

North Yorkshire County Council
Business and Environmental Services

Executive Members

26 February 2021

Opposed Public Path Order to Divert a Public Footpath at 124 Main Street, Cononley

Report of the Assistant Director – Transport, Waste and Countryside Services

1.0 Purpose of the Report

- 1.1 To advise the Corporate Director of Business and Environmental Services (BES) of an opposed Diversion Order and the proposed submission of the order to the Secretary of State (SoS). A location plan as attached to this report as **Plan 1**. The route is shown on **Plan 2**. Photographs of the current and proposed routes are shown as **Photos 1- 8**.
- 1.2 To request the Corporate Director BES, in consultation with the BES Executive Members, to authorise the submission of the opposed Order to the SoS, and to authorise that the Authority, in its submission of the opposed Order to the SoS, will take a neutral stance towards the confirmation of the Order.

2.0 Legal Context

- 2.1 Under Section 119 of the Highways Act 1980, the County Council, having consulted any other local authority, may divert a footpath where it appears to the Authority that in the interests of the owner of the land crossed by a footpath, and/or in the interests of the public, it is expedient that the line of the path should be diverted.
- 2.2 Where a Public Path Order is opposed, the County Council cannot confirm an Order. Where it is considered that an Order should be confirmed or it is unclear whether the Order should be confirmed it can be submitted to the Secretary of State (SoS) for resolution. The SoS will only confirm an Order if he/she is satisfied that:
- i) in the interests of the landowner and/or the public, 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.
- 2.3 In relation to opposed Public Path Orders the County Council has the discretion not to proceed with an opposed order and can decline to forward it to the SoS for confirmation. In these instances the authority must make a formal resolution not to proceed.

3.0 Background to the Application

- 3.1 The applicant made a previous application for the same proposal in 2015. At that time a Diversion Order was made and was opposed.
- 3.2 All stages of processing Diversion Orders, and the associated costs for necessary advertisements, are chargeable to the applicant except from the point where the need arises to forward opposed cases to the SoS.
- 3.3 The applicant had already been advised that if a made Order were to be opposed, the County Council would not be able to confirm the Order, and that with respect to opposed Diversion Orders, it is not our usual practice to refer them to the SoS for determination, due to the financial burden on the Authority.
- 3.4 The applicant was fairly confident that he would be able to resolve the objections and was allowed time to attempt to achieve this. However, he was not fully successful and some objections remained, therefore a formal decision was made in 2017 to abandon the Order as made and the applicant was advised. There is no process of appeal available to the applicant.
- 3.5 The applicant has since re-made this application in 2019, having been advised by officers that a further application, for the same proposal, so soon after the previously abandoned proposal was unlikely to be successful. However, the applicant persisted, and paid the relevant fees.
- 3.6 The pre-Order informal consultation was undertaken with interested parties in March 2020.
- 3.7 Following objections from the Local Parish Council to the Informal Consultation, the Order was referred to the Assistant Director, Transport, Waste and Countryside Services on 20 July 2020, and approval was given to make an Order. The Order was made and was advertised on 27 August 2020.

4.0 Responses to the sealed order

- 4.1 The Order has attracted an extraordinary number of letters of support, matched by the numbers of letters of objection.
- 4.2 Thirty five letters/e-mails were received in support of the Order. Examples of the comments made are:
 - The proposed new route is safer because it exits Gordon Terrace onto a wide pavement where there is a dropped curb, a grit bucket for use in the winter, and full view of the traffic from all directions.
 - The proposed alternate route has better visibility and has no gates so easy use for everyone.
 - The proposed new route is all flat as opposed to the three steps on the existing path which exit directly onto the road.
 - The proposed new route is much wider which makes it accessible for wheelchair users, people with other mobility aids, and those with pushchairs.
 - The proposed new route is also much straighter than the existing route which has tight 90 degree corners which are blind bends, which again are inaccessible for wheelchair users and those with other disabilities.
 - The proposed route is not gated like the current footpath.
 - I always use the proposed alternative route and I always see others on this path too.

- We offer our approval of the closure of the right of way to the right of Gordon House on the grounds that it is unnecessary and intrusive, the alternative route has always been more than efficient.

4.3 Thirty Four letters/e-mails of objection to the Order were received. Examples of comments made are:

- This proposal is not a diversion to the current footpath but closure.
- If this footpath was to be closed, then the alternative walking route is around a dangerous blind corner which has no pavement.
- The existing footpath is an important route for the safety of local children, as it is the safest route to walk from the Institute to the local primary school.
- The footpath is a route used by parents and young children to walk from the Institute, where there is a nursery.
- Using the footpath in question avoids the risk from speeding traffic at a dangerous and unsighted corner.
- The alternative offered already exists and is not a new route or a safe route.
- The alternative offered requires walkers coming up Main Street to go onto carriageway of the road. This is avoided if they use the existing footpath.
- The footpath is a historically important route used for at least a century. It is one of the last two remaining cut throughs between Main Street and what is now called Meadow Lane and an important historical feature of the village.

4.4 Of the objections received, there were several instances where 2 or more letters/e-mails from members of the same household or family were submitted, using the same or similar content for their objections.

5.0 Representation made by the local member

5.1 No formal representations were received from Councillor Patrick Mulligan in response to the consultations regarding the Diversion Order.

6.0 Financial implications

6.1 Given the number of representations made by members of the public to this Order, it is probable that if the opposed Order were to be submitted to the SoS, the Order would be resolved involving a Public Inquiry.

6.2 In forwarding the opposed Order to the SoS there would be the usual unavoidable financial implications for the Authority in covering any costs associated with any subsequent public inquiry. If the SoS elects to hold a 'live' public inquiry over 2 days the costs to the Authority in this instance, without the need for advocacy support, would be in the region of £1,000.00, including the preparation of a Statement of Case, 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. This would be considerably less if the matter is dealt with by a virtual public inquiry due to the current pandemic restrictions.

6.3 The Authority cannot charge the applicant for the costs associated with a public inquiry and the preparation for an inquiry. As required, the applicant has agreed to meet all other administration and advertisement costs up to the point of any submission to be made to the SoS, in line with standard policy and procedures.

6.4 The proposed route is approximately 29 metres in length (approx. 6 metres less than the original path) and has a paved surface. It is anticipated that the initial cost to the Authority in maintaining the proposed path would be two waymarks, and that on-going maintenance costs would be negligible.

7.0 Equalities Implications

- 7.1 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.

8.0 Legal Implications

- 8.1 The opposed Diversion Order will be determined by an Inspector appointed by the SoS, and, as stated above, determination will be by way of written representations, a public hearing or a public inquiry.
- 8.2 The Inspector, on the basis of the legal criteria summarised in paragraph 4.2 above, will decide whether or not to confirm the opposed Diversion Order. If he/she decides to confirm the Order, part of the existing footpath would be extinguished and the proposed route would be added to the Definitive Map as a public footpath.

9.0 Climate Change Implications

- 9.1 The proposal is merely to divert a short section of existing public footpath on to an alternative alignment very close by. The confirmation of this order would have no positive or negative impact on climate change.

10.0 Current Decisions to be made

- 10.1 There are two decisions to be made at this stage:
- 10.2 The first decision to be made is whether the Order is to be abandoned or is to be forwarded to the SoS for resolution. To be consistent with our usual practice in the light of substantial objection to an Order it would be justifiable to abandon this Order as was the previously made and opposed Order.
- 10.3 However, whilst there is no right of appeal for the applicant, if it were to be decided again to abandon the order, it is possible that a further application would be made necessitating the further input of officer resources.
- 10.4 It would be open to the Authority to forward the case to the SoS requesting that the Order is not confirmed although this would require the case to be made why the legislative criteria has not been met.
- 10.5 It would also be open to the Authority to take a neutral stance, allowing the SoS to decide whether or not to confirm the Order by taking into account the arguments in support of the confirmation and those against, within the legislative framework without an opinion being expressed by the Authority.
- 10.6 This matter has become very controversial locally and by forwarding the opposed Order to the SoS a formal, and more final, resolution will be reached by a higher authority; either the confirmation of the Order or non-confirmation of the Order.
- 10.7 If the matter is to be forwarded to the SoS then a second decision needs to be made, namely which stance the authority would take within its submission to the SoS towards the confirmation of the Order, with reference to the points made above.

- 10.8 In submitting an opposed Order to the SoS the Authority needs to decide whether, on the basis of the available information, it;
- supports confirmation of the Order,
 - believes the Order should not be confirmed, or
 - considers the circumstances are so finely balanced, or are particularly unclear and wishes to take a neutral stance.

11.0 Conclusions

- 11.1 It is officers' view that the proposed diversion meets the relevant legal criteria outlined in paragraph 4.2 in that -
- It is expedient to divert the footpath in the interest of the owners on the grounds of privacy and security.
 - Privacy would be achieved by diverting the footpath away from the house and out of the small enclosed gardens.
 - Security would be enhanced in that the owners would be able to challenge anyone found within the curtilage of the house and garden area.
 - The diversion route is not 'substantially less convenient' for the public with regard to ground levels/contours and distance travelled.
 - The length of footpath will be reduced by 6 metres from the current 35 meters to 29 metres on the proposed route, which is not substantially less convenient for the public.
 - The current alignment through the small front and back gardens maybe inhibiting to some members of the public due to the enclosed and private character of the garden, whereas the proposed route has a more open aspect.
 - Walkers already make use the proposed route indicating that it is an acceptable route to the public.
- 11.2 The diversion of the footpath is desirable to the applicant in terms of safety, privacy and security, and in officers' view it would also be of some benefit to the public, as the proposed diverted route would avoid the confined curtilage of the property and the steps.
- 11.3 Officers are not convinced that the point of access on to Main Street is any more inconvenient or unsafe for the public. The existing end of the footpath and the proposed end of the footpath on the short section of roadside footway are relatively close together on the bend in the road, both exits requiring the same care and attention in relation to the oncoming traffic.
- 11.4 It is contended that the objections raised do not support a sufficient case to warrant the refusal of confirmation of the order on the only grounds stated in Sec 119(6) Highways Act, namely that the proposed route is substantially less convenient for users.
- 11.5 In conclusion, the view is that as the Order has merit to the applicant, and to some extent to the public, there is no reason for the Authority to oppose the confirmation of the Order. As the general practice of the Authority is not to pursue the confirmation of substantially opposed Public Path Orders it would be inconsistent for the Authority to actively support the confirmation of this Order at this stage. Therefore the remaining option for the Authority is to take a neutral stance towards the confirmation of the Order.

12.0 Recommendation

12.1 As this is the second application for the same diversion, and in order to resolve the controversial long-standing issue, it is recommended that the Diversion Order be referred to the Secretary of State for resolution, and in its submission to the Secretary of State the Authority takes a neutral stance towards the confirmation of the Order.

IAN FIELDING

Assistant Director - Transport, Waste and Countryside Services

Author of report: Mike Lee

Enclosures:

- Location Plan (Plan 1)
- Order Plan (Plan 2)
- Photographs 1 - 8

Background papers: File Ref: CRA/2019/04/DO Cononley - FP 05.13/25 Main St



PLAN 1



**North Yorkshire
County Council**

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

LOCATION PLAN

Map drawn on 20 July 2020

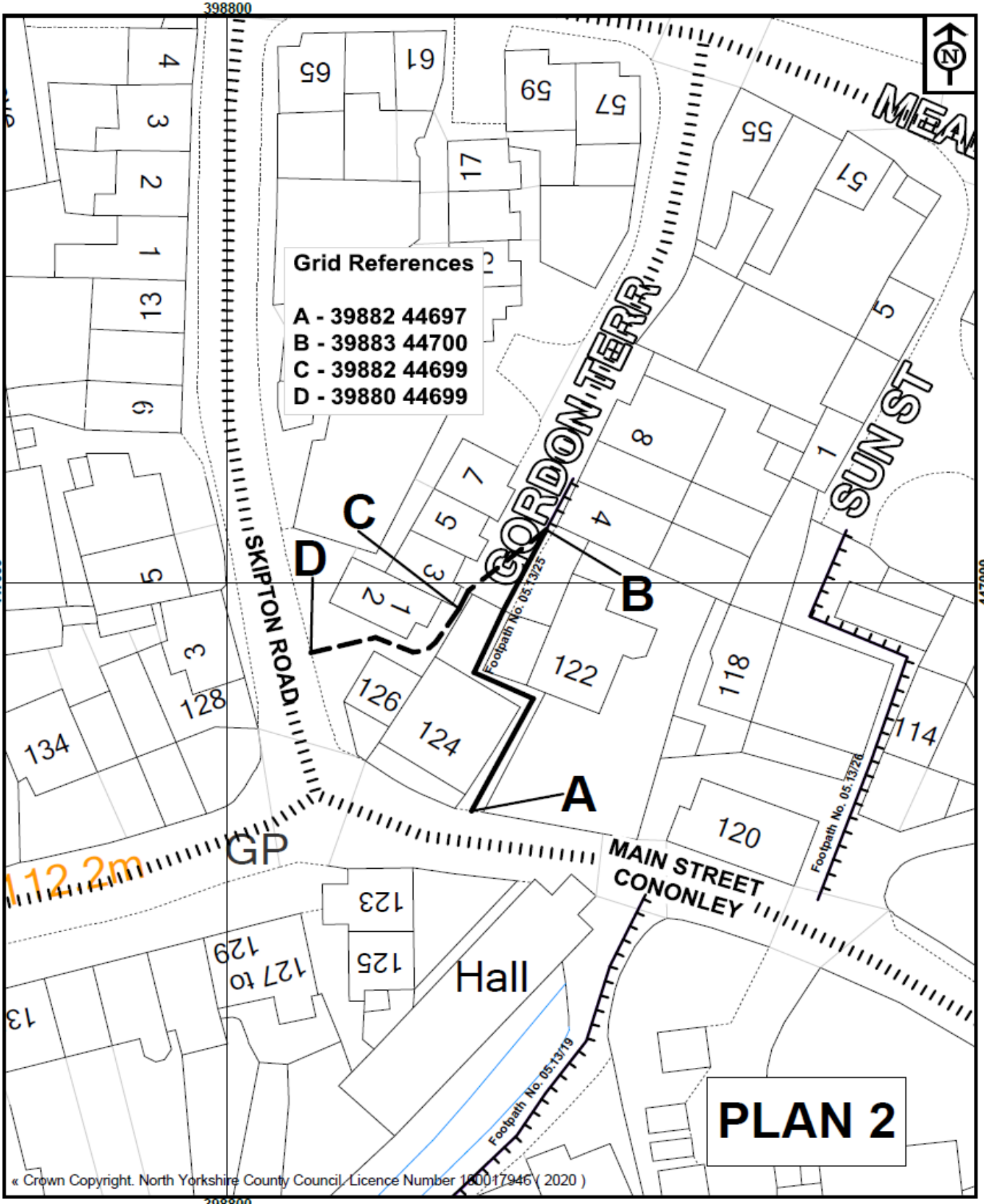
Drawn by pn

Scale 1:5000

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Executive Members
26th February 2021

File Ref No.



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

Key:
 Footpath to be added 
 Footpath to be deleted 
 Other footpaths 
 Maintainable Highways 
 Map drawn on 27 October 2020
 Drawn by ML | Scale 1:500

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File Ref No. CRA/2019/04/DO



1. Point A on the existing footpath, the exit on to Main Street.



2. Hand gate at Point A on existing footpath.



3. Exit of existing footpath on to Gordon Terrace from the back garden of No 124 Main St.



4. Looking from Gordon Terrace at the existing footpath through wooden gates on the left, and at the proposed footpath through the gap on the right, Point C.



5. Point C on the proposed footpath.



6. Looking back at Gordon Terrace from Point C on the proposed footpath.

7.



7. Looking east from Point D on the proposed footpath.



8. The end of the short section of roadside footway south of Point D.

North Yorkshire County Council

Corporate Director - BES

03 December 2020

**Public Path Order to Divert a Public Footpath
at 124 Main Street, Cononley**

Report of the Assistant Director – Transport, Waste and Countryside Services

AUTHORISATION

I approve / do not approve the recommendation set out above

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ANY ADDITIONAL RECOMMENDATION or COMMENT:

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Karl Battersby
Corporate Director - BES

Signed: Date:

Date: