

Agenda Item No. 4(h)

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

25 July 2016

Report of the Strategic Director – Economy, Transport and Communities

**SECTION 119 OF THE HIGHWAYS ACT 1980 - PROPOSED DIVERSION  
OF PUBLIC FOOTPATH NO. 8 – PARISH OF BRADBOURNE**

(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.8, in the Parish of Bradbourne, in the interests of the landowner.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of this footpath to resolve issues of obstruction caused by the construction of a barn and a horse exercise enclosure over the path and to improve public safety within a working farm environment.

If the proposed diversion takes effect, it will divert approximately 318 metres of Public Footpath No.8, shown as a bold solid line between points **A-B** on the attached plan. There is currently no way to cross the stream to the north of the buildings. The proposed alternative is shown as a bold broken line **C-D-E-F-B**, a length of 290 metres. Part of Public Footpath No.7 will be used to access the diverted path adding approximately 66 metres additional walking if coming from Brackendale Lane. The alternative route would have a stone surface with a short section of grass at the north end, and a recorded width of 2.0 metres. The route passes over culverts at **E** and **F** which will be maintainable by the landowner.

No objections were received to the proposed diversion when informal consultations were carried out in June this year. The Local Member, Councillor Ratcliffe, Bradbourne Parish Council and Derbyshire Dales District Council have no objection 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 and is estimated to be in the region of £1,500. As the footpath passes through agricultural premises, the Committee may allow a discretionary 25% reduction in these costs. It is

recommended that this reduction is applied to ensure there is a safe alternative walking route for the public.

(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**

It is in the interests of the owner of the land that the footpath should be diverted away from the currently obstructed line as the obstructions are substantial and would be costly and impractical to remove at this stage. The diversion would also remove the footpath from an area used by machinery and horses where there are safety issues.

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

The existing route is 318 metres long and the same journey on the diverted route with the connecting part of Public Footpath No.7 is approximately 66 metres longer when approaching from Brackendale Lane but shorter when approaching along Public Footpath No.7. In the context of a country walk, this is not believed to be significant or detrimental, so the diverted footpath is believed not to be substantially less convenient to the public and the alteration to the terminus is substantially as convenient to the public.

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

The existing route is unusable due to a building and equestrian enclosure on the route, plus there is no means of crossing the stream. The proposed route takes the footpath away from the buildings and provides a safe culverted crossing point for the stream. It is therefore concluded that the diversion would have a positive effect on the public enjoyment of the footpath as a whole.

**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 known or anticipated 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**

There are no identifiable effects that the new route would have on the land.

**Whether it is expedient to make the Order**

It is considered that it is expedient that the proposed Diversion Order is made in the interests of the landowner as it would be costly and expensive to remove the buildings. The proposed diversion would not be substantially less convenient to the public and the alteration to the terminus is substantially as convenient. The diversion would not have an adverse effect on 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.

(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.

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) **Key Decision** No.

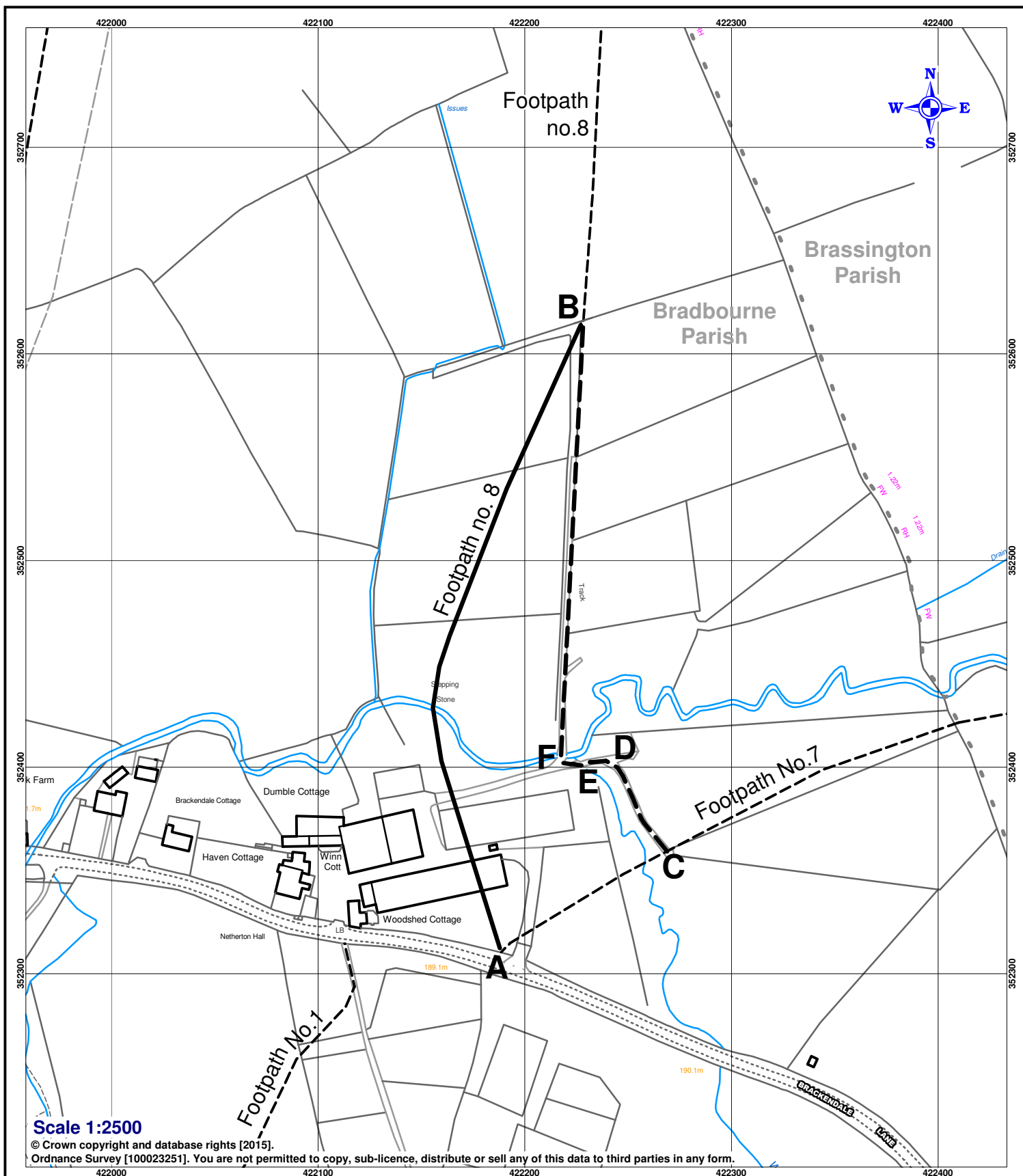
(7) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(8) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details – David McCabe, extension 39770.

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

- 9.1 The Director of Legal Services be authorised to make the necessary order to divert part of Public Footpath No.8, Parish of Bradbourne, under the provisions of Section 119 of the Highways Act 1980.
- 9.2 A discretionary 25% reduction be applied.
- 9.3 If an Order is made and any objection is received that cannot be resolved then the matter be forwarded to the Secretary of State for determination.

**Mike Ashworth**  
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Produced by Public Rights of Way on 15 May 2015

### Highways Act 1980 Section 119

## Proposed Diversion of Public Footpath No.8 (part) - Parish of Bradbourne

#### Key:

Footpath to be diverted

Alternative Footpath

Other footpaths

Parish Boundary

