

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

10 September 2018

Report of the Strategic Director – Economy, Transport and Environment

PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.25 (PART) – PARISH OF SHIRLAND AND HIGHAM

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Public Path Diversion Order for the permanent diversion of Shirland and Higham Public Footpath No.25, in the interests of the landowner.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of part of Public Footpath No.25, to the north-west of Valley View Farm, Stretton. The diversion of the path would enable the landowner to better protect their livestock and to increase the grazing capacity of their land.

If the Diversion Order takes effect, it will divert approximately 198 metres of Public Footpath No.25, as shown as a bold solid line between points **A-B** on the attached plan (ref. TE/CH/X4167/Cttee/2018). The new path would be approximately 241 metres, shown as a bold broken line between points **A-C-B**, it would have a natural ground/grass surface and a recorded width of 5 metres.

A gap to the current British Standard (BS5709:2018) with a width of 1.1 metres would replace the stile currently in place at Point **B**, improving accessibility on the route.

No objections were received to the proposed diversion when informal consultation was carried out on 23 May 2018. The Local Member, Councillor Barry Lewis, Shirland and Higham Parish Council, and North East Derbyshire District were consulted and offered no objections to the proposal.

Concerns were raised by representatives of the Peak and Northern Footpath Society (PNFS) and the local Ramblers regarding the impact that enclosing the alternative path would have on users' enjoyment of the path, and the convenience of the route should inadequate maintenance of surface vegetation and overhanging vegetation occur. These comments were passed on to the applicant for reference should they decide to fence the path in future. Derbyshire County Council, as the Highway Authority, would have a duty to

ensure the path is adequately maintained and any obstructing vegetation cut back, likewise for the existing path.

PNFS also raised concerns regarding the placement of barbed wire on any fencing erected in the future. This matter has been discussed with the applicant and should barbed wire be installed, it would be placed on the field side of the fence with a plain wire on the side of the footpath, so as to not be a nuisance to users of the path.

(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 application for the diversion of the footpath has been made in the interest of the landowner, to better protect their livestock and to increase the grazing capacity of their land.

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

Investigation has concluded that the diversion of the path would not be substantially less convenient to the public for the following reasons:

- The alternative route is similar in length, with an increase of 43 metres on what is a rural path most likely used for enjoyment.
- The surface would remain the same (natural ground/grass).
- The termination points of either end of the affected section of path would not be altered as a result of the proposed diversion.
- The stile currently on the route would be replaced with a gap to the current British Standard (BS5709:2018) with a width of 1.1 metres; this would improve the convenience of the route by improving the accessibility along it.

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

The alternative path offers similar views to the current alignment of the path and would not have a significant negative impact upon enjoyment in regards to this.

The effect which the coming into operation of the Order would have as respects other land served by the existing public rights of way

None identified.

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

The management of the land would be easier for the landowner as a result of the path being diverted; the grazing capacity of the land would be increased.

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 - Corinne Hudson, extension 39660.

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

- 7.1 The Director of Legal Services be authorised to make the necessary Order under Section 119 of the Highways Act 1980 to divert Public Footpath No.25 (part) in the Parish of Shirland and Higham.
- 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

