The North Yorkshire Council

Richmond (Yorks) Area Constituency Planning Committee

12 October 2023

Opposed public footpaths 10.146/013, 10.146/015 & 10.146/200 and public bridleway 10.146/016, Thimbleby Grange, Thimbleby Diversion Order 2023

Report of the Assistant Director – Integrated Passenger Transport, Licensing, Fleet, Harbours and Countryside Access

1.0 PURPOSE OF THE REPORT

- 1.1 To advise Members of the Richmond (Yorks) Area Constituency Planning Committee of the proposed submission to the Secretary of State (SoS) of an opposed Public Path Diversion Order. A location plan is attached to this report as **Plan 1**. The route is shown on **Plan 2**.
- 1.2 To request the Members of the Richmond (Yorks) Area Constituency Planning Committee to decide what stance the Authority should take in its submission to the SoS, regarding the confirmation of the opposed Diversion Order.

2.0 SCHEME OF DELEGATION

- 2.1 Within the Council's scheme of delegation, it is delegated to the Assistant Director of Integrated Passenger Transport, Licensing, Fleet, Harbours and Countryside Access, 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 Richmond (Yorks) Area Constituency Planning Committee that the Order be referred to the Secretary of State for resolution.
- 2.2 The Assistant Director of Integrated Passenger Transport, Licensing, Fleet, Harbours and Countryside Access is satisfied that the tests have been sufficiently met to recommend the confirmation of the Order and recommends that the Order should be referred to the Secretary of State for resolution.
- 2.3 Within the Council's scheme of delegation, it is delegated to the Area Constituency Planning Committees to authorise the making of representations to the Secretary of State regarding Public Path Orders to which valid objections have been received.

Applicant:	Ms Diane Baines (agent for the landowner)
Date of application:	16/11/2022
Type of Application	Diversion Order S.119 Highways Act 1980
Parish:	Thimbleby

3.0 THE APPLICATION

Local Member:	Cllr. Bridget Fortune (at the time of the consultation).
Applicant's grounds for making the application	The current PRoW network completely surrounds and criss-crosses in close proximity to the farmstead. They effectively separate the farmstead from its land to the south and east, making it difficult to expand or improve the farmstead, which is severely impacting the farm's operational viability.

4.0 GENERAL DESCRIPTION OF ROUTES AND THE PROPOSAL

- 4.1 The routes to be diverted comprise a network of footpaths and a bridleway across a mixture of arable fields and pasture, which are located predominantly to the south and east of the Thimbleby Grange farmstead.
- 4.2 The routes include one footpath which currently joins the A19 without a further public right of way to access and is from a safety point of view, effectively a deadend.
- 4.3 There is a bridleway which runs along a track and across a field which has been badly affected by rabbits and which is close to the neighbouring clay pigeon shooting range.
- 4.4 This proposal effectively removes the network of paths in the more immediate vicinity of the farm buildings, and creates a loop around them, linking into the wider network, removing the path onto the A19 and reduces proximity to the shooting range.
- 4.5 The applicant's clients have indicated that if the Diversion Order is confirmed they intend to upgrade all the resulting routes to bridleways, though this would require an entirely separate dedication when the current diversion process has been completed.
- 4.6 A plan showing the new network as it would appear after the proposed diversion and bridleway dedications is shown in Plan 3.
- 4.7 Photographs of various sections of the existing and proposed routes are provided in Appendix A.

5.0 RELEVANT LEGAL CRITERIA

- 5.1 Under Section 119 of the Highways Act 1980, the 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.
- 5.2 The 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).

- 5.3 Where an Order is opposed, the Council cannot confirm the Order. The Council may choose to abandon the process or to forward the opposed Order to the Secretary of State for resolution. The Secretary of State will confirm an Order if the 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.
- 5.4 There is a legal requirement to consult with any other local authority or local authorities in whose area the land concerned is situated.

6.0 REASON FOR THE DIVERSION OF THE FOOTPATH

6.1 The owners are looking to improve and upgrade the farmstead, but the current network of routes close to the farm buildings and yard, make it very difficult to expand or improve the farmstead providing new buildings in appropriate locations, which will impact the farm's operational viability. They also wish to improve privacy and security. In addition, the zig-zag nature of the current routes (particularly Footpath 10.146/013) result in people not keeping to the legal line and taking their own line across cropped fields. The proposal would replace the footpath which has a dangerous juncture with the A19. In addition, it is the applicant's intention, if the Diversion Order is confirmed, to subsequently upgrade all the resulting footpaths to bridleways, thus significantly improving the bridleway network in the area.

7.0 RESPONSES TO THE INITIAL CONSULTATIONS

- 7.1 One objection was received at informal consultation from the Ramblers, who were happy with some aspects of the proposal, namely the diversion of A-AC away from the A19 and F-G-S onto F-O-P-Q-R-S and, whilst they saw no advantage of H-V-W-X-Y-Z-AA from a walker's perspective as walkers can just as easily use the road, they were not inclined to oppose this element.
- 7.2 The Ramblers did, however, object to the diversion of the remaining routes on the grounds as they believe that they represent a significant reduction in enjoyment for those people using them. The Ramblers stated that, in their view, the existing network of routes provides variety and interest, and excellent views over the surrounding countryside.

- 7.3 Attached to this report as Appendix B is a copy of the report submitted to the Assistant Director Travel, Environmental and Countryside Services of the former North Yorkshire County Council, on 9 March 2023 which considered the objection received from the Ramblers. (To avoid repetition and too great a file size, the photographs have been removed from Appendix B).
- 7.4 The objection was not considered to be substantial enough to refuse to make an Order, therefore the Assistant Director approved the making of a Diversion Order, which was subsequently made and was duly advertised by notice on 12 May 2023.

8.0 RESPONSES TO THE PUBLICATION OF THE SEALED ORDER

- 8.1 Fourteen objections were received consisting of a letter from the Ramblers, and copies of a 'proforma letter' submitted by 13 members of the public.
- 8.2 The nature of the objections received were as follows:
 - **Objection:** This Order would result in a reduction in variety and attractiveness, which would mean a reduction in public enjoyment and therefore make the new routes substantially less convenient. (Ramblers).
 - **Objection:** The Order would result in a loss of views, (Ramblers & members of the public), particularly from the top of the ridge between Points M and N (members of the public).

Officer's Comments: The existing routes are predominantly field edge routes, as are the proposed routes, so it is considered that there is no reduction in the variety of the nature of the routes. In addition, similar views, as well as alternative views, which could be considered equally attractive, are available from the proposed new routes, and that overall, the proposal would enhance public enjoyment of the vicinity, rather than detract from it. Enjoyment and convenience are two separate issues subject to separate tests within the legislation and should not be conflated.

The member of the public objections refer to a loss of views from the top of the ridge, however, the legal line of the route has not run along the top of the ridge since it was diverted previously in 1995.

• **Objection:** The bridleway is being diverted onto area of boggy land, reducing accessibility (members of the public).

Officer's Comments: The applicant has indicated that there is a defective land drain next to the area in question which will be repaired before the new route would be brought into use, this is expected to resolve any past drainage issues. It is envisaged that at this location the land will be dry, and would be more accessible than the current route, which runs across a slope and has been badly affected by rabbits and is therefore more challenging for those with less mobility.

- 8.3 <u>The responses in support of the Order were as follows:</u>
 - The British Horse Society supports the Order and is grateful for the proposal to subsequently upgrade the routes to bridleways.

Officer's Comments: The proposal to upgrade all the new routes to bridleways cannot form part of a Diversion Order and so will be subject to a separate dedication if, and when, the Diversion Order has been confirmed. Officers have no reason to doubt that the applicant will dedicate the routes as bridleways, and this would be a welcome enhancement of the bridleway network in this area.

9.0 REPRESENTATION MADE BY THE LOCAL MEMBER

9.1 No comments were received from the local Member (Cllr. Bridget Fortune), who is no longer a Councillor. The position was vacant at the time of preparing this report.

10.0 FINANCIAL IMPLICATIONS

- 10.1 If the opposed Order were to be submitted to the SoS, the Order would be resolved by written representations, a Hearing or a Public inquiry.
- 10.2 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 unlikely to exceed £1,000.

11.0 EQUALITIES IMPLICATIONS

11.1 There are no significant equalities implications arising from this report.

12.0 LEGAL IMPLICATIONS

- 12.1 The opposed Diversion Order would be determined by an Inspector appointed by the SoS, by way of either a Public Inquiry, a Hearing or by written representations.
- 12.2 The Inspector, on the basis of the legal criteria summarised in paragraph 5.3 above, will decide whether or not to confirm the opposed Diversion Order. If he/she decides to confirm the Order, part of the existing routes would be extinguished and the proposed routes would be added to the Definitive Map.

13.0 CLIMATE CHANGE IMPLICATIONS

13.1 There are no significant climate change implications arising from this report.

14.0 CURRENT DECISIONS TO BE MADE

- 14.1 The decision to be made at this stage are, firstly, whether the Order is to be abandoned, or is proposed to be forwarded to the SoS for resolution.
- 14.2 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, or not, or
- considers the circumstances are so finely balanced, or are particularly unclear and wishes to take a neutral stance.

15.0 CONCLUSIONS

- 15.1 The majority of the objections received have been made on the grounds of reduced public enjoyment, but this is not something which the Council is obliged to take into account before making an Order.
- 15.2 It is, however, a factor which an Inspector is required to consider if an Order is referred to the Secretary of State, so it would be wise to consider it at this stage. Officers believe that the proposed new routes would provide similar amenities and vistas as the existing route, albeit from different locations.
- 15.3 In addition, the existing Public Bridleway between Points M and N is in an area which is badly affected by rabbits and is also close to a clay pigeon shooting range so the proposed diversion would have the added benefit of moving the route away from these issues.
- 15.4 The issue raised by the members of public concerning boggy ground is being addressed by the applicant by repairing a defective drainage system, which should alleviate any problems there may have been with poor drainage in the past.

16.0 REASONS FOR RECOMMENDATIONS

16.1 In these circumstances it is felt that the objections do not warrant abandoning the Order. It is considered that the relevant test have been met and that the Order would have a reasonable chance of being confirmed by an Inspector if it is referred to the Secretary of State.

17.0 RECOMMENDATION

- 17.1 It is therefore recommended that:
 - a. the Order is submitted to the Secretary of State for a decision on confirmation as an opposed Order
 - b. a supportive stance is taken towards the confirmation of the Diversion Order
 - c. the Corporate Director is delegated to make representations to the Secretary of State.

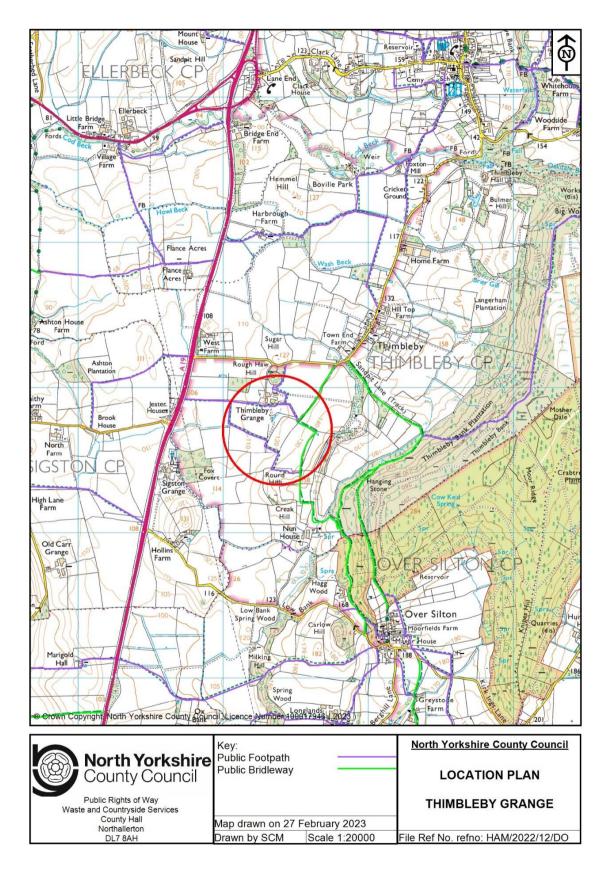
APPENDICES - APPENDIX A – Photographs of routes

BACKGROUND DOCUMENTS: File Ref HAM-2022-12-DO

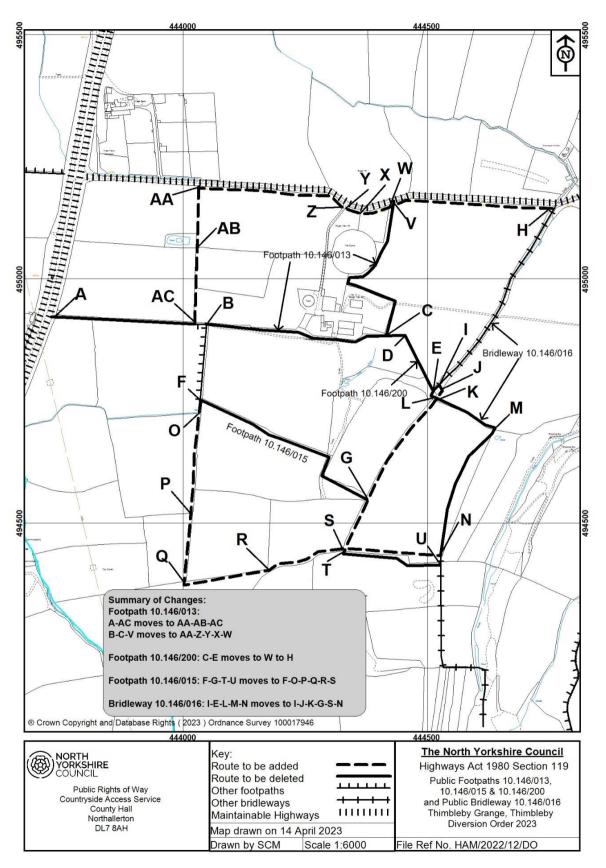
Author of report: Steve Metcalfe, Definitive Map Officer

Presenter of Report: Penny Noake, Principal Definitive Map Officer

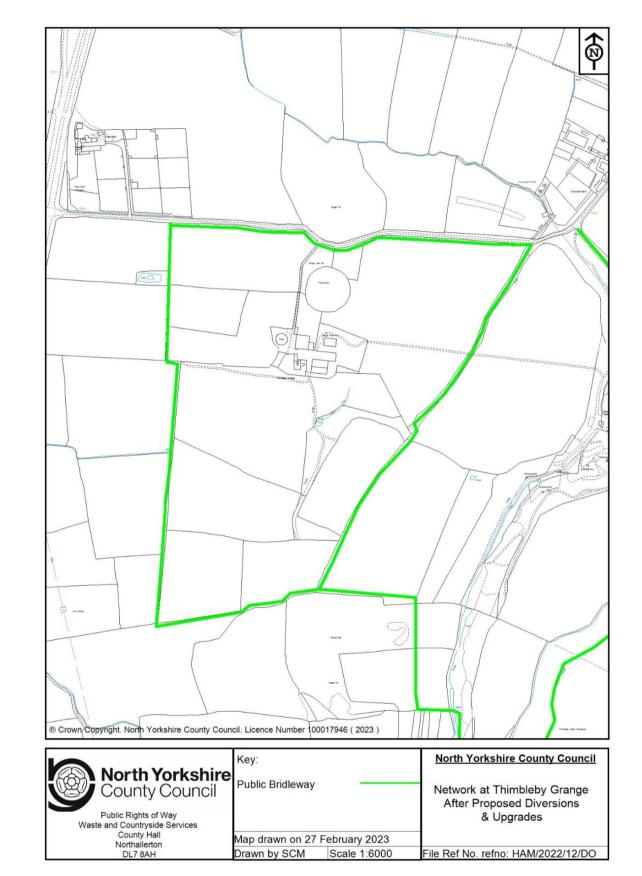
PLAN 1



PLAN 2



PLAN 3



PROPOSED FINAL NETWORK AFTER DIVERSIONS & UPGRADES

PHOTOS OF ROUTES -

APPENDIX A



Point AC looking towards Point A (A19) (to be deleted) (to be deleted)



Point AC looking towards Point AB (to be added)



Point AC looking towards Point B (to be retained) and towards Point C (to be deleted)



Point B looking towards Point F (to be retained)



Point F looking towards Point G (to be deleted)



Point Q looking towards Points P and F (to be added)



Point S looking towards Point N (to be added)



Point N looking towards Point K



Point K looking towards Point G (to be added)



Gates & Trees at Points I-E-L



Point I looking towards Point H (to be retained)



Point V looking towards Point H (to be added)

APPENDIX B

North Yorkshire County Council

Business and Environmental Services

09 March 2023

OPPOSED PROPOSED DIVERSION OF PUBLIC FOOTPATHS 10.146/13, 10.146/15 & 10.146/200 AND PUBLIC BRIDLEWAY 10.146/16. THIMBLEBY GRANGE. THIMBLEBY

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

1.0	Purpose Of Report	
	1.1	To advise the Assistant Director of an opposed proposed Diversion Order for three Public Footpaths and a Bridleway in Thimbleby. A location plan is attached to this report as Plan 1. The proposal is shown in detail on Plan 2.
	1.2	To seek authorisation to make and advertise a Diversion Order.

Background

2.0 Scheme of Delegation

2.1 Within the Country Council's scheme of delegation, it is delegated to the Assistant Director - Travel, Environmental and Countryside Services to exercise the functions of the Council under Section 119 of the Highways Act 1980 ("the 1980 Act") to make and advertise Diversion Orders, including where an objection has been received from any person or body entitled under the relevant statute to the making of the Order.

3.0 General Description of Route(s)

- 3.1 The routes to be diverted comprise a network of footpaths and a bridleway across a mixture of arable fields and pasture, which are located predominantly to the south and east of the Thimbleby Grange farmstead. The routes include one footpath which currently terminates at the A19, and is effectively a dead-end, and a bridleway which runs along a track and across a field which has been badly affected by rabbits and which is close to the neighbouring clay pigeon shooting range.
- 3.2 This proposal effectively removes the network of paths across the land and creates a loop around it, which links into the wider network and removes the termination at the A19 and proximity to the shooting range.
- 3.3 The applicant has indicated that they intend to upgrade all the resulting routes to bridleways, though this would require a separate dedication when the current diversion process has been completed and is not subject of this report.
- 3.4 A plan showing the new network as it would appear after the proposed diversion and bridleway dedications is shown in Plan 3. Photographs of various sections of the existing and proposed routes are provided in Appendix A.

OFFICIAL

4.0 The Application

Applicant:	Ms Diane Baines
Date of application:	16/11/2022
Type of Application	Diversion Order made under Section 119 Highways Act 1980
Parish:	Thimbleby
Local Member:	Cllr. Bridget Fortune
Local Member Comments:	None
Applicant's grounds for making the application	The current PRoW network completely surrounds and criss-crosses in close proximity to the farmstead. They effectively separate the farmstead from its land to the south and east, making it difficult to expand or improve the farmstead, which is severely impacting the farm's operational viability.

5.0 Relevant legal criteria

5.1 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.

6.0 The current proposal

- 6.1 The current proposal is for the diversion of a number of public footpaths and a public bridleway in the vicinity of Thimbleby Grange, Thimbleby, as shown on Plan 2. The applicant is an agent, working on behalf of the landowner of Thimbleby Farms, Thimbleby Hall, Thimbleby. The applicant has also stated that it is their client's intention to upgrade the resulting footpaths to bridleways via a separate dedication, once the current diversion proposal has been implemented.
- 6.2 An initial site visit was carried out on 23 August 2022, following which a detailed proposal was drawn up and agreed by the applicant. An informal consultation was initiated on 18 November 2022.
- 6.3 The only objection made in response to the informal consultation was from the Ramblers.
- 6.4 The Ramblers representatives are happy with some aspects of the proposal, namely the diversion of A-AC away from the A19 and F-G-S onto F-O-P-Q-R-S and, whilst they see no advantage of H-V-W-X-Y-Z-AA from a walker's perspective as walkers can just as easily use the road, they are not inclined to oppose it.
- 6.5 The Ramblers have, however, objected to the diversion of the remaining routes on the grounds that they believe that they represent a significant reduction in enjoyment for those people using them. The Ramblers state that, in their view, the existing network of routes provides variety, interest and excellent views over the surrounding countryside.

7.0 The Objection(s)

7.1	The Objections and associated DMO comments can be summarised as follows:-
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Objection No:	1
Objector Details:	Ramblers representative
Grounds:	The Ramblers have indicated that they would object to an Order which included the diversion of Public Footpath routes B-C-D-E, C- V and S-T-U and also Public Bridleway route I-E-L-M-N on the grounds that this would substantially reduce public enjoyment due to a loss of variety and interest and views over the landscape. They have also suggested that the bridleway between Points M-N could be diverted to run alongside the field boundary to the east of the current line instead of the proposed diversion K-G-S and that the current confusing alignment of gates etc at Points E, I, J, K & L could be rationalised.
DMO Comment:	The landowner's prime motive for applying for this diversion is to remove the routes which surround the farmyard and farm buildings, which restrict the landowner's ability to improve and develop the farm's operational viability.
	They are also seeking to improve other routes around the farm, improvements which the Ramblers Association appear to be in agreement with.
	In addition, the landowner has said that if the diversion is confirmed, it is their intention to then upgrade all the resulting routes to Public Bridleways, resulting in further gains to the network as a whole.
	In particular, providing a bridleway along H-AA will take horse riders off a link road to the A19 and greatly improve their safety and enjoyment. Officers do not agree that the diversion of the parts of the routes to which the Ramblers are objecting would adversely affect the enjoyment of the public as similar views are afforded by the proposed routes, albeit from slightly different locations.
	The Ramblers' suggestion to move the existing route between Points M and N would bring the route closer to the neighbouring clay pigeon shooting range, which would be of particular concern to anyone riding the route on horseback. The reason for wishing to divert the route along the western field boundary (Points K-S) is to move the bridleway further away from the shooting range.
	It is maintained that the proposed diversions will also achieve the Ramblers' desire to rationalise the gates at Points E, I, J, K & L as only the gates at Points J & K would remain.
	Officers do not feel that these arguments provide sufficient grounds for abandoning the proposal at this stage.

8.0 Options available

- 8.1 Negotiations have been undertaken with the objector to explore ways in which they could be persuaded to withdraw their objection, but these have been unsuccessful and so as there is no further scope to amend the proposal to resolve those objections, there are only 2 options available to the Authority:
 - i) Reject the application and advise the applicant that the Authority is not prepared to pursue a Diversion Order in the light of the objection at the current time, but that they may re-apply at later date if they can find a way to satisfy the objector.
 - ii) Decide that despite the objection the proposal satisfies the criteria within the legislation, as referred to in section 5.1 above, and resolve to make the Diversion Order, letting the statutory process take its course.

9.0 Legal Implications

9.1 If an Order is made and no duly made objections are received the Authority would confirm the Order. If objections are received, and are not subsequently withdrawn, the Authority cannot confirm the Order, and a formal decision will then need to be made whether to abandon the Order, or to forward the opposed Order to the Secretary of State for resolution.

10.0 Financial Implications

10.1 There are no financial implications in rejecting the application at this stage. However, if the Order were to be made and was opposed, and the Authority was still prepared to pursue the Order then there would be a cost to the Authority in making a submission to the SoS and being involved in the subsequent processes involving written representations, a local hearing or public inquiry. Any necessary works to the proposed route would be undertaken by the applicant and at his own expense.

11.0 Equalities Implications

11.1 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.

12.0 Climate Change Implications

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

13.0 Conclusions

- 13.1 It is considered that the criteria described in 5.1 above are met ie that it would undoubtedly be in the interests of the owner of the land crossed by the public footpaths for the paths to be diverted, and it is also considered that the proposed diversion would not be substantially less convenient to the public.
- 13.2 The existing public bridleway between Points M and N is in an area which is badly affected by rabbits and is also close to a clay pigeon shooting range so the proposed diversion would have the added benefit of moving the route away from these issues.

The Ramblers have suggested moving the route to the east, closer to the shooting range but this is not considered to be appropriate.

- 13.3 The Ramblers have given their general view that public enjoyment would be reduced by claiming that there would be less variety and interest and poorer views for walkers without elaborating further.
- 13.4 The effect of a diversion on public enjoyment is not something which the Council is obliged to take into account before making an Order. However, the Council is required to have a 'regard' for 'the effect which the diversion would have on public enjoyment of the path or way as a whole' if it intends to confirm an unopposed order. Similarly, an Inspector is required to have the same regard if an Order is made and is opposed, and is referred to the Secretary of State, so it would be wise to consider this at this stage.
- 13.5 Officers do not feel that public enjoyment overall would be adversely affected, as the views are equally extensive from the different field boundaries along which the existing and proposed routes are aligned, and the topography is similar between the existing and proposed routes.

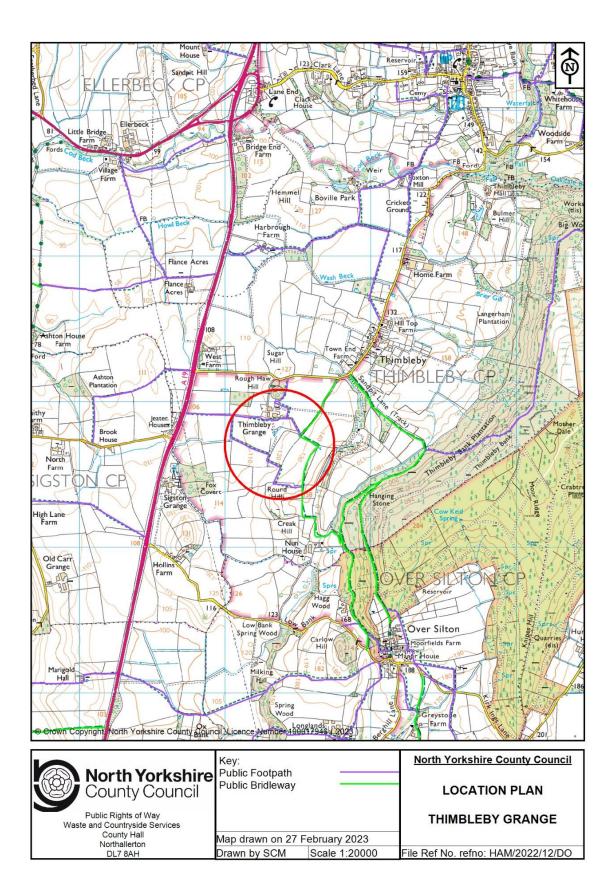
14.0 Recommendation

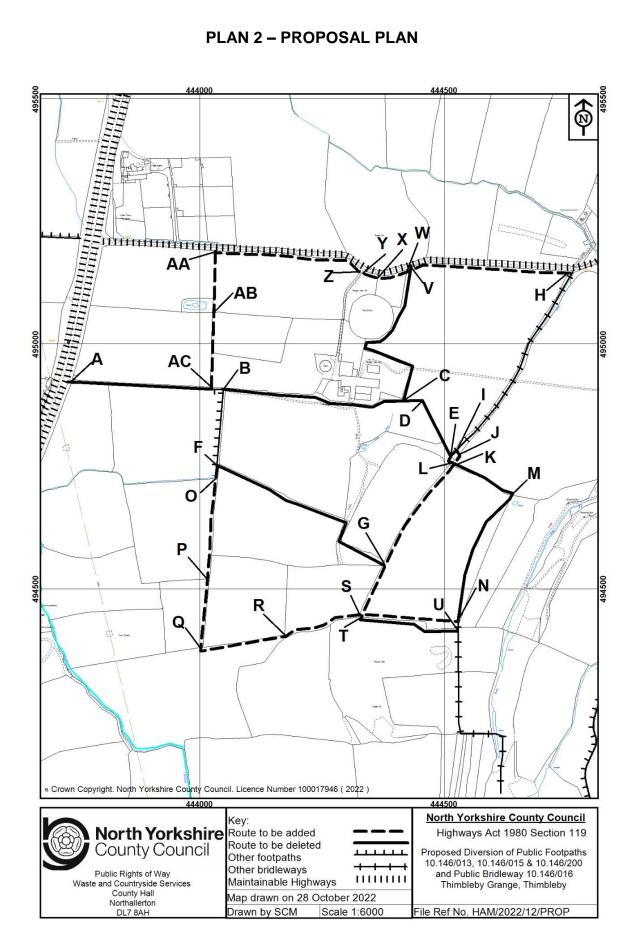
14.1 It is therefore recommended that the Assistant Director, Travel, Environmental and Countryside Services authorises the making of a Diversion Order.

Author of Report: Steve Metcalfe

Background Documents: File Ref: HAM-2022-12-DO

PLAN 1 – LOCATION PLAN





PLAN 3 – FINAL NETWORK AFTER DIVERSIONS & UPGRADES

