

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

21 May 2018

Report of the Strategic Director – Economy, Transport and Environment

**PROPOSED DIVERSION OF PUBLIC FOOTPATHS NOS. 7 AND 8
(PARTS) – PARISH OF BRADBOURNE**

(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 Nos. 7 and 8 (parts) in the Parish of Bradbourne, in the interests of the landowner and the public.

(2) **Information and Analysis** Derbyshire County Council has received an application for the permanent diversion of parts of Public Footpath Nos. 7 and 8 to accommodate a building, a horse exercise enclosure, earthworks, fencing and a hedge that have been erected on the footpaths. The proposal for Footpath No. 8 was approved by Committee on 25 July 2016 (Minute No. 29/16 refers) but this was not carried through when a mapping issue was discovered. Updating of the Ordnance Survey's mapping revealed that the entrance to Footpath No. 8 does not coincide with the farm entrance as was thought, which meant that access from the alternative route to the road would be obstructed. Footpath No. 7 was to provide the link but it is obstructed by fencing and a hedge. The current proposal seeks to accommodate this by moving the entrance of Footpath No. 7 to a more straightforward location at the farm entrance, and moving Footpath No. 8 so that it by-passes the building, horse exercise enclosure and earthworks, as per the previous proposal. Where the existing route crosses the stream, there is currently no adequate means of crossing, so the proposed diversion will save the Council the cost of installing one.

If the proposed diversion takes effect, it will divert approximately 67 metres of that part of Footpath No. 7 shown as a bold solid line between points **A** and **B** on the attached plan. The proposed alternative would be approximately 62 metres long, shown as a bold broken line on the route **C-D-B**. The alternative route has a short section of stone surface at the southern end with a grass surface on the rest, and would have a recorded width of 2.0 metres and a stile at Point **D**. The applicant believes a stile is necessary rather than a pedestrian gate as expensive horses are kept in the field and a gate would increase the risk of theft and injury.

The proposal would divert approximately 318 metres of that part of Footpath No. 8 shown as a bold solid line between points **A**, **E** and **F** on the attached plan. The proposed alternative would be approximately 286 metres shown as a bold broken line between points **G**, **H**, **J**, **K** and **F**. The alternative route would have a stone surface with a short section of grass surface at the north end, and a recorded width of 2.0 metres. The route passes over culverts at **J** and **K** which will be maintainable by the landowner.

One objection was received to the proposed diversions when informal consultations were carried out, about the use of a stile rather than a gate, but this was later withdrawn. The Local Member, Councillor Irene Ratcliffe, Bradbourne Parish Council and Derbyshire Dales District Council 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, but has asked for the discretionary reduction of 25% of costs due to Footpath No. 8 passing through agricultural premises. The total cost including Officer time in processing the application 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

It is in the interests of the landowner of the land that the footpaths should be diverted because liabilities would be reduced by removing the footpath from an area used by machinery and horses where there are safety issues; also, the footpath passes through a building, equestrian compound, earthworks, hedge and fencing that would otherwise have to be removed. The diversion is also in the interests of the public because it provides a safe means of crossing a stream that would otherwise have to be provided at some expense by the Council.

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

The affected length of Footpath No. 7 is 67 metres long and the proposed alternative is 62 metres long. The distance along the diverted route, **B-D-C-A** is 72 metres, a difference which is insignificant. The existing length of Footpath No. 8 to be diverted is some 318 metres long and although the alternative route is shorter at 286 metres, to get to and from the same end points using the connecting part of Footpath No. 7 is some 68 metres longer. In the context of a country walk at this location, this is not believed to be significant or detrimental. Hence, the diversion appears not to be substantially less convenient to the public.

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

Both footpaths are obstructed but the proposals should be assessed as if the obstructions were not present. The diversion of Footpath No. 7 would resolve the obstruction issues but, by comparison to its original route, would have a neutral effect on public enjoyment as it represents a minor alteration. The diversion of Footpath No. 8 would take it away from the obstructions and provide a safe culverted crossing point for the stream. The proposed route is less direct than the existing legal route and therefore arguably less enjoyable, but not significantly so. It is therefore concluded that the diversion would have a neutral effect on the public enjoyment of the footpath as a whole, and in

practice a positive effect by providing a usable route where there currently is no formal access.

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

There would be no known or anticipated effects.

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

All of the affected land is owned by the applicant so any effects are acceptable to the owner.

Whether it is expedient to make the Order

In summary, taking into account the points raised above and in the body of the report, it would be 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

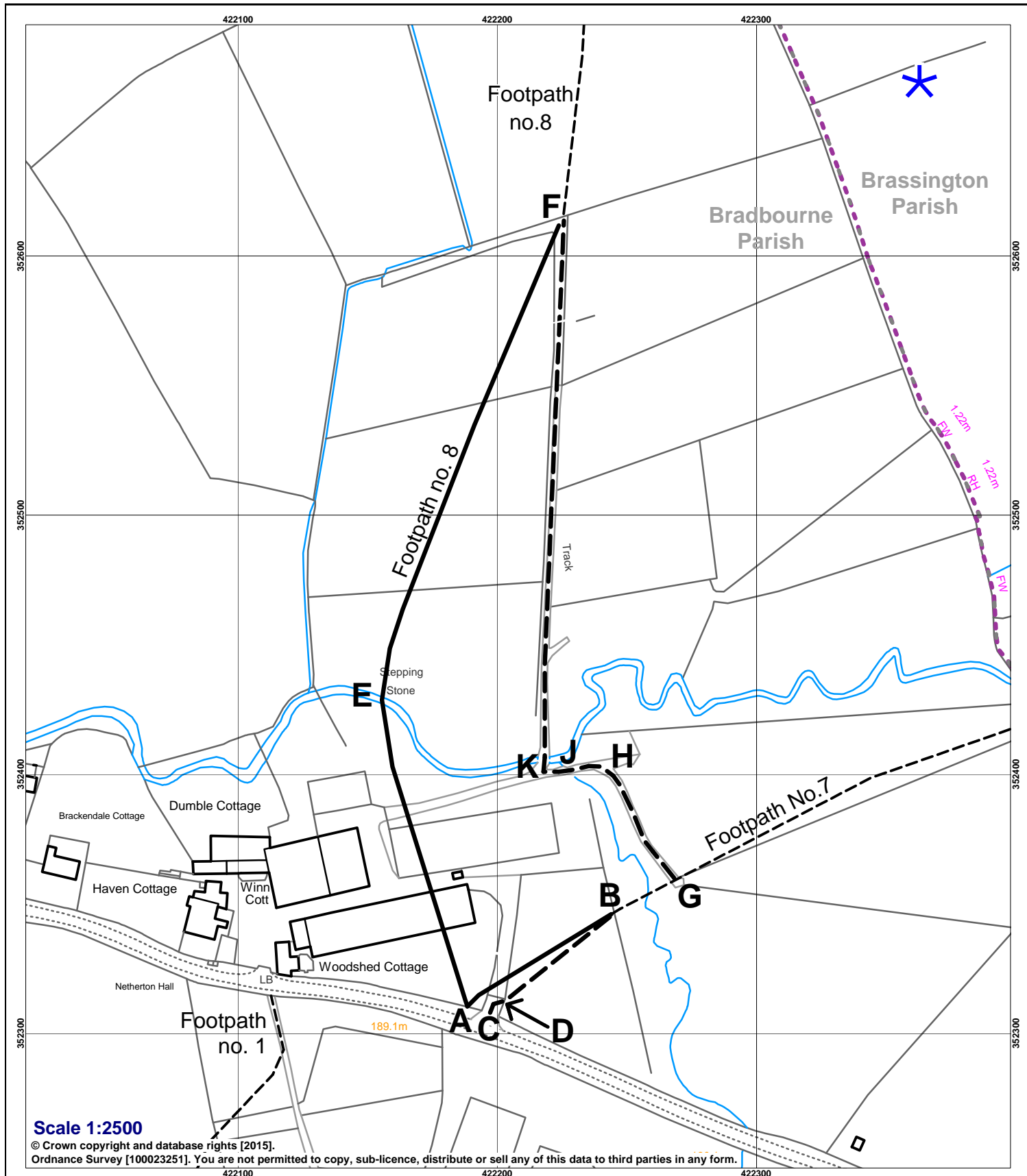
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(6) **Background Papers** Held on file within the Rights of Way Section of 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 Diversion Order to divert parts of Public Footpath Nos. 7 and 8 in the Parish of Bradbourne.
- 7.2 Approval be given to apply the discretionary reduction of 25% due to the footpath passing through agricultural premises.
- 7.3 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 Footpaths Nos.7 (part) & 8 (part) - Parish of Bradbourne.

Key:

Footpath to be diverted

Alternative Footpath

Other footpaths

Parish Boundary

