

Agenda Item No. 5(a)

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

10 September 2018

Report of the Strategic Director – Economy, Transport and Environment

**PROPOSED DIVERSION OF PUBLIC FOOTPATHS NO. 4 (PART) AND NO. 5 (PART), AND THE PROPOSED EXTINGUISHMENT OF PUBLIC FOOTPATH NO. 3 (PART) – PARISH OF SMISBY**

(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 Footpaths No. 4 (part) and No. 5 (part), and a Public Path Extinguishment Order for the permanent extinguishment of part of Public Footpath No.3, in the interests of the landowner and the public.

(2) **Information and Analysis** Following negotiations with the landowner, authority is sought to make the Public Path Diversion and Extinguishment Orders, in part, in the interests of the public and, in part, in the interests of the landowner.

**Public Footpath No. 4 (Points A-B)**

The diversion of this part of Public Footpath No. 4, under Section 119 of the Highways Act 1980, is proposed in the interest of the public. The effect would be to straighten the alignment of the path to a more direct and convenient route. The effect of the Order would be to divert approximately 94 metres of that part of Public Footpath No. 4 shown as a bold solid line between points **A-B-C** on plan ref. TE/CH/X4171/Cttee/2018. The alternative route would be approximately 78 metres, shown as a bold broken line between points **A-C**, and would have a natural ground/grass surface and a recorded width of 2 metres.

**Public Footpath Nos. 4 and 5 (Points D-E and Points F-E-G-H)**

The diversion of parts of Public Footpath Nos. 4 and 5 is proposed under Section 119 of the Highways Act 1980 in the interest of the landowner. The diversion of these paths would enable better management of the land. The path is currently unavailable due to areas of uneven ground, fence lines and the extension of a pond. The effect of the Order would be to divert approximately 48 metres of that part of Public Footpath No. 4 and approximately 98 metres of that part of Public Footpath No. 5 shown as a bold solid line between points **D-E** and **F-E-G-H** (respectively) on the plan. The alternative route would be approximately 138 metres shown as a bold broken

line between points **D-F-X-H**. The route would have a natural ground/grass and rolled stone surface and generally a recorded width of 2 metres. It would pass through a field gate at Point **F** and a pedestrian gate at Point **Fi**.

### **Public Footpath No. 5 (Points N-J-K)**

The diversion of part of Public Footpath No. 5, under Section 119 of the Highways Act 1980, is proposed in the interest of the landowner. The diversion of the path at this point would enable better management of the land and enable the landowner to maintain the electric security gate at the entrance to their property. The effect of the Order would be to divert approximately 174 metres of that part of Public Footpath No. 5, shown as a bold solid line between points **N-J-K**. The proposed alternative would be approximately 162 metres shown as a bold broken line between points **N-L**. The alternative route would have a natural ground/grass surface and generally a recorded width of 2 metres, passing through a pedestrian gate at Point **Ni** and a kissing gate at Point **L**.

### **Public Footpath No. 3 (Points X-G)**

The extinguishment of part of Public Footpath No. 3, under Section 118 of the Highways Act 1980, is also proposed. Should the diversion of Public Footpath Nos. 4 and 5 take effect, this section of path would no longer be needed for public use. The effect of the Order would be to extinguish approximately 5 metres of part of Public Footpath No. 3, shown as a bold solid line between points **X-G**. The extinguishment of part of Public Footpath No.3 would only be pursued if the diversions of Public Footpath Nos. 4 and 5 are confirmed.

Gates have been provided to a satisfactory standard on the route.

No objections were received to the proposed diversion and extinguishment when informal consultation was carried out on 23 May 2018. The Local Member, Councillor Linda Chilton, Smisby Parish Council and South Derbyshire District Council were consulted and offered no objections to the proposal.

(3) **Financial Considerations** It is proposed that the Council meets the estimated costs of £2,500 associated with the making and confirmation of the proposed Diversion and Extinguishment Orders. The changes to the rights of way over Daniel Hayes Farm have been proposed by way of resolution of an associated civil claim, subject to authorisation being sought from this Committee. The costs of the Order making process will be met from the Rights of Way Revenue budget. The agreed diversion will utilise existing gates and there are no other works required to bring the path into a fit state for use by the public.

(4) **Legal Considerations** Derbyshire County Council may make an Order under:

**(a) Section 119 of the Highways Act 1980 (to divert a Public Right of Way):**

- 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.

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

Some of the proposed changes to the footpath network surrounding Daniel Hayes Farm are in the interest of the landowner, to improve the management of their land and improve security by enabling them to maintain an electric security gate on their property. Parts of Public Footpath Nos. 4 and 5 are currently obstructed, as indicated above, and the diversion of the footpaths will enable the landowner to retain fencing and an extended pond.

The public will benefit from the proposed diversions by having a more direct route over the farm land.

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

The proposed alternative route is approximately the same length overall as the current route through the farm and is of a similar gradient throughout. Structures on the proposed alternative route are of an appropriate level of accessibility and are currently in a good state of repair for use by pedestrians.

The diverted footpath would therefore not be substantially less convenient to the public.

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

Parts of the existing route are not usable due to obstructions, including fencing, trees and a pond. However, the existing and proposed alternative route should be viewed as if the obstructions were not present on the path and as if the legal line of the existing footpaths were to be properly re-instated. If this were the case, the paths would be similar, and a distinction in regards to enjoyment and convenience would probably be difficult to make. The alternative route offers a slightly more convenient route through Daniel Hayes Farm by offering a more direct and accessible route of approximately the same length as the current footpaths. The similarity in the routes ensures that similar views/ viewpoints and the general feel of the existing path is maintained.

The diversion would therefore have no significant impact upon the public's enjoyment of the path.

**The effect which the coming into operation of the Order would have as respects other land served by the existing public rights of way**

Should the proposed diversion take effect, the security of Daniel Hayes Farm would be improved by allowing the landowner to retain the electric security fence at the entrance to their property. Privacy, and to some extent security, surrounding the property and the associated garden area would also be improved, by taking the public right of way slightly further away from the residential area of the farm with no overall detrimental impact on the footpath network.

**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**

None identified.

**(b) Section 118 of the Highways Act 1980 (to extinguish a Public Right of Way):**

- 1) Where it appears to a council as respects a footpath in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.  
An Order under this section is referred to in this Act as a “Public Path Extinguishment Order”.
- (2) The Secretary of State shall not confirm a Public Path Extinguishment 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 it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.
- (6A) The considerations to which—
  - (a) the Secretary of State is to have regard in determining whether or not to confirm a Public Path Extinguishment Order, and
  - (b) a council is to have regard in determining whether or not to confirm such an order as an unopposed order, include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.

In regards to the above mentioned sections 2 and 6, should the Diversion Order go ahead, that part of Public Footpath No. 3, between points **G-X** on the plan, would become redundant and not needed for public use, and would therefore need to be removed from the Definitive Map and Statement for Derbyshire.

With regard to the above mentioned section (6A)(b), the Rights of Way Improvement Plan, in general, seeks to improve and enhance the public rights of way network. Whilst this proposal would reduce the network, it would appear to have no significant negative impact due to the short length of path to be extinguished, and the lack of need for a cul-de-sac path.

### **Whether it is expedient to make the Orders**

It is concluded that the proposed diversion, and required extinguishment of a short section of path, is, in part, in the interests of the landowner and occupier and in the interests of the public. The proposed diversion would not be substantially less convenient to the public, and would not have an adverse effect on the public enjoyment of the route as a whole or adversely effect the land over which the diversion would run or land served by the existing right of way. As the proposal satisfies the necessary legal criteria under sections 119 and 118 of the Highways Act 1980, it is therefore concluded that it is expedient to promote the Orders.

(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**

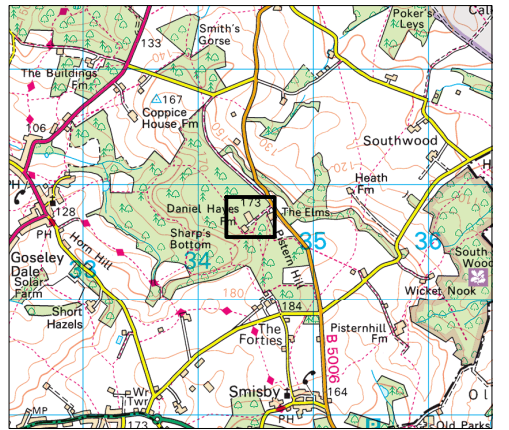
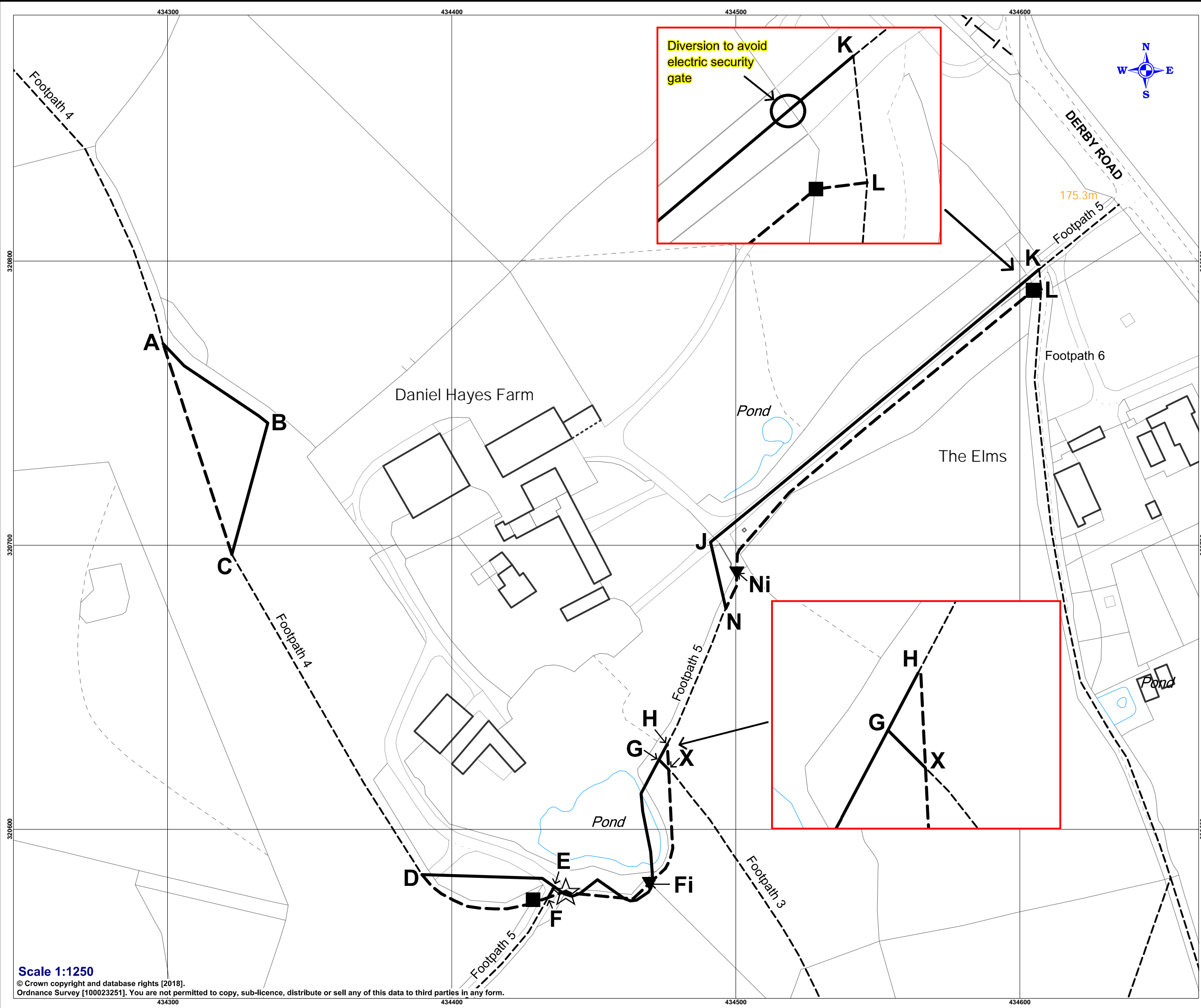
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(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:

- 10.1 The Director of Legal Services be authorised to make the necessary Orders to permanently divert Public Footpath Nos. 4 (part) and 5 (part), in the Parish of Smisby.
- 10.2 The Director of Legal Services be authorised in the event that the order/s to divert Public Footpath Nos. 4 (part) and 5 (part) to make the necessary Order to extinguish Public Footpath No. 3 (part), in the Parish of Smisby.
- 10.2 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 119 and Section 118**

**Diversion of Public Footpaths No. 4 (part) and No.5 (part) and Extinguishment of Public Footpath No. 3 (part) at Daniel Hayes Farm - Parish of Smisby**

**KEY**

- Path to be diverted (A-B-C) (D-E) (F-E-G-H) (N-J-K)
- Path to be extinguished (G-X)
- Alternative Footpath
- Unaffected Footpath
- Field Gate (F.G)
- Kissing Gate (K.G)
- Pedestrian Gate (P.G)

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