

North Yorkshire County Council
Business and Environmental Services

Executive Members

18 February 2022

Opposed Public Bridleways 15.44/3 and 15.44/5 and Public Footpath 15.44/7, Thwaite House, Fountains Earth Diversion Order 2021

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

1.0 Purpose Of Report

- 1.1 To advise the Corporate Director of Business and Environmental Services (BES) of an opposed Public Path Diversion Order for two bridleways and a footpath in Fountains Earth parish. A location plan is attached to this report as Plan 1. The proposal is shown in detail on Plan 2.
- 1.2 To request that the opposed diversion order be referred to the Secretary of State and that the Authority supports the confirmation of the Order.

2.0 The Application

Applicant:	Mr. R. Burrows (agent on behalf of Mr. S. Halsall)
Date of application:	04/03/2021
Type of Application	Diversion Order made under Section 119 Highways Act 1980
Parish:	Fountains Earth
Local Member:	Cllr. Stanley Lumley
Local Member Comments:	None
Applicant's grounds for making the application	To move the current route out of the gardens of Thwaite House to enhance the privacy and security of the property.

3.0 Relevant legal criteria

- 3.1 Under Section 119 of the Highways Act 1980, the County Council, having consulted any other local authority, may divert a public right of way (PROW) where it appears to the Authority that in the interests of the owner of the land crossed by the PROW described in the Order, it is expedient that the line of the PROW should be diverted, and that the diversion would not be substantially less convenient to the public.
- 3.2 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).
- 3.3 Where an Order is opposed, the County Council cannot confirm the Order; it can only be confirmed by the Secretary of State (SoS). The SoS will confirm an Order if he/she 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.

3.4 There is a legal requirement to consult with any other local authority or local authorities in whose area the land concerned is situated.

4.0 Background to the Application

4.1 An application was received by the Authority on 3/12/2020 to divert Public Bridleways 15.44/3 & 15.44/5 along with public footpath no 15.44/7 in the vicinity of Thwaite House Farm, Lofthouse. The grounds for the application were to enhance privacy and security of the property and is therefore made in the interests of the landowner.

4.2 All the land affected by the application is within the ownership of Thwaite House, Lofthouse.

5.0 Responses to the initial consultations

5.1 An informal consultation was carried out from 23rd April 2021 to 21st May 2021 which resulted in one representation being made requesting a number of changes to be made to the proposal. The issues were discussed with the applicant and some compromises were made. The further suggestions upon which agreement was not reached were not considered to be objections to the overall proposal to divert the routes.

6.0 Responses to the publication of the sealed order

6.1 The Diversion Order was then made on 31st August 2021 and duly advertised by notice on 23 September 2021.

6.2 One letter of objection was received which included the following points of objection:

6.2.1 Effect of Order. The Order is made under Section 119 of the Highways Act 1980. It provides for diversions of two parts of one path (bridleway 15.44/3) and the diversion of one path (footpath 15.44/7). It also extinguishes part of one path (bridleway 15.44/5) without diverting that path. There appears to be no power in Section 119 to extinguish a path without diverting that path, so that that element of the Order appears not to be validly made. I therefore OPPOSE that element of the Order.

Officer comments:

- officers do not agree with this interpretation of the order description and are satisfied that each section of path to be extinguished is replaced by a new section of path of corresponding status.

6.2.2 Diversion of BW 15.44/3 between A and B.

This diversion does not appear to satisfy the preconditions in Section 119(1) of the Highways Act, so that this element of the Order does not appear to have been validly made. I therefore OPPOSE that element.

Officer comments:

- the landowner has stated that there is an intention to re-plant and manage the woodland in this area which diversion of the path will facilitate. It is therefore in the landowners interest that the path is diverted which meets the requirements of S119(1) of the Highways Act.

6.2.3 Diversion of BW 15.44/3 between C and Q

Despite some loss of public enjoyment and loss of convenience to some users, I would not oppose this element of the Order, provided that the new footpath on a more direct route is constructed to a satisfactory standard (i.e. to a width of 2 metres throughout) and that agreement can be reached on satisfactory routing of the paths connected to this section of the bridleway.

Officer comments:

- the specified width in the order for the footpaths is 2 metres. Officers consider that the new routes are not substantially less convenient for the public to use; the route between points C and Q using the current paths is approximately 386 metres, using the proposed routes the shortest route will be approximately 391 metres.

6.2.4 BW 15.44/5 and BW 15.44/3

Whether or not it is correct that the Order cannot validly extinguish part of bridleway 15.44/5 without diverting that bridleway, I OPPOSE the Order as it affects the field north-east of Thwaite House, because it would detract from the public enjoyment of the paths, by introducing the obligation make a 90 degree turn at an apparently arbitrary point in the middle of the field; it would have a negative impact on management of the field, because more paths through the middle of the field would create more disturbance and require a signpost at point N in the middle of the field, so one more thing for farm machinery to avoid in the future, and more initial expense; it would increase the number of walkers overlooking Thwaite House from Point N; and the increase in the number of walkers and other users in the middle of the field is likely to have a negative impact on the conservation of protected wild birds.

Officer comments:

- The route will pass through upland pasture with open views of the valley; it is difficult to see how this detracts from the enjoyment of the walk.
- There are numerous paths across the county with junctions or turns not associated with specific features, including the existing line of bridleway no 15.44/5 between points K and N. It is anticipated that most users will take a line which does not follow the exact new definitive line at Point N and the landowner has no issues with this.
- There is no requirement for a signpost at Point N. If however, a post of some type is installed any cost would fall on the landowner alone and given that this is pastureland there is unlikely to be any significant use of machinery, any inconvenience would be to the landowner and cannot be considered grounds for objection.
- Currently the paths pass within 7 metres of Thwaite House, the new route of bridleway 15.44/3 will be located between 44 and 68 metres from the house. It is well established that the sense of privacy and security are a matter for the occupiers of premises, not the public. In this case, the landowner has concluded that diversion of the paths onto the proposed routes will achieve a greater feeling of privacy and security.
- The Authority's Ecology unit was consulted on the proposed diversion and responded that –
 - *A screening assessment of the proposed diversion of a bridleway at Thwaite House, Lofthouse was considered necessary due to its proximity*

to the North Pennine Moors SAC/SPA in accordance with the provisions of the Conservation of Habitats and Species Regulations 2017

- It was concluded that –
 - Following Stage 1 screening, it is evident from existing information that there will be no likely significant effect on the North Pennine Moors SAC SPA arising from the proposed bridleway diversion and new footpath at Thwaite House. If the proposals were to change significantly, this screening stage may need to be repeated.
 - Based on the current information, North Yorkshire County Council as the competent authority considers that there is no requirement to continue the assessment into Stage 2 and beyond.

6.2.5 B/way 15.44/5 I have proposed an amendment to the Order, which would remedy or mitigate problems I have identified in the Order.

Officer comments:

- Officers do not agree with the objector's view that there are problems with the order which would prevent confirmation. The amendments suggested by the objector do not meet the needs of the applicant and cannot therefore be considered.

6.2.6 Other matters - There appear to be a number of minor errors in the Order.

Officer comments:

- It is accepted that there are a couple of minor errors in the order and a request for amendments to correct would be made to the Inspector. Those errors are not fatal to the order.

7.0 Legal Implications

7.1 If the opposed Order is to be referred to the SoS, it would be determined by an Inspector, by way of, as stated above, either a Public Inquiry or by written representations.

7.2 The Inspector, on the basis of the legal criteria summarised in paragraph 3.3 above, will 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(s) would be added to the Definitive Map.

8.0 Financial Implications

8.1 If the opposed Order were to be submitted to the SoS, the Order would be resolved by written representations or a Public Inquiry. As in this instance there is only 1 objector it is likely that the former method would be adopted.

8.2 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 and 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 and would be in the region of £1,000

9.0 Equalities Implications

9.1 Consideration has been given to the potential for any adverse equality impacts arising from the recommendations. It is the view that the recommendations do not have an adverse impact on any of the protected characteristics identified in the Equalities Act 2010.

10.0 Climate Change Implications

10.1 This decision would have no positive or negative impacts on climate change.

11.0 Current decisions to be made

11.1 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.

11.2 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
- believes that the Order should not be confirmed,
- considers the circumstances are so finely balanced, or are particularly unclear and wishes to take a neutral stance.

12.0 Conclusions

12.1 In conclusion, it is felt that the diversion order as made meets the legal tests outlined in Para. 3.3 above.

12.2 The Council has received one objection to the Order made on several grounds, as outlined in this report, but considers that the grounds made are insufficiently substantial to prevent the confirmation of the Order.

12.3 It is recommended that the Order be referred to the Secretary of State and that the Authority takes a stance of supporting the confirmation of the Order as the criteria for the Order are considered to be met. A request would also be made as part of the submission, for amendments to correct minor details within the Order.

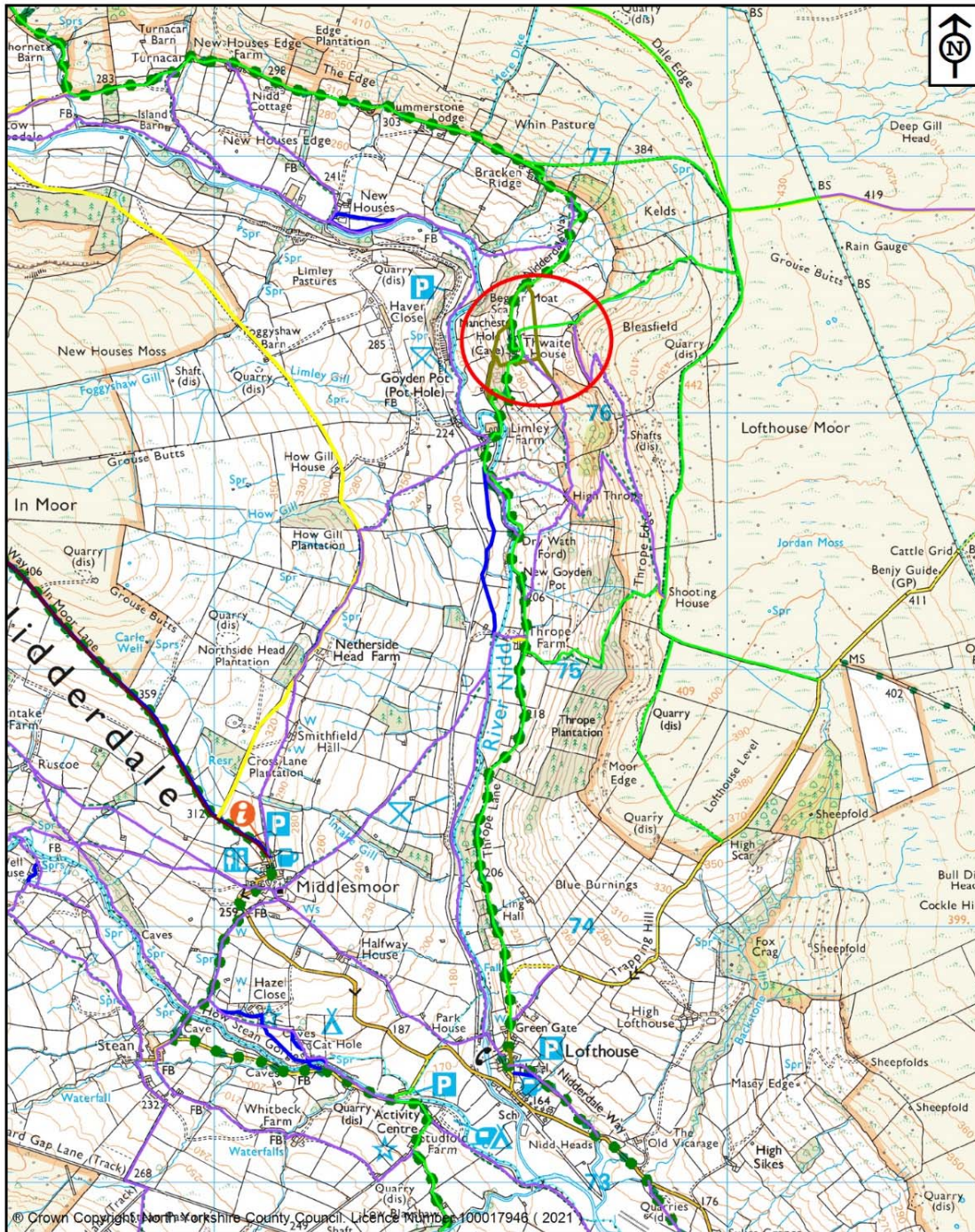
13.0 Recommendation

13.1 It is therefore recommended that the Corporate Director of Business and Environmental Services in consultation with the Executive Member, authorises the opposed Diversion Order be referred to the Secretary of State and that the Authority supports the confirmation of the Order.

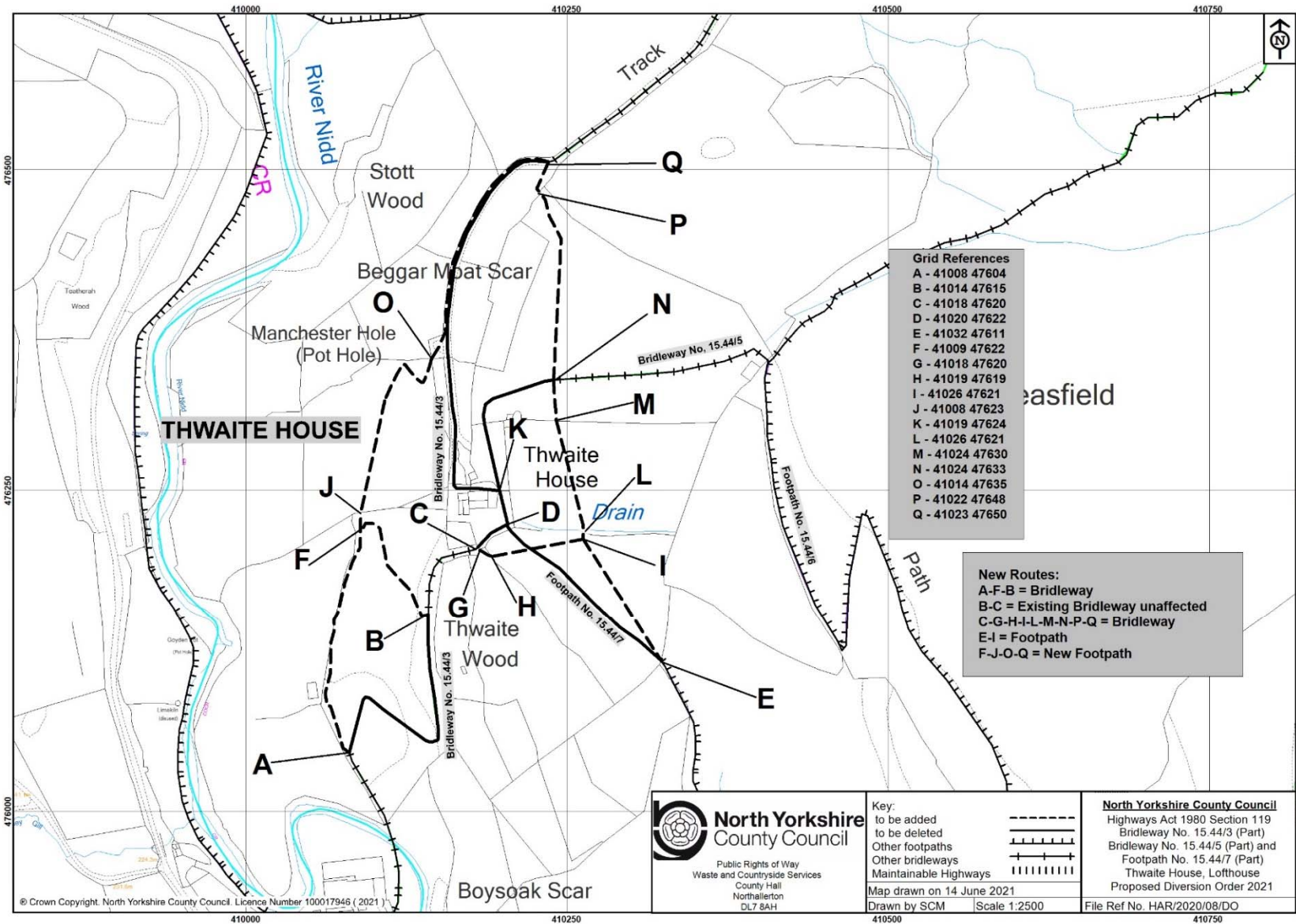
MICHAEL LEAH
Assistant Director – Travel, Environmental and Countryside Services

Author of Report: Steve Metcalfe

Background Documents: File Ref: HAR/2020/08/DO



 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>LOCATION PLAN</p> <p>Map drawn on 25 November 2021 Drawn by SCM</p>	<p>North Yorkshire County Council</p> <p>Location Plan for Thwaite House</p> <p>Scale 1:20000 File Ref No. HAR/2020/08/DO</p>
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