

North Yorkshire County Council
Business and Environmental Services

24 June 2022

Opposed Bridleway No. 30.53/034 & Footpath No. 30.53/031
Mulgrave Farm, Ugthorpe, Diversion Order 2022

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 an opposed Public Path Diversion Order for a bridleway and a footpath in the parish of Ugthorpe, in the district of Scarborough. 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 Secretary of State (SoS) **will support confirmation of the Order.**

2.0 Background

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 October 2020.
- 3.2 The reasons given for the application were to divert the bridleway and the linking footpath away from the farmyard at Mulgrave Farm, to improve privacy, security and to ensure safety of users from vehicle movements and enable safe movement of livestock within the yard, all for the benefit 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. Further objections were received from the Byways and Bridleways Trust, Ryedale Bridleways Group, and Ugthorpe Parish Council, but they were all subsequently withdrawn after site visits and further clarification of the proposals. A site visit was arranged on 1 October 2021, for the Ramblers representative to meet with the Estate Manager to discuss the Ramblers' objections, but the Ramblers did not attend this meeting, with no reason given.
- 5.2 A report was submitted to the Assistant Director, Travel, Environmental & Countryside Services requesting authorisation to make a Diversion Order, and it was determined that despite the objection that a Diversion Order should be made.
- 5.3 The Diversion Order was made on 11 March 2022 and was duly advertised.
- 5.4 During the formal consultation, one objection was received from the same local Ramblers representative. The nature of the objections were as follows:
- i) The proposed diverted routes are substantially less commodious for walkers.

Officer Comment.

If the meaning of 'less commodious' is taken as 'less convenient', then it could be argued that the proposed routes were actually more convenient. Part of the footpath proposal addresses the fact that the legal line running southeast from Point G is extremely steep, crossing difficult terrain and then running across a track and accessing a grass pasture via a stile. The legal line then continues across the corner of a grass pasture, exiting the pasture via a stile at Point F. The proposed route uses an existing sloping track from G-I, enabling walkers to make a more gentle and pleasant ascent from the beck through the woodland. The new access and exits points into the grazing land will replace the existing stiles with kissing gates.

The proposed bridleway will be five metres width, which is wider than the current route and would be for the sole use of users, avoids the farm yard and its potential dangers, and the new route would not be used for farm work.

- ii) Increase of 270 metres between B to G.

Officer Comment.

The proposal needs to be considered in the context of the entire lengths of the bridleway and footpath. The distances of the whole route were measured as approximately:-

Mulgrave Farm	Current Legal Line	Proposed new line	Difference
<i>Circular Walk</i> Ugthorpe Church - Mulgrave Farm - Ugthorpe Grange - Ugthorpe Church.	4366 metres	4322 metres	- 44 metres
<i>Linear Walk</i> Ugthorpe Church – Mulgrave Farm - the east of Peel Wood.	2346 metres	2564 metres	+ 218 metres

The distance stated by the Ramblers is disputed. The extra distances involved for the proposed linear walk are less than 10% for the whole route and the proposed circular walk would actually be slightly shorter, and therefore may not be considered 'substantially less convenient' in terms of length.

- iii) The bridleway has already been diverted once to meet the wishes of the applicants. National Park badge on gate post at B indicating a diversion.

Officer Comment.

There are no limits as to how many times a public right of way may be diverted and therefore, the fact that a route may have been diverted in the past would not be a barrier to a future diversion. A landowner is entitled to apply again to meet changing land management needs, as in this instance.

- iv) The existing route is natural and follows a well-made track of a width and quality appropriate for a bridleway.

Officer Comment.

The BHS, Byways and Bridleways Trust and the Ryedale Bridleways Group have all agreed to the proposed diversion, which consists of a five metre fenced corridor between Points B and C, with a "pinch-point" at Point C, to prevent any vehicles accessing the route.

- v) The proposed bridleway diversion is less direct, and is over soft pasture, vulnerable to being damaged by horses.

Officer Comment.

The BHS, BBT and RBG are happy that the land is and will be maintained to a high standard of drainage by the landowner. Subsoiling is carried out every few years, which prevents soil compaction and the possibility of subsequent drainage issue.

- vi) The diverted bridleway is significantly longer and more difficult.

Officer Comment.

Please see Officer Comments to ii) and v) above, regard the length of the proposed diversions. The Ramblers Representative has not given an indication of in what way it is more difficult.

- vii) The diverted route could have horses mixing with sheep and cattle.

Officer Comment.

The landowner has agreed to a fenced corridor between Points B and C of 5 metres width, so that bridleway users are separated from any livestock that may be in the fields.

- viii) The reason for this proposal is not supported by a risk assessment for the farm yard activities – just a statement by NYCC. Four site visits late August and September 2021 did not show any farming activity between B to F.

Officer Comment.

A risk assessment for farm yard activities is not a requirement of an application for a Public Right of Way diversion. The applicant has explained the reasons for wanting to divert the route from the farm yard for health and safety, and for privacy and security reasons, as the farm house is being renovated, in readiness for a new tenant and the farm yard will be therefore much busier with vehicles and livestock movements.

- ix) The proposal increases maintenance costs re the surface being the responsibility of the NYMNPA.

Officer Comment.

It is not envisaged that the proposal would increase maintenance costs for the NYMNPA. Any works undertaken to implement the effects of the Order in relation to the surface of the route would be undertaken at the cost of the applicant. In addition, NYMNPA have been consulted and have not objected to this proposed diversion.

- x) Advised on the 22 July 2021, house and yard works to start next year and will be a lot of changes. No details have been given, we are thus unable to assess whether any changes are required to the bridleway.

Officer Comment.

As commented upon in viii) above, the farm house is currently being renovated, in readiness for a new tenant and the farm yard will be therefore much busier with farm vehicles and livestock movements. The current bridleway has a couple of 'blind bends', between Points B and F whereas removing the bridleway from the farm yard would ensure safety of users from vehicle movements and enable safe movement of livestock within the yard.

- xi) The heritage of the Public Rights of Way network is slowly being eroded by large diversions around farms etc, and this proposal is one. Proposed solution; if it must be moved. We were advised on the 7 December 2020, the proposal takes a bridleway and footpath away from a working farm and farmyard. Move BW 30.53/034 to the other side (south) of the farm between points B and F together with a fence.

Officer Comment.

Land management needs can change over time and the Highways Act 1980 makes provision for diversions to be made when it is expedient to do so, as is the case with this location. The aim of the proposal is to divert the existing bridleway and footpath, not to extinguish them, therefore it is hard to see how this proposal may be considered as eroding the PRow network.

With regards to the Ramblers' proposed solution, the applicant's preferred route is a similar arrangement, but to the south along Points C - B, as the Ramblers' proposed route from Points B - F does not meet the applicant's concerns to keep the farmyard area secure.

- 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 to be resolved by written representations.
- 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, the costs of arranging, hosting and supporting the Inquiry would fall to the Council but 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 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 whether it 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 farm 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.

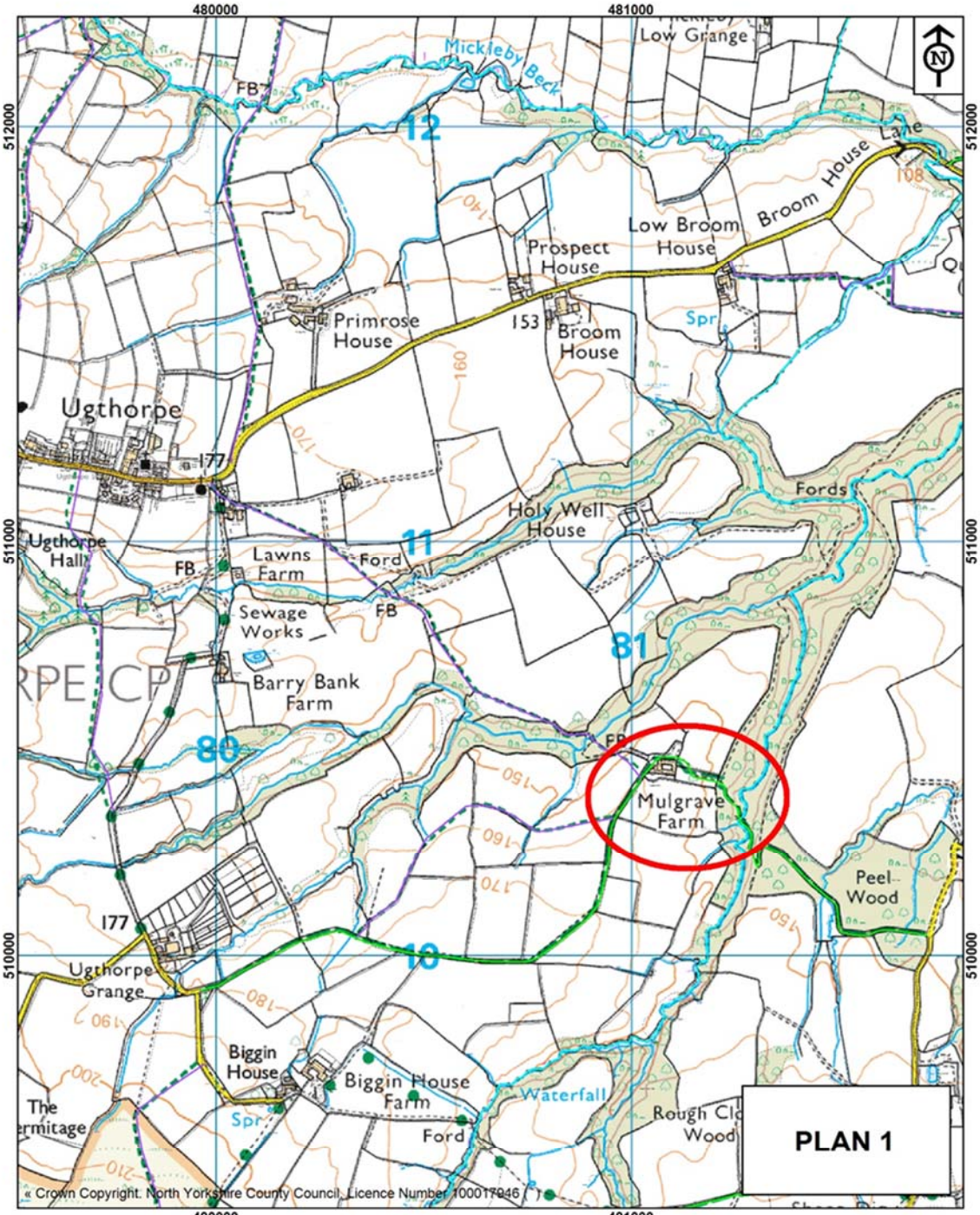
13.0 Recommendation



- 13.1 It is therefore recommended that the Corporate Director BES, in consultation with the BES Executive Members 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

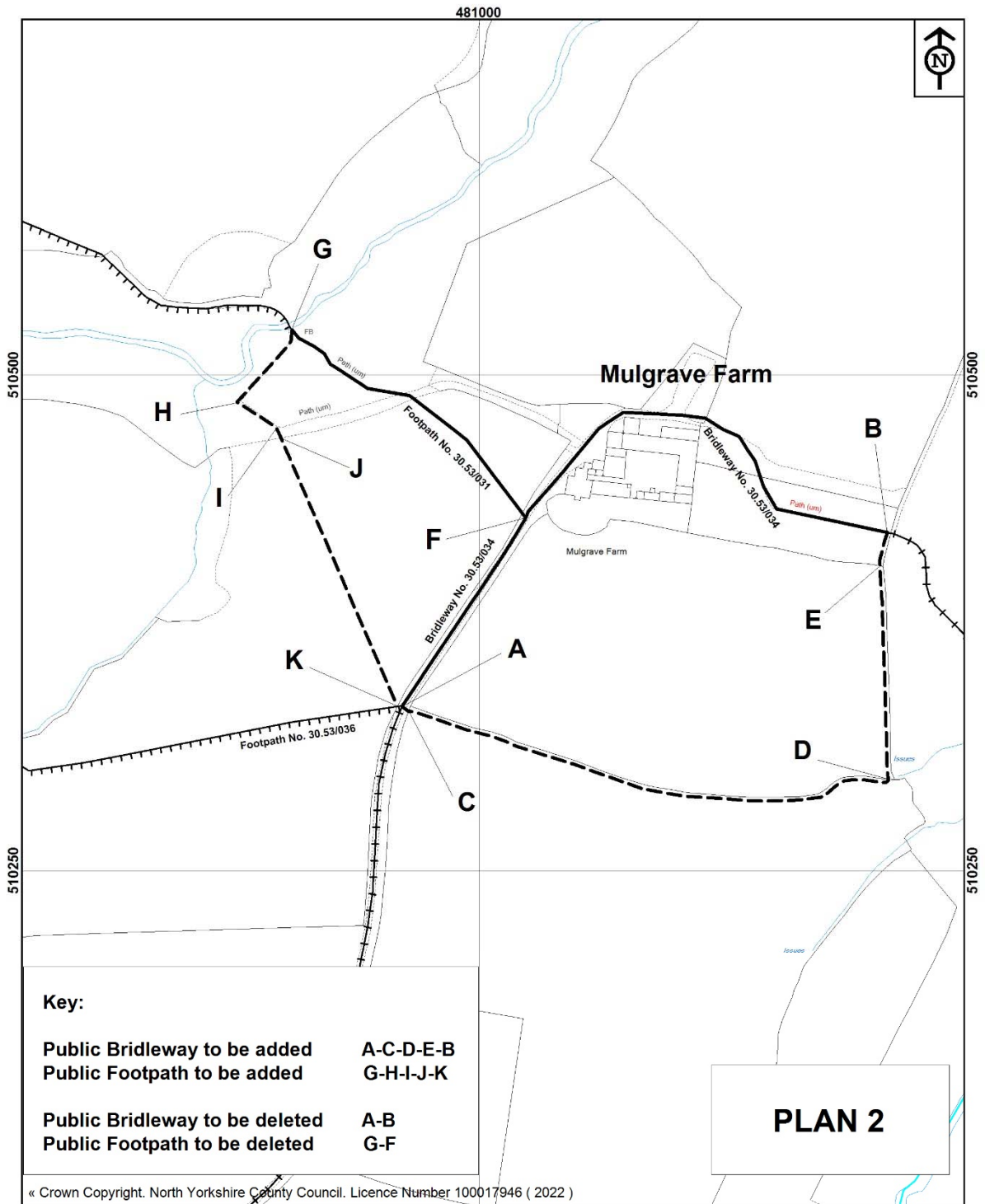
Author of report: Claire Phillips


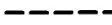



Background papers: File Ref SCAR-2020-01-DO



 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>MULGRAVE FARM</p> 	<p>North Yorkshire County Council</p> <p>Mulgrave Farm, Ugthorpe</p> <p>LOCATION PLAN</p>
	<p>Map drawn on 10 January 2022 Drawn by CP Scale 1:12000</p>	<p>File Ref No. SCAR/2020/01/DO</p>

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 Public Bridleway No. 30.53/034 & Public Footpath No. 30.53/031 Mulgrave Farm, Ugthorpe Diversion Order 2022</p>
	<p>Map drawn on 19 May 2022</p> <p>Drawn by CP Scale 1:2500</p>	