

Agenda Item No. 4(a)

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

14 January 2019

Report of the Strategic Director – Economy, Transport and Environment

**PROPOSED DIVERSION OF RIPLEY PUBLIC FOOTPATH NO. 3 AND  
CREATION OF PUBLIC FOOTPATHS BETWEEN RIPLEY PUBLIC  
FOOTPATH NO. 3 AND HADDON CLOSE AND BOWMER LANE –  
PARISHES OF RIPLEY AND CRICH**

- (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 Ripley Public Footpath No. 3 in the interests of the landowners. To also seek authority for the Director of Legal Services to make a Public Path Creation Order for the permanent creation of a Public Footpath from Haddon Close to the diverted alignment of Ripley Public Footpath No. 3, and to make a Creation Order for the permanent creation of a public footpath between Ripley Public Footpath No. 3 and Bowmer Lane, in the interests of the public.
- (2) **Information and Analysis** The County Council has been made aware of the need for the permanent diversion of Public Footpath No. 3 in the Parish of Ripley. The footpath is currently obstructed by residential properties and is consequently unavailable to the public.

The Ripley Urban District Definitive Map and Statement (relevant date: 1 June 1953) shows the alignment of Ripley Public Footpath No. 3, as on the attached plan (ref. TE/CH/X4201/Cttee/2019), as a bold solid line. The surrounding landscape was relatively undeveloped and the path would have been available on the ground. Since the publishing of the Definitive Map and Statement, the landscape of the area has changed due to the development of the area for residential properties.

After investigation, it remains unclear as to why the path was not diverted when the housing was constructed. Records held by Derbyshire County Council and Amber Valley Borough Council do not provide evidence of a Diversion Order being promoted. It does appear that an attempt was made by Amber Valley Borough Council, in 1981, to divert part of Ripley Public Footpath No. 3 affected by the development. However, although the Order was confirmed, it did not come into effect. Amber Valley Borough Council has confirmed that it will not be proceeding with the Order, due to the alternative

route no longer being available on the ground to certify. The proposals in this report are therefore being put forward to address the issues onsite retrospectively, onto alignments which will be available for use.

Where a diversion is sought in the interests of the landowner, it is usual to ask that person to defray, or to seek a contribution to, the costs of the Council of any compensation which may become payable, and any expenses incurred in bringing the new site of the path into a fit condition for use by the public. In this case, the diversion is considered to be in the interest of, but has not been sought by, the landowners. The residential properties affected by Public Footpath No.3 were constructed more than 30 years ago and the route has been inaccessible since that development. The Council is pursuing the diversion of Public Footpath No.3 rather than enforcement action to secure the opening of the existing definitive route, which would not be possible without the demolition of three residential properties.

The combination of Diversion Order and Creation Orders is therefore proposed in this report. This would formally record public footpaths on the available walked alignments which would benefit the landowners whose properties are currently affected a public right of way. It is considered that the most expedient way of doing this is to make a Diversion Order under Section 119 of the Highways Act 1980, and Creation Orders under Section 26 of the same Act.

The proposed Diversion Order will divert approximately 160 metres of Ripley Public Footpath No. 3, shown as a bold solid line between points **A-B-C** on the attached plan, to a line shown as a bold broken line between points **D-E-B-F-C**. The alternative path is approximately 140 metres in length and has a tarmac and natural ground surface. The recorded width of the path would vary between 1 metre and 1.6 metres between points **D-E** (as shown shaded grey on the plan), and would be 2 metres in width between points **E-B-F** and **F-C**.

The creation of a public footpath between Haddon Close and the proposed alternative alignment of Ripley Public Footpath No. 3 (points **G-F** on the plan) is sought in the interests of the public. The public footpath would provide a convenient link from Haddon Close to the diverted public footpath and on to Bowmer Lane, Chatsworth Crescent and Ripley Public Footpath No. 79. The formal recording of the footpath on the Definitive Map and Statement for Derbyshire would protect the public's right to use the path in the future, and would ensure that there is provision for proper maintenance should any issues arise. The proposed Creation Order would add 18 metres of public footpath between the end of the adopted highway (Haddon Close) and the alternative alignment of Ripley Public Footpath No. 3, as shown on the plan as a bold broken line between points **F** and **G**. The footpath has a tarmac surface and a width of 2 metres.

The creation of a public footpath between Ripley Public Footpath No. 3 and Bowmer Lane in the parish of Crich (points **H-J** on the plan) is sought in the interests of the public, to provide a convenient link onto Ripley Public Footpath No. 3 from the adopted highway. It would also remove the 'gap' currently in existence in the highway network. As noted above, the formal recording of the footpath on the Definitive Map and Statement for Derbyshire would protect the public's right to use the path in the future, and would ensure that there is provision for proper maintenance should any issues arise. The proposed Creation Order would add a public footpath 16 metres in length, as shown on the plan as a bold broken line between points **H** and **J**. The footpath has a tarmac surface and a recorded width of 2 metres.

No objections were received to the proposed diversion and creation when informal consultation was carried out on 20 June 2018. The Local Member Councillor Trevor Ainsworth, Ripley Town Council and Amber Valley District Council were consulted and offered no objections to the proposal.

**(3) Financial Considerations** Where a diversion is sought by, and in the interests of, the landowner, lessee or occupier of land the Council may require that person to enter into an agreement to defray or contribute to the costs otherwise payable by the Council. As this diversion is proposed by the Council, and not on the representations of any such party, it is proposed that the Council will meet the associated costs, of approximately £2,000, from the Rights of Way Revenue Budget.

The proposed routes are already available and sections have been constructed with a tarmac surface. The paths are in a state of general good repair and, therefore, no immediate maintenance costs are anticipated in order to bring the paths into a suitable condition for public use. Any future maintenance costs will be met by the Rights of Way Revenue Budget.

In the interest of public safety, a new handrail would be required at the top of the flight of steps from Chatsworth Crescent (Point **D** on the plan). The estimated cost to provide and install an approximately 6 metres, two rail key-clamp handrail is £851.

The routes would need to be signed should the Orders come into effect. Two footpath signs would be required and could be attached to an adjacent post and lighting column, the approximate cost of this being £114.

The above costs would be met by the Rights of Way Revenue Budget.

#### **(4) Legal Considerations**

**(a)** 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**

The current alignment of the path passes through a number of properties. Although the County Council would not be inclined to enforce the removal of these from the legal line of the path, the presence of the path could affect future house sales and development to the existing properties. It is therefore in the interest of the landowners to divert the path onto the walked alignment.

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

The alternative route will not be substantially less convenient to the public, for the following reasons:

- The termination point at the south end of the path would be moved from Amber Road (Point **A**) onto a connecting adopted highway (Chatsworth Crescent, Point **E**). The public would be required to walk an additional 46 metres along a highway footway to get onto the footpath; the footway is to a highway standard and in good condition, and therefore should not significantly impact upon how convenient the route is for the public.
- The length of the footpath will remain similar, with a decrease in length of 20 metres.
- The alternative route would use existing steps, which are currently in a good state of repair. A new hand rail at the top of the steps is to be installed as part of the proposal, to improve public safety.
- The termination of the north end of the affected section of footpath would remain unchanged, and would therefore have no impact on convenience.

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

Ripley Public Footpath No. 3 is unavailable due to residential properties which have been constructed on the line of the path. However, for the purposes of the proposed Diversion Order, the path should be viewed as if the path were available, and how this would compare with the proposed alternative route. In this respect, the alternative route would provide a more enjoyable route as it would take the path from being in close proximity to private residencies to an area of woodland and onto a partially surfaced route. Overall, enjoyment of the path would be unaffected, if not improved, should it be diverted as proposed.

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

The diversion would have no impact on private rights of access to properties. Properties currently affected would no longer have a public footpath passing through them.

**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.

**Whether it is expedient to make the Order**

It is considered that the proposed diversion is in the interests of the landowners and occupiers. 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.

**(b)** 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 public footpaths would serve as convenient links from Haddon Close to Bowmer Lane, and to Ripley Public Footpath No. 79 and Chatsworth Crescent, via Ripley Public Footpath No. 3. The routes would lessen the walking that would be required should these paths not be available in order to reach the same destinations.

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

No private rights to access property would be affected by the proposed Creation Orders.

Much of the land over which the paths cross was shown to be unregistered when a Land Registry search was done by the County Council. Notices were posted onsite as part of the consultation process, and the adjacent landowners were directly consulted, none offered any claim or information in regards to the unregistered land as a result of this. The landowner of the remaining part of the path has been consulted and offered no objections to the proposal. As the path is already available on the ground, it is not seen that the creation of the path would have any adverse effects on the property.

**Whether it is expedient to make the Order**

It is considered that the creation of a Public Footpath from Haddon Close to the proposed alternative alignment of Public Footpath No. 3, and the creation of a path from Ripley Public Footpath No. 3 to Bowmer Lane, would be in the interest of the public. The paths would provide convenient and accessible links onto the footpath network leading to Bowmer Lane and Haddon Close (respectively), Chatsworth Crescent and Ripley Public Footpath No. 79. The creation of these footpaths would have no effect on private rights to property.

(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.

(6) **Property Considerations** The landowners affected by the Diversion Order and Creation Orders have offered no objections to the proposals in this report. During consultation none of the adjacent landowners offered any claim to the section of unregistered land affected by the proposals.

**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, social value and transport considerations.

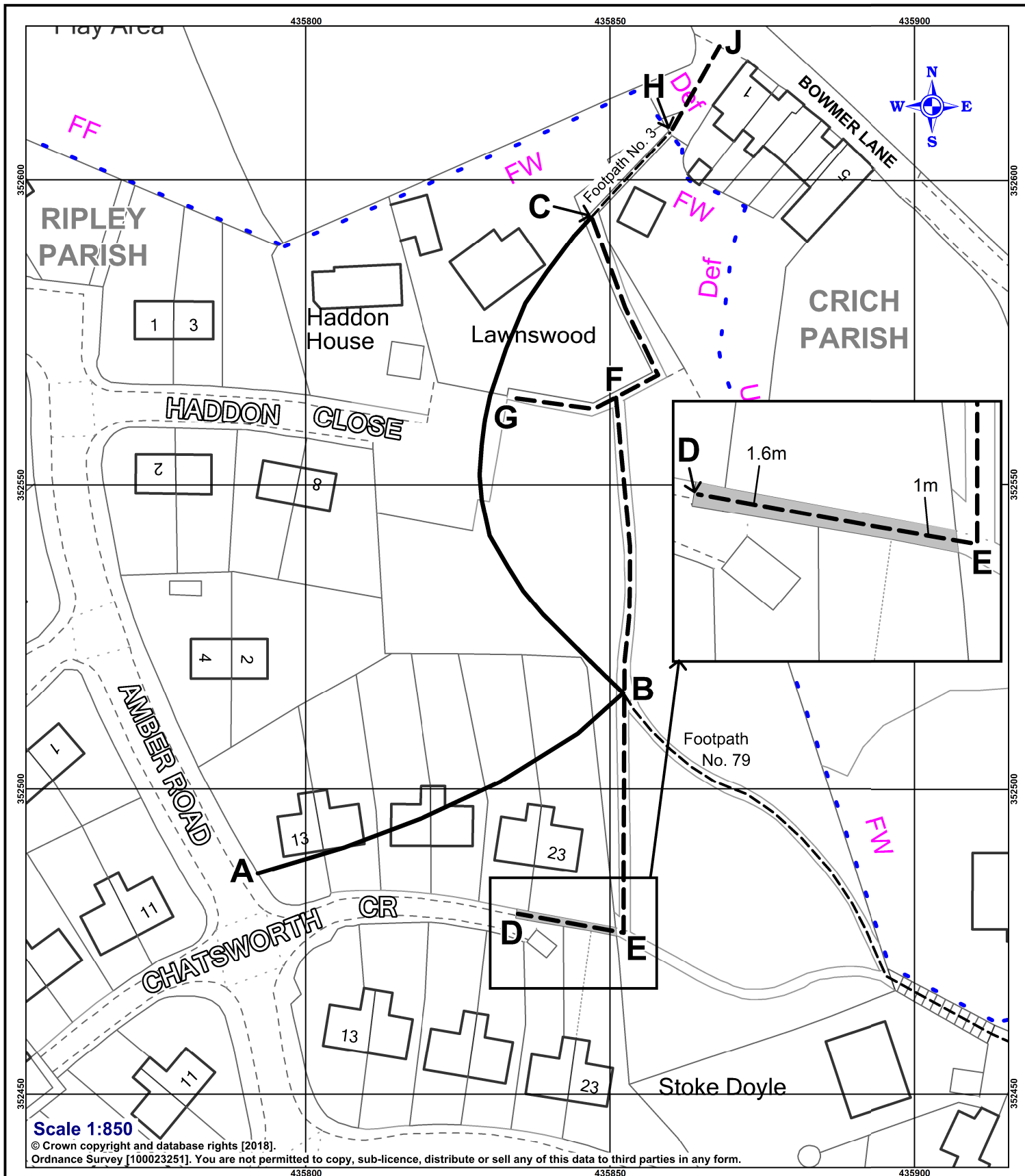
(7) **Background Papers** Held on file within the Economy, Transport and Environment Department. Officer contact details - Corinne Hudson, extension 39660.

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

- 8.1 The Director of Legal Services be authorised to make the necessary Order to permanently divert Ripley Public Footpath No. 3 in Ripley, under Section 119 of the Highways Act 1980.
- 8.2 The Director of Legal Services be authorised to make the necessary Order to create a Public Footpath from Haddon Close to the diverted alignment of Ripley Public Footpath No. 3 in Ripley, conditional upon the Diversion Order being made, under Section 26 of the Highways Act 1980.
- 8.3 The Director of Legal Services be authorised to make the necessary Order to create a Public Footpath from Public Footpath No. 3 Ripley to Bowmer Lane in the Parish of Crich, conditional upon the Diversion Order being made, under Section 26 of the Highways Act 1980.
- 8.4 The Director of Legal Services be authorised to refer the confirmation of the Orders to the Secretary of State should objections be received to the making of the Order.

**Mike Ashworth**  
**Strategic Director – Economy, Transport and Environment**





Ref: TE/CH/X4201/Cttee/2019  
 Date: 17 August 2018



**Mike Ashworth**  
 Strategic Director  
 Economy, Transport & Environment  
 Derbyshire County Council  
 Shand House  
 Dale Road South  
 Matlock  
 DE4 3RY

**Section 26 & 119 Highways Act 1980**  
**Proposed diversion of Ripley Public**  
**Footpath No. 3 and creation of Public Footpath**  
**to Haddon Close and Bowmer Lane -**  
**Parishes of Ripley and Crich**

<b>Key:</b>	Path to be diverted	—————
	Alternative Footpath (D-E-B-F-C)	- - - - -
	Footpath to be created (F-G)(H-G)	- - - - -
	Unaffected Footpath	- - - - -
	Parish Boundary	- . - . - .

