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| **Order Decisions** |
| Site visit made on 5 August 2024 |
| **by Charlotte Ditchburn BSc (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 September 2024** |

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| **Order Ref: ROW/3319959** | **Creation Order** |
| * This Order is made under Section 26 of the Highways Act 1980 and Section 53(2)(a) of the Wildlife and Countryside Act 1981 and is known as The Lake District National Park Authority Public Path Creation and Definitive Map and Statement Modification Order 2022 - Creation of footpath 407058 to the South East of Ennerdale Water, Ennerdale and Kinniside Parish. | |
| * The Order is dated 15 November 2022 and proposes to create a public footpath as shown on the Order Plan and described in the Order Schedule. | |
| * There were two objections outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. | |
| **Summary of Decision: The Order is confirmed subject to modifications set out below in the Formal Decision.** | |
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| **Order Ref: ROW/3319956** | **Diversion Order** |
| * This Order is made under Section 119 of the Highways Act 1980 and Section 53A(2) of the Wildlife & Countryside Act 1981 and is known as The Lake District National Park Authority Public Path Diversion and Definitive Map and Statement Modification Order 2022 – Diversion of Bridleway 407028 and Footpaths 407024, 407042 and 407054 at Woundell Beck, Ennerdale and Kinniside Parish. | |
| * The Order is dated 15 November 2022 and proposes to divert one bridleway and three public footpaths as shown on the Order Plan and described in the Order Schedule. * There were two objections outstanding when the Lake District National Park Authority submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. | |
| **Summary of Decision: The Order is confirmed subject to a modification set out below in the Formal Decision.** | |
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**Preliminary Matters**

1. The objector requested an accompanied site visit. However, the Lake District National Park Authority (the Authority) and Forestry England made it clear that no representatives would be made available for the site visit and accordingly I carried out an unaccompanied site inspection. I am satisfied that I can make my decision on the basis of that inspection.
2. Although there are two separate orders, the routes in the Diversion Order are interlinked and some sections are dependent on each other. Therefore, they are being considered concurrently as the diversion routes and creation route lead on from one another depending on the direction of travel. It would be possible to confirm some of the Order routes but not others. However, if I were to do this, modifications may be required to ensure that the bridleway and footpaths connect to other routes. I will refer to various sections and points shown on the Order Plans and have attached copies of them to the end of my decision.
3. The Authority have requested two minor modifications to the wording of the Orders to reflect the correct grid reference of Point U and to correct the grid reference of the gate in the description of the width of BW 407028. There would be no need for these modifications to be advertised further if I were to confirm the Orders.

**Main Issues**

***The Creation Order***

1. Under Section 26 of the Highways Act 1980 (the 1980 Act), if I am to confirm the Order, I need to be satisfied that there is a need for the public footpaths, and that it is expedient that they should be created. In determining the need for the footpaths, I must have regard to:
2. the extent to which the paths would add to the convenience or enjoyment of a substantial section of the public, or the convenience of persons resident in the area; and
3. the effect which the creation of the paths would have on the rights of the persons with an interest in the land, account being taken of the provisions for compensation.

***The Diversion Order***

1. Section 119(6) of the 1980 Act involves three separate tests for an Order to be confirmed. These are;

Test 1: whether it is expedient in the interests of the landowner, occupier, or the public for the paths to be diverted. This is subject to any altered point of termination of the paths being substantially as convenient to the public.

Test 2: whether the proposed diversions are substantially less convenient to the public.

Test 3: whether it is expedient to confirm the Order having regard to the effect which; (a) the diversion would have on public enjoyment of the paths as a whole, (b) the coming into operation of the Order would have as respects other land served by the existing public rights of way, and (c) any new public rights of way created by the Order would have as respects the land over which the rights are so created and any land held with it.

1. In determining whether to confirm the Order at Test 3 stage, (a)-(c) are mandatory factors. On (b) and (c) of Test 3, the statutory provisions for compensation for diminution in value or disturbance to the enjoyment of the land affected by the new paths must be taken into account, where applicable. Other relevant factors are not excluded from consideration and could include those pointing in favour of confirmation.

***Both Orders***

1. I need to have regard to any material provision of any rights of way improvement plan (ROWIP) prepared by any local highway authority whose area includes land over which the Orders would create, extinguish, or divert public rights of way.

**Reasons**

***The Creation Order***

1. The Creation Order, if confirmed, would create a new path from Point U to Point Z.

*The need for the proposed path*

1. The route provides a footpath between BW 407028 and FP 407024. It is known to have been well-used for many years and is a popular route. Therefore, I consider there is a need for this footpath.

*The extent to which the path would add to the convenience or enjoyment of the public or the convenience of residents*

1. The route provides an important and convenient link between BW 407028 and FP 407024. This link provides a route along the lake shore of Ennerdale, allowing the use of a circular walk around the Lake as well as linear walks beyond it. I consider it adds to the convenience and enjoyment of the public and residents.
2. It has been suggested that the structures along the route are not suitable for users. The gates on the footpath are easy to use. The Authority has confirmed that the gates meet the agreed standard in the Lake District National Park Structures Standards approved in 2011 (LDNPSS) which conform to BS 5709:2006. They are less restrictive than many access controls such as stiles and kissing gates. I do not consider it necessary for the gates to adhere to the latest British Standards when an alternative local policy is in place.
3. Concerns are raised about the accessibility of the structures due to the surface of the route. My site visit took place on a very wet day, whilst there was standing water on the route around the structures, the surface underneath was firm and useable with appropriate footwear. I consider that most walkers on this path would expect to encounter puddles and the natural topography of the area means that there may be rough ground along the route including around the structures.
4. Concerns are also raised over the route meeting the requirement of the Equalities Act 2010. When taking into consideration the nature of the Ennerdale Valley, users will expect routes to be of a natural surface including stepping stones and bridges. Natural England have raised no concerns with the Authority when choosing this route as part of the new Wainwright’s Coast-to-Coast long distance National Trail nor have they proposed any works along this section of the route and the path seemingly meets ‘National Trail Quality Standards’. To access the order route users would either have had to come over one of the fells, down the valley, or along the lakeshore from Bowness Knott or Bleach Green or have travelled at least 3km from the nearest car park; therefore, having had to have travelled some distance on a stone track or having had to have covered terrain similar to that of the order route. This bolsters the fact that the route is accessible and users’ expectations about the accessibility of the route will be in line with the nature of the route on the ground.

*The effect on persons with an interest in the land*

1. Although the definitive alignment of FP 407024 exists adjacent to the order route it is not easily accessible and therefore not used by the public at large, however this route runs through Open Access Land; therefore, if the public wish to follow it they still have the right to do so. There is the possibility that the public will have acquired rights over the path being used before the diversion order route was created on the ground therefore there could be two rights of way established. The Creation Order would create rights along an already established and well used path removing the liability for the surface from the landowner, placing this with the highway authority creating certainty for everyone. Therefore, I consider that there are no adverse effects on persons with an interest in the land.

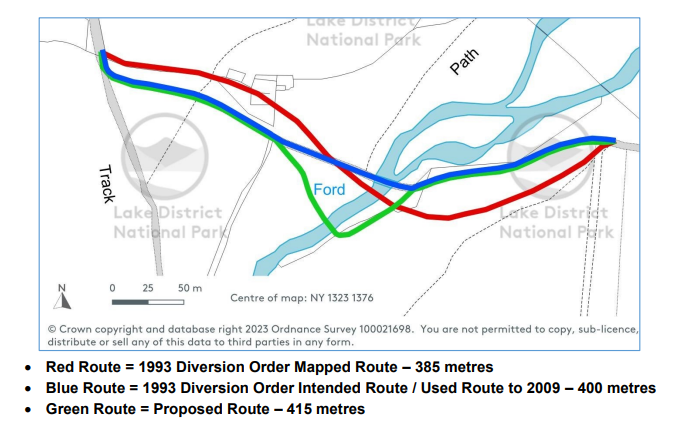
*Conclusions on whether it is expedient to confirm the Creation Order*

1. The Creation Order route is needed for public use and would add to the convenience and enjoyment of the public and residents. There are no adverse effects on the landowner or their tenants. Having regard to these and all other matters, I consider that it is expedient to confirm the Creation Order.

***The Diversion Order***

*Background*

1. The Diversion Order, if confirmed, would divert three footpaths and a bridleway. Section A-G-H-K-F would be extinguished and replaced with section A-B-C-D-E-F. Section C-H would be extinguished and replaced with section G-C. Section J-K would be extinguished and replaced with section J-F.
2. BW 407028 was subject to a diversion order in 1993, this order was intended to divert the bridleway along the forest road and over Irish Bridge which was constructed in the late 1970s / early 1980s, shown in blue on the below map. Unfortunately, the alignment of the definitive route and the route being used on the ground differed with the definitive line crossing through fields, sheepfolds and with no bridge over Woundell Beck shown in red on the below map. I shall refer to the red route as the current route and the green route as the proposed route.



1. Before the Diversion Order was made, Forestry England sought planning permission and removed Irish Bridge due to maintenance and ecological issues. They installed a replacement bridleway bridge upstream in a more sustainable location as to be less likely to be affected by increasing weather events, shown where the green route above crosses Woundell Beck. Regrettably these works were completed prior to any diversion order.
2. The existing bridleway is obstructed by trees, walls, fences and there is no bridge over Woundell Beck. However, these are temporary obstructions; therefore, I will disregard these obstructions and assess the use as if they were available to the public.

*Whether it is expedient in the interests of the owners, lessees, or occupiers of the land and the public that the paths should be diverted*

1. The Diversion Order has been made in the interests of both the owners of the land and the public.
2. The proposed diversion of BW 407028 between A-G-H-K-F is in the interest of the landowner and the public. It is in the landowners’ interests as it would remove the route from fields and sheepfolds, enabling the landowner to manage their land as best as possible for many aspects, including environmental considerations. The environmental considerations would also be in the wider public interest, as well as replacing an unusable path with a usable path. The bridge on the proposed route provides an all-weather crossing point, available at all times which is clearly in the public’s interest.
3. The proposed diversion of FP 407024, FP 407054 and FP 407042 are consequential changes to ensure connectivity. I consider that the diversion of these sections of footpaths is in the interests of the public.

*Whether any new termination points are substantially as convenient to the public*

1. The start and end points of bridleway 407028 are unchanged by the proposed diversion.
2. The termination points of footpath 407024 would move from Point H to Point B there would be a minimal change in length, BW 407028 continues beyond this point and the connection to the highway is thus unaffected. I am satisfied that the new termination points will be substantially as convenient to the public.
3. The termination point of footpath 407042 would move from Point K to Point F, there would be a minimal change in length, BW 407028 continues beyond this point and the connection to the highway is thus unaffected. I am satisfied that the new termination point will be substantially as convenient to the public.

*Whether the new paths will not be substantially less convenient to the public*

1. It is necessary to consider whether, in terms of convenience, matters such as the length of the proposed paths, the difficulty of walking them and their purpose will render the paths substantially less convenient to the public.
2. The utility of FP 407024, FP 407054 and FP 407042 will be unaffected by the diversion with a width of 1.8 metres. The proposed alignment of paths will be more convenient to the public as they will reduce the number of boundary crossings on FP 407024.
3. The proposed section of BW 407028 would be 30 metres longer than the existing bridleway, this is insignificant considering the overall length of the bridleway. It would cross a bridleway bridge and follow the forest road with a width of 3 metres. However, there would be a pinch point of 1.5 metres at a gate at NY 1304 1386, 1.8 metres over a bridge at Point E and 2.5 metres between Points D and E.
4. With regards to the current route and the proposed route, effectively the only change would be between Point D and Point E. The current route has no bridged crossing of the river, whereas, the proposed route crosses a bridleway bridge which is raised above the watercourse meaning that it is less likely to be affected by raised water levels and being suitable to cross at all times of the year; therefore, it is more convenient to the public.
5. As the bridge on the proposed route is raised above the watercourse, it means that there are slopes on both sides, this is clearly less convenient to some users. The route is promoted as a Miles Without Stiles route, categorised as a route ‘for some’ and is subject to annual surveys to check the condition of the route. The Miles Without Stiles Voluntary Co-ordinator stated in May 2024 that: *“Since I took over as Miles without Stiles Voluntary co-ordinator, 3 years ago, the bridge has not been raised as a concern. I have been over it many times, and never noticed a problem……I was on an all-terrain mobility scooter. With modern wheelchairs often with a 3rd wheel the users can go incredible distances and over very rough terrain, using just arm power, rachet assist, hand cycle adaption or power unit. My NHS powerchair can do in theory 25km. Its certainly been up and down to the bridge without problem.”* This adds support to the bridge being accessible to a range of users. In my view someone that would be unable to use the bridge approaches would be unlikely to reach the bridge in the first place considering who would be likely using the path, where the path is, and the distances they would have travelled already before reaching this area. I do not consider the increase in gradient to be substantially less convenient to the public.
6. The surface of the current route was a vehicular track, the proposed route is not vehicular so does not benefit from the same surface. The proposed route surface is more likely to suffer from minor dust run off which would be less convenient to some users. Considering the surface damage that occurred regularly on the current route then the proposed route is more convenient to the public.
7. I have already concluded in paragraph 21 that the installation of a bridleway bridge upstream that is useable in all weathers is easier to use creating a safe crossing of the Woundell Beck. This makes the proposed route more convenient for the public.
8. I do not consider that the diversions would make any of the paths substantially less convenient for the public. Some sections would be more convenient.

*The effect of the diversions on public enjoyment of the paths as a whole*

1. The diversion of BW 407028 from the current route to the proposed route is minor therefore the enjoyment of the path is not affected. The diversion would improve public enjoyment as it provides a crossing of Woundell Beck and provides a clear route on the ground on a well-established path.
2. The diversion of FP 407024, FP 407042 and FP407054 are minor, these will remove obstructions and provide routes that are easier to use and follow. The views would remain the same and they appear to be the preferred routes on the ground, therefore the diversions would make it more enjoyable.
3. The routes subject to the diversion are within the Ennerdale Valley which is part of the Wild Ennerdale Project. The bridleway bridge on the proposed route gives users an elevated view of the Woundell Beck allowing natural processes to take place and users to see these natural river processes in action increasing the public enjoyment of the route. The bridleway bridge on the proposed route reduces vehicular access along the valley, both lawful and unlawful, this also coincides with Wild Ennerdale’s aims, I consider this to enhance the public enjoyment of the route.
4. I have referred previously to the respective difficulties and merits of the surface and gradient of the current and proposed routes. In my judgement these issues are just as relevant to the enjoyment as they are to the convenience of the user.
5. Taking account of all factors, I conclude that, on balance, public enjoyment of the routes will be enhanced by reason of the practical advantages conferred by the proposed diversions.

*The effect of the diversions on other land served by the existing paths and the land over which the new paths would be created*

1. With regards to the land served by the existing paths, the forest track has been removed, this will reduce private vehicular access to the land beyond. However, this has been done by the landowner, and they actively wish to reduce such vehicular use.
2. There is nothing to suggest that the proposed diversions will have any adverse effect on land over which the diverted routes would be created as they are within the same ownerships and the landowners requested the proposal.

*Conclusions on whether it is expedient to confirm the Diversion Order*

1. I consider the diversion to be in the interests of the landowner and of the public. The diversion will not be substantially less convenient to the public and will be more convenient to the public. The proposed route is likely to be as enjoyable to use for most people and there would be no adverse impact upon the land currently served by the paths or the land which the diverted paths would cross. I am satisfied that it is expedient to confirm the Order.

**Rights of Way Improvement Plan**

1. The Authority believes that the Orders fit with the aims of the ROWIP to review and make legal orders to ensure a safe network, limit obstructions and support priority access development initiatives where required on the rights of way network. Nothing has been raised by any other party.

**Other matters**

1. Previous planning matters, grievances with the Authority’s ways of working and members of staff, alleged poor management of the network and alleged lack of action by the Authority were referred to. However, these matters do not relate to the Orders before me, and I have not taken them into consideration.

**Overall Conclusions**

1. Having regard to the above, and all other matters raised in the written representations, I conclude that the Creation Order and Diversion Order should be confirmed subject to modifications.

**Formal Decision**

***The Creation Order***

1. I confirm the Order subject to the following modifications:

* Replace “NY 1231 1338” with “NY 1231 1388” in line two of the description of the route in Part 1 of the schedule.
* Replace “NY 1231 1338” with “NY 1231 1388” in line two of the description of the route in Part 3 of the schedule.

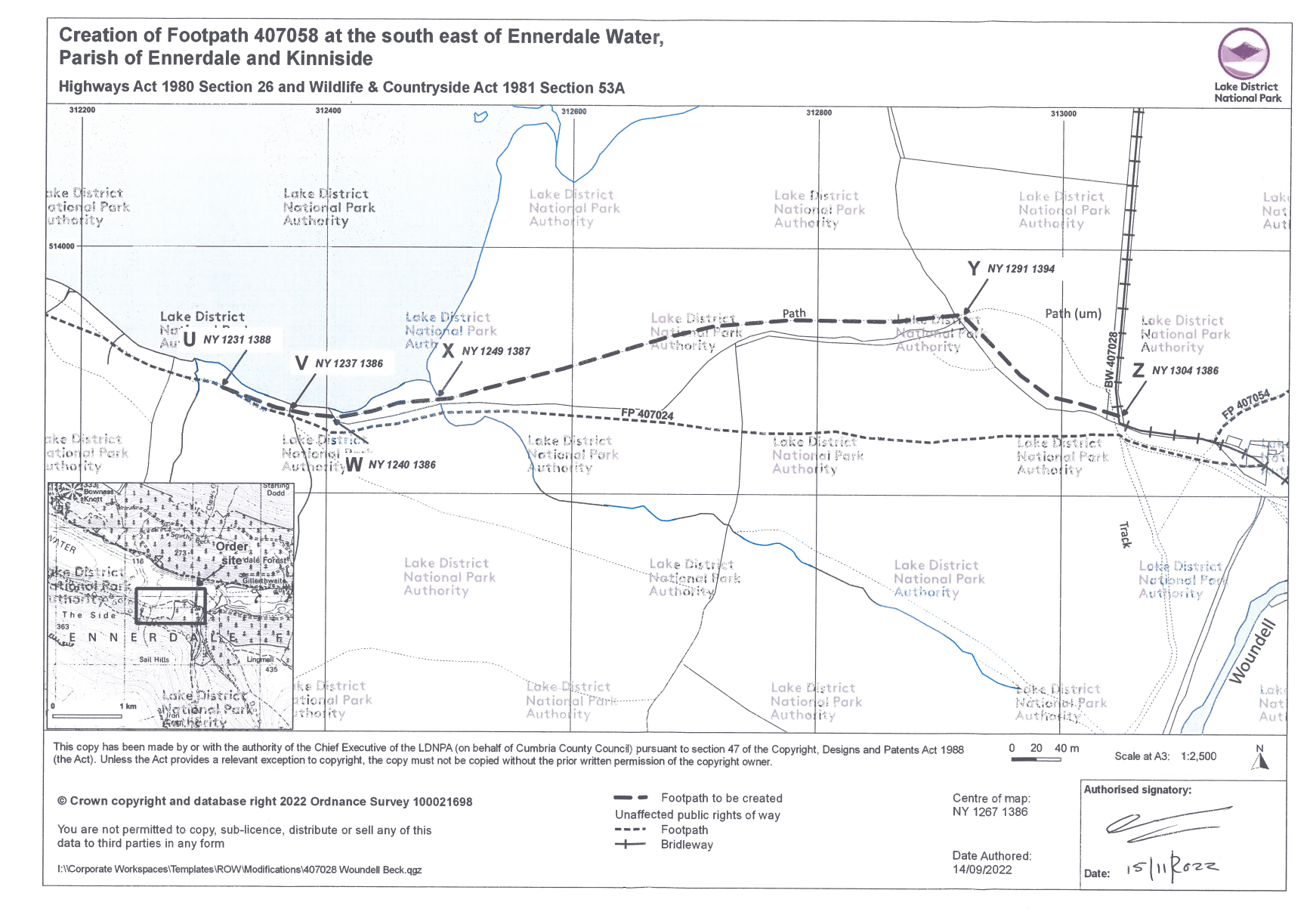
***The Diversion Order***

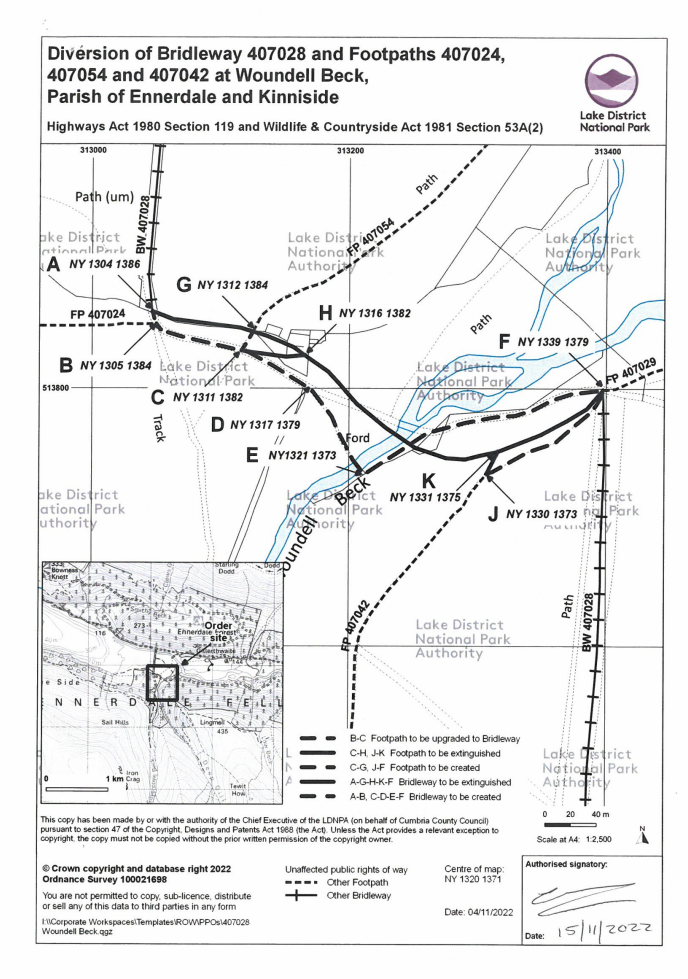
1. I confirm the Order subject to the following modification:

* Replace “SD 1304 1385” with “NY 1304 1386” in line 5 of the width description of BW 407028 in Part 2 of the Schedule.

*Charlotte Ditchburn*

INSPECTOR

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