

Agenda Item No. 5(c)

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.8 (FORMERLY NO.40 IN THE PARISH OF WHITWELL) (PART) – PARISH OF HODTHORPE AND BELPH

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Diversion Order for the permanent diversion of part of Public Footpath No.8 in the Parish of Hodthorpe and Belph (formerly No.40 in the Parish of Whitwell) 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 at Hall Leys Farm to improve safety by taking the route away from an area where vehicles manoeuvre, and for the efficient growing of crops. Over the years, field boundaries have been removed. Consequently, the irregular shape of the current definitive line of the path and its position relative to farming operations makes it difficult to reinstate the path. The proposed alternative route is a more direct alignment and easier to maintain. Part of the land over which the alternative route passes is held by a third party who has stated in writing that they have no objections to the proposal.

If the proposed diversion takes effect, it will divert approximately 540 metres of the footpath, shown as a bold solid line between points **A** and **B** on the attached plan. The proposed alternative would be approximately 484 metres long, shown as a bold broken line between points **A**, **C** and **B**. At Point **A**, access is open and at Point **C**, there is a gap with offset fencing to deter cyclists. The alternative route will have a recorded width of 2.0 metres.

No objections were received to the proposed diversion when informal consultation was carried out between 18 July 2017 and 15 August 2017. The Local Member, Councillor Duncan McGregor, Hodthorpe and Belph Parish Council and Bolsover District 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 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 an area where vehicles manoeuvre, which can be hazardous for the public and a potential liability on the owner. The existing route also follows a route that followed field boundaries that no longer exist and is now illogical, making it difficult to manage when growing crops. The diversion would take the route away from the area where vehicles manoeuvre and provide a route through the arable field that is easier to manage. 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

The existing route is around 540 metres long, whilst the alternative route is around 484 metres long; a reduction of 56 metres. The proposed route is also more direct, so 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 passes through an area where vehicles manoeuvre, which can be hazardous for the public, and it also follows an indirect route through an arable field. The alternative route avoids the safety issues and is more direct. Hence, it will 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

Part of the land is held by a third party who has 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

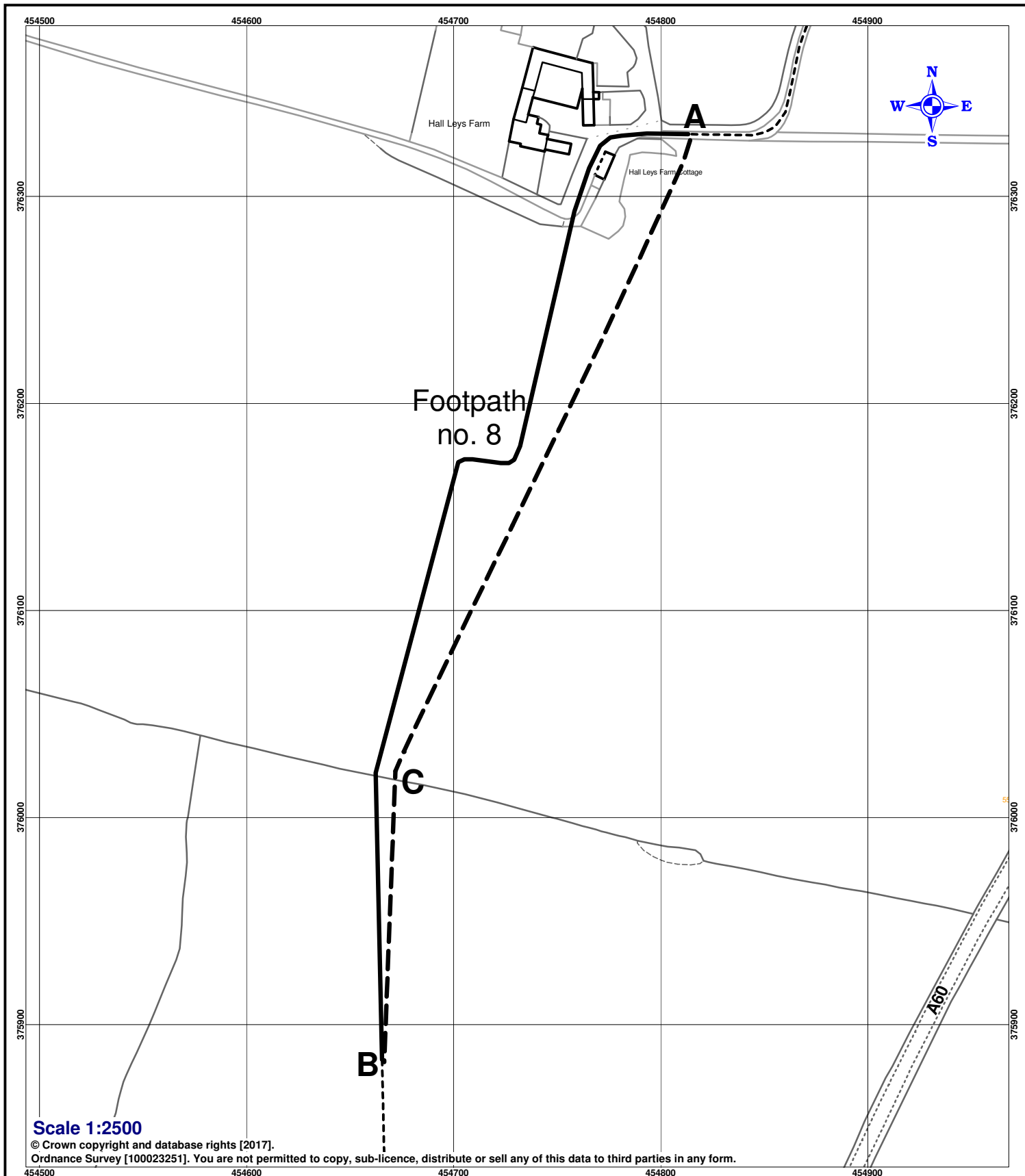
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(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 Diversion Order to divert part of Public Footpath No. 8 (formerly No.40 in the Parish of Whitwell), Parish of Hodthorpe and Belph, 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 Environment



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Mike Ashworth

Strategic Director
Economy, Transport & Environment
Derbyshire County Council
Shand House
Dale Road South
Matlock
DE4 3RY

Highways Act 1980, Section 119

Proposed Diversion of Public Footpath no. 8
(Formerly No. 40 in the Parish of Whitwell)
(Part) - Parish of Hodthorpe & Belph.

Key:

Path to be diverted —————
Alternative footpath - - - - -
Unaffected Footpath - - - - -

