

## Highways Committee

16 April 2021



### Proposed diversion of Public Footpaths No.s 1, 7, and 9 Cornsay Parish

#### Highways Act 1980 Public Path Diversion Order

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**Joint Report of Alan Patrickson, Corporate Director of  
Neighbourhoods and Climate Change and Helen Lynch, Head of  
Legal and Democratic Services**

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#### **Electoral division(s) affected:**

Esh and Witton Gilbert

#### **Purpose of the Report**

- 1 To consider a proposal to divert sections of Public Footpaths No.s 1, 7, and 9 Cornsay Parish by public path order (Highways Act 1980 Section 119) at Cornsay House Farm, Cornsay Colliery. The Council's Constitution requires the Committee to decide whether to make an Order, as the proposal has attracted objection from the British Horse Society.

#### **Executive summary**

- 2 A request for the diversion of Public Footpaths No.s. 1, 7, and 9 Cornsay Parish has been received from the owners of Cornsay House Farm. The public rights of way pass through the holding. The applicant feels that the existing footpaths cause safety and security issues to their holding and propose alternative routes for the benefit of the public. Consultations on the proposed diversion resulted in an objection from the British Horse Society.

#### **Recommendation(s)**

- 3 That the application to make an Order to divert Footpaths No.s 1, 7, and 9 Cornsay Parish under Section 119 of the Highways Act 1980 be refused.

#### **Background**

- 4 Public Footpath No.1 Cornsay Parish runs from a point on road C17 'Steadman's Lane', north west of Cornsay Colliery, initially running north west across pasture, then west along the farm access road to connect with Footpath No.9 at Cornsay House Farm, then continuing in a

generally westerly direction, around the south of the farmhouse, over farmland, past North and East Ravensbush Woods to Cornsay Village. Footpath No.1 links to other paths in the area, connecting with Public Footpaths No.s 9, 8, 5, 42, and 10 as you head from east to west towards Cornsay Village, which is approximately 1.5km away from Cornsay House Farm.

- 5 Public Footpath No.7 Cornsay Parish runs from a point on Footpath No.3 Cornsay Parish, on the west side of Click-em Inn Hill, south of Click-em Inn Farm, running south west connecting with Public Footpath No. 9 Cornsay Parish at Cornsay House Farm at a point immediately north of the farmhouse and west of the farmyard.
- 6 Public Footpath No.9 Cornsay Parish runs from a point on adopted highway UCR 18.26, north east of Cornsay Village, running south and south east to and through the yard serving the farmhouse (not the working farmyard) at Cornsay House Farm, connecting with Footpath No.1 at the yard entrance. Footpath No.9 connects with Public Footpath No.s 10, 7, and 1 as you head from north to south.
- 7 Public Footpaths No.s 1, 7, and 9 form a wider network of recreational rural paths positioned between Cornsay Colliery to the east, Cornsay Village to the west and minor roads to the north and south. Except for a section of Footpath No.1 and Footpath No.9, being a tarmac farm access road, and gravel yard in front of the main farmhouse respectively, the footpaths lie through and over agricultural land. An extract from the Definitive Map of Public Rights of Way is shown at **Document A1** with a plan showing the wider area at **Document A2**.
- 8 An application was received in June 2018 from Vickers and Barrass Chartered Surveyors on behalf of Mr and Mrs Charlton, the owners of Cornsay House Farm, to divert Public Footpaths No.s 1, 7, and 9 from along the farm access track and away from the centre of the farmyard. The diversion is sought in the interests of the landowner who wishes to improve safety and security. A statement as to the applicants' reasons for the proposals is shown at **Document B**.
- 9 The original application required an adjoining landowner's agreement which was secured but who sought some minor amendments to the proposal where it left their land. Pre-order consultations were then carried out on these amended proposals which received objections from Cornsay Parish Council and the British Horse Society. The objections received were explained to the applicant and a revised (the current proposal) was put out for a second pre-order consultation. A plan showing this proposal is shown at **Document C**.

- 10 The proposal would move Footpath No.1 from its current location through Cornsay House Farm to a more southernly route predominantly following the edges of fields to the south of the farm. As for limitations, the proposed route of Footpath No.1 would increase the number of gates for public users from three (on the existing route) to five, introduce two ditch crossings requiring sleeper bridges or culvert pipes, and a small number of steps to enable pedestrian access where there is a change in ground level.
- 11 The proposal would move also a second smaller section of Footpath No.1 from its current location, north of North Ravensbush Wood, to a slightly more northerly route to benefit the proposed change to Footpath No.9. There are no stiles or gates affected.
- 12 The proposal would move Footpath No.7 from its current location to a more northerly route following the edges of the fields to the north of the farm. The two stiles on the current route would be substituted for two gates on the proposed route.
- 13 The proposal would move Footpath No.9 from its current location, running in a generally north-south direction and providing a direct connection with Footpath No.s 1, onto a completely new alignment following the northern boundary of East Ravensbush Wood westward to join with the proposed change of Footpath No.1, mentioned at paragraph 11. The diversion would follow the field edge for its entirety. The three stiles on the current route (two on the legal line, and one to bypass the cattle grid mentioned in paragraph 14) would be substituted for one gate on the proposed route. Although the number of limitations would therefore be reduced on Footpath No.9, the removal of the direct connection with Footpath No.1 at the entrance to the yard would require users to use either the proposed routes of Footpath No.9 and No.1 around the north, west, and south of the farm to connect with Steadman's Lane, or use the proposed route of Footpath No.7 and then Footpath No.3 around the north and east of the farm to connect with the same Lane. In this respect, using the proposed diversion of Footpaths No.s 9 and 1 as the alternative, the number of stiles would decrease from three to one but the number of gates increasing from three to seven (as well as crossing two ditches). Whereas using a combination of the proposed Footpath No.7 and then Footpath No.3 as the alternative, the number of stiles would increase from three to six, and gates from three to five.
- 14 The diversion of Footpath No.9 would remedy two modern obstructions to the legal definitive line, namely: a cattle grid at its junction with Footpath No.1, at the entrance to the yard, and a two car garage near to the junction of Footpath No.7. Both obstructions can be easily bypassed, the cattle grid via a stile.

- 15 All necessary gates and other works would be paid for by the applicant.
- 16 Pre-order consultations have been carried out for this proposal. The Local Members, Cornsay Parish Council, and the Ramblers did not raise any objections, and any responses are at **Document D**. An objection however was received from the British Horse Society. This correspondence can be seen at **Document E**.

## **Legal Framework**

- 17 The briefing note at **Document F** describes the statutory framework.
- 18 The relevant statutory provision for the diversion of a public path is Section 119 of the Highways Act 1980. A Diversion Order can be made by the Council if it appears that it is expedient to do so in the interests of the owner, lessee or occupier of land or in the interests of the public. In this case the Order would be in the interests of the landowner.
- 19 The Council must also be satisfied in making a Diversion Order that the ends of the diverted paths are on the same or a connected highway and are substantially as convenient to the public as the existing paths. In this case the ends of the diverted footpaths are on the same highway, but it is argued that there is a loss of convenience for pedestrians using Footpaths No.1 and 9, and using Footpath No.7 when looking at the proposals as a whole. It is argued that the diverted routes would be longer, involve additional numbers of limitations (stile, gates, and ditch crossings), and involve additional gain of elevation. These paths are used for recreational countryside walking however the diversion would introduce two particularly circuitous and unnatural detours involving more than doubling the distance to be walked by those wishing to walk from Steadman's Lane to Footpath No.9 via Footpath No.1. Similarly the distance to be walked from Steadman's Lane to Footpath No.9 via Footpath No.7 by using Footpath No.3 would increase by more than a third. The avoidance of potential conflict for users in the proximity of the farmyards can also be seen as adding to the convenience of walkers, however Footpath No.9 does not pass through the main farmyard but the yard belonging to the main farmhouse and away from most farm traffic.
- 20 The Council also has a duty to have due regard to the needs of agriculture, forestry and the desirability of conserving flora, fauna and geological and physiographical features. A statement as to the applicants' reasons for the proposals is shown at **Document B** states that the needs of agriculture are relevant.
- 21 Before a Diversion Order is confirmed, the Council or the Secretary of State must, in addition to considering the above criteria, also be satisfied that the paths will not be substantially less convenient to the

public as a result of the diversion, and that confirmation is expedient having regard to the effect of the diversion on public enjoyment of the path as a whole, and on land crossed by the existing path or to be crossed by the new one. Footpaths No.s 1, 7, and 9 are part of a wider network of rural footpaths, used primarily for recreational purposes, but it is submitted that the public enjoyment of these paths as whole could be adversely affected and the public would be unduly inconvenienced as a result of the diversion, meaning the tests for confirmation cannot be met.

- 22 The confirming authority should also have regard to any material provisions of the Rights of Way Improvement Plan (ROWIP). The ROWIP for County Durham does not make specific reference to proposals of this kind other than to state that the Council will ensure that it deals with them in a balanced way as required by the legislation described.
- 23 The Council also has to have regard to the Equality Act in terms of the structures provided on new routes. This would be addressed by ensuring that all new structures are in accordance with BS5709:2018. The applicant has confirmed that they are happy to install kissing gates or wicket gates rather than stiles should the Diversion Order be confirmed.

### **Comments on the objection**

- 24 The objection from the British Horse Society at **Document E** can be summarised as follows:

*The diversions of Footpaths No.s 1, 7, and 9 would not be as convenient to the public as the existing paths.*

*There is a steep hill to climb from the eastern side towards Click em Inn Farm which makes the route longer.*

*Accessing Footpath No.10 which leads to Cornsay Village can only be reached via Footpath No.9 and this will be made more difficult as a pedestrian would need to walk at least a third more in distance to walk from Steadman's Lane to Footpath No.9.*

*In comparison to the existing route through Cornsay House Farm which is 0.67km, for a pedestrian using Footpaths No.s 7 and 3 (towards Click em Inn Farm) the diversion would be 1.03km, and when using Footpath No.s 1 and 9 the diversion would be 1.48km.*

*The paths are well used and should be preserved for future generations to enjoy.*

*The greater the number of people using the paths through the farm, the greater the likelihood of theft being prevented due to the chance of being seen.*

- 25 In response to the issues raised by the objector, it can be commented the proposed diversion would increase the distance to be travelled by a pedestrian required to bypass the farm, particularly when using the most obvious/likely route which is from Steadman's Lane to Footpath No.9. Using GIS software to measure the existing route through Cornsay House Farm from Steadman's Lane to Footpath No.9 the distance is 636 metres. The diversion between the same destinations using Footpaths No.s 7 and 3 is 890 metres, and the diversion using Footpaths No.s 1 and 9 is 1528 metres, an increase of 254 metres and 892 metres respectively. A pedestrian would therefore be required to walk a third more distance on both routes and more than double the distance when using Footpath No. 1 and 9. As a result, access to Footpath No.10 would be made more difficult and longer. The diversion towards Click em Inn using Footpath No.3 to access Footpath No.7 would involve some additional hill climbing before some elevation is lost before climbing again on Footpath No.9. No data exists on how well used the paths are but the applicants' own statement at **Document B** states that there have been many instances when walkers have crossed paths with machinery. Preserving paths for future generations is not always possible as legislation allows for public rights of way to be diverted should the proposal satisfy the necessary tests. It is possible that a high presence of pedestrians using the footpaths could deter potential criminal activities, but it is unlikely that path users would recognise and tell apart the farm's residents or staff from unauthorised persons on or off the footpaths.
- 26 The applicant has commented on the various points raised by the objector, and their comments are included at **Document G**.

### **Assessment of the application**

- 27 The Committee must firstly decide whether it appears that, in the interests of the landowner, the public, or both, it is expedient that Footpath No.s 1, 7, and 9 Cornsay are diverted.
- 28 The applicant has provided at **Document B** a credible case for the diversion and it is considered that the diversion is expedient in the interests of the landowner.
- 29 If the Committee is satisfied that the proposed diversion order would be expedient in the interests of the landowner, then it should next form a judgement on the convenience of the paths as a result of the diversion and the expediency of the proposals having regard to the effect the diversion would have on the public's enjoyment of the paths as a whole

and on the land crossed by the paths. On one hand the proposed route of the footpaths will be away from the farm buildings, farmhouse and yard area, potentially reducing the risk of any potential conflict with farm traffic, increasing security, and will follow around the field edges around the periphery of the holding. However, on the other hand, it is felt that proposed routes would be excessively longer, circuitous and unnatural detours, introducing further limitations, and involve additional gain of elevation. Even given the context and locations of these footpaths, taking into account the big increase in length, the increase in limitations, and circuitous nature of the diversions, it is felt that the diversion routes would be substantially more inconvenient, and could affect the public's enjoyment of the paths as a whole.

## **Options**

30 i). To refuse the application to make a Diversion Order. Should the Committee refuse then there is no appeal process. The applicant can however reapply with a revised diversion proposal which could provide more convenient routes than the current proposals that still address their safety and security concerns.

or

ii). To make the Diversion Order as applied for. If the Committee recommends to the making of a Diversion Order for Public Footpaths No.s 1, 7 and 9 Cornsay Parish then an Order will be advertised. The Order shall subsequently be confirmed as an unopposed Order or referred to the Secretary of State for determination in the event of objections.

## **Main implications**

31 See Appendix 1.

## **Conclusion**

32 It would be in the landowner's interests for Footpaths No.s 1, 7, and 9 to be removed from the present positions within the yard and close to the house / farm as it would improve the safety and security of the property. However, the proposed paths would be substantially more inconvenient to users due to increased distance and elevation, circuitous nature, and the increased number of access structures, which could make it less enjoyable to users.

33 It is concluded that the relevant tests set out in Section 119 of the Highways Act 1980 have not been satisfactorily met.

## **Background papers**

- Document A1 Definitive Map extract
- Document A2 Location plan
- Document B Applicant's case for the diversion
- Document C Proposed Order plan
- Document D Consultation responses
- Document E Objection
- Document F Briefing note on the statutory framework
- Document G Applicant's comments on the objection

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<b>Contact:</b>	<b>Nick Howell</b>	<b>Tel: 03000 265335</b>
	<b>Clare Cuskin</b>	<b>Tel: 03000 269723</b>

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## **Appendix 1: Implications**

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### **Legal Implications**

See paragraphs 17 to 23

### **Finance**

The applicants will meet the costs of the new paths and have agreed to pay for the costs of the Order should the Order be confirmed

### **Consultation**

See paragraphs 16

### **Equality and Diversity / Public Sector Equality Duty**

See paragraph 23

### **Climate Change**

None

### **Human Rights**

All those affected by the proposal will have the opportunity to submit objections and to present their case to an Inspector appointed by the Secretary of State for the Environment in the event of objection at the formal Order making stage

### **Crime and Disorder**

See paragraph 32

### **Staffing**

Part of routine officer responsibilities

### **Accommodation**

None

### **Risk**

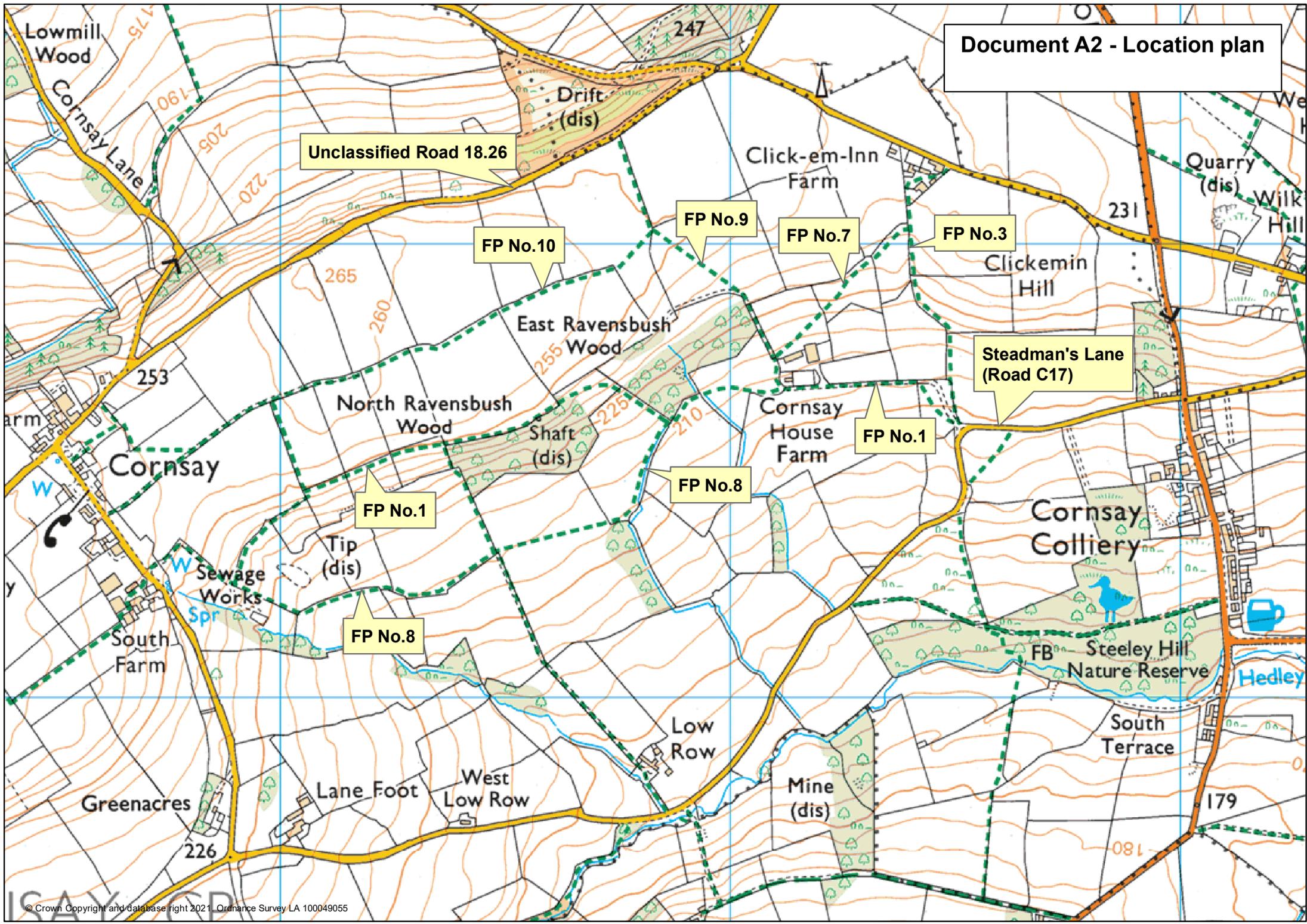
Low

### **Procurement**

None



Document A2 - Location plan



**Applicants Case for the Proposed Diversion of Public Rights of Way adjacent to Cornsay House Farm**

**Prepared on behalf of Mr and Mrs Charlton**

**1.0 Introduction**

This report will discuss the reasons for the application for the diversion, extinguishment and creation of public rights of way adjacent to Cornsay House Farm.

**2.0 Background**

Mr and Mrs Charlton run an arable enterprise from Cornsay House Farm, Cornsay, Durham. They have found that the existing right of way causes safety and security issues to their holding and propose an alternative route for the benefit of the public.

**3.0 Proposal**

Mr and Mrs Charlton have proposed an alternative public access route which provides approximately 997m of footpath through open countryside, as opposed to the existing route which is across farm track and through the centre of the farmyard. The new link would provide a safer route for pedestrians around Cornsay House Farm.

**4.0 Safety Issues**

This is a working arable farm and consequently there are machinery movements throughout the year to undertake arable operations. It is a concern to my client to have members of the public passing through the yard where they could come into conflict with a moving vehicle. This track also is a right of way for neighbouring farmers who use the route for moving livestock. This is a hazard to pedestrians who may become entangled in these movements.

There have been many instances when walkers have crossed paths with machinery. On one day in excess of 100 walkers passed through the farm.



*Figure 1 Photo of one of the smaller groups of walkers which passed through on the day that in excess of 100 walkers used the route.*

## **5.0 Farm Security**

The security of the farm steading is inhibited by the existing right of way which runs past the farm steading. Farm steadings utilise a range of equipment which is not fixed and cannot reasonably be locked up at all times throughout the day due to regular use requirements, consequently farms are often targeted by thieves. A right of way within this close proximity gives thieves the chance to inspect the holding, including layout for gaining access and awareness of the farms property. This right of way inhibits the farmer's ability to secure his property as public access makes it difficult to spot suspicious behaviour.

## **6.0 Conclusion**

This alternative routing improves public access into open countryside and away from a track which is regularly used by farm traffic and livestock. The diversion of this route is the only practical solution to overcome these issues.



Ian Thompson  
 Corporate Director  
 Regeneration and Local Services  
 Durham County Council  
 County Hall  
 Durham DH1 5UQ

**Draft Order Plan  
 Footpath No.s 1, 7 and 9  
 Cornsay Parish**

Postcode: DH7 9EE

New Footpaths  
 -----  
 Footpaths to be extinguished  
 \_\_\_\_\_

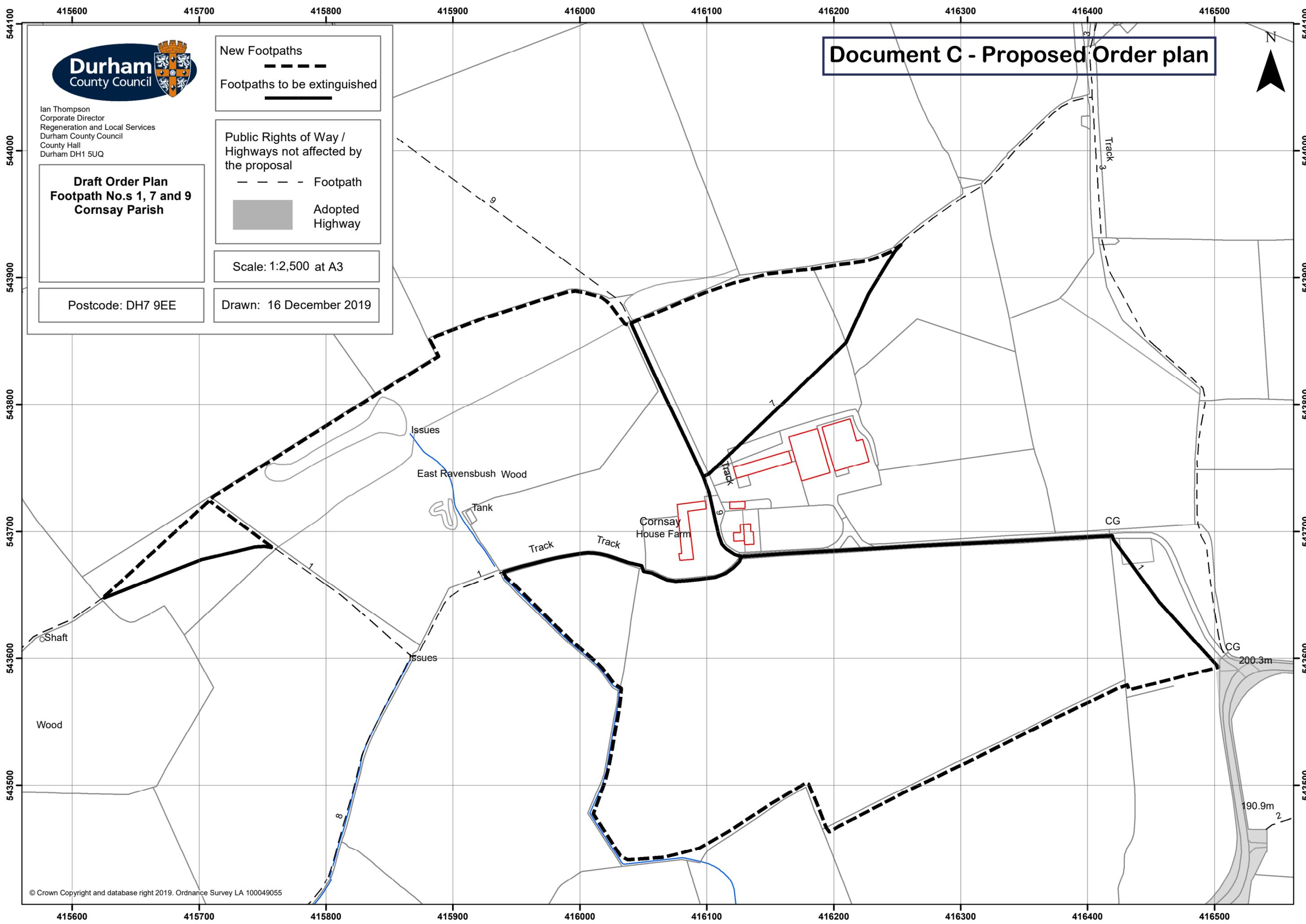
Public Rights of Way /  
 Highways not affected by  
 the proposal

--- Footpath  
 [Grey Box] Adopted  
 Highway

Scale: 1:2,500 at A3

Drawn: 16 December 2019

**Document C - Proposed Order plan**



**Nicholas Howell**

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**From:** [REDACTED] <[REDACTED]@cornsaypc.org.uk>  
**Sent:** 30 January 2020 17:43  
**To:** Nicholas Howell  
**Subject:** Re: Consultation on proposed diversion - Public Footpaths No.s 1, 7, & 9 Cornsay

Hello Nick

The Parish Council had the opportunity to discuss the revised proposal at its meeting last night.

The Council appreciated the applicant's willingness to review their proposal in light of previous objections and I can confirm that the additional footpath link proposed does address Members' previous concerns. Accordingly, this Council has no objections to the revised proposal.

Kind regards

On 06/01/2020 10:29, Nicholas Howell wrote:

Hello [REDACTED]

Happy New Year! No problem. If you need a little more time beyond 31<sup>st</sup> Jan then that will be fine.

Kind regards

Nick

**Nick Howell**

**Senior Rights of Way Officer**

---

**From:** [REDACTED] <[REDACTED]@cornsaypc.org.uk>  
**Sent:** 23 December 2019 16:20  
**To:** Nicholas Howell <Nicholas.Howell@durham.gov.uk>  
**Subject:** Re: Consultation on proposed diversion - Public Footpaths No.s 1, 7, & 9 Cornsay

Hello Nick

Thanks for the update. The next parish council meeting is at the end of January so I will seek Members' comments and let you know the Council's views before 31st Jan.

Have a good Christmas and best wishes for the New Year.

[REDACTED]

On 18/12/2019 15:03, Nicholas Howell wrote:

Hello [REDACTED]

I am emailing further to your email of 03 October outlining the Parish Council's objection to the diversion proposals at Cornsay House Farm.

The objections received were explained to the applicant and they have come back with a revised proposal. The new proposals are shown on the attached plan.

The proposed diversion remains under section 119 of the Highways Act 1980, and remains in the interests of the landowner / safety and security of the applicants farm. The applicant also confirmed that they are happy to install kissing gates/wicket gates rather than stiles along the proposed footpaths.

Given the Christmas break approaching, I would be pleased to receive any comments or objections by 31 January 2020.

Please note that if you do make representations, then by virtue of the Local Government (Access to Information) Act 1985, the County Council may make them available for public inspection. Additionally they may also be disclosable under the Freedom of Information Act 2000.

Hope you have a Merry Christmas and a Happy New Year.

Kind regards

Nick

**Nick Howell**

**Senior Rights of Way Officer**

**Nicholas Howell**

---

**From:** [REDACTED]  
**Sent:**  
**To:** Nicholas Howell  
**Subject:** RE: Consultation on proposed diversion - Public Footpaths No.s 1, 7, & 9 Cornsay

Hello Nick  
Yes I think that is a lot better and I have no objection to this route  
Have a good Christmas and a happy new year  
Regards  
[REDACTED]

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: Nicholas Howell <Nicholas.Howell@durham.gov.uk>  
Date: 18/12/2019 15:03 (GMT+00:00)  
To: [REDACTED]  
Subject: RE: Consultation on proposed diversion - Public Footpaths No.s 1, 7, & 9 Cornsay

Hello [REDACTED]

I am emailing further to our email exchange of 01 October regarding the diversion proposals at Cornsay House Farm.

The objections received were explained to the applicant and they have come back with a revised proposal. The new proposals are shown on the attached plan.

The proposed diversion remains under section 119 of the Highways Act 1980, and remains in the interests of the landowner / safety and security of the applicants farm. The applicant also confirmed that they are happy to install kissing gates/wicket gates rather than stiles along the proposed footpaths.

Given the Christmas break approaching, I would be pleased to receive any comments or objections by 31 January 2020.

Please note that if you do make representations, then by virtue of the Local Government (Access to Information) Act 1985, the County Council may make them available for public inspection. Additionally they may also be disclosable under the Freedom of Information Act 2000.

Hope you have a Merry Christmas and a Happy New Year.

Kind regards

Nick

**Nick Howell**

**Senior Rights of Way Officer**

Patron Her Majesty The Queen

The British Horse Society  
Abbey Park  
Stareton  
Kenilworth  
Warwickshire  
CV8 2XZ

Email: [REDACTED]

Tel: [REDACTED]

The logo for The British Horse Society, featuring the text "The British Horse Society" in white on a red square background.

Fulfilling your passion for horses

To:

Nick Howell  
Senior Rights of Way Officer,  
Regeneration and Local Services,  
Durham County Council,  
County Hall,  
Durham  
DH1 5UQ

[REDACTED]  
27<sup>th</sup> January 2020

**R.E. Highways Act 1980, Section 119  
Proposed diversion of Public Footpaths No.s 1, 7, and 9 Cornsay Parish  
Cornsay House Farm, Cornsay, County Durham, DH7 9EE**

Hi Nick

On Behalf of 'The British Horse Society' (Durham)

The amended diversions of these footpaths are much improved but would still not be as convenient to the public. To arrive at Footpath 9 a walker would need to walk at least a third more in distance;

Original Route through the farm is 0.67km.

The first diversion towards Click em in Farm is 1.03km, up the steep hill almost to Click em in farm then back down to the point where FP 9 will begin.

The new amended route to the south of Cornsay House is more than twice as far to the same point on FP 9 a total of 1.48km.

FP 9 is the only way to reach the Footpath 10 which goes in a westerly direction to Cornsay Village and for most of it, is a track. It also leads to the UNC 18.26 road further north and west.

**When diverting or closing a public right of way, any alternative or new route/path should be just as convenient for the public as the existing path**

These diversions do not meet the highlighted section above; from the east there is a very steep hill to climb from the eastern side which makes the route longer.

From the amended plan the diversion to the south and west is more than twice as long as the original footpath.

These are obviously well used paths as the applicant stated in the first application; ***“in one day, 100 walkers passed through the farm”*** so they should be preserved for future generations to enjoy.

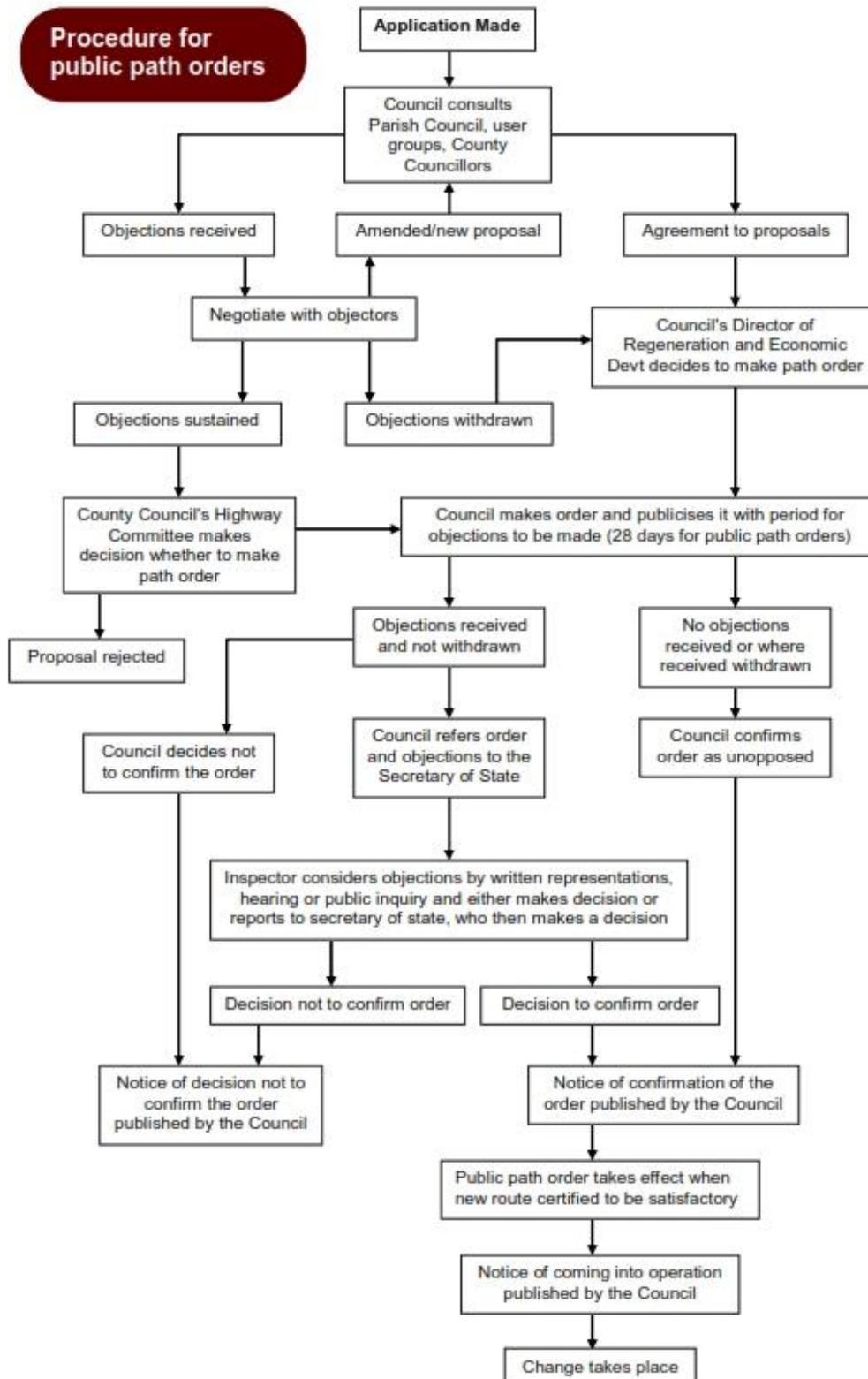
Surely the more people who pass through the farm the safer it will be, lots of people keeping watch on the land, they can't all be looking to steal property from the farm.

Regards



# PUBLIC RIGHTS OF WAY PATH ORDER INFORMATION

## Procedure for public path orders



## **CONCURRENT PATH ORDERS ie WHEN DOING A MIX OF CREATION AND/OR DIVERSION AND/OR EXTINGUISHMENT**

Note that when considering a creation or diversion order, made in association with an extinguishment order the extent to which the proposed path/s would provide an alternative to that proposed for extinguishment may be taken in to consideration in determining whether or not to confirm the extinguishment order. Account should be taken of the convenience of the alternative path compared to that which is to be extinguished and if this is significantly less than that enjoyed by users of the existing path. Full consideration should be given to the matters set out in all the relevant sections of the Highways Act 1980 (described below).

### **CREATION OF FOOTPATHS AND BRIDLEWAYS – SECTION 26 OF THE HIGHWAYS ACT 1980**

Section 26 of the Highways Act 1980 provides a power for the Council to create footpaths or bridleways.

The Council may make an Order where it is considered a need for the path but having regard to the extent to which the path would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area and the extent the creation would have on the rights of those with a legal interest in the land (eg ownership).

Consideration must also be given to the interests of forestry and agriculture, and the effect, if any, the creation of the path will have on these activities. However, authorities may decide that any effects may be compensated for.

The Highways Act provides for the payment by the order making authority of [compensation](#). In some cases authorities have been able to agree with the landowner a sum for compensation before an order is confirmed. However, this is not always possible. If a dispute arises as to compensation, it is determined by the Lands Tribunal after the order has been confirmed.

### **EXTINGUISHMENT OF FOOTPATH AND BRIDLEWAYS – SECTION 118 HIGHWAYS ACT 1980**

Section 118 of the Highways Act 1980 provides a power for the Council to extinguish footpaths and bridleways.

The Council may only make a Public Path Extinguishment Order where it appears that:

It is expedient that the path or way should be stopped up on the ground that it is not needed for public use (Section 118(1)).

The Council (or the Secretary of State if the Order is opposed) shall not confirm a Public Path Extinguishment Order unless it is satisfied that:

It is expedient so to do having regard to:

- (i) The extent (if any) to which it appears that the path or way would, apart from the Order, be likely to be used by the public, and
- (ii) The effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation (Section 118(2)).

When considering either the making or the confirmation of a Public Path Extinguishment Order the Council (or the Secretary of State as the case may be) may have regard to the extent to which any Public Path Creation Order, Public Path Diversion Order or Rail Crossing Diversion Order being considered concurrently would provide an alternative path or way (Section 118(5)).

When considering whether or not to make a Public Path Extinguishment Order the Council must also have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna, and geological and physiographical features (Section 29 Highways Act 1980).

### **DIVERSION OF FOOTPATH AND BRIDLEWAYS – SECTION 119 HIGHWAYS ACT 1980**

Section 119 of the Highways Act 1980 gives a discretionary power to the Council to divert a public path. A “Diversion Order” has the effect of extinguishing a path or length of path and creating an alternative path simultaneously.

The Council may make an Order where it appears to the Council that it is expedient to do so:-

- (i) in the interests of the owner, lessee or occupier of the land crossed by the path; and/or
- (ii) in the interests of the public

A Diversion Order shall not alter a point of termination of a path except to another point on the same highway or one connected with it and which is substantially as convenient to the public.

The Council (or the Secretary of State if the Order is opposed) may not confirm a Diversion Order unless satisfied that above criteria are met and that the path or way will not be substantially less convenient to the public as a result of the diversion and that it is expedient to confirm the Order having regard to the effect which:-

- (i) the diversion would have on the public enjoyment of the path as a whole:
- (ii) the diversion would have on land served by the existing path, and
- (iii) the new path would have on land over which the right of way is to be created.

A path which is diverted from land owned by one person onto land owned by another person may give rise to claims for compensation and this can be taken into account when considering points (ii) and (iii) above.

The Council may require an applicant (or joint applicants) to defray or make a contribution to:-

- (i) any compensation payable;
- (ii) any expense to the Council in facilitating the convenient exercise of any new path.

In making a Diversion Order the Council is required under Section 29 and 121(3) of the Act to have due regard to the needs of agriculture, forestry and the desirability of conserving flora, fauna and geological and physiographical features. The Council is also required, under the Countryside Act 1968 to have regard to the desirability of conserving the natural beauty and amenity of the countryside.

## Nicholas Howell

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**From:** Adam Barrass [REDACTED]  
**Sent:** 20 April 2020 09:26  
**To:** Nicholas Howell  
**Cc:** Owen Shaw; Mike Ogden  
**Subject:** RE: Cornsay House Farm

Dear Nick,

I hope this email finds you well. In relation to your below email my instructions from the clients are to continue the application as the objection is to do with further distances, yet point (a) below retracts this and provides for benefits to the user of the footpath and also provides more access in terms of length on Cornsay House.

The British Horse Society objectives are detailed below from their website and given that this application only covers a footpath, I would argue that the British Horse Society have little weight to add to this in meeting their objectives.

## Our objectives

Our primary objectives, as published in the Constitution, are:

- To promote and advance the education, training and safety of the public in all matters relating to the horse
- To promote the use, breeding, well-being, safety, environment, health and management of the horse for the public benefit
- To promote community participation in healthy recreation involving the horse
- To promote and facilitate the prevention of cruelty, neglect or harm to horses and to promote the relief, safety, sanctuary, rescue and welfare of horses in need of care, attention and assistance
- To promote and secure the provision, protection and preservation of rights of way and of access for ridden and driven horses over public roads, highways, footpaths, bridleways, carriageways, public paths and other land.

I also note that to potentially elevate the British Horse Society concerns would be to create a new bridle path, but this cannot be done as effectively it would come to a dead end once it leaves Cornsay House land and somewhat defeat the object.

Please let me know if you need anything further from me at this stage.

I appreciate the Highway Committee is likely to be delayed until COVID-19 restrictions are eased.

Kind regards

**Adam Barrass MRICS FAAV**  
Rural Chartered Surveyor and RICS Registered Valuer  
Practice Manager

**Office:** [REDACTED]

**Mob:** [REDACTED]



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**From:** Nicholas Howell <Nicholas.Howell@durham.gov.uk>  
**Sent:** 10 March 2020 11:52  
**To:** Adam Barrass [REDACTED]  
**Cc:** Owen Shaw <Owen.Shaw@durham.gov.uk>; Mike Ogden <Mike.Ogden@durham.gov.uk>  
**Subject:** RE: Cornsay House Farm

Good morning Adam,

Apologies for the delay in coming back to you with the consultation responses to your client's diversion application.

One objection was received during the pre-Order consultation period for the revised draft Order, this was from the British Horse Society (BHS). I've included the redacted response for you to read through. The response is of a similar theme to that made by the BHS on the original proposals.

Having discussed this with our Team Leader, Mike Ogden, we feel it is debatable as to whether the proposals would satisfy the tests to make and then confirm a s119 Highways Act 1980 Order. To recap the tests:

*The Council may make an Order to divert if satisfied that it is expedient to do so either in the interests of the owner of the land, or that it is expedient in the interests of the public. The alternative should be substantially as convenient to the public.*

*Whereas before confirming an Order the Council (or the Secretary of State (SoS) if dealing with an opposed Order) must be satisfied that the diversion will not be substantially less convenient to the public and that it is expedient to confirm the order having regard to the effect which:*

- a the diversion would have a public enjoyment of the path as a whole;*
- b the diversion would have on land served by the existing path, and*
- c the new path would have on land over which the right of way is to be created.*

As an objection has been received, we would be required to present these proposals to the Highways Committee if you wish to proceed with this diversion. We can take it forward to Committee, though given the objection it will be difficult to recommend that the Order be made. Even with an officer recommendation to proceed and make an Order, the Committee may refuse it given that the BHS will likely make representations at the meeting. If the Committee disagree with the BHS and agree to make an Order then we think it highly likely that the BHS would maintain their objection once the Order is formally advertised, meaning that the opposed Order would have to be referred to the SoS for determination. Bearing in mind the requirements before confirming an Order as mentioned above – the SoS may refuse to confirm the Order. I realise that there are a lot of 'ifs and buts'; we just believe that a year could go by (the SoS is taking 9 months plus to determine Orders) and the outcome may not be the one of success for your client.

If you can let me know your / your client's thoughts then that would be appreciated.

Kind regards  
Nick

**Nick Howell**

## Senior Rights of Way Officer

Access & Rights of Way Team | Regeneration and Local Services |  
Durham County Council | County Hall | Durham | DH1 5UQ

Tel: 03000 265335

Check out information about public rights of way at [www.durham.gov.uk/prow](http://www.durham.gov.uk/prow)

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**From:** Adam Barrass [REDACTED]  
**Sent:** 03 March 2020 12:36  
**To:** Nicholas Howell <[Nicholas.Howell@durham.gov.uk](mailto:Nicholas.Howell@durham.gov.uk)>  
**Subject:** FW: Cornsay House Farm

Dear Nick,

Further to my below email, please could you let me have a update to progression?

Kind regards

**Adam Barrass MRICS FAAV**  
Rural Chartered Surveyor and RICS Registered Valuer  
Practice Manager

**Office:** [REDACTED]

**Mob:** [REDACTED]  
[REDACTED]



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**From:** Adam Barrass  
**Sent:** 17 December 2019 11:27  
**To:** 'Nicholas Howell' <[Nicholas.Howell@durham.gov.uk](mailto:Nicholas.Howell@durham.gov.uk)>  
**Cc:** [REDACTED]  
**Subject:** RE: Cornsay House Farm

Morning Nick,

I can confirm that the revised draft order plan is acceptable and please proceed on this basis in terms of reconsulting with the objectors.

If you need any further information from me please do not hesitate to contact me.

Kind regards

**Adam Barrass MRICS FAAV**  
Rural Chartered Surveyor  
**Office:** [REDACTED]  
**Mob:** [REDACTED]  
[REDACTED]