

Agenda Item No. 5(a)

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

12 September 2016

Report of the Strategic Director – Economy, Transport and Communities

**SECTION 119 OF THE HIGHWAYS ACT 1980 – PROPOSED DIVERSION
OF PUBLIC FOOTPATH NO. 127 (PART) – PARISH OF ASHOVER**

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Diversion Order for the permanent diversion of Public Footpath No.127, in the Parish of Ashover, in the interests of the landowner.

This matter was reported to the Committee on 25 July 2016. Due to concerns about subsidies, it was decided to defer consideration of the matter until the 2007 Policy on subsidies could be reviewed. In the meantime, the applicant has indicated he no longer wishes to seek a subsidy for this application.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of the footpath in the interests of the landowner to increase privacy and security. The proposed diversion would move the footpath around the outside of the applicant's garden so that it passes adjacent to the car park of the Peak Edge Hotel, then through a rural field to the south and east of Myrtle Grove.

If the proposal takes effect, it will divert approximately 143 metres of the footpath, shown as a bold solid line between points **A** and **B** on the attached plan reference TE/DM/X4066/Cttee/2016. The proposed alternative would be approximately 229 metres long with a width of 2 metres, shown by a bold dashed line **A-C-D-E-B**. The length **A-C-D** would be surfaced in stone with timber edgings. The length between **D** and **E** would have a natural surface. The length between **E** and **B** would be surfaced in stone and separated from the field by a new drystone wall. Pedestrian gates would be provided at boundary crossings at points **D** and **E**.

No objections were received to the proposed diversion when informal consultation was carried out between 9 March and 6 April 2016. Councillor Barry Lewis (the local Member), Ashover Parish Council and North East Derbyshire District Council have been consulted and have lodged no objections to the proposal.

(3) **Financial Considerations** The applicant has agreed in writing to defray all costs in bringing the new route into a suitable condition for public use. The applicant has also agreed in writing to defray all the costs in respect of making and advertising the Diversion Order including Officer time which is estimated to be in the region of £1,500.

(4) **Legal Considerations** Derbyshire County Council may make an order under Section 119 of 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

The existing route passes close to the owner's home and the diversion would allow them greater privacy and security by moving the footpath around the outside of their garden.

The proposed diversion is in the interests of the landowner.

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

The existing route is some 143 metres long compared to 229 metres for the diversion. This adds an extra 86 metres or so of walking, which is not thought to be adverse within the context of a country walk. The termination points would not be altered by the proposed diversion.

The proposed diversion is not substantially less convenient to the public.

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

As the current route goes through the curtilage of a private property, the quality of the route will be improved by the proposed diversion as many people consider it preferable not to walk through a private garden and in such close proximity to residential property.

The proposed diversion would improve public enjoyment of the route 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

There would be no anticipated effects.

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 alternative route passes over land owned by the applicant, so any effects are accepted by them.

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 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.

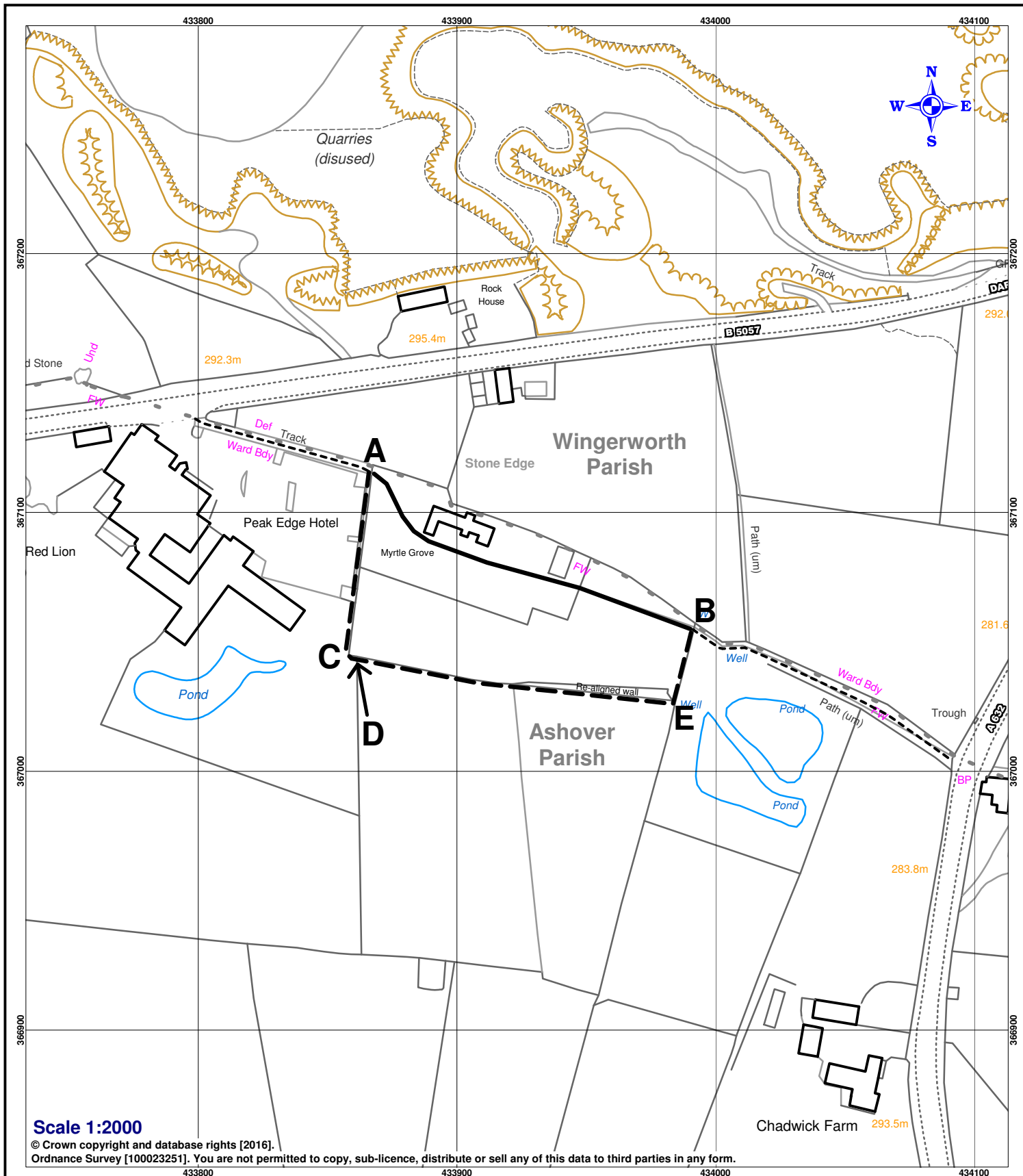
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(6) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details - David McCabe, extension 39770.

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

- 7.1 The Director of Legal Services be authorised to make the necessary order to divert Public Footpath No.127 (Part) – in the Parish of Ashover, under Section 119 of the Highways Act 1980.
- 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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Ref: TE/DM/X4066/Cttee/2016



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Highways Act 1980, Section 119

Proposed Diversion of Public Footpath no. 127 (Part) - Parish of Ashover

Key:

Footpath to be extinguished —————
Alternative footpath - - - - -
Unaffected footpath
Parish boundary - - - - -

