

**DERBYSHIRE COUNTY COUNCIL**

**REGULATORY – PLANNING COMMITTEE**

**12 April 2021**

Report of the Director – Economy, Transport and Environment

**3 SECTION 119 OF THE HIGHWAYS ACT 1980: PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.39 (PART) – PARISH OF BARLOW**

(1) **Purpose of Report** To seek authority for the Director of Legal and Democratic Services to make a diversion order for the permanent diversion of Public Footpath No.39 in the Parish of Barlow, in the interests of the landowner.

(2) **Information and Analysis** Derbyshire County Council has received an application for the permanent diversion of part of Public Footpath No.39 in the parish of Barlow, in the interests of the landowner. The footpath currently passes close to domestic premises at Bolehill House and the diversion is being sought for security and privacy, partly due to instances of walkers straying off the path around the buildings and conflicts with the owner's dogs. The proposed diversion would move the footpath eastward away from the domestic premises.

If the proposed diversion takes effect, it will divert approximately 137 metres of that part of the footpath on the route **A** to **B** shown on the attached plan as a bold solid line. The proposed alternative would be approximately 150 metres long on the route **A-C-D-E-F** shown by a bold broken line. To get to or from the existing roadside entrance at Point **B** requires walking an extra 27 metres along the road (which has an accessible verge), taking the comparable distance to 177 metres. The alternative route has a natural surface between points **A**, **C** and **D**, and tarmac between points **D** and **E**, and would be surfaced in rolled stone on a fenced corridor between points **E** and **F**. The recorded width would be 2 metres. A short flight of timber steps would be installed between points **A** and **C**. Pedestrian gates to the current British Standard would be installed at **C** and **D**, and there would be a 1.1 metre-wide gap access at both **E** and **F**.

An informal consultation has been carried out with consultees including Barlow Parish Council, North-East Derbyshire District Council and the local Member, Councillor Angelique Foster. The Parish Council initially indicated opposition to the proposal but later withdrew its objections. One individual indicated opposition on the following basis:

1. Bolehill House is a former school and the footpath is inherent to its history. It is a beautiful Grade II listed building that would no longer be visible to the public if the footpath were diverted.
2. The footpath is around 30m from the buildings and is surrounded by walls and railings that maintain privacy.
3. The footpath offers the most direct access to Barlow village from the west.
4. The existing footpath is not clearly marked and improved waymarking could prevent people straying off the route.
5. The problems with the owners' dogs are caused by the owners allowing them to have access to the footpath, which is their choice.
6. Any problems with walkers' dogs straying could be addressed by signage.
7. If the owners wanted a more private home they should not have purchased one with a footpath through the grounds.
8. The verge between points **B** to **F** is not suitable for walking on, narrowing to about 60cm and sloping towards the road. There is a tight blind bend nearby so there could be an accident.

The Council must consider whether a diversion affects the public enjoyment of the path as a whole and whether the alternative route poses any inconvenience to the public. The objector has raised three issues that should be measured against the criteria the Council needs to consider.

The position of the path, in relation to the former school building, is a matter of fact and provides views of the listed building, as well as being intrinsically linked to its history undoubtedly providing access to the school. Whilst the public may enjoy views of the property from the public footpath, it is now a private dwelling and not a public building served by the path. The Council is required to take a view on whether the diversion would have a detrimental effect on the public enjoyment of the route as a whole. On balance, and because views of the building may be seen from the nearby road, it is considered to be a minor issue and will not adversely affect the public enjoyment of the path as a whole.

The proposed alternative route to its junction with the existing path is approximately 180m, making it 40m longer than the current route. It does not directly connect with any nearby footpath and, therefore, this additional walking on a quietly trafficked road is not considered to be detrimental to public enjoyment or convenience.

The objector has made comments on dogs. This is not a specific issue the Council should consider, however, it features as part of the applicant's request to divert the path and should therefore be noted as an intrinsic part of the overall application, lending only minimal weight by way of justification for the application.

The remainder of the comments from the objector, including waymarking, are points of view and therefore not a matter for the Council to consider as part of this application.

(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 which is estimated to be in the region of £2,000.

(4) **Legal Considerations** 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.

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 footpath currently passes close to domestic premises at Bolehill House and the diversion is being sought for security and privacy, partly due to instances of walkers straying off the path around the buildings and conflicts with the owner's dogs. The diversion is therefore in the interests of the landowner.

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

The proposed diversion will divert approximately 137m of Footpath No.39 onto an alternative route approximately 150m long. The difference of 13m is not significant, but to get to or from the existing roadside entrance requires walking an extra 27m along the road, taking the comparable difference to 40 metres. The entire footpath is currently some 1,176m long, and in this context the increase is only some 3.4%. The existing route has two gates, as would the alternative, and gradients are not excessive, although a short flight of steps is proposed on the alternative route. It can therefore be concluded that the alternative route is not substantially less convenient than the existing route.

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

The more restricted views of Bolehill House from the alternative route would potentially reduce public enjoyment, but some members of the public are uncomfortable passing through domestic premises and prefer to be able to pass around them. These two aspects could be said to balance each other out. Also, the house and its vicinity represents a small portion of the route as a whole, the majority of which would be unchanged. It can be concluded that the public enjoyment of the route, as a whole, would not be significantly affected.

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

There are no known or anticipated issues in this regard.

**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**

There are no known or anticipated issues in this regard.

**Whether it is expedient to make the Order**

The proposed diversion is in the interests of the landowner and occupier. Whilst an objection was received to this proposal, on balance, 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 enjoyment of the route as a whole. It would not adversely affect 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.

(6) **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.

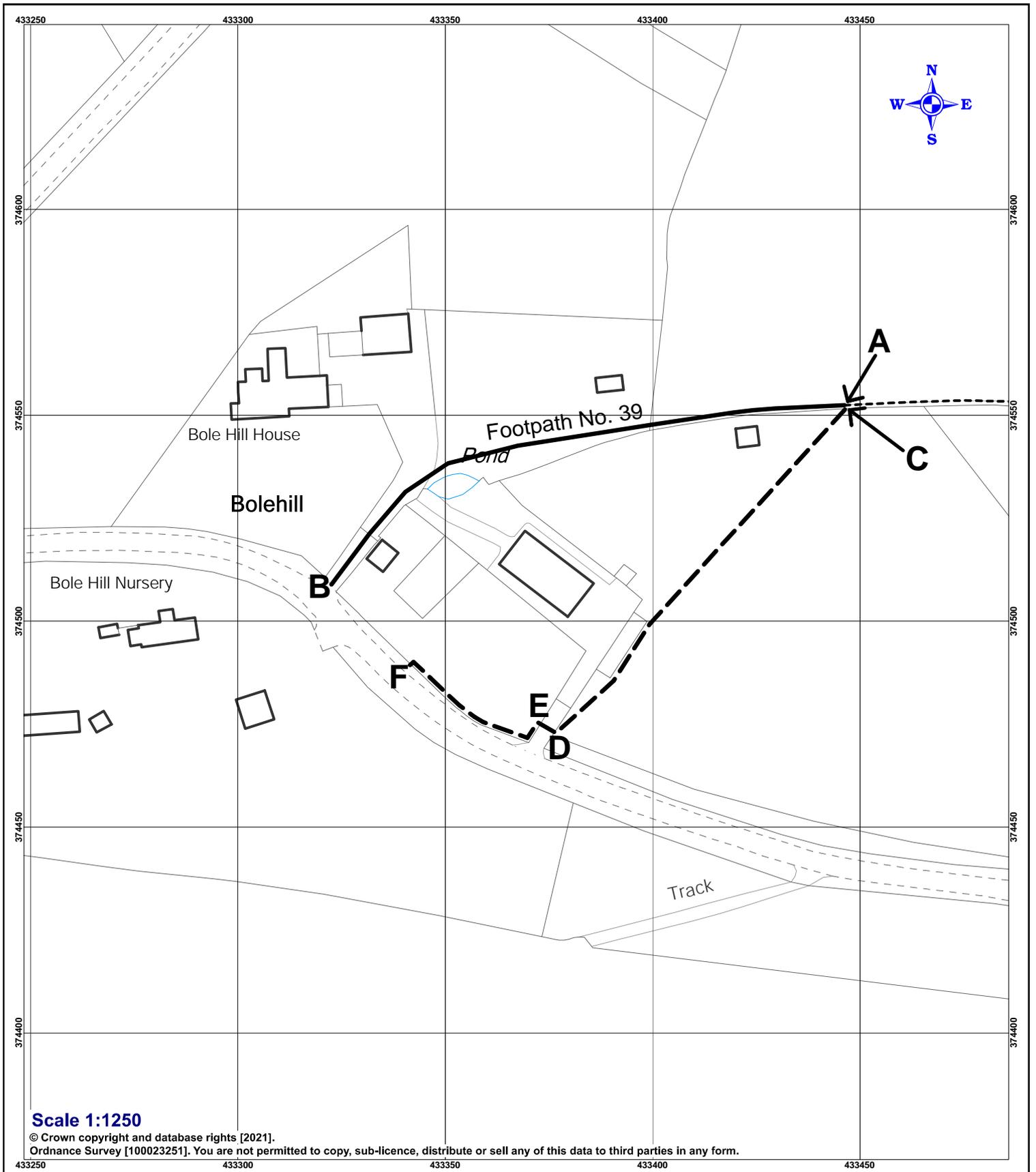
(7) **Background Papers** Held on file within the Economy, Transport and Environment Department. Officer contact details - David McCabe, extension 39770.

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

8.1 The Director of Legal and Democratic Services be authorised to make the necessary order for the permanent diversion of part of Footpath No. 39 in the Parish of Barlow under the provisions of Section 119 of the Highways Act 1980.

8.2 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.

**Tim Gregory**  
**Director – Economy, Transport and Environment**



**Scale 1:1250**

© Crown copyright and database rights [2021].  
 Ordnance Survey [100023251]. You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form.

**Ref: TE/DM/X4280/Cttee/2021**  
 Produced by Public Rights of Way on 12 February 2021



**Tim Gregory**  
 Director - Economy, Transport & Environment  
 Derbyshire County Council  
 County Hall  
 Matlock  
 DE4 3AG

**Highways Act 1980, Section 119:**

**Proposed Diversion of  
 Public Footpath No. 39 (Part) -  
 Parish of Barlow**

**Key:**

- Footpath to be diverted
- Alternative footpath
- Unaffected footpath

