

Agenda Item No. 3.3

**REGULATORY - PLANNING COMMITTEE**

**8 June 2020**

Report of the Executive Director - Economy, Transport and Environment

**3 PROPOSED DIVERSION OF PUBLIC FOOTPATH NO. 17 (PART) –  
PARISH OF HORSLEY**

(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.17 in the Parish of Horsley in the interests of the landowners.

(2) **Information and Analysis** Derbyshire County Council has received an application for the permanent diversion of Public Footpath No.17, in the Parish of Horsley, in the interests of the landowners, to improve safety for their young children and pets when they are playing in the field. Currently, dogs are being let of their leads which is scaring the children and the dogs are fouling in the field which is unpleasant for the landowner. The landowner would also like to make managing the land easier and graze the field with a horse or pony.

If the Diversion Order takes effect, it will divert approximately 48 metres of Public Footpath No.17, shown on the attached plan, Reference TE/LF/X4351/Cttee/2020, as a solid bold line between points **A-B**, to a line shown as a bold broken line between points **A-C-B**. The new path will be approximately 64 metres long with a recorded width of 2 metres and a crushed stone surface. The path will be fenced on its southern and eastern sides with a post and rail fence and the recorded width of 2 metres will begin 2 metres from the centre line of the hedge which borders its northern and western sides.

Amber Valley Borough Council and Horsley Parish Council were consulted and offered no objections to the proposal and the Local Member, Councillor Buttery, did not comment on the proposal.

Objections were raised to the proposal from another party on the grounds that the diverted section of path, which will be fenced off next to a hedge, would be less enjoyable because the path will be enclosed for a further 64 metres instead of crossing an open field between points **A-B**. It was also suggested that the footpath would not be useable as the hedge would eventually become overgrown and weeds would grow from and obstruct the surface of the path and these would not be cut back due to the path being enclosed, again

making the diverted section of path less enjoyable. The basis of these objections have been taken into account during consideration of the application. A post and rail fence will be erected, which will not completely enclose the path alongside the hedge, and the path will be 2 metres wide, beginning 2 metres from the centre line of the hedge to allow for growth of the hedge. The path will have a crushed stone surface to keep surface vegetation to a minimum and create a good year-round walking surface and the landowner will be required to maintain the hedge to keep the path width at 2 metres.

Further comments from the same party questioned how diverting the path would improve safety for the landowners' children and why a gate could not be installed to control the movement of animals in the field. The children's safety is compromised as the path passes through an open field where the children play. Due to the open nature of the field, dogs roam and foul in areas that are not part of the Public Right of Way which is scary and unpleasant for the landowner. A gate into the field at Point **B** would give walkers chance to put their dogs on a lead before entering the open field and would assist with using the field to keep animals in but there is potential for it to be left open, causing the animals to escape. This gate would be a limitation on the footpath which would not be required if the path is diverted and fenced along the field boundaries.

(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 11 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 improve safety for their young children and pets when they are playing in the field and to allow the field to be grazed by a horse or pony in the future without fear of it escaping.

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

The diverted section of footpath **A-C-B** would have a length of approximately 64 metres, the existing section **A-B** has a length of approximately 49 metres. The diversion would therefore increase the walking distance by 15 metres. This is not seen to be a substantial increase in distance and, therefore, will not be substantially less convenient.

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

The diverted footpath will have slightly different views of the surrounding landscape as the path is being moved to the edge of the field, but the path will be fenced off with a post and rail fence which will still allow users of the footpath to look at the surrounding views. Also, although the diverted footpath

will be next to a hedge, it will have adequate width to allow for the hedge to grow without causing an obstruction to the footpath and the landowner will be required to maintain the hedge to keep the path width at 2 metres.

The existing line of the path crosses an open field and has a grass surface. The diverted section of footpath would be in the same field but the path will have a crushed stone surface to ensure the path has a good year round walking surface and to prevent undergrowth from making the path inaccessible.

Diverting the footpath around the edge of the field would mean a further gate on the footpath will not be required, at Point **B**, when the field is grazed by a horse or pony. This will therefore not alter the accessibility of the footpath in accordance with the Equality Act 2010.

Overall, it is seen that the diversion would have no negative impacts on the public's enjoyment of the route as the views that will be lost from walking between a post and rail fence and the hedge are negligible and it would prevent an extra limitation being added to the footpath, in the form of a gate, when the applicants decide to graze the field.

**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. 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. It is therefore considered expedient to make the Order.

(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

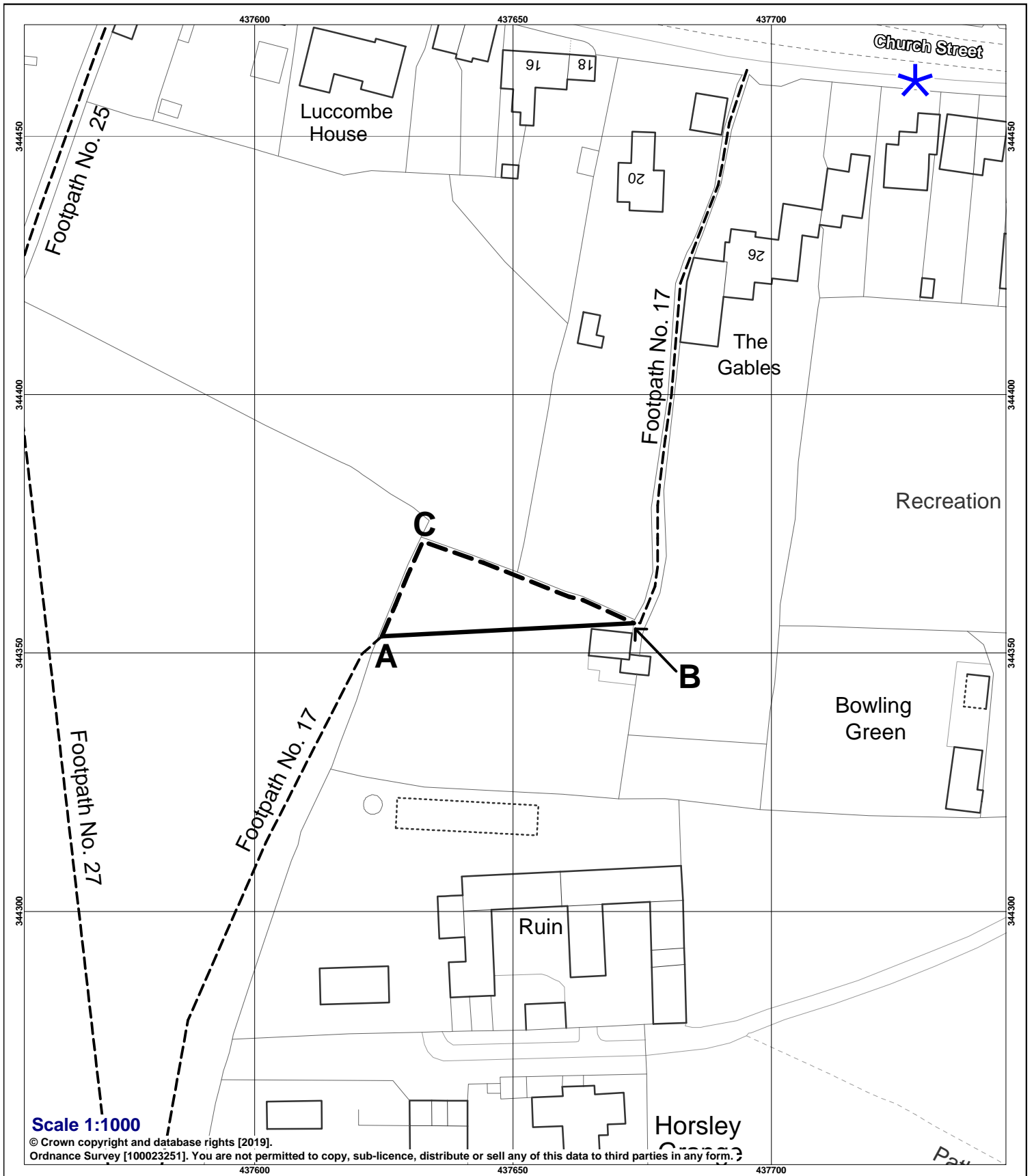
In preparing this report the relevance of the following factors has been considered; prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(6) **Background Papers** Held on file within the economy, Transport and Environment Department. Officer contact details - Louisa Freeman, extension 39790.

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

- 7.1 The Director of Legal Services be authorised to make the necessary Order to divert Public Footpath No.17 (Part), in the Parish of Horsley, 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**



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Ref: TE/LF/X4351/Cttee/2020

Date: 29 January 2020



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**Highways Act 1980, Section 119**  
**Proposed diversion of Public Footpath No. 17**  
**(Part) - Parish of Horsley**

<b>Key:</b>	Path to be diverted (A-B)	
	Alternative footpath (A-C-B)	
	Unaffected footpath	

