

Agenda Item No. 4(c)

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. 15 (PART) - PARISH OF ROWSLEY

(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. 15 in the Parish of Rowsley, in the interests of the landowner.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of part of Footpath No. 15, Rowsley, in the interests of the landowner, to accommodate a farm building, an earth bank and fences that were put up on the path many years ago, and to safeguard stock by taking the footpath out of two pasture fields.

If the proposed diversion takes effect, it will divert approximately 324 metres of that part of the footpath shown as a bold solid line on the route marked **A-B-C-D-E** on the appended plan (ref TE/DM/X4038/Cttee/2018), to an alternative route shown as a bold broken line on the route marked **A-F-G-H-J-E**, also approximately 324 metres in length. The section of the proposed route marked **A-F-G** is tarmacked and 3 metres wide. From points **G** to **H**, the route passes through a yard with a surface of rolled stone and the footpath would be defined as 2 metres wide through this section. At Point **H** there is a gap, 1.3m wide, and a nearby gate is to be moved back to widen the approach. Between points **H** and **J**, the surface would be levelled and improved with rolled stone. The width narrows to 1.2 metres (4 metres west of Point **J**) due to the available space. A pedestrian gate conforming to British Standard 5709:2018 would be installed at Point **J**.

No objections were received to the proposed diversion when informal consultations were carried out. Consultees included the Local Member, Councillor Jason Atkin, Derbyshire Dales District Council and Rowsley Parish Council.

(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

Part of the existing legal line is not usable, as a large farm building and earth bank were constructed on it in the 1970s. In the absence of a diversion, the Council is under a duty to enforce the legal line, so it is clearly in the owner's interest to have the legal line diverted. The applicant is also concerned about potential issues with dogs affecting livestock, and the diversion would address this by taking the footpath out of two pasture fields.

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

The proposed alternative route is approximately about the same length as the existing legal line and of a broadly similar gradient (notwithstanding the illegal earth bank on the existing line), so 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

Part of the current route is not usable due to obstructions, so the alternative route would clearly have a positive effect on public enjoyment, but in strict legal terms, the two routes should be compared as if the obstructions were not present and the legal line were properly re-instated. In these terms, there would probably be little to choose between the two routes. The existing route passes through pasture fields and the alternative route passes along made-up surfaces. As many walkers may prefer one as the other. The alternative route has the advantage of two fewer boundary crossings and reducing potential conflicts with farm animals. On the other hand, the route will be shared with vehicular traffic, but this will not be frequent.

It is concluded that the proposed diversion would have no 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 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

Most of the affected land is owned by the applicant and the section marked **A-F-G** forms the vehicular access to the property. As this is a generous width and very lightly trafficked, no problems are anticipated. Parts of the existing and alternative routes pass over land owned and occupied by a third party, who has agreed to the proposal in writing.

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, it 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.

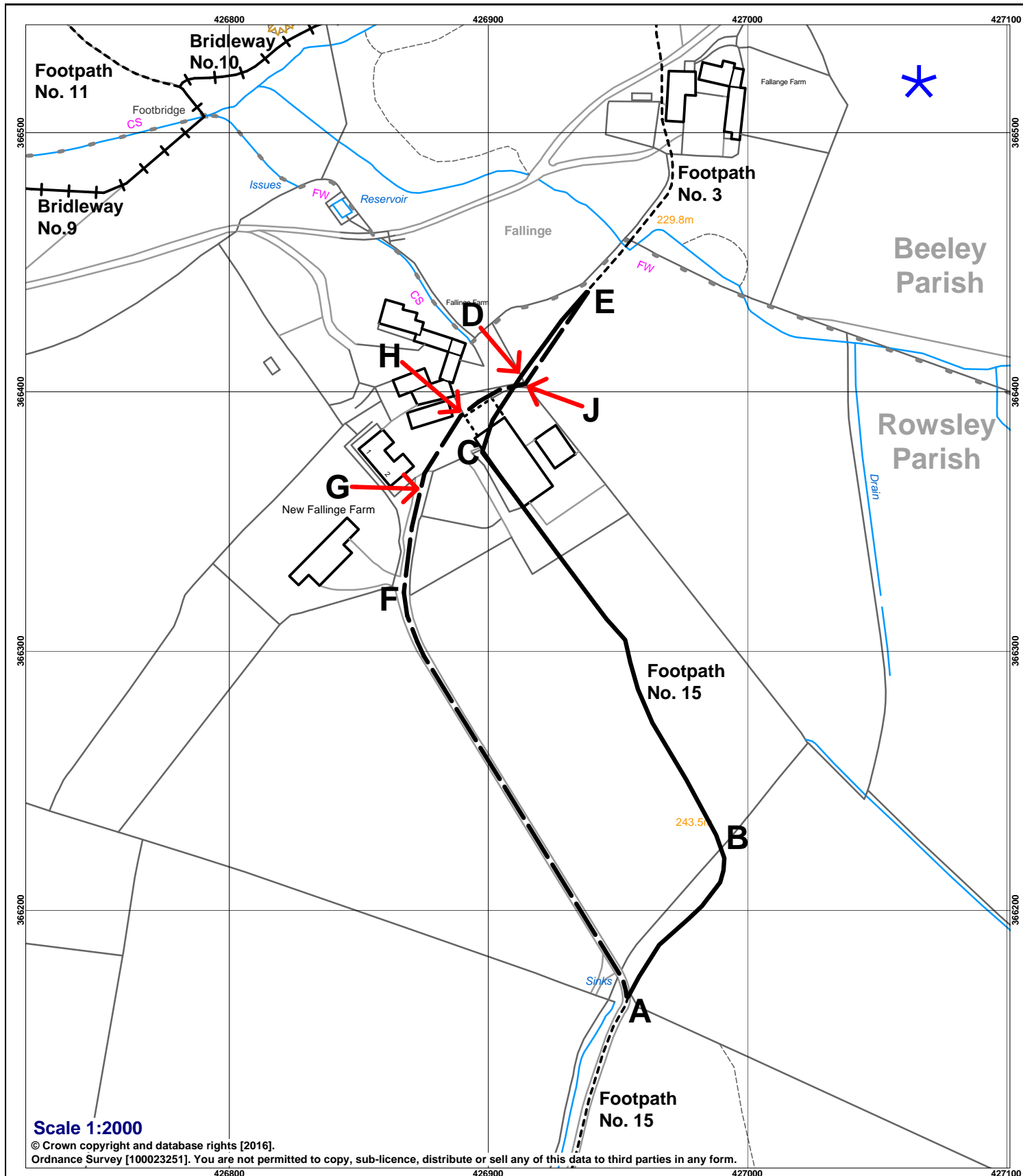
(6) **Background Papers** Held on file within the Rights of Way Section of the Economy, Transport and Environment Department. Officer contact details - David McCabe, extension 39770.

(7) OFFICER'S RECOMMENDATION 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 that part of Public Footpath No. 15 in the Parish of Rowsley.

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/X4038/Cttee/2018



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

Produced by Public Rights of Way on 29 May 2018

Highways Act 1980, Section 119

Proposed Diversion of Public Footpath No. 15 - Parish of Rowsley

Key:

Footpath to be extinguished
Alternative footpath
Other public footpaths
Public bridleways
Parish boundary

