

Agenda Item No. 5(a)

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

15 January 2018

Report of the Strategic Director – Economy, Transport and Environment

PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.2 (PART) – PARISH OF BRETBY

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Diversion Order for the permanent diversion of Footpath No.2 in Bretby Parish, in the interests of the landowner.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of the above footpath in the interests of the landowner to improve security. The footpath is, at present, obstructed by security gates, trees and fencing, a situation that existed before the current owner acquired the property. The diversion would move the footpath along a wide corridor to the west between a hedge and fence.

If the proposed diversion takes effect, it will divert that part of the footpath shown as a bold solid line between points **A**, **B** and **C** on the appended plan with the proposed alternative shown as a bold broken line between points **A**, **D**, **E** and **C**. Approximately 138 metres of the footpath would be diverted and the alternative would be approximately 122 metres long. The alternative route would be levelled and have a surface of rolled road planings 1.5 metres wide within a recorded legal width of 2 metres. Existing gates at points **D** and **E** would be removed and access would be gained through the gaps.

Part of the land over which the existing and proposed routes pass is owned by Burton Golf Club, which has agreed in writing to the proposal.

No objections were received to the proposed diversion when informal consultation was carried out between 15 August 2017 and 12 September 2017. The Local Member, Councillor Linda Chilton, Bretby Parish Council and South Derbyshire District Council were consulted and offered no objections to the proposal.

(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:

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

The footpath is currently illegally obstructed by security gates, trees and fencing. If the diversion does not go ahead the owner will have to remove them at some expense and reduce the security and privacy of the property, therefore, 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 length of the existing footpath that is proposed to be diverted is 138 metres compared to the alternative route which is 122 metres, therefore, the diverted path will be marginally shorter and so satisfies the convenience test.

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

The existing footpath is not currently passable due to obstructions, but in assessing diversion proposals these should be ignored and the situation assessed as if the route were open. The footpath originally passed close to Oldicote Farm, which has since been re-built as a modern private residence. Many people are uncomfortable when using public paths to pass through private residences, feeling they are intruding on the privacy of the residents. The proposed diversion would move the path outside the main grounds of the applicant, onto a more direct line alongside a mature hedge with some wildlife value, therefore, the diversion can be said to have a positive effect on the public enjoyment of the footpath 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 diversion would have no known or foreseen adverse consequences in this respect.

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

Part of the land is held by another land owner who has agreed in writing to the proposal, therefore the diversion would have no known or foreseen adverse consequences in this respect.

Whether it is expedient to make the Order

It is considered that the proposed diversion is in the interests of the landowner and occupier. 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.

(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

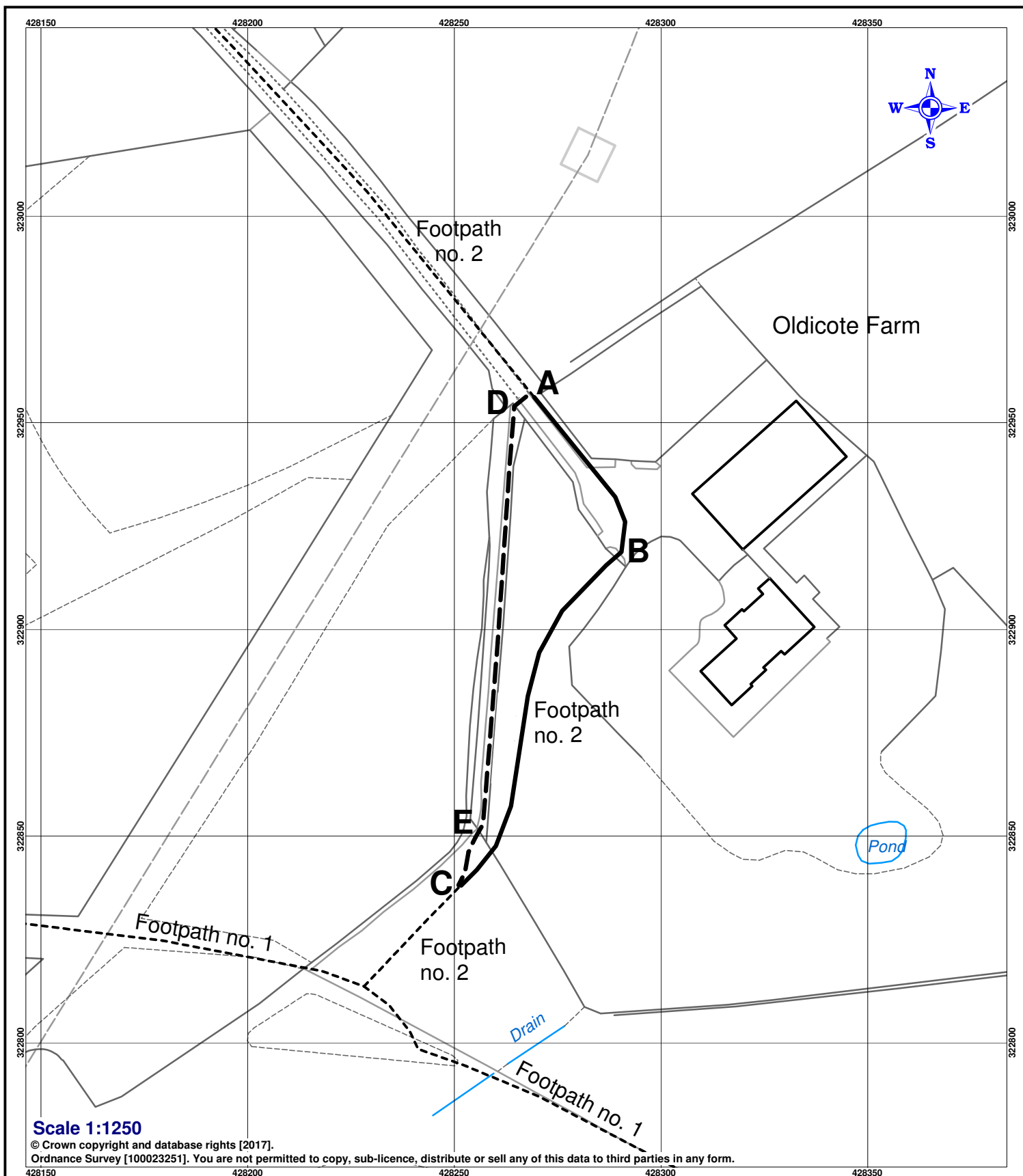
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

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

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

- 7.1 The Director of Legal Services be authorised to make the necessary Order to divert Public Footpath No.2 (Part) in the Parish of Bretby, 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.

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Highways Act 1980, Section 119

Proposed Diversion of Public Footpath no. 2 - Parish of Bretby

Key:

Path to be diverted	
Alternative footpath	
Other Footpaths	

