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## Order Decision

Site visit made on 23 October 2019

**by Paul Freer BA(Hons) LLM PhD MRTPI**

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

**Decision date: 21 November 2019**

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### **Order Ref: ROW/3221279**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and also section 53A(2) of the Wildlife and Countryside Act 1981, and is known as the East Riding of Yorkshire Council (Beswick Bridleway Nos. 4 and 6, Footpaths Nos. 6,13 and 15) Public Path Diversion and Definitive Map and Statement Modification Order 2017.
- The Order was sealed on 23 October 2017 and proposes to divert the public rights of way shown on the Order plan and described in the Order Schedule and to modify the Definitive Map and Statement in that respect.
- There was one objection outstanding when East Riding of Yorkshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is confirmed.**

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### **The Main Issues**

1. The Order has been made in the interests of the owners of the land crossed by the public rights of way. Section 119 of the Highways Act 1980 therefore requires that, before confirming the Order, I must be satisfied that:
  - (a) it is expedient in the interests of the owners of the land crossed by the section of footpath/bridleway to be diverted that the line of the path or way, or part of that line should be diverted; and
  - (b) the path or way will not be substantially less convenient to the public;
  - (c) the point of termination of the alternative path and/or way would be on the same highway, or a highway connected with it, and would be substantially as convenient to the public, and
  - (d) that it is expedient to confirm the Order having regard to:
    - (i) the effect which the diversion would have on public enjoyment of the path or way as a whole; and
    - (ii) the effect which the coming into operation of the Order would have as respects other land served by the existing rights of way; and
    - (iii) the effect which any new public rights of way created by the Order would have as respects the land over which the right is so created and any land held with it.
2. Section 119(6A) of the 1980 Act provides that I must have regard to any material provision contained in a Rights of Way Improvement Plan for the area covered by the Order.

## Reasons

### ***Whether it is expedient in the interests of the owners that the line of the path or way, or part of that line should be diverted***

3. At present, two footpaths (Nos.13 and 15) and one bridleway (No.6) all cut across the same field. I accept that the requirement to reinstate those routes following disturbance has a significant impact on the management and productivity of this field. Accordingly, I am satisfied that diverting these routes to follow the edges of the field is in the interests of the landowner.

### ***Whether the path or way will not be substantially less convenient to the public***

4. There is no dispute that the existing footpaths and the bridleway that are proposed to be diverted are used primarily for recreational purposes rather than to reach a specific point. I am also mindful that the footpaths and the bridleway form part of longer walking and/or riding routes albeit, and particularly so in relation to the bridleway network, completion of these longer routes involves some use of roads.
5. The diversion of Bridleway No. 6 would result in an increase of some 305 metres. The diversion of Footpath No. 13 would result in an increase of approximately 105 metres in the length of that footpath, whereas the diversion of Footpath No. 15 would result in an additional length of some 7 metres. I consider that the additional distance of 305 metres to Bridleway No. 6 is borderline in terms of convenience to the public. However, in the context of the longer-distance recreational walks/rides of which these routes form a part, on balance I do not consider that the ways as proposed to be diverted would be substantially less convenient than the existing footpaths and bridleway.
6. Footpath No 13 and Bridleway No. 6 are both shown on the Definitive Map to join with Middleton Road at a point some 20 metres west of the eastern boundary of the field that they cross. On reaching that point, according to the Definitive Map, for those walkers then intending to continue towards Kilnwick using Footpath No. 8, this entails doubling-back in a westerly direction for some 70 metres and crossing Middleton Road to reach the start of that footpath.
7. I am mindful that the diversions of Footpath No 13 and Bridleway No. 6 would involve moving the point at which the footpaths and the bridleway join with Middleton Road (shown as Point A on the Order plan as proposed to be modified) some 20 metres further to the east. This would increase by that amount the doubling-back required to link with Footpath No. 8 in both directions and would, I accept, be less convenient than the existing situation. I am also mindful that this additional distance would be on the road, and therefore with the spectre of vehicular/pedestrian conflict.
8. However, the salient point is that the proposed diversion would not introduce doubling-back as a new element of the walk: an element of doubling-back is already required, and on the same stretch of road. Moreover, Middleton Road is lightly-trafficked with, according to the Council, the last survey conducted recording 11 vehicles per hour at an average speed of 37 mph. Furthermore, at this point on Middleton Road there is good visibility in both directions and verges on both sides of the road to provide refuge for pedestrians.

9. Having regard to these factors, I am satisfied that the additional doubling-back that would be required as a result of the proposed diversion does not render the alternative route substantially less convenient than the existing footpath and bridleway. I am also mindful that the longer-distance routes of which the footpath and bridleway form a section already involve the use of some roads, such that an additional and relatively short additional section of road use would not inconvenience the public.
10. There is a further consideration in this respect. The Council indicates that the point where Footpath No 13 and Bridleway No. 6 join with Middleton Road is anomalously recorded on the Definitive Map due to a drafting error. It was originally intended that both of these public rights of way commenced at Point A (as shown on the Order plan as proposed to be modified). That is consistent with the situation on the ground at the time of my site visit, when I noted that there was no means of access to the footpath/bridleway from where the standing footpath signs are located and that access is actually gained from Point A. The Council indicates that in practice walkers/riders seeking to use these ways already access them from Point A and are therefore already making the doubling-back referred to by the objector. It follows that diverting the footpath and the bridleway to terminate at Point A would make no practical difference to how the routes are already being used and, in effect, formalises what was originally intended and what is already occurring in practice.
11. Finally, in this context, the footpaths and bridleway as existing do not have defined widths in the Definitive Statement. The corollary is that, following any disturbance, the land owner is only required to reinstate the footpaths and the bridleway to the minimum widths specified in the 1980 Act; specifically, 1 metre for the footpaths and 2 metres for the bridleway. The alternative routes would all have widths in excess of that minimum and, unlike the existing situation, would allow users to pass each other with ease. Furthermore, the alternative routes would largely follow the field edge and as such the surface would not be disturbed at any time. Even allowing for reinstatement of the existing routes following disturbance, there is a benefit to the convenience of the public arising from the proposed diversions in terms of retaining a more user-friendly compacted surface of the field edge paths without any disturbance.
12. Having regard to all of these points, I am satisfied that the proposed diversion would not be substantially less convenient.

***The effect which the diversion would have on public enjoyment of the path or way as a whole***

13. The two footpaths and the bridleway that cross this field, both as existing and as proposed to be altered, run through a landscape that is rural in character. There is little or no difference in the levels of enjoyment to be experienced in terms of the general character of the area or of the views of the wider rural landscape that may be obtained. If anything, there is added enjoyment to be gained through the proximity of Bridleway 4 to the area of woodland that adjoins the southern boundary of the field (known as High Wood), which allows views into that wooded area and offers the increased potential for observing wildlife therein.
14. There is also the additional enjoyment to be derived from walking/riding on wider and compacted surfaces compared to over disturbed ground or ground

that has been reinstated following disturbance. I note that the objector describes the section of Bridleway 4 adjoining High Wood to be covered in leaves and brambles, but that was not the case at the time of my site visit. Although not grassed, unlike the other section of that bridleway, the surface was compacted and pleasant to walk on. The Council indicates that the landowner was in the process of clearing this section of the way, and it would appear that this had been done by the time of my visit.

15. Furthermore, I note that the objector refers to difficulties in walking Footpath No. 6 (as proposed) due to flooding, suggesting that this would prompt walkers to use Middleton Road instead. However, I have no evidence to suggest that this footpath would be routinely made impassable by flooding, such that it would tempt walkers to use Middleton Road in preference. Similarly, there is no evidence before me to suggest that the alternative routes are any more prone to flooding than the existing footpaths and bridleways.
16. Having regard to all these factors, and taken in the round, I do not consider that the diversions will have any adverse effect on the public enjoyment of the footpaths and the bridleway. Indeed, the diversions would in my view enhance the public enjoyment of these routes.

***The effect which the coming into operation of the Order would have as respects other land served by the existing right of way***

17. There are no effects on other land served by the existing rights of way.

***The effect which any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it***

18. The landowner is of the view that the diversions would be a positive benefit in terms of freeing him of the obligation to manage the land in accordance with the existence of a public right of way running through it. The landowner therefore clearly supports the diversions.

***Whether the point of termination of the alternative path would be on the same highway, or a highway connected with it, and would be substantially as convenient to the public***

19. As indicated above, the point where Footpath No 13 and Bridleway No. 6 join with Middleton Road would be altered. Similarly, the point where Footpath No 13 joins with Footpath No 15 would be altered to the point where the latter joins with Middleton Road. However, for the reasons set out in paragraphs 4 to 11 above, these would be substantially as convenient to the public.
20. The landowner intends to install a new gate at Point A, this to prevent fly-tipping. There would also be a new 1.5 metre pinch point beside this gate, recorded as a limitation on the Order. I accept that the introduction of this pinch-point would be less convenient to the public but, in my view, not substantially so.

***Rights of Way Improvement Plan***

21. My attention has not been drawn to any objectives or proposals in the Rights of Way Improvement Plan that are directly relevant to this Order.

***Whether it is expedient to confirm the Order***

22. Having regard to all of the above, I conclude that it is expedient to confirm the Order.

**Conclusion**

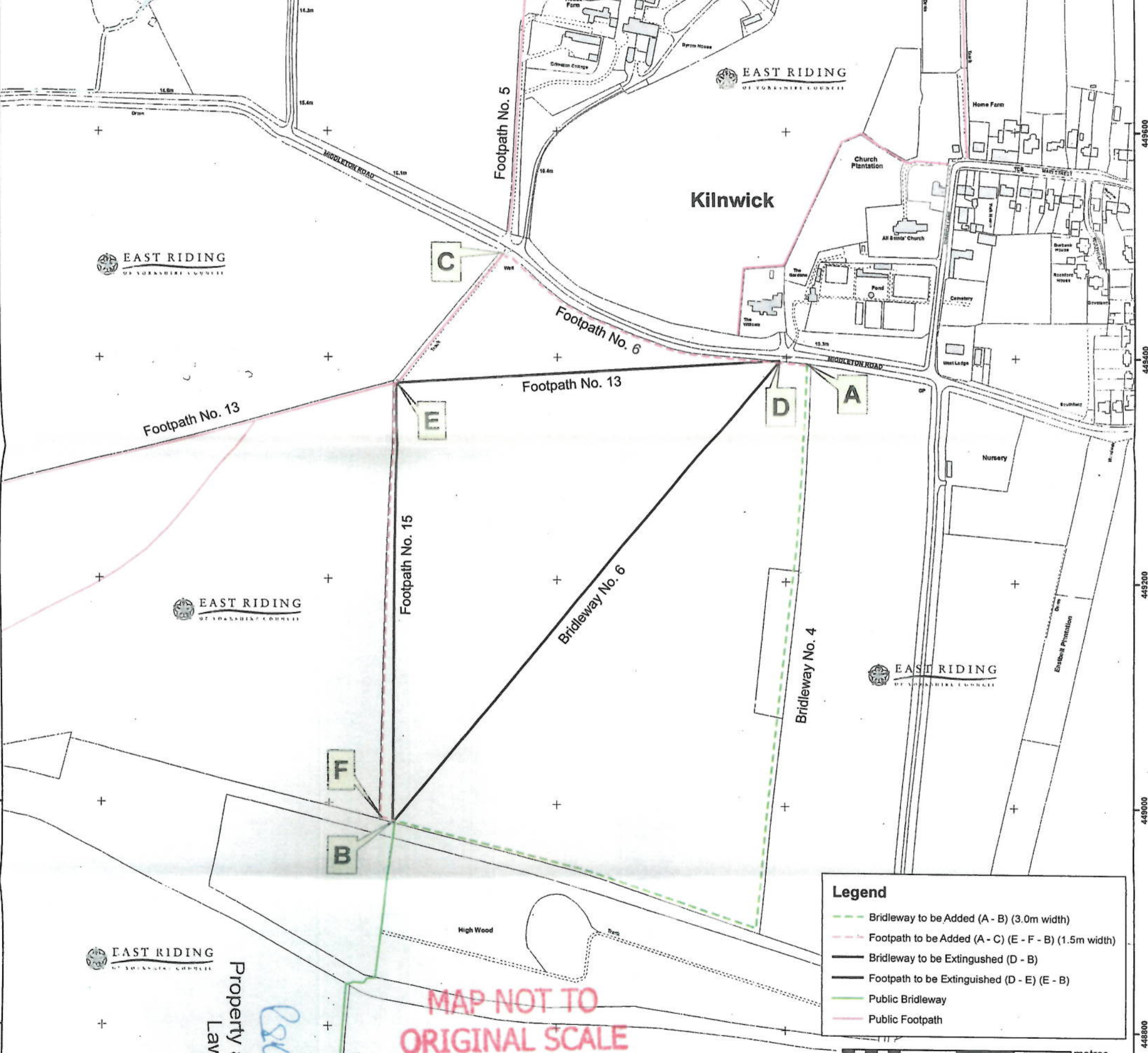
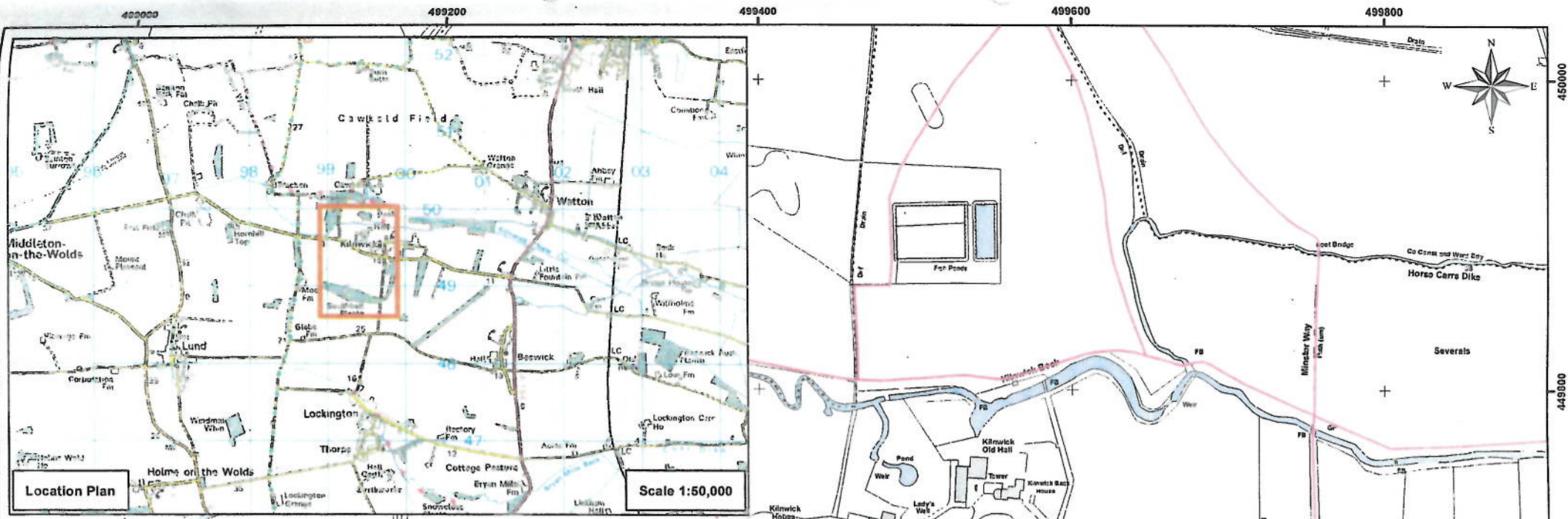
23. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed.

**Formal Decision**

24. I confirm the Order.

*Paul Freer*

INSPECTOR



**Legend**

- Bridleway to be Added (A - B) (3.0m width)
- Footpath to be Added (A - C) (E - F - B) (1.5m width)
- Bridleway to be Extinguished (D - B)
- Footpath to be Extinguished (D - E) (E - B)
- Public Bridleway
- Public Footpath

MAP NOT TO ORIGINAL SCALE



Property and Commercial Law Manager

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**EAST RIDING**  
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<b>TITLE</b>				
The East Riding of Yorkshire Council (Beswick Bridleway Nos. 4 and 6, Footpath Nos. 6, 13 and 15) Public Path Diversion and Definitive Map and Statement Modification Order 2017				
ORIGINAL SCALE	DATE	DRAWN	APPROVED	DRAWING NO.
1:2,500	Aug 2017	MD	GG	PER/DM/BESW/5786/PPDO/Drg03

