

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE

13 APRIL 2012

APPLICATION FOR DIVERSION OF PUBLIC FOOTPATH NO 05.30/37, 1. GALLABER FARM, LONG PRESTON

Report of the Corporate Director – Business and Environmental Services

1.0 PURPOSE OF THE REPORT

- 1.1 To advise Members of an application for a Diversion, the effect of which if pursued would be to divert Footpath No 05.30/37, 1. Gallaber Farm, Long Preston. A location plan is attached to this report as **Plan 1**. The section of footpath proposed to be deleted is shown A – B and the section of footpath proposed to be added is shown as B - C on **Plan 2**.
- 1.2 To request Members to authorise the Corporate Director, Business and Environmental Services, to make a Public Path Diversion Order.

2.0 THE COMMITTEE'S RESPONSIBILITIES

- 2.1 Under Section 119 of the Highways Act 1980, the County Council can make a Diversion Order where it is satisfied that it meets the relevant criteria, either in the interests of the owner, or occupier of the land crossed by the route in question, or in the interests of the public.
- 2.2 The Committee's decision whether to "make" an Order is the first stage of the process. If Members authorise an Order being "made", and there are no objections to the Order, the County Council can "confirm" the Order, but will need to be satisfied that:
- i) the diversion is still necessary, and
 - ii) that the diversion will not be substantially less convenient to the public as a result of the Order, and it is necessary 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.

- 2.3 However, if there were an objection to an Order that is not subsequently withdrawn, the matter would be forwarded to the Secretary of State, who has the power to decide whether or not the Order should be “confirmed”.

3.0 BACKGROUND

- 3.1 A formal application under Section 119 of the Highways Act 1980 was submitted on 21 February 2010 by the landowner of 1. Gallaber Farm, Long Preston, to divert the footpath as shown on Plan 2.
- 3.2 The proposal for diversion was submitted due to the landowner’s acquisition of a parcel of land to the north of the dwelling and their wish to encompass this land within their existing boundary. The existing footpath divides the land and the applicant wishes to divert the footpath along the eastern boundary of the field in order to minimise disturbance to animals within the field. The application is therefore made in the interests of the landowner.
- 3.3 The proposed route will be fenced from the field in order to segregate pedestrians from grazing animals. Gaps will be recorded at each end of the new route and the new path will have a grass surface with a recorded width of 2.0 metres. The proposed diversion would add 24 metres to the length of the overall footpath which is approximately 1,140m between Back Lane and the A682). Since the diversion would not greatly increase the length of the footpath, and would not require gates or stiles, it is submitted that the diversion would not be substantially less convenient to the public.
- 3.4 An informal consultation on the proposal was undertaken with the statutory consultees on 6 June 2011, in accordance with required procedure.
- 3.5 In response to the consultation, replies were received from the Ramblers, Craven District Council, Long Preston Parish Council and two residents of Hellifield.

4.0 REPRESENTATION IN SUPPORT OF THE PROPOSED DIVERSION

- 4.1 The Ramblers welcomed the inclusion of gaps at each end of the proposed new route and raised no objection to the proposal.
- 4.2 Craven District Council did not raise any objections to the proposal.

5.0 REPRESENTATION AGAINST THE PROPOSED DIVERSION

- 5.1 Long Preston Parish Council objected to the proposal merely stating that there have been enough changes at Gallaber especially to the line of the footpath and that there might be a hidden agenda.

5.2 Objections were also received from two Hellifield residents:

5.2.1 The first objected on the grounds that the route is historic and ancient, and that a further diversion would degrade this section of path.

5.2.2 The second objected on the grounds that the route is ancient, that the path was previously diverted to allow development at the caravan park. She does not agree with the reason given for the application for the diversion order.

6.0 COMMENTS ON THE OBJECTIONS

6.1 The footpath had previously been diverted in 2007 following development of the former farm complex. This was a minor diversion that moved the footpath northwards by approximately 15 metres away from the new houses built on the site. There is no limit within the legislation that would prevent a particular path being diverted more than once. Each application would be considered on the relevant criteria.

6.2 Officers are unaware of a 'hidden agenda'. The landowner has requested the diversion order on the basis of improving their capability of managing land for equestrian purposes. It is considered that this is reasonable request.

6.3 The first objection and one aspect of the second objection are based on historic and ancient grounds. However, these assertions are not supported by evidence, other than the fact that the path runs towards three hamlets described by the first objector. Whilst the diversion would move the path further away from the original route, the original route was not noticeably following an historic physical feature that might have been considered worthy of preservation; therefore it is not considered that the diversion would greatly diminish the public's enjoyment of the route as a whole in relation to its historic context. Furthermore, since the path was previously diverted approximately 10 years ago to allow development of the site, the section of the route subject to the proposed Order cannot be regarded as ancient or historic.

6.4 The second objection was on the grounds that the route had previously been diverted to allow development of the adjacent caravan park. She further comments that the land is for sale, and does not agree that the application for the diversion order has been made for more efficient use of the land. No evidence was found to suggest that any recorded rights of way were adversely affected by the development at the caravan site. As described above, it is the landowner's belief that the diversion would increase his ability, or his successor's, (as the land is for sale), to manage the land more efficiently, and the legislation permits diversion orders to be made in the interests of the landowner, so long as the new route will not be substantially less convenient to the public.

7.0 CONCLUSION

- 7.1 It is considered that the application satisfies the criteria of Section 119 (1) Highways Act 1980, that is to say, it is in the owner's interests to have the footpath moved to the boundary of their property, and it is considered that the proposal would not be substantially less convenient to the public.
- 7.2 As there are three outstanding objections to the proposal, the Planning and Regulatory Functions Sub-Committee are being asked to determine whether a Diversion Order should be made, having given consideration to the objections.

8.0 RECOMMENDATION

- 8.1 It is therefore recommended that the Committee authorise the Corporate Director, Business and Environmental Services to make a Diversion Order for the route shown A – B on plan 2 to be diverted to the alignment as shown B – C on plan 2.
- and,
- 8.2 in the event that formal objections are made to that Order, and are not subsequently withdrawn, the Committee authorise the referral of the Order to the Secretary of State for determination, and permit the Corporate Director, under powers delegated to him within the County Council's Constitution, to decide whether or not the County Council can support confirmation of the Order.

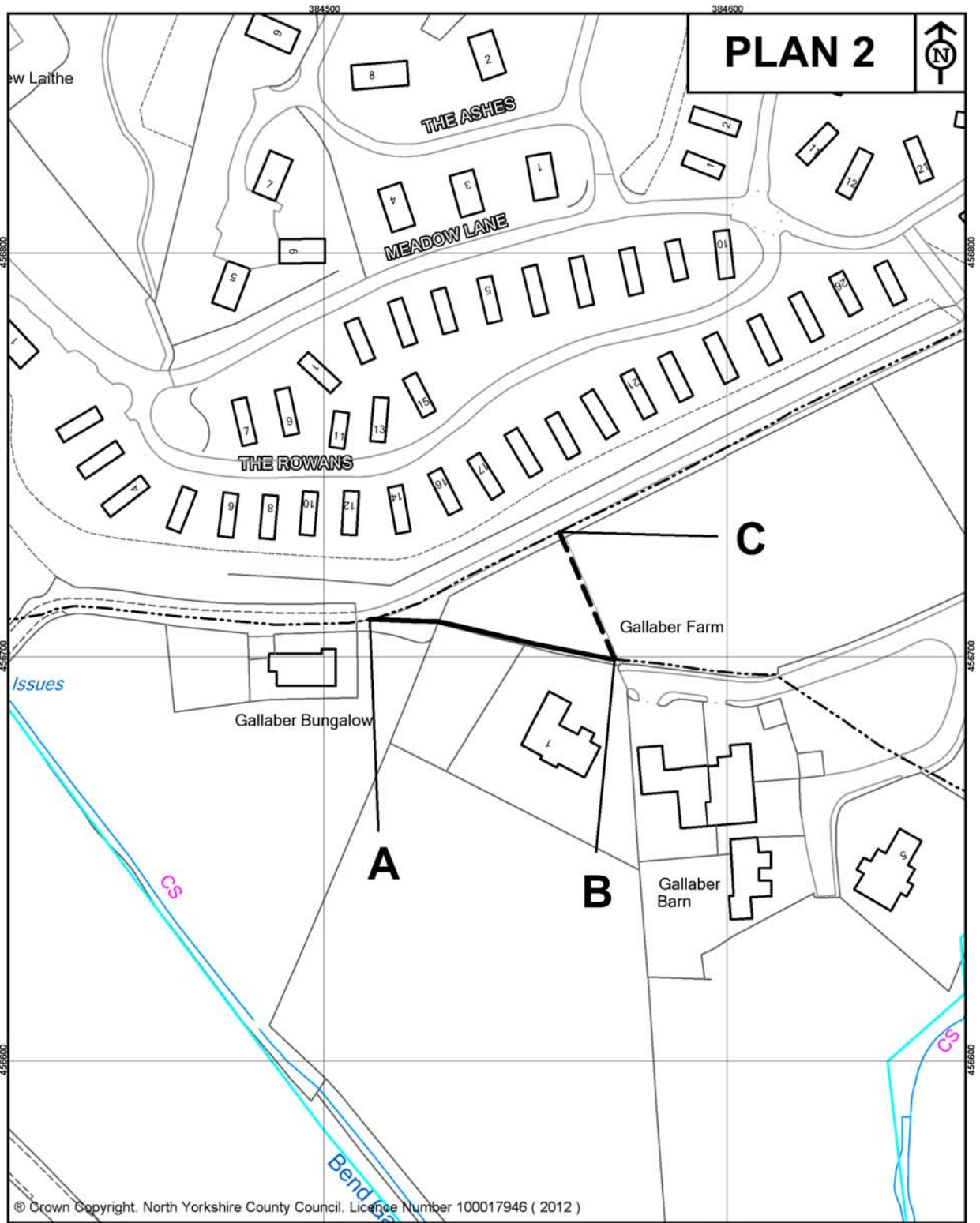
DAVID BOWE
Corporate Director Business & Environmental Services

Author of report: Andy Hunter, Diversion Officer

Background papers:

Diversion application dated 21 February 2010
Correspondence relating to the consultation on the application.

The documents are held on a file marked CRA/2010/01 held by the Definitive Map Team.



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North Yorkshire County Council
 Public Rights of Way
 Waste and Countryside Services
 County Hall
 Northallerton
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Plan of Existing and Proposed Footpaths

Key:
 Footpath to be added - - - - -
 Footpath to be deleted = = = = =
 Other footpaths

Map drawn on 28 February 2012
 Drawn by AWH Scale 1:1250

North Yorkshire County Council

Plan prepared for the
 Planning and Regulatory Functions
 Sub-Committee on 13 April 2012
 Application for Diversion of Footpath
 No. 05.37/30, 1 Gallaber Farm,
 Long Preston

File Ref No. CRA/2010/01