

Agenda Item No. 4(d)

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 NOS. 12 (PART) AND 13 (PART) – PARISH OF  
HULLAND**

- (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 Nos. 12 and 13 in the Parish of Hulland, in the interests of the landowner.
- (2) **Information and Analysis** The County Council has received an application for the permanent diversion of the footpaths to accommodate farm buildings that have been constructed on the footpaths which are substantial and, at this stage, would be costly and impractical to remove. The proposed diversion would move the end-point of Public Footpath No.12 to the south-east of the farmstead and move the northern end of Public Footpath No.13 to the north and east.

If the proposed diversion takes effect, it will divert approximately 415 metres of that part of Public Footpath No.12, shown as a bold solid line between points **A-B-C** on the attached plan reference TE/AG/X4048/Ctee/2016. The proposed alternative would be approximately 249 metres, shown as a bold broken line between points **A-D**. Around 151 metres of Public Footpath No.13 will be diverted, as shown by a bold solid line between points **D-B**. The proposed alternative would be approximately 200 metres long, shown as a bold broken line between points **D-E-F-G-H**. Two pedestrian gates, conforming to British Standard 5709:2006, would be installed at points **D** and **E**. The existing double gates at **G** would be retained for stock control, but would mostly be kept open as at present. At Point **F**, the route crosses from Hulland into Hulland Ward Parish for a short distance to Point **H**. Both alternative routes would have a natural surface, apart from where stone would be added on short muddy lengths between points **D-E**, and the existing hard surface from just west of points **E-H**. Both routes would have a recorded width of 2.0 metres.

No objections were received to the proposed diversion when informal

consultation was carried out between 18 January and 15 February this year. Councillor Irene Ratcliffe, the Local Member, and Derbyshire Dales District Council have been consulted and have lodged no objections to the proposal. There was no Clerk in place for Hulland Parish Council and no alternative contact address, so they were not consulted. However, as copies of the letter were placed on site, people will have been made aware of the proposal. Hulland Ward Parish Council was consulted as the alternative route crosses into that parish between points **F** and **H**, and no objections were received.

(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 £1,500.

(4) **Legal Considerations** Derbyshire County Council may make an order under Section 119 of 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 definitive alignment of the Public Footpaths has been obstructed for many years by the farm buildings, which are substantial, and at this stage, would be costly and impractical to remove.

The proposed diversion is in the interests of the landowner.

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

The current alignments are not available and any person wishing to use the path would have to negotiate their way around the building complex. The alternative routes are slightly longer but, overall, this is not considered to be substantially less convenient.

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

The proposed diversion will provide the public with an unobstructed route through a field. It would not have an adverse effect on 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**

This is no identifiable impact on other land.

**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**

A small part of the diversion is not on land within the ownership of the applicant, however, the adjoining landowner has consented to the proposal.

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

It is considered that the proposed diversion is in the interests of the landowner. The proposed diversion would 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. The new termination points are substantially as convenient to the public.

(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 Public Footpath Nos 12 (Part) and 13 (Part) in the Parish of Hullan under the provisions of Section 119 of the Highways Act 1980.
- 9.2 Should objections be received to the making of the Orders that cannot be resolved then the matter be forwarded to the Secretary of State for determination.

**Mike Ashworth**  
**Strategic Director – Economy, Transport and Communities**

