

North Yorkshire County Council
Business and Environmental Services
Executive Members

26 June 2019

Opposed Public Footpath No.10.39/8 (part) Easby Firs, Easby, Diversion Order 2019

Report of the Assistant Director - Transport, Waste and Countryside Services

1.0 Purpose of the report

- 1.1 To advise the Corporate Director of Business and Environmental Services of an opposed Diversion Order. A location plan is attached to this report as **Plan 1**. The route is shown on **Plan 2**. Photographs of the current and proposed routes are shown as **Appendix A**.
- 1.2 To request that the Corporate Director authorise the submission of the opposed Order to the Secretary of State for determination.

2.0 Scheme of Delegation

- 2.1 The County Council's Scheme of Delegation, delegates to the Corporate Director of Business and Environmental Services to exercise the functions of the Council under Section 119 of the Highways Act 1980 in relation to public rights of way. This delegation includes:
- *a power to make and advertise Public Path Diversion Orders in the interest of the landowner, including those where an objection is received from any person or body entitled under the relevant statute to the making of the Order.....*

3.0 The Application

Applicant:	Dr Roger D. Strachan
Date of application:	09 January 2019
Type of Application	Diversion Order S.119 Highways Act 1980
Parish:	Easby
Local Member:	Councillor Heather Moorhouse
Applicant's grounds for making the application	Better route and safer for the public, putting the definitive line onto the walked line, privacy for owners of Easby Firs

4.0 Relevant legal criteria

- 4.1 Under Section 119 of the Highways Act 1980, the County Council, having consulted any other local authority, may divert a footpath where it appears to the Authority that in the interests of the owner of the land crossed by the footpath described in the Order it is expedient that the line of the path should be diverted.

- 4.2 The County Council charges applicants for the costs incurred in the processing/making of Diversion Orders, as provided for by the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (S.I. 1993/407), amended by regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (S.I. 1996/1978).
- 4.3 Where an Order is opposed, the County Council cannot confirm the Order; it can only be confirmed by the Secretary of State. The Secretary of State will confirm an Order if he/she is satisfied that:
- i) in the interests of the landowner it is expedient to divert the footpath, and
 - ii) the diversion will not be substantially less convenient to the public as a result of the Order, and that it is expedient to confirm the Order having regard to the effect which:
 - (a) the diversion would have on public enjoyment of the route as a whole;
 - (b) the coming into operation of the Order would have, as respects other land served by the existing public right of way; and
 - (c) any new public right of way created by the Order would have, as respects the land over which the right is created and any land held with it.
- 4.4 There is a legal requirement to consult with any other local authority or local authorities in whose area the land concerned is situated.

5.0 Reason for the diversion of the footpath

- 5.1 Part of the existing footpath runs along the driveway and within the front garden of Easby Firs. The applicant wishes to move the footpath out of the garden onto the currently walked line in the adjacent field to improve privacy, security and desirability for the owners of Easby Firs.

6.0 Responses to the initial consultations

- 6.1 No representations or objections were received in response to the initial consultation, and the Authority made the Order on 4 March 2019 to divert the footpath.

7.0 Responses to the publication of the sealed order

- 7.1 The Order was duly advertised on 15th March 2019.
- 7.2 Three letters of objection were received in response to the publication of the notice, citing the following grounds/issues –
- “Im fed up of having Mares and foals, locked gates, electric fence! Is it on? It off? No to the divert”
 - “Purley to increase the value of Easby firs is not a good enough reason”
 - “I shall continue to use the small stile though Easby firs veg garden with my family and dogs as I have used for the last 24 years.”
 - “ps a footpath is for people= stiles”
 - “We like to gather under the willow tree at Easby firs to let people catch up, before climbing the fence or after climbing the fence”
 - “Don’t spoil out rendezvous point”
 - “A kissing gate should be put under the willow tree”

- 7.3 All three objectors provided incomplete postal addresses, e.g. town names were spelt incorrectly, and the property numbers do not exist. No telephone numbers, email addresses or any other contact details were provided. The Authority wrote letters to the incomplete postal addresses, all three of the letters have been returned by the post office.
- 7.4 These objections are remarkably similar to objections received to a previous PPO application at a different location on the same route (Public Footpath 10.56/9 Crow Wood House, Great and Little Broughton, Diversion Order 2015). This order was sent to the Secretary of State for determination and was confirmed by a Planning Inspector by written representations, after similar and unsuccessful attempts to contact the objectors.
- 7.5 Advice was sought from the Authority's Legal Service on the previous application, and the outcome was that as the objections were 'duly made' in accordance with the relevant legislation i.e. they were submitted to the Authority in writing and within the relevant timescale, the Authority must take them into account and could not confirm the order with these outstanding objections.

8.0 Representation made by the local member

- 8.1 No representations were received from Councillor Moorhouse to the consultations regarding the Diversion Order.

9.0 Financial implications

- 9.1 The Order is opposed, therefore under normal circumstances there may be financial implications for the Authority in covering any costs associated with any subsequent public inquiry. The Council may not charge these costs to the applicant. Such costs cannot be avoided where the Planning Inspectorate decides that a public inquiry should be held to resolve an application. The applicant has agreed to meet the other administration and advertisement costs in line with standard policy and procedures up to the point of any submission to be made to the Secretary of State.
- 9.2 Given the similarity to the circumstances in 2015, it is probable that if the opposed Order were to be submitted to the Secretary of State, the Order would be resolved by written representations and the submission to the Secretary of State would require minimal preparation by the Authority.
- 9.3 The proposed route is approximately 112 metres in length (approx. 60 metres less than the original path), has a natural surface and will have one pedestrian gate. It is anticipated that the initial cost to the Council would be two waymarks, provision of a timber pedestrian gate and that on-going maintenance costs would be negligible.

10.0 Legal implications

- 10.1 The opposed Diversion Order will be determined by an Inspector appointed by the Secretary of State, and, as stated above, determination will be by way of written representations, a public hearing or a public inquiry.
- 10.2 The Inspector, on the basis of the legal criteria summarised in paragraph 4 above, will decide whether or not to confirm the opposed Diversion Order. If he/she decides to confirm the Order, the existing footpath will be extinguished and the proposed route will then be added to the Definitive Map as a Public Footpath.

11.0 Equalities implications

- 11.1 The proposed route is sited in open country between Great Broughton and Great Ayton and consists of a path across fields.
- 11.2 There is no need for surfacing of the proposed diverted section of the path as the adjoining paths also have natural surfaces.
- 11.3 The existing stile is on the walked line (Point D) rather than the Definitive line, and if the Order is to be confirmed, access would be improved by installation of pedestrian gate at Point D.
- 11.4 The proposal is to make a minor diversion to an existing footpath and is not considered to present any detrimental equality implications. It is considered that an Equality Impact Assessment is not required.

12.0 Conclusions

- 12.1 The Authority contends that the proposed diversion meets the relevant legal criteria outlined in paragraph 4 in that -
- It is expedient to divert the footpath in the interest of the owners on the grounds of privacy and security
 - Privacy would be achieved by diverting the footpath away from the house and out of the garden
 - Security would be enhanced in that the owners would be able to challenge the rights of anyone found within the curtilage of the house and garden area
 - The diversion route is not substantially less convenient for the public with regard to ground levels/contours
 - The length of footpath will be reduced from approximately 173 metres to approximately 112 metres, which is not less convenient for the public
 - The diversion route provides more open views of the Cleveland Hills and Roseberry Topping and would have no adverse impact on the enjoyment of the route as a whole
 - The diversion route is in keeping with the nature of the remaining length of the footpath between Crow Wood House and Easby Firs
 - The diversion conforms to previous findings of the Planning Inspectorate in similar cases regarding privacy, security and views of the house
 - Walkers already use the proposed route through the field. Any issues, if they were to be raised, relating to problems with animals, locked gates or electric fences in the vicinity of existing public rights of way, as stated in one of the objection letters, would be dealt with by the Countryside Access Team, and, if necessary, enforcement action can be taken to alleviate such issues.
- 12.2 It is further contended that the objections raised do not support a sufficient case to warrant the refusal of confirmation of the order on the only grounds stated in Sec 119(6) Highways Act, namely that the proposed route is substantially less convenient for users; thus overall the objections are not considered to be valid.

13.0 Recommendation

- 13.1 It is therefore recommended that the Corporate Director, Business and Environmental Services authorises the submission of the opposed Diversion Order to the Secretary of State for determination, supporting the confirmation of the Diversion Order at **Appendix B**.

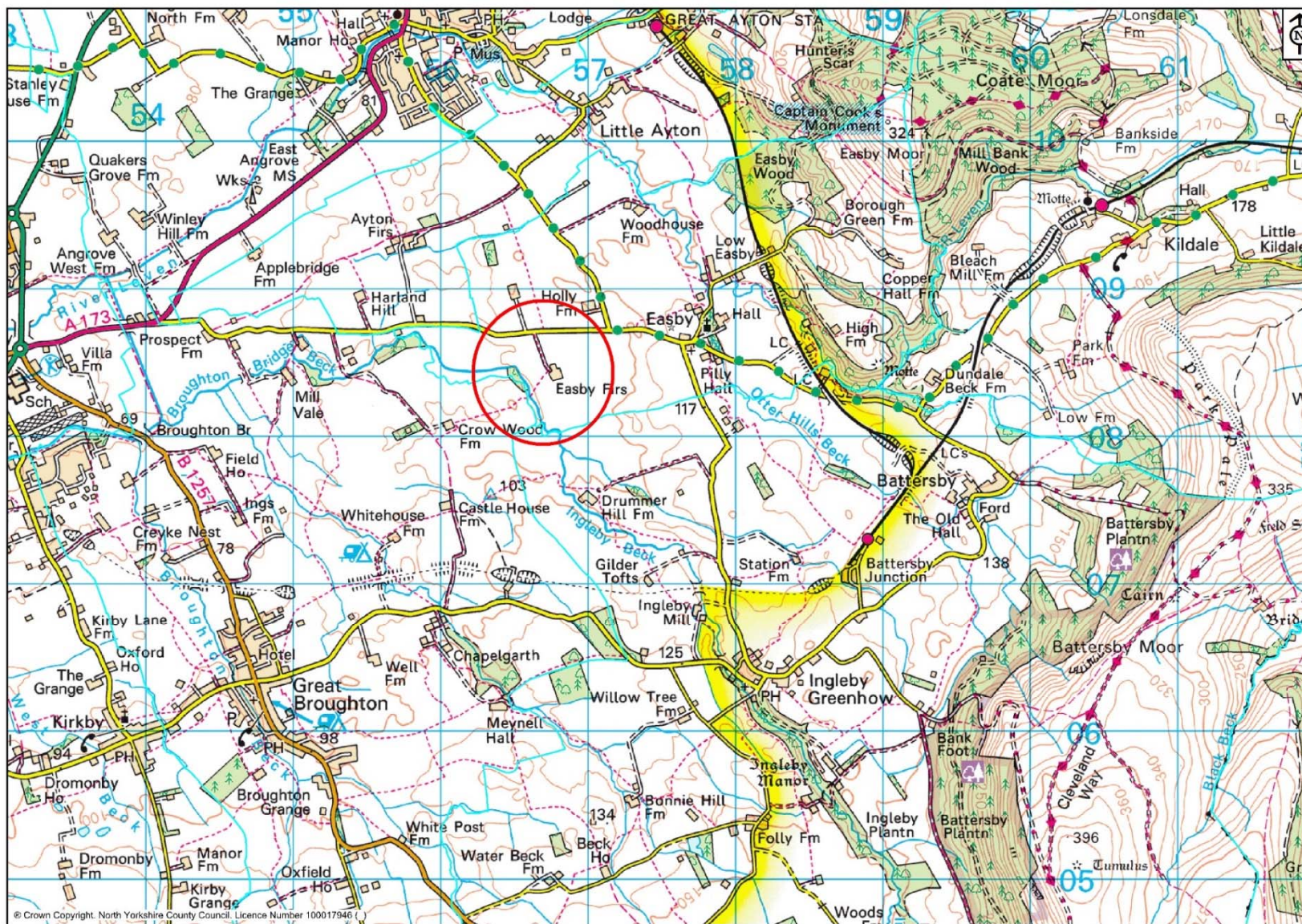
IAN FIELDING

Assistant Director Transport, Waste and Countryside Services

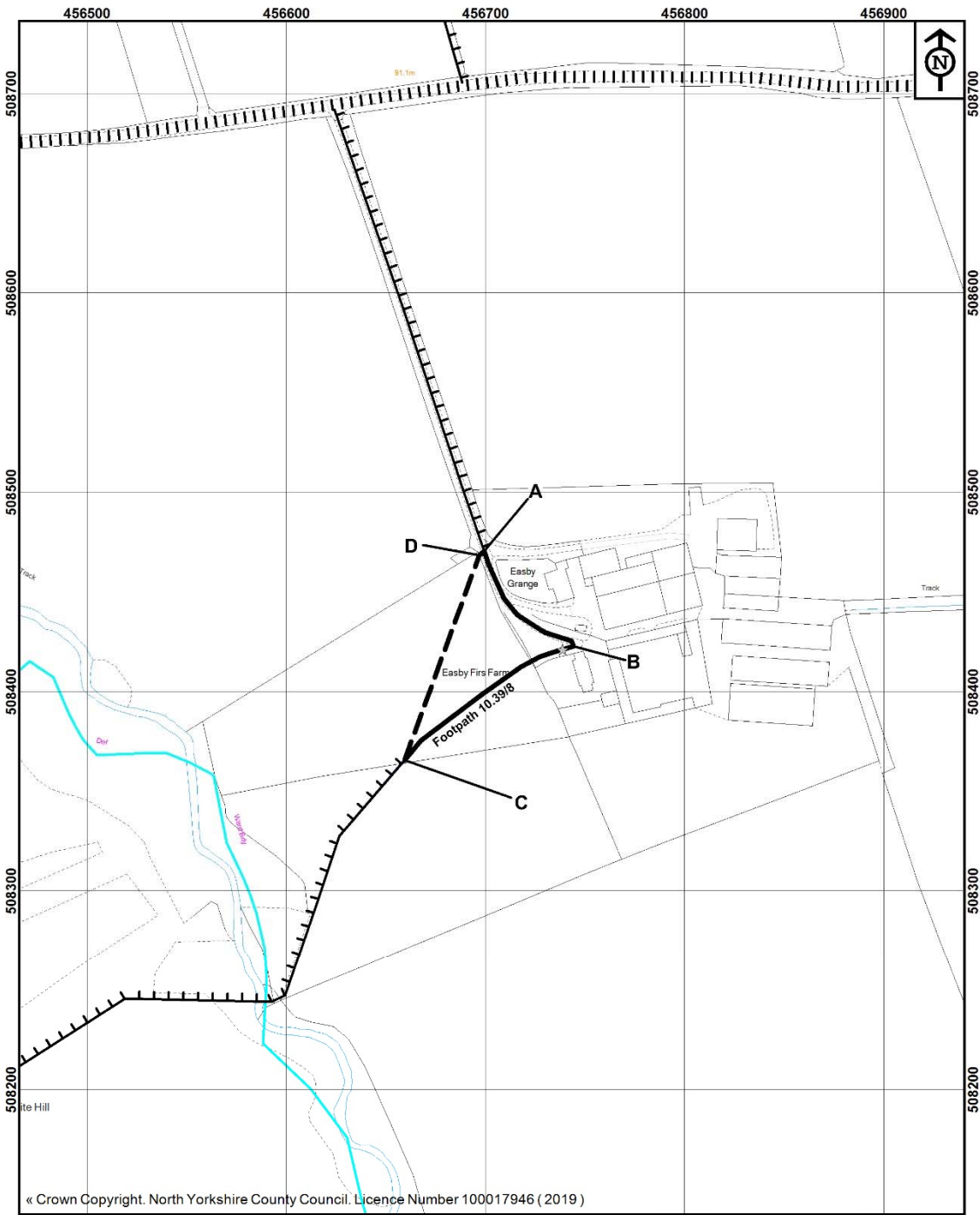
Author of report: Rachel Tyrer

Background papers: HAM/2018/18/DO Easby Firs

Plan 1: Location Plan



Plan 2 Diversion Order Plan



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 <p>North Yorkshire County Council Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p> <ul style="list-style-type: none"> Footpath to be added Footpath to be deleted Other footpaths Maintainable Highways 	<p>North Yorkshire County Council Highways Act 1980 Section 119 Wildlife & Countryside Act 1981</p> <p>Public Footpath 10.39/8 (part) Easby Firs, Easby Diversion Order 2019</p>
	<p>Map drawn on 15 January 2019 Drawn by RCT Scale 1:2500</p>	<p>File Ref No. HAM/2018/18/DO</p>

Photo 1 Existing footpath Point A towards Point B



Photo 2 Existing footpath at approximately Point B



Photo 3 Existing footpath from Point B looking to Point C



Photo 4 Diversion route Point D



Photo 5 Looking towards Easby Firs from the diversion route



Photo 6 Diversion route looking towards Point C



Photo 7 Diversion route looking towards Point D



**Report to the Corporate Director of Business and Environmental Services and
Executive Members**

28 June 2019

**OPPOSED FOOTPATH NO. 10.39/8 (PART) EASBY FIRS,
EASBY, DIVERSION ORDER 2019**

AUTHORISATION

I approve / do not approve the recommendation set out in the report.

ANY ADDITIONAL RECOMMENDATION or COMMENT:

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.....

David Bowe
Corporate Director of Business and Environmental Services

Date: