

Agenda Item No. 5(g)

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

21 May 2018

Report of the Strategic Director – Economy, Transport and Environment

**PROPOSED EXTINGUISHMENT OF PUBLIC FOOTPATH NO. 71 (PART),  
BUXTON**

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Public Path Extinguishment Order for the permanent extinguishment of part of Public Footpath No. 71 in Buxton, to enable development to take place in accordance with planning permission issued by the County Council.

(2) **Information and Analysis** The County Council has received an application from its Director of Property for the permanent extinguishment of part of Public Footpath No. 71 in the grounds of Buxton Community School between Temple Road and College Walk, to enable development to take place. The proposed development is the installation of a security fence to make the school more secure in order to safeguard the pupils and protect the site from theft and vandalism. Planning permission for the fencing under reference CD1/0917/47 was granted on 23 November 2017.

If the proposal takes effect then it will stop up approximately 135 metres of that part of the footpath shown as a bold solid line between points **A**, **B** and **C** on the attached plan. There is an alternative route of around the same length along publicly maintainable ways shown on the attached plan between points **A**, **D** and **C**.

No objections were received to informal consultations on the proposal, which included the Local Member, Councillor Tony Kemp, and High Peak Borough Council. There is no Parish or Town Council in Buxton.

(3) **Financial Considerations** The applicant has agreed in writing to defray all of the costs in respect of making and advertising the Extinguishment Order. 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 257 of the Town and Country Planning Act 1990:

- (1) Subject to Section 259, a competent authority may by order authorise the stopping up or diversion of any footpath if they are satisfied that it is necessary to do so in order to enable development to be carried out—
  - (a) in accordance with planning permission granted under Part III, or
  - (b) by a government department.
- (2) An order under this section may, if the competent authority are satisfied that it should do so, provide—
  - (a) for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing highway for such use;
  - (b) for authorising or requiring works to be carried out in relation to any footpath for whose stopping up or diversion, creation or improvement provision is made by the order;
  - (c) for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across any such footpath;
  - (d) for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.
- (3) An order may be made under this section authorising the stopping up or diversion of a footpath which is temporarily stopped up or diverted under any other enactment.
- (4) In this section “competent authority” means—
  - (a) in the case of development authorised by a planning permission, the local planning authority who granted the permission or, in the case of a permission granted by the Secretary of State, who would have had power to grant it; and
  - (b) in the case of development carried out by a government department, the local planning authority who would have had power to grant planning permission on an application in respect of the development in question if such an application had fallen to be made.

Section 259: Confirmation of orders made by other authorities:

- (1) An order made under Section 257 or 258 shall not take effect unless confirmed by the Secretary of State or unless confirmed, as an unopposed order, by the authority who made it.
- (2) The Secretary of State shall not confirm any such order unless satisfied as to every matter as to which the authority making the order are required under Section 257 or, as the case may be, Section 258 to be satisfied.
- (3) The time specified—
  - (a) in an order under Section 257 as the time from which a footpath is to be stopped up or diverted; or
  - (b) in an order under Section 258 as the time from which a right of way is to be extinguished,shall not be earlier than confirmation of the order.

- (4) Schedule 14 shall have effect with respect to the confirmation of orders under Section 257 or 258 and the publicity for such orders after they are confirmed.

**Whether it is expedient to make the Order**

Planning permission has been granted by Derbyshire County Council, and as it is the local planning authority which granted the permission it is empowered to make an Extinguishment Order. The Order is necessary to enable the development to take place, i.e. the construction of fencing across the footpath. It is therefore concluded 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**

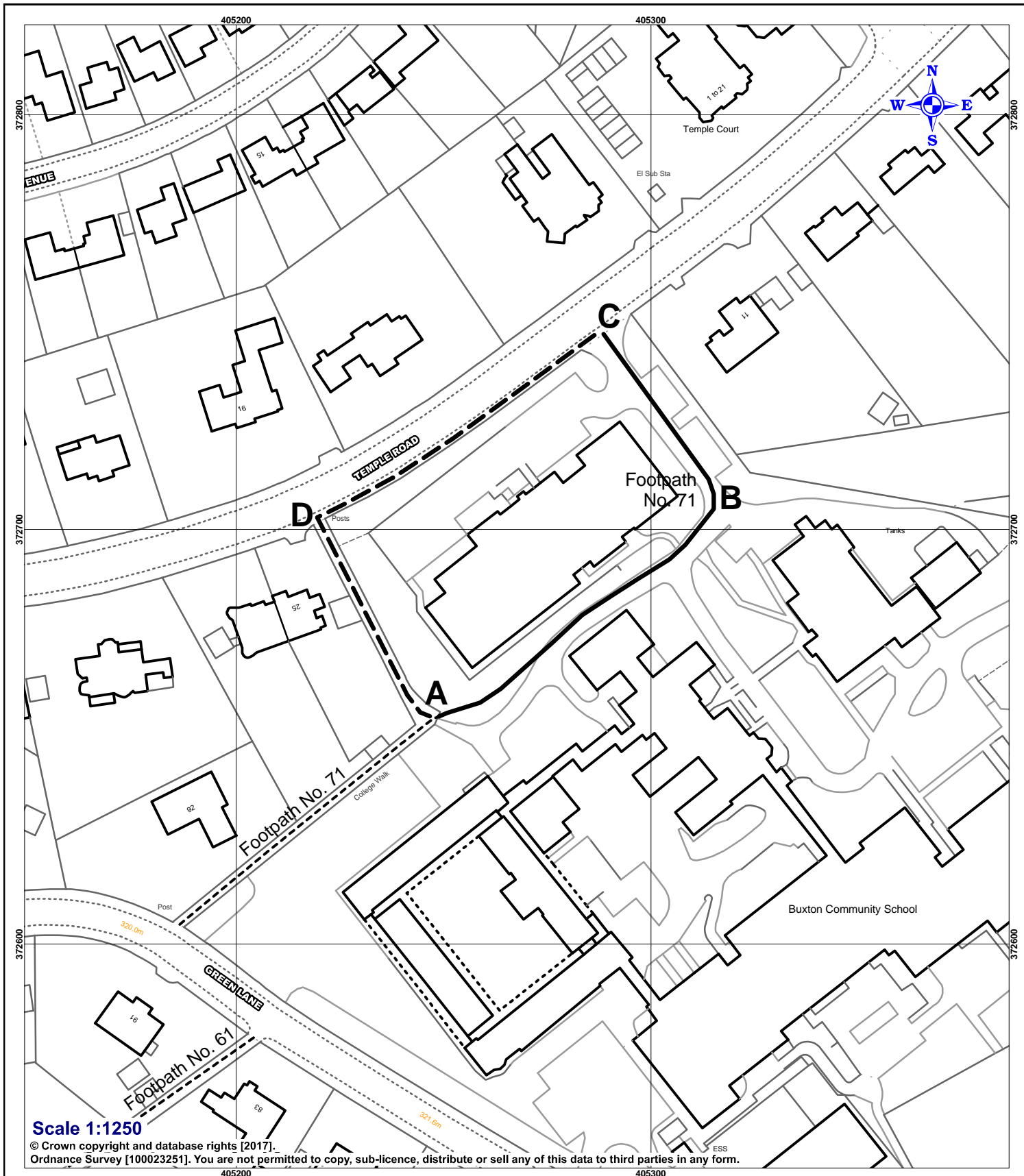
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

- (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 Extinguishment Order of Public Footpath No. 71 (part), Buxton, under the provisions of Section 257 of the Town and Country Planning Act 1990.
- 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**



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**Town & Country Planning Act 1990,**  
**Section 257**

**Proposed Extinguishment of  
 Public Footpath No. 71  
 (Part) Buxton.**

**Key:**

- Footpath to be extinguished —————
- Alternative adopted route - - - - -
- Other public footpaths ..... (dotted line)

