

Agenda Item No.4

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

29 February 2016

Report of the Strategic Director – Economy, Transport and Environment

**SECTION 119 OF THE HIGHWAYS ACT 1980
PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.4 (PARTS) –
PARISH OF WINGERWORTH**

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Diversion Order for the permanent diversion of Footpath No. 4 (Parts) – Parish of Wingerworth, in the interests of the owner of Stone Edge Farm.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of the footpath to allow the retention of two cattle grids that have been installed in the footpath. Retention of the two grids is needed for stock control and the ease of movement of vehicles along the public footpath, which forms the access to the farm.

If the proposed diversions take effect, they will divert approximately 3 metres of the footpath at the northern site and 3.5 metres at the southern site, shown as a bold solid line between points **A-B** and **E-F** on the attached plan. The proposed alternatives would be approximately 5.7 metres at the northern site and 6.5 metres at the southern site, shown as bold broken lines between points **C-D-B** and **E-G-H-F**. The alternative routes would have a stoned surface and a recorded width of 1.8 metres at the northern site and 1.5 metres at the southern site, widening to 1.8 metres at Point **H** to accommodate a pedestrian gate to the current British Standard. There would also be a pedestrian gate to the current British Standard at Point **C**. The path at the northern site would be retained by a revetment, and at the southern site the necessary width would be provided by adjusting the position of the fence and installing a timber beam across the watercourse.

No objections were received to the proposed diversion when informal consultations were carried out on 2 December 2015. Councillor Barry Lewis (the Local Member), Wingerworth Parish Council and North East Derbyshire District Council have been consulted and gave 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, bringing the new route into a suitable condition for public use and to pay any compensation that may become payable in consequence of the Order coming into effect. This includes Officer time in processing the application which is estimated to be in the region of £2,000.

(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:

It is in the interests of the owners of the land that the footpath should be diverted, as retention of the cattle grids allows stock retention whilst providing convenient vehicular access, therefore allowing better use of the land.

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

The proposed alternatives are longer than the sections of footpath proposed to be diverted but considering the diverted route as a whole will not be substantially less convenient to the public.

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

The proposed alternatives are parallel and in close proximity to the current routes and therefore will have no negative impact on the public enjoyment of the route as a whole.

The coming into operation of the Order would not have any known adverse effects on any other land served by the existing public right of way.

None.

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

Part of the proposed new route is within the ownership of the neighbouring landowner. The landowner has been consulted.

Whether it is expedient to make the Order

In conclusion, it is considered that the proposed diversion is in the interests of the landowners. It 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, nor adversely effect 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.

Other Considerations

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

(6) **Background Papers** Held in file within the Economy, Transport and Environment Department. Officer contact details - David McCabe, extension 39770.

(7) **Key Decision** No.

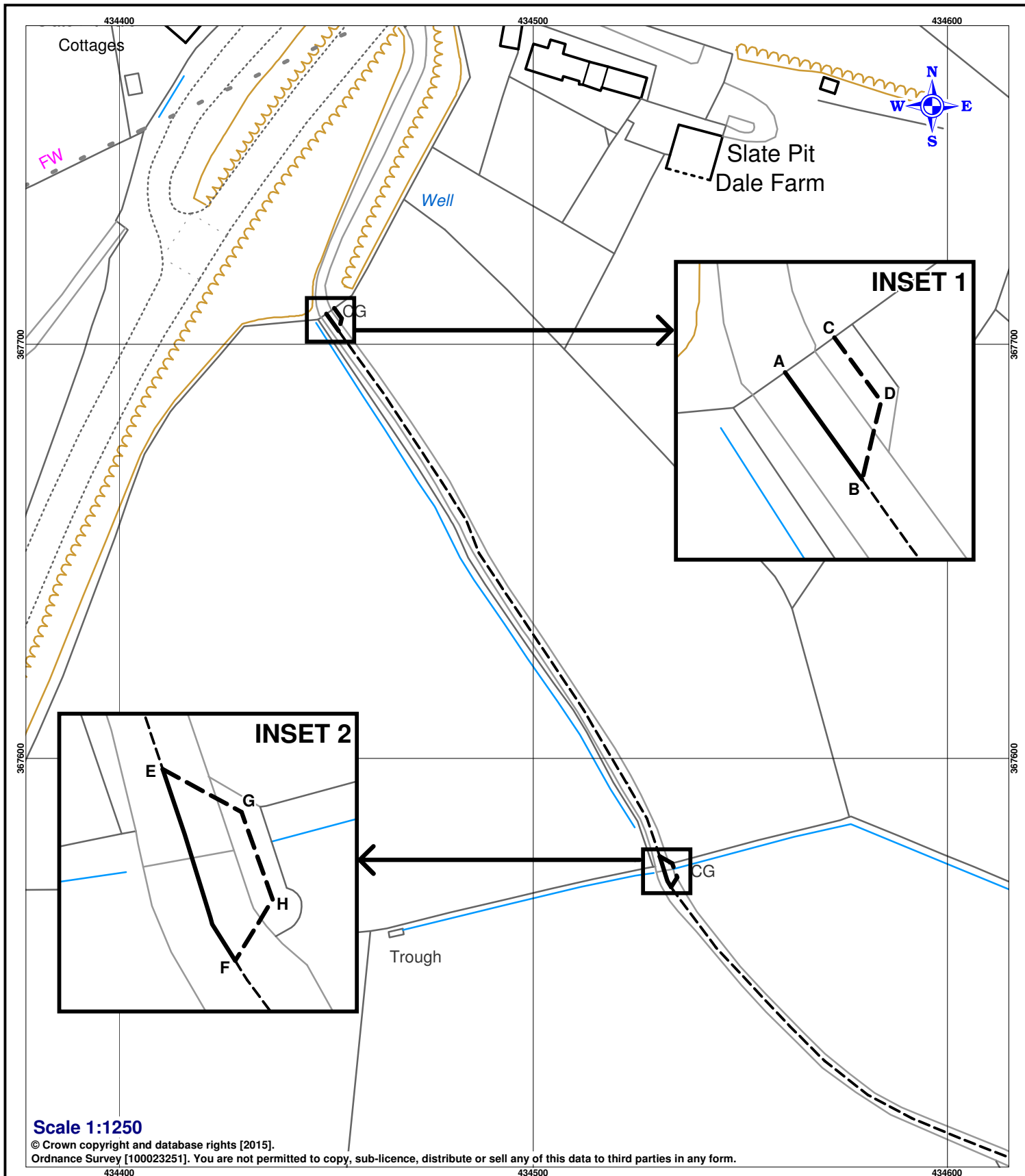
(8) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

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

9.1 The Director of Legal Services be authorised to make the necessary order to divert Public Footpath No. 4 (Parts) in the Parish of Wingerworth 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.

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Produced by Public Rights of Way on 11 November 2015

Highways Act 1980, Section 119

Proposed diversion of Public Footpath no. 4 (parts) - Parish of Wingerworth

Key: Footpath to be diverted
Alternative footpath
Unaffected footpath
Parish boundary

