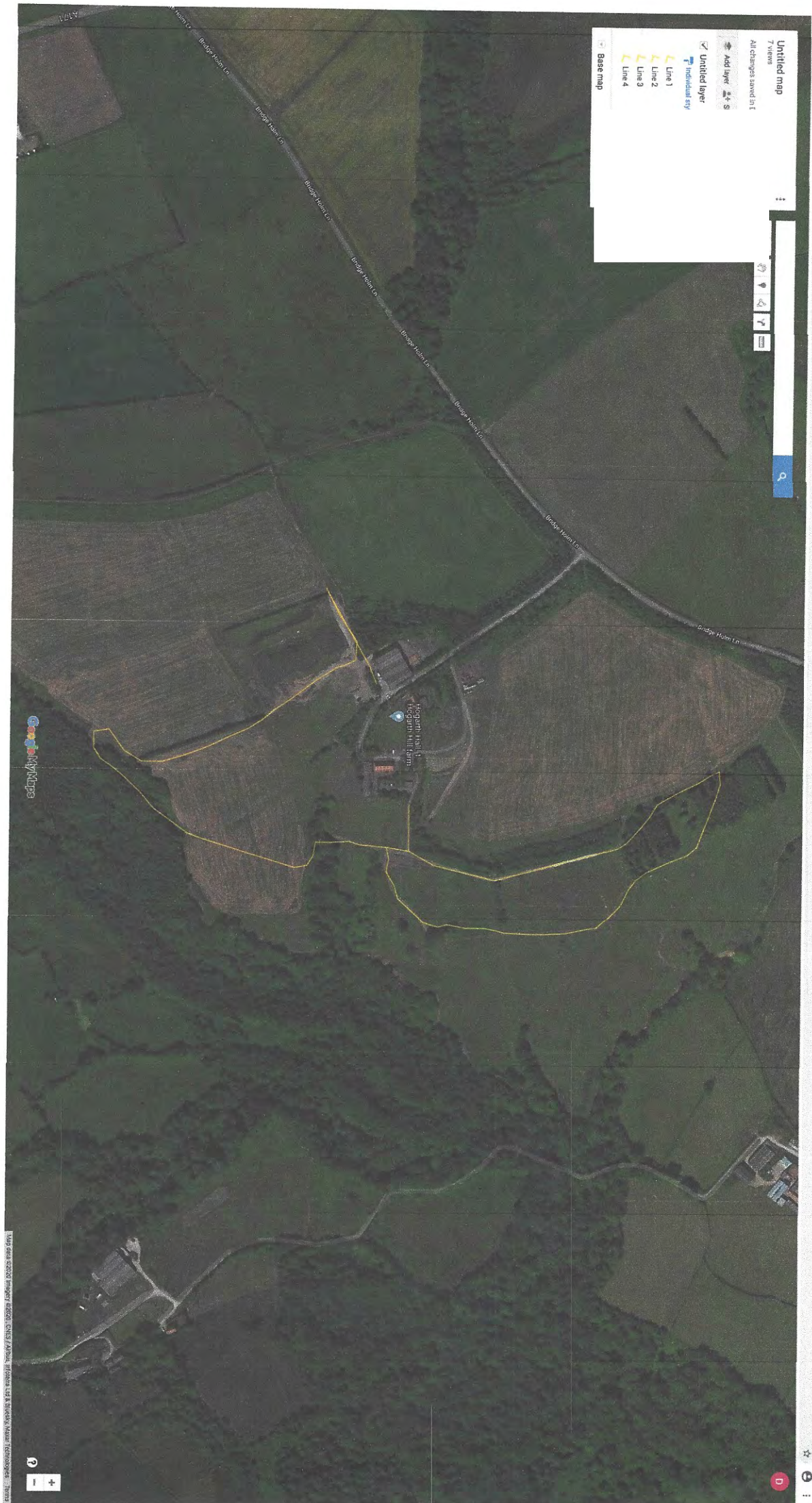
On this 17 day of April 2020.

In the presence of

Witness signature: _____

Name: MAUREEN LEWIS

Address: 3 BAGDALE, WHITBY, YO21 1QL



Maureen Levo is
3 BAGDACE, WHITBY

NYMNP
27/04/2020

SWORN STATEMENT

I, Paul Helm of Garth Cottage, Ugthorpe, Whitby, North Yorkshire, YO21 2BL hereby confirm that I helped construct the road on the attached map marked yellow at Hogarth Hill Farm, Fylingdales.

This work was carried out between July 2003 and April 2005.

I drove a digger and vibrator roller alternately during this time with Mr D Pattinson.

I declare that to the best of my knowledge and belief, the information herein is true, correct and complete.

Paul Helm: _____

Declared at:

WHITBY, NORTH YORKSHIRE

On this 17 day of April 2020.

In the presence of

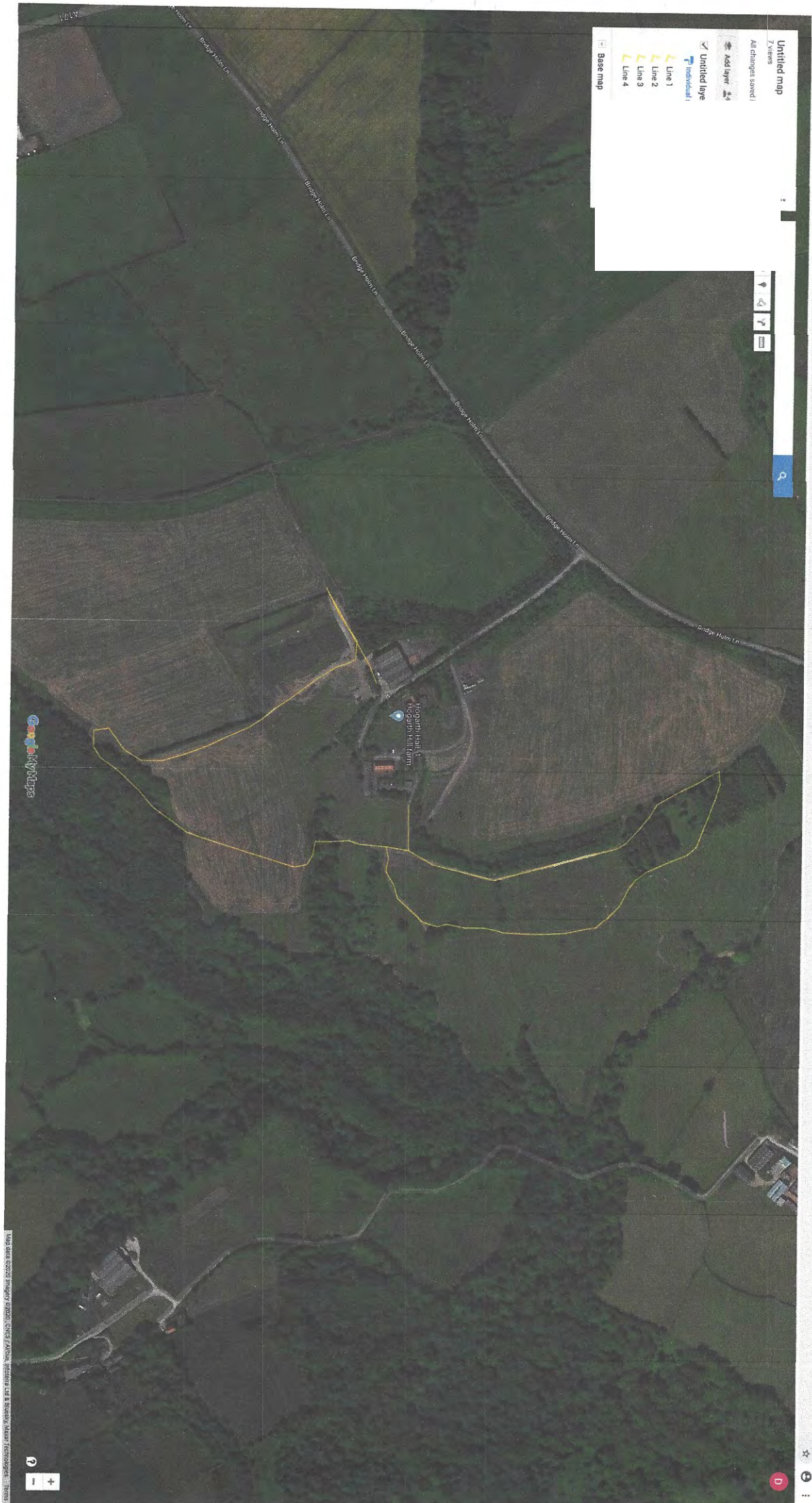
Witness signature: _____

Name:

MAUREEN LEWIS

Address:

3 BAGDALE, WHITBY, YO21 1QL



Maureen Leves is
3 BAGDACE, WY1BY

NYMNPA
27/04/2020

Statement of Truth

I, Ian Spenceley of No. 1 Hogarth Hill, Boggle Hole Road, Fylingdales, Whitby YO22 4QW hereby confirm the following:-

- 1. I was employed to clear a roadway flat enough and safe enough to take a vehicle around the boundary of Hogarth Hill Farm, Boggle Hole, Whitby, North Yorkshire
- 2. This roadway is shown on the attached plan coloured blue situated at Hogarth Hill Farm, Boggle Hole, Fylingdales, Whitby.
- 3. The work I was employed to undertake was done between March 2014 and December 2015

I believe that the facts and matters contained in this statement and the plan annexed are true to the best of my knowledge and belief.

Signature of the person making the statement:

Ian Spenceley

Date: 17-4-2020

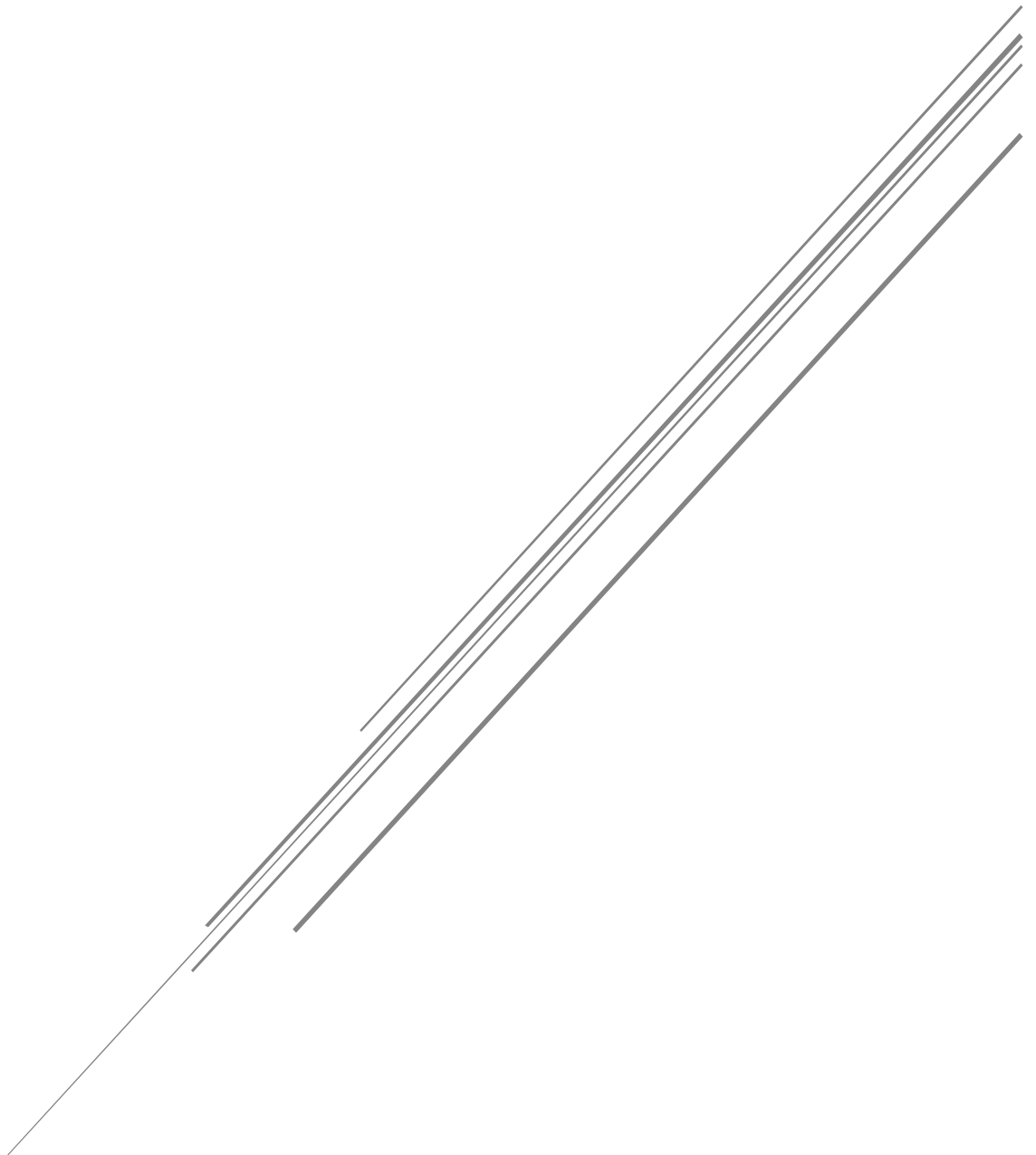
80115410185368265735942C-056485409000008162=16

Untitled map
1 view
All changes saved in Drive
Add layer + Share Preview
Untitled layer
Individual styles
Line 1
Line 2
Line 3
Line 4
Line 5
Base map



APPENDIX E - PHOTOGRAPHIC EVIDENCE – CORRESPONDS WITH PLAN 2 (YELLOW LINE)

Hogarth Hill Farm, Fylingdales



**For: Mr D Pattinson
Hogarth Hill Farm, Fylingdales**

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**For: Mr D Pattinson
Hogarth Hill Farm, Fylingdales**

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Up to date photographs – Tracks from Plan 2



Fig 1. - From electric gate looking down hill.



Fig 2. – Looking uphill.

Pictures were sent last year and now show depletion of winter feed on bale park



Fig 3. – From bottom of by-pass at first T Junction.



Fig 4. - view looking right from T junction. Original road to cottages at wooden garages in the distance passed the bale feeder.



Fig 5. – view to north from 1st T junction.



Fig 6. – view back towards 2nd T junction.



Fig 7. - 2nd T junction proceeding along previously shored up edge.



Fig 8. - Continuing passed newly seed area.



Fig 9. – Looking down track in woodland – no change.



Fig 10. - Road goes down through spruce to Waterpump Field.



Fig 11. – Identifies tarmac on the bank laid 20 yrs ago.
Proof in accounts at Appendix I an J.

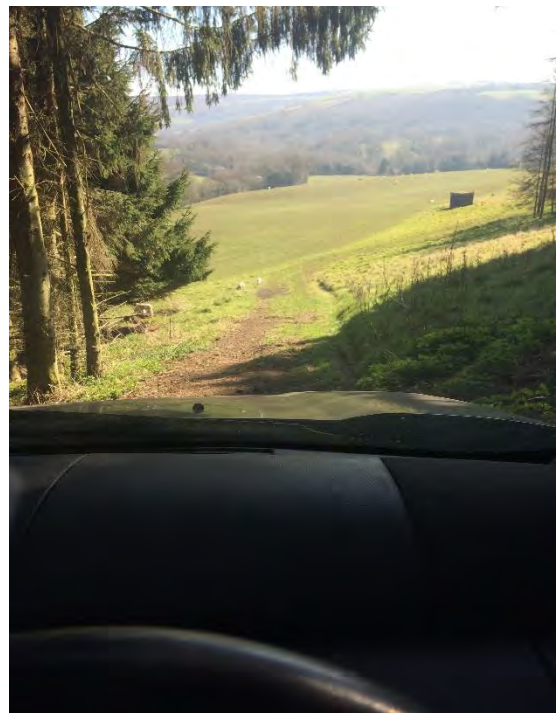


Fig 12. - Coming out of spruce into Waterpump Field.



Fig 13. – Track at bottom of hill leading down from the septic tank area.



Fig 14. - From septic tank turning area up final hill back to 1st T junction.



Fig 15. – Size of tanker to be accommodated.



Fig 16. – Tanker accessing site and septic tank.

From: **Waste Exemptions Service**
Subject: Registration complete
Date: 5 November 2018 14:12
To: angelampattinson@gmail.com

NYMNP

27/04/2020

WE



Registration complete

This confirmation email has been sent to all contacts responsible for this waste operation.

This is not a permit

Your responsibilities

The business or organisation responsible for carrying out the exempt waste operations agrees to:

- comply with all limits on waste types and quantities
- comply with all conditions governing how waste must be stored, handled and treated
- carry out the operations without endangering human health or harming the environment

For the operations to remain exempt they must be carried out without:

- causing risk to water, air, soil, plants or animals
- causing a nuisance through noise and odours
- negatively affecting the countryside or places of special interest

In sensitive locations extra controls may be needed over and above those set out in the exemptions to make sure this happens

those set out in the exemptions to make sure this happens.

Registration details

Reference number	WEX149385
Activation date	5 November 2018

Your contact details

Your name	ANGELA PATTINSON
Your business telephone number	
Your business email	

Business details

Business or organisation type	Partnership
Details of accountable partner	ANGELA PATTINSON, HOGARTH HALL, BOGGLE HOLE ROAD, FYLINGDALES, WHITBY, YO22 4QW
Details of accountable partner	DAVID PATTINSON, HOGARTH HALL, BOGGLE HOLE ROAD, FYLINGDALES, WHITBY, YO22 4QW

Waste operation contact

Name	DAVID PATTINSON
Position	OWNER
Telephone number	
Email	

Waste operation details

Waste operation
location

HOGARTH HALL, BOGGLE HOLE ROAD, FYLINGDALES, WHITBY, YO22
4QW

Grid reference

Site details

Exemptions

D1: Depositing waste from dredging inland waters	Expires on 04 November 2021
D7: Burning waste in the open	Expires on 04 November 2021
S2: Storing waste in a secure place	Expires on 04 November 2021
T1: Cleaning, washing, spraying or coating relevant waste	Expires on 04 November 2021
T4: Preparatory treatments (baling, sorting, shredding etc)	Expires on 04 November 2021
T6: Treating waste wood and waste plant matter by chipping, shredding, cutting or pulverising	Expires on 04 November 2021
U1: Use of waste in construction	Expires on 04 November 2021
U3: Construction of entertainment or educational installations	Expires on 04 November 2021
U4: Burning of waste as a fuel in a small appliance	Expires on 04 November 2021
U8: Using waste for a specified purpose	Expires on 04 November 2021
U10: Spreading waste to benefit agricultural land	Expires on 04 November 2021

If you need assistance call the Environment Agency helpline:

It's open Monday to Friday, between 8am and 6pm