

Agenda Item No. 5(f)

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

21 May 2018

Report of the Strategic Director – Economy, Transport and Environment

**PROPOSED DIVERSION OF PARTS OF PUBLIC FOOTPATH NOS.20 AND
21 AND EXTINGUISHMENT OF PART OF PUBLIC FOOTPATH NO.33 –
PARISH OF BRADLEY**

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Diversion Order for the permanent diversion of parts of Public Footpath Nos. 20 and 21 in the Parish of Bradley, in the interests of the landowner and the public, and an Extinguishment Order for part of Public Footpath No. 33 in the interests of the landowner.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of parts of Public Footpath Nos. 20 and 21 and the extinguishment of part of Public Footpath No. 33 in the Parish of Bradley. The diversions are proposed in the interests of the landowner to improve security and privacy, and in the interests of the public to provide more commodious paths with better views and surfaces, and fewer stiles. The extinguishment would be to remove a short length of Footpath No. 33 that would be made a remnant dead end by the diversions. Part of the land is held by a third party and they have agreed in writing to the proposal.

Footpath Nos. 20 and 21 pass close to the applicant's residence and there is a concern that the property is isolated and the footpath potentially allows reconnaissance by criminals with a view to carrying out burglaries, plus access to facilitate actual burglaries. The diversion would move the footpath away from the buildings. Part of the footpath is not on its correct alignment due to alterations to the property in the 1970s, and the proposed diversion would also correct this. The footpath also originally went along the top of a dam constructed for a large pond to the north, but the dam was reinforced in the 1960s so that the footpath now runs across the adjacent earth bank. The surface is therefore sideways sloping and uncomfortable to walk, and the large pond is not easily visible due to a hedge and fencing. The proposed diversion would move the path around the north and west sides of the pond, providing better views, width and surfaces. It would also facilitate connecting with Footpath No. 5 by providing an entrance directly opposite, avoiding the current need to walk on the road. Footpath No. 21 passes along a narrow

fenced corridor that is dark due to tree cover, and the diversion would move the path onto a more open route.

If the Diversion Order takes effect, it will divert approximately 274 metres of Public Footpath Nos. 20 and 21, shown on the appended plan as a solid bold line between points **A**, **B** and **C** onto the route **D-E-F-G-H-J** shown by a bold broken line, which is approximately 252 metres long. The comparable distances between the starting and end points **D** and **C** are 319 metres for the existing route and 315 metres for the proposed diversion. The route between points **D** and **E** would be alongside Milldam Lane and provide an alternative to walking on the road. It would be surfaced with rolled stone and fenced on the east side, the fencing being 1.5 metres high gapped boarding which would allow views of the pond. There would be a pedestrian gate at Point **F**, which would be set back around 6 metres from the road. The route between **F**, **G** and **H** would be surfaced with rolled stone and enclosed on both sides with mesh fencing that allows views of the pond. The route between **H** and **J** is surfaced in compacted sand and gravel. There is a basic concrete slab bridge at Point **G** that would be replaced with a reinforced concrete pipe culvert with parapets.

The Footpath No.20 route **K-L-B** is 224 metres long and would be diverted onto the route **K-M-N-P-C**, which is 283 metres long. The comparable distance between **K** and **C** on the existing route (**K-L-B-C**) is 307 metres. The surface on this length would be natural.

There would be pedestrian gates to the current British Standard 5709:2006 at points **F**, **P** and **M**, and gaps at points **D**, **E**, **J**, **C** and **N**.

The proposed new routes would have a recorded width of 2 metres.

The proposed diversions would leave around 37 metres of Public Footpath No. 33 as a dead end in the middle of the field, so if the diversion is successful it is proposed to extinguish this length.

The Local Member, Councillor Steve Bull, and Derbyshire Dales District Council were consulted and had no objections to the proposals. Bradley Parish Council indicated it was unable to support the proposed changes but would not give details. Three members of the public made negative comments; one regarding the loss of woodland walk (on Public Footpath No.21) and the new path exiting onto a busy potholed road. Whilst there would be a small reduction in the path under tree cover (**C-B**), the new lengths **C-M**, **D-E** and **H-J** also have some tree cover and, as the rest of the route is more open, it could be said to provide a welcome change from the rather closed-in aspect of the existing route. The issue of the exit appears to have been misunderstood as the existing route already exits onto the road and the proposal provides a means of avoiding using the road, also providing an exit

directly opposite Public Footpath No. 5. Another member of the public stated that Public Footpath No. 5 was a long distance from the proposed exit, but this also seems to have been a misunderstanding as it is directly opposite. They also indicated a preference for a loop to the south to provide a circular walk, but this was not acceptable to the applicants and would require crossing another owner's land. A third member of the public opposed the proposed exit at Point **E** due to proximity to housing and a concern about walkers causing disturbance, also that the proposal could facilitate development. They also stated that the existing Public Footpath No. 20 should follow the lake side of the boundary which, if opened up, would provide the privacy the residents are seeking. To address these points, the exit at Point **E** is around 60 metres from the nearest dwelling and not expected to be heavily used, so it is not thought that it will cause disturbance. The applicants have not indicated any plans to build in the vicinity and, in any case, the entrance already exists as a gateway for land access. The correct route of the existing Public Footpath No. 20 has been investigated and it is believed to be correctly mapped, an extension of the dam having changed the layout on site.

Thirteen respondents indicated no opposition or positive support for the proposals, citing improved safety due to less need for road walking, better views, discomfort of passing close to the applicant's private dwelling, respect for the privacy and security of the residents, and uneven ground on the existing route, which is also dark and enclosed in places.

(3) **Financial Considerations** The applicant has agreed in writing to defray all of the costs in respect of making and advertising the diversion and extinguishment orders and bringing the new routes into a suitable condition for public use. This includes Officer time in processing the application which is estimated to be in the region of £3,000.

(4) **Legal Considerations**

Diversion Order

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 proposed diversions would move the footpaths away from the dwelling, which would reduce the opportunity for reconnaissance and access by thieves, and would improve the residents' privacy. The existing footpaths also suffer from poor surfaces and are hemmed-in in places as opposed to the better surfaced and wider proposed paths. Stiles can be awkward for people with restricted mobility and, whilst there are some of these on the existing paths, the alternative routes would have gates or gaps at boundaries. The proposed length of new path alongside Milldam Lane would provide a traffic-free alternative to walking on the road, a direct connection with Footpath No. 5 and views of the large pond. It can therefore be concluded that the proposal is in the interests of both the land owner and the public.

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

The diverted lengths are 274 metres (existing, **A-B-C**) and 252 metres (alternative, **D-E-F-G-H-J**), and 224 metres (existing, **K-L-B**) and 283 metres (alternative, **K-M-N-P-C**). The first alternative is 22 metres shorter and the second 59 metres longer. However, it is also instructive to consider journeys rather than just the lengths that are to be diverted. The existing network provides travel options mainly from the end of Footpath No. 5 (opposite Point **D**) south-eastward and north-eastward, and in the opposite directions towards Point **D**. At present the south-eastward route **D-A-B-L-K** is 459 metres compared to **D-E-F-G-H-J-C-P-N-M-K** on the alternative routes which is 598 metres - 139 metres longer. The present north-eastward route **D-A-B-C-J** is 382 metres compared to **D-E-F-G-H-J** on the alternative route which is 252 metres - 130 metres shorter. It can therefore be said that some journeys would be longer but some shorter. At this location, the length of walk is also unlikely to be a major issue and extra length may even be preferred by some walkers, so there is no obvious advantage or disadvantage in the proposed changes. Gradients are fairly gentle throughout. It can therefore be concluded that the proposal is not substantially less convenient.

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

The diversion of Footpath No. 20 away from the dam would remove views of the smaller pond to the south but in compensation provide views of the larger pond. Views of the latter from the existing paths are currently restricted by trees and fencing. The existing length along the dam also has a sideways slope and the alternative would provide better walking conditions. The provision of a length of path parallel to the road would increase safety and amenity by reducing road walking, and provide an exit directly opposite Yeldersley Footpath No. 5. Parts of Footpath No. 21 are hemmed-in and dark, and the alternative would provide more open and commodious routes. The use of gates and gaps on the alternative routes, rather than stiles on the existing routes, would improve access for those with restricted mobility. In conclusion, the proposals would appear to increase public enjoyment of the routes substantially.

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 and there would be a minor diversion of Public Footpath No. 20 within their holding. They have agreed in writing to the proposal.

Whether it is expedient to make the Order

It is considered that the proposed diversion is in the interests of the landowner and the public, it would not be substantially less convenient to the public, it would have a positive effect on the public enjoyment of the route as a whole and would not adversely affect the land over which the diversion would run or land served by the existing rights of way. It is therefore considered expedient to make the Order.

Extinguishment Order

Derbyshire County Council may make an Extinguishment Order under Section 118 of the Highways Act 1980:

- (1) Where it appears to a council as respects a footpath in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

An order under this section is referred to in this Act as a “public path extinguishment order”.

- (2) The Secretary of State shall not confirm a public path extinguishment 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 it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by Section 121(2) below.
- (6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.
- (6A) The considerations to which—
 - (a) the Secretary of State is to have regard in determining whether or not to confirm a public path extinguishment order, and
 - (b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,
 include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.

With regard to the above mentioned sections (2) and (6), the length of footpath under consideration is that part of Footpath No. 33 between points **L** and **M**. The Extinguishment Order is proposed to be made after the

completion of the above Diversion Order, and should be viewed in this context. If the diversion is successful it will leave around 37 metres of Footpath No. 33 as a remnant dead end in the middle of the field. This would appear to serve no purpose and would be very unlikely to receive any use. Regarding the above mentioned Section (6A)(b), the Rights of Way Improvement Plan in general seeks to improve and enhance the public rights of way network. Whilst this proposal would reduce the network, it would appear to have no negative impact.

Whether it is expedient to make the Order

It is concluded that the proposal satisfies the above legal criteria and that it is expedient to promote 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

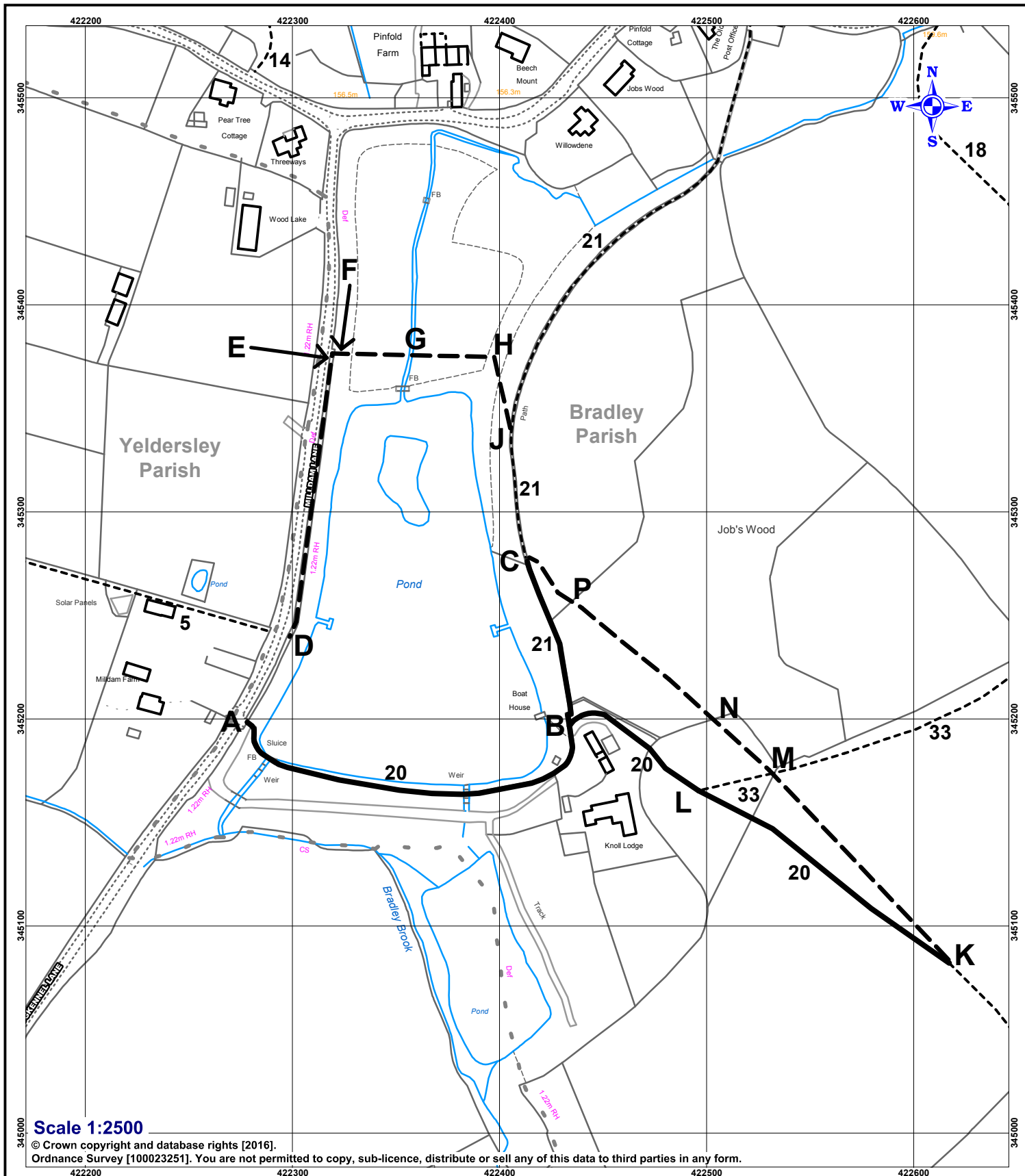
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(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 order for the diversion of parts of Public Footpath Nos. 20 and 21 under the provisions of Section 119 of the Highways Act 1980, and upon confirmation of this Order to make an Extinguishment Order for part of Footpath No. 33, Parish of Bradley.
- 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.

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Ref: TE/DM/X4093/Cttee/2018



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Produced by Public Rights of Way on 22 December 2017

Highways Act 1980, Section 119

Proposed Diversion of Footpaths 20 & 21 (Parts) - Parish of Bradley

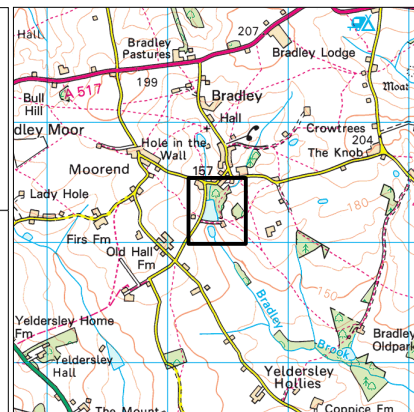
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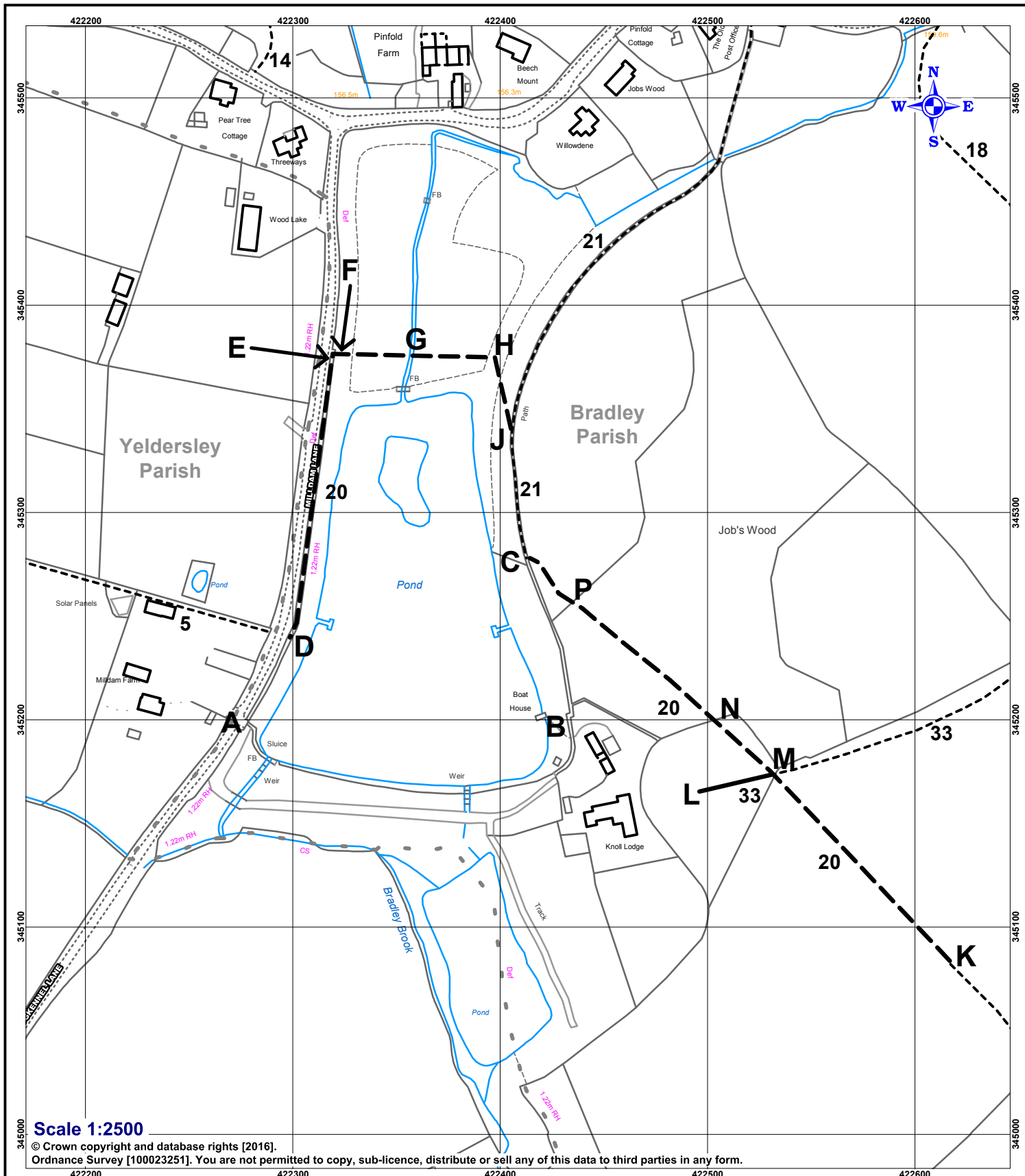
Footpaths to be diverted

Alternative footpaths

Other footpaths

Parish boundary





Ref: TE/DM/X4072/Cttee/2018



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Produced by Public Rights of Way on 26 March 2018

Highways Act 1980, Section 118

Proposed Extinguishment of Footpath No. 33 (Part) - Parish of Bradley

Key:

Footpath to be extinguished

Alternative footpaths from
proposed diversion order

Other footpaths

Parish boundary

