

Agenda Item No. 4(c)

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

16 January 2017

Report of the Strategic Director – Economy, Transport and Communities

PROPOSED DIVERSION OF PUBLIC FOOTPATH NOS 19 (PART) AND 21 (PART) – PARISH OF TRUSLEY AND FOOTPATH NO. 29 (PART) – PARISH OF OSLESTON AND THURVASTON

(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 nos 19 (part) and 21 (part), Parish of Trusley and footpath no. 29 (part). Parish of Osleston and Thurvaston, in the interests of the landowners and the public.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of parts of the above footpaths in the interests of the landowners. In the case of footpath no.19, this is to accommodate fences and a pond built on the path line. In the case of footpath no.21 it is to accommodate a ditch and hedge that were installed across the path line many years ago. In the course of dealing with the application, it was discovered that the footbridge on footpath no.29 had been installed a few metres off the correct line and to accommodate this, it is proposed to incorporate a short diversion in the public interest.

The parts of the paths proposed to be diverted are shown on the appended plan (TE/DM/X4008/Cttee/2017) as bold solid lines, and the proposed alternative routes by bold broken lines. If the proposed diversion takes effect it will divert approximately 13 metres of part of footpath no. 29 between points **A** and **B**, and the proposed alternative would be approximately 16 metres long between points **A** and **E**. Approximately 337 metres of footpath no. 19 along the route **B-C-D** would be diverted, with an alternative route approximately 321 metres long along **E-F-G-H-D**. Approximately 229 metres of footpath no.21 along the route **J-K** would be diverted, with an alternative route 198 metres long along **J-D**.

The alternative routes would have a natural surface and a recorded width of 2 metres. Pedestrian gates to the current British Standard 5709 would be installed at points **F**, **G** and **B**.

No objections were received to the proposed diversions when informal consultations were carried out between 12 April 2016 and 10 May 2016. The Local Member, Councillor Julie Patten, Trusley Parish Meeting, Osleston and Thurstaston Parish Council and Derbyshire Dales District Council have been consulted and raised no objections to the proposals.

(3) **Financial Considerations** The applicant has agreed in writing to defray all of the costs in respect of making and advertising the Diversion Order and bringing the new route into a suitable condition for public use. This includes Officer time in processing the application which is estimated to be in the region of £2,000.

(4) **Legal Considerations** 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:

In the case of footpaths nos. 19 and 21, it is in the interests of the owners of the land that the footpaths should be diverted, as it would enable the retention of fences, a pond, a hedge and a ditch that currently obstruct the path. In the case of footpath no. 29, the diversion is in the interests of the public as the bridge would otherwise have to be moved for it to be on the correct legal line.

The diversion of footpath no. 19 would have a slightly positive effect on the public enjoyment of the footpath as a whole, due to providing a more direct and rational route. The other diversions are judged to be neutral in this regard.

The coming into operation of the Order would not have any known adverse effects on any other land served by the existing public right of way.

Regarding the effect of the Order on the land over which the right is so created, and any land held with it, the written agreement of two out of three affected owners has been obtained. The other owner refused to sign an agreement but did not indicate any intention to object. This relates only to the short section of footpath no. 29. Potentially, a claim for compensation could be made under Section 28 of the Highways Act 1980 if it can be shown that the value of a landowner's interest had depreciated or he has suffered damages by being disturbed in his enjoyment of the land as a consequence of the Order. However, in the circumstances of footpath no.29, the risks to the Council are considered to be low.

Whether it is expedient to make the Order

It is considered that the proposed diversion is in the interests of the landowners and the public. The proposed diversion routes would not be substantially less convenient to the public, and would not have an adverse effect 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.

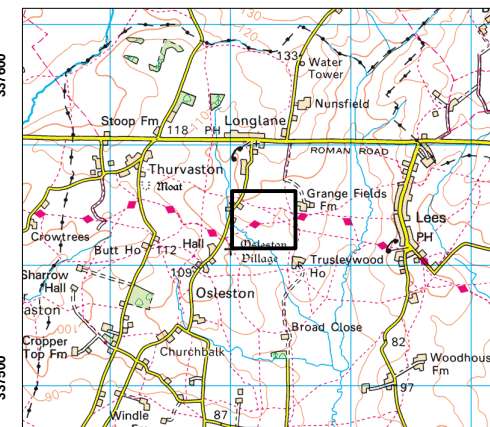
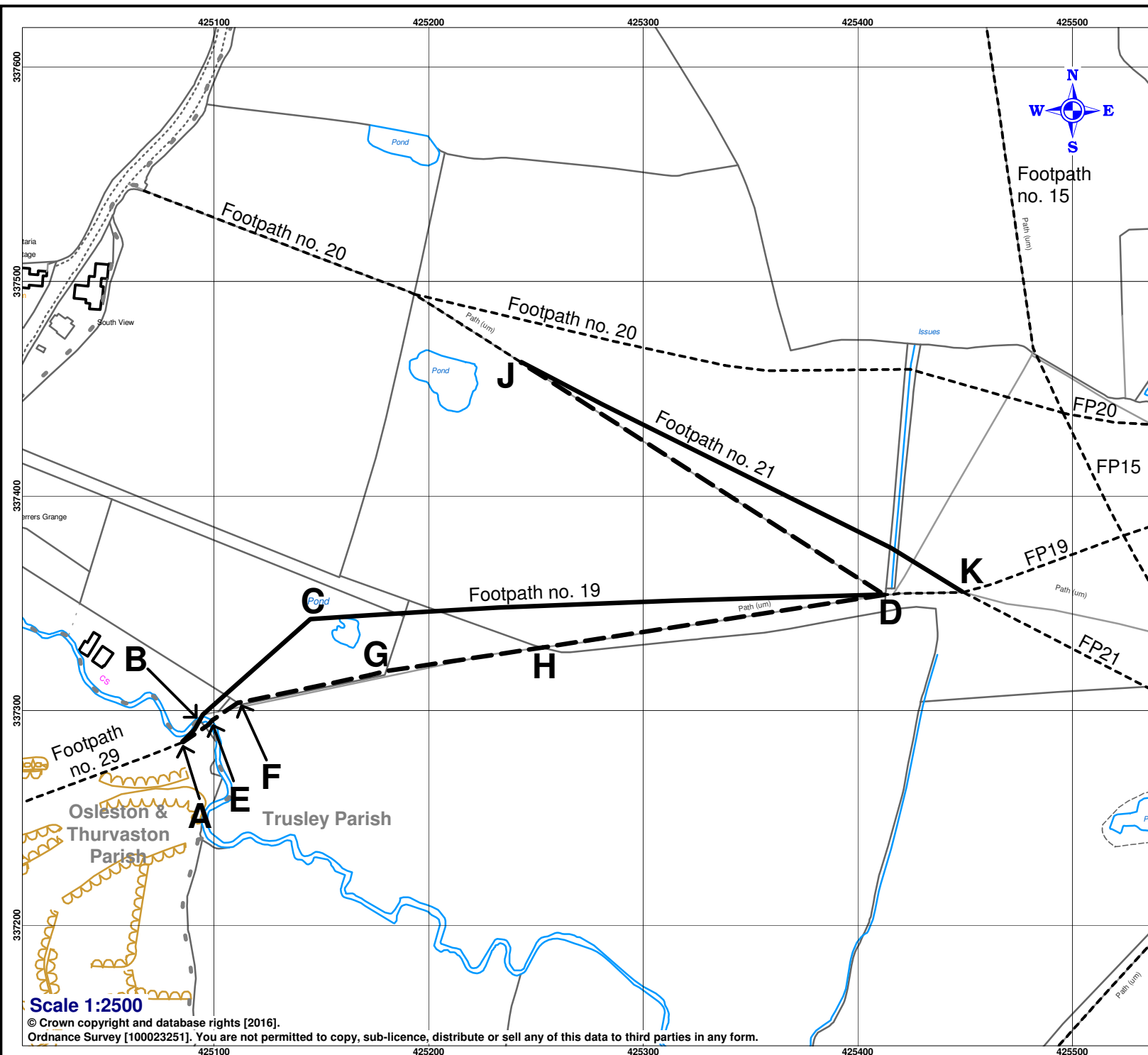
(6) **Background Papers** Held on file within the Rights of Way Section of the Economy, Transport and Communities Department. Officer contact details - David McCabe, extension 39770.

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

7.1 The Director of Legal Services be authorised to make the necessary Diversion Order under the provisions of 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.

Mike Ashworth
Strategic Director – Economy, Transport and Communities



Highways Act 1980, Section 119

**Proposed diversion of
Public Footpaths nos.
19 & 21 - Parish of Trusley -
and no. 29 - Parish of
Osleston & Thurvaston**

KEY

- Paths to be diverted —————
- Alternative footpaths - - - - -
- Unaffected footpaths (dotted)
- Parish boundary



Improving life for local people

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