

**DERBYSHIRE COUNTY COUNCIL**

**REGULATORY – LICENSING AND APPEALS COMMITTEE**

**25 February 2019**

Report of the Strategic Director – Economy, Transport and Environment

**PROPOSED DIVERSION OF PUBLIC FOOTPATH NO. 56 (PART) –  
ALFRETON**

(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. 56 (part), formerly in the civil parish of Alfreton (now in the Parish of Somercotes).

(2) **Information and Analysis** The route referred to as Public Footpath No. 56, which was formerly in the civil parish of Alfreton but now falls within the boundaries of the civil parish of Somercotes passes through the compound of an engineering company, EP Industries Ltd.

Although there have been several Orders made previously for diverting the line of Footpath No.56 away from the land now occupied by the compound, in each case issues identified following the making of the orders have prevented them from being confirmed.

Following the initial identification of an obstruction of the legal line, an unofficial alternative route was made available, and the Council subsequently approved a request for an order to divert the footpath.

The footpath is currently obstructed by fencing, an earth bank, machinery and other items. The diversion is sought to enable safe passage of the public whilst allowing the company to make better use of its land and develop its business. If the proposed diversion takes effect, it will divert approximately 237 metres of Public Footpath No. 56, shown as a bold solid line between points **A** and **B** on the attached plan. The proposed new section it would be diverted onto is approximately 265 metres long, shown as a bold broken line between points **A**, **C**, **D**, **E** and **F**, and is partly over Council land within the corridor of the former Cromford Canal and partly over land owned by EP Industries Ltd. The part of the proposed new section between points **A-C** will have a compacted stone surface whereas the part between points **C-D** is satisfactory subject to minor vegetation clearance. The part between points **D**, **E** and **F** will have a bound surface built up as a ramp with a low gradient of approximately 1 in 15 to improve access to the former canal corridor. The new

section will have an overall width of 2 metres except where it narrows through a gap in an existing fence at Point **C** and walls at points **D** and **E**. These three points will be 1.1 metres wide.

There is no statutory requirement for a Council to consult any person about a proposal to make a public path diversion order prior to making such an order. In accordance with its usual practice my Department has carried out appropriate consultation in respect of this proposal. Consultees included local members Councillors Paul Smith and Steve Marshall-Clarke, Somercotes Parish Council and Amber Valley Borough Council. A consultation response has been received from a local resident in objection to the proposal. The resident criticises both the procedure being followed by the Council and the diversion, which the resident does not consider to be in the interests of the public. The latter point is dealt with further under the Legal Considerations section of this report.

(3) **Financial Considerations** The landowner has agreed in writing to defray all costs in respect of bringing the new route into a suitable condition for public use over land in its ownership. That part of the new section which is on County Council land is generally suitable for use as a footpath and so needs only minimal vegetation clearance.

The landowner has, as previously agreed, met the costs from a previous order to divert the route, which was withdrawn after it became apparent that there was a potential conflict between the proposed new path section and an emerging policy for the Amber Valley Local Plan. In the circumstances it is considered to be unreasonable to charge for the costs associated with this proposed Order. These total costs are estimated to be in the region of £2,000 which would be met by the Rights of Way Revenue Budget.

Compensation may be sought from the Council if it is shown that 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 land, as consequence of a public path diversion order. However it is not considered that anyone would suffer such damage as a consequence of this order.

(4) **Legal Considerations** Derbyshire County Council is empowered to make orders to divert footpaths under Section 119 of the Highways Act 1980:

**“119. Diversion of footpaths, bridleways and restricted byways**

(1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) 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 or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.

An order under this section is referred to in this Act as a ‘public path diversion order’.

(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.....”.

Subsections (1) and (2) of section 119 set out the criteria considered with regard to a proposal to divert a route. However there are additional criteria which must be considered at order confirmation stage and subsection (6) of section 119 is relevant here:

(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;

so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) [of section 119]” .

When considering whether the proposal meets these criteria it should be assumed that the existing legal line of Footpath 56 is available for public use despite this line not being usable in practice at present since it remains obstructed.

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

The footpath passes through the compound of an engineering works and its continued presence through it is in conflict with the continuing active use of the land as EP Industries Ltd intends. The diversion is therefore in the interests of the company as the landowner and sole occupier of the land.

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

The existing route that is proposed to be diverted is approximately 237 metres long, and the proposed new path to replace it is approximately 265 metres long, which is 28 metres longer (about 12%). The gradients on the two routes are similar. The termination point on Main Road would be approximately 7 metres to the south east of the current termination point. Therefore, whilst the alternative route is slightly longer, it is not considered substantially less convenient.

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

The total length of Footpath No. 56 is around 492 metres, and the proposed increase in length is approximately 28 metres. The footpath provides a useful route between Riddings and Pye Bridge. This would be maintained by the proposed diversion which will divert the route along the alignment of the former Cromford Canal, passing through a lightly wooded area. The current alignment passes through an engineering works compound, which has the potential to be hazardous due to moving vehicles and the handling of materials.

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

Footpath 56 connects Riddings to Pye Bridge. A route between those two locations will be maintained by the diversion of the route. The coming into operation of the proposed Order would benefit the land owned and occupied by EP Industries in removing the footpath from an area of land that is used in connection with the business.

The existing footpath passes in part over a road or driveway in the ownership of EP Industries Limited. The residential property at the northernmost end of the existing footpath is accessed from this road. The owner of that property has a private right of way, at all times and for all purposes, which is set out in the registered title to that land. The diversion of the footpath will not affect that private right.

**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 new route would pass partly over land in the County Council's ownership

which is part of the corridor of the former Cromford Canal. There are no immediate plans to restore this section of the former Canal, but if any such restoration were to come to fruition, then the path could still be accommodated within the Canal Corridor. The remainder of the new route passes over land in the ownership of EP Industries Ltd. There are no indications that the diversion would have any adverse effects on any land.

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

It is considered that the proposed diversion is in the interests of the landowner and that it is expedient in the circumstances described in this report to make the Order.

It is claimed by the resident who responded to the consultation that the making of the proposed diversion would be unreasonable and against the interests of the public. However, since the new section of path would in some ways represent an improvement over the current legal line, and also offers a practical solution to the incompatibility between the current legal line and the continuing industrial use of the compound, it is considered to be in the public interest.

Although the test to be considered at order confirmation stage has been considered matters may be brought to the Council's attention, should an Order be made, which are not apparent at present. In the event that objections are received following the making of the Order, the Council would have to refer the matter to the Secretary of State should it be considered that confirmation of the Order is appropriate.

(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.

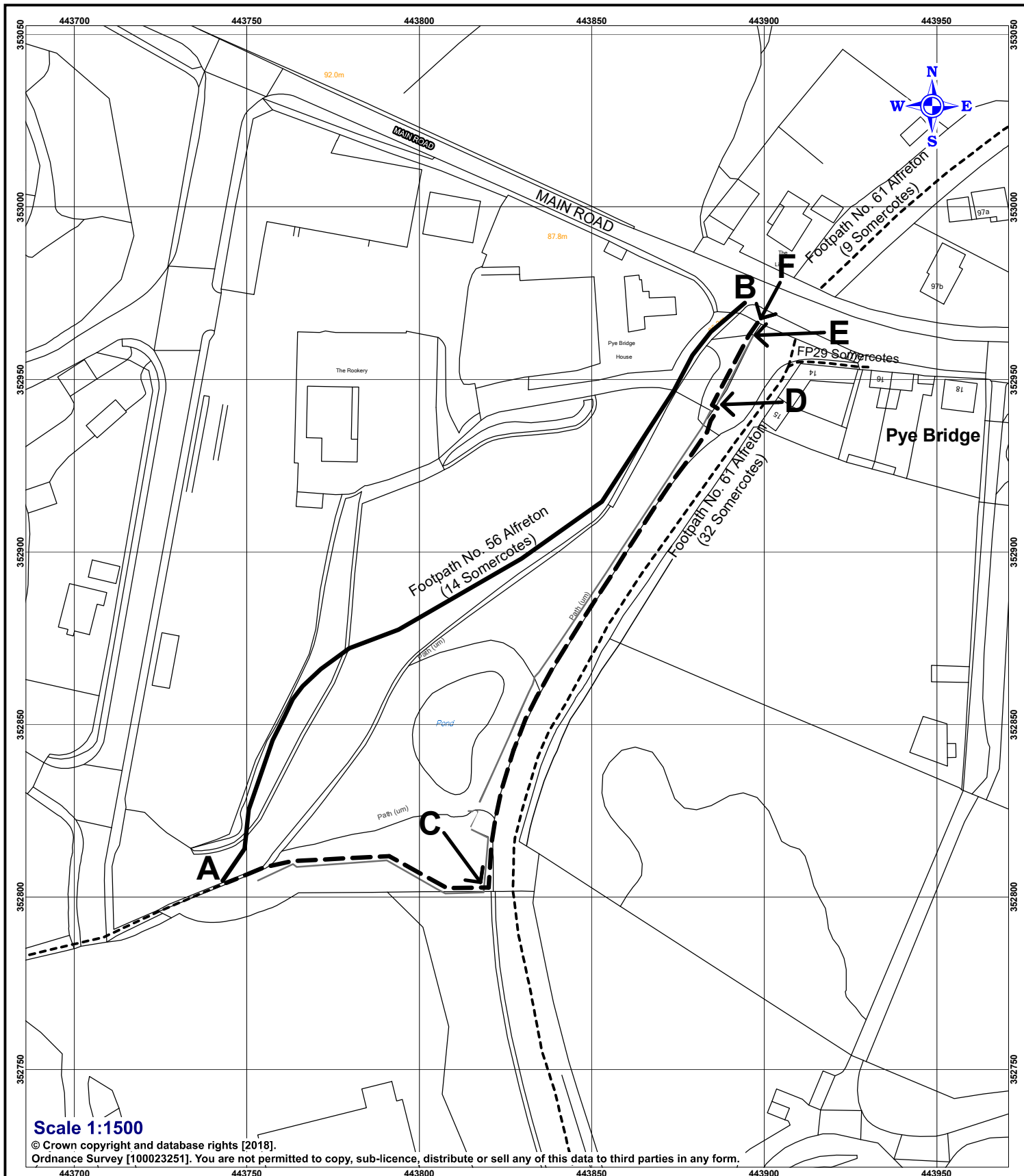
### **Other Considerations**

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 - David McCabe, extension 39770.

(7) **OFFICER'S RECOMMENDATION** That the Director of Legal Services be authorised to make an order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No 56. Alfreton as described in this report.

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### Highways Act 1980, Section 119

Proposed Diversion of Public Footpath  
No. 56 (Part) - Alfreton (now Footpath  
No. 14 in the Parish of Somercotes)

#### Key:

Footpath to be diverted —————

Alternative footpath - - - - -

Other footpaths - - - - -

