

Agenda Item No. 3.2

DERBYSHIRE COUNTY COUNCIL

REGULATORY – PLANNING COMMITTEE

16 December 2019

Report of the Executive Director – Economy, Transport and Environment

2 PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.162 (PART) – PARISH OF BELPER

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Public Path Diversion Order for the permanent diversion of part of Public Footpath No.162 in the Parish of Belper, in the interests of the landowner.

(2) **Information and Analysis** The Belper Rugby Club is seeking a permanent diversion of the above public footpath. The Rugby Club has a long term lease of land, through which the footpath runs, from the Council. The Club is growing and now finds it has a shortfall in capacity for changing facilities, so it intends to renovate an old pavilion near the footpath. It has concerns about the security of this building and the wider premises, particularly with regard to safeguarding the large numbers of young people who frequent the site. There has been a history of vandalism, theft and dog fouling on the Club's wider premises which led to the Club installing security fencing with locked gates across the footpath. The Club has found that these security measures have been effective in reducing such crime on the site. However, the fencing and gates obstruct the footpath. They were installed before the footpath was officially recorded in 2018 by the confirmation of a Definitive Map Modification Order which added Public Footpath No.162 to the Definitive Map and Statement. To ensure that the Club can maintain the security of the site, it is proposed to divert the public footpath.

The proposed diversion would take the path from Point **A** on the attached plan, just south of the Coppice Brook eastward then southward around the back of the pavilion to re-join the existing footpath at Point **B**. This would allow security to fencing to be installed between the part of the footpath as diverted from points **A** and **C**, and the back of the old pavillion. The footpath lies within the Derwent Valley Mills World Heritage Site, along with much of the river corridor between Cromford and Derby. It contributes to the value of the World Heritage Site as its route formed part of the access drive to Bridgehill House, a former Strutt residence, now demolished. The proposed diversion would take the footpath off this line for a short distance before re-joining it.

If the proposed diversion takes effect, it will divert approximately 58 metres of the existing footpath, which is shown as a bold solid line between points **A** and **B** on the attached plan. The proposed alternative, shown as the bold broken line between points **A**, **C**, **D** and **B**, is approximately 73 metres long. The alternative route would have a surface of rolled stone and a recorded width of 2 metres, except at Point **D** where it narrows to 1.5 metres.

Informal consultations were carried out between 29 October 2019 and 26 November 2019. Consultees included the Local Member, Councillor Chris Short, Belper Town Council and Amber Valley Borough Council, who offered no objections to the proposal. However, two members of the public objected. The first said they had walked the path at least once a week for 60 years, their children and grandchildren had learned to ride bikes on it and it now comes out into a supermarket car park. They said the Club had not listened to the public or offered a compromise and they wanted the footpath back on its original route which is an ancient walkway.

To address these points, the length of time a route of a footpath has been used is not, of itself, a persuasive reason for refusing to divert it. However, it may impact on the consideration of the use and enjoyment of the route through the sense of history engendered by features on an historic route. As mentioned above, the route is of historic value as it was part of the driveway to Bridgehill House, a Strutt residence. However, the diversion would deviate from the footpath's historic alignment for only a short distance. The Club has also agreed that, if the footpath is diverted, it will allow access along this section for guided walks and maintain it to an acceptable standard. The deviation from the historic line is therefore arguably not such a significant issue.

The second individual objector commented that it should be possible to retain the route between points **A** and **B** whilst retaining security for the Club by fencing alongside and having an access gate opposite the pavilion, with security at the pavilion by modern alarm systems and locks. The Club, however, has indicated that fencing the existing path with a gate to access the old pavilion would be impractical for it, as this would isolate that building from the rest of its premises, and cause other access and security problems for it.

The Angling Club alleges that the fencing currently obstructs its private right of access. Whilst the Angling Club does hold private rights, it is not clear whether these run along the current alignment of the footpath. Negotiations over this issue are ongoing and it is understood the diversion will be opposed until this is resolved. The private right of access is a separate matter to the diversion of the public footpath.

(3) Financial Considerations The Director of Property will defray all of the costs in respect of making and advertising the Public Path Diversion Order and bringing the new route into a suitable condition for public use. The cost of

making the Order is estimated to be in the region of £2,000. The cost of the construction works will be a matter for the Director of Property Services and be dealt with under his specific delegation.

(4) **Legal Considerations** Section 119(1) of the Highways Act 1980 states:

“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.”

Subsection (2) of Section 119 states:

“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.”

Subsection (6) of Section 119 states:

“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.”

It is considered, having regard to the above factors, that it is expedient to make a Diversion Order as proposed, as explained below:

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

The diversion would enable the premises to be lawfully made secure to prevent crime and unauthorised access. This is in the interests of the lease holder which, for these purposes, is classed as the land owner.

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

The length of the existing footpath that is proposed to be diverted is approximately 58 metres, compared to the alternative route at approximately 73 metres, an increase of approximately 15 metres. This is not significant. The alternative route would also have a similar surface and gradient to the existing one.

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

The route is of historic value and contributes to the Outstanding Universal Value of the Derwent Valley Mills World Heritage Site. It formed part of the access drive to Bridgehill House, a former Strutt residence, now demolished. The current route is most probably of historic construction. However, the effect of the footpath diversion will be to prevent unlimited access over the historic route over only a relatively short part of its surviving length, as referred to above. The historic construction and appearance of the route will not need to be altered. The alternative route is less direct but, as it is only some 15 metres longer, this appears insignificant. It is considered that 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 affect the land over which the diversion would run or land served by the existing right of way.

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 footpath has been used by members of the Belper and District Angling Club to gain access to the adjacent land and the River Derwent. Since the erection of the fencing, Club members have reported being denied access to the River Derwent, however, this would relate to the current obstruction, rather than the proposed diversion. If successful, the diversion would increase the length of passage by approximately 15 metres, which is not considered to have a significant impact on any land served by the footpath. The alleged private right of the Angling Club to use a route that is coincident with the public right of way is a separate matter and not considered to be a matter that directly affects the Council's consideration of the diversion of this path. Other than this, there are no known issues regarding other land served by the existing footpath.

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 diversion would benefit the lease holder and is accepted by the Council, as the freehold land owner, so any effects on the land will be acceptable to them. Consultations have not revealed any other land issues.

(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

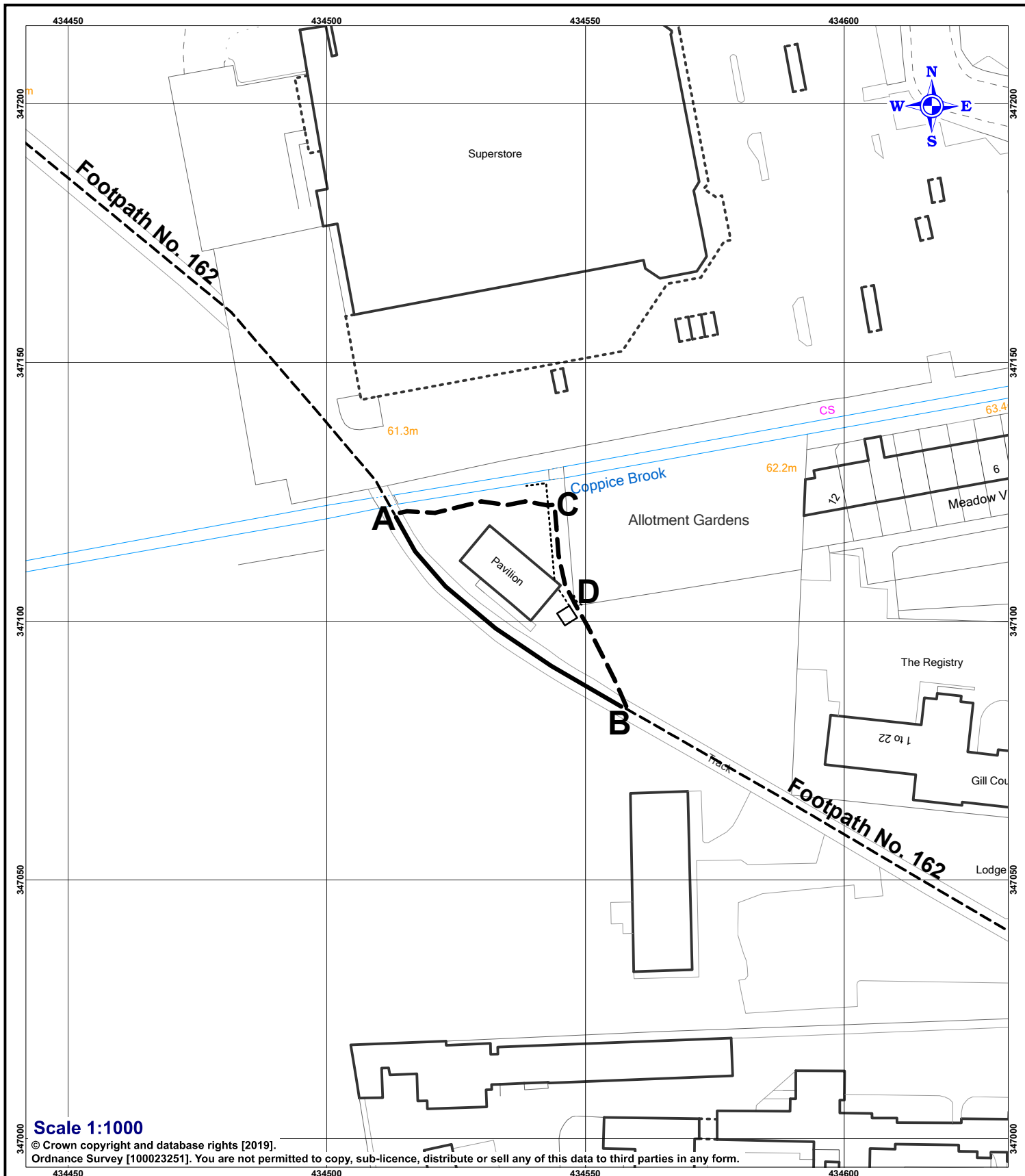
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations

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

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

- 7.1 The Director of Legal Services be authorised to make an order under Section 119 of the Highways Act 1980 for the permanent diversion of part of Public Footpath No. 162 in the Parish of Belper in the interests of the landowner, as outlined in this report.
- 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



Ref: TE/DM/X4352/Cttee/2019

Produced by Public Rights of Way on 27 November 2019



Mike Ashworth

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

Highways Act 1980, Section 119:

Proposed Diversion of Public Footpath No. 162 (Part) - Parish of Belper

Key:

Footpath to be diverted	
Alternative footpath	
Unaffected footpath	

