

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

**PROPOSED DIVERSION OF PUBLIC FOOTPATH 256,
BARNETBY LE WOLD**

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To consider whether a diversion order members previously agreed to the making of should be discontinued in the light of new information.
- 1.2 The key points in this report are:
 - a) the section of footpath to be diverted has received a number of objections from members of the public, and
 - b) the landowner at whose request the order was made is himself now in agreement for the diversion order not to be confirmed.

2. BACKGROUND INFORMATION

- 2.1 Public Footpath 256 runs westwards a short distance south of the Grimsby to Scunthorpe railway line from the Melton Ross to Bigby road to its junction on land known as Knab's Hill with Public Footpath 297 to Victoria Road and Public Footpath 249 to St Barnabas Road, both in Barnetby le Wold village.
- 2.2 An order to divert the said footpath was made on 30th January 2009, following members' instructions to do so at the meeting of Planning Committee on 10th September 2008 (Minute No. 1071), and subsequently advertised in the Scunthorpe Telegraph on 13th February 2009.
- 2.3 Appendix one shows the public footpath to which the proposal to divert applies.
- 2.4 Four duly lodged objections to the order have been received from members of the public. Three concerning the surface conditions of the proposed diverted route, and one with regard to the stated variable width. Please see Appendix 2, 3, and 4. Members should consider the order before confirmation if objections to its making were duly lodged.
- 2.5 The landowner is in agreement for the order not to be confirmed. Please see Appendix 5.

- 2.6 The PROW General Appendix outlines the legal background in more detail.

3. OPTIONS FOR CONSIDERATION

- 3.1 Abandon the order.
- 3.2 Submit the order and objections to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

4. ANALYSIS OF OPTIONS

- 4.1 At the end of the objection period the authority may itself confirm the order if no objections have been received, but not otherwise. If objections have been received the authority has three options:
(a) it can resolve not to confirm the order;
(b) it can seek the withdrawal of objections;
(c) it can submit the order with the objections to the Secretary of State for Environment, Food and Rural Affairs.
- 4.2 Although there is no specific power in the Act for orders to be withdrawn by an authority, Defra takes the view that an authority may make a formal resolution not to proceed with an order.
- 4.3 Alternatively, the order may be submitted to the Secretary of State for Environment, Food and Rural Affairs with a request that he refuse to confirm it. Unless there is a patent defect in the order, the Secretary of State has to determine the order in the same way as he would an order which the authority continued to support.
- 4.4 Once the order and objections are submitted to the Secretary of State for Environment, Food and Rural Affairs the power of decision passes to him.
- 4.5 Any decision not to confirm an order, whether made by an authority or by the Secretary of State, must be notified to every person on whom a copy of the notice of the making of the order was served.
- 4.6 Officers doubt the Secretary of State would confirm the order. This is because the footpath crosses an area where underground springs render, at certain times of the year, the footpath to be less convenient to members of the public, and:
- 4.7 The variable width as stated in the order does not represent which parts of the footpath are two metres and which parts are six metres. It is agreed this is unhelpful in determining the path's extent.

- 4.8 It appears to the officers that, in the interests of the public that the order to divert a part of the line of Public Footpath 256 should not be confirmed.

5. RESOURCE AND OTHER IMPLICATIONS

5.1 Financial

- 5.1.1 From within the existing budget of the Environment Team.

5.2 Staffing

- 5.2.1 From within the existing complement of the Environment Team.

5.3 Property

- 5.3.1 None.

5.4 IT

- 5.4.1 None

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17-CRIME AND DISORDER, RISK AND OTHER)

6.1 Statutory

- 6.1.1 In deciding whether an order should be confirmed, the Secretary of State must be satisfied that the new path will not be substantially less convenient to the public. He must also consider the effect of the diversion on the public's enjoyment of the path as a whole (Highways Act 1980, section 119(6).)

6.2 Environmental and Other

- 6.2.1 None

6.3 Risk

- 6.3.1 Orders referred to the Secretary of State will be dealt with by written representations, hearing or inquiry. The order-making authority must normally meet their own costs, but in the case of inquiries can claim costs against a third party thought to have been acting unreasonably.

6.4 Diversity

- 6.4.1. None

6.5 Section 17-Crime and Disorder

6.5.1 None.

6.6 Other

6.6.1 None.

7. RECOMMENDATIONS

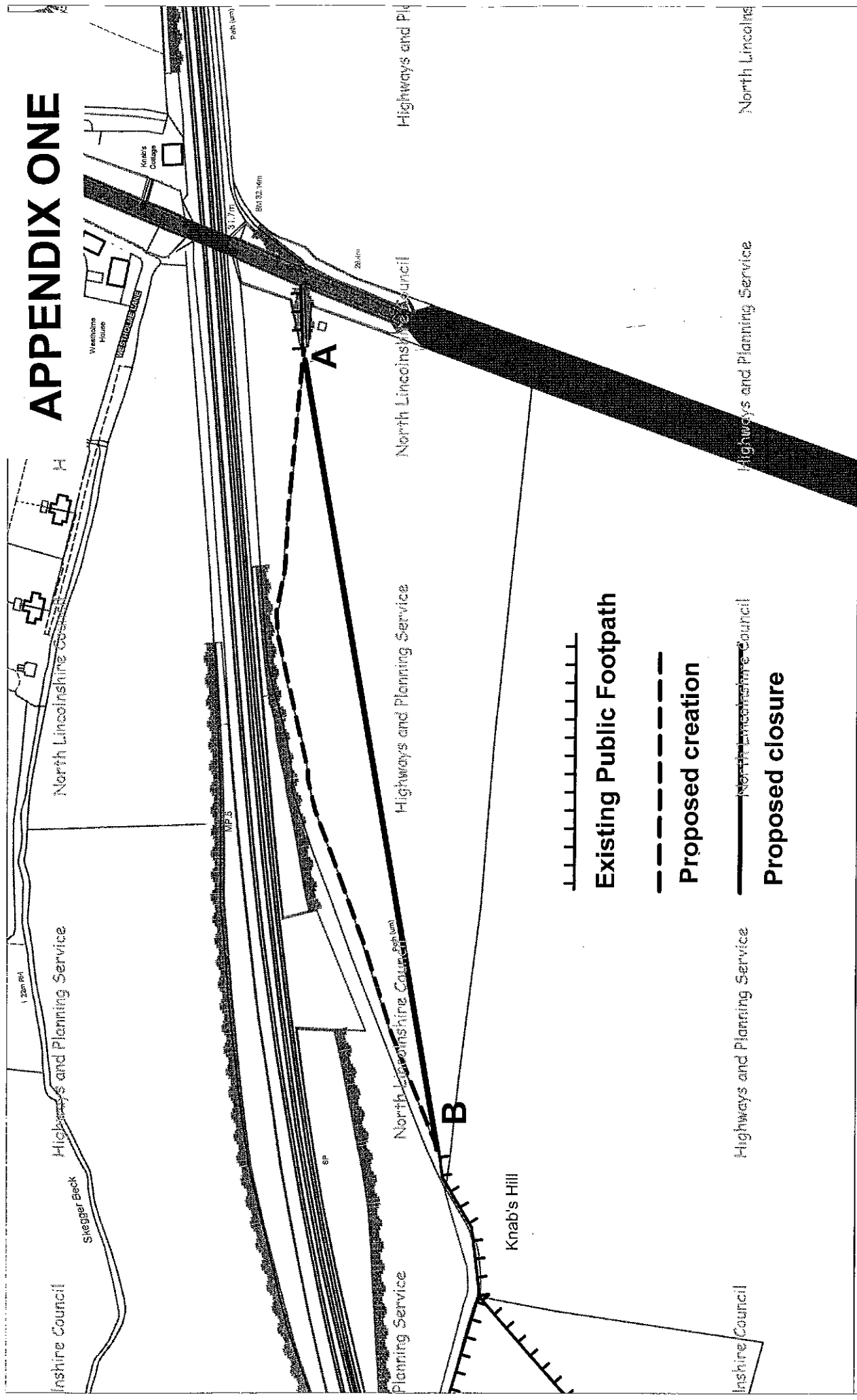
7.1 It is recommended that members formally resolve the order with immediate effect on the grounds that the proposed route is prone to severe waterlogging and the applicant himself concedes that for this reason alone revocation is the right course of action.




Church Square House
SCUNTHORPE
North Lincolnshire
DN15 6XQ

Author: Anita Greener
Date: 24th April 2009

Background Papers used in the preparation of this report: "Diversion of Public Footpath 256 Barnetby le Wold." File held electronically at Church Square House, Scunthorpe.

APPENDIX ONE



-  Existing Public Footpath
-  Proposed creation
-  Proposed closure

North Lincolnshire Council
 Highways and Planning Service
 Service Director,
 G Popple

Drawing Title: Proposed Diversion Public Footpath 256 Barnetby le Wold
Drawn by: AG
Date: 29/04/2008
Scale: 1:2,500
OS Grid Ref: TA06591029

Based upon the Ordnance Survey mapping with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown Copyright.
 Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.
NORTH LINCOLNSHIRE COUNCIL 100013349 2008

The Ordnance Survey map data included within this publication is provided by North Lincolnshire Council under license from Ordnance Survey in order to fulfill its public function to act as a highways and planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to license Ordnance Survey map data for their own use.

NORTH LINCOLNSHIRE COUNCIL
 Highways and Planning Service
 Service Director,
 G Popple

APPENDIX TWO

SCANNED

From:-
Mr C Lawler
!2, Sycamore Close
Barnetby-le-wold
North Lincolnshire
DN38 6FG Tel 01652 680231
23 Feb 09

replied
3/3/09

To:-
North Lincolnshire Council
Public Footpath 256 Barnetby Le Word 2009 (1)

I would like to object to the above proposal to divert the footpath on the grounds that the proposed route would be un-useable for most of the year due to the condition of the ground.

I use this footpath every day to travel between Barnetby-Le-Wold and New Barnetby and the new route would take the footpath through what can only be decribed as a 'bog'. The reason for this area holding water is that a few years ago the adjacent railway embankment suffered a landslip that blocked the railway line. To prevent this from happening again, Network Rail reinforced the embankment which has had the effect of 'damming' the area preventing rain water from soaking away from the field. The water now stays in the ground for many months of the year and seeps out of the ground were the new route of the footpath is proposed. Please see the enclosed picture's which shows the state of the ground and please note this not 'surface water' this water is coming out of the ground.

I am of the impression that if the footpath is diverted then it will be fenced in by the land owner to prevent trespass onto his land. If this happens then the only lawful route would be over this 'bog' and any adult will be knee deep in the soft ground, an animal will be chest deep, and a small child would be waist deep.

May I suggest that one of your officials visits this proposed route and carries out a 'risk assessment' to assess whether this new route can be used safely for all users all year round..

HIGHWAYS AND PLANNING
ENVIRONMENT TEAM

Mr. C Lawler
E-Mail address


chrisalaw@aol.com

No. DATE 3 FEB 2009

6 Pictures enclosed

Officer

Response
Required

Date
Responded

APPENDIX THREE

34 WOODLAND VIEW
BARNETBY-LE-WOLD
SOUTH HUMBERSIDE
DN38 6FE
Tel: 01652 6980243
13 March 2009

SERVICE DIRECTOR
HIGHWAYS AND PLANNING
NORTH LINCOLNSHIRE COUNCIL
CHURCHSQUARE HOUSE
PO Box 42
SCUNTHORPE
DN15 6XQ

Dear Sir

Ref Footpath 256: O/S ref TA06761035 to TA063710229

It is proposed to move the line of the above footpath from a direct line between the two above points to a line that follows the railway boundary.

I object to this alteration for the following reasons;

1. There is no obvious benefit to the users of the footpath for the alteration. The only discernable benefit is to the owners of the land who will then be able to fence off the remainder of the field to prevent walkers from accessing it.
2. The current line is passable in all weathers. The proposed line takes the path across an area of very boggy land where it appears that a spring emerges. This area is extensive and is away from the footpath's current line. The poor condition of the land remains at all times of the year, and is particularly impassable and unpleasant for long periods after rain. This effectively deprives walkers of free passage along the footpath, as even with, say, wellington boots it is difficult to transverse, causing damage to clothing and having potential for personal injury.
3. This spring appears in a further section of the path to the west of the proposed alteration approaching Barnetby, and the section is equally impassable all of the year. The result is that the fences adjoining the

path are broken down over time to gain access to the better ground in the adjacent fields so that walkers do not have to struggle through the poor ground.

4. The police appear to have no interest in dealing with this criminal damage, and it is likely that the same damage will occur along the new line of the path way if the adjoining land is fenced. This sort of disorder causes problems elsewhere including for myself personally where my fences are broken down when people trespass on my land. If the owners do not intend to fence the land, then there does not seem to be any benefit in altering the line of the footpath.

I suggest that the officers of the council walk the proposed line and see for themselves how bad the problem is.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Martin Breakspear', written in dark ink.

Martin Breakspear

APPENDIX FOUR

SCANNED

from Alan Kind
45 The Fairway
Gosforth
Newcastle upon Tyne
NE3 5AQ

tel 0191 2364086
e-mail mondard@mac.com

Service Director: Highways
North Lincolnshire Council
Church Square House
PO Box 42
Scunthorpe
DN15 6XQ

16 February 2009

replied
3/3/09

Dear Sir,

Proposed addition of footpath 256 Barnetby le Wold.

Reference your order of 30 January 2009, I object on the ground that the width of the path to be added is not properly specified.

The order states that the route has a 'variable width of between two and six metres ...', but the order plan does not in any way represent which parts are two metres wide, which parts are six metres wide, and which parts are somewhere inbetween.

The 'non-statutory guidance' accompanying defra's advice note 16 explains how an order plan may properly depict such a variable width.

Yours faithfully,

Alan Kind



**HIGHWAYS AND PLANNING
ENVIRONMENT TEAM**

No. ¹⁵²⁶⁷ DATE 17 FEB 2009

Order	Response Required	Date Responded
AG	3/3/09.	

COMPANY ACCOUNTS LIMITED

Finance Company

Licence No. 589463

Tel: 01482 640847

SCANNED

Registered Office:

178 Hull Road
Hessle
East Yorkshire
HU13 9NH

Directors: P.Piccos, S.R.Fowler

Registered in England No. 3054282

APPENDIX FIVE

Mrs Anita Greener
Public Rights of Way Officer
Environment Team
North Lincolnshire Council
Church Square House
P O Box 42
SCUNTHORPE
North Lincolnshire
DN15 6XQ

reply -
3/3/09.

24 February 2009

Dear Mrs Greener

Public Footpath 256 Barnetby le Wold
Order 2009 (1)

Further to our meeting at the site yesterday, I was extremely disappointed and surprised at the state of the land. It was self-evident that it was impractical to move the footpath to the new position, because of the boggy state of the land.

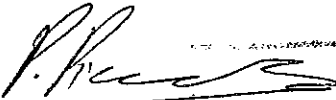
I therefore formally object to the proposal to divert the path, on the grounds of:

- a. The state of the land along parts of the proposed footpath, which would be unfair to the general public using the path.
- b. I cannot consent to the footpath being up to 6 metres wide, as it would remove free use of a large area of our land, which is unreasonable.

I therefore cannot give our consent to the order and ask that it be withdrawn.

Thanking you for your kind assistance and guidance in this matter.

Yours sincerely



P Piccos
COMPANY ACCOUNTS LIMITED

HIGHWAYS AND PLANNING
ENVIRONMENT TEAM

No. 15273
DATE 25 FEB 2009

Officer	Response Required	Date Responded
AG	11/4/09	