

**NORTH YORKSHIRE COUNTY COUNCIL****PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE****22 JUNE 2012****BRIDLEWAY No 15.111/10 (Part) EAST OF KILLINGHALL BRIDGE, RIPLEY  
DIVERSION ORDER 2012****Report of the Corporate Director – Business and Environmental Services****1.0 PURPOSE OF REPORT**

- 1.1 To advise Members of a Diversion Order that has been made, but has been opposed. The effect of the order, if confirmed, would be to divert a section of Bridleway No 15.111/10, east of Killinghall Bridge. A location plan is attached to this report as Plan 1. The section of bridleway to be deleted is shown A – B and the section of bridleway to be added is shown as A - C - B on Plan 2.
- 1.2 To request Members to authorise the Corporate Director, Business and Environmental Services, to support the confirmation of the Order within the County Council's submission to be made to the Secretary of State, and, in the event of any Public Inquiry that may be held, that officers maintain that stance.

**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 criteria that is expedient to do so, either in the interests of the owner, lessee or occupier of the land crossed by the route in question, or that it is expedient in the interests of the public.
- 2.2 A consultation was undertaken on the proposal to divert the bridleway with the statutory consultees i.e. with Harrogate Borough Council and Ripley Parish Council. As no objection was received, the Constitution allowed that the order be made. Following formal advertisement of the order objections have been received. As there are objections to the Order, the opposed Order is to be forwarded to the Secretary of State for consideration.
- 2.3 Members are requested to decide whether or not to authorise the support for the confirmation of the opposed Order, within the County Council's submission to be made to the Secretary of State. To support the confirming of the Order members will need to be satisfied that:
- i) the diversion is still expedient; and
  - ii) that the diversion will not be substantially less convenient to the public as a result of the Order, and 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.

### **3.0 BACKGROUND**

- 3.1 The Diversion Order which has been made is being promoted by North Yorkshire County Council in the interests of the public, to divert a section of 320 metres of the bridleway at the western end of the Bilton to Ripley bridleway that was established by a Creation Order made by Harrogate Borough Council.
- 3.2 The bridleway was created, by order, to provide a walking, horseriding and cycling route between Bilton and Ripley, linking Harrogate to Nidderdale. The scheme is supported by Sustrans who have provided the majority of the funding to partners, North Yorkshire County Council and Harrogate Borough Council, to construct a surfaced route. Funding has been secured for the southern end of the route and construction has commenced. Funding from Sustrans is available for the construction for the remaining northern section on the understanding that the works are completed by the end of March 2013.
- 3.3 The Order was promoted as it is considered that some re-alignment of a short section at the northern end of the route, through the woodland at the side of the River Nidd, would be in the interests of the public. The terrain is very undulating at this location, and to provide a route that would be easier for the public to use, and would be easier to construct, a relatively minor amendment to the alignment of the route is required to make better use of the existing topography to link the bridleway with the road at the old Killinghall Bridge.
- 3.4 The proposed section of bridleway will have the same recorded width and surface as the existing bridleway, as recorded in the Creation Order confirmed in 2011.
- 3.5 In accordance with the statutory requirement, consultation on the proposal was undertaken on 7 March 2012 with Ripley Parish Council and Harrogate Borough District Council.
- 3.6 In response to the consultation, replies were received from both councils confirming that they are in agreement with the proposed diversion.
- 3.7 The Diversion Order was made on the 24 April 2012, and was advertised on between 4 May 2012 and 1 June 2012.

#### **4.0 REPRESENTATIONS IN SUPPORT OF THE DIVERSION ORDER**

- 4.1 Standard pro forma letters of support were received from 105 members of the public, who state that they support the proposed diversion of the bridleway as they consider it is in the public's interest.
- 4.2 Letters of support were received from the Harrogate Bridleways Association and British Driving Society.

#### **5.0 REPRESENTATION AGAINST THE DIVERSION ORDER**

- 5.1 A letter of objection dated 1 June 2012 was received from Walton and Co Solicitors representing the landowner of Hollin Hall Farm. The representatives make several references to the inquiry that determined the Creation Order in 2011, and to their client's concerns, which were made at that time, regarding the funding of the scheme, and the cost of achieving a link for the bridleway onto the A61 at Killinghall Bridge. The representatives state that their client objects to the Diversion Order on the following grounds:
  - 5.1.1 That the Diversion Order has been made for the principal purpose of remedying the deficiencies of the Creation Order made in 2009, they see this course of action as a misuse of the powers conferred upon the highway authority by Section 119 of the Highways Act 1980.
  - 5.1.2 To rectify the omissions and mistakes of the Creation Order in 2009, creation and extinguishment orders should of being pursued instead of a Diversion Order. Thus allowing the inspector to have regard to the full range of matters set out in Section 26(1)(a) and (b) of the Highways Act 1980.
- 5.2 A letter of objection was received from Nidd Parish Council dated 31 May 2012 on the following grounds:
  - 5.2.1 That North Yorkshire County Council have not provided any rationale or justification for the proposed Diversion Order.
  - 5.2.2 That it is incomprehensible that fourteen months after the order confirmation, the authorities are now seeking a major change to the route.
- 5.3 Four letters from the residents in the parish of Nidd objected or made representation including the following grounds:
  - 5.3.1 That a full inquiry was held at which assurance was provided that the route had been fully surveyed and costed, and in the course of the inquiry a diversion of the route in this section was proposed and accepted by the inspector. In light of this cannot see a need for the further diversion.
  - 5.3.2 That the construction works that are already underway are not complying with the format that was presented at the Inquiry.

- 5.3.3 That there are concerns that the proposed pelican crossing will lead to traffic congestion problems on the A61, but that this could be avoided if the route was diverted under the A61 bridge.

## **6.0 COMMENTS ON THE OBJECTIONS**

- 6.1 It is accepted that the Diversion Order is being promoted to resolve issues resulting from the original Creation Order, and which were not resolved at the public inquiry in 2011. The alternative option of promoting a Creation Order and an extinguishment order had been considered but it was eventually decided that a Diversion Order would serve the same purpose, and that the circumstances adequately met the criteria required to promote a Diversion Order, therefore it is not accepted that there has been misuse of the authority's powers. The legislation permits Diversion Orders to be made in the interests of the public, so long as consideration is given to the effect that the new path will have on the land over which it crosses. It was considered that the diversion would not have a detrimental affect on the land.
- 6.2 The highway authority has a duty within the legislation to consult on Diversion Order proposals with the district council and the parish council in which the diversion is located, these 2 consultations were accordingly made (see paragraph 3.5). The section of the bridleway proposed to be diverted lies entirely within Ripley parish, therefore Nidd Parish Council was not directly informed of the proposed diversion.
- 6.3 Nidd Parish Council's concerns regarding the time it has taken from the confirmation of the Creation Order on 15 March 2011 to the promotion of the Diversion Order are acknowledged. The delay in progress has been due to the necessity to establish any impact on the environment that a diversion of the bridleway may have, and to plan for the works to commence at a time to minimise impact of the wildlife.
- 6.4 Whilst a possible diversion of a section of the bridleway may have been discussed at the Public Inquiry, no formal amendment was made to the Creation Order by the Inspector. Therefore, any subsequent change to the route that may have been required would, by necessity, be made by separate order. The need for the diversion became apparent during the surveying of the order route in relation to the proposed construction works. It was considered that this relatively minor amendment to part of the bridleway would allow better use to be made of the topography to create a bridleway that would be easier to use, and to construct.
- 6.5 The concerns that have been raised with regard to the use of the proposed pegasus crossing (the objector referred to this as a pelican crossing) across the A61 cannot be taken into consideration in determining whether the Diversion Order should be confirmed, as the location of the crossing is outside of the extent of the Diversion Order route.

## **7.0 CONCLUSION**

- 7.1 It is considered that the proposed diversion satisfies the criteria of Section 119 (1) Highways Act 1980, that is to say, it is in the public's interests to have the bridleway moved to the new alignment, and it is considered that the re-alignment of the bridleway would not have a detrimental effect on the land crossed by the bridleway.
- 7.2 Many of the issues raised within the letters of objection are not specific to the proposed diversion, but relate to the objectors' lack of support for the original creation of the bridleway. These issues are not relevant to the consideration of whether or not the order should now be confirmed. It is not considered that any of the objections raise valid issues which suggest that the order should not be confirmed, it is therefore considered that the order should be confirmed.
- 7.3 Whilst there is some objection to the Diversion Order from the landowner and from a number of residents in Nidd, the 105 pro forma letters received in support of the confirmation of the Diversion Order demonstrate that there is also a considerable proportion of the local community in favour of the proposed improvement of the bridleway.
- 7.4 As there are six outstanding objections to the Order, the Order will need to be forwarded to the Secretary of State for determination. Members are requested to decide what stance the County Council should take in its submission to be made to the Secretary of State, having given consideration to the objections.

## **8.0 RECOMMENDATION(S)**

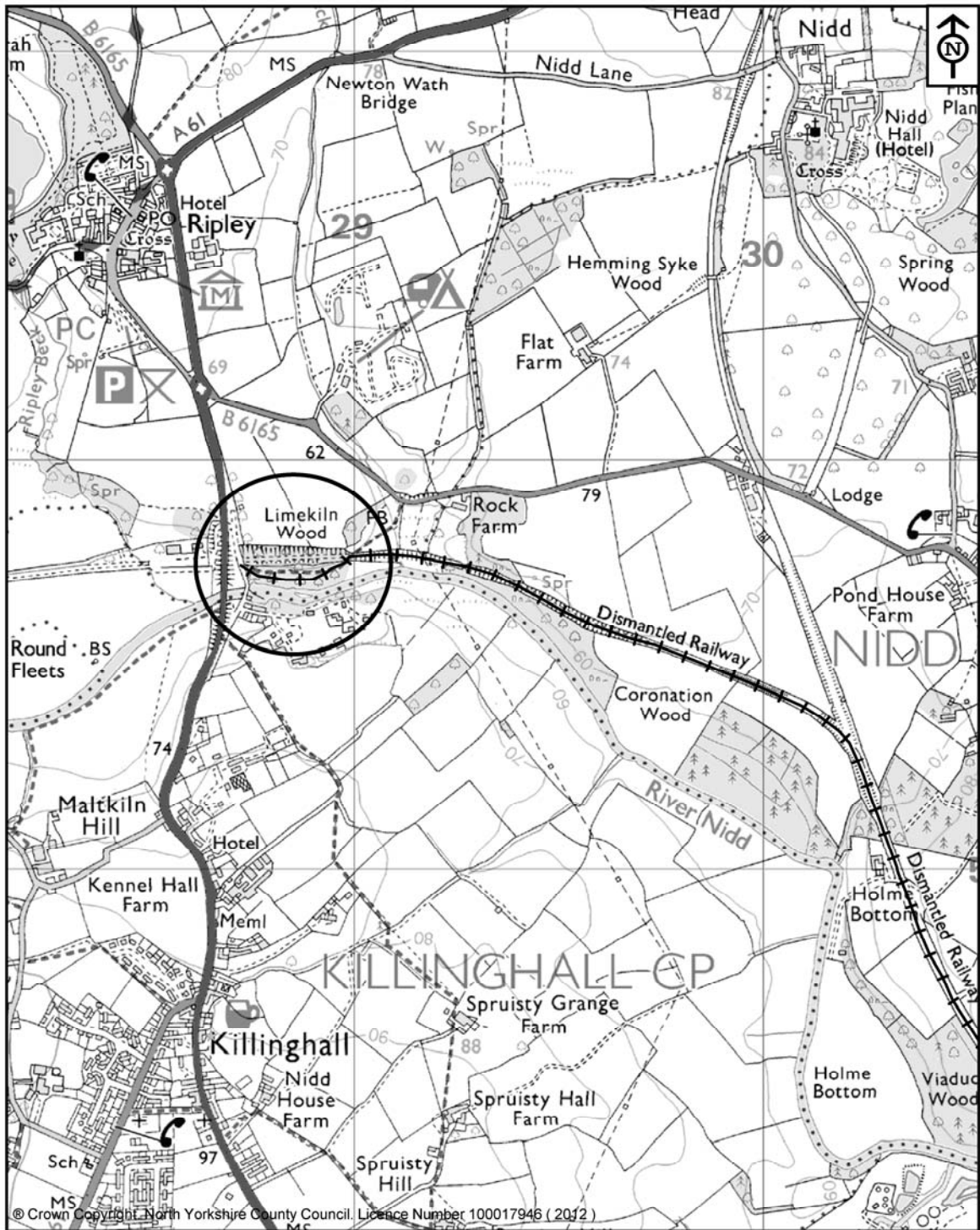
- 8.1 It is recommended that the Committee authorise the Corporate Director, Business and Environmental Services to support the confirmation of the Diversion Order within the County Council's submission to be made to the Secretary of State, and, in the event of any Public Inquiry that may be held, that officers maintain that stance.


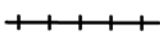
DAVID BOWE  
Corporate Director Business & Environmental Services

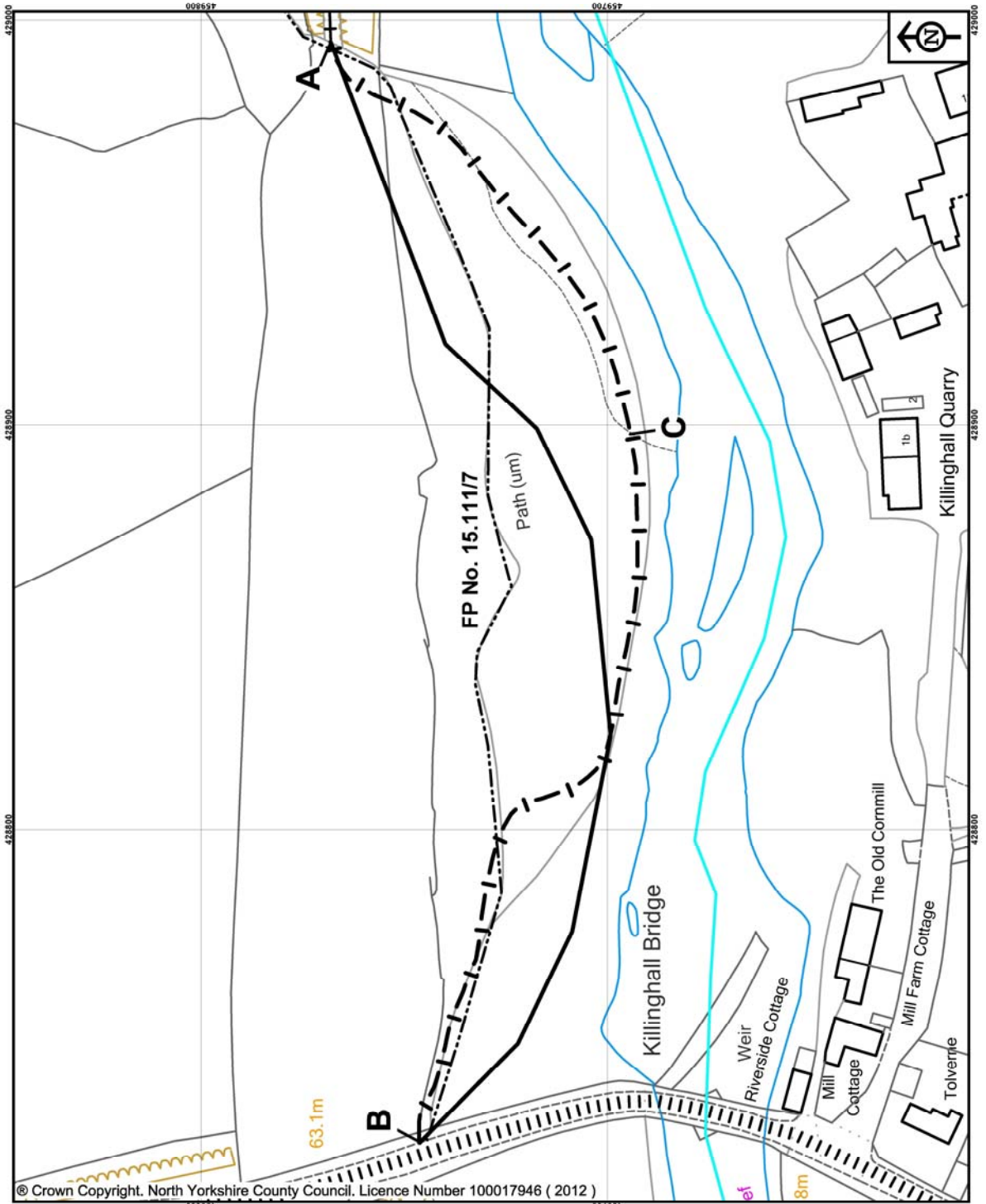
Author of report: James Perkins, Definitive Map Officer

### Background papers:

*Correspondence relating to the consultation on the application.  
The documents are held on a file marked HAR/2012/01/DO held by the Definitive Map Team.*



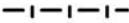



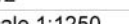
 <p><b>North</b> Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p align="center"><b>PLAN 1</b></p> <p>LOCATION PLAN</p> <p>Key: Bilton to Ripley Bridleway</p> <p>Map drawn on 23 April 2012 Drawn by JRP</p> <p align="center">  </p> <p align="right">Scale 1:12500</p>	<p align="center"><b>PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE 22 JUNE 2012</b></p> <p align="center">BRIDLEWAY No 15.111/10 (Part) EAST OF KILLINGHALL BRIDGE, RIPLEY DIVERSION ORDER 2012</p> <p align="right">File Ref No. HAR/2012/01/DO</p>
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**North**  
**Yorkshire County Council**

Public Rights of Way  
 Waste and Countryside Services  
 County Hall  
 Northallerton  
 DL7 8AH

**PLAN 2**

Key:  
 Bridleway to be added   
 Bridleway to be deleted   
 Other footpaths   
 Other bridleways   
 Maintained Highways   
 Map drawn on 23 April 2012  
 Drawn by JRP

**PLANNING AND REGULATORY  
 FUNCTIONS SUB-COMMITTEE**  
 22 JUNE 2012

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 EAST OF KILLINGHALL BRIDGE,  
 RIPLEY  
 DIVERSION ORDER 2012

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