

**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.17 (PART) – PARISH OF BRAILSFORD**

(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.17 (Part) in the Parish of Brailsford, in the interests of the landowner.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of part of the footpath in the interests of the landowner, to enhance privacy and security, and to allow better use of the land as a garden and car parking area. The proposed diversion would move a length of the footpath into the field to the north of the garden.

If the proposed diversion takes effect, it will divert approximately 48 metres of that part of Public Footpath No.17, shown as a bold solid line between points **A-B** on the attached plan reference TE/DM/X4040/Cttee/2016. The proposed alternative would be approximately 54 metres long, shown as a bold broken line between points **A-C-B**. The surface between points **A** and **C** would be gravel, with a natural surface between points **C** and **B**. The recorded width would be 2.0 metres.

A pedestrian gate, conforming to British Standard BS:5709:2006, would be installed at Point **C**.

No objections were received to the proposed diversion when informal consultations were carried out between 7 December 2015 and 4 January 2016. Councillor Steve Bull, the Local Member, Brailsford Parish Council and Derbyshire Dales District Council have been consulted and have 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 £1,500.

(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**

The proposed diversion would remove the footpath from the immediate curtilage of the domestic property and garden to a route on the outside of the

boundary, therefore improving the privacy and security of the landowner and allowing better use of the land.

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 proposed alternative route is only 6 metres longer than the existing route and there will be no alteration in the termination points.

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**

As the current route goes through the curtilage of a private property, the quality of the route will be improved by the proposed diversion as many people consider it preferable to walk through fields than through a private garden and in such close proximity to residential property.

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 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**

The diverted route passes along the adjoining boundary, in an adjacent landholding, owned by the same landowner. Any negative effect has not been identified or raised as part of the consultation.

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

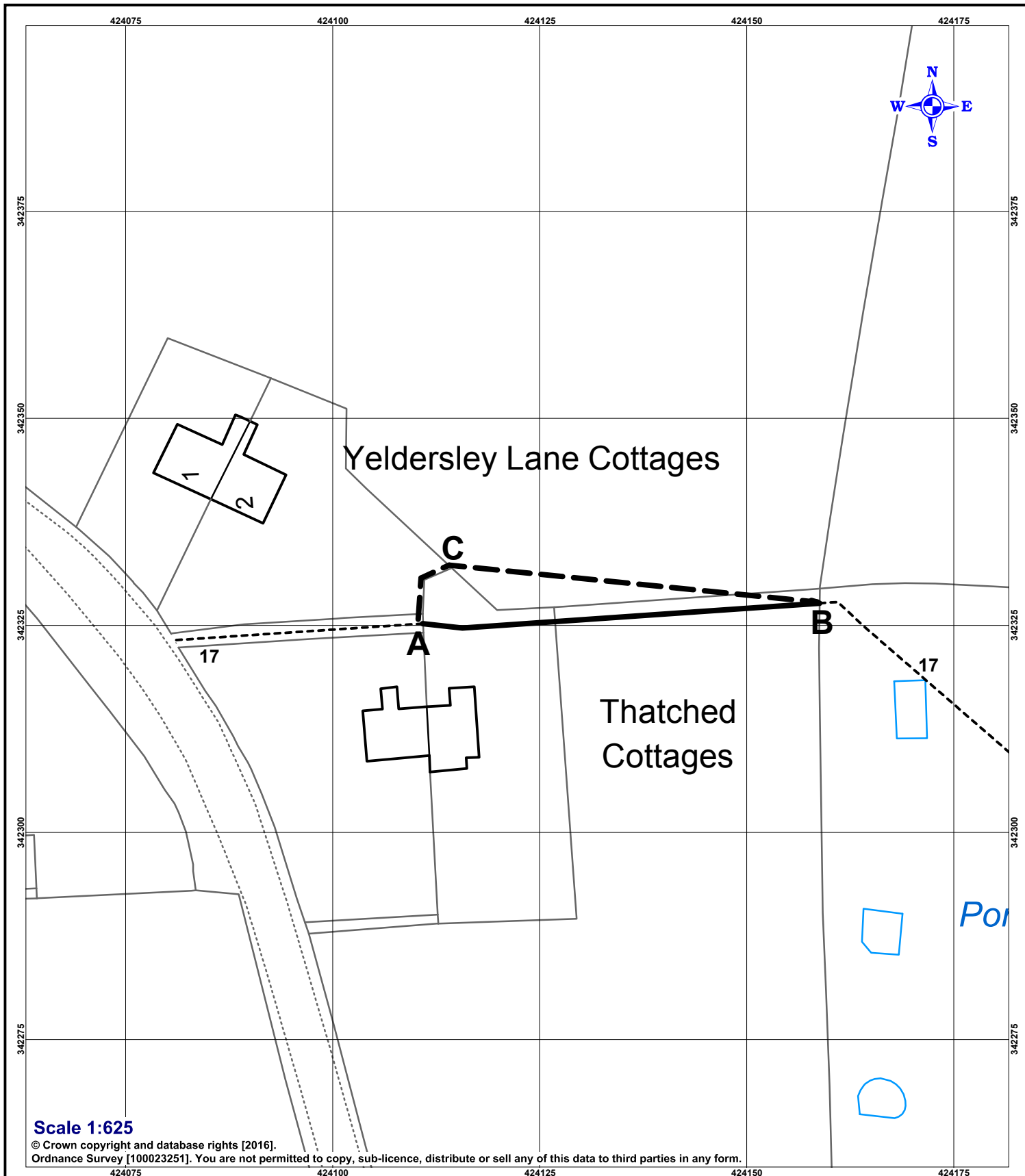
It is considered that the proposed diversion is in the interests of the landowner and occupier. The proposed diversion would not be substantially less convenient to the public and would not have an adverse effect the public enjoyment of the route as a whole or adversely affect the land over which the diversion would run or land served by the existing right of way

(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 No.17 in the Parish of Brailsford, under the provisions of Section 119 of the Highways Act 1980.
- 9.2 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 Communities**



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## Highways Act 1980, Section 119

### Proposed Diversion of Public Footpath no. 17 (Part) - Parish of Brailsford

#### Key:

Footpath to be extinguished —————

Alternative footpath - - - - -

Unaffected footpath - - - - -

