

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE

23 NOVEMBER 2012

APPLICATION FOR DIVERSION ORDER - PUBLIC FOOTPATH NO 15.89/21, MARFIELD QUARRY NATURE RESERVE, MASHAM

Report of the Corporate Director – Business and Environmental Services

1.0 PURPOSE OF REPORT

- 1.1 To advise Members of an application for the diversion of a public footpath, the effect of which if pursued would be to divert Footpath No 15.89/21, Marfield Quarry Nature Reserve, Masham. A location plan is attached to this report as Plan 1. The section of footpath proposed to be deleted is shown A – B – C and the section of footpath proposed to be added is shown as A – D – E – F – G – H – I – J – K 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 criteria that it 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 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 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.

- 2.3 However, if there were an objection to an Order that is not subsequently withdrawn, the matter would be forwarded to the Secretary of State, who has the power to decide whether or not the Order should be “confirmed”.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 10 October 2011 by Lafarge Aggregates Ltd, to divert footpath no 15.89/21.
- 3.2 The application for diversion was submitted to correct the long standing obstruction of footpath no. 15.89/21 by the quarry and subsequent landscaping.
- 3.3 Footpath no 15.89/21 was temporarily diverted for five years in 1979 to allow quarrying to take place. The route of the temporary diversion corresponded with the route of a current permissive path (shown as E – L – K on Plan 2). However when the temporary diversion expired in 1984 it was intended that footpath 15.89/21 should revert to its original alignment through the quarry. However, the re-instatement of landscaping did not allow for the footpath to return to its original alignment on the ground. As a result of the quarrying the original route is obstructed by a lake.
- 3.4 The land is owned by Lafarge Aggregates Ltd but is now managed by the owner as a nature reserve. The owner wishes to divert the footpath as currently shown on the Definitive Map to keep it as close as possible to the original route but avoiding the standing water. They have identified a route which is as close as possible to the route currently walked by the public, but which would reduce the disturbance to the birds that the managers of the nature reserve are attempting to encourage.
- 3.5 An initial consultation on the proposal was undertaken with the statutory consultees, land owners, and other interested parties on 14 October 2011, in accordance with required procedure.
- 3.6 In response to the consultation, twelve replies were received of which nine either expressed support or gave no view. The remaining three responses objected to the proposals.

4.0 REPRESENTATION IN SUPPORT OF THE PROPOSED DIVERSION

- 4.1 The Ramblers supported the diversion and the Byways and Bridleways Trust made no comment. Masham Parish Council stated that they were content with the diversion proposal but warned that some local residents may object.
- 4.2 Harrogate Borough Council did not raise any objections to the proposal.

5.0 REPRESENTATION AGAINST THE PROPOSED DIVERSION

- 5.1 North Yorkshire County Council's Natural Environment Team initially objected to the original proposal on the grounds that the northern end it ran through species rich deciduous woodland and the presence of a public right of way would disturb the wildlife that would be attracted to such a habitat. However they supported the rest of the diversion route because it moved the footpath away from important bird nesting areas.
- 5.2 Mr A.C. Plumpton and Mr F.A. Plumpton objected to the application separately but on the same grounds that the proposed new route was used by nesting birds and that the walked line that passed to the east of the southernmost water body had a good surface which had been used for years. They also commented that a memorial bench would be inaccessible if the route were diverted.

6.0 COMMENTS ON THE OBJECTIONS

- 6.1 In response to the objection raised in the consultation by North Yorkshire County Council's Natural Environment Team, the northern end of the route was realigned following liaison with the managers of the nature reserve to that now shown on plan 2. The objection was subsequently withdrawn.
- 6.2 Mr A.C. Plumpton and Mr F.A. Plumpton both indicated that they maintained their objections to the application.
- 6.3 The view of the two objectors regarding the nesting birds is in contradiction with the view of the managers of the nature reserve and the Natural Environment Team.
- 6.4 The view of the two objectors regarding the suitability of the surface is accepted as a valid concern; however the landowners have undertaken to improve the surface of the proposed route to allow it to be more easily used by people on foot or in wheelchairs.
- 6.5 Whilst Officers are sympathetic to the issue of future access to the memorial bench, it is not something to be taken into account in determining whether the legal criteria are met for the diversion of the public right of way. However, the landowner has been contacted about the objectors' concern, and has agreed to the re-location of the bench in the event the diversion order is confirmed.

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 interest to divert the footpath to improve the management of the nature reserve, and it is in the public's interest that the path is diverted to avoid the bodies of standing water. It is considered that the proposal would not be substantially less convenient to the public and it makes the legal route of the public footpath useable for the first time in many years
- 7.2 As there are two outstanding objections to the proposal, the Committee's authority is sought to make the proposed Diversion Order, having given consideration to the objections.

8.0 RECOMMENDATION(S)

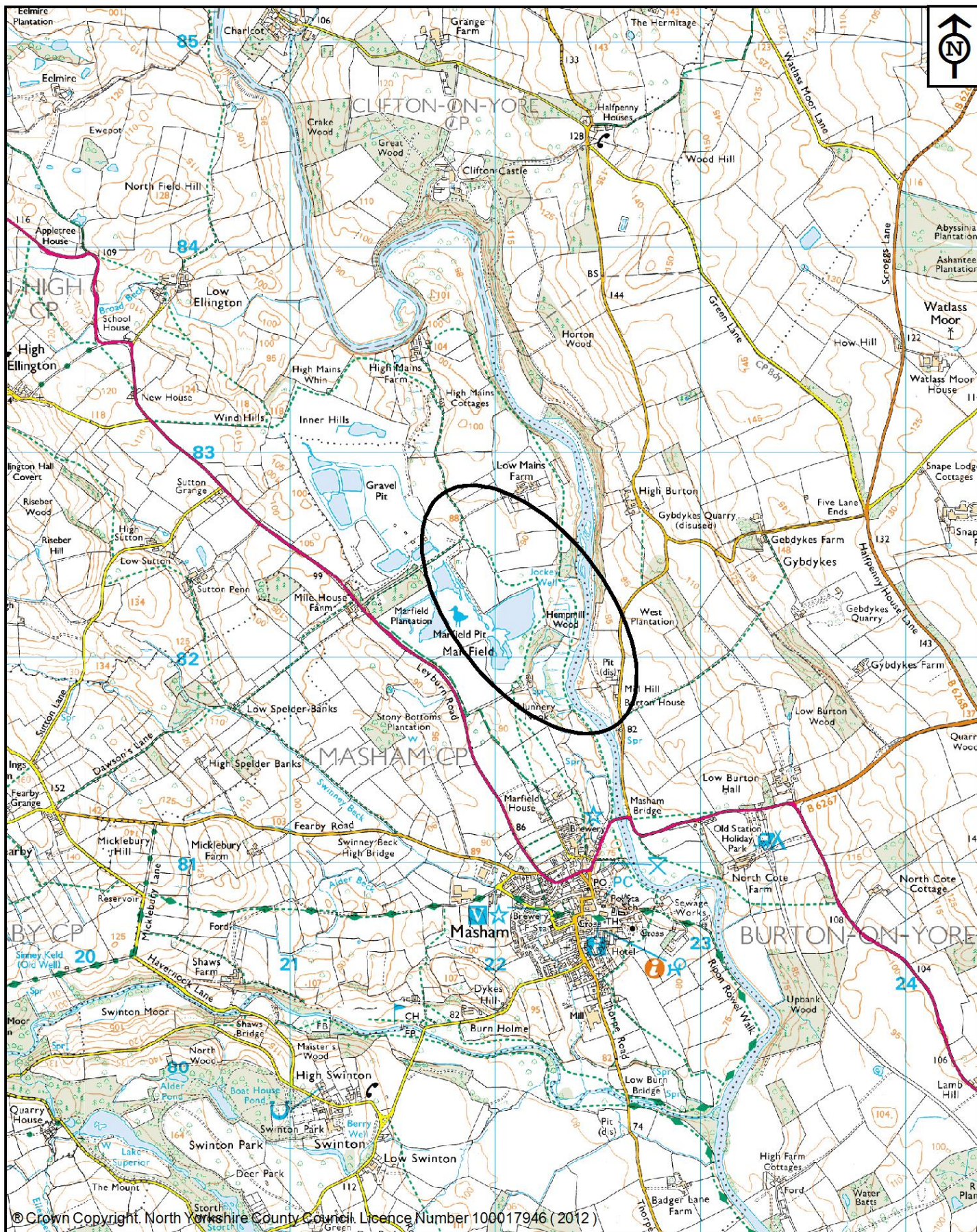
- 8.1 It is recommended that the Committee authorise the Corporate Director, Business and Environmental Services to make a Diversion Order for the route shown A – B on plan 2 to be diverted to the alignment as shown A – D – E – F – G – H – I – J – K on plan 2; and
- 8.2 In the event that formal objections 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 and Environmental Services

Author of Report: Russ Varley

Background Documents:

Diversion application dated 10 October 2011
Correspondence relating to consultation on the application.



**North
Yorkshire County Council**

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

Plan 1

Map drawn on 3 October 2012

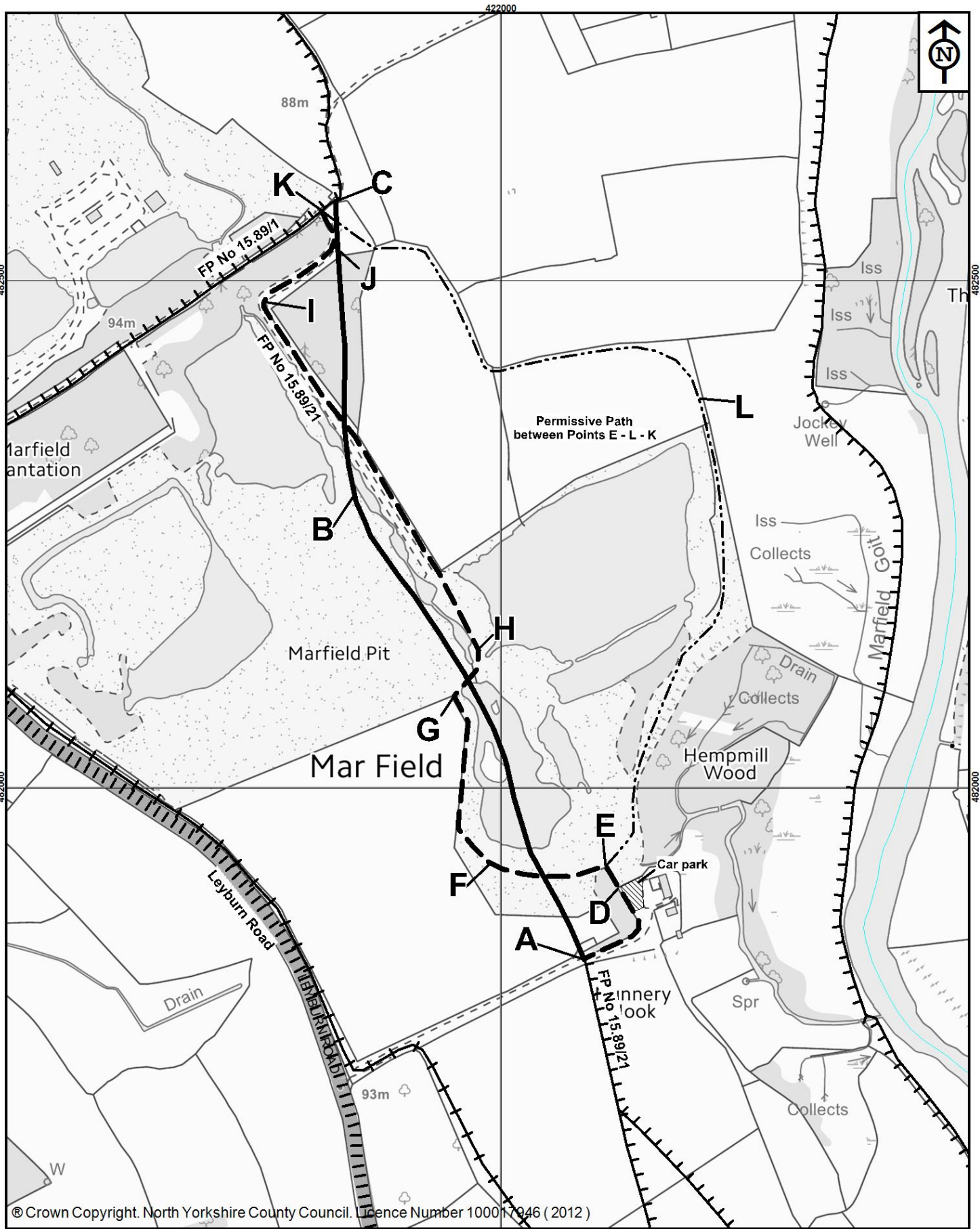
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Scale 1:25000

North Yorkshire County Council

Harrogate Area Committee
1 November 2012
Application to divert footpath 15.89/21
Marfield Nature Reserve, Masham

File Ref No. HAR/2011/14/DO



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Key:

- Footpath to be added
- Footpath to be deleted
- Other footpaths
- Other bridleways
- Maintained Highways
- Permissive Path

Map drawn on 3 October 2012
Drawn by RJV Scale 1:5000

North Yorkshire County Council

Plan 2

Harrogate Area Committee
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