

Agenda Item No. 4(b)

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

23 July 2018

Report of the Strategic Director – Economy, Transport and Environment

**PROPOSED CREATION OF A PUBLIC FOOTPATH AND PROPOSED  
DIVERSION OF PUBLIC FOOTPATH NO.7 (PART) - PARISH OF  
MAPLETON**

(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. 7 in the Parish of Mapleton, in the interests of the landowner, and to enter into a Public Path Creation Agreement for a new public footpath in the interests of the public.

(2) **Information and Analysis** Derbyshire County Council has received an application for the permanent diversion of part of Public Footpath No. 7 in the Parish of Mapleton in the interests of the landowner, to move the footpath away from the busy rear entrance and storage area of the Okeover Arms public house, and resolve various obstruction issues. The proposed diversion would move part of the path onto a line joining Public Footpath No. 9, where the latter enters the field.

If the proposed diversion takes effect, it will divert approximately 272 metres of that part of the footpath, shown as a bold solid line between points **A**, **B** and **C** on the attached plan. The proposed alternative would be approximately 135 metres long, shown as a bold broken line between points **A** and **D**. The comparable route between the same end points (**A** and **C**) using the alternative route, plus Public Footpath No. 9 and the road would be around 270 metres, similar to the existing route. There are footways on the west side and part of the east side of the road. The alternative route would have a grass surface and a recorded width of 2 metres.

In conjunction with the diversion, the landowner also proposes to enter into an agreement with the Council to create a new footpath to provide a more direct alternative for north-south travel, as shown by the bold long broken line between points **A**, **E** and **F**. The route is around 276 metres long across a pasture field of some historic interest, as it has 'ridge and furrow' features and is part of a scheduled Ancient Monument. The recorded width would be 2 metres and access at Point **E** is by a gap through a hedge.

Informal consultations resulted in no objections or adverse comments. The consultees included local Member, Councillor Simon Spencer, Mapleton Parish Council and Derbyshire Dales District Council.

(3) **Financial Considerations** The applicant has agreed in writing to defray the costs of making and advertising the Diversion Order and bringing the new route into a suitable condition for public use. However, as the applicant is offering an extra path for the benefit of the public, current Council policy allows the Committee the discretion to waive 50% of the Council's costs. These are estimated to be in the region of £2,000 and include Officer time in processing the application. As the creation agreement is in the public interest, it is proposed that the costs of this are also covered by the Council, estimated to be around £500. The above costs can be met from the Rights of Way Revenue Maintenance budget.

(4) **Legal Considerations**

### **Diversion**

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 footpath is currently obstructed at numerous points at the rear of the Okeover Arms public house, and the diversion would resolve these issues. Without a diversion, it will be necessary for the owner to open up the path, which will incur considerable expense and prevent their current land use continuing.

It can be concluded that the proposal is in the interests of the landowner.

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

The existing route to be diverted is approximately 272 metres long, whilst the proposed alternative would be approximately 135 metres long. However, a more meaningful comparison is between the same end points. The comparable route between the same end points (**A** and **C**) using the alternative route plus Public Footpath No. 9 and the road would be around 270 metres, similar to the existing route. The proposal can therefore 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 existing route is not wholly usable at present due to numerous obstructions. However, the proposal should be assessed as if the route were in fact open and available for use. On this basis, there is some loss of amenity in that the existing route emerges onto the road directly opposite Public Footpath No.

2, whilst the alternative requires around 75 metres of walking along pavements. On the other hand, the route through the working rear yard of a public house is not a particularly attractive prospect. On balance, it can be concluded that the diversion is somewhat neutral in its effect on 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**

No other land is served by the existing footpath.

**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 landowner. 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.

**Creation Agreement**

Derbyshire County Council may enter into an agreement to create a public path under Section 25 of the Highways Act 1980:

- (1) A local authority may enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a footpath, bridleway or restricted byway over land in their area.  
An agreement under this section is referred to in this Act as a “public path creation agreement”.
- (2) For the purposes of this section “local authority”—
  - (a) in relation to land outside Greater London means a county council, a district council; and
  - (b) in relation to land in Greater London means a London borough council or the Common Council.
- (3) Before entering into an agreement under this section a local authority shall consult any other local authority or authorities in whose area the land concerned is situated.
- (4) An agreement under this section shall be on such terms as to payment or otherwise as may be specified in the agreement and may, if it is so agreed, provide for the dedication of the footpath, bridleway or restricted byway subject to limitations or conditions affecting the public right of way over it.
- (5) Where a public path creation agreement has been made it shall be the duty of the local authority who are a party to it to take all necessary steps for securing that the footpath, bridleway or restricted byway is dedicated in accordance with it.
- (6) As soon as may be after the dedication of a footpath, bridleway or restricted byway in accordance with a public path creation agreement,

the local authority who are party to the agreement shall give notice of the dedication by publication in at least one local newspaper circulating in the area in which the land to which the agreement relates is situated.

**Whether it is expedient to enter into the Public Path Creation Agreement**

The land owner has the necessary power to dedicate the public footpath, and the location is within the jurisdiction of Derbyshire County Council. The other relevant local authorities have been consulted and have not opposed the proposal. It is therefore considered expedient to proceed with the creation agreement if the diversion is successful.

(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.

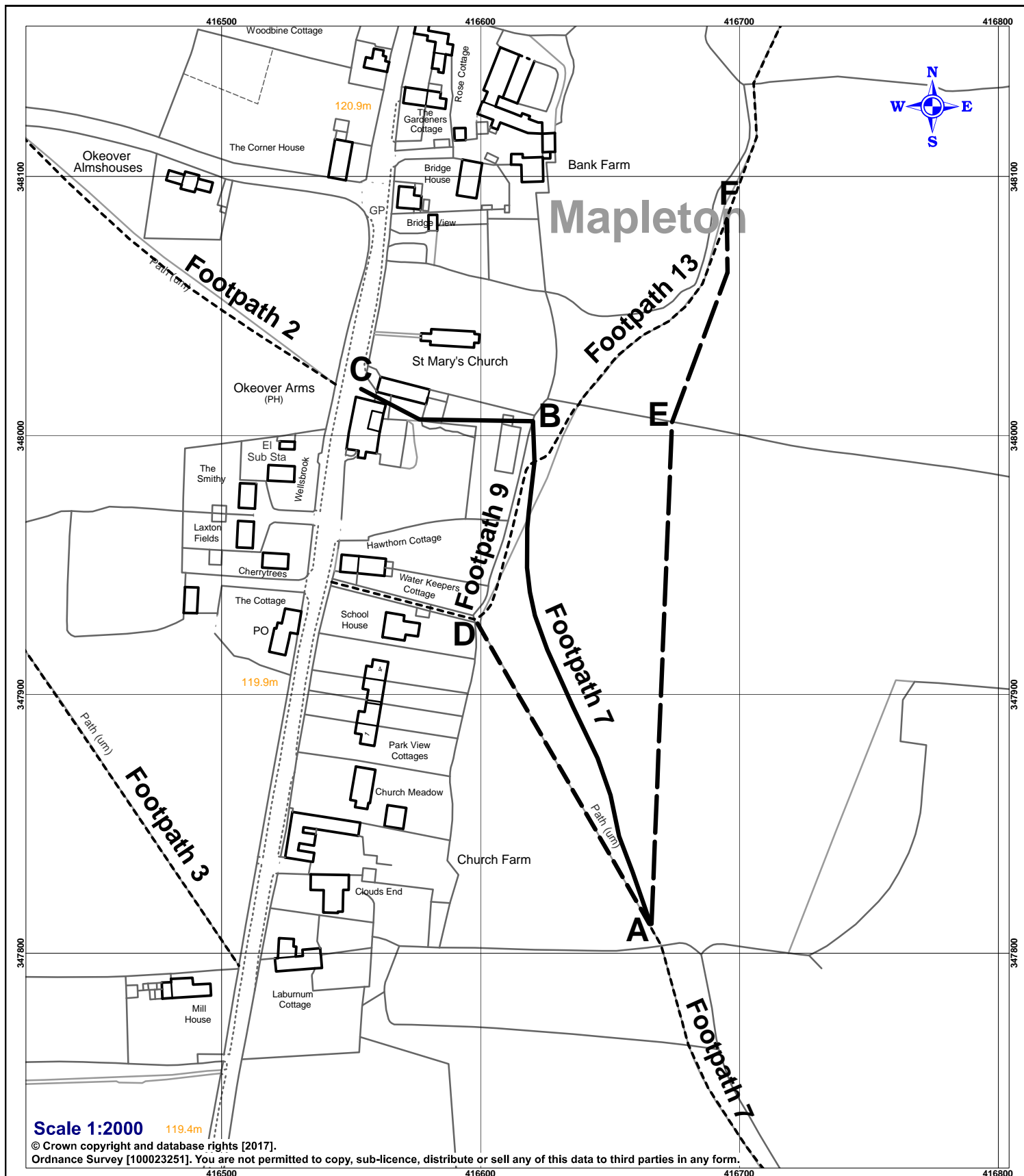
(6) **Background Papers** Held on file within the Rights of Way Section of the Economy, Transport and Environment Department. Officer contact details - David McCabe, extension 39770.

(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 and, after successful confirmation of the Order to draw up a Public Path Creation Agreement with the landowner to create a new footpath as described above under the provisions of Section 25 of the Highways Act 1980 in the Parish of Mapleton.

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**  
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### Highways Act 1980, Sections 25 & 119

Proposed Creation of a Public Footpath  
and Proposed Diversion of Footpath no.7  
(Part) - Parish of Mapleton

#### Key:

Footpath to be diverted	—————
Alternative footpath	- - - - -
Footpath to be created	—————
Other footpaths	- - - - -

