

Agenda Item No. 5(e)

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. 23 (PART) –
PARISH OF CLOWNE**

(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.23, Parish of Clowne, 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. The existing route passes through a farmyard close to a private dwelling where there is potential conflict with dogs and safety issues with farming operations. The diversion would enhance privacy and safety by moving part of the footpath towards the edge of the property and along an existing stoned track. Part of the land, between points **C** and **D**, is held by a third party who has agreed in writing to the proposal.

If the proposed diversion takes effect, it will divert approximately 125 metres of that part of the footpath shown as a bold solid line between points **A** and **B** on the attached plan. The proposed alternative route would be approximately 133 metres long, shown as a bold broken line between points **A**, **C** and **D**. However, the comparable route to and from the same points would be 235 metres long but, if travelling from Hoodcroft Lane, the distance would be 102 metres shorter than using the existing route with Bridleway No.27. There would be a new pedestrian gate conforming to British Standard 5709:2006 at Point **C**. The surface between points **A** and **C** would be of crushed stone, and between points **C** and **D** is an existing stone surface. The recorded width would be 2.0 metres.

No objections were received to the proposed diversion when informal consultation was carried out from 27 June 2017 to 25 July 2017. The Local Member, Councillor Western, supports the proposal, and Clowne Parish Council and Bolsover District Council were consulted and offered no objections.

(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 existing route passes through a farmyard close to a private dwelling, where there is potential conflict with dogs and safety issues with farming operations. The diversion would enhance privacy and safety by moving part of the footpath towards the edge of the property and along an existing stoned track. 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 proposal is to divert 125 metres of the existing route between points **A-B** onto an alternative route **A-C-D** around 133 metres long. It can therefore be concluded that the diverted path would not be substantially less convenient to the public.

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

The comparable route **A-C-D-B**, which uses the same end points, is around 235 metres, which is 110 metres longer than the existing route. However, if travelling to or from the north along Hoodcroft Lane using Bridleway No.27, the proposed route actually shortens the journey by around 102 metres. It can therefore be concluded that the diverted path would be substantially as convenient to the public.

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

The existing route passes through a farmyard close to a private dwelling where there is potential conflict with dogs and safety issues with farming operations. The diversion would resolve this. Many people are also uncomfortable passing through rural properties, feeling they are intruding on the privacy of the residents, and diverting part of the footpath towards the edge of the property would address this. 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 a third party and the proposed route follows their access road. However, visibility is good and they see no problem with this as they have 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 the new termination point would be substantially as convenient. It would not have an adverse effect on 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. It is therefore concluded that it is expedient to make the order.

(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

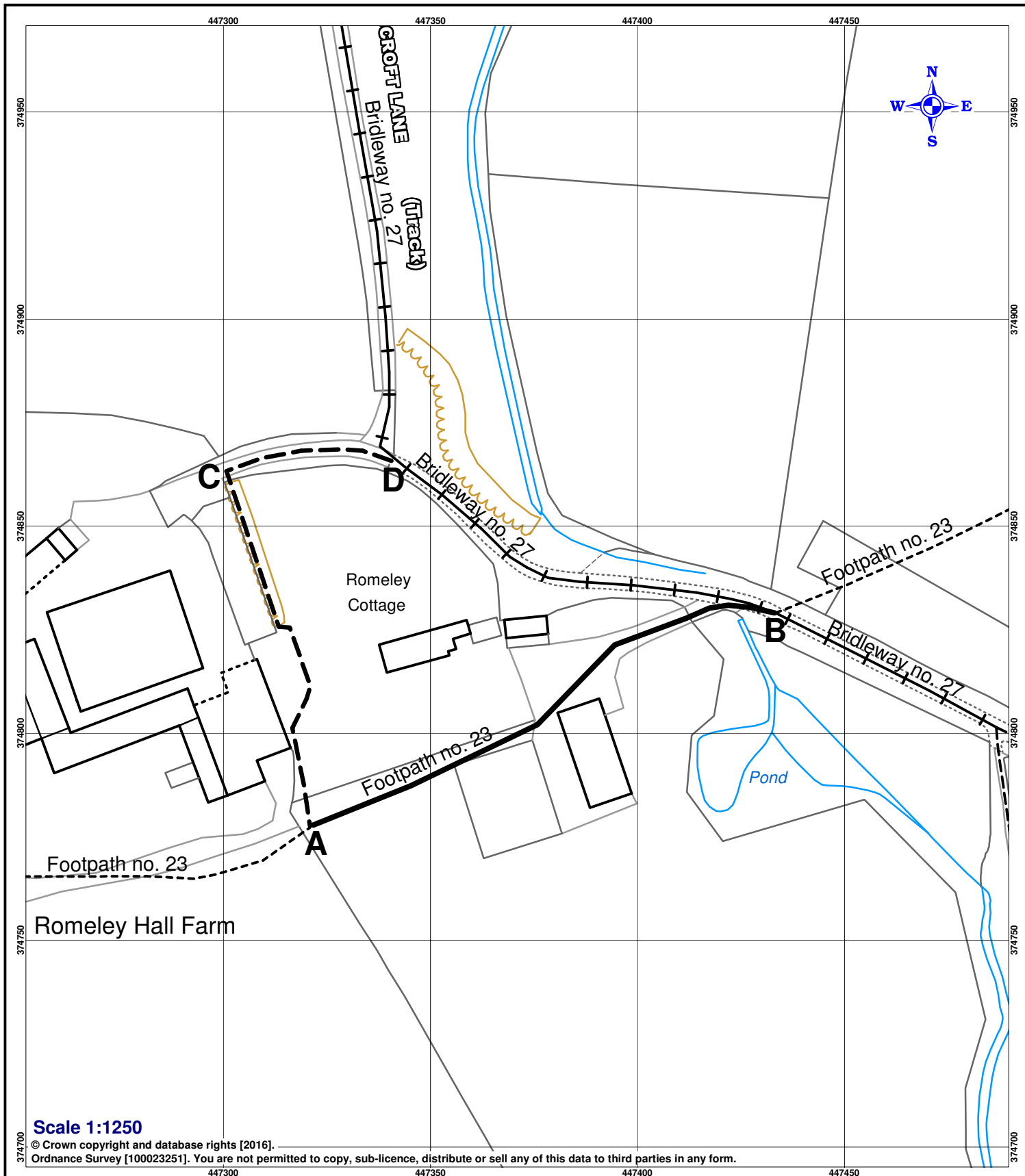
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(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 Diversion Order to Public Footpath No.23 (Part), in the Parish of Clowne, 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.

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Highways Act 1980, Section 119

Proposed Diversion of Public Footpath no. 23 (Part) - Parish of Clowne

Key:

Footpath to be diverted	
Alternative footpath	
Unaffected footpath	
Public bridleway	

