

Agenda Item No. 5(a)

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

24 July 2017

Report of the Strategic Director – Economy, Transport and Communities

PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.1 – PARISH OF ASHBOURNE

(1) **Purpose of Report** To seek authority for the Strategic Director – Economy, Transport and Communities to carry out a public consultation on a proposal to divert Public Footpath No.1, Parish of Ashbourne, and, if no significant objections are received then the Director of Legal Services be authorised to make a Diversion Order for the permanent diversion of Public Footpath No.1, Parish of Ashbourne.

(2) **Information and Analysis** The County Council has received an application from the Strategic Director – Children's Services for the permanent diversion of Public Footpath No.1 to enable an extension of St Oswald's C of E Infant School into the field through which the footpath passes.

A planning application has been made to the County Council for a change of use from agricultural use to educational (school) use so that part of this field can be enclosed for use by the school as a recreation area as part of the school curriculum. This is likely to be determined in the next few weeks. The area will be fenced with stock fencing as a security measure and to keep out livestock. As security for schools is now a major issue, it is considered necessary to divert the footpath from the enclosed area to provide a safe learning environment.

The diversion application was received in March 2017 and an informal consultation was carried out. This revealed that the proposed route was unsuitable and a revised route, as shown on the attached plan, is now being considered.

The new proposal is to divert approximately 78 metres of Public Footpath No.1, shown as a bold solid line between points **A** and **B** on the attached plan. The proposed alternative would be approximately 100 metres long, shown as a bold broken line on the route **A – C – D – B**. The alternative route would have a recorded width of 2 metres to allow for future maintenance within which there would be a 1.5 metres wide stone surface seeded with grass to blend in with the landscape at this sensitive location.

A British Standard gate will be installed for stock control purposes at Point C on the attached plan.

A further informal consultation would usually be carried out inviting comments on this new line before reporting the application to Committee. In this instance, time constraints (the school needs the extra land to be available for pupils for the new school year in September 2017) are such that the Committee is requested to consider the application in advance of further consultation. This will allow the Diversion Order to be made promptly if planning permission is granted and would reduce the risk of the development being held up.

It is acknowledged that this is a departure from the Council's normal procedure but public consultation will still take place and if significant objections are received that cannot be resolved, the Committee will be asked to consider them at a later meeting. However, during the previous consultation the only objections received were about the route consulted on and that route has now been discarded in favour of the route shown on the attached plan. The principle of the diversion was not questioned.

(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** Section 55 of the Town and Country Planning Act 1990 ("the 1990 Act") provides that development includes "*the making of any material change in the use of any buildings or other land*". The change in use of the land from agriculture to education (school) use is a material change and is therefore development.

Section 257 of the 1990 Act permits the County Council, as the Planning Authority, to divert a footpath, bridleway or restricted byway "*if they are satisfied that it is necessary to do so to enable the development to be carried out*". It is considered that it is necessary to divert Public Footpath No.1 to enable this development to be carried out.

As referred to in the body of the report, the Committee is asked to approve this application in advance of an informal consultation. This is a departure from the Council's normal procedure in relation to applications made under Section 257 of the 1990 Act but it is expedient to make exceptions where there is an immediate need. In this case, it is considered that the desirability of providing a safe and secure area for primary age children to play and learn from September 2017 makes it expedient to seek Committee authority ahead of carrying out the consultation on the grounds that it is urgent and any delay could impact upon the ability of the school to deliver its curriculum.

It is possible that the informal public consultation will result in objections being made to the diversion proposal. If that occurs and the objections cannot be resolved, the application will be returned to the Committee for further consideration.

(5) **Environmental and Health Considerations** Consideration has been given to the County Council's Rights of Way Improvement Plan.

(6) **Property Considerations** The diversion of the path will be over land not in the Council's ownership but the landowner has provided their support to this proposal.

(7) **Social Value Considerations** This minor realignment of the public footpath will enhance the school curriculum and provide a safe environment for the pupils to enjoy outdoor exercise.

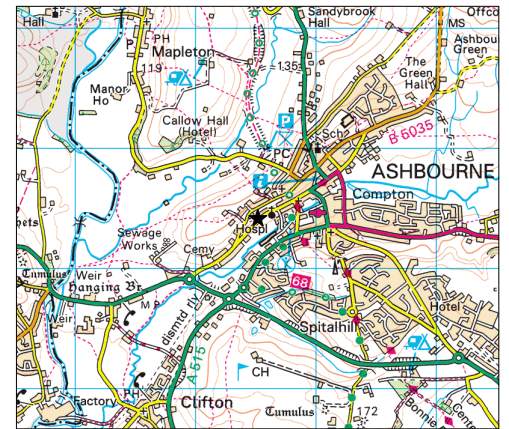
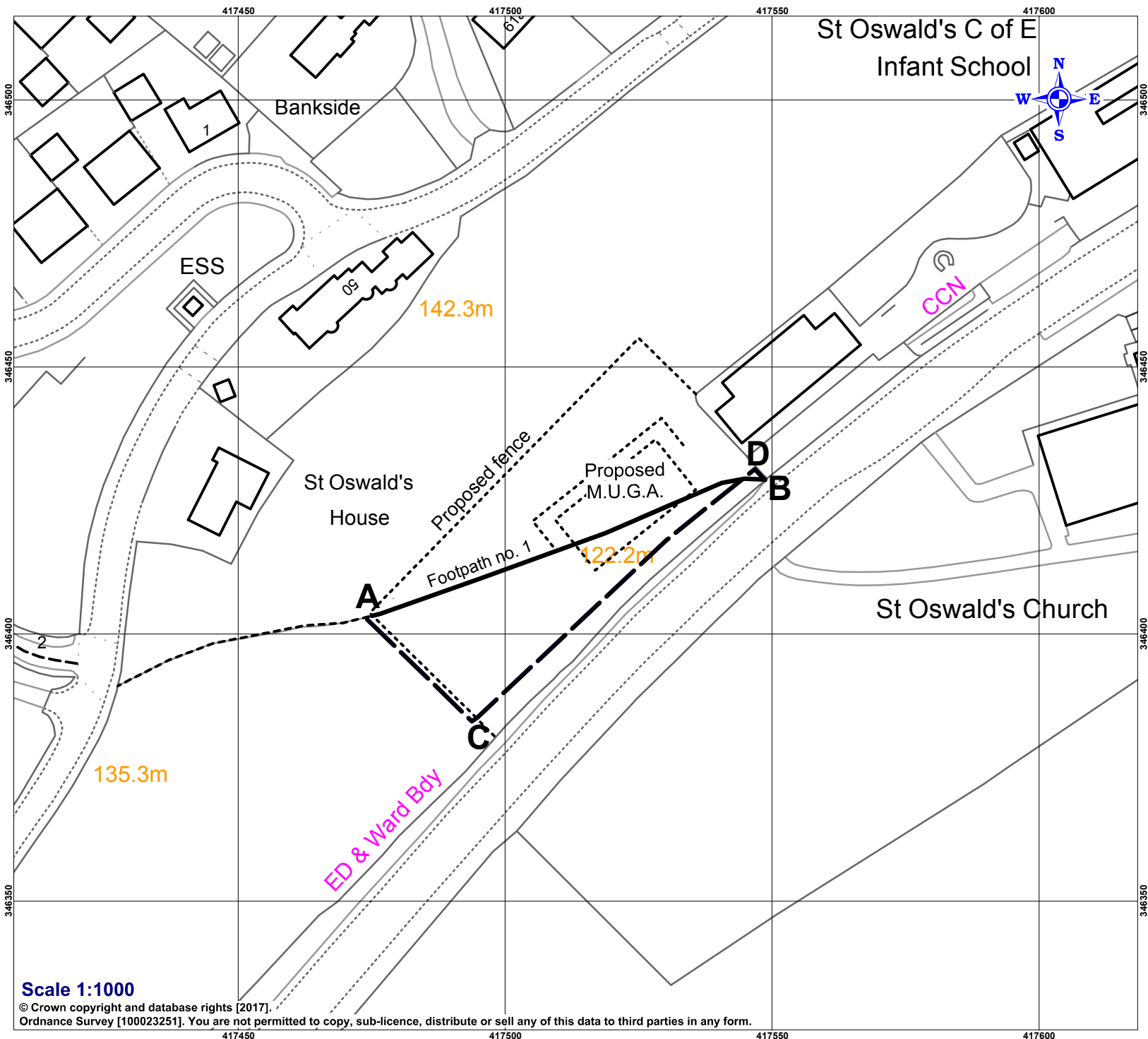
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources and transport.

(8) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details – Peter J White, extension 39673.

(9) **OFFICER'S RECOMMENDATIONS** That:

- 9.1 The Committee supports the application to divert Public Footpath No.1, Parish of Ashbourne, with a recorded width of 2 metres and a constructed width of 1.5 metres.
- 9.2 The Strategic Director – Economy, Transport and Communities carries out an informal public consultation.
- 9.3 If objections are received during the informal consultation stage that cannot be resolved then the matter will be returned to the Committee for resolution.
- 9.4 If no objections are received, the Director of Legal Services be authorised to make the necessary Order under the provisions of Section 257 of the Town and Country Planning Act 1990.
- 9.5 If objections are received to the making of the Order, then it will be referred to Secretary of State for determination.

Mike Ashworth
Strategic Director – Economy, Transport and Communities



**Town & Country Planning
Act 1990, s.257**

Proposed Diversion of Public
Footpath no. 1 - Parish of
Ashbourne, for the extension
of St. Oswald's C of E Infants'
School, Mayfield Road.

KEY

Footpath to be diverted ———

Alternative footpath - - - - -

Unaffected footpath - - - - -



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