

**NORTH YORKSHIRE COUNTY COUNCIL****PLANNING & REGULATORY FUNCTIONS SUB COMMITTEE****8 MARCH 2013****APPLICATION FOR DIVERSION OF PUBLIC FOOTPATH NO 10.19/21,  
PEARTREE BUNGALOW, DEIGHTON LANE, BROMPTON****Report of the Corporate Director – Business and Environmental Services****1.0 PURPOSE OF REPORT**

- 1.1 To advise Members of an application for a Diversion Order, the effect of which, if pursued, would be to divert Footpath No. 10.19/21 at Peartree Bungalow, Deighton Lane, Brompton. A location plan is attached to this report as **Plan 1**. The section of footpath proposed to be deleted is shown as A – B and the section of footpath proposed to be added is shown as A – C – D – B 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 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 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.

2.3 However, if there were an objection to an Order that is not subsequently withdrawn, the power to confirm the Order rests with the Secretary of State, who will apply the legal tests set out in 2.2 above.

### **3.0 BACKGROUND**

3.1 A formal application under Section 119(1) of the Highways Act 1980 was submitted on 20 June 2012 by the landowner of Peartree Bungalow, Deighton Lane, Brompton, to divert the footpath as shown on Plan 2.

3.2 The proposal for diversion was submitted due to the landowner's desire to divert the path out of the garden area in order to improve security and privacy at the property. The application is therefore made in the interests of the landowner.

3.3 The proposed path will have a recorded width of 2.0 metres between A - C - D and 1.8 metres between D - B, with pedestrian gates installed at points C and D. The path will have a gravel surface between A – C, grass between C – D and grass/hardcore between D – B.

3.4 An informal consultation on the proposal was undertaken with the statutory consultees on 19 July 2012, in accordance with the required procedure.

3.5 In response to the consultation, replies were received from the Parish Council, the Ramblers, and from the owner of a neighbouring property.

3.6 The Parish Council and the Ramblers did not raise any objections to the proposal.

### **4.0 REPRESENTATION AGAINST THE PROPOSED DIVERSION**

4.1 The owner of the neighbouring property objected to the proposal on the grounds that:-

- the diversion will not improve the applicant's security and privacy;
- the path should remain on its current alignment;
- instead of a diversion, a fence could be erected to provide privacy and security;
- a diversion would increase the likelihood that walkers would cut the corner across his field and climb the existing fence at D rather than use the gate at B; and
- the footpath should remain on its current line where it crosses his access track immediately south of A.

## **5.0 COMMENTS ON THE OBJECTION**

- 5.1 That the proposed diversion will not improve the applicant's privacy or security.

The applicant is of the opinion that the diversion will improve her privacy and security. The County Council may make a Diversion Order if it is satisfied that the diversion is in the interests of the owner, occupier, or lessee of the land and as landowner, the applicant has demonstrated her interest in diverting the path.

- 5.2 That the path should be kept as it is and a fence should be erected from point B southwards to the track.

As described in 5.1 above, a diversion may be made in the interests of the landowner.

The applicant does not wish to divide her property in two by a fence, and considers a diversion would be the most appropriate solution to her concerns over privacy and security.

- 5.3 That walkers would cut the corner across his field and climb the existing fence at D rather than use the gate at B.

There is an existing pedestrian gate provided for the public footpath at Point B. Public access to the gate will remain unaffected by the diversion. When approaching from the north, the gate is an obvious feature in the boundary and Officers see no reason for the public to deviate from the footpath across the objector's land to climb a barbed wire fence, in preference to using the pedestrian gate.

- 5.4 That the path remains in its current position on the access track.

The access track is owned by the objector, and the northern edge of this track forms the boundary with the applicant's property. The diversion would commence at Point A, just north of the track and therefore will not divert any part of the path on the neighbour's access track, and will not affect land outside the ownership of the applicant.

- 5.5 The objector has confirmed that he does not wish to withdraw his objection, but should the diversion proceed, he has asked that Point A be clearly marked with a waymark post.

## **6.0 LEGAL IMPLICATIONS**

- 6.1 There are no legal implications associated with the introduction of these proposals.

## **7.0 CONCLUSION**

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

## **8.0 RECOMMENDATIONS**

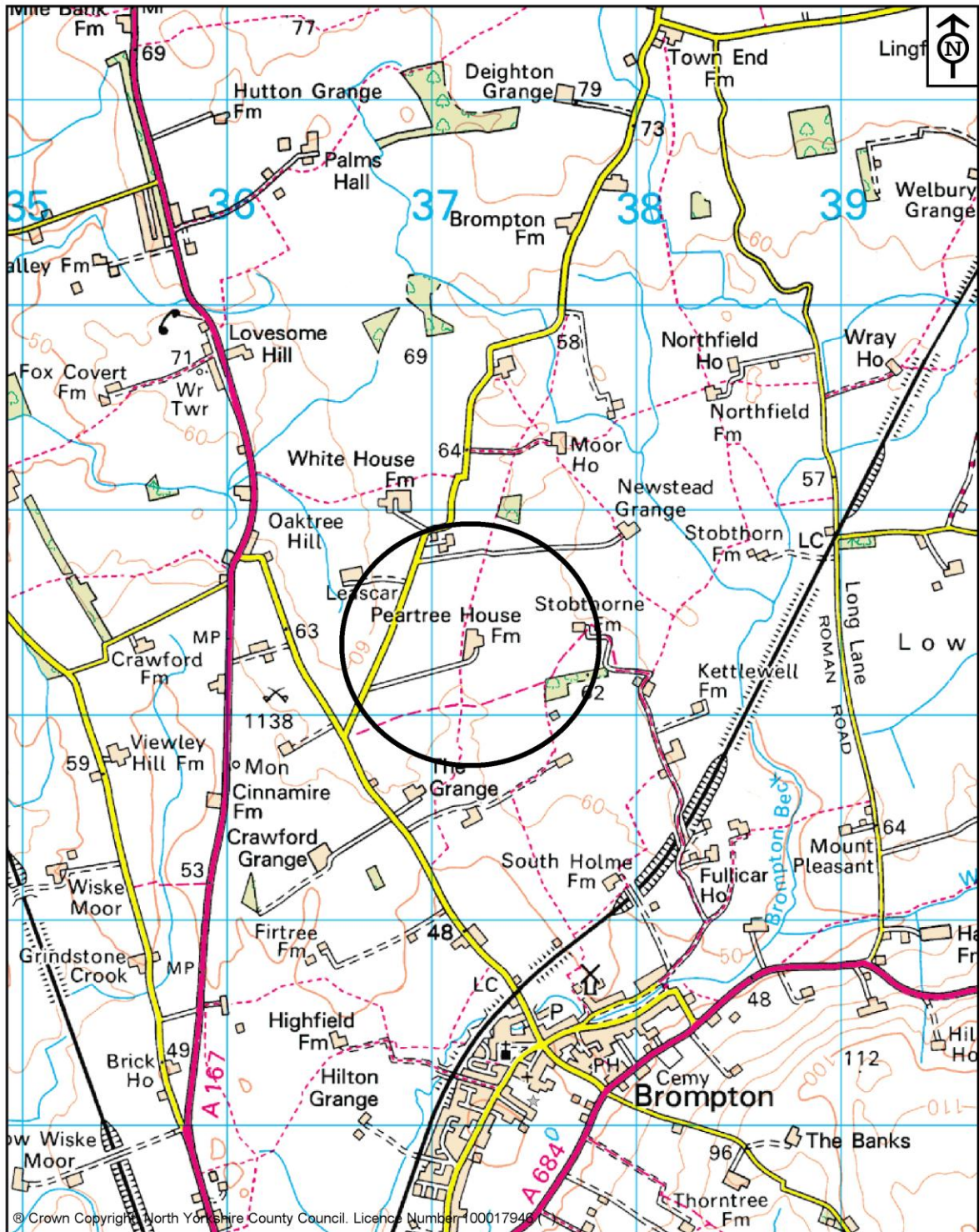
- 8.1 It is therefore recommended that the Committee authorise the Corporate Director, Business and Environmental Services to make a Diversion Order for the route shown A – B on plan 2 to be diverted to the alignment as shown A – C – D – B on **Plan 2**; and
- 8.2 in the event that formal objections 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

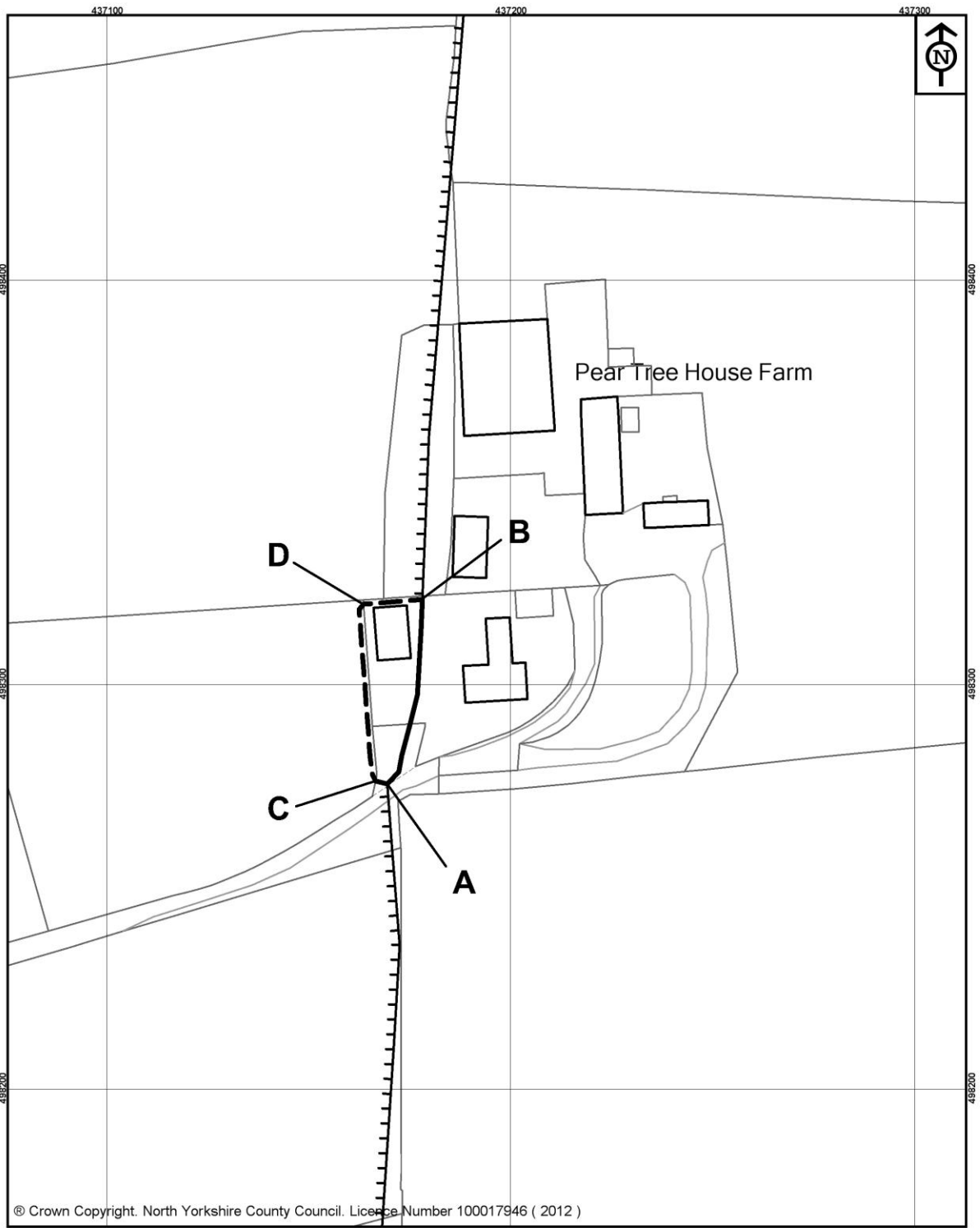
Author of Report: Andy Hunter

Background Documents:

Definitive Map Team Case file ref: HAM/2012/05/DO






 <p><b>North Yorkshire County Council</b></p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<h2>PLAN 1 LOCATION</h2> <p>Map drawn on 14 December 2012 Drawn by _____ Scale 1:25000</p>	<p><b>North Yorkshire County Council</b></p> <p>APPLICATION FOR DIVERSION OF FOOTPATH NO. 10.19/21, PEARTREE BUNGALOW, BROMPTON</p> <p>Plan prepared for the Planning &amp; Regulatory Functions Sub-Committee</p> <p>File Ref No. HAM/2012/05</p>
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**North Yorkshire County Council**

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

**Key:**  
 Footpath to be added   
 Footpath to be deleted   
 Other footpaths 

Map drawn on 9 October 2012  
 Drawn by AWH Scale 1:1250

**North Yorkshire County Council**

APPLICATION FOR DIVERSION OF  
 FOOTPATH NO. 10.19/21  
 PERATREE BUNGALOW, BROMPTON  
 Plan prepared for the  
 Planning & Regulatory Functions  
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**PLAN 2**

File Ref No. HAM/2012/05