

DERBYSHIRE COUNTY COUNCIL

REGULATORY – PLANNING COMMITTEE

8 July 2019

Report of the Executive Director – Economy, Transport and Environment

4 CREATION OF PUBLIC FOOTPATH AT LOCK LANE, SANDIACRE AND PROPOSED EXTINGUISHMENT OF PART OF LONG EATON PUBLIC FOOTPATH NO. 47 (NOW KNOWN AS NO. 68) – LONG EATON, PARISH OF SANDIACRE

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Public Path Creation Order (“Creation Order”) for the creation of a public footpath between Lock Lane and Sandiacre Public Footpath No. 19 (the Erewash Canal towpath) and to make a Public Path Extinguishment Order (“Extinguishment Order”) for the permanent extinguishment of part of Long Eaton Public Footpath No. 68.

(2) **Information and Analysis** A section of path which offers a convenient link from Long Eaton Public Footpath No. 68 to Lock Lane and Sandiacre Public Footpath No. 19 has been identified by Derbyshire County Council. It is proposed that this section of path is the subject of a Creation Order, to ensure it is part of the official footpath network in the interests of the public.

A public footpath is needed in this location. Part of a nearby public footpath, which would otherwise provide access to Sandiacre Public Footpath No. 19, is unusable as it crosses the Erewash Canal at a location where no form of crossing has been provided, and there is some uncertainty over its precise alignment.

The section of path offering the link is already part of the completed Cycle Network (Sandiacre and Breaston). However, the route has no recorded legal status and is not publicly maintainable highway. The formal creation of the route as a public footpath will make a proportion of the width of the route maintainable at public expense, which will be of long-term benefit to the public. It will also protect the public’s right to use the path in the future.

If the Creation Order takes effect, it will create a public footpath of 64 metres as shown as a bold dashed line between points **A-B-C** on the plan. The footpath will have a width of 2 metres, run along on existing, wider stone track.

No maintenance work is seen to be required for this. Derbyshire County Council would maintain the 2 metres as from the Order taking effect.

Long Eaton Public Footpath No. 47 is recorded on the Long Eaton Urban District Definitive Map (relevant date: 1 January 1953). In the 1980s, the path was severed by Bostock's Lane and Springfield Avenue, and renumbered Public Footpaths Nos. 67 and 68 on the working copy of the Definitive Map. The Definitive Map records this path as Public Footpath No. 47. However, the path is referred to in this report as Public Footpath No. 68, to accord with the working copy of the map.

On the Definitive Map, the public footpath is shown crossing the Erewash Canal. The Definitive Statement describes the route as a '*footpath from Breaston Parish Boundary following the Derby Canal to Sandiacre Lock*', there is no bridge recorded in the Statement and, given the scale of the Definitive Map (six inches to the mile), the precise alignment of the path cannot be determined. There remains no structure at this point and, therefore, the public are unable to use the path where it crosses the canal. Pursuing the installation of a bridge crossing at this point does not appear to be expedient, due to the impact it would have on users of the canal, the limited space and strength of the banks at either side of the canal to support a structure of the required size, and the financial costs associated with the implementation of a suitable crossing. It is therefore proposed that the section of path which crosses the canal be extinguished. That part of Public Footpath No. 68 not obstructed by the canal will be retained to form a cul-de-sac path so that the public can continue to access the canal view point at Point **D** on the plan (ref. TE/CH/X3496/Cttee/2019).

If the Extinguishment Order takes effect, the section of Long Eaton Public Footpath No. 68, which crosses the Erewash Canal, will be permanently extinguished, this is an approximately 27 metres section of path shown as a bold solid line between points **D-E** on the plan.

Informal consultation of the proposals was carried out on 15 August 2018. The Local Member, Councillor Hickton, and Erewash Borough Council were consulted and offered no objections to the proposals.

Objections were received to the proposal to create a public footpath between Lock Lane and the canal towpath, however, they do not address the criteria for Section 26 of the Highways Act 1980 creation orders. The objections raised noted that the width of the created path would be restricted due to obstructions such as vehicles; that the movement of heavy vehicles, livestock and speeding traffic in the area would impact upon the public's use and safety; that the creation of the path would lead to increased litter on the route; and that HS2 may impact the area in future leading to increased vehicle traffic from people wishing to use the path to access any new stations.

1. Obstruction of the path by vehicles and speeding vehicles

It was noted that the track is used for parking by residents, and for visitors during events held at one of the properties on a monthly basis. It was also noted that the track is used as a turning area by unauthorised vehicles which would pose a risk to pedestrians using the route. Derbyshire County Council (the Highway Authority) and the Police have the necessary powers to address obstructions and the unauthorised use of vehicles along public footpaths, and therefore these should not significantly impact the level of the convenience and enjoyment of the created route.

2. Implications of heavy machinery and livestock movement on path

Comments were also made regarding the use of the track for the movement of heavy vehicles and livestock in the area, and the impact that this may have on the safety of pedestrians and the fact that, on occasion, the field gate adjacent to Point A is closed to control the movement of livestock. If due care and caution is exercised by both vehicle users and pedestrians, the use of authorised vehicles and users should not significantly impact the public's enjoyment or convenience of the route, nor should any authorised vehicle uses or livestock practices be impeded by the public footpath.

3. Maintenance liabilities of the path

Comments regarding the maintenance liabilities for the track were also raised. The recording of a public footpath along the track would clarify these responsibilities. Derbyshire County Council would maintain a 2 metres proportion of the path upon completion of the Order, and litter would be dealt with by Erewash Borough Council.

4. Implications of HS2 on path

The impact that HS2 would have on the usage of the path was also raised, however, the implications of HS2 cannot be accurately determined at this time and may ultimately result in the path improving convenience and enjoyment for local residents even further.

(3) Financial Considerations It is proposed that Derbyshire County Council should defray all of the costs in respect of making and advertising the Creation Order and Extinguishment Order, as they are needed to ensure that a connected, recorded footpath network between Lock Lane and the Erewash Canal towpath is provided in the interests of the public. The extinguishment of Public Footpath No. 68 would solve a long-standing issue whereby part of the path is not accessible due to the lack of crossing at the canal. The associated costs are estimated to be in the region of £2,000 which will be covered by the Rights of Way Revenue budget.

The track over which the public footpath is proposed to be created is already constructed and in a state of good repair and therefore no immediate maintenance costs are anticipated in order to bring the path into a suitable condition for public use.

The route would need to be signed should the Order come into effect. One signpost at the entrance to the path from Lock Lane would be required, the approximate cost of this is £145.

Under Section 28 of the Highways Act 1980, compensation may be payable, on the application of an affected landowner, if the value of an interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of the land, in consequence of the coming into operation of a public path creation order. As no objection was raised to the order by the affected landowner, in this case, it is not anticipated that any such claim will be submitted.

(4) **Legal Considerations** Derbyshire County Council may make an Order under:

(b) Section 26 of the Highway Act 1980 (to create a Public Right of Way)

- (1) Where it appears to a local authority that there is need for a footpath or bridleway over land in their area and they are satisfied that, having regard to:
- (a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
 - (b) the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 28 [of the Highways Act 1980],
- it is expedient that the path or way be created, the authority may by order made by them and submitted and confirmed by the Secretary of State, or confirmed by them as an unopposed order, create a footpath or bridleway over the land.....
- (3) A local authority shall, before exercising any power under this section, consult any other local authority or authorities in whose area the land concerned is situated.

Pursuant to Section 36 of the Highways Act 1980, the footpath created in consequence of the Creation Order would be maintainable at public expense:

36 (2) Without prejudice to any other enactment (whether contained in this Act or not) whereby a highway may become for the purposes of this Act a highway maintainable at the public expense, and subject to this section and section 232(7) below, and to any order of a magistrates' court under section 47 below, the following highways (not falling within subsection (1) above) shall for the purposes of this Act be highways maintainable at the public expense- (d) a highway, being a footpath or bridleway, created in consequence of a public path creation

order or a public path diversion order in consequence of an order made by the Minister of Transport or the Secretary of State under section 247 of the Town and Country Planning Act 1990 or by a competent authority under section 257 of that Act, or dedicated in pursuance of a public path creation agreement.

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

The extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area

The path would provide a convenient link from Lock Lane onto Public Footpath No. 68 and Sandiacre Public Footpath No. 19 (the Erewash Canal towpath). There is not currently a recorded public right of way which provides such a link for a considerable distance, and so the creation of a public footpath would greatly reduce the amount of walking which would otherwise be required to get onto these popular routes from Lock Lane.

The effect which the creation of the path or way would have on the rights of persons interested in the land

A Land Registry search has been conducted by the County Council. This showed the majority of the land over which the proposed public footpath would run to be unregistered. The owners of the adjacent properties have been consulted and have not come forward to claim the land, or to offer any information regarding its ownership.

The title holders for the remaining land have been consulted and offered no objection to the proposed public footpath creation when directly consulted by email and letter.

It does not appear that the proposed right of way would interfere with any private rights of access.

(a) Section 118 of the Highways Act 1980 (to extinguish a Public Right of Way)

- 1) Where it appears to a council as respects a footpath in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

An order under this section is referred to in this Act as a "Public Path Extinguishment Order".

- (2) The Secretary of State shall not confirm a Public Path Extinguishment 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 so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.
- (6A) The considerations to which—
 - (a) the Secretary of State is to have regard in determining whether or not to confirm a Public Path Extinguishment Order, and
 - (b) a council is to have regard in determining whether or not to confirm such an order as an unopposed order, include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.

As regards sub-sections (2) and (6), the proposed Creation will provide a suitable, convenient route from Lock Lane to the canal towpath, between points **A-B-C** on the plan. That part of Public Footpath No. 68, which is proposed to be extinguished, would then no longer be needed for public use, as an alternative footpath would be secured on a more convenient alignment.

With regard to the above mentioned Section (6A)(b), the Rights of Way Improvement Plan, in general, seeks to improve and enhance the public rights of way network. Whilst this proposal would reduce the network (in terms of absolute length), it will create a new public footpath on a similar alignment so the overall impact on the footpath network would be minimal.

(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.

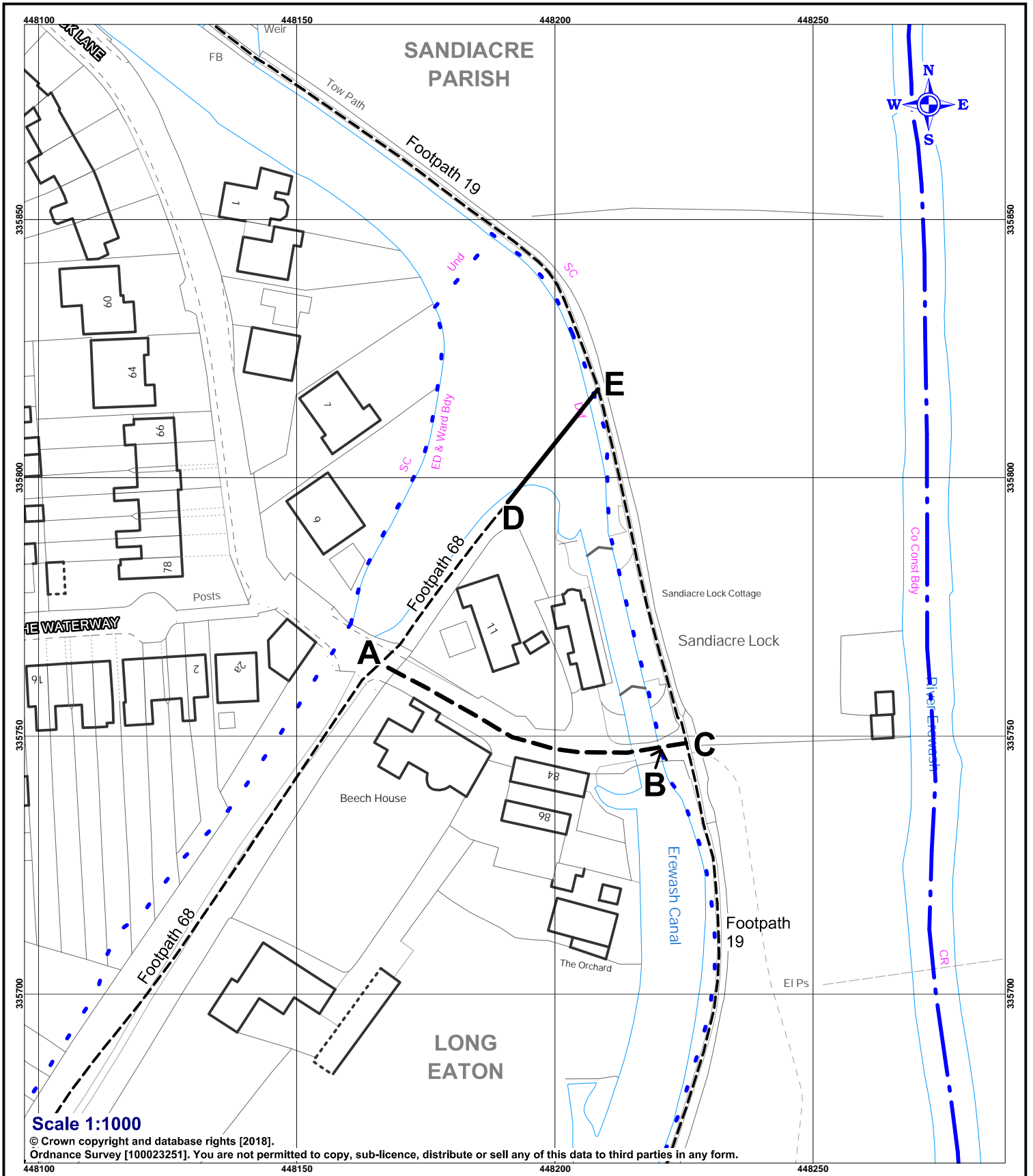
Other Considerations

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 an order to create a public footpath between Lock Lane and Sandiacre Public Footpath No.19.
 - 7.2 The Director of Legal Services be authorised to make an order to extinguish part of Long Eaton Public Footpath No. 68 upon the coming into effect of that Creation Order.
 - 7.3 Should objections be received to the making of either or both of the orders that cannot be resolved, then the matter(s) be forwarded to the Secretary of State for determination.

Mike Ashworth
Executive Director – Economy, Transport and Environment



Ref: TE/CH/X3496/Cttee/2019
Date: 21 January 2019



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Section 26 & 118 Highways Act 1980

Proposed creation of Public Footpath at Sandiacre Lock and proposed extinguishment of part of Long Eaton Public Footpath No. 47 (now known as No. 68) - Long Eaton and Parish of Sandiacre

Key:	Path to be extinguished	
	Path to be created	
	Existing Footpath	
	Parish Boundary	
	County Boundary	

