

Agenda Item No. 5(d)

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 NOS. 15 AND 18  
(PARTS) – PARISH OF MARSTON MONTGOMERY**

(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 the Public Footpath Nos. 15 and 18 (parts), in the Parish of Marston Montgomery, in the interests of the landowner.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of Public Footpath Nos. 15 and 18 (parts) in the interests of the landowner to improve privacy, security and safety at Marston Park. The footpaths currently pass close to the buildings and through a working farm, and the proposed diversion would take them around the farmstead. The buildings are currently uninhabited but are being renovated.

If the proposed diversion takes effect, it will divert approximately 144 metres of part of Footpath No. 15, shown as a bold solid line between points **A**, **B** and **C** on the attached plan. The proposed alternative would be approximately 130 metres long, shown as a bold broken line between points **A**, **D**, **E** and **F**. The alternative route would have a natural surface and a recorded width of 2 metres. Pedestrian gates to the current British Standard 5709:2018 would be installed at points **D** and **E**. The route between points **A** and **D** tends to be wet so some drainage works would be undertaken to improve conditions underfoot. At Point **D**, the existing culvert would be extended. Approximately 58 metres of part of Footpath No. 18, shown as a bold solid line between points **F** and **B** on the attached plan, would be diverted onto a route approximately 71 metres long, shown as a bold broken line between points **F**, **G**, **H** and **J**. The alternative route would have a rolled stone surface, a recorded width of 2 metres, a pedestrian gate to the current British Standard at Point **G** and a 1 metre wide gap at Point **H**. The public may inspect the alternative routes during the consultation period without seeking further permission, but there is currently no access at points **D** or **E**. However, access may be gained along the track, north-east of Point **D**.

No objections were received to the proposed diversion when informal consultations were carried out. The Local Member, Councillor Steve Bull, Marston Montgomery Parish Council and Derbyshire Dales District 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 footpaths currently pass close to a domestic building and through a working farmyard. The proposed diversion would take the footpath around the farmstead, increasing the owner's sense of privacy and security. It would also improve safety in relation to farming operations and vehicular traffic, reducing the owner's liabilities. It is therefore in the interests of the landowner that the footpaths should be diverted.

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

The affected length of Footpath No. 15 is around 144 metres, whilst the proposed alternative would be approximately 130 metres long. The affected length of Footpath No. 18 is around 58 metres, whilst the proposed alternative would be approximately 71 metres long. These are not significant differences. However, there would be quite a substantial increase in the overall journey for travellers going east to west and vice versa. On the route **A-B-C**, it is currently around 145 metres long, but after the diversion it would be around 268 metres long on the route **A-D-E-F-G-H-J-C**, an increase of 123 metres. However, this is arguably not detrimental in the context of a country walk at this location, where a shorter distance is not necessarily of benefit to the walker. It can therefore be concluded that, on balance, the diversion has no adverse effect on the convenience of the routes.

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

The domestic house on the site is an attractive brick, stone and timber-framed building, Grade 2 listed, with parts dating from the early 17<sup>th</sup> Century. The more southerly of the outbuildings is also Grade 2 listed, with parts dating from the early 18<sup>th</sup> Century. These will be of interest to the public. Footpath No. 15 currently passes immediately alongside the house enabling close views of the north side. Footpath No. 18 allows reasonably close views of the west side. The close-up views would be lost by the diversion but the alternative route allows views of the west side from about 50 metres away, plus it provides new views of the south side, albeit from about 50 metres distance. Closer views of the east side would continue to be available from Footpath No. 17. The diversion would mean Footpath No. 18 would no longer pass immediately alongside the outbuilding, but views from about 12 metres away would still be available.

There would, therefore, potentially be a reduction in public enjoyment by virtue of the reduced views of the listed buildings, although this was not raised as an issue during the informal consultations. A more positive aspect of the proposal is that walkers can be uncomfortable passing close to domestic premises as there is a sense of intruding into people's privacy, and the alternative route avoids this. The existing paths also pass through a working farmyard which can be dirty, noisy and hazardous, so being able to circumvent the farmyard should increase public enjoyment of the routes. Hence, there would be both positive and negative effects on the public's enjoyment, and the informal consultation suggests that the balance is not adversely negative.

**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 routes pass is under the ownership of the applicant, so any effects are accepted by them.

**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 effect 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**

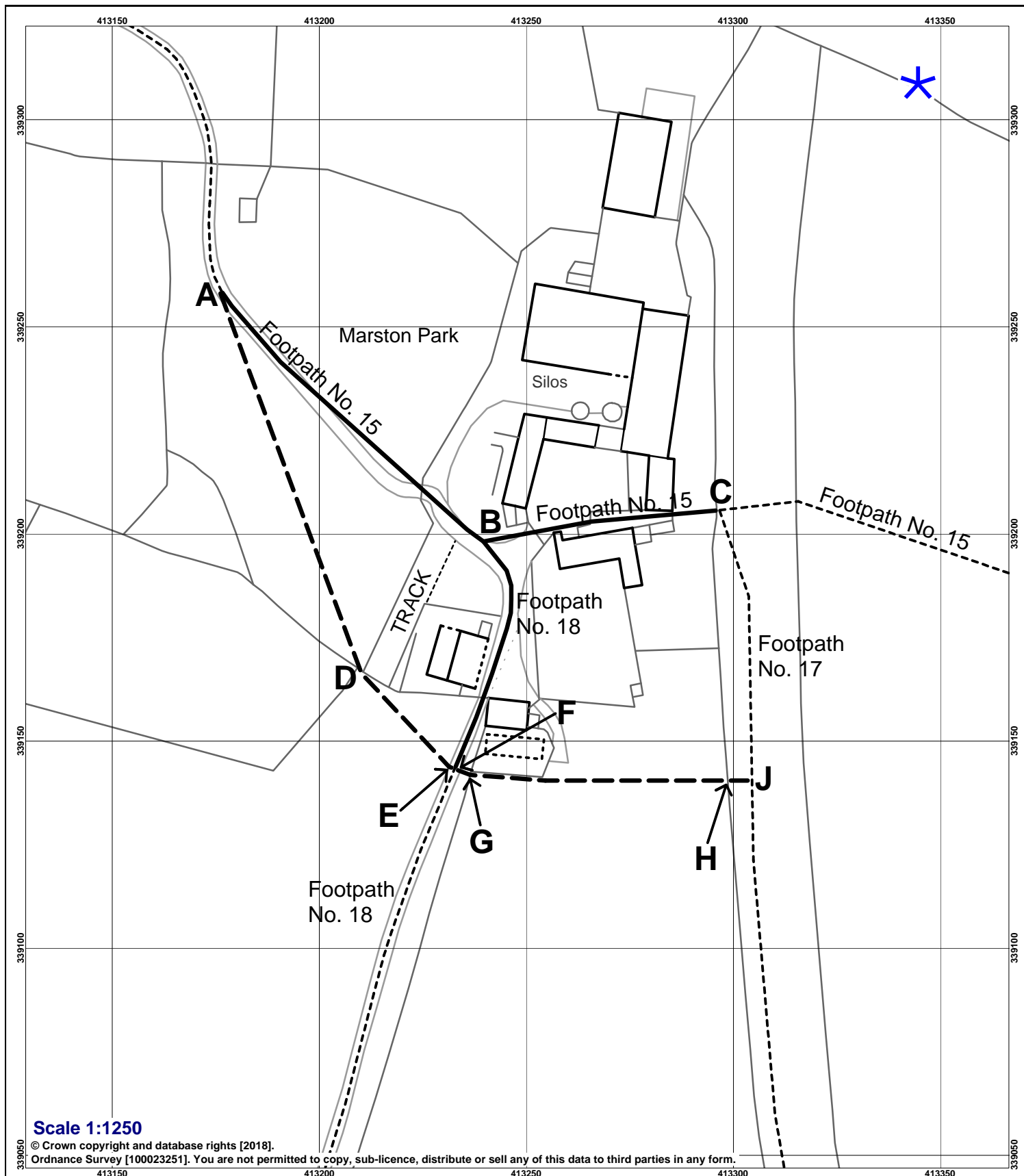
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(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 Nos. 15 and 18 (parts), Parish of Marston Montgomery under 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.

**Mike Ashworth**  
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### Highways Act 1980, Section 119 Proposed Diversion of Public Footpaths Nos. 15 & 18 (Parts) - Parish of Marston Montgomery

#### Key:

Paths to be diverted	
Alternative footpaths	
Other Footpaths	

