



Order Decision

Hearing held on 16 July 2019

Site visit made on 16 July 2019

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 19 September 2019

Order Ref: ROW/3215727

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the North Yorkshire County Council Highways Act 1980 Section 119 Wildlife and Countryside Act 1981 Bridleway No 20.55/6 Mainsgill Farm, Ravensworth Diversion Order 2015.
- The Order is dated 21 August 2015 and proposes to divert a section of the said bridleway and make a consequential modification of the definitive map and statement as shown on the Order plan and described in the Order Schedule.
- There were two objections outstanding when North Yorkshire County Council (the Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed

Background to the Order

1. The owner of Mainsgill Farm, Mr Henshaw applied to the Council as Order Making Authority (OMA) to divert a section of the bridleway as shown by Points A-B-C on the Order Map. The existing route crosses a paddock from C-B, thence through a hedge and from B-A along an adjacent field with the line of the hedge on its south-western side. The proposed diversion, Points A-D-E-C is already laid out around the paddock, at the corner of which, Point E, the diversion proceeds along the north-east side of the hedge and along the boundary of the paddock to Point A.
 2. Mr Henshaw has a zoo licence to keep camels, ostriches and other exotic animals that need to be kept separate from the public. The animals are kept in large pens, including within the paddock traversed by the line of the existing bridleway.
 3. Visitors to the farm, who do not pay a fee, currently use the route of the proposed diversion from which to view the exotic and other farm animals, in common with other walkers and horse riders. Indeed all potential users of Bridleway No 20.55/6 are obliged to use this "de facto" diversion due to Mr Henshaw having fenced off access on the existing line A-B-C as further described below.
 4. The section of the bridleway with which this Order is concerned is well to the south of the farmhouse and other buildings. The farm has diversified to provide a café, farm shop and visitor attraction off the A66 trunk road, as well
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as a car park and landscaping. A permissive route is available around these buildings. At the hearing objections were made to the Order based on alleged obstructions north of the Order route, through the main buildings complex. For the avoidance of doubt, I have not found any evidence relating to this area of assistance in considering whether to confirm the Order before me.

Main Issues

5. Section 119 of the 1980 Act requires that, before confirming the Order, I should be satisfied that:
 - a) the diversion is expedient in the interests of the owner, lessee or occupier of land crossed by the way or of the public;
 - b) the new route will not be substantially less convenient to the public;
 - c) it is expedient to confirm the Order having regard to its effect:
 - (i) on public enjoyment of the way as a whole; and
 - (ii) the effect the coming into operation of the Order would have with respect to the land served by the existing right of way and the land over which the new way is created together with any land held with it, having regard to the provisions as to compensation.
6. In determining whether or not to confirm the Order consideration must be given to any material provision of a rights of way improvement plan (ROWIP) of any local highway authority whose area includes land affected by the Order.
7. Also to be considered is the impact if any of the proposed diversion on the needs of agriculture and forestry, biodiversity and natural beauty of the area. I am also mindful of the requirements of the Equality Act 2010.

Whether it is expedient, in the interests of the owner or occupier of land or of the public that the bridleway in question should be diverted

8. Mr Henshaw owns the enclosed paddock and the adjoining field on which are located the definitive line of Bridleway No 20.55/6 and line of diversion. In supporting confirmation of the Order he emphasised to me that as certain of the animals had parasitic worms, from time to time the paddock would need to be ploughed out. I was told that ploughing out the field could be done within a day and this had been carried out a couple of times previously.
9. It is undisputed that there had been no fencing on either side of the definitive line C-B through the paddock, either before or since Mr Henshaw acquired the farm in about 1995. It was not until about 2002-2003 that he fenced it off at Points B and C and diverted the line of the bridleway. The zoo licence was granted subsequently and renewed in 2018. It is subject to a condition that the zoo is operated in accordance with the Secretary of State's Standards of Modern Zoo Practice 2012¹.
10. Mr Henshaw's farm land covers a large area of which the paddock was but a part. I was told that the farm and exotic animals were moved around pens from time to time, whether within the paddocked area or on adjoining land.

¹ Paragraph 3.4 "Enclosures must be of a size and design, and animals and enclosures must be managed so as to prevent an uncontrolled build-up or spread of parasites and other pathogens".

11. I am not persuaded that because the paddock needs to be ploughed out occasionally, the diversion is clearly in the interests of the owner. Of course were the original line to be reinstated walkers and horse riders would have to be separated from the animals by means of a fence or similar barrier alongside it. However no good reason was put forward as to why other areas of the farm could not be used to relocate animals that need to be separated from the public or why it would be a disbenefit to have to plough the paddock on either side of the definitive bridleway, fenced or not.
12. The supposed benefit of the diversion to the owner rests on avoiding the paddock being bisected by the reinstatement of the bridleway including fencing alongside it that would be required if the animals continued to be kept there. This, Mr Henshaw is of course entitled to do according to the terms of his zoo licence and subject to the duty of care owed to users of the bridleway relative to activities on his adjoining land.
13. However the land comprising the paddocked area and the fields to the north and east, is essentially a single large grassed area including the strip of land forming section C-E of the "de facto" diversion that has been wire fenced. I note that the (approximately) two-thirds of the paddock (after its bisection due to any eventual fence to protect users of the way) is at the edge of the north-west boundary of the property. However it would be available to combine with the field area to the north-east and furthermore the other segment can be combined with the grassed area to the south-east which includes the land between the wire fencing that has enclosed the "de facto" diversion C-E.
14. Neither the Council nor any member of the public made representations to the effect that it is expedient in the interests of the public that the bridleway should be diverted as proposed. The Council has focussed on the interests of the owner, as being to layout pens for their animals as part of the visitor attraction "in a manner to accommodate visitors efficiently." However the flexibility inherent in the large area to the south of the farm buildings does not make it at all obvious why diverting the bridleway would make any appreciable improvement in efficiency or why visitors could not just as well use the definitive line of the bridleway. The animals kept in the field south-east of the "de facto" diversion were spread over a large open area when I visited and those at its far end could not in any event be appreciated in any detail from C-E. On the other hand there is a track along the south-east boundary of that area which could be used as an additional viewing platform, as indeed could any other area within his property that the owner may choose to use.
15. In truth the only plausible reason why the diversion would be in the owner's interests, assuming he would otherwise keep the animals and reinstate the definitive line as he told me he would, would be to avoid having to dismantle the fencing and replace it along the existing bridleway.
16. Simply to preserve a state of affairs arrived at by having obstructed the existing way, where no other readily discernible benefit accrues that would render the diversion in his interests, would not make it expedient in my view that the proposed diversion should be confirmed as in the interests of the owner.
17. I conclude on balance that it is not expedient, in the interests of the owner or occupier of land or of the public that Bridleway No 20.55/6 should be diverted as proposed.

Whether the proposed diversion would be not substantially less convenient to the public

18. The relative convenience of the present and proposed routes is assessed by considering such matters as the length, difficulty of walking or riding and purpose of the bridleway. This includes length, width, gradient, surface and limitations, including safety issues that have been raised. The range and types of users, and the likelihood of an accident occurring are therefore relevant.
19. Wire fencing obstructs the existing way at Point B and Point C. I also saw on my accompanied visit that the existing section A-B, behind the established hedge and within the adjoining field owned by Mr Henshaw, was inaccessible at Point B due, not only to the hedge but also to a low barbed wire fence which Mr Henshaw told me he put there in about 2004. There was a further obstruction at Point A where vegetation and fencing continued on the north-west boundary of the field. Mr Henshaw told me that he and his wife nevertheless used that part of the way to the south-west of the hedge, including section A-B for private walks along the edge of that field.
20. A fair comparison between existing and proposed diversionary routes can only be made by applying the principle set out for extinguishment orders, namely to disregard temporary circumstances preventing or diminishing its public use. Therefore the existing route must be assessed as unobstructed and maintained to a standard suitable for its lawful use. Although the hedge I have referred to is established it is not a feature that could reasonably be regarded as of an enduring and permanent nature. Therefore in considering whether or not the diversionary route would be substantially less convenient to the public, the obstructions should be disregarded and the existing way treated as if available to its full legal extent and suitably maintained for those with rights to use it.
21. The diversionary route provides a corridor around the paddock on good quality grass with tall fencing to each side of the route that faces an animal pen, including the field over which lies the section proposed to be diverted. There is also double fencing which keeps the animals well separated from the public.
22. No evidence of use of the existing route by the public was supplied at the hearing, understandably given its obstruction, nor of the route as diverted save that Mr Henshaw recalled seeing a few riders on it. That said the evidence of officers of the British Horse Society and Byways and Bridleways Trust leads me to conclude that if made available the existing route would be used as part of the Bridleway.
23. The width of the existing route is unrecorded. The width of the diversion was agreed at the site visit to be some 4.5m at Point C, narrowing to just over 4m at Point E. After turning the corner the way narrows further to about 3m but then encounters a large mature tree within the hedge whose trunk extends into the way. For some users this would be an awkward section to negotiate.
24. The diversion would lengthen the bridleway by about 48m on a route that is 1.72 km long between the A66 and Ravensworth village. The extra distance required to walk or ride the route would not be significant in my view. The gradients of the two routes differ slightly in that the diverted route would be on a gentle incline downward from C-E, whereas the existing line C-B traverses that incline. Traversing slopes can be more stressful to both ankles and

- fetlocks but there would not be a significant difference between the existing and proposed diversion.
25. The objectors stated that users of the bridleway as diverted would have to share it with families and their young children when viewing the exotic animals.
 26. It was put to me that even well-trained horses can take fright on encountering exotic animals, and on an enclosed path injury could be caused to other users of the way. However I agree with the Council that users of a public right of way can expect to share it with others including families with young children, not necessarily connected with the presence of animals or any other attraction specific to the site.
 27. Mrs Cook pointed out that the increased length of the diversionary route presented a risk of injury for a greater length of time, adding that the true comparison for such purposes would ignore the existing section A-B which is behind the hedge. Thus, considering Points B-C, some 120m, and the diversionary line D-E-C which is some 191m, a further 71m of way would be created during which a risk of injury obtains. All this is so, however I am not convinced in the first place that the risk of injury, as a result of interaction between horse and exotic animals or other users of the way, would be at all significant given the distances involved and the double fencing used to separate the animals from contact with the public.
 28. There is no plan attached to the zoo licence which refers simply to the address of Mainsgill Farm and therefore no restriction on the area within the property where animals may be located, but as Mr Henshaw acknowledged, he would need to put in place similar fencing arrangements alongside the definitive line of the way if it were to be reinstated and the animals stayed there. Therefore there would be no substantial difference in any potential risk to users of the bridleway between the definitive line and the proposed diversion.
 29. Having regard in particular to the useable width and physical features on each side of the route relative to the level and types of users, the presence of the mature tree could make it somewhat difficult for riders or cyclists to pass each other conveniently. The diversion would add somewhat to the length of the way which would be next to the animals but it would not lead to a clear change in the circumstances of the juxtaposition of the animals and the bridleway.
 30. Overall despite some potential awkwardness in using the route in the vicinity of the corner at Point E, I find that the proposed diversion would not be substantially less convenient to the public.

Whether it is expedient to confirm the Order having regard to:

The effect the diversion would have on public enjoyment of the way as a whole

31. Excluding the effect of the obstructions in the form of the hedge, barbed wire and other fencing, as one descends the slope from Point C walkers and riders will gain a panorama of the open countryside before them until the hedge at the bottom of the paddock rises up to meet them. By comparison the proposed diversion from C-E affords similar views and a sense of freedom in crossing the fields.
32. However on section E-D I saw that the diverted route is surrounded on both sides. The height of the hedge combined with the tall wire fencing on the other

side of the way is such that walkers and riders would have a sense of being trammelled by this corridor and experience a significant sense of enclosure, inhibiting any views of the open land to the south, until they reached Point A.

33. On the existing route, users will walk or ride down to the hedge at Point B and (assuming the appropriate gap to be there) cross it and turn north-west along the field behind the hedge until they reach Point A (again ignoring the obstruction in the form of the fence in the corner of the field. Away from the animals in the paddock, those walking or riding this part of the definitive line from B-A would have unrestricted views of the countryside to the south, currently only enjoyed in that location by the landowner and his family. It is not difficult to imagine that having gained the relative quietude on this side of the hedge, the public might pause to take in the view, at least as far as the lawful use of any right of way would allow.
34. I recognise that the section with which this Order is concerned, and indeed the particular section I have pointed up, is a relatively short section of the whole route. However the section E-A is some 85m in length and I cannot see any good reason to replace the existing route with this enclosed corridor that would all but deprive the public of clear views of countryside to the south. To do so would in my view significantly diminish the enjoyment to be derived from the existing section and of the bridle path taken as a whole.

The effect the coming into operation of the Order would have with respect to the land served by the existing way, account being taken of the provisions as to compensation

35. There is no evidence that the Order would have, in this respect, any material effects separately identifiable from those considered above in relation to the other requirements of s119 of the 1980 Act.

The effect any new right of way created by the Order would have as respects land over which the new right is created together with any land held with it, account being taken of the provisions as to compensation

36. There is no evidence before me that the proposed diversion would have any detrimental impact on the land over which Bridleway No 20.55/6 would run. Compensation under s28 of the 1980 Act is unlikely to be an issue in this case.

Summary

37. I conclude that it would not be expedient to confirm the Order taking into account the effect the diversion would have on the public enjoyment of the bridleway as a whole, on land served by the existing and proposed routes and on any land held with it.

Other matters and general considerations of expediency

38. Mrs Bradley for the BHS stated that as the bridle path remains obstructed to the north of the proposed diversion, the public enjoyment of the path as a whole is severely limited, and the bridleway in its entirety within the applicant's landownership will be substantially less convenient.
39. The alleged obstruction north of Point C is not relevant to this Order. It may be unfortunate that the Council, having made a previous order that contained proposals to divert the definitive line of the bridleway in this area, did not

proceed with it so as to give interested parties an opportunity to participate in a resolution of what is clearly a disputed obstruction. However that is not a matter before me.

40. Mrs Bradley was also concerned that there should be a solution found to the disconnected network for riders who, when at the top of the farm wish to cross over the A66 to the unclassified road to the north, feel unable to do so due to the busy traffic. However the alternative route suggested by the Byways and Bridleways Trust was not an alternative to the proposed Order which deals with a section of the way in an entirely different location.
41. I have considered the ROWIP. It highlights the importance of better linking rights of way and integrating them with, preferably, off-road highway or other public accesses including, for bridleways, more linked routes that connect to other bridleway networks and circular journeys. These are of course laudable objectives but do not relate to the section of the way proposed to be diverted.
42. Disabled horse riders and cyclists are considered at section 4.9.6 of the ROWIP. It advocates bridleways that are wide enough to allow unconfident riders to pass safely, and perhaps to allow one horse to be led from another. Whilst I did not conclude that the proposed diversion around the corner at Point E was substantially less convenient, it is nevertheless a consideration that less mobile users would be likely to find a part of the route proposed to be diverted less convenient to use than on the existing route.
43. Diverting the bridleway as proposed would avoid the need to create a gap in the hedge, however removal of a small section would have a minor detrimental effect on flora.

Summary

44. I have found that the diversion if confirmed would not be substantially less convenient than continued use of the existing bridleway. Even had the interests of the owner made it expedient to confirm the Order, which I am not persuaded that they do, I must give significant weight to my finding that it would not be expedient to confirm the Order taking into account the effect the diversion would have on the public enjoyment of the bridleway as a whole. Other relevant considerations do not override this main issue.

Conclusion

45. Overall, taking into account all relevant factors noted above and all other matters raised in the written statements and orally, I conclude that it would not be expedient to confirm the diversion as proposed in this Order.

Formal Decision

46. I do not confirm the Order.

Grahame Kean

INSPECTOR

APPEARANCES

North Yorkshire County Council

Mr Ron Allan	Definitive Map Officer
Ms Penny Noake	Principal Definitive Map Officer

Applicant

Mr Andrew Henshaw	Owner of Mainsgill Farm
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Objectors

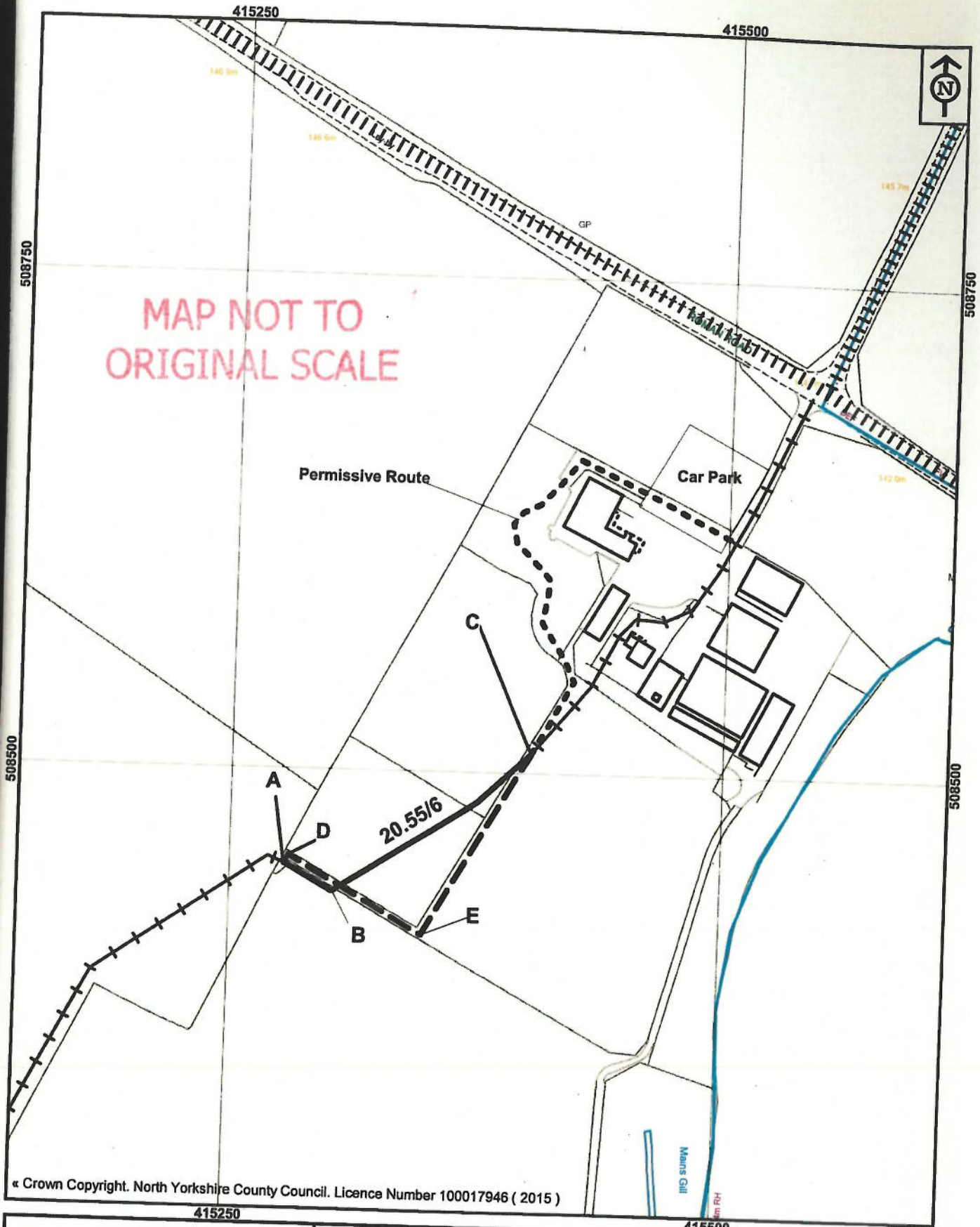
Mrs Caroline Bradley	Access Volunteer, British Horse Society
Ms Fran Mason	Bridleways Officer, British Horse Society

Mrs Catriona Cook	Regional Access Officer, Byways and Bridleways Trust
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Additional Documents submitted at the hearing

AD1 to AD4	Plans for proposed filling station
AD5 to AD6	Approved plans/documents for Application 17/00300/FULL
AD7	Map showing alternative grid coordinates
AD8	Licence to Keep a Zoo
AD9	Certified copy of Definitive Map Sheet 17
AD10	Certified copy of Definitive Map Sheet 17 (enlarged section)

MAP NOT TO ORIGINAL SCALE



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**North Yorkshire
County Council**

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

Key:	
Bridleway to be added	
Bridleway to be deleted	
Permissive Bridleway	
Other bridleways	
Maintainable Highways	

Map drawn on 9 July 2015

Drawn by RA

Scale 1:2500

North Yorkshire County Council

Highways Act 1980 Section 119
Wildlife & Countryside Act 1981

Bridleway No 20.55/6
Mainsgill Farm, Ravensworth
Diversion Order 2015

File Ref No. RICH/2012/05