



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**REGULATORY - PLANNING COMMITTEE**

**Report of the Executive Director - Place**

**Section 119 of the Highways Act 1980 - Proposed Diversion of Public Footpath No. 35 (Part) – Parish of Hartshorne**

**1. Divisions Affected**

1.1 Melbourne

**2. Key Decision**

2.1 This is not a Key Decision.

**3. Purpose**

3.1 To seek authority for the Director of Legal and Democratic Services:  
a) to make a diversion order for the permanent diversion of part of Footpath No. 35 in the Parish of Hartshorne in the interests of the landowner; and  
b) 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.

**4. Information and Analysis**

4.1 The County Council has received an application for the permanent diversion of Public Footpath No 35 in the Parish of Hartshorne, in the interests of the landowner. The footpath currently passes through the centre of the applicant's land, which is a wooded area enclosed by hedging and is used for holiday lets. The diversion is being sought for the improved health and safety, security, and privacy of the site. It

would move the path to the eastern boundary hedge, then westward across the wooded area and south-westward across open grassland to the junction with Footpath No 36. The legal line of the footpath is not, in fact, currently usable due to tree planting some years ago, but the public have become accustomed to using a roughly parallel route. If the legal line is not formally diverted, it will be necessary to restore access along it. Comparisons between the existing and proposed routes below are made as if the existing route were open and available.

- 4.2 If the proposed diversion takes effect, it will divert approximately 395 metres of that part of the footpath on the route **A-B-C**, shown on the attached plan as a bold solid line. The proposed alternative would be approximately 466 metres long on the route **A-D-E-C**, shown by a bold broken line. This will be 71 metres longer than the existing path, but on a pleasant route through woodland and grassland. The recorded width would be 2 metres and the path has a natural grass surface.
- 4.3 A 1.1 metre wide gap to the current British Standard would be constructed at Point **D** in the boundary hedge.
- 4.4 In investigating the application the following criteria were considered:

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

The footpath currently goes through the middle of a small wood that has received planning permission as detailed above, so the diversion is being sought for the improved health and safety, security, and privacy for tourism purposes and for the retention of the Yurt. The diversion is therefore in the interests of the owner of the land.

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

The proposed diversion will divert approximately 395 metres of Footpath No. 35 onto an alternative route that is approximately 466 metres. The difference is approximately 71 metres, but this extra distance is arguably not detrimental or a cause of inconvenience on a route that is principally for enjoyable walks through woodland and grassland.

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

The alternative route will be adjacent to a large hedge, through woodland and across grassland, which would provide ample opportunities for the enjoyment of the countryside and wildlife in a variety of habitats.

*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 definitive line between points **A** and **B** and the alternative route between points **A** and **D** are on land owned by Forestry England, which has given written consent for this proposal. Hence no issues are apparent.

*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:*

On the applicant's land the effect would be positive in terms of their campsite business. Forestry England have raised no objections to the route over their land.

*Whether it is expedient to make the Order*

It is considered that the proposed diversion is in the interests of the landowner. The proposed diversion 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 adversely affect land served by the existing right of way. It is therefore concluded that it is expedient to make the order.

4.5 An informal 28-day consultation was carried out on 4 January 2022. The consultees included Hartshorne Parish Council, South Derbyshire District Council and the local Member, Councillor David Muller. Objections were received from four members of the public. Their comments relate to the unofficial walked route rather than the legal line, but the basis for their objections are as follows:

1. Traffic noise - Traffic noise from the Ticknall Road (A514) is louder on the proposed route.
2. The conditions on the path - The proposed route is narrow and boggy in winter and when leaves are on trees the route is dark and enclosed.
3. Wildlife - There will be less wildlife on the proposed route.
4. Planning permission – Disapproval for the applicant's planning permission (9/2017/1262) for '*change of use of the land for tourism purposes and the retention of a yurt and tipi with associated sauna and compost toilet structures with hardstanding*'. Full permission for this was granted and the date for the decision was 9 May 2018.

4.6 Whilst the above mentioned objections 1, 2 and 3 do meet the criteria of Section 119 of the Highways Act 1980, the Officer would make the following comments and observations:

1. Traffic noise - The applicant appointed Acute Acoustics Ltd to carry out a professional assessment (Appendix 3) to compare the environmental noise levels on the proposed diversion route (**A-D-E-C**) with those on the existing route (**A-B-C**). As mentioned above, the major source of noise is from intermittent traffic on Ticknall Road. Acute Acoustics Ltd collected data on site with noise monitoring equipment, which was used to calculate an average noise level on each path if the stream of traffic on Ticknall Road was constant (LAeq). There were two systems for gathering data, as follows:
  - a. At Point **E**, which was the location where the proposed route was closest to Ticknall Road, there was a fixed installation. This apparatus collected information every 15 minutes and the noise levels were between 53-56dbA. The log average of these results was 54.6dBA.
  - b. Handheld apparatus was used to measure noise on the existing and proposed paths. Data was gathered by walking the whole of each path in one direction and then in the other direction. Using the data from Point **E** and from the mobile apparatus the log average for each route was calculated, as follows:
    - i. The existing route - 50dBA
    - ii. The proposed route – 53dBA(dBA is a relative loudness of sound as perceived by the human ear).

Graph 1 on page 14 of the Noise Assessment Report (Appendix 3) illustrates the noise data mentioned in (b) above. It shows the noise levels for the existing and proposed routes when walked in one direction and then in the other direction. Their respective lines on the graph are intermingled between 40dB and 60dB lines. There are some isolated taller peaks on each line shown on the graph and the noises that caused them are likely to have been created by standing on a twig or bird song rather than by traffic on the Ticknall Road. This type of noise could occur on either the existing or proposed path. For example, the tallest peak is above 60dB and this was recorded on the existing line.

The information from the results indicates that the difference in noise levels between the existing and the proposed paths are negligible. The main source of noise is from the Ticknall Road where the traffic is randomly intermittent. Noise does occur on the existing and proposed paths and in the surrounding woodland. This includes bird song and the sound of a twig being trodden under foot. These sounds tend to be of short duration and they can be louder than the sound of the traffic, but as they occur on either path this noise is irrelevant to this case.

The conclusions of the Noise Survey Report are that whilst the traffic noise is louder on the proposed route, the increase of 3dB is considered to be just discernible to the human ear. This small increase in noise should not be sufficient to diminish the enjoyment or convenience of the proposed route in comparison to the existing route. Also, there is not a constant stream of noise on these routes, because traffic on Ticknall Road is intermittent. Furthermore, a noise level of 53dB (LAeq) meets the criteria of the British Standard 8233 for outdoor amenity areas.

In the 'Discussion' towards the end of the Noise Assessment Report, Footpath No 35 is considered as part of the surrounding network of public rights of way, which vary in distance from the Ticknall Road. Sometimes these routes are closer to the road, whilst others are further away from it. Some like Footpath 35 are through woodland, whereas, others are in open countryside, so there will be varying levels of traffic noise on all of these routes. It is concluded, therefore, that the small increase in noise on the proposed route would have a negligible effect on the convenience and enjoyment, when considered as part of a longer walk.

The 'Noise Assessment – Proposed diversion of Public Footpath No 35 (Part), Parish of Hartshorne' (Appendix 3) and 'Technical Note' (Appendix 4) from Acute Acoustics Ltd are attached.

2. Conditions on the path – The current accessible width of the alternative route is 4 metres, which is twice the width that would be recorded in the Order if this application were to be successful. Inspections of the path in summer and winter indicated that the surface was firm and level. The boundary gap at Point **D** was the only location that becomes paddled and muddy in wet weather. If this application is successful, the applicant will resolve these issues by:
  - a. Siding up the vegetation between points **C-E** to increase sunlight accessing the path surface, which will also improve surface conditions.
  - b. Create a 1.1 metre gap to British Standard 5709: 2018 at Point **D**, which will include a rolled stone surface.
3. Wildlife – The alternative route would be adjacent to a hedgerow (**C-E**) that is backed by trees on both sides, through woodland (**D-E**) and across grassland (**A-D**), which should provide good habitat for wildlife.
4. The fourth objection was pertaining to disapproval for the granting of planning permission. South Derbyshire District Council is the

Authority for matters concerning planning permissions, and this aspect is not under consideration.

## **5. Consultation**

- 5.1 An informal 28-day consultation has been carried out and although this is not a statutory requirement it is recommended by Government advice. If an order is made it will be subject to a statutory 28-day consultation period.

## **6. Alternative Options Considered**

- 6.1 The alternative option is to refuse the application and leave the Footpath on its existing route. This option was discounted because it appears to the Council that, under Section 119 Subsections (1) and (6), of the Highways Act 1980, it would be expedient to progress this application, which is in the interests of the landowner. The reasons being that the Council was satisfied that if the proposed diversion were to be effected, then it would not be substantially less convenient:

- In terms of the public of enjoyment in comparison to the existing route.
- In terms of any effects on land served by the existing route.
- In terms of any effects on the land on which it is proposed to be situated.

Further legal information can be found in Appendix 1, 2.1

## **7. Implications**

- 7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

## **8. Background Papers**

- 8.1 Application Form dated 13 July 2020.  
Forestry England agreed to a part of the proposed diversion being on its land – 18 August 2021, 23 August 2021, 30 November 2021  
Informal Consultation Notice dated 4 January 2022 and Plan dated 20 December 2021 (LS\_X4475\_Cttee\_2022)
- 8.2 Email correspondence from and to the four objectors:
- Objector 1 – 10 January 2022, 11 January 2022, 9 March 2022, 15 March 2022, 1 May 2022, 26 April 2022, 1 May 2022

- Objector 2 – 17 January 2022, 31 January 2022, 22 March 2022, 26 April 2022, 28 April 2022
- Objector 3 – 14 January 2022, 4 March 2022, 9 March 2022, 14 March 2022, 26 April 2022
- Objector 4 – 20 January 2022, 9 March 2022, 26 April

8.3 Email correspondence from statutory undertakers:

- BT Openreach – 4 January 2022, 2 February, no objection.
- Cadent – 4 January 2022, no objection.
- Western Power Distribution – 5 January 2022, no objection.
- Atkins – 6 January 2022, no objection.
- Environment Agency – 6 January, holding reply.

8.4 Email correspondence from walking groups:

- Derby and South Derbyshire Ramblers – 6 January 2022, 10 January 2022, no objection
- Peak & Northern Footpath Society – 14 January 2022, no objection.
- Open Spaces Society – 5 January 2022, 18 January 2022, no objection.

8.5 Email correspondence from Derbyshire County Council's Director of Legal and Democratic Services dated 4 January 2022 stated no objections at this stage.

## 9. Appendices

9.1 Appendix 1- Implications.

9.2 Appendix 2 – Location Plan (LS\_4475\_Cttee\_2022).

9.3 Appendix 3 – Noise Assessment, Proposed Diversion of Public Footpath No 35 (Part), Parish of Hartshorne, Acute Acoustics Ltd.

9.4 Appendix 4 – Technical Note, Acute Acoustics Ltd.

## 10. Recommendations

That:

- a) The Director of Legal and Democratic Services be authorised to make the necessary order for the permanent diversion of part of Footpath No. 35 in the Parish of Hartshorne under the provisions of Section 119 of the Highways Act 1980.

- b) 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.

## **11. Reasons for Recommendations**

- 11.1 The proposal meets the statutory criteria as set out under Section 119 of the Highways Act 1980.
- 11.2 This is a required step in the statutory process, unless the order is to be abandoned.

## **12. Is it necessary to waive the call in period?**

- 12.1 No.

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**Implications**

**Financial**

- 1.1 In line with the Council's Charging Policy, the costs of this work (estimated to be £2,000) must be paid by the landowner in full before any work commences. Failure of the landowner to make payment in full will mean that the works are not carried out.
- 1.2 If once works have commenced, it becomes apparent that costs are to increase then the Council will inform the landowner and seek further payment. If at this point, the landowner no longer wishes to continue with the diversion order costs incurred to date will not be refunded.

**Legal**

- 2.1 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,

### **Human Resources**

- 3.1 The Rights of Way section, in conjunction with Legal Services have sufficient resources to process the application.

### **Information Technology**

- 4.1 None.

### **Equalities Impact**

- 5.1 The new route has a gap that will be upgraded to British Standard 5709; 2018 at Point **D** where there was once a stile. The alternative path will have a bound surface at the location of the gap.

### **Corporate objectives and priorities for change**

- 6.1 The proposal does not conflict with objectives and priorities set out in the Council's Rights of Way Improvement Plan.

### **Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

#### **7.1 Environmental**

The new route will provide the same pleasant route and environment as the existing one. This is because it is within the same surrounds, which include woodland and open grassland.

- 7.2 The definitive line between points **A** and **B** and the alternative route between points **A** and **D** are on land owned by Forestry England, which has given written consent for this proposal.

