



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

REGULATORY - PLANNING COMMITTEE

13 May 2024

Report of the Executive Director - Place

Section 119 of the Highways Act 1980 – Proposed Diversion of Public Footpath No 9 (Part) – Parish of Holmesfield

1. Divisions Affected

1.1 Dronfield West and Walton.

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. 9 Holmesfield Parish under the provisions of Section 119 of the Highways Act 1980 in the interests of the owners and occupiers of the land; 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 Council has received an application for the permanent diversion of part of Footpath No 9 Holmesfield Parish, in the interests of the landowner, to enable the curtilage of a barn, which has now been

converted to a dwelling, to be secured and to increase privacy for the residents. The proposed diversion would take the path away from land close to the barn to pasture fields to the east and north-west.

4.2 If the proposed diversion takes effect, it will divert approximately 172 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 182 metres long, shown as a bold broken line between points **A**, **C** and **B**. It would have a recorded width of 2 metres commencing from Point **A** on a short length of tarmac and rolled stone then into a grass field fenced on both sides, over a ditch crossing with one handrail at Point **C** and then across another pasture field with fencing on the south side of the path to Point **B**.

4.3 An informal consultation was undertaken on 26 October 2022. The Local Member, Councillor Angelique Foster, and North East Derbyshire District Council were consulted and offered no objections to the proposal. However, objections were received from Holmesfield Parish Council, as follows:

“The Parish Council object to the diversion as it creates a precedent and they would prefer that the historic route of footpaths remain unaltered.”

4.4 In assessment of the Parish Council’s objections:

- a) The Parish Council’s contention that the diversion proposal would ‘set a precedent’ is not valid, because legislation exists that enables public rights of way to be diverted legally and this is a routine matter. In this case, the Council would use powers contained in Section 119 of the Highways Act 1980 and consideration has been given to the legal tests detailed in the Act in Appendix 1 (Legal).
- b) Investigations indicate that the existing and proposed routes for Holmesfield Footpath No 9 are in the ‘Woodthorpe and Fanshawe Gate Conservation Area’ as designated by North East Derbyshire District Council. This is described as scattered farm groups connected by paths within a rural landscape in the Holmesfield Parish. Footpath No 9 is one of those paths and it seems that it has existed for at least a century, but the long-standing existence of a public footpath is not a valid reason for it not to be diverted. Also, the diversion would not disrupt the connection of paths to the scattered farm groups or stray outside of the Conservation Area.

4.5 In conclusion, none of the grounds for objection appear to be valid in this case.

4.6 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 path should be diverted:

There are four applicants for this application and between them, they own all the land concerned with the existing and proposed diversion routes at the location of Fanshawe Gate Hall and surrounding land. Planning permission was received from North East Derbyshire District Council, to convert their Grade II listed barn and outbuildings to a residential dwelling (Planning Application No. 18/00959/LB). The proposed diversion would enable the curtilage around the barn conversion to be secured and provide privacy for the for the residents.

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

The diverted path will be substantially as convenient because the change of use of the barn from agricultural to a dwelling has altered the nature of the existing route. It now passes through the curtilage of the barn conversion. Members of the public may be uncomfortable walking through this residential space and may feel like they are infringing on the privacy of the residents. Also, they are likely to encounter vehicular traffic accessing and egressing the barn conversion. These issues would not occur on the proposed diversion, because it passes through pasture fields and whilst it is 10 metres longer than the existing route, this would not be significant on a rural walk.

The effect that the path would have on the public enjoyment of the path as a whole:

The diversion would provide a route across pasture fields where there will be no restrictions such as stiles or gates, whereas there is a stile on the existing route. The path will be near to Fanshawe Gate Hall and the converted barn, thus enabling the public to continue to have views of these buildings and the surrounding countryside. The connections with other paths in the Conservation Area will not be disrupted, so the public enjoyment of the path as a whole should not be affected by this diversion.

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

No issues are anticipated in this regard.

The effect which the new public right of way created by the order would have as respects other land served by the existing public rights of way:

No issues are anticipated in this regard.

Whether it is expedient to make the Order:

It is considered that the proposed diversion is in the interests of the owners. It 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. The Department for Environment, Food and Rural Affairs (DEFRA) guidance, from August 2023, states that where public paths pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises, if the proposal satisfies the relevant legislative tests the order-making authority should be predisposed to make an order (full details can be obtained on [this](#) link). It is therefore concluded that it is expedient to make the Order.

5. Consultation

5.1 If an order is made it will be subject to a Statutory 28-day consultation.

6. Alternative Options Considered

6.1 Option 1 - Refuse the application and leave the path on its existing route. This is not recommended as the application appears to satisfy the criteria set out in the legislation and the objections do not appear to be valid.

7. Implications

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

8. Background Papers

8.1 Diversion application form dated 27 April 2022.

8.2 Applicants map dated 27 April 2022.

8.3 Correspondence with the applicants and agent dated 16 April 2020 to 18 May 2022.

8.3 Land Registry documents dated 20 July 2020 and 19 September 2023.

- 8.4 Assessment by the Director of Legal and Democratic Services dated 16 May 2022.
- 8.5 Informal consultation letter and map dated 26 October 2022.
- 8.6 Consultation responses and related correspondence dated 26 October 2022 to 20 March 2023.
- 8.7 North East Derbyshire District Council's Planning Decision Notice for listed building consent 'for change of use and conversion of redundant barn and outbuildings to dwelling with installation of a small package treatment plant '(Application No. 18/00959/LB) dated 11 January 2019.
- 8.8 North East Derbyshire District Council's response to the proposal to divert Holmesfield Footpath No 9 dated 23 August 2023.
- 8.9 North East Derbyshire District Council plan showing 'Woodthorpe and Fanshaw Gate Conservation Area'.

9. Appendices

- 9.1 Appendix 1- Implications.
- 9.2 Appendix 2 – Plan of proposed diversion.

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 9 in the Parish of Holmesfield 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.
- 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 corporate charging policy fees relating to this footpath diversion must be paid in full prior to works taking place. This alleviates the risk to the Council of non-payment of debt.
- 1.2 A full and accurate cost of works must be presented to the customer and once agreed and invoice raised, after payment of which the works may start. The customer should be made aware that they are liable to cover any cost overruns that occur that are not the fault of the authority.

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.

2.2 The Director of Legal and Democratic Services is satisfied that, on the basis of the information contained in this report, it is expedient to make an Order under section 119 of the Highways Act 1980.

Human Resources

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

Information Technology

4.1 None.

Equalities Impact

5.1 There is a stile on the existing route whereas the new route would not have any stiles or gates. Also, the ditch crossing will be widened to the legally required 2 metres walkable width and the existing handrail will be replaced. These features will improve access for those with restricted mobility.

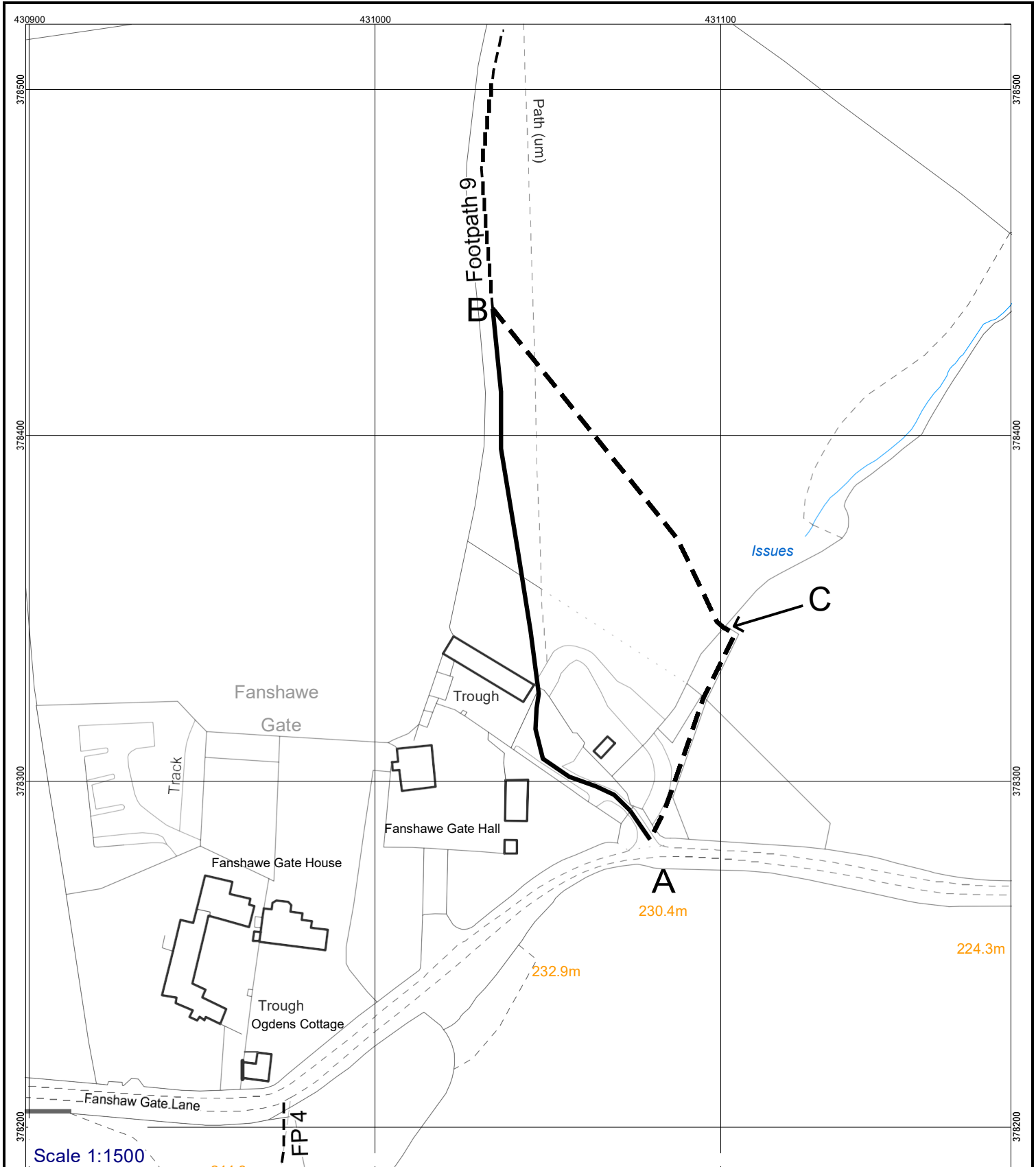
Corporate objectives and priorities for change

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)

Environmental

7.1 The new route will provide a more pleasant route and environment for the public, because it will take the path from the curtilage of the barn conversion and the built environment of Fanshaw Gate Hall to the pasture fields nearby, which will provide views of the surrounding countryside and closer contact to nature.



Scale 1:1500

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Highways Act 1980, Section 119
Proposed diversion of Public
Footpath No. 9 (Part)
- Parish of Holmesfield

Key:	Path to be diverted (A-8)	
	Alternative footpath (A-C-8)	
	Other footpaths	

