

North Yorkshire County Council

Executive Members

17 December 2021

Opposed Public Bridleway No. 20.46/24, Brook House Farm, Middleton Tyas Diversion Order 2021

Report of the Assistant Director – Travel, Environmental and Countryside Services

1.0 Purpose of the report

- 1.1 To advise the Corporate Director of Business and Environmental Services (BES) of an opposed Public Path Diversion Order and the proposal to refer it to the Secretary of State for resolution. A location plan is attached to this report as **Plan 1**. The route is shown on **Plan 2**.
- 1.2 To request the Director and Executive Member to authorise the opposed Diversion Order be referred to the Secretary of State, and that the Authority supports the confirmation of the Order within its submission to the Secretary of State (SoS).

2.0 Scheme of Delegation

- 2.1 Within the County Council's scheme of delegation, it is delegated to the Assistant Director - Travel, Environmental and Countryside Services, to decide whether to abandon an opposed Diversion Order where the Authority is of the opinion that the requirements to confirm the Order may not be met and where an Inspector appointed by the SoS may decline to confirm the Order, or to recommend to the Director-BES that the Order be referred to the SoS for confirmation.

3.0 The Application

Applicant:	Mr. Edward Speir
Date of application:	16/10/2020
Type of Application	Diversion Order S.119 Highways Act 1980
Parish:	Middleton Tyas
Local Member:	Cllr. Angus Thompson
Applicant's grounds for making the application	To remove bridleway users from the potential risks from farm machinery manoeuvring in the yard, as identified in an independent risk assessment carried out in the wake of a recent fatal accident on a Public Right of Way elsewhere in North Yorkshire, and to enhance the applicant's privacy and security.

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 Public Right of Way where it appears to the Authority that in the interests of the owner of the land crossed by the Public Right of Way described in the Order it is expedient that the line of the route 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 the appointed Inspector 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 bridleway

- 5.1 The Brook House Farm manager's family recently experienced a tragic fatal accident on their farm, elsewhere in North Yorkshire, in which a walker, using a public right of way through the farmyard, was fatally injured by a reversing farm vehicle.
- 5.2 As a consequence, an independent contractor was hired to carry out a risk assessment at Brook House Farm, where the bridleway runs along the side of a working farm yard. The assessment recommended that the bridleway be diverted, particularly as two potentially dangerous bends were identified which could result in an accident, especially with bike riders riding at speed around the bends.
- 5.3 The diversion would also potentially enhance the privacy and security of the applicant's home which also borders the bridleway, though this is less of a factor as the bridleway meets an unclassified road outside the farm house, which would remain available to the public (albeit as a dead-end) after the diversion has been implemented.
- 5.4 All the land affected by the diversion is in the family ownership of the applicant.

6.0 Responses to the initial consultations

- 6.1 No objections were received at informal consultation. The Diversion Order was made and was duly advertised by notice on 11/06/2021.

7.0 Responses to the publication of the sealed order

7.1 The objections received were as follows:

- Both Objectors were concerned about the change of the surface of the bridleway from compacted stone to a mixture of compacted stone and grass. They argued that the grass surface would be less suitable for use by cyclists and pedestrians, especially during bad weather. The surface of the diverted route will be compacted aggregate apart from the section between Points F and H, which will be grass. The additional bridle gate is necessary for stock control, however the applicant has indicated that all bridle gates will remain open apart from those times when stock is being moved (as is the case with the existing gate). The DMO does not feel that the additional gate or the grass surface will make the new route substantially less convenient for users.
- Both Objectors were also concerned about the development of agricultural land and a potential detrimental effect on wildlife which the diversion would represent. The DMO is of the opinion that the proposal does not represent an undue development of agricultural land and the County Council Ecology team did not express any concerns over the proposal at the informal consultation stage and made no further response at formal consultation.
- One objector complained that the diversion represented a 325% increase in the length of the bridleway. The DMO is of the opinion that this is not a fair comparison as it does not include the length of the unclassified road which forms part of the route, and which would not be affected by the Order. In fact, the increase in length of the route between Points B and C (the start and end of the section to be diverted) is only about 30%, which represents no more than a couple of minutes walking time, at most.
- One objector stated that, in their opinion, there was no need to move a route which has been in use for many decades. In particular they did not believe that there was a significant safety risk as they were a regular user and had never met a farm vehicle and part of the route would still be on access tracks, so the danger would remain. The DMO feels that this opinion, whilst no doubt genuinely held, would not be sufficient to override the recommendations of an independent risk assessment. The assessment identified the risks of farm machinery manoeuvring (and in particular, reversing) in the yard, rather than travelling forwards along the access roads as being the main risk.

7.2 As is quite common, no specific expressions of support for the proposal were received during the formal consultation.

8.0 Representation made by the local member

8.1 No comments were received from the local Member.

9.0 Financial implications

9.1 If the opposed Order were to be submitted to the SoS, it would be most likely to be resolved by written representations, or possibly by a public inquiry.

9.2 There would be a non-rechargeable cost to the Authority in preparing a submission to the SoS and responding to any queries raised by the SoS. These costs would be for officer time which would be met by the respective staffing budgets. If the Inspector chose to hold a public inquiry, the costs of arranging, hosting and supporting the Inquiry would fall to the Council.

10.0 Equalities implications

10.1 Consideration has been given to the potential for any equality impacts arising from the recommendations. It is considered that the outcome would have no impact on the protected characteristics identified in the Equalities Act 2010.

11.0 Legal implications

11.1 The opposed Diversion Order would be determined by an Inspector appointed by the SoS, by way of, as stated above, either written representations or public inquiry.

11.2 The Inspector, on the basis of the legal criteria summarised in paragraph 4.3 above, would decide whether or not to confirm the opposed Diversion Order. If he/she decides to confirm the Order, part of the existing route(s) would be extinguished and the proposed route would be added to the Definitive Map.

12.0 Climate change implications

12.1 The proposal is merely to divert part of the existing public bridleway on to an alternative alignment very close by. The confirmation of this order would have no positive or negative impact on climate change.

13.0 Current decisions to be made

13.1 The decisions to be made at this stage are, firstly, whether the Order is to be abandoned, or is to be forwarded to the SoS for resolution.

13.2 Secondly, if it is decided that the matter is to be forwarded to the SoS then a further decision will need to be made, namely which stance the authority would take within its submission to the SoS towards the confirmation of the Order; that is the Authority needs to decide if it:

- supports confirmation of the Order,
- does not support confirmation of the Order,
- considers the circumstances are so finely balanced, or are particularly unclear and wishes to take a neutral stance.

14.0 Conclusions

14.1 The prime motive for requesting this diversion has arisen from the farm manager's family having had direct experience of a fatal accident involving a walker and farm machinery. Their subsequent independent risk assessment identified similar potential risks at Brook House Farm and recommended the diversion of the bridleway.

14.2 Two objections to the Order have been received from members of the public, which are outlined above together with the Definitive Map Officer's comments.

14.3 In conclusion, it is felt that the objections would not prevent the Order from meeting the relevant legal tests to be confirmed, and do not carry sufficient merit to outweigh the recommendations of the independent health and safety risk assessment undertaken for the farm manager.

14.4 It is the view of officers that the proposed diversion of the bridleway would not be substantially inconvenient to the legitimate users of the route, overall it is considered that the relevant criteria is met, and that the Order should therefore be referred to the Secretary of State and that the Council should support confirmation of the Order.

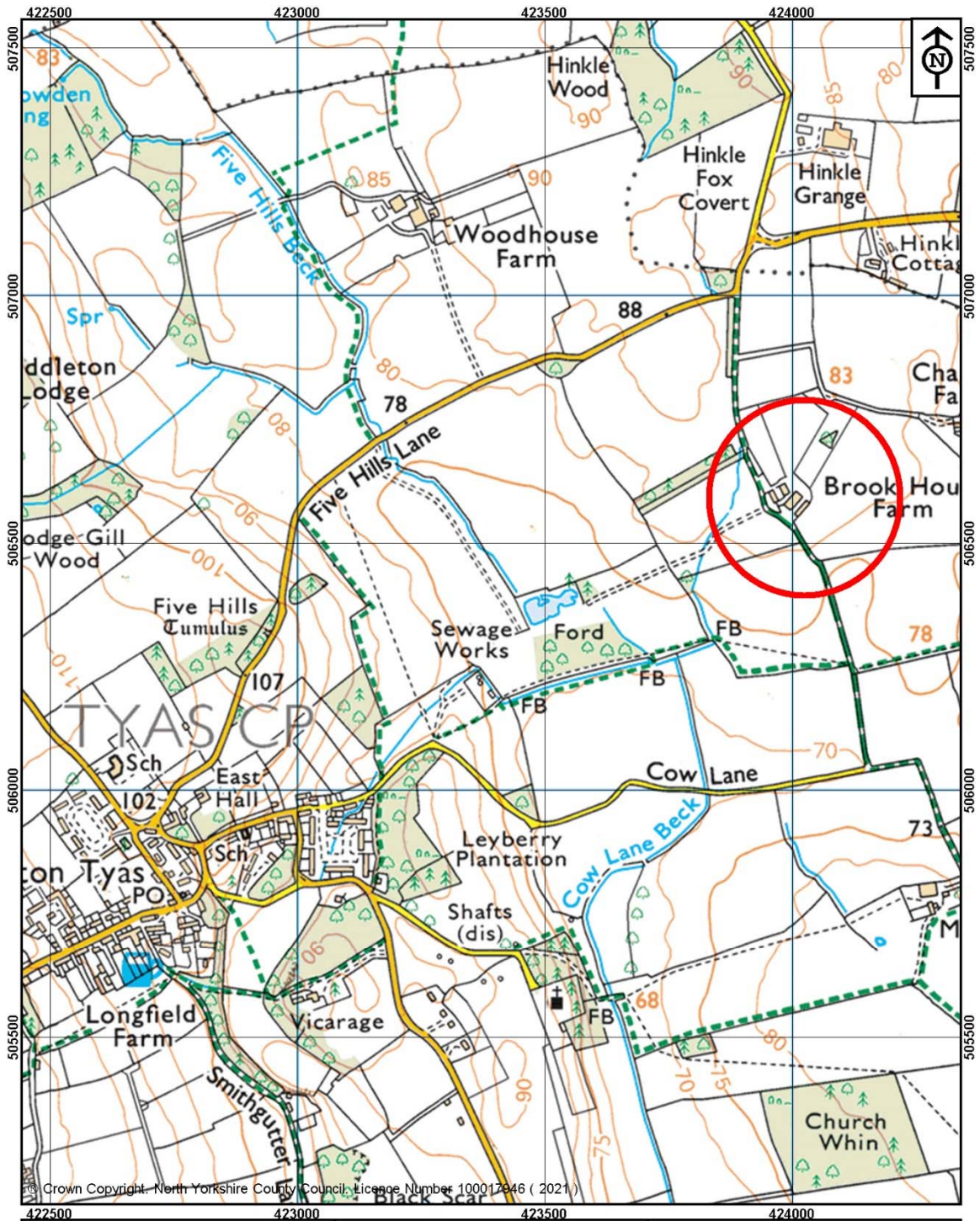
15.0 Recommendation

15.1 That the Director authorises the Authority to refer the opposed Diversion Order to the Secretary of State for resolution, and to support the confirmation of the Diversion Order within the submission.

MICHAEL LEAH
Assistant Director Travel
Environmental and Countryside Services

Author of report: Steve Metcalfe

Background papers: File Ref RICH-2020-10-DO



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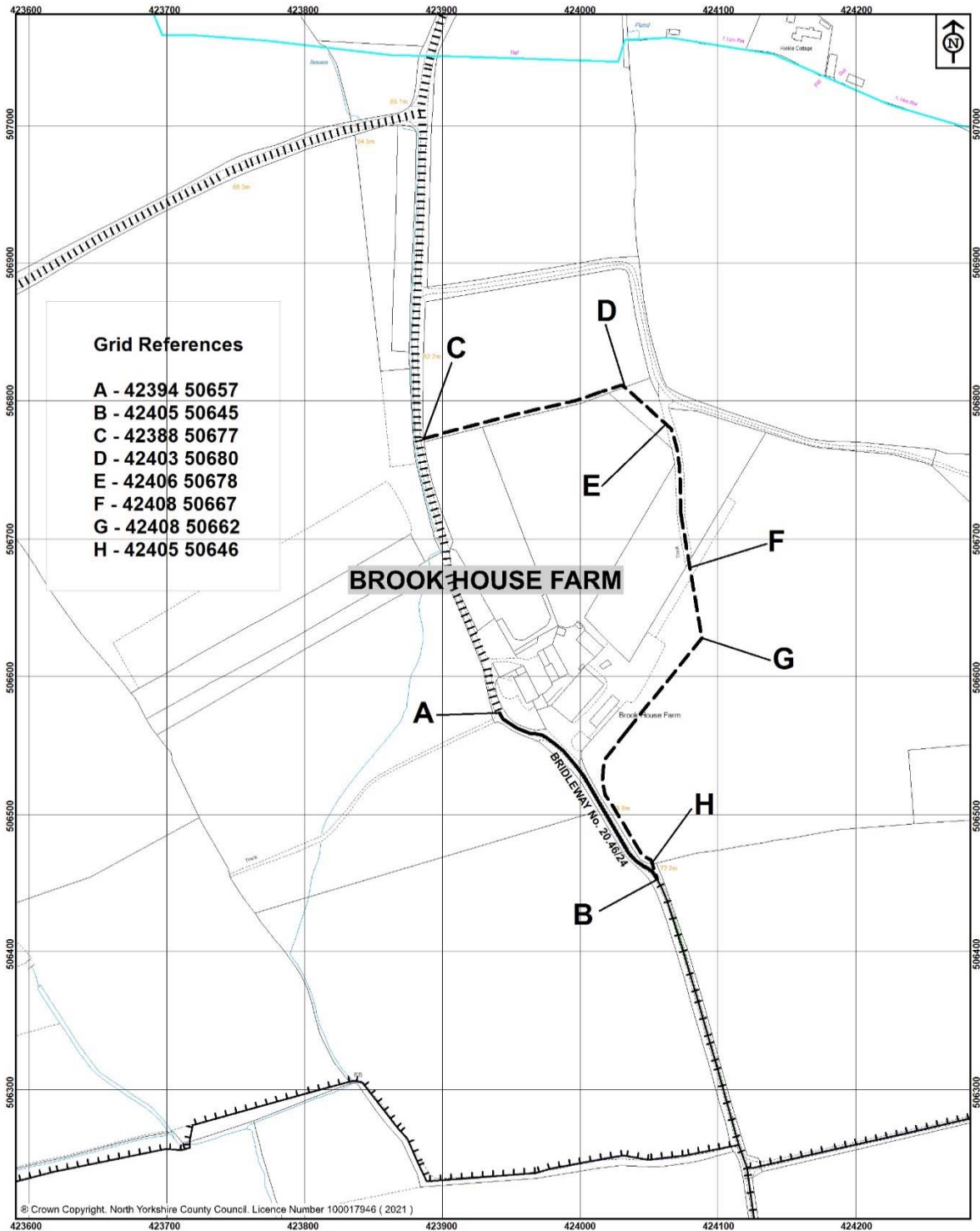
**Brook House Farm
Middleton Tyas
LOCATION PLAN**

Map drawn on 5 March 2021
Drawn by SCM Scale 1:10000

North Yorkshire County Council

File Ref No.
RICH/2020/10/DO

PLAN 2




Grid References

A - 42394 50657
 B - 42405 50645
 C - 42388 50677
 D - 42403 50680
 E - 42406 50678
 F - 42408 50667
 G - 42408 50662
 H - 42405 50646

BROOK HOUSE FARM

BRIDLEWAY No. 20.46/24

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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"> Bridleway to be added Bridleway to be deleted Other footpaths Other bridleways Maintainable Highways <p>Map drawn on 12 April 2021 Drawn by SCM</p>	<p>North Yorkshire County Council</p> <p>Highways Act 1980 Section 119 Bridleway No. 20.46/24 Brook House Farm Middleton Tyas Proposed Diversion Order 2021</p> <p>Scale 1:2500 File Ref No. RICH/2020/10/DO</p>
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Diversion Order 2021**

Report of the Assistant Director – Travel, Environmental and Countryside Services

AUTHORISATION

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

ANY ADDITIONAL RECOMMENDATION or COMMENT:

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.....

Karl Battersby

Corporate Director - BES

Signed:Date: