

North Yorkshire County Council
Business and Environmental Services

Executive Members

27 May 2022

Opposed Footpath No. 25.121/048
Scugdale Cottage, Hartoft, Diversion Order 2021

Report of the Assistant Director – Travel, Environmental & 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 for a footpath in the parish of Hartoft, 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 BES, in consultation with the BES Executive Members authorises the opposed diversion order be referred to the Secretary of State and that the Authority supports the confirmation of the Order.

2.0 Background

- 2.1 Within the County Council's scheme of delegation, it is delegated to the Assistant Director of Transport, Environment 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, in consultation with the BES Executive Members Services 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 footpath was submitted to the County Council in May 2020.
- 3.2 The reasons given for the application were to divert the footpath away from the immediate vicinity of Scugdale Cottage, to improve 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 (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.
- 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.
- 5.2 A report was submitted to the Assistant Director, Travel, Environmental & Countryside Services and it was determined that a Diversion Order should be made.
- 5.3 The Diversion Order was made on 22 December 2021 and was duly advertised.
- 5.4 During the Formal Consultation 1 objection was received,
- i) From the Local Ramblers representative:

- **Objection 1**

Footpath 25.121/048 is one of a pair of paths that have been recorded on OS maps for over a hundred years. The other path leaves the Rosedale to Cropton road at the gate at SE 7492 9328, goes south west to SE 7480 9341 and then joins 25.121/048 at SE 7479 9318. Scugdale Cottage is served by an access track from the Rosedale to Cropton road. The existing footpath gradually comes down a grassy slope from point B on the plan to join the cottage access track at SE 7479 9318.

Officer Comment.

The fact that the footpath has been recorded on OS maps for over a hundred years is no barrier to the owners seeking a Public Right of Way diversion under the 1980 Highway Act.

- **Objection 2**

The footpath then follows the track, passing to the right of the cottage. The building to the right of the footpath appears to be a garage; the path does not pass between residential buildings and it is therefore unlikely that footpath users cause significant inconvenience to those living in the cottage. It is not unusual to encounter rights of way close to residential property, and the Ramblers' Association does not consider this footpath to be especially intrusive. The garage has been built quite recently and, in consequence, passers-by now have to walk nearer to the house than was previously the case. This outcome would have been apparent when the location of the garage was decided.

Officer Comment.

The sense of privacy and security can only be articulated by the owner who lives at the premises. The distance between the house and the footpath has been measured as 2.5 metres. The siting of the garage has no impact on the current route of the footpath. Having a public right of way 2.5 metres distant from the house, which has a downstairs bedroom and bathroom, would be likely to impact upon both privacy and security. (Photograph 1).

- **Objection 3**
The proposed diversion requires the addition of four pedestrian gates, whereas there are none on the historic right of way, apart from a gate on the access track to Scugdale Cottage.
Officer Comment.
There are currently two structures on the existing footpath; a pedestrian gate into the curtilage of Scugdale Cottage (Photograph 1), and a stile where the footpath leaves the access track. (Photograph 2). The proposed route includes four structures in the form of pedestrian gates at Points C,E,F and G, for the purposes of stock control.

- **Objection 4**
The diverted route from point B to point F is on grass and almost flat. However, the consequence of maintaining height between B and F is that the other end of the diverted path becomes steep. Specifically, the section from C to D is unacceptably steep and dangerous; the provision of steps between C - D - E might reduce danger to walkers, but would nevertheless restrict access. The proposed route crosses a beck emanating from a spring and the ground is muddy for most of the year. Substantial work would be needed to bring this route to an acceptable standard and, importantly, regular and frequent maintenance would be required thereafter.
Officer Comment.
The owner has agreed to pay for works on the section between Points C to D, to bring the route up to the required standard, and which will reduce the gradient, by culverting the spring. The proposed diversion lies within the North York Moors National Park and they have already agreed that steps can be installed, if needed after the spring is culverted, and they will cover any ongoing maintenance required. Steps are not unusual within the National Park, to improve a Public Rights of Way. Culverting the spring will also resolve the current muddy surface (Photographs 3 and 4).

- **Objection 5**
However, even if the path were adequately maintained, the steepness of this section would make the route substantially less convenient to footpath users and would impair public enjoyment of the path.
Officer Comment.
This route is not close to a village and lies partly on a hillside where the surrounding landscape consists of steep wooded slopes and escarpments interspersed with undulating terrain. The proposed new route crosses terrain typical of this part of the North York Moors and does not represent anything out of the ordinary for this area which might challenge any walker who would choose this landscape to walk in.

- **Objector's summary**
The Ramblers' Association therefore objects to the proposed diversion on the grounds that it would be substantially less convenient to footpath users and would impair public enjoyment of the path.

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 will 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 most likely be resolved by written representations, or possibly a Public Inquiry.

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. 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. These costs would be unlikely to exceed £1,000.

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 merely to re-align the status of a route already recorded as a public footpath 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; 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, the application for the Diversion Order was made to increase privacy and security of the property. It is felt that the Diversion Order meets the legal tests outlined in Para. 4.1 above, and has been made in the interests of the applicant. It is considered that the proposed route is not substantially less convenient for the public and that therefore there is no reason for the Authority to abandon the Order, or oppose confirmation of the Order.

12.2 The objection to the Order outlines a number of issues however it is felt that overall the objections are not sufficient to prevent the confirmation of the Order.

13.0 Recommendation

- 13.1 It is therefore recommended that the Corporate Director BES, in consultation with the BES Executive Members authorises the opposed Diversion Order be referred to the Secretary of State and that within the submission the Authority supports the confirmation of the Order.

MICHAEL LEAH



Assistant Director – Travel, Environmental and Countryside Services

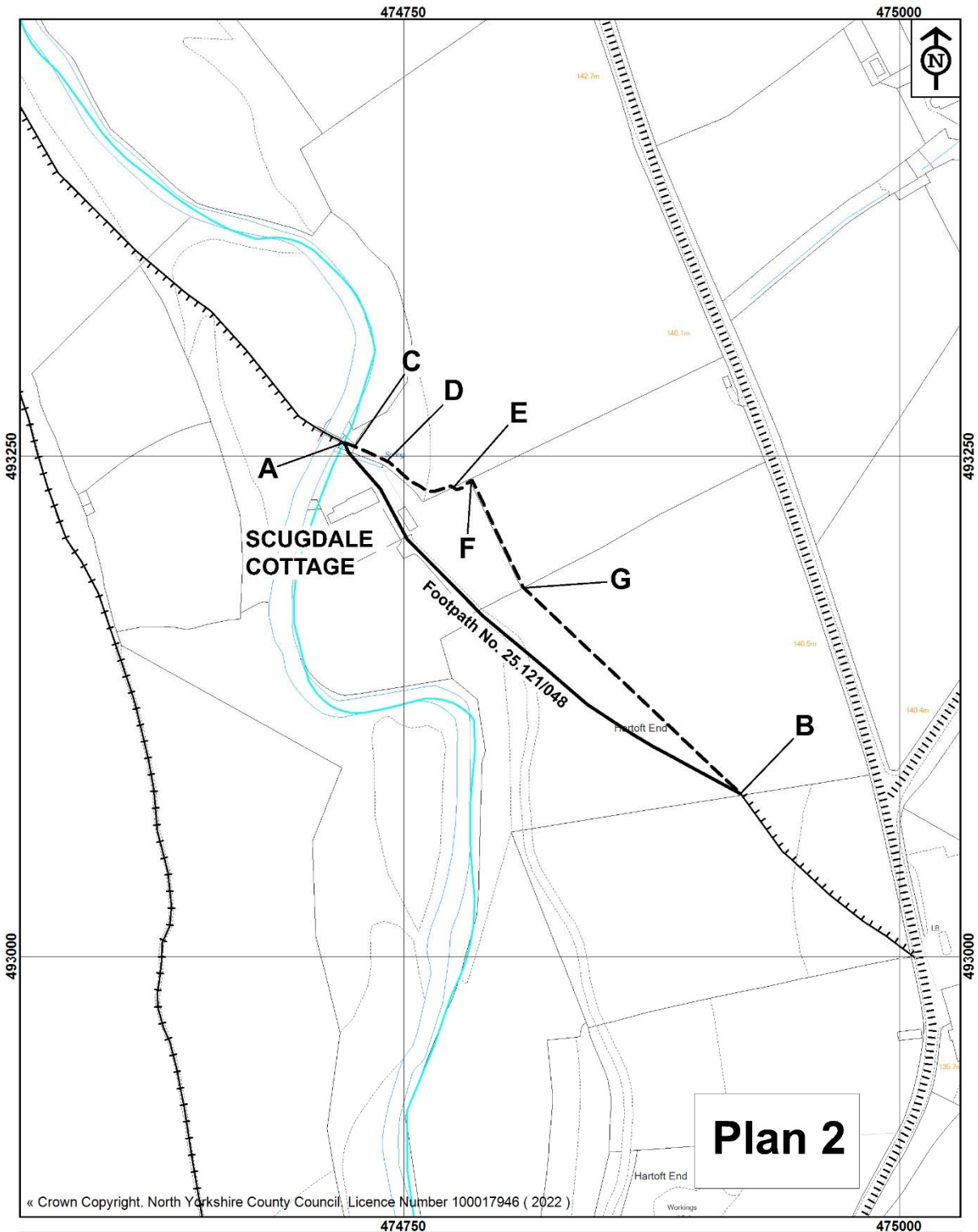
Author of report: Claire Phillips

Background papers: File Ref RYE-2020-01-DO




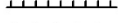
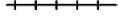
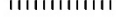
Location Plan



 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 5AH</p>	<p>Scugdale Cottage</p>  <p>Map drawn on 23 August 2021 Drawn by _____ Scale 1:10000</p>	<p>North Yorkshire County Council</p> <p>Scugdale Cottage, Hartoft</p> <p>Location Plan</p> <p>File Ref No. RYE/2020/01/DO</p>
---	--	--



« Crown Copyright. North Yorkshire County Council. Licence Number 100017946 (2022)

 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p> <p>Footpath to be added </p> <p>Footpath to be deleted </p> <p>Other footpaths </p> <p>Other bridleways </p> <p>Maintainable Highways </p>	<p>North Yorkshire County Council Highways Act 1980 Section 119</p> <p>Footpath No. 25.121/048 Scugdale Cottage, Hartoft Diversion Order 2021</p>
	<p>Map drawn on 6 April 2022</p> <p>Drawn by CP Scale 1:2500</p>	



Photograph 1 – Existing footpath - To the south east of Point A, pedestrian gate into the curtilage of Scugdale Cottage and the footpath runs 2.5 metres to the left of the corner of the Cottage, shown in the background.



Photograph 2 – Existing footpath – Looking south east where the existing footpath leaves the driveway and runs up a gradient, towards Point B in front of woodland, with stile.



Photograph 3 - Proposed footpath - Looking north west to Point C and Point A, showing gradient.



Photograph 4 – Proposed footpath Point D - Looking north west to the spring, which will be culverted and steps installed if needed, to reduce the gradient.