

**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. 79 (PART) –  
PARISH OF RIPLEY**

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Diversion Order for the permanent diversion of part of Public Footpath No. 79, in the Parish of Ripley, in the interests of the public.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of part of Public Footpath No. 79 from Network Rail, in the interests of the public, to provide a safer means of crossing a high-speed railway. The proposed diversion would move the footpath onto a steel footbridge from its current position on a level crossing. Network Rail has, in fact, already built the bridge and fenced off the level crossing as they overlooked following the required diversion procedure before making this change, but a formal diversion would legalise the current situation. The diversion would also resolve an anomaly where part of the legal line passes through a wall and area of trees. If the diversion is not taken forward the Council could require Network Rail to re-instate the level crossing.

If the proposed diversion takes effect, it will divert approximately 40 metres of that part of Footpath No. 79 shown as a bold solid line between points **A - B** on the attached plan, reference TE/DM/X3990/Cttee/2018/Plan1. The proposed alternative would be approximately 78 metres long, shown as a bold broken line between points **C-D-E-F-G-H-J-K-B** as shown on the attached plan reference TE/DM/X3990/Cttee/2018/Plan2. The surface between points **C** and **D** would be of rolled stone, and that of the footbridge would have a non-slip coating at points **D-E-F-G-H-J-K-B**. The recorded width would be 2 metres. The bridge will be maintainable by Network Rail but the Council would be responsible for maintaining any surface treatment plus the rolled stone path.

One objection was received to the proposed diversion when informal consultations were carried out, on the basis of non-compliance with the Equality Act 2010. This has since been withdrawn. The Local Member, Councillor David Williams, Ripley Town Council and Amber Valley Borough Council were consulted and had 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 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**

The proposed diversion would alter the means of crossing the railway from an uncontrolled level crossing to a modern footbridge. Network Rail is undertaking a national programme of such changes due to the danger presented by level crossings. The maximum line speed at this location is 100mph and, according to Network Rail, there are 110 passenger trains and 35 freight trains passing through every 24 hours. At the informal consultation stage the issue of conformity with the Equality Act 2010 was raised on the basis that the change from a level crossing to a stepped bridge may prejudice people with mobility problems. Whilst this is possible, a judgement must be made on the route as a whole in terms of what is reasonable, having regard to its location and likely usage. Use of the route is believed to be light and the bridge has been in place for some time now and no complaints have been received about this issue. Having a bridge with ramped access would be much more expensive and take up more space and, whilst there may be negative effects on some people with mobility problems, there are likely to be benefits for those with sensory disabilities. It is concluded that it is reasonable to replace the level crossing with a stepped footbridge in this instance.

It is submitted that the proposed diversion is in the interests of the public.

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

The proposed alternative route is some 38 metres longer than the existing route and requires going up and down steps on the footbridge rather than staying at one level. There is an element of inconvenience in this, especially for those with restricted mobility, but for most people this appears not to be substantial, especially in view of the safety benefits provided by the bridge. The southern termination point would be moved along the A610 by approximately only 4 metres.

It is submitted that the diversion would not be substantially less convenient to the public.

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

Many walkers are nervous about using level crossings so their enjoyment of the route would be enhanced by the provision of the footbridge. This also provides some elevated views of the railway and surrounding countryside. Others may prefer the shorter route of the level crossing.

The diversion would have both positive and negative potential effects on public enjoyment, and it is therefore concluded that the proposed diversion would not have an adverse effect upon public enjoyment of the route as a whole.

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

There would be no known or 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**

All of the affected land is owned by Network Rail or the County Council and there would be no adverse effects.

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

It is considered that the proposed diversion is in the interests of the public, that 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**

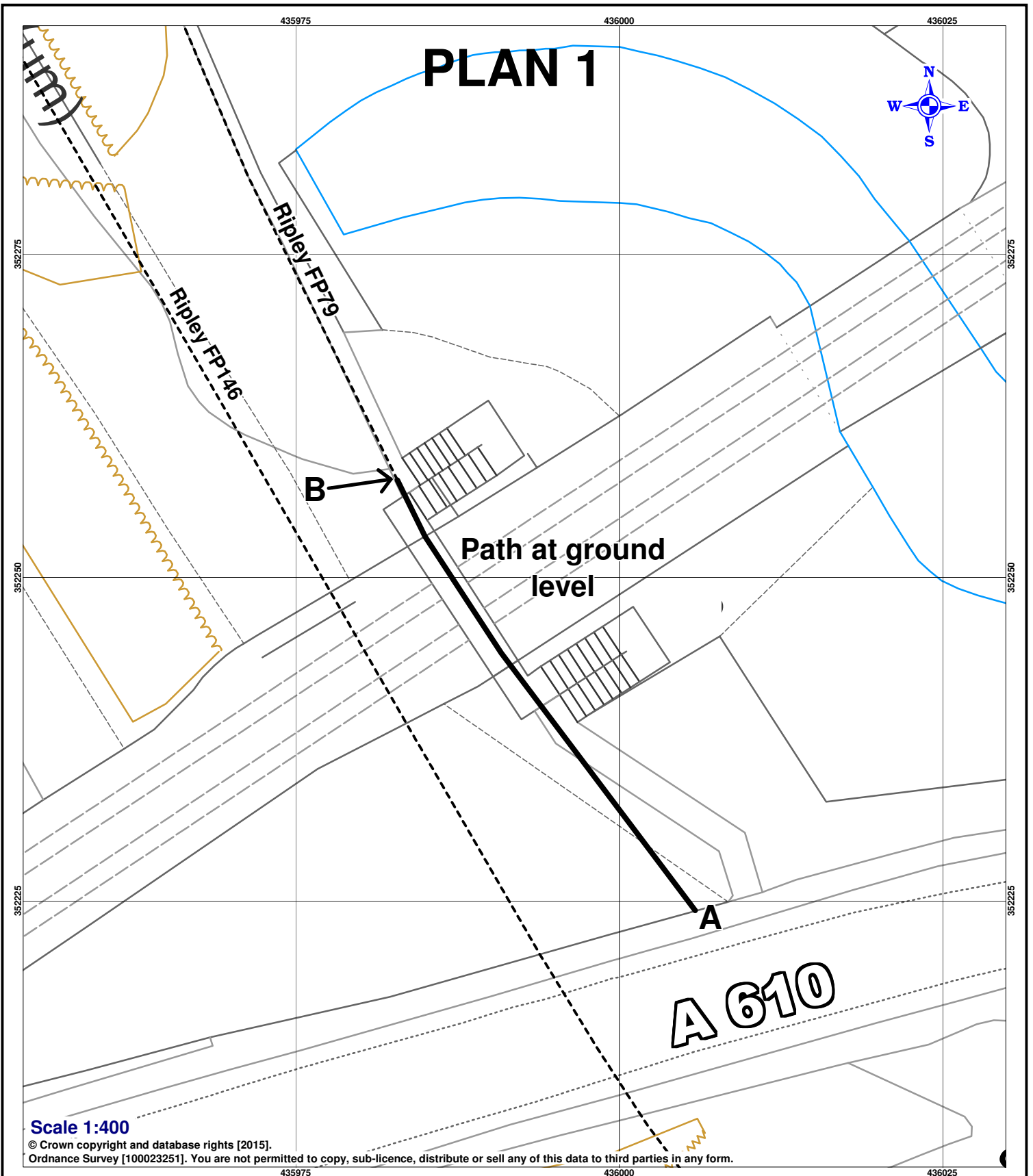
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(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 under the provisions of Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 79 in the Parish of Ripley.
- 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**



Ref: TE/DM/X3990/Cttee/2018/Plan1



**Mike Ashworth**

Strategic Director – Economy, Transport & Environment  
Shand House  
Dale Road South  
Matlock  
Derbyshire  
DE4 3RY

Produced by Public Rights of Way on 26 March 2018

### Highways Act 1980, Section 119

## **Proposed Diversion of Public Footpath No. 79 (part) - Parish of Ripley**

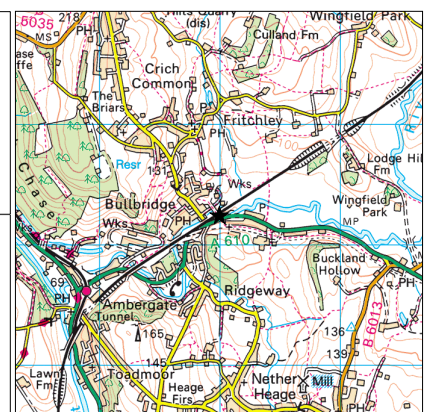
#### **Key:**

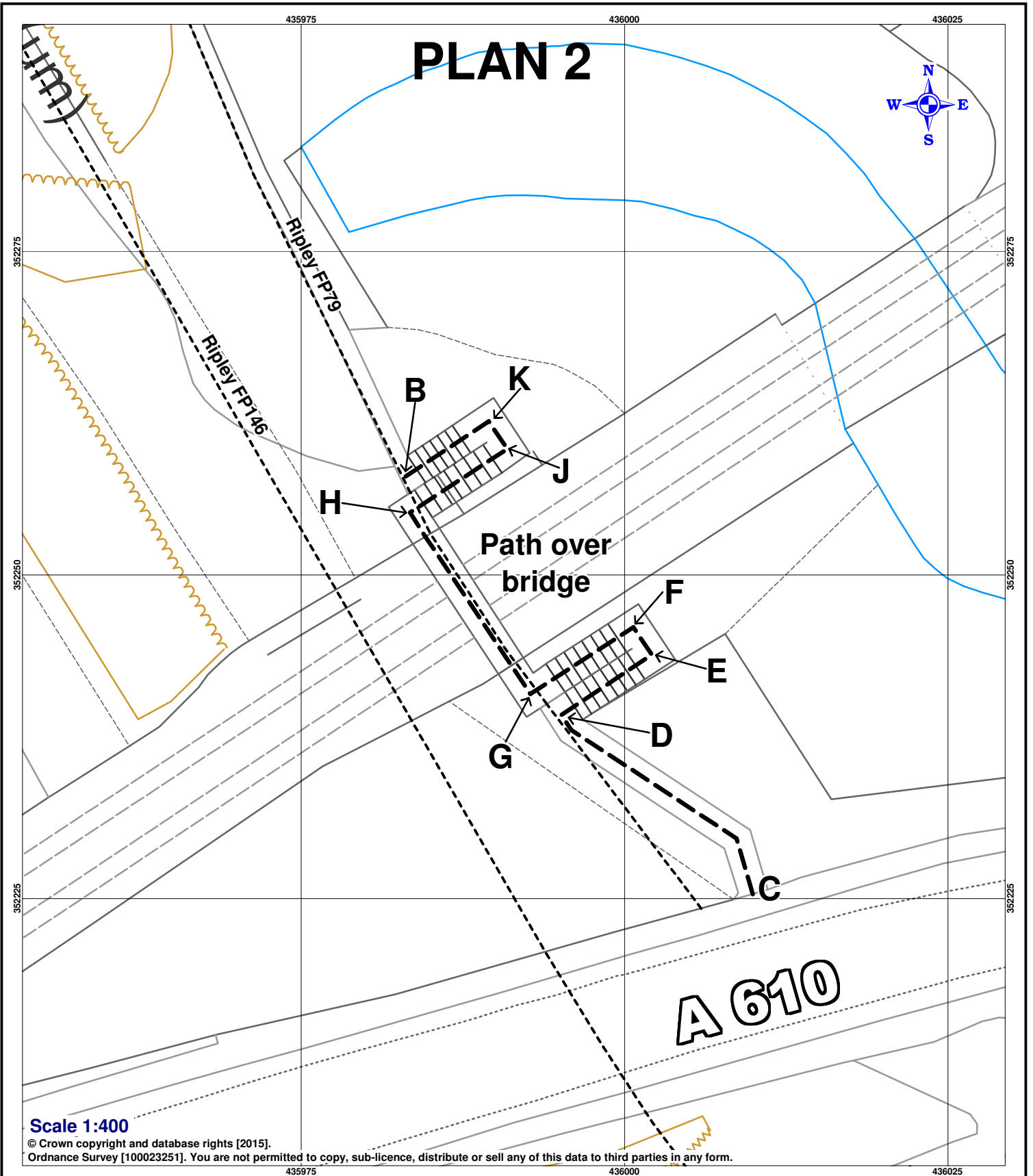
Path to be diverted

A ————— B

Other footpaths

-----





Ref: TE/DM/X3990/Cttee/2018/Plan2



**Mike Ashworth**  
Strategic Director - Economy, Transport & Environment  
Shand House  
Dale Road South  
Matlock  
Derbyshire  
DE4 3RY

Produced by Public Rights of Way on 26 March 2018

### Highways Act 1980, Section 119

### Proposed Diversion of Public Footpath No.79 (part) - Parish of Ripley

#### Key:

Alternative route  
over railway bridge **C ——— B**

Existing footpaths ———

