

Agenda Item No. 4(g)

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.35 (PART) – PARISH OF MATLOCK**

(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.35 in the Parish of Matlock, in the interests of the landowners to improve privacy, security and aid the resolution of longstanding obstructions on the path.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of the Matlock Public Footpath No.35. The application requests the diversion of the path out of two separate parcels of land under different ownership. The adjoining owner supports this application.

Diverting this path will provide a route for the public to enjoy and reconnects the local network of paths. If the proposed diversion takes effect, it will divert approximately 80 metres of that part of the footpath, shown as a bold solid line between points **A** and **B** on the attached plan, to an alternative route, shown as a bold broken line between points **C** and **D**; approximately 97 metres in length. The recorded width will be 1.8 metres.

There has been some doubt over the precise line of the path which cannot be determined from the Matlock Urban District Definitive Map with any degree of accuracy owing to the scale of the map. This imprecision, combined with the development of the property and garden, has resulted in the path being rendered unusable due to a number of obstructions along the route; a situation the applicants inherited on purchasing the property and which they did not create. Furthermore, there is evidence of indecision on the part of the Council during the process of considering and advising on the alignment of the path, as well as the application to divert the path. These internal matters have been resolved with additional guidance and support.

No objections were received to the proposed diversion when informal consultations were carried out between 15 February and 14 March this year,

although improvements to the surface of the alternative path were requested by one consultee. The applicants have agreed to undertake the improvements. Councillor Andy Botham, the Local Member, Matlock Town Council and Derbyshire Dales District Council have been consulted and support the proposal.

(3) **Financial Considerations** Given the lack of precision on the Matlock Urban District Definitive Map, the duty placed on the County Council to record rights of way accurately and evidence of delays experienced by the applicant, it is recommended that no charge should be made for this application. The cost of the application, approximately £500 for advertising plus Officer time, can be contained within the Rights of Way budget.

(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**

Re-opening the existing legal path line would involve the landowners having to knock down walls and remove other obstructions from the path. With an equally commodious path available, it would not serve the wider interests of the public to enforce the re-opening of the path, particularly in the absence of objections to the proposal.

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

The alternative route is easy to negotiate. The western end of the path on the road at Lumsdale will be diverted by a few metres along the road. This is minimal and will be substantially as convenient to the public. The eastern end of the section to be diverted will also be moved to a point along Public Footpath No. 31 to the south of Moorland View. Again, this will be substantially as convenient to the public. The direction of travel will dictate whether the alternative route adds to the distance walked or reduces the distance. Overall, there is no evidence that indicates that the public will be substantially inconvenienced by the diversion of this path.

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

The paths, both the current alignment and the proposed alignment, lie within a semi-rural setting. The sections are short and therefore, the overall impact on the public walking in the area is considered to be negligible.

**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 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**

The alternative route passes over land owned by a third party who has given their agreement to the diversion in writing.

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

In summary, taking into account the points raised above and in the body of the report, it would be 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.

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.

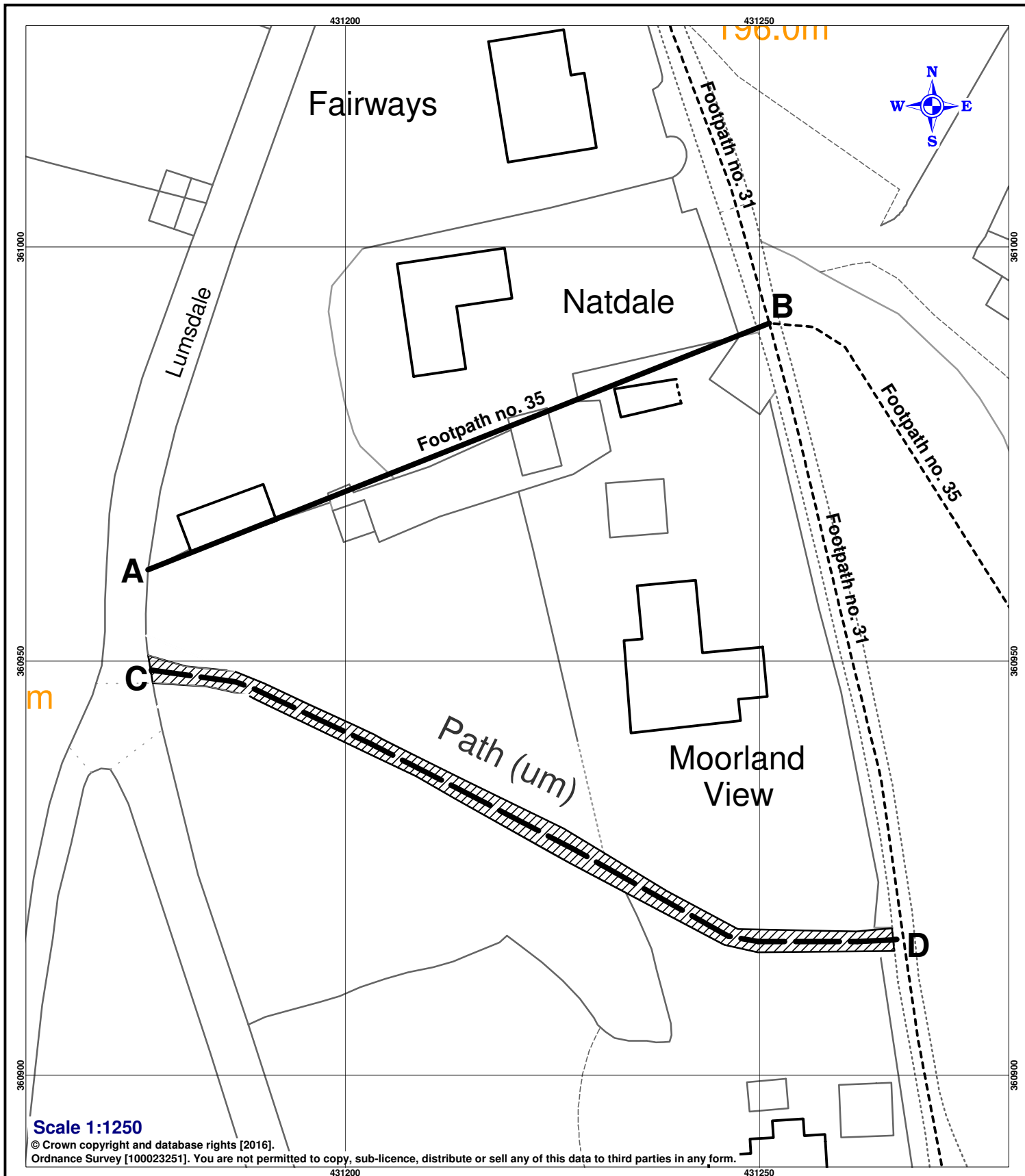
(9) **OFFICER'S RECOMMENDATIONS** That:

9.1 The Director of Legal Services be authorised to make the necessary Order to divert Public Footpath No.35, Parish of Matlock.

9.2 No charge be made for the application.

9.3 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**



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## Highways Act 1980, Section 119

### Proposed Diversion of Public Footpath no. 35 - Parish of Matlock

#### Key:

- Footpath to be diverted
- Alternative footpath
- Other public footpaths

