

North Yorkshire County Council
Business and Environmental Services

Executive Members

21 May 2021

Opposed Diversion Order - Botton Grove, Danby Head

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 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. Both shown in Appendix 1.
- 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 support 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 application was made in January 2020. The applicant's reasons for requesting the diversion of the footpath are that:
- The land around and under the public footpath is suffering landslip, which is causing the collapse of many ancient underground culverts giving the applicant concern for public safety.
 - He may need to erect a large supporting wall to protect his farm house from the landslip due to the ancient, now failing, drainage of spring water off the moors.
 - He would like the footpath diverted to free him to undertake the substantial necessary works to resolve some of these issues.
 - Also he and his family find the footpath uncomfortably close to their house, with members of the public being at eye level with the windows on the upper floor, and occasionally intruding on the privacy of the property.
- 3.2 Officers from both the North York Moors National Park Authority, (who have the maintenance responsibility for PRoWs within this area), and officers from NYCC are in agreement that the surface of the footpath is no longer safe for the public to traverse due to the breaking up of the surface and the opening up of the old culverts.
- 3.3 The footpath is consequently currently closed, being subject of a temporary Traffic Regulation Order, and the proposed diversion route is being used by the public as the temporary alternative route to the closed section of footpath.
- 3.4 The pre-Order informal consultation was undertaken with interested parties in April 2020.
- 3.5 No objections were raised at this stage and letters of support were received from the Parish Council and the Footpath Secretary of the Scarborough Ramblers Group.

4.0 Responses to the sealed order

- 4.1 The Order was made in August 2020 and was advertised in the normal manner, on site and in the local press.
- 4.2 One objection was received within the 'objection period', from the representative of the Ramblers Association Cleveland Group. The grounds for the objection are not entirely clear. There is no comment on the suitability or otherwise of the proposed route but an insistence that the applicant is pressed to provide him with the proposed costs of the works the applicant intends to do to reroute/repair the culverts etc.
- 4.3 The applicant was under no obligation to provide this information and declined to do so. The applicant merely needs to show that it is in his interests to have the footpath moved, and that the alternative route proposed is not substantially less convenient to the public.
- 4.4 The legislative requirements have been explained to the objector but he has retained his stance that 'we object to the proposal until such time details of the civil works are made available to us'.
- 4.5 The objection is considered to be unhelpful, in that it is unreasoned, and seems to be based upon an unwillingness to accept that the law is constructed in a way to facilitate landowners to request the diversion of rights of way on their property, where it would be in their interests to do so.
- 4.6 To this extent the objection is considered to be invalid, but nevertheless is an outstanding objection, preventing the Authority from confirming the Order.

5.0 Representation made by the local member

5.1 No formal representations were received from the local councillor in response to the consultations regarding the Diversion Order.

6.0 Financial implications

6.1 Given there is only one objection to the Order it is probable that if the opposed Order were to be submitted to the SoS, the Order would be resolved by written representations.

6.2 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 officer time which would be met by the respective staffing budgets.

6.3 Unless and until there is any change to the Agency Agreement with the North York Moors National Park Authority the future maintenance of the route would lie with the NYMNP.

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 would be determined by an Inspector appointed by the SoS, and, as stated above, determination will most likely be by way of written representations.

8.2 The Inspector, on the basis of the legal criteria summarised in paragraph 2.2 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.

10.3 Where an Order is substantially opposed or where valid reasons have been raised suggesting an Order should not be confirmed, our stance would be likely to be that the Order should be abandoned. However in this case only one objection has been raised, and it would seem to be unfair on the applicant if one poorly reasoned objection caused the abandonment of an Order that in all other respects is satisfactory.

- 10.4 If it is decided that 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.
- 10.5 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 2.2 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.
 - 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 new footpath would be a little longer but the surface of the new section of footpath would be more stable and, being away from the area subject to land slippage, would be free of collapsing culverts, so cannot be considered substantially less convenient for the public.
 - Walkers are already making use the proposed route as it is serving as the alternative route whilst the difficult section is subject of the temporary Traffic Regulation Order.
- 11.2 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. The sole objection raises no reasons why the Order should not be confirmed, and the matter is not so unclear such that the Authority might wish to take a neutral stance. Therefore the remaining option for the Authority is to take the stance of supporting the confirmation of the Order.

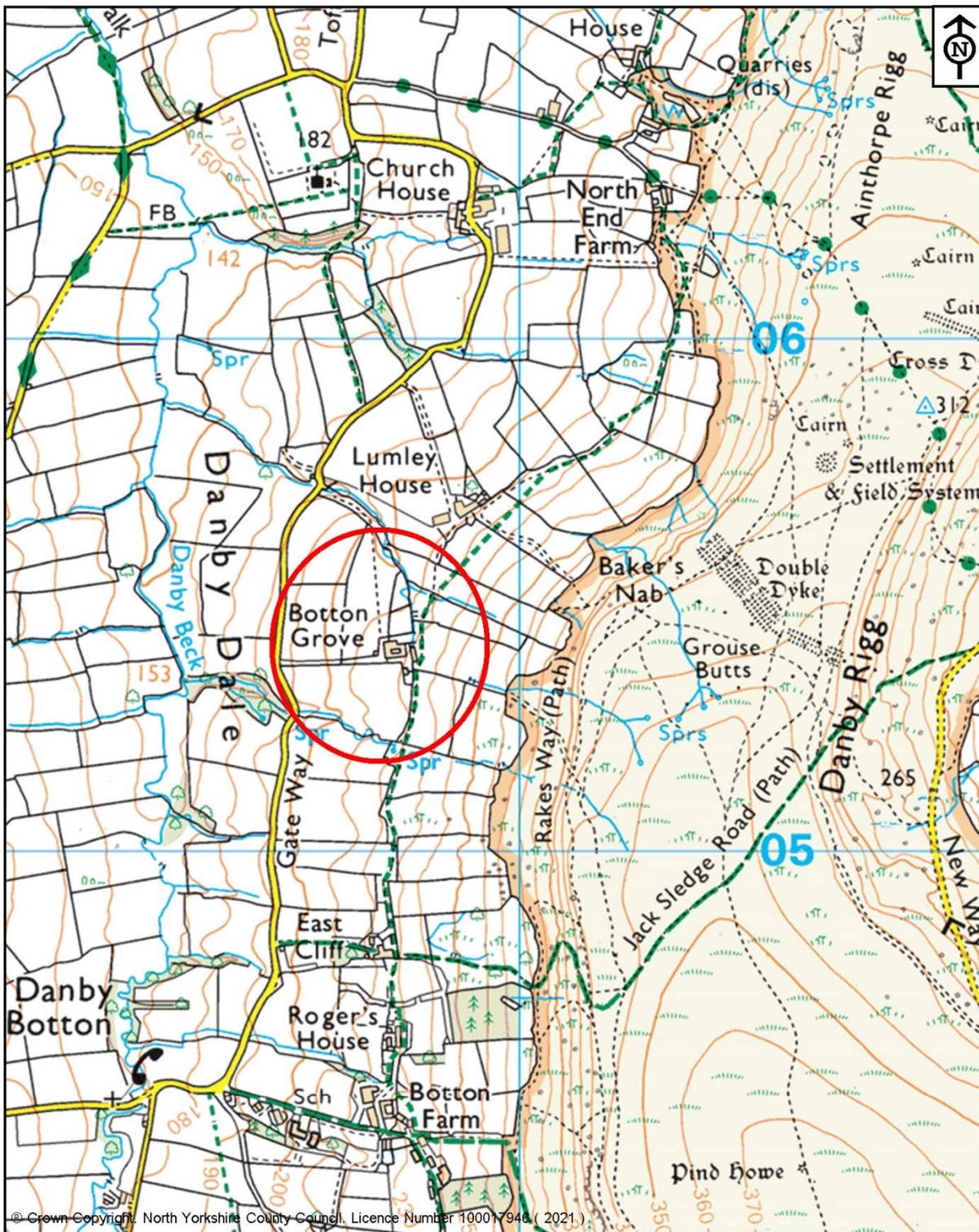
12.0 Recommendation

- 12.1 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 stance of supporting the confirmation of the Order.

MICHAEL LEAH
Assistant Director - Travel, Environmental & Countryside Services

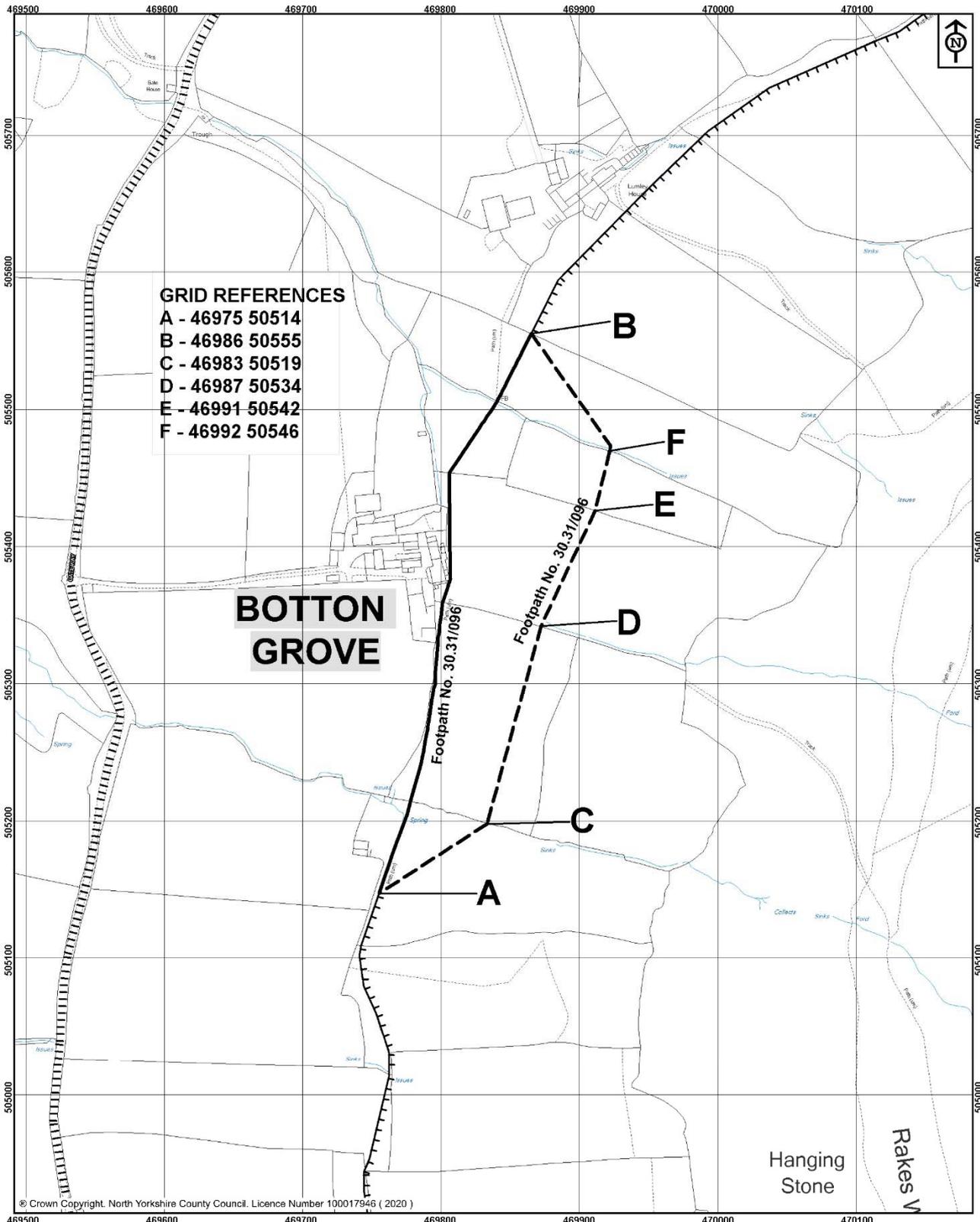
Author of report: Penny Noake

Background papers: File Ref: SCAR/2019/04/DO

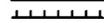
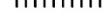


© Crown Copyright, North Yorkshire County Council, Licence Number 100017946 (2021)

 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>LOCATION PLAN</p> <p>Map drawn on 14 April 2021 Drawn by P Noake Scale 1:10000</p>	<p>North Yorkshire County Council</p> <p>Plan prepared for the BES - Executive Members Meeting on 21 May 2021</p> <p>PLAN 1</p> <p>File Ref No. SCAR/2019/04/DO</p>
---	--	---



© Crown Copyright. North Yorkshire County Council. Licence Number 100017946 (2020)

 <p>North Yorkshire County Council Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Key:</p> <ul style="list-style-type: none"> Footpath to be added  Footpath to be deleted  Other footpaths  Maintainable Highways  	<p>North Yorkshire County Council Plan prepared for the BES - Executive Members Meeting on 21 May 2021 PLAN 2</p>
	<p>Map drawn on 12 August 2020 Drawn by ML</p>	<p>Scale 1:2500</p>

North Yorkshire County Council
Business and Environmental Services
Executive Members

21 May 2021

Opposed Public Path Order to Divert a Public Footpath at Botton Grove, Danby Head
Report of the Assistant Director – Travel, Environmental & Countryside Services

AUTHORISATION

I approve / do not approve the recommendation set out above

.....

ANY ADDITIONAL RECOMMENDATION or COMMENT:

.....

.....

Karl Battersby
Corporate Director - BES

Signed:Date:

Date: