

**DERBYSHIRE COUNTY COUNCIL**  
**REGULATORY LICENSING AND APPEALS COMMITTEE**  
**REPORT OF THE DIRECTOR OF LEGAL SERVICES**  
**12 September 2016**

**THE DERBYSHIRE COUNTY COUNCIL (FOOTPATH FROM PUBLIC  
FOOTPATH NO.36 TO PUBLIC FOOTPATH NO. 37 – PARISH OF SOUTH  
DARLEY) MODIFICATION ORDER 2015**

**1. Purpose of the Report**

- 1.1 Members are asked to note the submission of this Order to the Secretary of State and to determine the stance to be taken by the Council regarding the confirmation of the Order.

A copy of the Order plan showing the location of the route is attached to this report.

**2. Information and Analysis**

- 2.1 On 21 October 2013 a report was submitted to the Committee seeking the determination of an application made by Lynda Aylett-Green, under the Wildlife and Countryside Act 1981, as described above. The recommendation was to dismiss the claim on the grounds that there was insufficient user and documentary evidence to raise a statutory presumption of the claimed route having been dedicated as a highway. This recommendation was approved by the Committee.
- 2.2 The applicant exercised its right of appeal against the Council's refusal to make an Order. The appeal was made to the Secretary of State. Following an exchange of evidence, the case was considered by an Inspector of the Planning Inspectorate, who recommended that the appeal be allowed. The Secretary of State accepted that recommendation and the Council was directed to make an Order under Section 53(2) of, and Schedule 15 to, the Wildlife and Countryside Act 1981. On 28 July 2014 a report was brought to Committee seeking a resolution to make an Order in accordance with that direction. The Order was subsequently made on 06 August 2015.
- 2.3 On 17 August 2015 notice of the Order was published on site, in the Peak Advertiser and by sending copies to the statutory consultees. Six objections and one representation were received in objection and two

representations were received in support of the Order. The Local Member, Councillor Judith Twigg, had no objection to the Order. In cases where objections are received to an Order the matter may only be determined by the Secretary of State.

2.4 The Planning Inspectorate, who administers these matters, requires the Council, on submission of the Order, to state whether it supports the confirmation of the Order. The matter may thereafter be dealt with by way of written representations, a hearing or a local public inquiry. Committee is requested to determine what stance the County Council is to take in this matter. Three options are available – to support the confirmation of the Order, to oppose it, or to take a neutral stance.

2.5 No additional evidence has been submitted by the applicant on appeal which convinces officers that their initial assessment of the matter was incorrect. In light of the Committee having resolved, prior to the Secretary of State's direction, to reject the application, it does not seem to be appropriate, in absence of any new evidence, for the Council to support the confirmation of the Order. The Planning Inspectorate's own advice into the conduct of public inquiries suggests that:

"In such circumstances where an order making authority has previously assessed the facts of the case and decided that the making of an order was not justified, it may opt to actively oppose confirmation of the order, or it may choose to adopt a neutral stance whereby it neither supports nor objects to confirmation".

2.6 No evidence has been submitted in objection to the order which suggests that the Council should actively oppose it. The submission made by the landowners and objectors, largely reiterates earlier submissions made to the Council and subsequently the Inspector determining the appeal. It is therefore proposed that the Council should take a neutral stance.

2.7 Whilst it is possible that this matter could be dealt with by way of written representations it is the view of officers that it is more likely that the Inspector appointed by the Planning Inspectorate to deal with this matter will arrange either a hearing or a public inquiry.

2.8 It is usual for the Council at a public inquiry to present the case either in support or objection to confirmation of the Order by calling and cross-examining witnesses and to make legal submissions. Responsibility for the Order remains with the Council where a neutral stance is adopted, but the Council's participation at inquiry will be limited to setting out the background to the making of the Order, and the Council's reasons for adopting a neutral stance. The Council is legally represented at inquiry and the legal representative will assist the Inspector on points of law or procedure which may arise during the course of the inquiry. Such assistance may still be offered to the Inspector where the Council is taking a neutral stance.

- 2.9 A hearing is a ‘round-table’ discussion of the case; a less formal setting where the parties will discuss the evidence for and against the confirmation of the Order. The participation of the Council in such a forum, having taken a neutral stance, is less clear but it is anticipated that this would again be limited to providing assistance to the Inspector on points of law or procedure which may arise during the course of the inquiry. Such assistance may still be offered to the Inspector where the Council is taking a neutral stance.

### **3. Considerations**

#### **Legal and Human Rights Considerations**

- 3.1 In addition to the legal considerations contained within the body of the report it is noted that paragraph 7 of Schedule 15 to the Act provides that:

“(1) If any representation or objection duly made is not withdrawn the Authority shall submit the order to the Secretary of State for confirmation by him.

(2) Where an order is submitted to the Secretary of State under sub-paragraph (1), the Secretary of State shall [subject to sub-paragraph (“A),] either –

(a) cause a local inquiry to be held; or

(b) afford any person by whom a representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Secretary of State for the purpose.

[(2A) The Secretary of State may, but need not, act as mentioned in sub-paragraph 2(a) or (b) if, in his opinion, no representation or objection which has been duly made and not withdrawn relates to an issue which would be relevant in determining whether or not to confirm the order, either with or without modifications.]”

### **4 Other Considerations**

- 4.1 In preparing this report the relevance of the following factors has been considered: financial, prevention of crime and disorder, equality of opportunity, personnel, environmental, health, property, and transport considerations.
- 4.2 None of these factors are considered to be relevant for the purpose of this report.

### **5. Background Papers**

Director of Legal Services file 50234

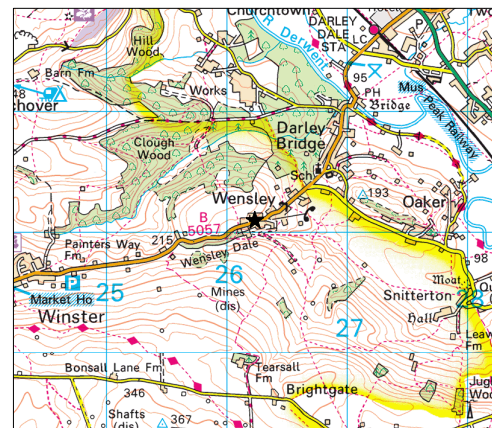
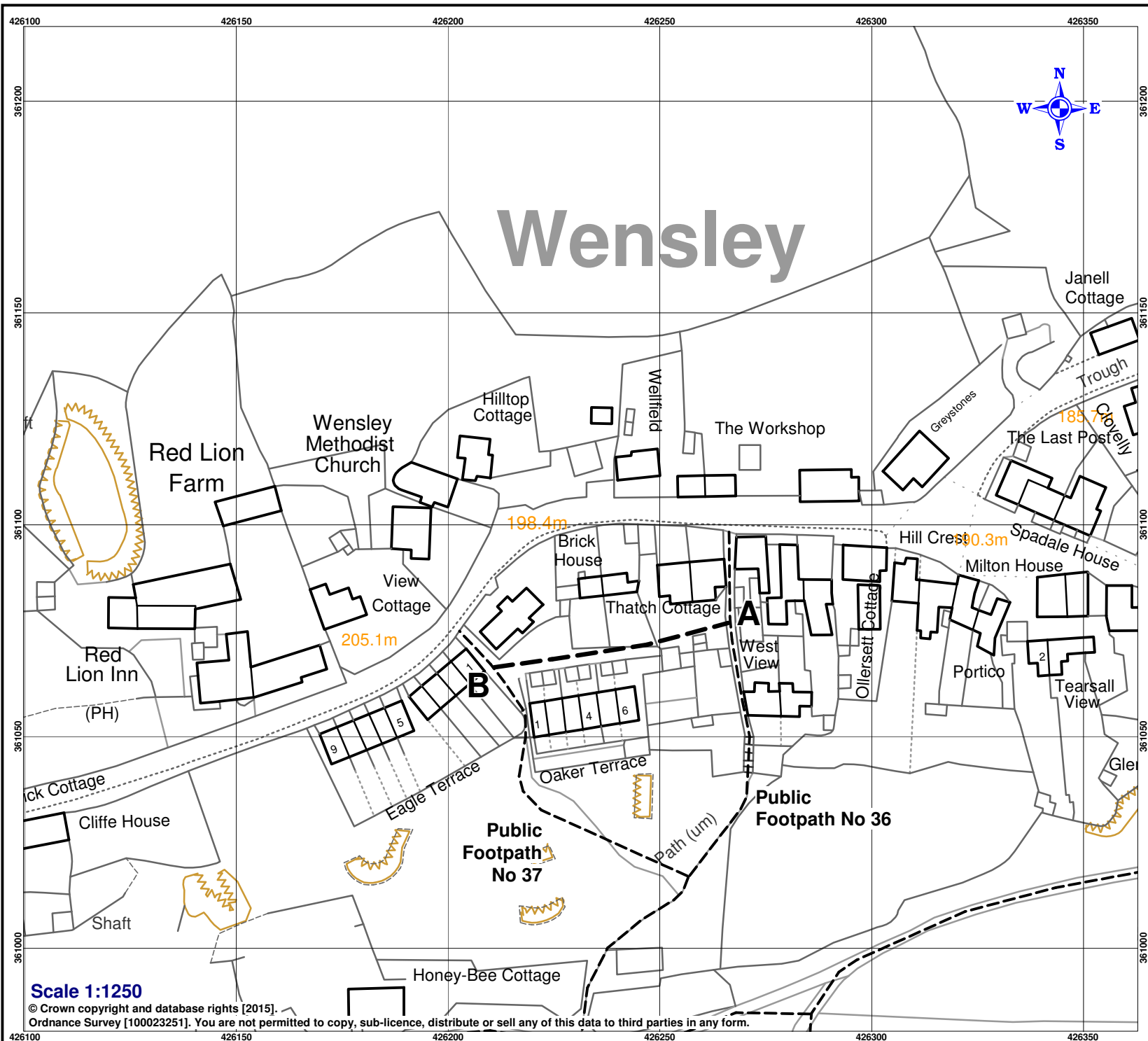
### **6. Officer recommendation**

## **That the Committee**

6.1 notes the submission of the Derbyshire County Council (Footpath from Public Footpath No 36 to Public Footpath No 37 – Parish of South Darley) Modification Order 2015 to the Secretary of State for determination; and,

6.2 approves the adoption of a neutral stance in regards to the Confirmation of the Order.

**John McElvaney**  
**Director of Legal Services**



**Wildlife and Countryside Act 1981 S.53**

**The Derbyshire County Council  
(Footpath from Public Footpath  
No 36 to Public Footpath No 37  
Parish of South Darley)  
Modification Order 2015**

**KEY**

Footpath to be added — — — — —

Existing Footpaths — — — — —



**Improving life for local people**

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Produced by Public Rights of Way on 1 November 2013

Ref: **TE/DC/X3676/Order/2015**