

Agenda Item No. 5(e)

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

10 September 2018

Report of the Strategic Director – Economy, Transport and Environment

PROPOSED CREATION OF PUBLIC FOOTPATH BETWEEN CLEVELAND AVENUE AND PUBLIC FOOTPATH NO.59 – PARISH OF LONG EATON

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Public Path Creation Order for the creation of a Public Footpath between Cleveland Avenue and Public Footpath No.59 in the Long Eaton, in the interests of the public.

(2) **Information and Analysis** The County Council has been made aware of a section of footpath that is not recorded on the Definitive Map and Statement for Derbyshire between Cleveland Avenue and Public Footpath No.59 in the Parish of Long Eaton.

The footpath is not publicly maintainable and the land over which it crosses is unregistered; none of the adjacent landowners came forward to claim an interest in the land when consulted.

To protect the public's right to use the path and ensure that there is provision for proper maintenance should any issues arise, it is proposed that the route be formally recognised as a Public Footpath. It is considered that the most expedient way of doing this is to make a Creation Order under Section 26 of the Highways Act 1980.

The effect of the Order would be to create a Public Footpath of approximately 32 metres in length between Cleveland Avenue and Public Footpath No.59, shown as a bold dashed line between points **A-B** on the plan (ref. TE/CH/X3468/Cttee/2018). The path has a tarmacadam surface with a recorded width varying between 1.5 metres and 2.7 metres, as shown shaded in grey on the plan.

No objections were received to the proposed creation when informal consultation was carried out on 20 June 2018. The Local Member, Councillor Alan Griffiths, received no negative comments regarding the proposal, and noted that local residents seem 'quite happy' with it. Erewash Borough Council was consulted and offered no objections to the proposal.

Erewash Ramblers strongly support the addition of the path to the Definitive Map and Statement for Derbyshire.

(3) **Financial Considerations** It is proposed that Derbyshire County Council should defray all of the costs in respect of making and advertising the Creation Order, estimated to be in the region of £1,000 which will be covered by the Rights of Way Revenue budget.

The route is already constructed and in a state of good repair and therefore no immediate maintenance costs are anticipated in order to bring the path into a suitable condition for public use.

The route would need to be signed should the Order come into effect. One footpath sign would be required and could be attached to an adjacent lighting column, the approximate cost of this being £57.

All associated costs would be met by the Rights of Way Revenue Budget.

(4) **Legal Considerations** The Creation Order can be promoted by the County Council under Section 26 of the Highways Act 1980 provided that it is satisfied that:

- (1) Where it appears to a local authority that there is need for a footpath or bridleway over land in their area and they are satisfied that, having regard to:
 - (a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
 - (b) the effect to which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in Section 28 below.

If it is determined to be expedient that the path or way be created, the authority may by order made by them and submitted and confirmed by the Secretary of State, or confirmed by them as an unopposed order, create a footpath or bridleway over the land.

- (3) A local authority shall, before exercising any power under this section, consult any other local authority or authorities in whose area the land concerned is situated.

Section 36 would make this footpath maintainable at public expense:

- (2) Without prejudice to any other enactment (whether contained in this Act or not) whereby a highway may become for the purposes of this Act a highway maintainable at the public expense, and subject to this section and section 232(7) below, and to any order of a magistrates' court under section 47 below, the following highways (not falling within subsection (1) above) shall for the purposes of this Act be highways maintainable at the public expense-

(d) a highway, being a footpath or bridleway, created in consequence of a public path creation order or a public path diversion order in consequence of an order made by the Minister of Transport or the Secretary of State under section 247 of the Town and Country Planning Act 1990 or by a competent authority under section 257 of that Act, or dedicated in pursuance of a public path creation agreement.

Research has concluded that it is expedient to make the necessary Order because:

The extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area

The footpath links Cleveland Avenue to Public Footpath No.59, which then continues to the County Boundary with Nottinghamshire and on to playing fields and Carrfield Avenue, Toton. This is a convenient pedestrian route between Long Eaton and Toton, and the creation of the footpath would remove the 'gap' between highways which currently exists.

The effect which the creation of the path or way would have on the rights of persons interested in the land

A Land Registry search has been conducted by the County Council. This shows the land over which the path crosses to be unregistered. The owners of the adjacent properties have been consulted and have not come forward to claim the land, or to offer any information regarding its ownership.

It does not appear that the proposed right of way would interfere with any private rights of access.

(5) **Environmental and Health Considerations** Consideration has been given to the County Council's Rights of Way Improvement Plan in considering this application and preparing this report.

(6) **Property Considerations** As stated above, the land over which the proposed path runs was shown to be unregistered when a Land Registry search was conducted. No adjacent landowner has come forward to claim the path as within their ownership. As the path is already constructed to a footpath standard with a tarmac surface, the creation of a Public Footpath over the route should have no effect on the adjacent properties.

Other Considerations

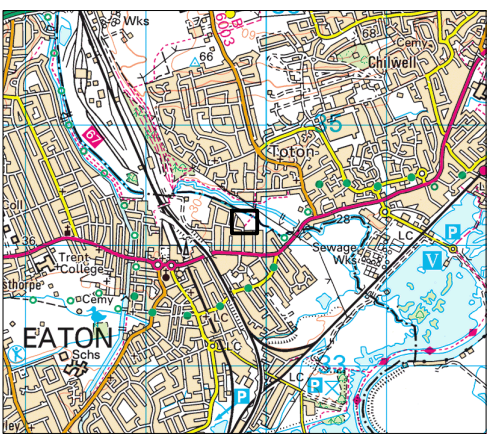
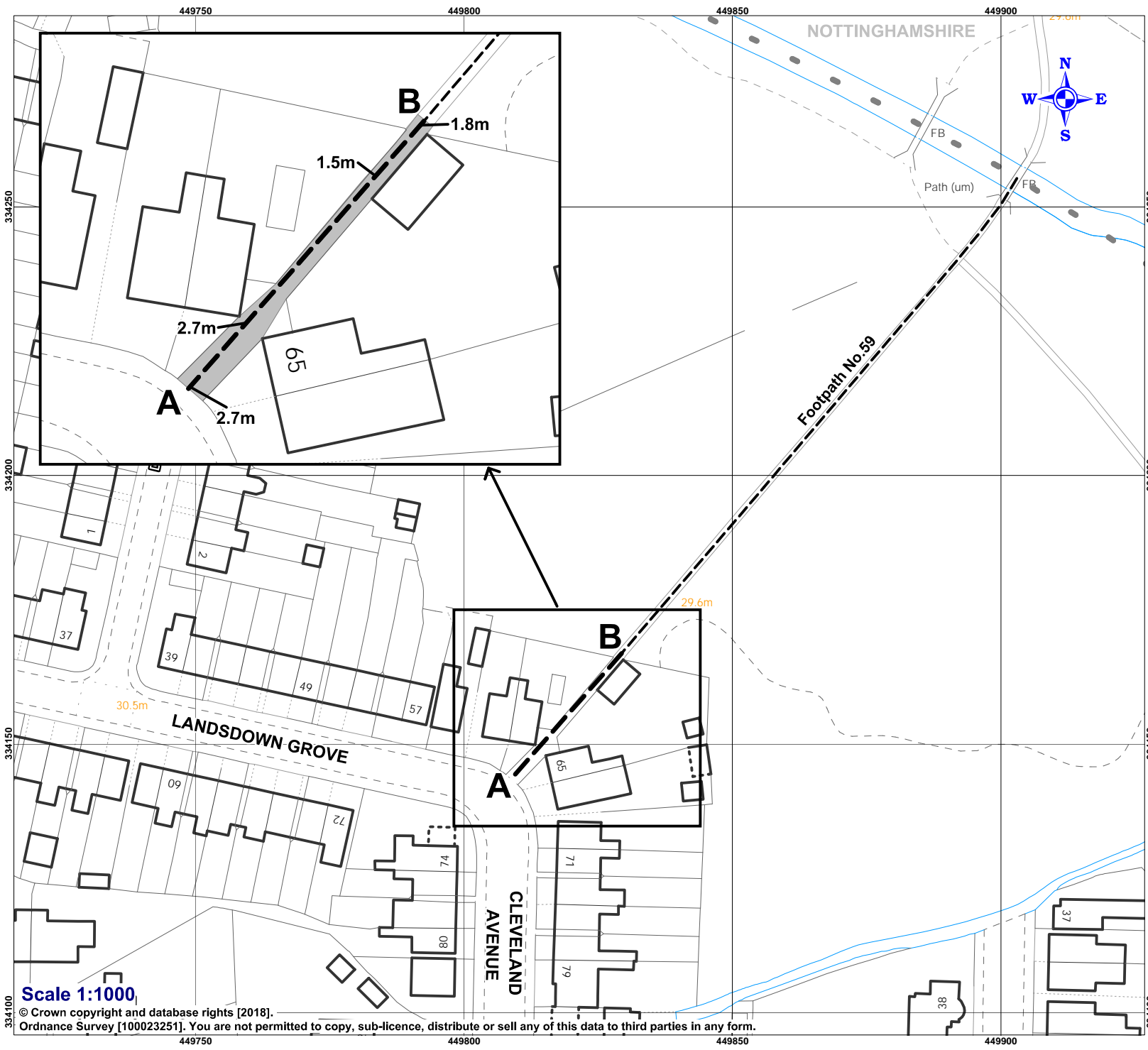
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, social value and transport considerations.

(7) **Background Papers** Held on file within of the Economy, Transport and Environment Department. Officer contact details - Corinne Hudson, extension 39660.

(8) **OFFICER'S RECOMMENDATIONS** That:

- 8.1 The Director of Legal Services be authorised to make the necessary Creation Order to create a Public Footpath from Cleveland Avenue to Public Footpath No. 59 in the Parish of Long Eaton, under Section 26 of the Highways Act 1980.
- 8.2 Should objections be received to the making of the Order that cannot be resolved, then the matter be forwarded to the Secretary of State for determination.

Mike Ashworth
Strategic Director – Economy, Transport and Environment



Highways Act 1980 Section 26

**Proposed Creation of Footpath
between Cleveland Avenue
and Public Footpath No. 59
- Long Eaton**

Key:

- Path to be created - - - - -
- Existing Footpath - - - - -
- County boundary - - - - -

Ref: TE/CH/X3468/Cttee/2018
Date: 26 July 2018



Mike Ashworth
Strategic Director
Economy, Transport & Environment
Derbyshire County Council
Shand House
Dale Road South
Matlock
DE4 3RY

Scale 1:1000

© Crown copyright and database rights [2018].
Ordnance Survey [100023251]. You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form.