

**The Openness of Local Government Bodies Regulations 2014** require that officers keep a written record of decisions which are made, either:

- a) under a specific express authorisation or
- b) under general delegated authority, where the effect of the decision is to
  - i) grant permission or licence;
  - ii) affect the rights of an individual; or
  - iii) award a contract or incur expenditure which, in either case, materially affects the Authority's financial position (£50,000 or over).

Lead Director	Steve Ratcliffe, Director of Sustainable Development	
Subject of Decision	<b>Diversion of Footpath 577022 at Fallen Yew, Underbarrow &amp; Bradleyfield Parish</b>	
Relevant section of Scheme of Delegation	<b>PART 4 - DELEGATION OF FUNCTIONS TO OFFICERS</b> <b>ANNEX 4 - Functions delegated to Head of Strategy &amp; Ranger Service and sub-delegated to Ranger Team Leader Meeting.</b> <b>Rights of Way and Access Matters</b> All functions of the Authority under the Highway Acts (whether acting pursuant to its own functions or in pursuance of functions delegated to it by Cumbria County Council) except for the making and confirmation of Definitive Map Modification Orders (Wildlife and Countryside Act 1981) and the decision to refer to the Planning Inspectorate of the confirmation of any orders under the Highway Acts where formal substantive representations have been made. "Substantive representations" are those which explain adequately the nature of the concerns and meet the legal considerations defined by the Highways Acts and the Planning Acts.	
Background	Extensive redevelopment of the properties at Fallen Yew (creating dwellings where there were previously farm buildings) has included the straightening of the main access track, which carried a public footpath. The old access track has also been built over. A diversion of the footpath is suggested to regularise the situation.	
Details of Decision	Recommendation that we make a diversion order for Public Footpath 577022 at Fallen Yew, Underbarrow & Bradleyfield. That we confirm the Order if no objections are received, or we send the Order to the Planning Inspectorate if objections are received.	
Details of alternative options considered and rejected.	The alternative is to not make the Order and re-open the definitive line. This is not hugely practicable, and is probably not the best solution for the users of the footpath anyway.	
Where a decision is made under an express authorisation, names of any Member(s) who have declared a conflict of interest	None	
Author and contact details of report	Nick Thorne, Senior Rights of Way Officer	
Background Papers	Case file: 1412.577.08	
Date of Report	1 July 2025	
Authorising officer	Ranger Team Leader Meeting	
Date	07 July 2025	

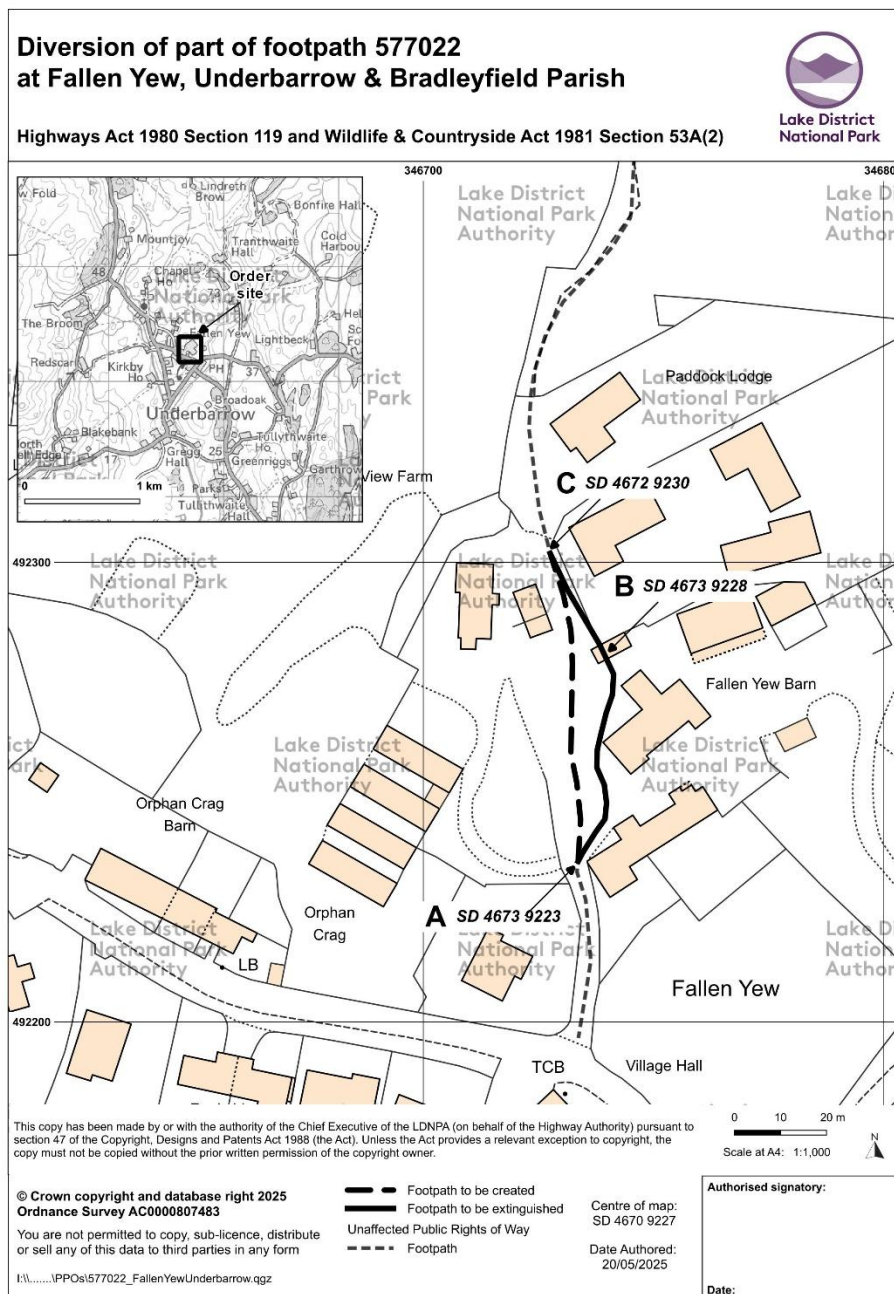
## Diversion of Footpath 577022 at Fallen Yew, Underbarrow & Bradleyfield Parish

### 1 Summary

- 1.1 A Diversion Order is proposed to move the legal line of this footpath from the old access track, which no longer exists on the ground and has been built over, onto the current access track.

**Recommendation that:**

- a we make a Diversion Order for Public Footpath 577022 replacing A-B-C with A-C as shown on the map below.**
- b we confirm the Order if no objections are received or if those objections received are withdrawn. If objections are received, we forward the Order to the Secretary of State and seek confirmation.**



Map of proposed diversion

## 1 Background

- 1.1 Over the years there has been a lot of changes at Fallen Yew in Underbarrow. The farm grew over many years, and sometime prior to 2003 chicken sheds were built on the original line of this footpath, which had previously passed through a field. The path was diverted in 2003 so that it followed the then access track, which wiggled its way through the farm buildings and exited to the north into a field.
- 1.2 Over the last five years or so, the farm has ceased to exist, and the chicken sheds have been largely demolished – dwellings have been built in their place. The old barn immediately alongside the old track has also been demolished and rebuilt on seemingly the same footings, or very similar footings.
- 1.3 To provide a straighter and more navigable access road to the new dwellings, the 2003 track was straightened and widened. Following this, a planning application was received for a logstore, and unfortunately, the application site was moved mid-process at the LDNPA's request – and the new logstore was built over what had been the old (2003) access track. This was not picked up by our planners, who assumed that the footpath followed the new track – so the result was that the definitive line as diverted in 2003 was built over.
- 1.4 Following research into the exact alignments and positioning of the path and buildings (Annex 2), and prolonged discussions and negotiations with the two landowners concerned (the 2003 track and the current track are on different landholdings), and with our planners, it was agreed that the most expedient solution was to divert the line of the footpath so that it follows the current access track.



In basic terms, the proposal is to move the path from the red line to the green line.

## 2 Policy Context

- 2.1. The Vision for the Lake District National Park sets out our aspirations for what we hope to achieve by 2030. To summarise: these are to have a landscape which provides an irreplaceable source of inspiration, whose benefits to people and wildlife are valued and improved; a landscape whose natural and cultural resources are assets to be managed and used wisely for future generations.
- 2.2. The Partnership's Plan contains the policies and actions for achieving the aims of the Vision. The main delivery aim in the Partnership's Plan for access and rights of way is to make the most of the landscape and nature as the backdrop for outdoor leisure experiences for all, particularly the next generation of returning visitors, from relaxing and tranquil, to adventurous and exhilarating.
- 2.3. Our Business Plan states what actions will be taken as the National Park Authority plays its part, in partnership with others, in realising the Vision. The core Access & Recreation Action is to deliver the 'improve, maintain, promote and integrate elements' of the 'Out there' Strategy to deliver infrastructure and services which focus on serving under-represented groups (as identified by the 'Lake District for Everyone' Key Outcome Group).
- 2.4. The Strategy & Rangers Service Plan contains the priorities for our service, including Contributing to World Class Visitor Experiences. This aims to achieve a programme of activity that will implement the adopted Cumbria and the Lake District Access and Recreation Strategy.
- 2.5. 'Out There', our Access and Recreation Strategy (approved March 2023), contains our vision for countryside access and recreation in the Lake District, which is: A well connected network fit for purpose in the 21st Century with high quality infrastructure, facilities and services meeting the needs of all visitors and residents. We have identified four priority themes of work, and under each of these are a series of strategic actions that will contribute to the achievement of our goal and our strategic aims. The four priority themes are:
  - Improve: rights of way and countryside access.
  - Manage and maintain: rights of way, countryside access and recreational activities.
  - Promote and engage: connect more people to nature and the special qualities of the Lake District.
  - Integrate: with health and wellbeing, sustainable transport and the economy.
- 2.6. Factors to take into account when determining changes to the network were agreed at Park Management Committee in May 1997 ("Changing the Rights of Way Network: Statement of Policy"), and are listed at Annex 4.

## 4 Demonstrating Best Value

- 4.1 Work Programme and Relevance to This Case: we have identified this case as being relatively high priority as it resolves an issue partly caused by us, and also prevents potential neighbourly conflicts.

The recommendation delivers value for money in the following ways

- a) The **challenge** is for us to achieve our policies without significant financial or staff implications. The proposed diversion is a speedy and pragmatic method of resolving a number of issues in that area.
- b) Processing public path orders is not a **competitive** procedure. Westmorland & Furness Council can also process orders, but we are more closely connected with the day-to-day management of the network and so can act more effectively.
- c) We have **consulted** user bodies, the Local Access Forum, and other interested parties as part of the process, their responses and our comments are below.
- d) We have **compared** our casework completion rates with other authorities, and are roughly comparable with other authorities doing this sort of work with similar levels of resources.

## 5. Options

- a: Make the recommended Diversion Order
- b: Do not make the Diversion Order and re-open the definitive line

## 6. Proposals

- 6.1. I recommend option 5.1a. Not making an Order would cause the demolition of a logstore that we have given planning permission for, and would also mean walkers would have to follow a rather illogical route, rather than an obvious and easy track.

## 7. Grounds and Tests for Diversion

- 7.1. The grounds and tests for a Diversion are slightly different at the making and confirmation stage. However, as we have discretion as to whether to make an order in the first place, it would be unwise to ignore something that could prevent an order from being confirmed. Therefore, the issue should be considered in the whole, and the factors to take into account are set out and discussed below. These factors incorporate our own policies on changes to the rights of way network which are set out in annex 1.
- 7.2. There are only two grounds for a Diversion of a right of way (section 119, Highways Act 1980), namely where it appears to the Authority that it is expedient to do so:
- a) in the interests of the owner, lessee or occupier of the land crossed by the path,  
OR
  - b) in the interests of the public.
- 7.3. I consider that it is expedient in the interests of both the landowner over which the current definitive line runs, and in the interests of the public that we divert this footpath.

## 8. Tests to be Considered – Diversion Order

8.1. These are:

- Will the new path be substantially less convenient to the public?
- The effect which the Diversion would have on public enjoyment of the path or way as a whole;
- The effect the order would have as respects other land served by the existing right of way;
- The effect of the new right of way on land over which the new path is created.
- That termination of the alternative footpath is on the same or a connected highway, and is substantially as convenient to the public.

8.2. *Will the new path be substantially less convenient to the public?*

8.2.1. The proposed route is very slightly shorter, is more direct, and is easier to follow. I therefore consider it is more convenient than the definitive line.

8.3. *What is the effect of the diversion on public enjoyment of the path or way as a whole?*

8.3.1. The proposal will not impact upon enjoyment of the path as a whole. If anything it could be said to be a benefit as it enables walkers to pass through developed areas more quickly without having to try and work out where a wiggling route runs.

8.4. *Would the order affect other land served by the existing right of way?*

8.4.1. The new route runs over an access track to the new dwellings. So, it could be argued that those driving up and down to their houses may be slightly affected by sharing their rights of access with a footpath. But given that it is only a few houses and a lightly used footpath – this impact is exiguous; especially as the undiverted route partly runs along the same track anyway.

8.5. *Is there any effect of the new right of way on land over which it is created?*

8.5.1. The new route runs over land in different ownership (owner B) to that of the definitive line (owner A). However, it has also been constructed by owner A to be the main access track to new dwellings being sold by owner B. And therefore there will be constant usage of the track whether it carries a footpath or not. Owner B has accepted the diversion of the footpath, and compensation has been negotiated between the owners – which we are not party to, or involved with.

8.6. *Is the termination of the alternative footpath on the same or a connected highway, and is it as substantially as convenient to the public?*

8.6.1. The diversion is 'mid-path' and therefore the termination points are unaffected.

## 9. Other Considerations Required by Legislation

### 9.1. *Rights of Way Improvement Plan*

9.1.1. Before confirming a Public Path Creation or Diversion Order we are required to have regard to any material provision of a Rights of Way Improvement Plan (RoWIP). No RoWIP formally exists now for Westmorland & Furness, so we are effectively considering our own Access & Recreation Strategy to be the LDNPA's RoW improvement plan.

[https://www.lakedistrict.gov.uk/data/assets/pdf\\_file/0023/59270/Out-there-Access-and-Recreation-Strategy-2023-final.pdf](https://www.lakedistrict.gov.uk/data/assets/pdf_file/0023/59270/Out-there-Access-and-Recreation-Strategy-2023-final.pdf)

9.1.2. The proposals meet the general aims within the Access & Recreation Strategy, in particular the making of orders to reflect current demand/usage and to suit modern needs (page 12).

9.2. Limited Mobility - We have a duty to audit the proposals with regard to limited mobility. The proposed route is a relatively flat vehicular access track and suitable for many.

9.3. Impact on the needs of agriculture and forestry – an assessment is required under schedule 6, of the Countryside & Rights of Way Act 2000. There is no identifiable impact – the land is now a residential access track.

9.4. We consider landscape impact, biodiversity and archaeological interests and have to conserve biodiversity under the Natural Environment and Rural Communities Act 2006. And under Section 11 of the Countryside Act 1968 we have to have regard to the conservation of flora, fauna, and geological and physiographical features and the amenity of the countryside. The proposals do not appear to have any effects on these aspects.

## 10. Stakeholder Consultation

We have consulted our usual consultees and responses were received from the following stakeholders:

Name of Stakeholder	Consultation Response
Open Spaces Society	The OSS are grateful for this consultation and have previously walked this path. Despite noting that the issue of the erected bin store may have been one which the planners could have picked upon earlier we note the benefits of the proposed diversion which has our support.
Ramblers	Thank you for this information. It makes sense to divert FP 577022 along the alignment AC as it is more direct. I would certainly support this.
Local Access Forum	The diversion to the path is very minor as the route passes through a development in an area of old farm buildings and creates no inconvenience or loss of amenity to users. Approved by the LAF.
Westmorland & Furness Council – Countryside Access Team	In most circumstances I would not view a diversion where the existing route is obstructed by the landowner as in the interest of the public and would not expect the authority to pay any of the costs of processing the order. Nevertheless, I have no objections to this proposed diversion.

Westmorland & Furness Councillor	This makes sense to me.
Utility Companies	No assets affected.

## 11 Finance Considerations

11.1 Our charging policy is below.

**For orders under the Highways Act 1980 that are wholly or partly in the public interest, the charges may be negotiable according to the extent to which the public will benefit from the proposal in relation to the benefit derived by the applicant – SEE BELOW.**

- **The total cost of a diversion is the sum of the costs involved in administration, advertising and works on the ground.**
  - **The exact amount to be waived will depend on the circumstances of each case, and will be negotiated with the landowner(s).**
1. Where an order is predominantly or wholly in the interests of the public, up to 100% of the total cost will be waived.
  2. Where an order is partly in the landowner's interest, and partly in the public interest, up to 75% of the total cost will be waived. The higher the level of public interest, the greater the percentage that will be waived.
  3. Where an order is predominantly in the interests of the landowner, but would result in some small public benefit then up to 25% of the total cost may be waived.
  4. Where an order is wholly in the interests of the landowner - none of the total cost will be waived.

11.2 The standard costs for this diversion are £3,150 (mostly staff time), and two adverts in the Westmorland Gazette costing around £250+VAT each. In this instance, the diversion is a mix of landowner and public benefit. The landowner is probably gaining more than the public, so it would fit into category 3, or possibly category 2 – probably somewhere in between.

11.3 However, the circumstances are unusual here, in that the original planning application placed the logstore to the east of Point B, and not impacting upon the path at all – so our Rights of Way staff raised no issues. Our Planners then informed the applicant that they would prefer a different location because of 'massing' issues, and an amendment to the permission was then sought. Unfortunately this amendment was not consulted upon with the Rights of Way staff, and when the Planner visited the site – they incorrectly assumed that the legal line of the footpath was the new access track. They therefore approved the building of the logstore – which then was constructed across the definitive line of the footpath – thereby obstructing it.

11.4 It is very much the case that we have contributed to this issue, and therefore I consider it appropriate that we waive the costs of our time in resolving it. Our Planning Team have agreed to meet the costs of the adverts in the paper.

11.5 Compensation is payable when paths move from one landholding to another – and this has been agreed separately between the two owners – and we will not be involved in any payments of this nature.

**12 Risk**

12.1 There is a risk that the Diversion Order could be objected to – although I consider this to be extremely low, as it is a very logical proposal and we have received no negative feedback in our consultations.

**13 Legal Considerations**

13.1 The Diversion Order will be made under s119 of the Highways Act 1980 - we are able to make orders under these sections by virtue of Schedule 9, paragraph 11 of the Environment Act 1995. The modification element will be made under section 53A(2) of the Wildlife & Countryside Act 1981, and we have powers to make such orders through our Agency Agreement with Westmorland & Furness Council. The action strikes a reasonable balance between private and public rights.

**14 Human Resources**

14.1 The legal work involved in these orders is usually around 60 hours from members of the Ranger teams, and one hour from a member of Legal Services. Although we have probably spent that amount of time already as well – researching the history of the path to work out precisely where the 2003 access track ran. And in negotiating the change with the landowners. The remaining work is probably only around 20 hours.

**15 Diversity Implications**

15.1 I have not identified any significant diversity issues.

**16 Sustainability**

16.1 I have not identified any significant environmental, economic or social issues.

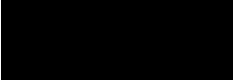
**17 Summary**

17.1 The proposal will benefit one landowner and the public, and the second landowner will receive agreed compensation. All of those who responded to the consultation are in agreement with the proposals.

17.2 I recommend that we make the necessary Diversion Order to bring this into effect.

<b>Background Papers:</b>	Case file reference 1412.577.08
<b>Author/Post:</b>	Nick Thorne, Senior Rights of Way Officer
<b>Responsible Director:</b>	Stephen Ratcliffe, Sustainable Development
<b>Date Written:</b>	1 July 2025

Authorised by:

...  ..

Ranger Team Leaders' Meeting

Date...07July 2025.....

## **Annex 1**

### **Our Policies on Changes to the Public Path Network**

Policies on changing the public path network have been developed and approved by the Authority. These are listed below, and reference is made to them, where appropriate, in the later annexes.

- There will be a presumption in favour of preserving the historical integrity of the network.
- The concerns of those managing land, especially for agriculture and forestry, will be recognised where legitimate operations may affect the public's enjoyment of or safety in using a public right of way. Under schedule 6 of the Countryside & Rights of Way Act 2000, we also have to look at the impact of all changes on agriculture and forestry.
- There will be a presumption against re-alignment of cross-field paths onto routes following field edge boundaries.
- There will be a presumption against any reduction in the amount of public access in the National Park.
- Where the route in use at present differs from the definitive line, there will be a presumption in favour of restoring the original route before considering a legal diversion.
- The future maintenance and management implications of any proposed change to the network will be considered.
- Changes should, if possible enhance public benefit through enabling the better enjoyment of the cultural landscape and nature conservation interest and should not reduce the ability of the public to discover any of the special qualities / features of the National Park.

## Annex 2

### Research / Investigations as to definitive line and relationship to tracks/buildings

#### FALLEN YEW – PUBLIC FOOTPATH 577022 DEFINITIVE LINE - MARCH 2024 – updated Jan 2025

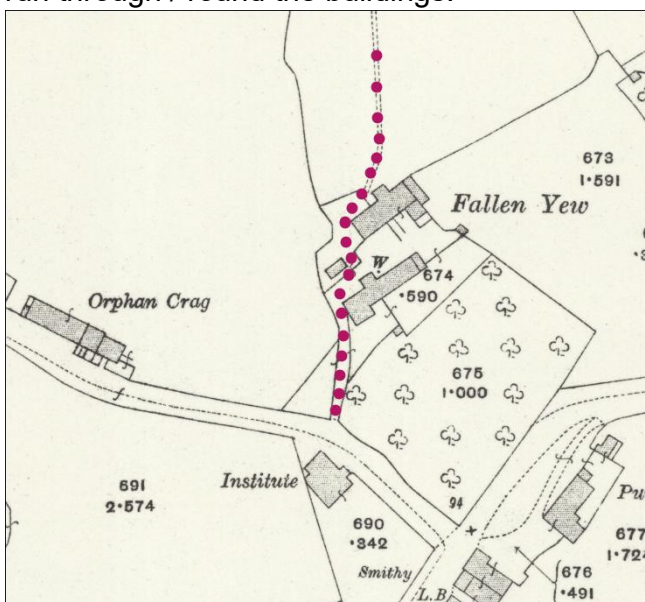


#### Original Definitive Line of Footpath 577022

As shown on the Cumbria County Definitive Map – relevant date 1 January 1976.  
Map base 1:10,560.

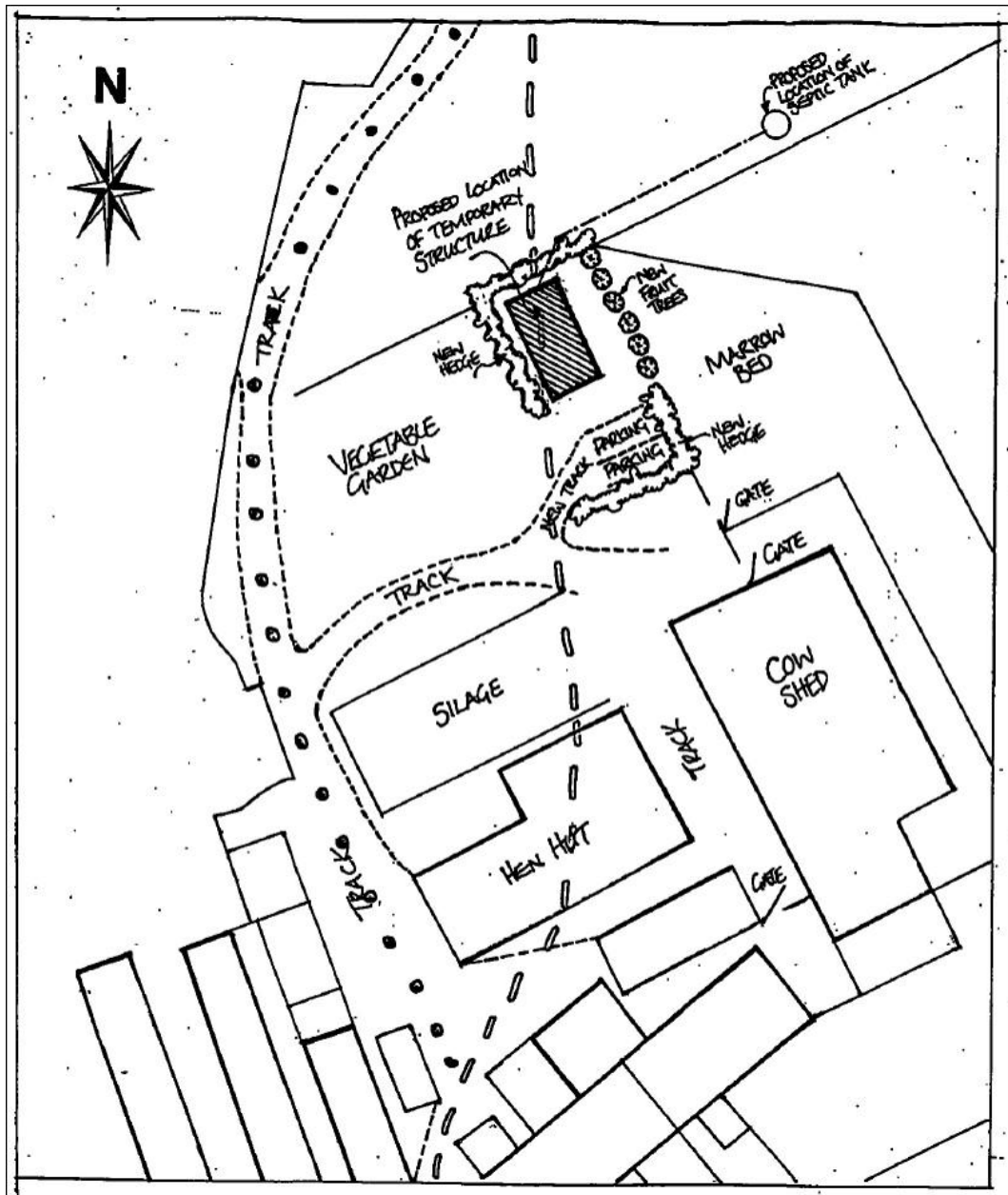


It is generally necessary to use larger scale mapping to determine the precise alignment and the layout of buildings – as the black dashes on a 1:10,560 scale map effectively cover a width of around 10 metres. On the OS 1:2,500 map – red dots show how path must have run through / round the buildings.



### Diversion Order 2003

The path was diverted at Fallen Yew in 2003 – as the definitive line had been built over. This was a schematic map of what was on site at that time.



The request for the diversion was to put the footpath onto the track that ran through the site at that time, as can be seen by the consultation letter.

**The proposed route follows a surfaced track in good condition, running through the yard. This path provides an easy to follow line around the farm buildings for members of the public, rejoining the definitive line to the north of the farm.**

**It is considered by this Authority that it may be expedient to promote a diversion order as shown on the attached plan to resolve this issue. Before any decision is taken on this matter by the Head of Park Management, I would be grateful for your views on this proposal so that your comments can be taken into consideration.**

**A response by the middle of February 2003 would be much appreciated.**

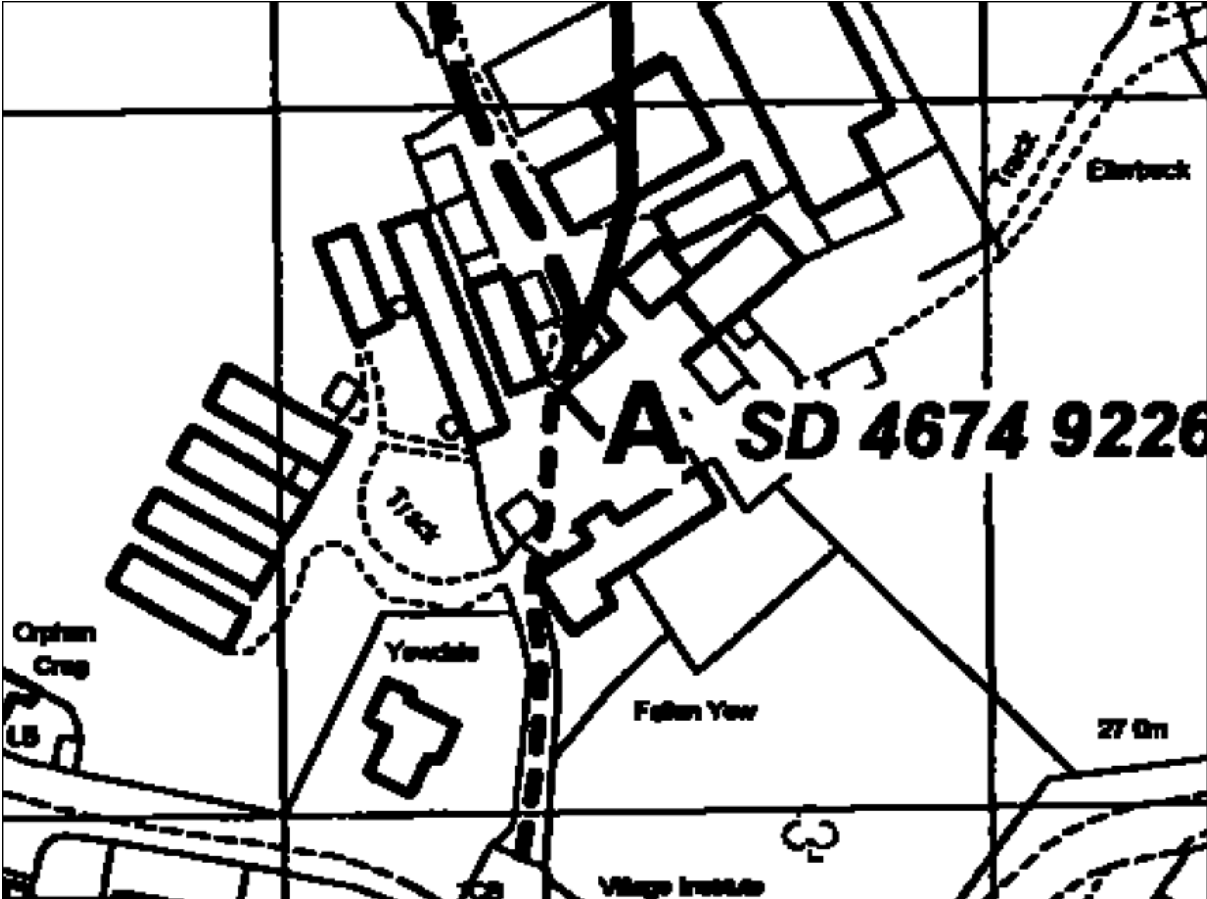
**Yours faithfully**

The Diversion Order itself described the route as 'following the track'. The minimum width was just that – a minimum. The maximum width would have been the width of the track unless there was any constraining features.

#### PART 2

<b>Section of footpath as indicated on plan</b>	<b>Description of site of new footpath</b>	<b>Minimum width</b>
<b>Marked with bold black dashes and shown A-B</b>	<b>A new section of footpath 577022 commencing at grid reference SD 4674 9226 (Point A) proceeding generally northwards, following the track around the farm buildings, slightly west of the existing footpath for approximately 119 metres to grid reference SD 4674 9237 (Point B).</b>	<b>1.8 metres</b>

The Diversion Order plan also shows the 'new' definitive line as following the track.



The track in 2003 was as shown on the aerial photos at the time

**1995**



*"You are permitted to use the aerial photographs within this document solely to enable you to respond to, or interact with, the Lake District National Park Authority on this matter. You are not permitted to copy, sub-license, distribute or sell any of this data to third parties in any form.": Aerial photography © Bluesky International Ltd and Getmapping Plc [1995].*

2004



*'You are permitted to use the aerial photographs within this document solely to enable you to respond to, or interact with, the Lake District National Park Authority on this matter. You are not permitted to copy, sub-license, distribute or sell any of this data to third parties in any form.'* Aerial photography © Bluesky International Ltd and Getmapping Plc [2004].

2009



*'You are permitted to use the aerial photographs within this document solely to enable you to respond to, or interact with, the Lake District National Park Authority on this matter. You are not permitted to copy, sub-license, distribute or sell any of this data to third parties in any form.'* Aerial photography © Bluesky International Ltd and Getmapping Plc [2009].



2022



*'You are permitted to use the aerial photographs within this document solely to enable you to respond to, or interact with, the Lake District National Park Authority on this matter. You are not permitted to copy, sub-license, distribute or sell any of this data to third parties in any form.'* Aerial photography © Bluesky International Ltd and Getmapping Plc [2022].

The most recent aerial photograph – with the same lines shown. This doesn't yet show the log store or the new dwellings to the north.

Therefore, logic dictates that:

- The original definitive line followed a track between / around the few buildings that were there, and then followed the footpath shown on early edition Ordnance Survey maps within the fields.
- When the land was developed, the footpath in the old fields was obstructed.
- The owner sought and was granted a diversion order in 2003 to resolve this.
- The route for the new footpath (the new definitive line) was along the track that existed through the farm at that time. This track is clearly shown on all aerial photographs between 1995 and 2014.
- This track now no longer exists, and a new track has been created to the west.
- The definitive line has not been diverted onto this track – so remains where it was, which is on the alignment of the old track.

**Nick Thorne**

Senior Rights of Way Officer  
Lake District National Park Authority  
01539 792621

**UPDATE – JANUARY 2025**

The Ordnance Survey updated their base mapping on 28 November 2024. They add new data through a combination of satellite imagery, aerial photos, ground surveys and local authority data.

To check the maps we have shown the georeferenced aerial photograph from 2009 – the purple line ran along the then existing track – which carried the diverted public footpath. The purple line is the definitive line of the footpath as from the analysis and assessments made in March 2024.



*'You are permitted to use the aerial photographs within this document solely to enable you to respond to, or interact with, the Lake District National Park Authority on this matter. You are not permitted to copy, sub-license, distribute or sell any of this data to third parties in any form.'*: Aerial photography © Bluesky International Ltd and Getmapping Plc [2009].

The new base map clearly shows the new logstore in relation to the other buildings, and shows the new dwellings to the north.

The purple line is where we concluded that the definitive line ran from the analysis and assessments made in March 2024, and is the same purple line as on the aerial photograph from 2009.



To triple check, we have made the layers slightly transparent. It could not be clearer that the logstore occupies the whole of the 2009 track. Consequently there can be no argument that a) the footpath line on our maps is incorrect, or b) the line of the footpath somehow passes by the logstore.

The logstore has been built over the line of the track that carried the footpath. The legal line of the footpath is therefore fully obstructed.



*'You are permitted to use the aerial photographs within this document solely to enable you to respond to, or interact with, the Lake District National Park Authority on this matter. You are not permitted to copy, sub-license, distribute or sell any of this data to third parties in any form.'* Aerial photography © Bluesky International Ltd and Getmapping Plc [2009].

The final overlay is the 'cadastral parcels' – which are the land registry parcels. These clearly show that the edge of the land parcel correlates with the edge of the logstore (there is a very slight transpositional drift, but the effect is quite clear). This means that there is no room within this land parcel to divert the footpath around the logstore. Any diversion will mean that the footpath will have to be moved into a different land parcel – which is one owned by the neighbouring property.

