

Agenda Item No. 5(i)

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. 91 (PART) –
PARISH OF WHALEY BRIDGE**

(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. 91 in the Parish of Whaley Bridge, in the interests of the landowner and the public.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of part of Public Footpath No. 91 at Toddbrook Farm. The footpath previously passed beside farm buildings but now passes through the garden of a dwelling, causing privacy and security issues. There are also potential issues with the applicant's dogs which are sometimes present in the garden. Whilst it is possible to pass through the garden via two gates, the legal line of the footpath is not actually available due to the layout of the garden and a stone wall. If a diversion is not obtained, the applicant will have to undertake works to restore the legal line. The proposal also includes part of the route through what is still a working farmyard at the adjacent Slatersbank. Hence, there are benefits to the two landowners in terms of privacy, safety, security and expense. In terms of benefit to the public, the proposed diversion route would be easier to follow, would avoid the sense of intruding into a private garden and avoid the need to pass through a working farmyard. The new path would follow a tarmac driveway to the east of the buildings and would exit opposite the entrance to Footpath No. 20, reducing the need for road walking when connecting with this route.

If the proposed diversion takes effect, it will divert approximately 130 metres of that part of Public Footpath No. 91 shown as a bold solid line between points **A** and **B** on the attached plan. The proposed alternative would be approximately 57 metres long, shown as a bold broken line between points **B** and **C**. This route has a tarmac surface and would have a recorded width of 3.5 metres.

Informal consultations were carried out resulting in two expressions of concern. One was that the alternative route would be difficult for some people

due to its steepness and that it would be better to divert the route to the south of the buildings. This is a valid point but the route might be viewed in the context of the locality, which is hilly and so some steep gradients can be expected. The suggested alternative would require the construction of substantial steps to accommodate a change in levels and would not remove the path from the farmyard of the adjacent property. The other issue raised was about sight lines at the roadside entrance being restricted. The proposed exit is on the inside of a shallow bend and the sight line eastward is slightly restricted by overhanging vegetation. However, the road is a rural minor road which is lightly trafficked and the applicant has stated an intention to cut back overhanging branches to improve the sight line, so this is not believed to be a cause for concern.

The Local Member, Councillor Alison Fox, Whaley Bridge Town Council and High Peak 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 diversion would improve privacy and security at Toddbrook Farm by removing the route from a private garden. Safety and security would also be improved at the adjacent Slatersbank. The public would benefit by avoiding the sense of intruding into a private garden, avoiding the need to pass through a working farmyard and by a reduction in the need for road walking when connecting with Footpath No. 20 due to its exit being opposite that of the proposed route.

It can be concluded that the proposal is in the interests of the landowners and the public.

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

The affected length of the existing route is approximately 130 metres, whilst that of the proposed alternative is approximately 57 metres. The latter is therefore more convenient for someone travelling north-south, but for journeys to or from the footpaths further west along Start Lane, a further 96 metres of road walking are needed, making the journey around 23 metres longer. Whilst the extra road walking counts against the proposal, the extra length is not significant, and these factors have to be balanced against the benefit of the reduced length and direct connection with Footpath No. 20 for north-south journeys. On balance, it is submitted that the proposal can be said not to be substantially less convenient.

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

The direct legal line of the existing route is not currently usable but this should be ignored for the purposes of assessing the proposal. It is, however, possible to pass through the garden on a nearby route. The necessity to pass through a private garden is, for most walkers, unwelcome as it gives a sense of intruding into a private area. Part of the existing route also passes through a working farmyard and, again, many walkers prefer to avoid this due to safety issues. The alternative route avoids both of these situations, making for more enjoyable walking. The amount of road walking increases for journeys in one direction but decreases in another, so on balance the proposal has a neutral effect. The issues with sight lines on the road and the steepness of the alternative route are arguably insignificant. On balance, it can be concluded that the diversion provides an increase in public enjoyment.

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

Part of the route that is proposed to be diverted passes over land belonging to a third party who has given their written agreement as it is of benefit to them by removing the footpath from a working farmyard and proximity to buildings.

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 landowners and the public. It would, on balance, not be substantially less convenient to the public and 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 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

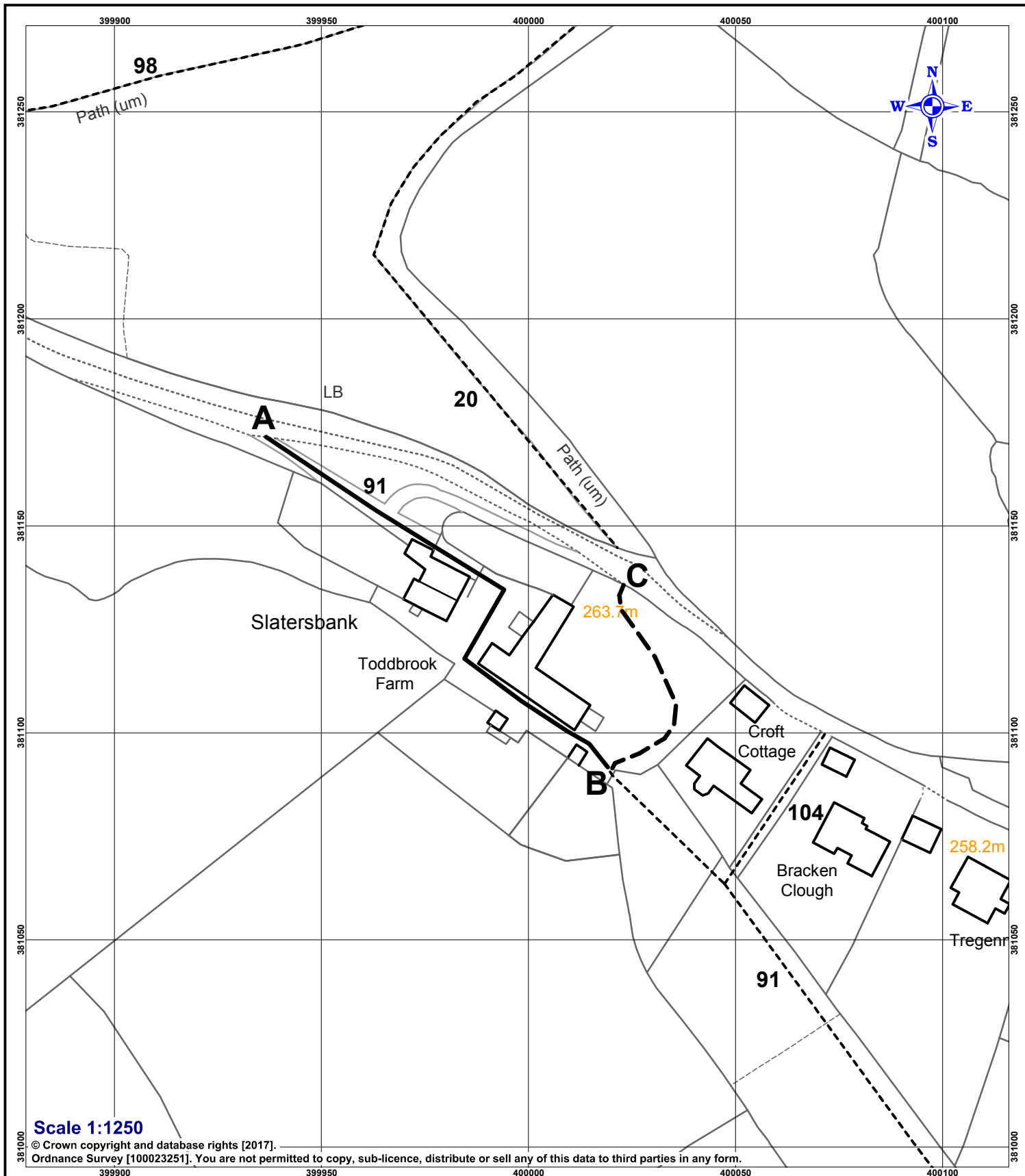
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(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.91 (part), Parish of Whaley Bridge, under the provisions of 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.

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Highways Act 1980, Section 119

Proposed Diversion of
Public Footpath no. 91 (Part) -
Parish of Whaley Bridge

Key:

Footpath to be
diverted



Alternative footpath



Other public footpaths

