

Agenda Item No. 5(b)

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.5 (PART) – PARISH OF WHALEY BRIDGE

(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.5 (part) in the Parish of Whaley Bridge 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 accommodate a wall, a garage and fences that have been erected on the path line. The proposed diversion would move the footpath to the west along a surfaced track. Parts of the affected land are held by four other landowners who have agreed in writing to the proposal.

If the proposed diversion takes effect, it will divert approximately 47 metres of the footpath shown as a bold solid line between points **A**, **B**, **C** and **D** on the attached plan. The proposed alternative would be approximately 43 metres long, shown as a bold broken line between points **A**, **E** and **D**. The alternative route has a field gate at Point **E** and a stone surface, and will have a recorded width of 2.0 metres along the centre of the track.

No objections were received to the proposed diversion when informal consultations were carried out between 11 July 2017 and 8 August 2017. The Local Member, Councillor Alison Fox, Whaley Bridge Town Council and High Peak Borough Council have been 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 any necessary works to bring 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 legal line of the footpath is obstructed by a wall, a garage and fences. The alternative to a diversion is for the legal line to be restored, requiring removal of these obstructions. Hence, the diversion is in the interests of the landowner.

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

That part of the existing route which would be diverted is approximately 47 metres long, and the alternative is only 43 metres long, hence, it can be said not to be substantially less convenient.

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

The existing route is currently unusable due to obstructions, so the alternative route would have a positive effect on public enjoyment in that respect. The situation should also be considered as if the obstructions were not there and the legal line were restored, and as the legal line passes through a private garden (which the public often feel uncomfortable about using), the alternative route could be said to be more enjoyable on this basis. Hence, the diversion can be said to increase 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

As mentioned above, part of the land is held by four other parties who have agreed in writing to the proposal, hence 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, it would not be substantially less convenient to the public, it would have a positive effect on the public enjoyment of the footpath as a whole, and would not 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

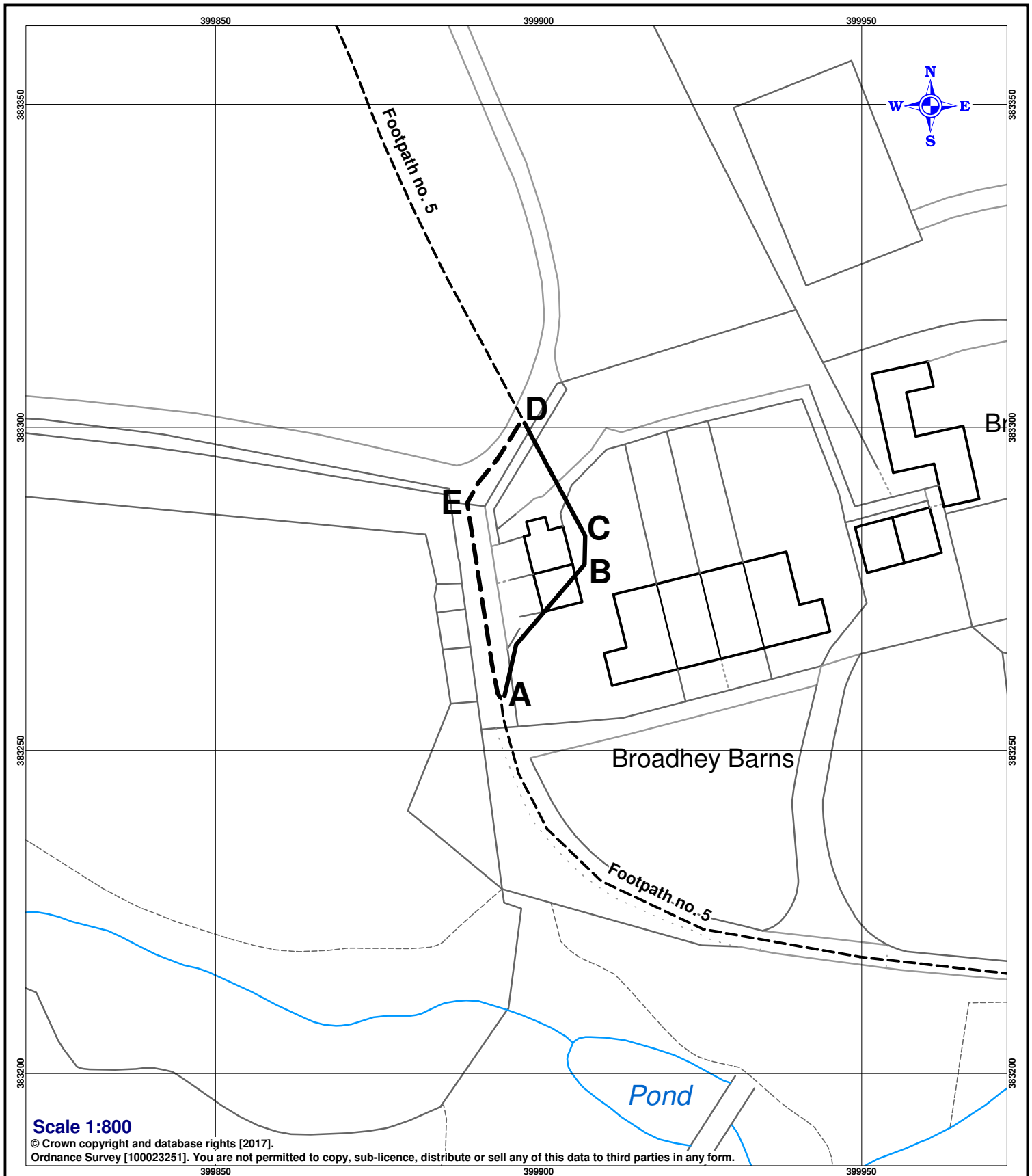
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(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 Order to divert part of Public Footpath No.5, Parish of Whaley Bridge, 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. 5 (part) - Parish of Whaley Bridge.

Key:	Path to be diverted	
	Alternative Footpath	
	Unaffected Footpath	

