

Agenda Item No.4

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

11 September 2017

Report of the Strategic Director – Economy, Transport and Communities

**SECTION 119A OF THE HIGHWAYS ACT 1980 -  
PROPOSED DIVERSION OF PUBLIC FOOTPATH NO. 26 (PART)  
FORMERLY IN THE PARISH OF MATLOCK, NOW IN THE PARISH OF  
DARLEY DALE**

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Diversion Order for the permanent diversion of part of Public Footpath No. 26, formerly in the Parish of Matlock, now in the Parish of Darley Dale, in the interests of the safety of the public using it or likely to use it.

(2) **Information and Analysis** An informal consultation has been undertaken on this proposal in which it was stated that it was proposed to use Section 119 of the Highways Act 1980. For legal reasons, it is now proposed to use Section 119A, and as the route of the proposed path remains the same and the legal tests for Section 119A are less stringent than Section 119, it is not deemed necessary to undertake a further consultation with regard to this procedural change.

The existing footpath crossing is considered to be unsatisfactory due to safety concerns and the fact that it is very steep and uneven. The Strategic Director of Economy, Transport and Communities wishes to undertake a permanent diversion of the footpath onto a safer, more accessible private crossing of the railway line in the vicinity, in the interests of the public. Public Footpath No. 26 connects with a number of footpaths on the western side of the railway and is also intended to form part of the White Peak Loop multi-user trail which is to run from Matlock to Bakewell. A means of crossing the railway is therefore needed in this locality. It is proposed, subsequently, to convert the diverted part of the footpath into a cycle track to connect with the rest of the cycle path along the railway corridor, which has been agreed with the relevant parties. The proposed diversion will provide a much safer route for cyclists. The Office of Rail and Road, the regulatory body for safety on the railways, supports the proposal.

If the proposed diversion takes effect, it will divert approximately 103 metres of that part of the footpath shown as a bold solid line between points **A** and **B** on the attached plan. The proposed alternative would be approximately 150 metres long, shown as a bold broken line between points **C-D-E-B**. To facilitate safer crossing and to prevent cycles from being ridden across the track, there would be chicane barriers on both sides. In order to comply with equality legislation, these would be designed to accommodate mobility scooters. The surface of the path would be of rolled stone with tarmac at the roadside entrance and through the chicane barriers up to the rails. Between the rails would be a rubberised surface recommended for the purpose. The path would have a recorded width of 3 metres.

No objections were received to the proposed Section 119 diversion when informal consultations were carried out between 6 December 2016 and 3 January 2017. The diversion is supported by Derbyshire Dales District Council which owns the land crossed by the rail track. Peak Rail has not objected to the scheme but has concerns over the safe operation of the new crossing. The local Member, Councillor Joanne Wild, and Darley Dale Town Council have been consulted and have lodged no objections to the proposal.

(3) **Financial Considerations** The costs of advertising the diversion and the capital works to create the new route have already been allowed for within the Pedal Peak Project budget. Future maintenance will continue to be covered by the Rights of Way Revenue budget as the basic split of responsibilities for maintenance between the County Council and Peak Rail, as rail operator, will remain unchanged.

(4) **Legal Considerations** Derbyshire County Council may make an Order under Section 119A of the Highways Act:

- (1) This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath in their area which crosses a railway, otherwise than by tunnel or bridge, should be diverted (whether on to land of the same or of another owner, lessee or occupier).
- (2) Where this section applies, the council may 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 path or way as appears to the council requisite for effecting the diversion, and
  - (b) extinguish, as from such date as may be specified in the order or determined under subsection (7) below, the public right of way over the crossing and over so much of the path or way of which the crossing forms part as appears to the council requisite as aforesaid.

- (4) The Secretary of State shall not confirm a rail crossing 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 it is expedient to do so having regard to all the circumstances, and in particular to—
  - (a) whether it is reasonably practicable to make the crossing safe for use by the public, and
  - (b) what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.
- (5) A rail crossing diversion order shall not alter a point of termination of path or way—
  - (a) if that point is not on a highway over which there subsists a like right of way (whether or not other rights of way also subsist over it), or
  - (b) (where it is on such a highway) otherwise than to another point which is on the same highway, or another such highway connected with it.
- (6) A rail crossing diversion order may make provision requiring the operator of the railway to maintain all or part of the footpath created by the order.
- (7) Where it appears to the council that work requires to be done to bring the new site of the footpath into a fit condition for use by the public, the council shall—
  - (a) specify a date under subsection (2)(a) above, and
  - (b) provide that so much of the order as extinguishes (in accordance with subsection (2)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.

Research has concluded that it is expedient to make the necessary Diversion Order because:

**Whether it is in expedient in the interests of the safety of members of the public using it or likely to use it that a footpath in their area which crosses a railway, otherwise than by tunnel or bridge, should be diverted**

The existing footpath crosses the railway by a level crossing. The crossing is in a poor state with no crossing timbers, rails standing above the surface, slopes on both sides and a series of steep, uneven steps on the east side. The route crosses diagonally, potentially extending the time spent on the railway longer than necessary. The eastern approach is significantly lower than the railway and requires pedestrians to negotiate some very steep, uneven steps, meaning that trains are not easily visible to users or users to train drivers, until the last minute when they arrive at the top of the steps at track level. The route is inaccessible to people with mobility difficulties or who have young children.

The diversion would provide a shorter, quicker crossing at right angles to the railway, with the approaches at the same level, making visibility better and the route more accessible. In negotiation with Peak Rail, the Council has carried

out a safety risk assessment, considering 26 Risk Influencing Factors taken from the Office of Rail and Road's Risk Management Toolkit for Level Crossings to inform the safety implications for the design of the new crossing. It is therefore considered that the diversion, which provides the opportunity to improve the design at the new location to meet modern safety and accessibility standards, would be in the interests of the safety of members of the public.

**Whether it is reasonably practicable to make the crossing safe for use by the public**

The diagonal route of the footpath across the railway makes it inherently less safe than a route at right angles. The existing crossing could be improved with crossing timbers and new steps but it would still suffer from visibility issues and take longer to cross than the shorter alternative. Because of the steps, this location would also never be suitable for people with restricted mobility. The eastern approach is significantly lower than the railway and would require major engineering works to bring it level with the railway. It is therefore considered that it is not reasonably practicable to make the existing crossing safe for use by the public.

The proposed crossing is more direct and is in a position that improves visibility. It removes the need to negotiate steep and uneven ground as the route has previously been ramped to enable vehicles to cross and will be raised to improve visibility further. The track surface would be improved so that wheels would not get caught in the tracks and the surface would be colour-coded to identify the exact area of the crossing.

As described below, works would be undertaken to ensure that appropriate signs and barriers are erected and maintained to reduce the risk of injury to the public.

It is therefore considered that it is reasonably practicable to make the proposed location of the crossing safe for use by the public.

**What arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained**

In consultation with the Office of Rail and Road and Peak Rail, the Council has agreed to erect chicane barriers which will force cyclists to dismount to cross the track, timber trespass guards and signage that complies with the Private Crossing (Signs and Barriers) Regulations 1996 and the Traffic Signs Regulations and General Directions 2016. On-going maintenance of the barriers will be the responsibility of the Council and the maintenance of the signs will be shared between the Council and Peak Rail.

**Whether a point of termination of the diverted path would be on a highway over which there subsists a like right of way or (where it is on such a highway) otherwise than to another point which is on the same highway, or another such highway connected with it**

The roadside entrance of the existing route is off the A6 Bakewell Road at Point **A**, and that of the alternative route would be moved only to Point **C** just a few metres along the same road.

**Whether provision is to be made requiring the operator of the railway to maintain all or part of the footpath created by the order**

Peak Rail, as rail operator, is currently responsible for the maintenance of the route over the rail track since it is within the boundary of the operational railway and this is expected to continue. It is proposed that Peak Rail should not have to take on additional responsibilities so, in recognition of the new trail that is being constructed, it is proposed that the Council takes on the maintenance of the barriers and the construction and maintenance of the new section of footpath approaching the railway from the east.

The land crossed by the existing and proposed routes is owned by Derbyshire Dales District Council and occupied by Peak Rail. Both were consulted and the District Council supports the proposal. Peak Rail has not formally objected to the proposal but has concerns about the safe operation of the new crossing. The Office of Rail and Road has confirmed that an agreement needs to be in place between the Council and Peak Rail over the safe operation of the new crossing. Discussions are currently ongoing with Peak Rail to ensure that this agreement is in place before the Order is confirmed. The Peak Rail Board met on 25 August to discuss the situation. Any further comments will be reported verbally at the committee meeting.

The Diversion Order would amend the location of Public Footpath No. 26 as recorded in the Second Schedule of Statutory Instrument 1991 No. 2812 – The Peak Rail Light Railway Order 1991.

Section 119A only requires the Council to be satisfied that the diversion is expedient in the interests of the safety of members of the public using or likely to use the crossing. Circular 1/09 produced by the Department for Environment, Food and Rural Affairs (DEFRA) advises that:

- the new way should be reasonably convenient to the public;
- regard should be had to the effect that the proposal will have on the land served by the existing path or way and on the land over which the new path or way is to be created;
- the effect that the diverted way will have on the rights of way network as a whole; and

- the safety of the diversion, particularly where it passes along or across a vehicular highway.

It is considered that the proposed path is more convenient to the public as it has a less steep approach and visibility of the railway line is improved. The diversion would have a positive effect on the land served by the existing path and that over which the new path will run as it will give improved visibility and shorten the time that the public are on the track. It will also enable an improved track crossing to be installed which will reduce the chance of people tripping over the rails. There will be no negative effect on the rights of way network as the diversion will preserve the connections with other footpaths in the area. It will also improve accessibility to the network for the less mobile and those with young children.

It is considered that the diversion will provide a safer route for the public.

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

It is considered that it is not reasonably practicable to make the existing crossing safe for use by the public but the diversion will provide a safer route for the public. Appropriate barriers and signs will be erected and maintained by the Council, as will the surface of the alternative route other than between the rail tracks. The point of termination of the diverted path would be moved only a few metres along the same road as its current location. Hence it is submitted that it is expedient to make an 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.

### **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, social value and transport.

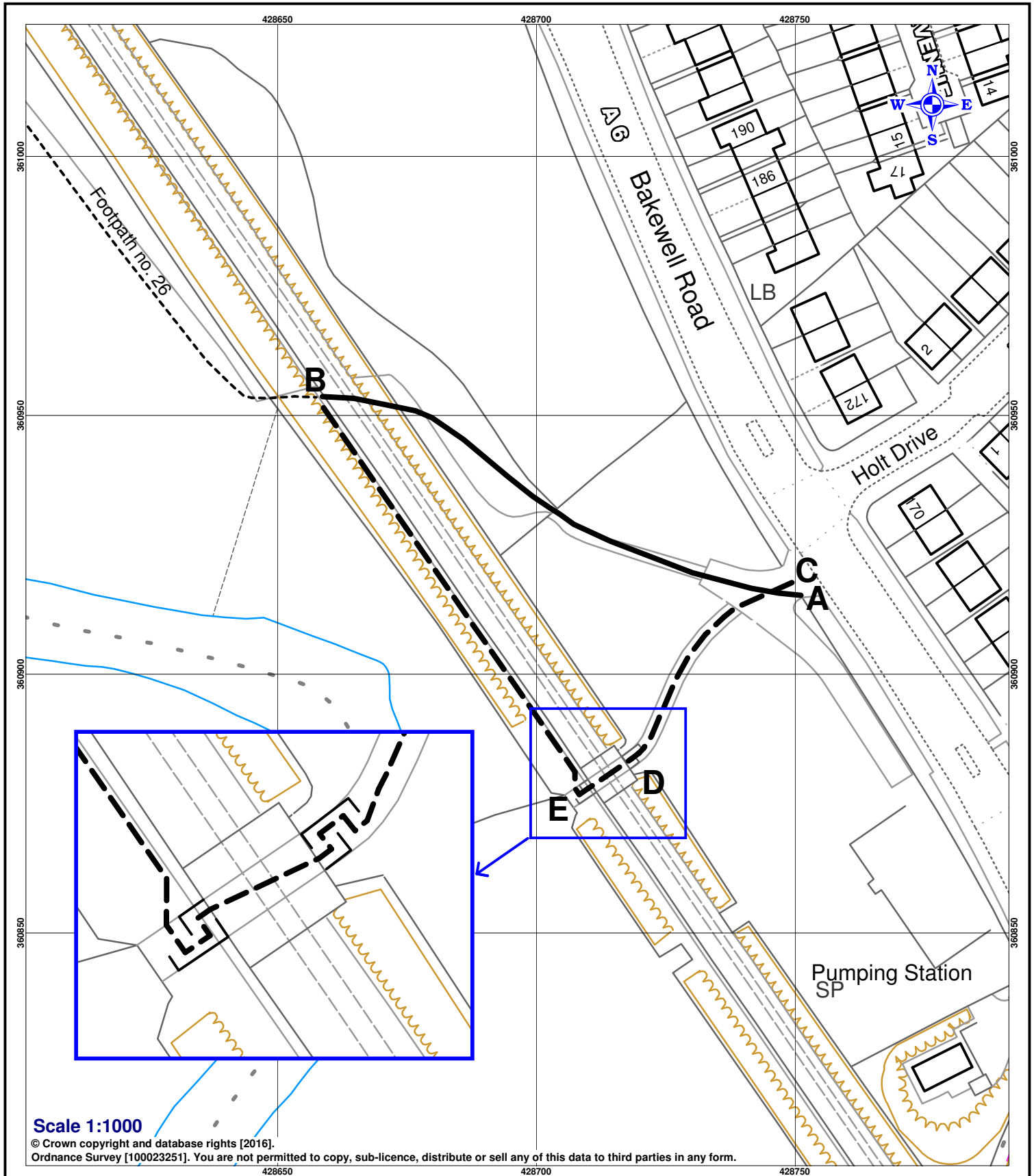
(6) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details – Claire O'Reilly, extension 39652.

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

7.1 The Director of Legal Services be authorised to make the necessary Order to divert Public Footpath No. 26 (part), formerly in the Parish of Matlock, now in the Parish of Darley Dale under Section 119A of the Highways Act 1980.

- 7.2 That the order is not confirmed until an agreement is in place between the Council and Peak Rail over the safe operation of the new crossing that would be created.
- 7.2 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**



Ref: TE/BS/X4042/Cons2/2016



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Strategic Director - Economy, Transport and Communities

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### Highways Act 1980, Section 119

Proposed Diversion of Public Footpath  
no.26 (part) - formerly in the Parish of  
Matlock, now in the Parish of Darley Dale.

#### Key:

Footpath to be diverted  
Alternative footpath  
Unaffected footpath  
Parish boundary

