

Agenda Item No. 5(b)

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

21 May 2018

Report of the Strategic Director – Economy, Transport and Environment

**PROPOSED DIVERSION OF PUBLIC FOOTPATH NO. 14 (PART) –
PARISH OF DENBY**

(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 part of Public Footpath No.14, Parish of Denby, in the interests of the landowner.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of a section of Denby Public Footpath No.14, in the interests of the landowner, to improve security and move the footpath from the garden where it is obstructed by a retaining wall. The proposed diversion would move the entrance of the footpath from its current site on Derby Road to one on Ryknield Hill, a short distance away.

If the proposed diversion takes effect, it will divert approximately 17 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 would be approximately 10 metres long; shown as a bold broken line between points **C** and **B**. The alternative route provides a shorter journey to or from Ryknield Hill. The alternative route would have a surface of road planings and a recorded width of 2 metres. There is a change in levels on the site and this would be fenced for safety and privacy. A bollard would be installed at the new entrance at Point **C** to prevent unauthorised vehicular access.

No objections were received to the proposed diversion from informal consultations. The Local Member, Councillor Kevin Buttery, Denby Parish Council and Amber Valley Borough Council were 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 a Diversion 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 footpath currently passes close to a domestic building and through a private garden. The proposed diversion would take the footpath further away from these into an area separated by a fence, increasing the owner's sense of

privacy and security. The footpath is also obstructed in the garden by a retaining wall and if it is not diverted this will have to be removed and the path re-instated at some expense to the landowner. It is therefore in the interests of the landowner that the footpath should be diverted.

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

The affected length of the existing footpath is around 17 metres long and the proposed alternative would be approximately 10 metres long. The journey **A-C-B** using the pavement and the alternative route is around 32 metres long, meaning a slightly longer journey to or from Derby Road. However, the journey **B-A-C** using the existing path and the pavement is around 40 metres long, meaning the alternative route provides a shorter journey to or from Ryknield Hill. It can therefore be concluded that, on balance, the diversion has no significant effect on the convenience of the route.

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

The footpath is obstructed but the proposal should be assessed as if it were not so. Both the existing route and the alternative route have a modest gradient. The alternative route would be of a commodious width and surfaced in rolled road planings. The distances do not appear to be an issue but the necessity to pass through a private garden is, for most walkers, unwelcome as it gives a sense of intruding into a private area. It can therefore be concluded that the diversion would have a positive effect on the public enjoyment of the route.

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 anticipated adverse 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

The land over which the alternative route passes is under the ownership of the applicant.

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, 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 considered 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.

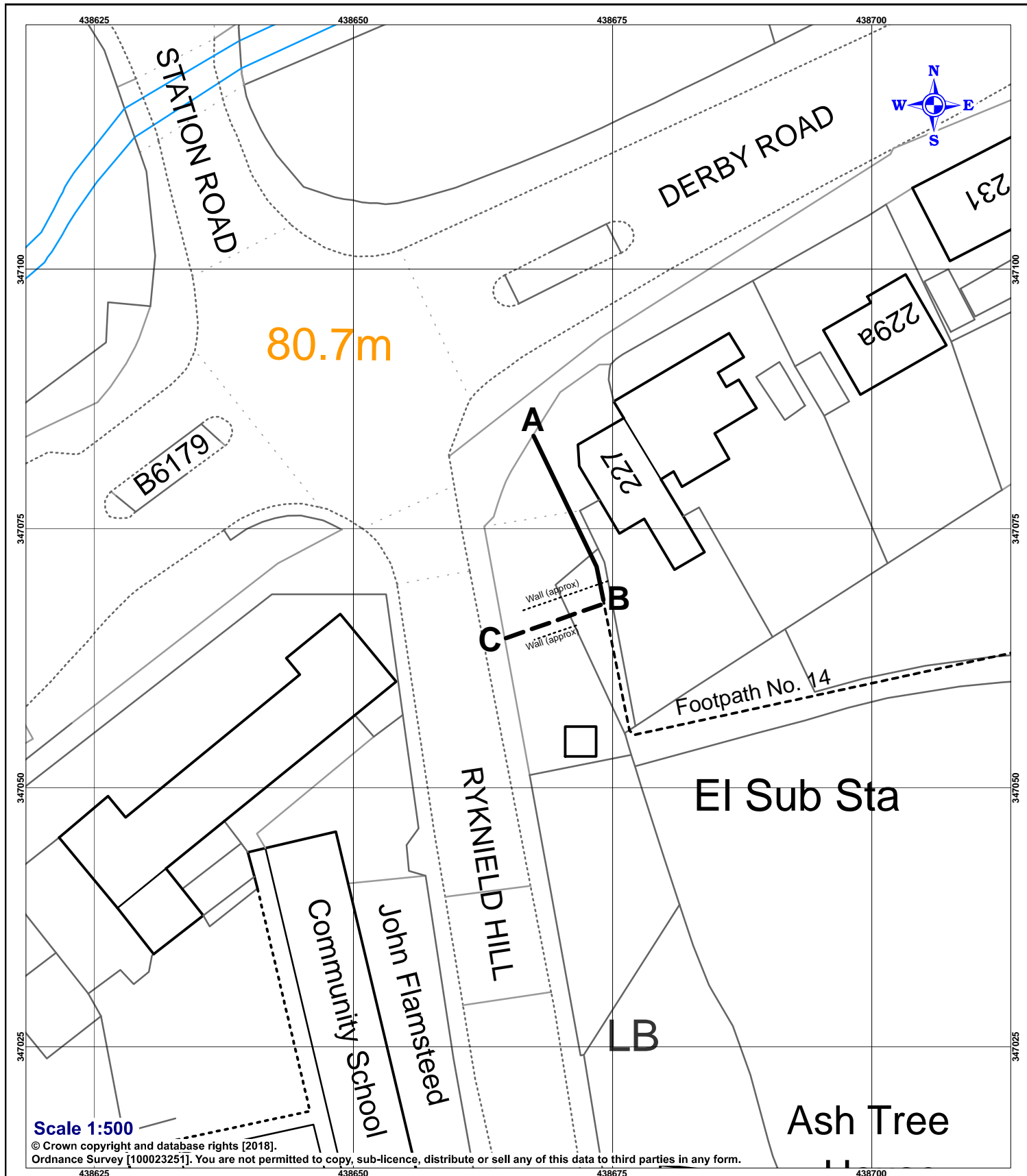
(6) **Background Papers** Held on file within the Rights of Way Section of the Economy, Transport and Environment Department. Officer contact details - David McCabe, extension 39770.

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

7.1 The Director of Legal Services be authorised to make the necessary Diversion Order of Public Footpath No. 14 (part), Parish of Denby, under 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.

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Highways Act 1980, Section 119

Proposed Diversion of
Public Footpath No. 14 (Part) -
Parish of Denby

Key:

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

