

Agenda Item No. 4(b)

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. 5, 7 AND 9 (PARTS) – PARISH OF CLIFTON
AND COMPTON**

(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. 5, 7 and 9 (Parts) – Parish of Clifton and Compton, in the interests of the landowners.

(2) **Information and Analysis** Derbyshire Dales District Council granted a series of planning permissions for the development of a garden centre in the early 1990's. Over the course of its construction, the District Council did not receive an application to divert the paths which pass through the buildings and glasshouse complex. Complaints arose from members of the public and negotiations with the owners resulted in the County Council receiving an application for the permanent diversion of these footpaths.

Following discussions and negotiation with the owner of the site, and via public consultation, a solution has been found which will result in paths being available around the site. If the proposed diversion takes effect, it will divert approximately 266 metres of that part of Public Footpath No.5, shown as a bold solid lines on the attached plan reference TE/DM/X3624/Cttee/2016 between points **A-B**, to a route shown as a bold broken line between points **A-C-D-E-B**, a distance of approximately 316 metres in length. The additional length avoids the public parking area.

The diversion of Public Footpath No.7 is included in the proposals to realign the path to a nearby footbridge. It would also divert approximately 156 metres of Public Footpath No.7, shown as a solid bold line between points **F-G**, to a route shown as a bold broken line between points **F-H-J**, a distance of 292 metres which is shorter than the cumulative distance of 320 metres that the public would walk on the route **F-G-J** to reach the same point as the proposed alternative route.

The proposal also resolves the obstruction of Public Footpath No.9, shown as a solid line **K-C-G-J**. The alternative route, **K-E-B-L-M**, is approximately 455 metres in length, some 200 metres shorter than the current legal alignment.

The alternative routes would have a natural surface with a recorded width of 2.0 metres. Pedestrian gates to British Standard 5709:2006 would be installed at points **B** and **L**, and a waymark post at Point **D**. A corridor would be made through the woodland between Points **E-B**.

No objections were received to the proposed diversion when informal consultations were carried out from 18 January to 15 February 2016. Councillor Steve Bull, the Local Member, Clifton Parish Council and Derbyshire Dales District Council have been consulted and submitted no objections to the proposal.

(3) **Financial Considerations** The application has taken a long time to process, partly due to the complexity of the situation and also delays introduced due to competing demands in this service area. Following a complaint received by the applicant, he was advised that the Council would not charge for this application. The cost of this application would normally be in the region of £1,500 made up of staff time, circa £1,000, and advertising in the press, circa £500. If the Committee supports the recommendation not to charge for its services, then the Council will have to bear the cost of the advertising which can be covered by the Rights of Way budget.

The applicant has agreed to carry out the necessary works to bring the new routes into a suitable condition for public use.

(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 definitive alignment of Public Footpath Nos. 5 and 9 are obstructed by the garden centre which would be costly and impractical to remove at this stage.

Relocation of the bridge on Public Footpath No.7 would result in the need to re-arrange the field boundaries.

The diversions are in the interests of the landowner.

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

In the case of Public Footpath No.9, the alternative route is approximately 45 metres longer. The eastern end of Public Footpath No.9 will move from Point **J** to Point **M**. In the context of the realignment of all these paths, it is considered that the new terminus will be substantially as convenient to the public.

In the case of Public Footpath No.5, the alternative route is approximately 50 metres longer.

In the case of Public Footpath No.7, the realignment will provide a path that is 28 metres shorter. The southern end of Public Footpath No.7 will move from Point **G** to Point **J**. In the context of the realignment of all these paths, it is considered that the new terminus will be substantially as convenient to the public.

Overall, having given consideration to the layout of the site and avoiding further potential obstructions, the additional distances are not considered to be substantially less convenient to the public.

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

A resolution to the long standing obstructions on the site will open the network and enhance public enjoyment, offering an obstruction free route.

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 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

There would be no adverse effects as the proposals have been agreed with the land owners and the majority of the alternative routes are through the same fields as the existing routes.

Whether it is expedient to make the Order

It is considered that the proposed diversion is in the interests of the landowners who are also the occupiers. The proposed diversions 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 alterations to the terminus of Public Footpath Nos. 7 and 9 will be 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.

Part of the diversion affects land not in the ownership of the applicant but written consent has been received from the land owner.

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

(6) **Key Decision** No.

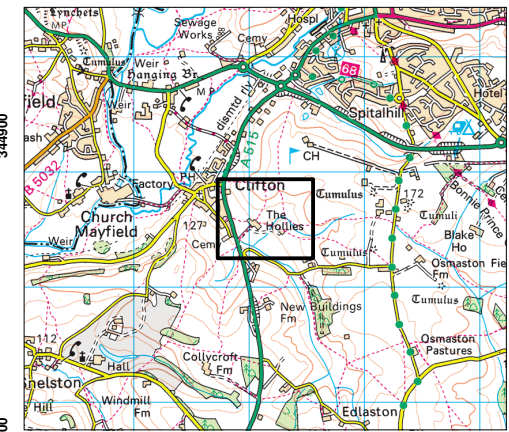
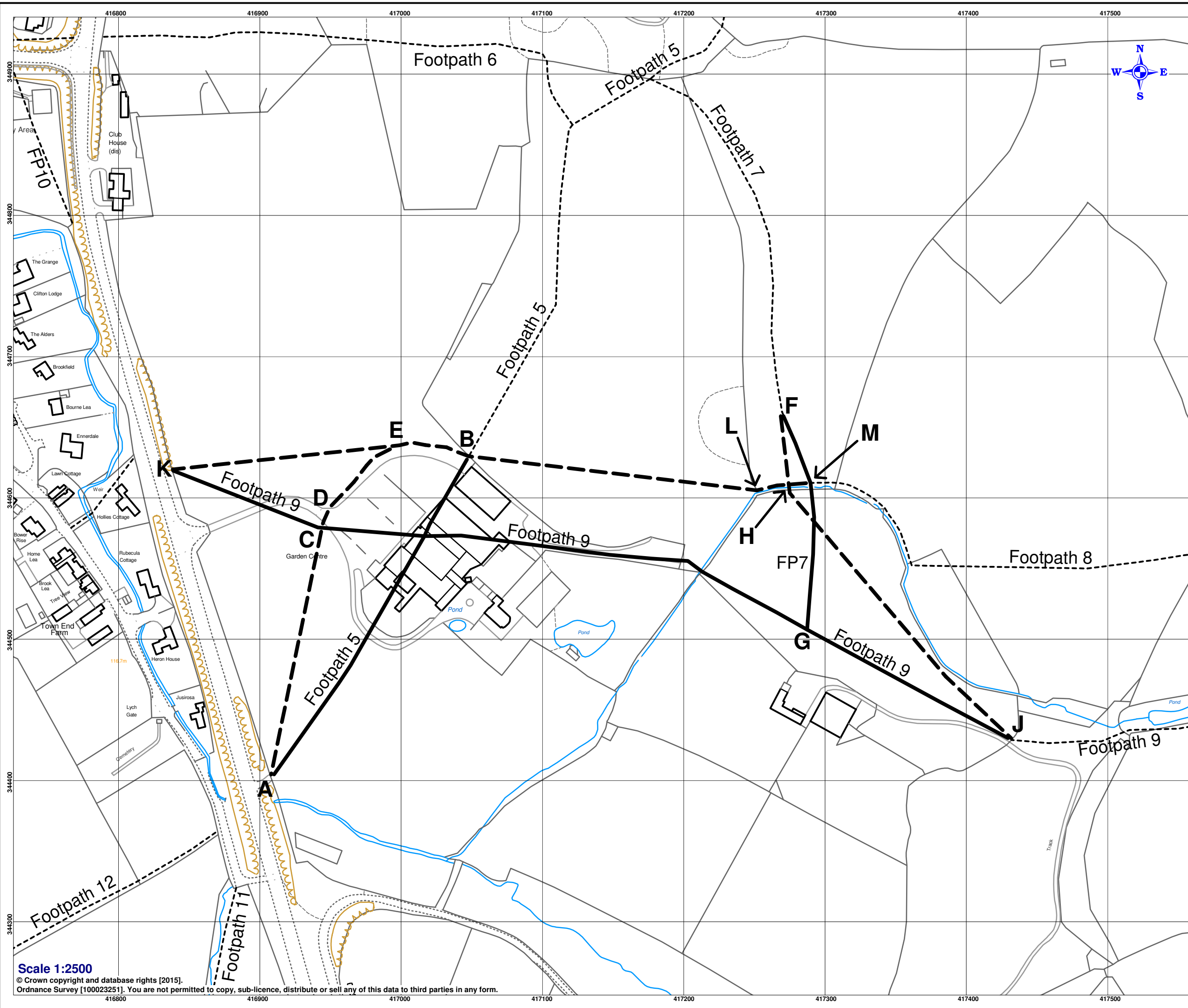
(7) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(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 under the provisions of Section 119 Highways Act 1980 to divert parts of Public Footpath Nos. 5, 7 and 9 in the Parish of Clifton and Compton.
- 9.2 The Committee agrees that no charge should be made for this 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



**Highways Act 1980,
Section 119**

**Proposed Diversion
of Public Footpaths
nos. 5, 7 & 9 (parts) -
Parish of Clifton & Compton**

KEY

Footpaths to be diverted

Alternative footpaths

Other public footpaths

DERBYSHIRE
County Council
Improving life for local people

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Produced by Public Rights of Way on 2 November 2015

Ref: TE/DM/X3624/Cttee/2016