

DERBYSHIRE COUNTY COUNCIL

REGULATORY – PLANNING COMMITTEE

8 July 2019

Report of the Executive Director – Economy, Transport and Environment

3 PROPOSED DIVERSION OF PUBLIC FOOTPATH NO. 11 – PARISH OF CHISWORTH

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Public Path Diversion Order (“Diversion Order”) for the permanent diversion of Public Footpath No. 11 in the parish of Chisworth in the interests of the landowners.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of Public Footpath No.11 in the parish of Chisworth, in the interests of the landowners, to take the path away from a livestock handling and feeding area, thus enabling the landowners to manage their land more effectively.

The line of the path is currently obstructed by a barn building for which planning permission was granted by the local planning authority (High Peak Borough Council) in 2006. No legal order to formally divert the path was processed in conjunction with the planning permission, and a Diversion Order has now been applied for by the landowners to resolve the issue of obstruction, and to take the path away from the structure to enable better management of the land.

If the Diversion Order takes effect, it will divert approximately 260 metres of Public Footpath No. 11, shown on plan (ref: TE/CH/X4255/Cttee/2019) as a solid bold line between points **A-B**, to a line shown as a bold broken line between points **A-C**. The new path will be approximately 206 metres long with a recorded width of 2 metres and a natural grass surface.

The Local Members, Councillor J Wharmby and Councillor G Wharmby, High Peak Borough Council and Chisworth Parish Council were consulted and offered no objections to the proposal.

Objections were raised to the proposal from other parties on the grounds that the barn, which currently obstructs the public footpath, should not have been granted planning permission. This does not meet the criteria for Section 119 of the Highways Act 1980 objections, as the objection does not relate to the impact of the diverted route on the convenience and enjoyment for members

of the public, nor does it indicate any impacts of diverting the path upon the land served by the existing or proposed path alignment.

Further comments were raised in relation to the surface of the proposed alternative path, which would have a natural grass surface, and could become boggy due to wet weather and the exposed nature of the land. However, the existing public footpath also has a natural ground surface and the diverted path would reduce the amount of walking on this surface. The County Council has had no previous reports of issues with the existing path surface. Should such reports be made to the County Council, then appropriate measures would be taken to alleviate the impact on path users. It was suggested that a constructed surface path be installed to address potential surface issues, however, this is not deemed to be appropriate given the rural landscape of the area.

(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 and the installation of a way-marker post. The overall cost 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:

Whether it is in the interests of the owner of the land or of the public that the footpath should be diverted

The diversion of the public footpath is seen to be in the interest of the landowners, to take the path away from a livestock handling and feeding area, thus enabling the landowners to manage their land more effectively.

The path is obstructed by a barn building and is therefore not accessible along its entire length. The diversion of the path onto an unobstructed alignment will benefit the landowners by ensuring they are able to retain the barn, and benefit the public by providing an unobstructed footpath for use.

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

The diverted footpath would have a length of 206 metres, the existing path has a length of 260 metres. The termination point of the path would be moved approximately 100 metres southwards along the same public footpath meaning a total increase in walking distance of 46 metres. This is not seen to be a substantial increase in distance and therefore satisfies the convenience test.

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

Part of the existing footpath is not currently accessible due to a barn building which has been constructed on the line of the path, however, when assessing proposals to divert a footpath, obstructions should be ignored and the situation assessed as if the route were open.

The existing line of the path crosses an open field and has a natural ground/grass surface which is prone to becoming muddy during wetter periods. The diverted footpath would require a reduced amount of walking over the field and would provide a more direct link onto Public Footpath No. 4, which has a stoned surface and provides a better walking surface all year round.

The diverted footpath would not cross the stone wall to the north of the barn, and would therefore not require a stile like the existing footpath. This would improve the accessibility of the route in accordance with the Equality Act 2010.

The diverted footpath would be on a similar alignment to the existing path, and therefore the views of the surrounding landscape and general feel of the path would be unchanged.

Overall, it is seen that the diversion would have a positive impact on the public's enjoyment of the route, by providing a better walking surface, removing a limitation from the line of the path and by maintaining the views and feel of the path.

The effect which the coming into operation of the Order would have as respects other land served by the existing public rights of way

The diversion would have no known or foreseen adverse consequences in this respect.

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 land over which the new path will run is within the ownership of the applicants, and no effects are anticipated.

Whether it is expedient to make the Order

It is considered that the proposed diversion is in the interests of the landowners and occupiers. The proposed diversion would not be substantially less convenient to the public and would not have an adverse effect on the public's enjoyment of the route as a whole, or 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

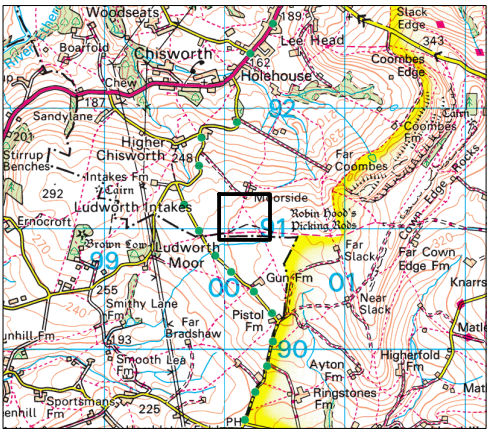
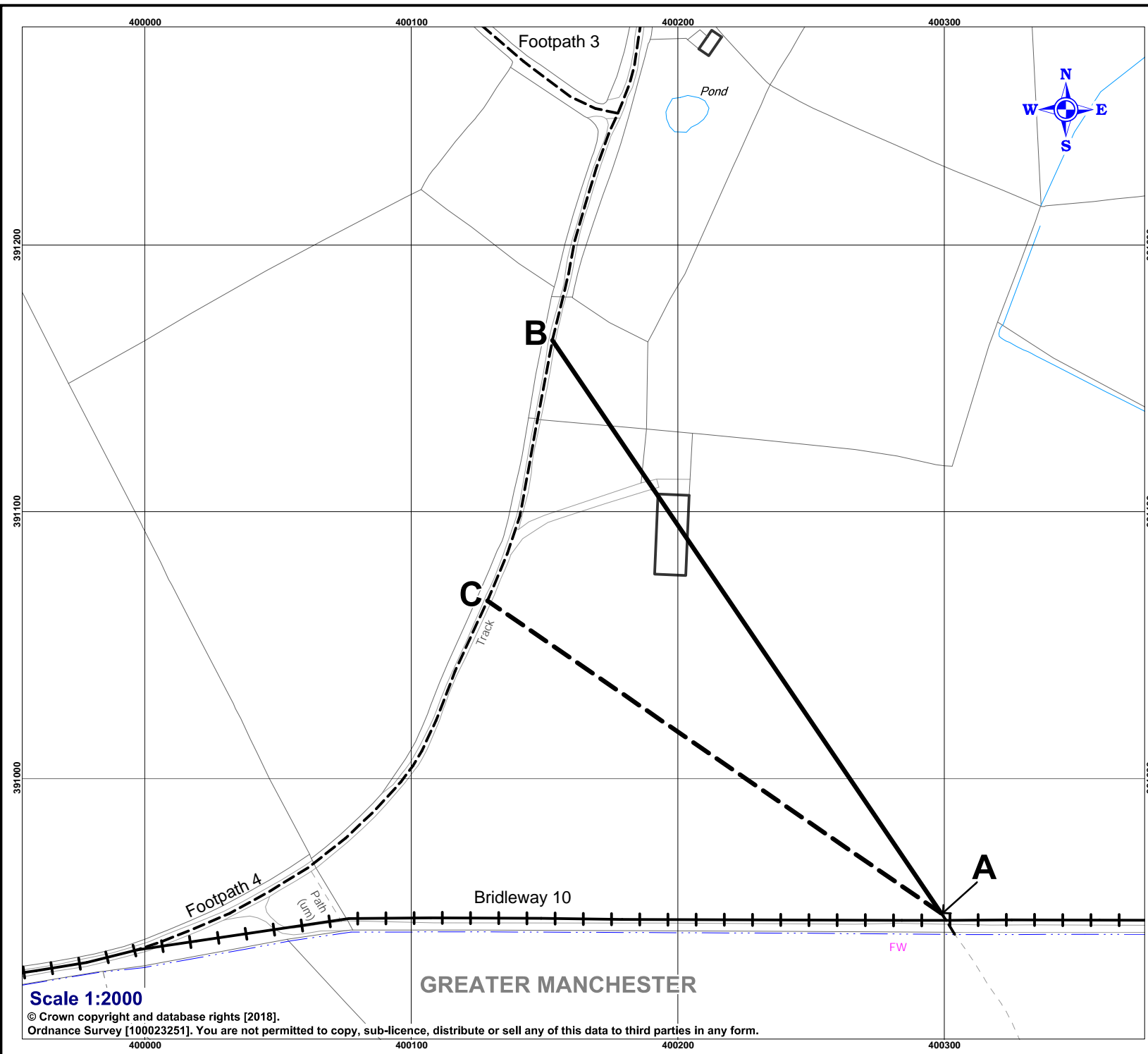
In preparing this report the relevance of the following factors has been considered; prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(6) **Background Papers** Held on file within the Rights of Way Section of the Economy, Transport and Environment Department. Officer contact details - Corinne Hudson, extension 39660.

(7) OFFICER'S RECOMMENDATIONS That:

- 7.1 The Director of Legal Services be authorised to make the necessary order to divert Public Footpath No. 11 (Part) in the parish of Chisworth under the provisions of Section 119 of the Highways Act 1980.
- 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
Executive Director – Economy, Transport and Environment



Highways Act 1980 Section 119

**Proposed diversion of Public Footpath No. 11
- Parish of Chisworth**

KEY

Footpath to be diverted	
Alternative Footpath	
Existing Footpath	
Existing Bridleway	
County Boundary	



Mike Ashworth
 Strategic Director
 Economy, Transport & Environment
 Derbyshire County Council
 Shand House
 Dale Road South
 Matlock
 DE4 3RY

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