

Agenda Item No. 4(d)

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

16 January 2017

Report of the Strategic Director – Economy, Transport and Communities

**SECTION 119 OF THE HIGHWAYS ACT 1980 - PROPOSED DIVERSION  
OF PUBLIC FOOTPATH NOS 58 AND 61 (PARTS) – PARISH OF  
BRAMPTON**

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Diversion Order for the permanent diversion of parts of footpaths nos. 58 and 61 Parish of Brampton in the interests of the landowner.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of the above footpaths in the interests of the landowner to facilitate safety and avoid endangering the public in the course of their work. The proposed diversion would move footpath no. 58 eastward to join the main access track, and move footpath no. 61 northward through a woodland.

If the proposed diversion takes effect, it will divert approximately 176 metres of that part of footpath no.58, shown as a bold solid line between points **A**, **B** and **C** on the appended plan (TE/DM/X4078/Cttee/2017). The proposed alternative would be approximately 172 metres long, shown as a bold broken line between points **A**, **D** and **E**. The route has a stoned surface 3 metres wide, and some works would be done to fill in potholes. The Order would also divert approximately 70 metres of that part of footpath no. 61, shown as a bold solid line between points **F** and **B**. The proposed alternative would be approximately 130 metres long, shown as a bold broken line between points **F**, **G**, **H** and **C** passing alongside a building between **F** and **G**. This would have a natural surface, levelled and widened to 1.5 metres.

Informal consultations were carried out on 6 June 2016 which resulted in only one indication that an objection would be made to an Order (from Brampton Parish Council), but this was later withdrawn. The Local Member, Councillor Stuart Ellis, and North East Derbyshire District Council were consulted and indicated no objections to the proposal.

(3) **Financial Considerations** The applicant has agreed in writing to defray all costs in bringing the new route into a suitable condition for public

use. The applicant has agreed to meet a proportion of the cost of the diversion in line with the Council's current Policy to assist with the diversion of paths away from farm buildings. The estimated cost of this diversion will be in the region of £1,500 of which the Council will bear 25% of that cost which will be met from the Rights of Way Revenue Budget.

(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:

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

The proposed diversion would take the paths away from working areas, enabling the owner to carry out works that could be hazardous to the public, allaying their concerns about endangering the public, and reducing their risk of liability for accidents.

The diversion is in the interests of the landowner.

**Whether the diverted footpaths will (or will not) be substantially less convenient to the public and whether the altered termination points will be substantially as convenient)**

If the diversions take effect the public will have to walk from **A – D – E**, along footpath no. 61 to **F** and then via **G – H – C** which is an overall distance of 385 metres. This is considerably further than the existing distance from **A – C** along footpath no. 58 which is 176 metres. However, the proposed route will take the public away from the working farmyard and domestic buildings and is arguably more pleasant to walk. The paths are likely to be used only by people who are walking for pleasure and in the context of a longer country walk the increase in distance is not substantial. For people who walk along footpath no. 61 to or from the south east, the existing distance **F – B – C** is slightly longer than the proposed new route **F – G – H – C**. Overall the diversions are not considered to be substantially less convenient to the public.

The alteration in the termination point of footpath no. 61 with footpath no. 58 from Point **B** to Point **C** is considered to be substantially as convenient to the public. The alteration in footpath no. 58 to create a new terminus with footpath no. 61 at Point **E** does mean that people who are walking along footpath no. 58 in either direction will have to walk further than they do at the moment (**A – D – E – F – G – H – G** rather than **A – B – C**) but in providing a footpath away from the working farmyard and along the stoned access track, the new route is considered to be substantially as convenient to the public. For people who walk along footpath no. 61, from the south-east and then wish to head south along footpath no. 58, (and vice versa), the distance they have to walk will be shorter as they will be able to travel **E – D – A** rather than **E – F – B – A** as at present.

Overall, the alterations in the termination points are considered to be substantially as convenient to the public.

The proposed diversion would not be substantially less convenient to the public and the alterations to termination points are substantially as convenient.

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

The current routes go through working areas and beside a dwelling. The public in general are uncomfortable walking through working farmyards and in close proximity to residential property. The alternative routes take the footpaths away from these areas, part of which is through an attractive woodland. Hence the alternative routes should increase public enjoyment.

The proposed diversion would have no adverse effect upon public enjoyment as a whole.

**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 only land affected belongs to the applicants.

**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 only land affected belongs to the applicants.

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

It is considered that the proposed diversion is in the interests of the landowner, it would not be substantially less convenient to the public, it would not have an adverse effect on the public enjoyment of the route as a whole, and it would not 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 to divert Public footpaths nos. 58 and 61 (Parts) – Parish of Brampton under the provisions of Section 119 of the Highways Act 1980.

- 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 Communities**

