

North Yorkshire County Council

Executive Members

29 April 2022

Opposed Bridleway No. 25.126/009 & Footpath No. 25/126/306 High Kingthorpe, Lockton, Diversion Order 2021

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

1.0 Purpose of the report

- 1.1 To advise Corporate Director of Business and Environmental Services (BES) of the proposed submission to the Secretary of State (SoS) of an opposed Public Path Diversion Order for a bridleway and a footpath in the parish of Lockton, in Ryedale. A location plan is attached to this report as Plan 1. The proposal is shown in detail on Plan 2.
- 1.2 To request the Corporate Director, in consultation with the Executive Member for Access, to authorise that North Yorkshire County Council (NYCC), in its submission of the opposed Order to the SoS **will support confirmation of the Order**.

Background

2.0 Scheme of Delegation

- 2.1 Within the County Council's scheme of delegation, it is delegated to the Assistant Director of 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 Secretary of State may decline to confirm the Order, or to recommend to the Corporate Director BES that the Order be referred to an Inspector appointed by the Secretary of State.

3.0 The Application

- 3.1 The application to divert the bridleway and footpath was submitted to the County Council in August 2020.
- 3.2 The reasons given for the application were to divert the bridleway and footpath away from the farm yard, to ensure safety of users from vehicle movements and enable safe movement of livestock within the yard. The proposed diversion would also improve security and privacy of the property, all of which are in the interests of the landowner.

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 (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 effect of diversion would not be substantially less convenient to the public.

- 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 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.

5.0 The Making of the Order

- 5.1 An informal consultation was carried out and an objection was received from the Local Ramblers representative. A further objection was received by Ryedale Bridleways Group, but it was subsequently withdrawn.
- 5.2 A report was submitted to the Assistant Director, Travel, Environmental & Countryside Services and it was determined that despite the objection that a Diversion Order should be made.
- 5.3 The Diversion Order was made on 24 September 2021 and was duly advertised.
- 5.4 During the formal consultation, a further objection was received from the Local Ramblers Representative. The nature of the objections were as follows:
- i) The Ramblers stated that at present the bridleway from A to B is on a metalled surface, providing a good firm surface for walkers. The proposed diversion from A to E is across arable land which, at the time of our visit, was planted. For a substantial part of the year, the passage of horses across this soft ground would disturb the surface sufficiently to make it unsuitable for walkers; even in good conditions progress across an arable field can be difficult. The proposed diversion A to E would be substantially less convenient than the current route on a metalled surface.

Officer Comment.

The applicant and the NYMNP Ranger have expressed the view that the route receives little use by horses, and the objector has indeed agreed with this, it is surmised therefore that damage to the surface of the route is unlikely to occur.

- ii) The Ramblers suggested an alternative route following the fence-line from Points A to E rather than the cross-field route proposed.

Officer Comment.

This suggestion was rejected by Ryedale Bridleways Group, as there is an electric fence running down the field boundary which would be in too close a proximity to users of the route.

- iii) The Ramblers also suggested diverting the bridleway along the proposed line A to E, and create a footpath along the field edge.

Officer Comment.

NYCC rejected the idea of creating a new footpath, which would be only a matter of metres away from the proposed new section of bridleway and was not considered to be necessary. A solution of a “Permissive Footpath” running down the fence-line and to be used in bad weather was also rejected by the Ramblers, who stated that they would withdraw their objection if an additional footpath was created.

- iv) The Ramblers also suggested downgrading the bridleway from A to B to a footpath, extinguish the bridleway from B-C, and retain the footpath from B to D; create a new bridleway along the proposed line A-E-C; it would then not be necessary to create a footpath from E to F.

Officer Comment.

The purpose of the diversion is to divert the public rights of way away from a busy farmyard, and these suggestions do not achieve the stated purpose.

- 5.5 Considering these objections together, it is the view of Officers that they are without merit and would not be sufficient to prevent the order being confirmed.

6.0 Representation made by the local member

- 6.1 No formal representations were received from the local Councillor in response to the consultations regarding the Diversion Order.

7.0 Legal Implications

- 7.1 The opposed Order would be determined by an Inspector appointed by the SoS, and, as stated above, determination will most likely be by way of written representations.
- 7.2 The Inspector, on the basis of the evidence and the legal criteria would decide whether or not to confirm the opposed Order. If he/she decides to confirm the Order, the routes will be amended on the Definitive Map and Statement in accordance with the details within the Order.

8.0 Financial implications

- 8.1 If the opposed Order were to be submitted to the SoS, the Order would be most likely resolved by written representations or a Hearing.
- 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. In the unlikely event that the Inspector chose to hold a Public Inquiry or even a Hearing, the costs of arranging, hosting and supporting the event would fall to the Council but overall would be unlikely to exceed £1,000.00, for the preparation of a Public Inquiry documents, officer travel and attendance, and hire of a venue. These costs are largely officer time which would be met by the respective staffing budgets. The cost of the hire of the venue would be met from the Countryside Access Service budget.

9.0 Equalities Implications

9.1 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 The proposal is to alter the alignment of routes already recorded as public routes within the County Council's records. The confirmation of this order would have no positive or negative impact on climate change.

11.0 Current Decision 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. The Authority needs to decide whether 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, the application for the Diversion Order was made to increase privacy and security of the property, and to ensure safety of users from vehicle movements and enable safe movement of livestock within the yard. It is felt that the Diversion Order meets the legal tests outlined in Para. 4.1 above.

12.2 The objection to the Order outlines a number of issues however it is felt that the proposed route is not substantially less convenient for the public and that the remaining objections are insufficient to prevent the confirmation of the Order.

12.3 Officers are of the view that the Order should be referred to the Secretary of State, and that there is no reason why the Authority should not support the confirmation of the Order.

13.0 Recommendation

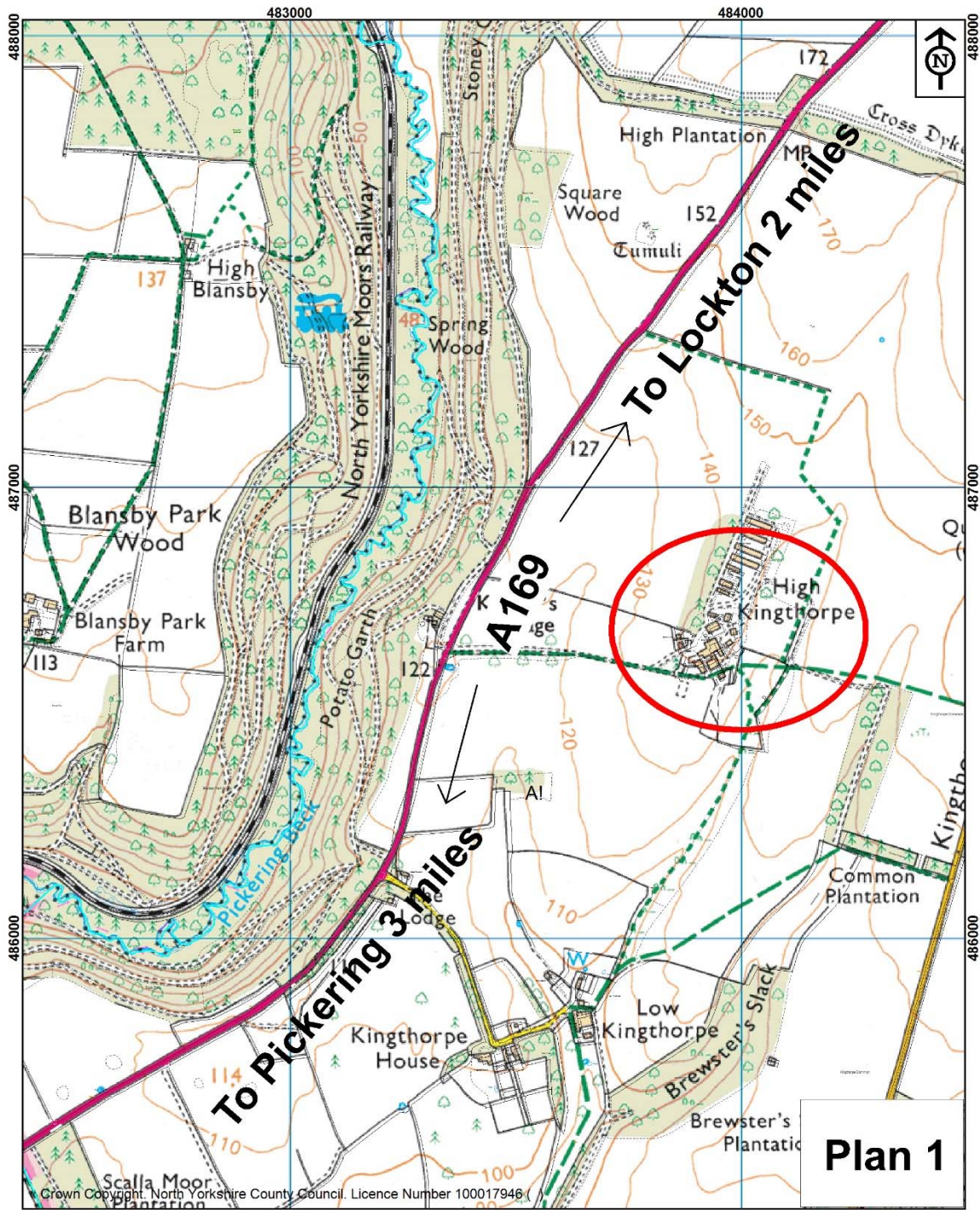
13.1 It is therefore recommended that the Assistant Director approves the referral of the opposed Diversion Order to the SoS, and that within the submission the Authority supports the confirmation of the Order.

MICHAEL LEAH
Assistant Director - Travel, Environmental and Countryside Services

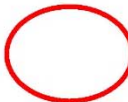
Author of report: Claire Phillips

Background papers: File Ref RYE/2019/10/DO

Plan 1



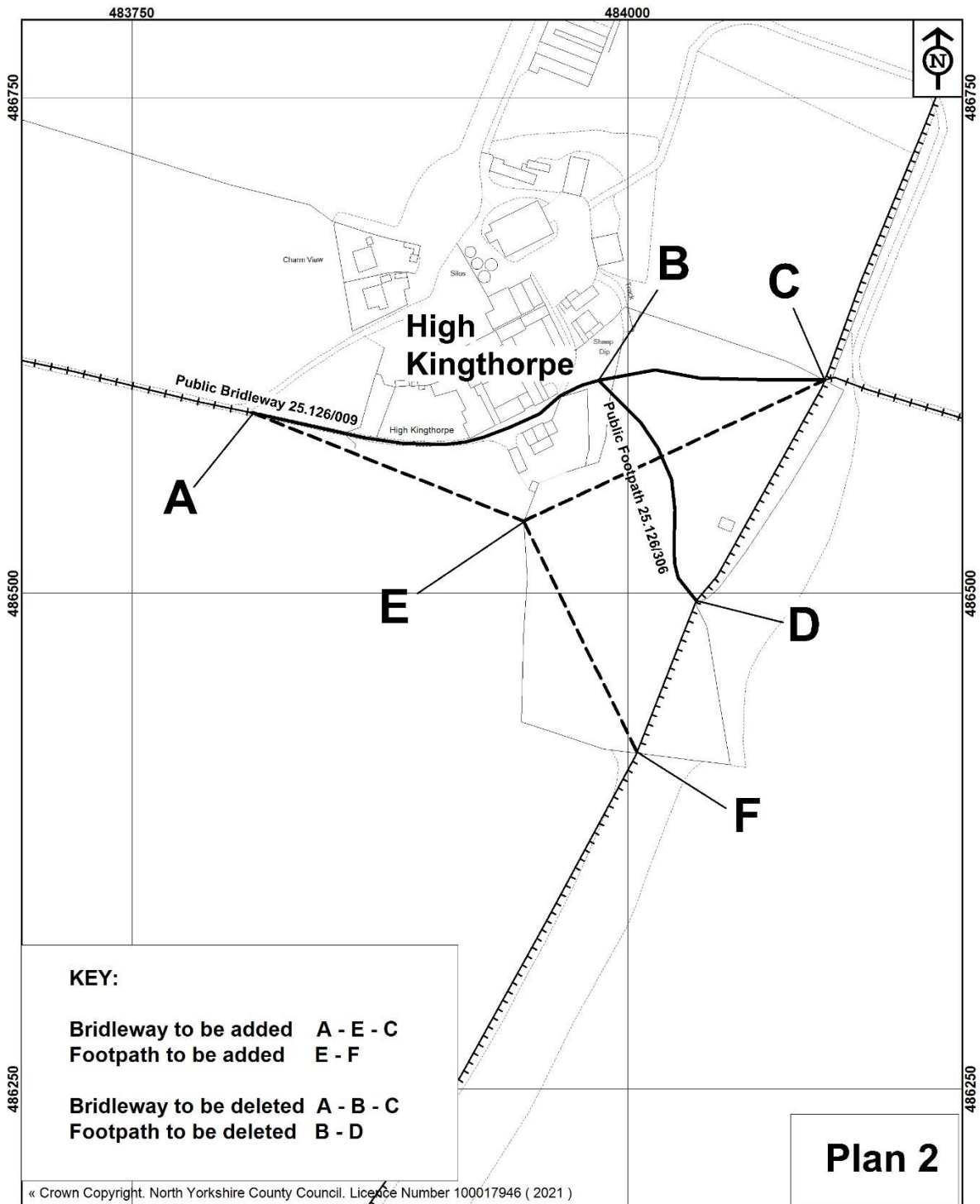
North Yorkshire County Council
 Public Rights of Way
 Waste and Countryside Services
 County Hall
 Northallerton
 DL7 8AH




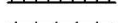

Key:
 High Kingthorpe 

Map drawn on 8 February 2022
 Drawn by CP Scale 1:11000

North Yorkshire County Council
High Kingthorpe, Lockton Location Plan
 File Ref No. RYE/2019/10/DO

Plan 2



 <p>North Yorkshire County Council Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p> <p>PRoW to be added </p> <p>PRoW to be deleted </p> <p>Other footpaths </p> <p>Other bridleways </p>	<p>North Yorkshire County Council Highways Act 1980 Section 119</p> <p>Bridleway No. 25.126/009 & Footpath No. 25.126/306 High Kingthorpe, Lockton Diversion Order 2021</p>
	<p>Map drawn on 8 February 2022</p> <p>Drawn by CP</p>	<p>Scale 1:2500</p>

BRIDLEWAY No. 25.126/009



1. Existing bridleway, looking generally east between Point A and Point B (2019).



2. Existing bridleway between Point A and Point B (2019).



3. Existing bridleway/footpath Point B (2019).



4. Existing bridleway between Point B and Point C (2019).



5. Existing bridleway field gate at Point C and existing footpath stile (2020).



6. Proposed bridleway, from Point A looking south east towards Point E (2020).



7. Proposed bridleway from Point E looking north west towards Point A (2020).



8. Proposed bridleway, Point E gate to be replaced (2020).



9. Proposed bridleway from Point C looking south west towards Point E on brow of hill (2020).

FOOTPATH No. 25/126/306



10. Existing footpath looking towards Point B behind large tree (2020).



11. Existing footpath looking towards Point D field gate (centre) and Point F in distance (centre right) (2019).



12. Proposed footpath between Point E and Point F (2019).



13. Proposed footpath Point F, just in front of field gate (2020).