

**DERBYSHIRE COUNTY COUNCIL**  
**REGULATORY – LICENSING AND APPEALS COMMITTEE**

**18 January 2016**

Report of the Strategic Director – Economy, Transport and Environment

**SECTION 119 OF THE HIGHWAYS ACT 1980 -**  
**PROPOSED DIVERSION OF PUBLIC FOOTPATHS NOS 2 AND 57**  
**(PARTS) – PARISH OF HOLMESFIELD**

(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 Public Footpath Nos 2 and 57, Parish of Holmesfield, 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 improve privacy and security by taking the paths away from the immediate vicinity of their homestead. The proposed diversion would move Public Footpath No 2 westward, along the edge of the field, and move Public Footpath No 57 southward, from a track to cross the corner of a field.

If the proposed diversion takes effect, it will divert approximately 416 metres of that part of Public Footpath No 2 in the parish of Holmesfield, shown on plan reference TE/AG/x4006/Cttee/2016 as a bold solid line between points **A-B-C-D**. The proposed alternative would be approximately 375 metres long, shown as a bold broken line between points **F-E-D**. It would also divert approximately 62 metres of Public Footpath No 57 shown as a bold solid line between points **B-F**. The proposed alternative would be approximately 61 metres shown as a bold broken line between points **A-G**. The alternative routes would have a natural surface and a recorded width of 2 metres. Pedestrian gates to the current British Standard 5709:2006 would be installed at points **F** and **G**. An earth ramp at point **F** would be further smoothed and compacted.

Informal consultations were carried out on 25 November 2015 which resulted in no indications that objections would be made to an Order. The Local Member, Councillor Stuart Ellis, Holmesfield Parish Council and North East Derbyshire District Council have been consulted and have no objections to the proposal.

(3) **Financial Considerations** The applicant has agreed in writing to defray all of the costs in respect of 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. The applicant would like to be considered for the discretionary 25% reduction in costs due to Public Footpath No 2 passing through agricultural and domestic premises. This would result in the applicant paying 75% of the costs in respect of making and advertising the Diversion Order, including Officer time which is estimated to be in the region of £1,500. Derbyshire County Council will contribute the outstanding 25% in accordance with the Policy on removing public footpaths from domestic premises; this is estimated to cost £500 and will be met from the existing Rights of Way revenue maintenance 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 path from the garden and curtilage of the residential property, improving privacy and security.

The diversion is in the interests of the landowner.

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

The proposed alternatives would result in a 20 metres increase in the total length required to walk and there will be limitations for stock control purposes on the proposed alternative. As there are none on the current route, however, this is not considered to be substantially less convenient.

There would be an alteration to the termination point of Public Footpath No 57 as a result of the proposed diversion. However, this is only 61 metres to the east of the current termination point, on the same highway, and is therefore substantially as convenient.

The proposed diversion would be substantially as convenient to the public.

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

As the current route goes through the curtilage of private property, the quality of the route will be improved by the proposed diversion as the public in general have expressed that it is preferable to walk through fields than through a private garden and in such close proximity to residential property. The views of the surrounding countryside are also enhanced by walking the proposed alternative.

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**

No other land is affected.

**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**

No other land is affected.

**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. The alteration to the termination point of Public Footpath No 57 is substantially as convenient to the public.

(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 and transport considerations.

(6) **Key Decision** No.

(7) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

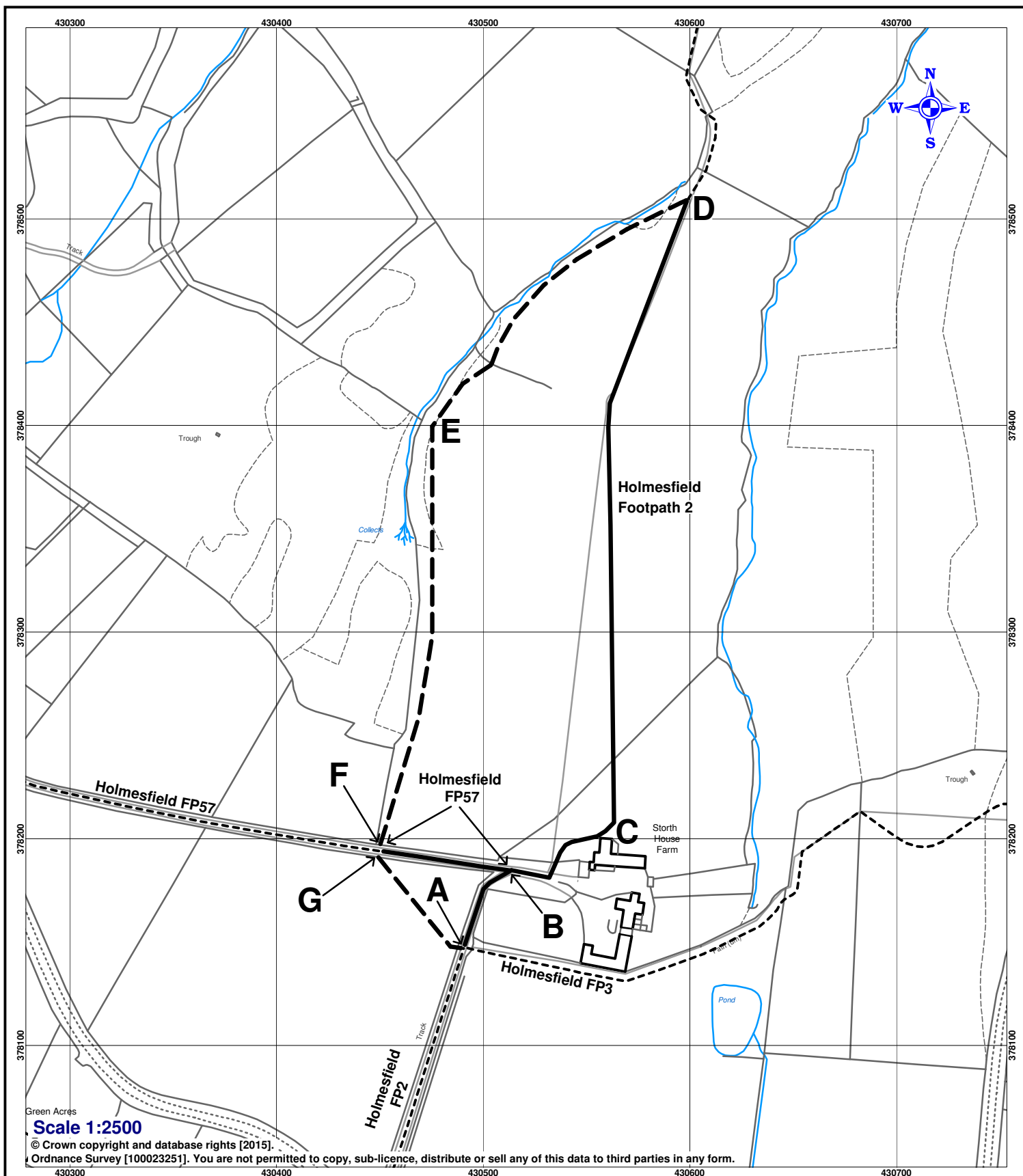
(8) **Background Papers** Held on file within the Economy, Transport and Environment Department. Officer contact details - David McCabe, extension 39770.

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

9.1 The Director of Legal Services be authorised to make the necessary Diversion Order to divert Public Footpaths Nos 2 and 57 (Parts) – Parish of Holmesfield, under the provisions of Section 119 of the Highways Act 1980.

9.2 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**  
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Ref: TE/AG/X4006/Cttee/2016



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Produced by Public Rights of Way on 28 July 2015

**Highways Act 1980, Section 119**  
**Proposed diversion of**  
**Public Footpath No.2 (Part)**  
**and Public Footpath No.57 (Part) -**  
**Parish of Holmesfield**

**Key:**

- Path to be diverted —————
- Alternative footpath - - - - -
- Other public footpaths - - - - -

