

Agenda Item No. 4(e)

**DERBYSHIRE COUNTY COUNCIL**

**REGULATORY – LICENSING AND APPEALS COMMITTEE**

**14 January 2019**

Report of the Strategic Director – Economy, Transport and Environment

**PROPOSED CREATION OF PATH BETWEEN DALE ROAD AND HAZEL COURT – PARISH OF DRONFIELD**

(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 Dale Road and Hazel Court, in the Parish of Dronfield, in the interests of the public.

(2) **Information and Analysis** The County Council has been made aware of a path that is not recorded on the Definitive Map and Statement for Derbyshire between Dale Road and Hazel Court in the Parish of Dronfield.

Upon investigation, it appears that the route was eligible for adoption when the adjacent area (Hazel Court) was developed circa 1983, and a recommendation was made to North East Derbyshire District Council to create a path over the land via a Creation Order. However, it does not appear that such an Order has ever been made and, consequently, there is no publicly maintainable link between Dale Road and Hazel Court.

Part of the land over which the path crosses is unregistered; none of the adjacent landowners came forward to claim an interest in the unregistered 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 recorded as a public footpath. It is considered that the most expedient way of doing this is to make an Order under Section 26 of the Highways Act 1980, as it is clear that the formal recording of the path as a public footpath would add to the convenience of persons resident to the area.

The effect of the Creation Order would be to create a public footpath of approximately 61 metres in length between Dale Road and Hazel Court, shown as a bold dashed line between points **A-B-C** on the plan (ref. TE/CH/X4211/Cttee/2018). The path has a tarmacadamed surface with a width varying between 1.8 metres and 2 metres.

No objections were received to the proposed diversion when informal consultation was carried out on 22 August 2018. The Local Member, Councillor Alex Dale, Dronfield Town Council, and North East Derbyshire District Council were consulted and offered no objections to the proposal.

(3) **Financial Considerations** The formal recording of the path as a public footpath is seen to be in the interests of the public, and it is therefore proposed that Derbyshire County Council should defray all of the costs in respect to 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 no immediate maintenance costs will be incurred to bring the path into a suitable condition for public use. Any future maintenance will be met from the Rights of Way Revenue Budget.

Under Section 28 of the Highways Act 1980 compensation may be payable, on the application of an affected landowner, if the value of an interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of the land, in consequence of the coming into operation of a public path creation order. Property Services have estimated the value of the land affected by the Creation Order to be negligible.

(4) **Legal Considerations** A Public Path Creation Order may be promoted by the County Council under Section 26 of the Highways Act 1980. Section 26 provides:

- (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 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 [of the Highways Act 1980],it is 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.

Pursuant to section 36 of the Highways Act 1980 the footpath created in consequence of the Creation Order would be maintainable at public expense:

36 (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 Creation 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 provides a link between Dale Road and Hazel Court, which are both adopted highways. It offers a convenient and safe route for residents to access local facilities, including local schools, shops, bus stops and the railway station. The path reduces the need for walking along busy roads in the estate, some without footways, which would be required should the path not be available.

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

Part of the route is owned by the original developer of the housing estate. Title to the remaining part of the route was shown to be unregistered when a Land Registry search was carried out by the County Council. None of the adjacent landowners or residents indicated any interest in the land, or objection to the proposed Order, when they were consulted by letter and when notices were posted onsite. Should the Creation Order be confirmed, compensation may be payable, on the application of an affected landowner, by Derbyshire County Council as the authority by whom the Order was made. Compensation would be payable if the value of an interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of the land, in consequence of the coming into operation of a Public Path Creation Order.

A path has already been constructed on the land and appears to have been identified for use as a footpath, therefore, the proposal should have no adverse effects on the property.

It does not appear that the proposal 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.

### **Other Considerations**

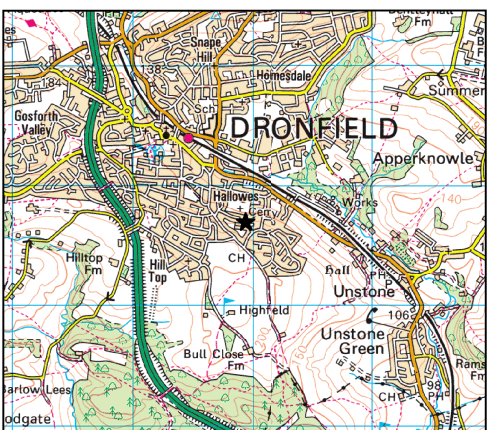
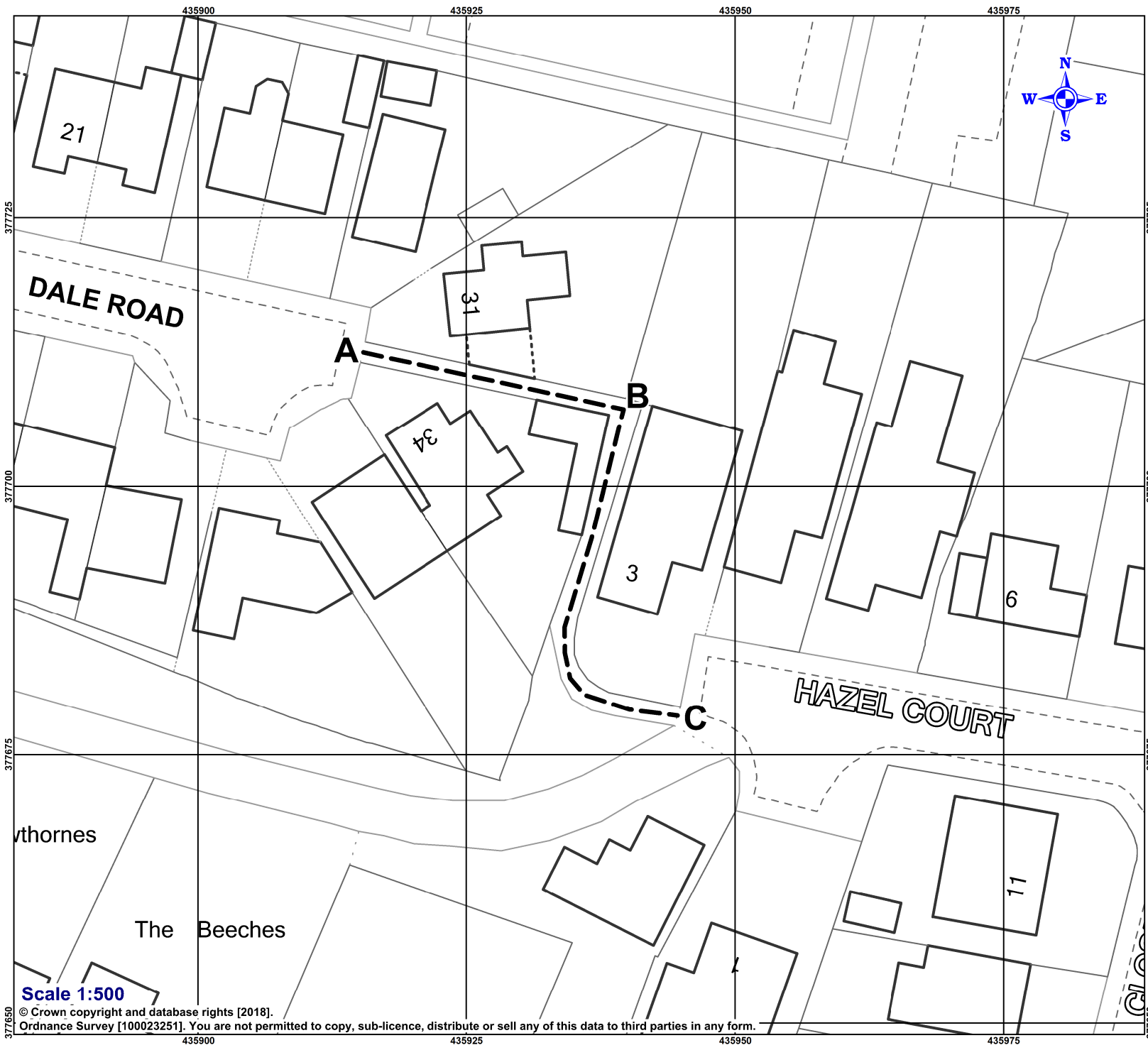
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(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 under Section 26 of the Highways Act 1980 to create a public footpath between Dale Road and Hazel Court in the parish of Dronfield.
- 7.2 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 Footpath creation**  
**between Dale Road and**  
**Hazel Court**  
**- Parish of Dronfield**

**Key:**

Path to be added      - - - - -

**Ref: TE/CH/X4211/Cttee/2019**  
**Date: 1 October 2018**



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