

Agenda Item No. 4(a)

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

23 July 2018

Report of the Strategic Director – Economy, Transport and Environment

PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.1 (PART) - PARISH OF ASHOVER

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Diversion Order for the permanent diversion of Public Footpath No. 1 (Part) in the Parish of Ashover in the interests of the landowner to increase the privacy and security of a dwelling.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of part of Public Footpath No.1 which currently passes through domestic premises. The proposed diversion would take the starting point of the footpath from the main entrance of the property to an adjacent field, a short distance away.

If the proposed diversion takes effect it will divert approximately 123 metres of that part of the footpath shown as a bold solid line between points **A** and **B** on the attached plan. The proposed alternative would be approximately 122 metres long, shown as a bold broken line between points **A** and **C**. To get to or from the same location at Point **B** from Point **C** requires an additional 15 metres of walking along the highway verge, which is of ample width. The alternative route would have a rolled stone surface and a recorded width of 2 metres. There is currently a stile at Point **C** but this would be replaced with a pedestrian gate to the current British Standard. A small tree on the route would be removed.

No objections were received to the proposed diversion when informal consultations were carried out. The Local Member, Councillor Barry Lewis, Ashover Parish Council and North East Derbyshire District 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 existing route of the footpath passes through a former farmyard that is now part of domestic premises. Removing the footpath from this area will increase the residents' sense of privacy and security.

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

The proposed alternative route would be approximately the same length as the existing one, although to get to or from the same point on the road from the north-east requires an additional 15 metres of walking along the highway verge. This is not believed to be significant. Gradients are similar but there is one fewer gate to pass through on the alternative route, making it slightly more convenient in this aspect.

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

Many walkers are uncomfortable passing through domestic premises as they may feel they are intruding into the residents' privacy. The new path would have a rolled stone surface, and as mentioned above there is one fewer gate to pass through. Hence, on the whole, it should provide a more enjoyable route.

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

There would be no 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 the affected land is owned by the applicant, so any effects are accepted.

Whether it is expedient to make the Order

It is considered that the proposed diversion is in the interests of the landowner, 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 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

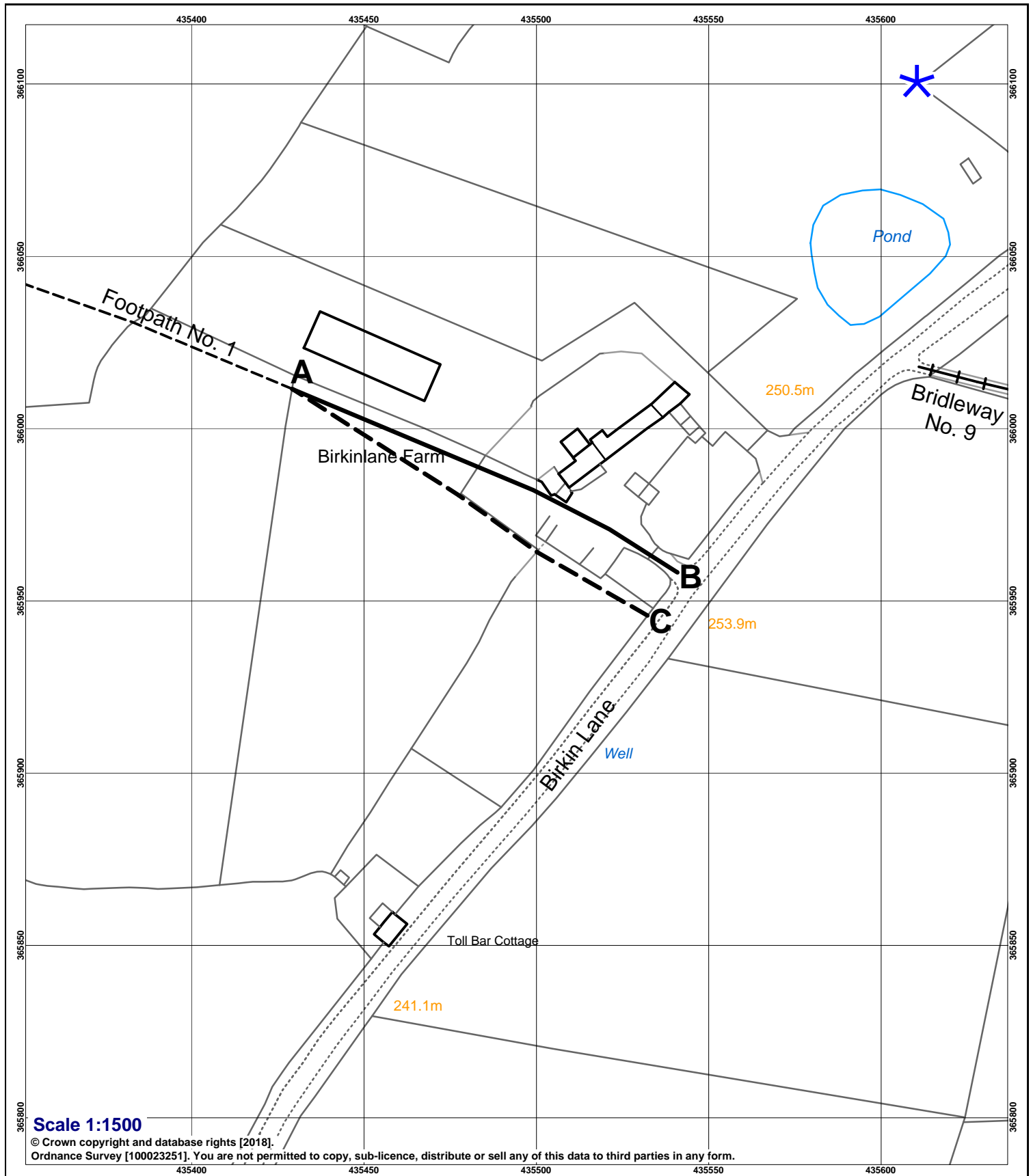
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(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 for Public Footpath No. 1 (Part), in the Parish of Ashover, under the provisions of Section 119 of the Highways Act 1980.
- 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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Highways Act 1980
Proposed Diversion of Public
Footpath No. 1 (Part) -
Parish of Ashover

Key:

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|----------------------|--|
| Path to be diverted | |
| Alternative footpath | |
| Unaffected footpath | |
| Unaffected bridleway | |

