

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

10 September 2018

Report of the Strategic Director – Economy, Transport and Environment

PROPOSED DIVERSION OF PUBLIC FOOTPATH NO. 9 (PART) – PARISH OF HARTSHORNE

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Public Path Diversion Order for the permanent diversion of Public Footpath No. 9 (part) in the Parish of Hartshorne, in the interests of the landowner.

(2) **Information and Analysis** The County Council has been made aware of the need to permanently divert part of Public Footpath No. 9 in the interests of the landowner. The path currently blights residential properties on an alignment which was incorrectly recorded. The current alignment of the footpath came about when the Definitive Map for South Derbyshire was published in 1987, and a discrepancy was created due to the change in scale of mapping which changed from 1:25000 to 1:10000. The line of the path is now inaccurately recorded and inconsistent with the path available on the ground. The Council is seeking to process this under Section 119 of the Highways Act 1980 to provide a timely and efficient solution to this matter.

The effect of the Diversion Order would be to divert approximately 142 metres of that part of Public Footpath No. 9 shown as a bold solid line between points **A-B** on the attached plan (ref. TE/CH/X4139/Cttee/2018), to a line shown as a bold broken line between points **B-C-D-E**. The alternative route has a width of 1.8 metres and a stone and natural ground surface, and would be approximately 149 metres in length.

Limitations on the alternative route include a gap of 1.3 metres at Point **D** and a stile at Point **C** are to be retained.

No objections were received to the proposed diversion when informal consultation was carried out on 23 May 2018. Councillor Linda Chilton, the Local Member, Hartshorne Parish Council and South Derbyshire District Council have been consulted and raised no objections.

(3) **Financial Considerations** This Order seeks to correct a discrepancy brought into existence by the publishing of the Definitive Map and

Statement for South Derbyshire in 1987. It is therefore considered that Derbyshire County Council should defray all of the costs in respect of making and advertising the Diversion Order. These costs will be met by the Rights of Way Revenue Budget.

The route is in a state of good repair and there are no anticipated immediate maintenance costs required to bring this path into a suitable condition for public use.

A replacement metal footpath finger (to be attached to an existing post) will be needed at the entrance to the path, the cost of this is estimated to be £57.

(4) **Legal Considerations** Derbyshire County Council may make an Order under Section 119 of the Highways Act 1980:

- 1) Where it appears to a council as respects a footpath or bridleway in their area that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,—
 - (a) create, as from such date as may be specified in the order, any such new footpath or bridleway as appears to the council requisite for effecting the diversion, and
 - (b) extinguish, as from such date as may be specified in the order the public right of way over so much of the path or way as appears to the council requisite as aforesaid.
- 2) A Public Path Diversion Order shall not alter a point of termination of the path or way—
 - (a) if that point is not on a highway, or
 - (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
- (6) The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—
 - (a) the diversion would have on public enjoyment of the path or way as a whole,
 - (b) the coming into operation of the order would have as respects other land served by the existing public right of way, and

(c) 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.

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

Whether it is in the interests of the owner of the land or of the public that the footpath should be diverted

Public Footpath No. 9 is currently shown on the Definitive Map as running through residential properties and gardens, and is unusable. Should the diversion of the path not be sought, the Council would have a duty to enforce the legal line of the path. It is therefore in the landowner's interest for the path to be diverted.

Whether the diverted footpath will (or will not) be substantially less convenient to the public

The termination point of the western end of the path, on Church Street (Public Footpath No. 23), differs by only 5 metres on the alternative route, and is not considered to have a significant impact upon the convenience of the route. In addition, the length and alignment of the alternative path are similar to the existing path, with the length of the affected section of path increasing by approximately 7 metres.

Overall, it is considered that the proposed alternative footpath would not be substantially less convenient to the public.

The effect the diversion would have on the public enjoyment of the footpath as a whole

The existing legal line of the footpath is not currently accessible, it being recorded as passing through residential properties and two stone walls. Nonetheless, the routes should be compared as if the existing legal line of the path were unobstructed and properly instated along its recorded alignment. With this in mind, the two routes are highly similar and so it would be difficult to determine any significant difference in enjoyment between the two paths.

The alternative route passes along a stoned track adjacent to a property for a relatively short distance, and then along the boundary of a field used as a garden and for keeping livestock. This offers a comfortable walking route in keeping with the rest of the footpath, which passes through agricultural fields.

It is therefore considered that the diversion would have a positive impact on the public's enjoyment of the footpath as a whole.

The effect which the coming into operation of the Order would have as respects other land served by the existing public rights of way
None identified.

The effect which the 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

The affected landowner has been consulted and has raised no objection to the proposed diversion of the legal line of the path onto land in their ownership.

It does not appear that any private rights of access will be affected by this proposal.

Whether it is expedient to make the Order

It is considered that the proposed diversion is in the interests of the landowner and occupier. The proposed diversion would not be substantially less convenient to the public, and would not have an adverse effect on the public's enjoyment of the route as a whole or adversely affect the land over which the diversion would run or land served by the existing right of way.

(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.

Other Considerations

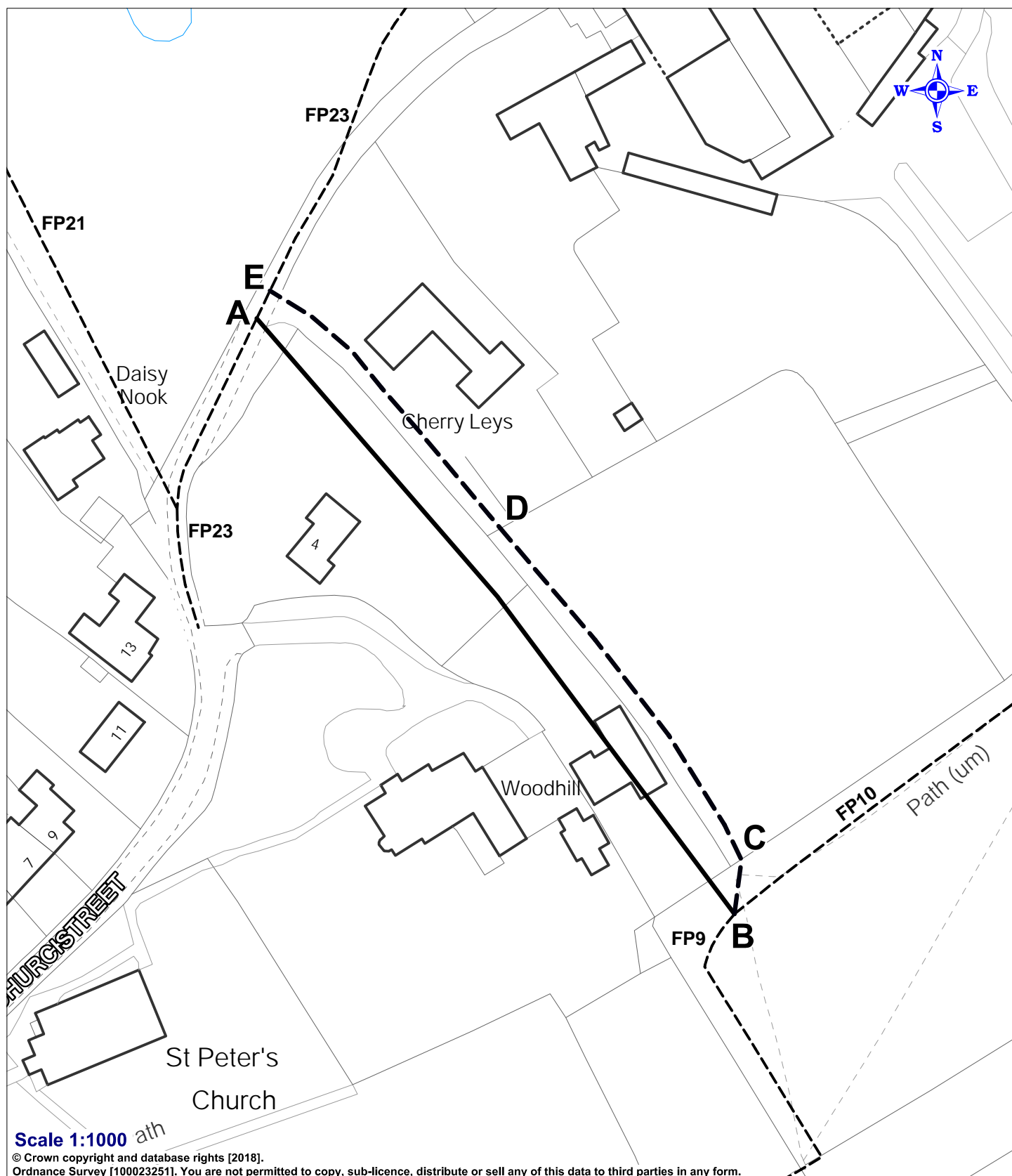
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

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

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

- 7.1 The Director of Legal Services be authorised to make the necessary Order to divert Public Footpath No. 9 (part) in the Parish of Hartshorne.
- 7.2 Should objections be received to the making of the Orders that cannot be resolved, then the matter be forwarded to the Secretary of State for determination.

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Highways Act 1980 Section 119
Proposed diversion of Footpath
No. 9 at Cherry Leys - Parish of
Hartshorne

Key:	Path to be diverted	
	Alternative footpath	
	Existing Footpath	

