

North Yorkshire County Council

Executive Members

14 June 2021

Opposed Footpath No. 05.22/1, Leys Barn, Glusburn Moor Diversion Order 2021

Report of the Assistant Director – Travel, Environment and Countryside Services

1.0 Purpose of the report

- 1.1 To advise the Corporate Director - Business and Environmental Services (BES) 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**. Photographs of the proposed route are at Appendix A. Copies of the relevant landowners' agreements to the proposal, the letter of objection and the subsequent qualified objection withdrawal letter are at Appendix B.
- 1.2 To request that the Corporate Director - BES, in consultation with the Executive Member for Open for Business recommends that the Diversion Order be referred to the Secretary of State (SoS) with regard to objections to the Order as described below.

2.0 Scheme of Delegation

- 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 Director of Travel, Environment and Countryside Services that the Order be referred to an Inspector appointed by the Secretary of State.

3.0 The Application

Applicant:	Dr John Stephen Pickles, Leys Barn, Glusburn Moor, Lothersdale, Keighley, BD20 8DY
Date of application:	29/06/2020
Type of Application	Diversion Order S.119 Highways Act 1980
Parish:	Lothersdale
Local Member:	Councillor Patrick Mulligan
Applicant's grounds for making the application	The definitive line is obstructed by the applicant's property, a former barn, which was constructed in the early 1800s. This application is intended to move the definitive line onto the line which has been walked by the public for at least 40 years.

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 footpath where it appears to the Authority that in the interests of the owner of the land crossed by the footpath described in the Order it is expedient that the line of the path should be diverted.
- 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.
- 4.4 The applicant is Dr John Stephen Pickles, Leys Barn, Glusburn Moor, Lothersdale, Keighley, BD20 8DY.
- 4.5 With reference to Plan 2 landownership is as follows;
- Land crossed by part of the existing footpath north west from Point B – the applicant.
 - Land crossed by the proposed diversion route between Points C & D – joint ownership – the applicant and Mr. R Baldwin of Leys House.
 - Agricultural land crossed by part of the existing path south east from Point A and the proposed diversion route between Points A & C - Mr. N Bell, Mire Close Farm.
- 4.6 There is a legal requirement to consult with any other local authority or local authorities in whose area the land concerned is situated.

5.0 Reason for the diversion of the footpath

- 5.1 The applicant states that Footpath 05.22/1 is shown on the Definitive Map as going through his property which was built circa 1820 and so, he maintains must have been drawn incorrectly on the original Definitive Map (issued by the former West Riding CC in 1973). The applicant advises us that for as long as he has lived at the property (approx. 40 years) the public have used an alternative route (A-C-D as shown on Plan 2) and this diversion is intended to divert the legal line onto the long-standing walked route. The definitive line appears to be encroached upon by the barn, but whether or not this has always been the case is unclear.

6.0 Responses to the initial consultations

- 6.1 An objection was received from the Ramblers in response to the initial consultation, who wanted to see the replacement of the existing non-compliant stone stile at Point C with a BS5709:2018 pedestrian gate. After discussion between the Definitive Map Officer, the Ramblers Representative and the applicant, the Ramblers representative agreed to withdraw their objection. The other affected landowners were not included in the initial consultation because they had both provided signed statements stating that they had no objections to the proposal, and which were submitted by the applicant as part of the original application. The Authority made the Order on 16 March 2021 to divert the footpath.

7.0 Responses to the publication of the sealed order

- 7.1 The Order was duly advertised by notice on 25 March 2021.
- 7.2 One duly-made (but unsigned) objection was received from one of the affected landowners in response to the publication of the notice, citing the following grounds:
- General concerns that the proposal would restrict access to and the use of the land between Points A and C as shown on Plan 2.
 - Concerns for the safety of livestock in the field and the general public.
 - Alleged misuse of the landowner's original statement that he had no objection to the proposal.
- 7.3 Prior to the submission of the objection, several telephone calls and emails were received from the landowner's son, Mr. C Bell, making the same objections. The applicant alleges that when he spoke to the landowner, Mr. N Bell, Mr. N Bell had no knowledge of the objection which had been submitted in his name.
- 7.4 Following discussions between the applicant and the Bells a further (signed) letter was received on 05 May 2021, from Mr Norman Bell, which stated that he wished to retract the objection and that he fully supported the application provided that a stile is retained at Point C. However, the sealed Diversion Order provides for a pedestrian gate at Point C, and the Order cannot be modified by the County Council at this late stage. Mr Bell is not prepared to support the replacement of the existing stile with a gate and therefore it is assumed that he continues to object to the order on this basis alone.

8.0 Representation made by the local member

- 8.1 No responses were received from the Local Member to the consultations regarding the Diversion Order.

9.0 Financial implications

- 9.1 Given that 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.
- 9.2 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.

10.0 Equalities implications

- 10.1 Consideration has been given to the potential for any equality impacts arising from the recommendations. It is the view that the proposed change from the current stile to a BS5709:2018 pedestrian gate at Point C, as shown on Plan 2, would represent an improvement in ease of access at this point and that therefore a rejection of the application at this stage would remove the potential for realising that improvement.

11.0 Legal implications

- 11.1 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.
- 11.2 The Inspector, on the basis of the legal criteria summarised in paragraph 4.3 above, will decide whether or not to confirm the opposed Diversion Order. If he/she decides to confirm the Order, part of the existing footpath would be extinguished and the proposed route would be added to the Definitive Map as a public footpath.

12.0 Climate change implications

- 12.1 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.

13.0 Current decisions to be made

- 13.1 The decisions to be made at this stage is firstly whether the Order is to be abandoned, or is to be forwarded to the SoS for resolution.
- 13.2 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
 - considers the circumstances are so finely balanced, or are particularly unclear and wishes to take a neutral stance.

14.0 Conclusions

- 14.1 After due consideration of the nature of the objections, and bearing in mind that the proposed pedestrian gate would meet the requirements of BS5709:2018, both in terms of its design and by being the least obstructive option which meets the land management needs, officers believe that despite the objection from one of the affected landowners on one particular aspect, if the matter were to be forwarded to the SoS, a Planning Inspector, would be likely to find that the proposed diversion adequately meets the relevant legal criteria outlined in paragraph 4 above on the following grounds, and may therefore confirm the Order:-
- i) The public have been using the proposed route for many years as a suitable alternative to the definitive line. The proposed route is not substantially less convenient than the definitive route, indeed there is a benefit to the public avoiding the close proximity to the building.

- ii) The current stile at Point C does not meet the requirements of BS5709:2018. To satisfy the consideration of ease of use it would be desirable for a stock-proof pedestrian gate which complies with BS5709:2018 to be provided in place of the existing stile.

14.2 In view of the objection to the proposed removal of the stile at Point C, the Inspector may be minded to confirm the Order, but to modify it to specify the provision of a new stile which meets the dimensional requirements of BS5709:2018, rather than require the replacement of the stile with a pedestrian gate. In this event the Authority would accept that decision.

15.0 Recommendation

- 15.1 It is recommended that the opposed Diversion Order be referred to the Secretary of State and that the Corporate Director – BES, in consultation with the Executive Member for Open to Business authorises the authority to support the confirmation of the Order within its submission to the SoS.

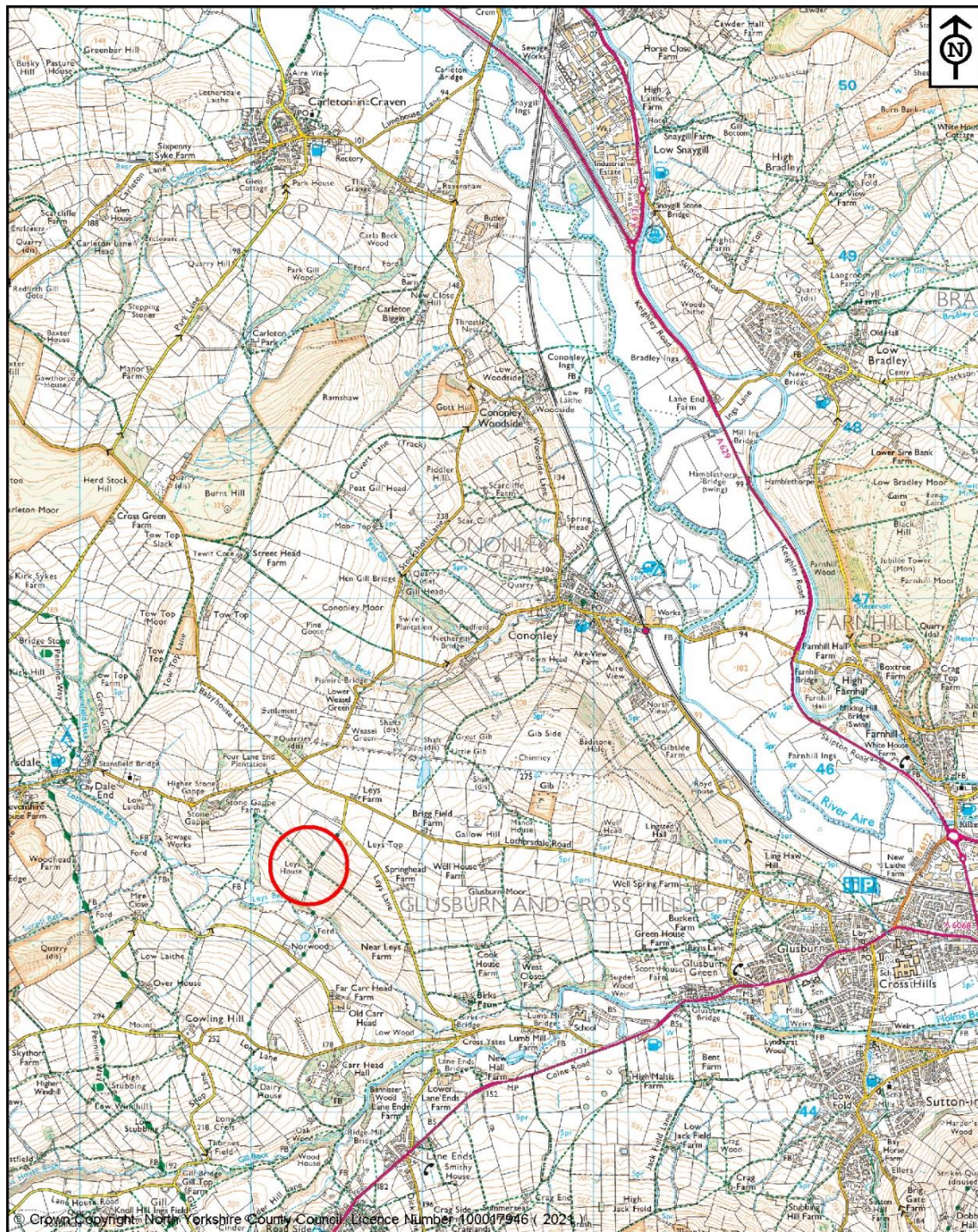
MICHAEL LEAH

Assistant Director - Travel, Environment and Countryside Services

Author of report: Steve Metcalfe

Background papers: File Ref CRA/2020/03/DO

Plan 1: Location Plan



 <p>North Yorkshire County Council</p> <p>Public Rights of Way Waste and Countryside Services County Hall Northallerton DL7 8AH</p>	<p>Leys Barn Diversion Order</p> <p>Location Plan</p> <p>Map drawn on 20 May 2021 Drawn by SCM Scale 1:30000</p>	<p>North Yorkshire County Council</p> <p>Plan prepared for the AD Decision Meeting on 1st June 2021</p> <p>PLAN 1</p> <p>File Ref No. CRA/2020/03/DO</p>
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Plan 2: Diversion Order Plan

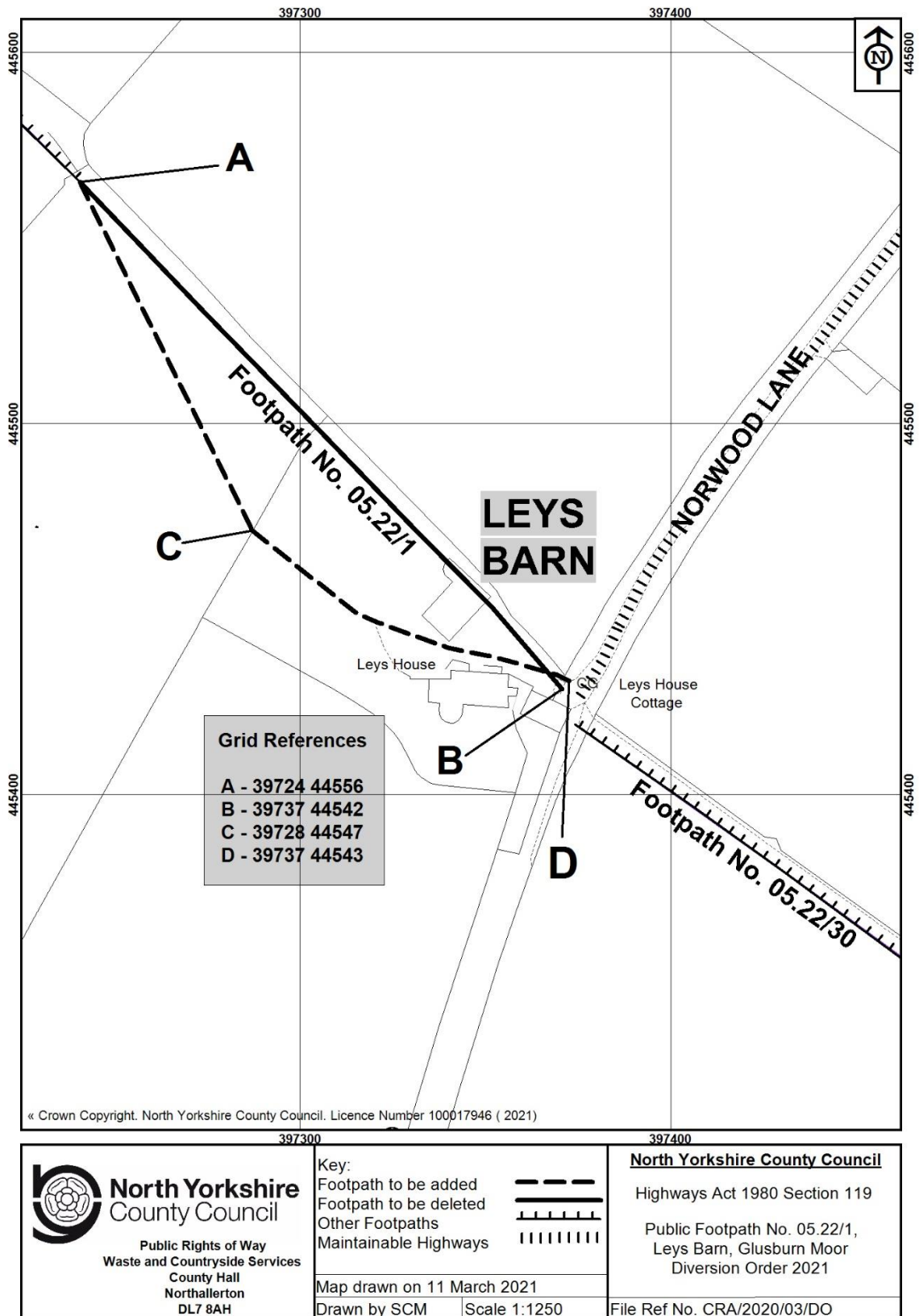


Photo 1 - Definitive route from cattle grid (Point B) to right of barn. Proposed route from gap (Point D) to left of barn.



Photo 2 – Proposed Route: Approach from Leys Barn to Point C (behind beech hedge).



Photo 3 – Existing Stile (Point C) – to be replaced by pedestrian gate in opposed Order.



Photo 4 – Proposed Route Point C to Point A. Definitive route runs along field edge in centre right of photo.



Photo 5 – Proposed Route Point A to Point C. Definitive route runs along field edge to left of photo.



OBJECTION ETC.

Document 1: Letter of Support from owner of Leys House.

19 8 20 2 027487 NYCC Page

Robert Baldwin
Leys House
Glusburn Moor
Keighley
BD20n 8DY

Re proposed footpath application by Dr J S Pickles

12.8.2020

Dear Sir,

I am the owner of Leys House which is on the proposed scaled map enclosed. Along with the owner of Leys barn there is a shared yard and footway between our properties. It is along this footway D to C on the map and highlighted in pink that the footway travels across. It has been used for the last 7 months whilst I have owned Leys House and I am given to understand it was used at least 32 years whilst the previous owner was in occupation of Leys House. I have no objection for this footpath to be formally routed along this direction as it is the route already used and signposted etc.

Yours sincerely

Robert Baldwin

Document 2: Letter of Support & Plan from N. Bell – owner of field (Points A–C).

19 8 20 2 027487 NYCC Page

Norman Bell
Mire Close Farm
Mire Close Lane
Cowling
Keighley
BD22 0LQ

Re proposed footpath at Leys Barn

Dear Sir,

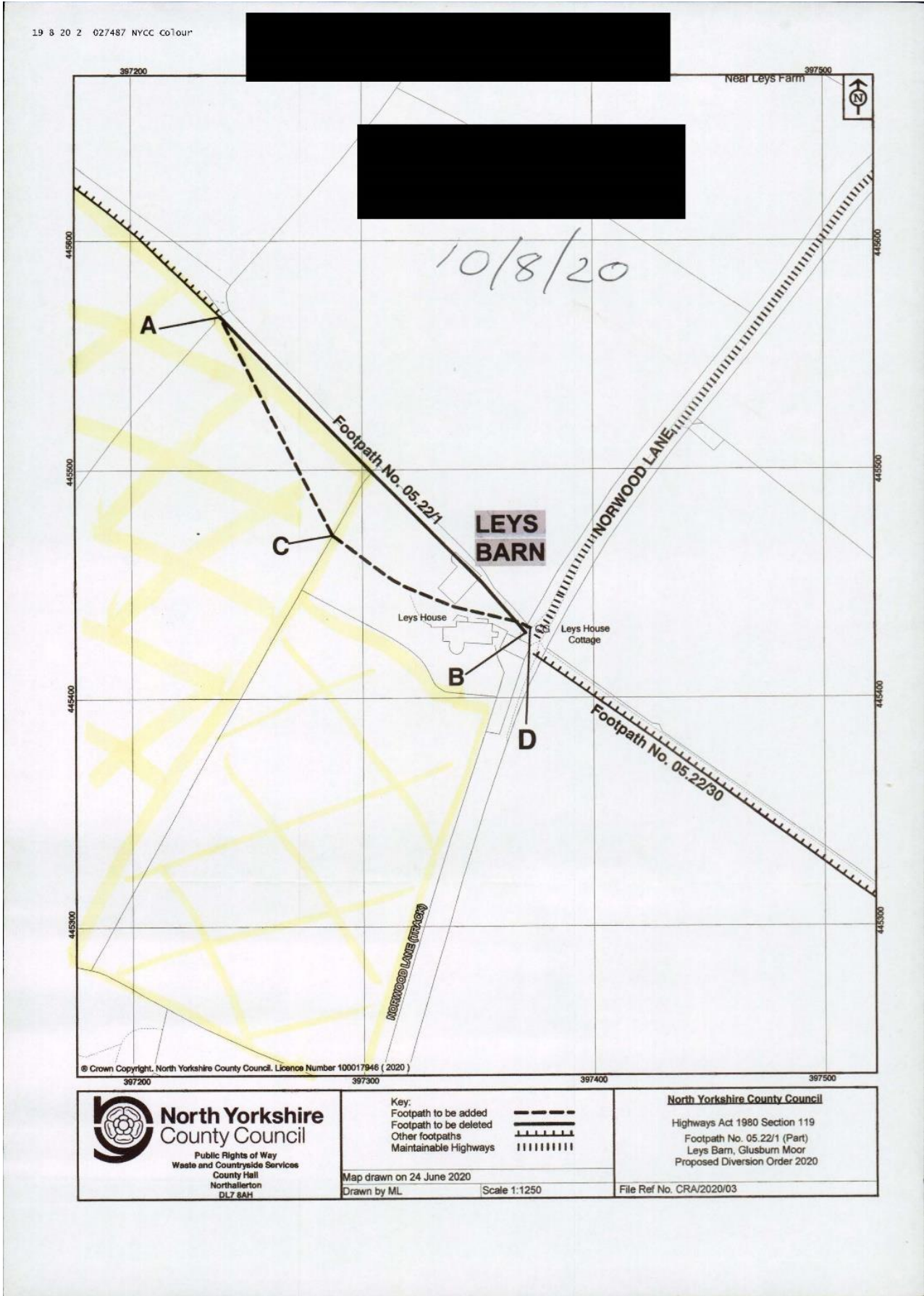
I am the owner of the fields hatched yellow on the enclosed plan.
I have no objection to the proposed route of DCA on the plan as this is the route of the path for at least the last 33 years. The relevant styles through and over the walls are already in place.

Yours sincerely

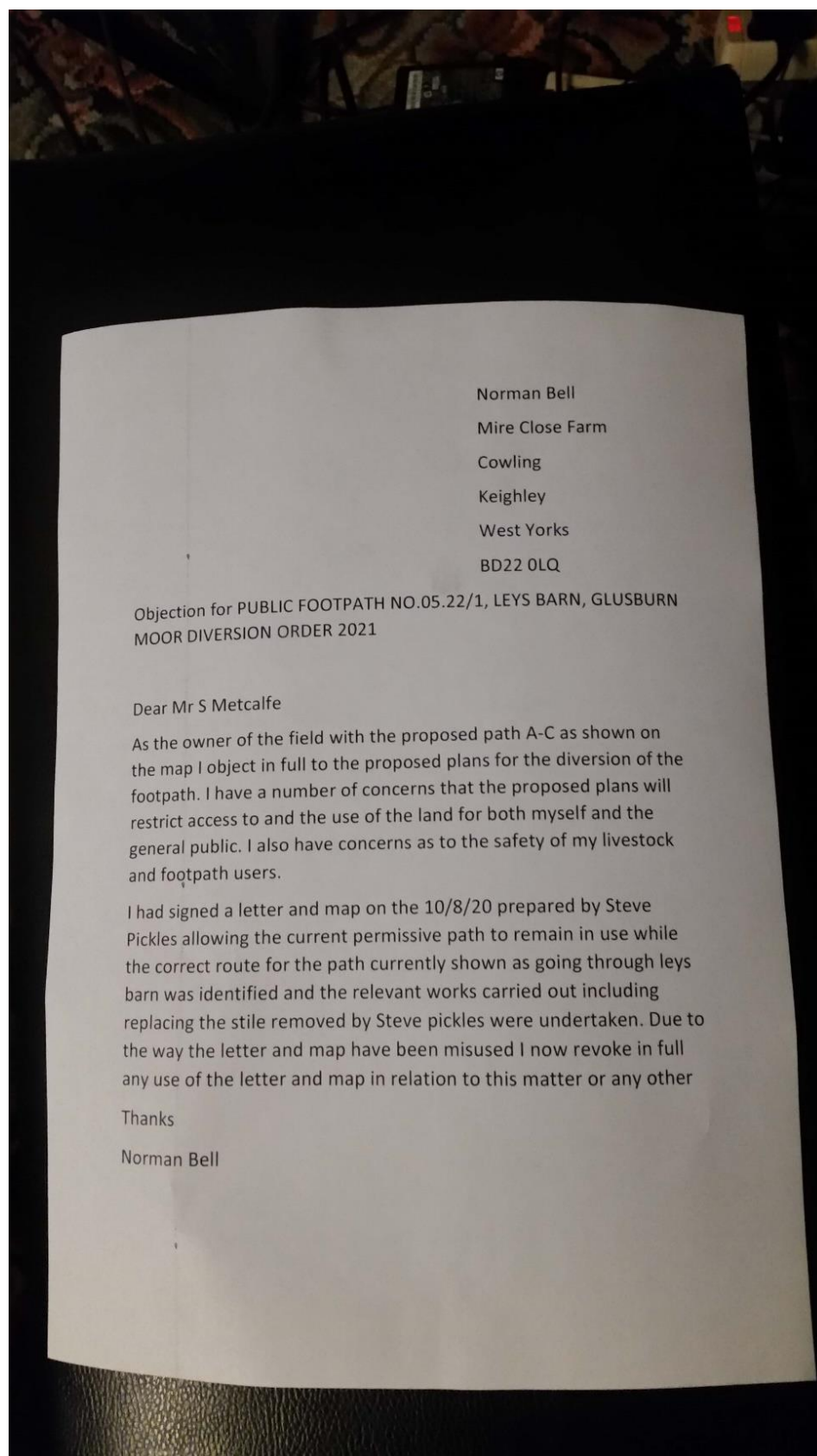
Mr Norman Bell



10/8/20



Document 3: Letter of Objection



Norman Bell
Mire Close Farm
Cowling
Keighley
West Yorks
BD22 0LQ

Objection for PUBLIC FOOTPATH NO.05.22/1, LEYS BARN, GLUSBURN
MOOR DIVERSION ORDER 2021

Dear Mr S Metcalfe

As the owner of the field with the proposed path A-C as shown on the map I object in full to the proposed plans for the diversion of the footpath. I have a number of concerns that the proposed plans will restrict access to and the use of the land for both myself and the general public. I also have concerns as to the safety of my livestock and footpath users.

I had signed a letter and map on the 10/8/20 prepared by Steve Pickles allowing the current permissive path to remain in use while the correct route for the path currently shown as going through leys barn was identified and the relevant works carried out including replacing the stile removed by Steve pickles were undertaken. Due to the way the letter and map have been misused I now revoke in full any use of the letter and map in relation to this matter or any other

Thanks

Norman Bell

Document 4: Letter Withdrawing Objection (on condition that a stile remains at Point C).

30 4 21 018672 1 NYCC Page

Dear Mr Metcalfe 27-4-21
Regarding the proposed planning
application submitted by JS Pickles

I after further consideration
wish to fully support this application
as I did last year as long as you
still agree to keeping a stile
as your email said.

Please take this to retract the
objection to the proposal you
received on 22/4/2021 and all points
mentioned in that objection be
deleted from your records

Yours Sincerely

North Yorkshire County Council

Executive Members

Report of the Assistant Director – Travel, Environment and Countryside Services

14 June 2021

**Opposed Footpath No. 05.22/1, Leys Barn, Glusburn Moor
Diversion Order 2021**

AUTHORISATION

I approve / do not approve the recommendation set out in the report.

ANY ADDITIONAL RECOMMENDATION or COMMENT:

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.....

Karl Battersby
Corporate Director - BES

Signed:Date: