

## PLANNING AND LICENSING COMMITTEE

18 July 2023

### PROPOSED DIVERSION OF PUBLIC FOOTPATH D79

#### Report of the Strategic Director for Places

Strategic Aim:	A special place	
Exempt Information	No	
Cabinet Member(s) Responsible:	Cllr C Wise, Portfolio Holder for Highways, Transport, and the Environment	
Contact Officer(s):	Penny Sharp, Strategic Director for Places	01572 758160 psharp@rutland.gov.uk
	Stuart Crook, Highways Asset Management and Policy Manager	01572 758260 scrook@rutland.gov.uk
Ward Councillors	Councillor Rosemary Powell	

#### DECISION RECOMMENDATIONS

That the Committee:

1. Approves the application to divert public footpath D79 and authorises legal services to make an order under section 119 of the Highways Act.

## 1 PURPOSE OF THE REPORT

- 1.1 To consider an application (Appendix A) submitted on 27th of September 2021 by John Gregory of Wright Hassall on behalf of Whissendine Farms Limited to divert part of public footpath D79 in the parish of Whissendine. Subsequent modifications resulted in the proposal illustrated on the plan attached at Appendix B.
- 1.2 The application is made under section 119 of the Highways Act 1980 (the 1980 Act), which gives the highway authority (Rutland County Council) the power to make orders to divert footpaths, bridleways, or restricted byways in the interests of the owner, lessee or occupier of land where it is expedient.

## 2 BACKGROUND AND MAIN CONSIDERATIONS

- 2.1 Agents for the landowners sought pre-application advice from the authority in relation to their proposal, which is linked to the current refurbishment, diversification, and regeneration of Whissendine Lodge Farm (2022/0250/MAF), which was approved on the 7<sup>th</sup> of October 2022.

- 2.2 An initial proposal for a longer diversion was considered by the Rutland Countryside (Local) Access Forum at a meeting held on the 6<sup>th</sup> of October 2021. Members were concerned about the additional maintenance liability that would be generated by the proposal. Both the Chair and William Cross felt there was an alternative route that should be looked at.
- 2.3 An amended proposal was submitted on the 2<sup>nd</sup> of May 2022 (Appendix C) which forum members considered to be much improved, addressing their concerns about additional maintenance costs through a reduction in length and commitments to provide a hard (compacted aggregate) surface over enclosed sections, meaning that they would not need mowing.
- 2.4 Public footpath D79 is approximately 1.7 km in length and connects Melton Road, Whissendine, with the A606 in Leicestershire. It's a category 3 (rural) path that doesn't feature on any promoted routes. Consequently, it appears relatively little public use. Part of the footpath coincides with a tarmac 'road' serving as the main access to Whissendine Lodge Farm.
- 2.5 The applicant considers the diversion of footpath D79 to be (principally) in the interests of the owner of land who is seeking increased security and privacy around Whissendine Lodge Farm.
- 2.6 Some element of public benefit is required from proposals to divert public rights of way in Rutland (see 4.4 below). In this case the public benefits include increased width and improved accessibility by upgrading parts of the paths surface, reducing the number of structures along the route and improving those that remain. There is also an offer to dedicate a short new footpath linking a layby on Melton to footpath E8 (Appendix D).
- 2.7 Taking all this into account, the proposed diversion could be considered expedient in the interests of the owner/occupier and the public, as per section 2.3.4 of [Rights of Way Advice Note 9](#).

### **3 LEGAL FRAMEWORK**

- 3.1 Before exercising its powers, a surveying authority must consider whether a proposal meets the requirements of the 1980 Act. It must also consider any other relevant legislation, supplementary guidance, and policy.

#### **3.2 [Section 119 of the Highways Act 1980](#):**

*(1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) 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, bridleway or restricted byway as appears to the council requisite for effecting the diversion, and*

*(b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.*

*An order under this section is referred to in this Act as a “public path diversion order”.*

*(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.*

*(3) Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall—*

*(a) specify a date under subsection (1)(a) above, and*

*(b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.*

*(4) A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.*

*(5) Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—*

*(a) any compensation which may become payable under section 28 above as applied by section 121(2) below, or*

*(b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public, or*

*(c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.*

*(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,*

*so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above.*

*(6A) The considerations to which—*

*(a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and*

*(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,*

*include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.*

*(7) A public path diversion order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed,—*

*(a) showing the existing site of so much of the line of the path or way as is to be diverted by the order and the new site to which it is to be diverted,*

*(b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a footpath, bridleway or restricted byway, and*

*(c) where some part of the new site is already so comprised, defining that part.*

*(8) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path diversion orders.*

*(9) Section 27 above (making up of new footpaths, bridleways and restricted byways) applies to a footpath, bridleway or restricted byway created by a public path diversion order with the substitution, for references to a public path creation order, of references to a public path diversion order and, for references to section 26(2) above, of references to section 120(3) below.*

### 3.3 [Section 149\(1\), Equality Act 2010:](#)

In considering this matter the decision maker must have regard to the Council's duties under the Equality Act 2010. Pursuant to these legal duties Councils must, in

making decisions, have due regard for the need to:

- (1) eliminate unlawful discrimination
- (2) advance equality of opportunity
- (3) foster good relations on the basis of protected characteristics

## **4 POLICY FRAMEWORK**

### **4.1 [Second Rutland County Council Rights of Way Improvement Plan](#) (action 2C):**

Local authorities have discretion in how they exercise their powers to divert right of ways. Such decisions should not be taken lightly and when resources are limited so the 'do-nothing' option is going to appear far more appealing unless an application has clear public benefit. Otherwise, we're using our resources on a power, to the advantage of owners and occupiers, whilst possibly having to neglect our statutory duties which have wider benefits.

## **5 CONSULTATION**

5.1 An initial proposal for a longer diversion was considered by the Rutland Countryside (Local) Access Forum at a meeting held on the 6th of October 2021. Members were concerned about the additional maintenance liability that would be generated by the proposal. Both the Chair and William Cross felt there was an alternative route that should be looked at.

5.2 An amended proposal was submitted on the 2nd of May 2022 (Appendix C) which forum members considered to be much improved, addressing their concerns about additional maintenance costs through a reduction in length and commitments to provide a hard (compacted aggregate) surface over enclosed sections, meaning that they would not need mowing.

## **6 ALTERNATIVE OPTIONS**

6.1 There is no requirement for local authorities to make public path orders; it's a discretionary power not a duty. Committee members could, therefore, reject the application.

## **7 FINANCIAL IMPLICATIONS**

7.1 All costs associated with the diversion, including officer time, advertising, and works on the ground, will be borne by the applicant.

7.2 The (amended) proposal imposes virtually no additional maintenance liability on the council. The minor exception is a new culvert that has been constructed around point A on the draft order map (Appendix B).

7.3 The new culvert has been constructed to a good standard and they're generally low maintenance structures. Additionally, the applicant has indicated a willingness to either enter into an agreement to maintain the culvert going forward or provide a commuted sum.

## **8 LEGAL AND GOVERNANCE CONSIDERATIONS**

8.1 Set out within the report.

## **9 DATA PROTECTION IMPLICATIONS**

9.1 There are no significant data protection implications arising from the report.

## **10 EQUALITY IMPACT ASSESSMENT**

10.1 An Equality impact Assessment has not been completed because the report does not propose a significant change to an existing policy or service provision.

10.2 The general effect of the proposed diversion would be to improve / enhance accessibility of footpath D79.

## **11 COMMUNITY SAFETY IMPLICATIONS (MANDATORY)**

11.1 There are no significant community safety implications arising from the report.

## **12 HEALTH AND WELLBEING IMPLICATIONS (MANDATORY)**

12.1 There are no significant health and wellbeing implications arising from the report.

## **13 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS**

13.1 The proposed diversion is not considered to be substantially less convenient than the current route. The overall effect of the proposed development / diversion on the public's enjoyment of the route is neutral / slightly positive.

13.2 It's recommended, therefore, that committee members authorise the making of a public path diversion order by legal services, but also that confirmation of the order is conditional and will require the applicant to:

13.2.1 Construct the new path to the satisfaction of the council,

13.2.2 Dedicate the proposed new link path shown in Appendix D,

13.2.3 Agree satisfactory maintenance arrangements for the new culvert and link path,

13.2.4 Approval from the neighbouring landowners with regards to shared boundaries.

## **14 BACKGROUND PAPERS**

14.1 Set out within the report.

## **15 APPENDICES**

Appendix A – Diversion application

Appendix B – Draft order map

Appendix C – Amended diversion proposal

Appendix D – Map showing proposed new footpath.

**A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.**

# Appendix A. Application

FORM XX



**Rutland**  
County Council

Public Rights of Way (Highways)  
Rutland County Council, Catmose  
Oakham, Rutland LE15 6HP  
Tel: 01572 722577  
Email: [rightsofway@rutland.gov.uk](mailto:rightsofway@rutland.gov.uk)

<b>Application for Public Path Diversion Order</b>			
HIGHWAYS ACT 1980, Section 119			
<p>Please read the 'Applicant Guidance Notes' carefully before completing all section of this form. The application from should be accompanied by (1) A map clearly showing the existing and alternative routes, ideally to a scale of 1:2500, (2) A letter of consent and accompanying plan showing the extent/interest of each affected landowner, occupier, lessee or other party affected by the proposal (where applicable, a plan showing and unidentified ownership should also be included), and (3) An environmental statement and other supporting documentation, where applicable.</p>			
CONTACT DETAILS			
Applicant			Full Name: Whissendine Farms Limited
	Address:	Whissendine Farms Limited Marlborough Property Co, Two Marlborough Court Pontylue Way, Syston, Leicester Leicestershire LE7 1AD	
	Telephone:	01926 884600	Email: john.gregory@wriighthassall.co.uk
Agent	Mr/Mrs/Miss/Ms/Other:	Mr	Full Name: John Gregory
	Address:	Wright Hassall LLP Olympus Avenue Leamington Spa CV34	
	Telephone:	01926 884600	Email: John.gregory@wriighthassall.co.uk
LAND OWNERSHIP			
Are you the freehold owner and occupier of <u>all</u> the land affected by the diversion proposal?			Yes <input type="checkbox"/> No <input type="checkbox"/>
If no, please list the names and addresses of all those who stand to be affected by the proposal, along with the nature of their interest in the affected land:			
Name	Address		Interest
Peter Darlington	J Darlington and Son Ltd Brickfield Farm Leesthorpe Melton Mowbray Leicestershire Le14 2XJ		Owners of the boundary hedge adjacent to the unfenced section of the diverted footpath shown by a red line on Plan 1, and the boundary hedge that runs down the western boundary of the driveway to the farm.

**FORM XX**

Rutland County Council	Rutland County Council Catmose Oakham LE15 6HP	Highway Authority in respect of the section of highway situated at the start of the diversion.
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Give details of any land affected by the proposal for which the owner has not been identified (refer to plan):	
N/A.	
Are you aware of the existence of any apparatus belonging to statutory undertakers in, on, over or across the land affected by the existing route(s)? If yes, please provide details:	
No – not on the route of the existing path, although there an electric pole and transformer on the land which will be fenced to separate it from the route of the diverted footpath.	
<b>PROPOSAL</b>	
Status:	Public Footpath
Path reference:	D79
Town/Parish:	Whissendine
OS Grid Reference:	SK 8096,1459
Annotating the proposal map accompanying this application, please give a detailed description of the new route in terms of its width, surface, proposed structures (gates/stiles etc) and any relevant topographic features:	
Please refer to the attached annotated plans (1-5) which show the proposed diversion in detail.	
The existing footpath D79 is indicated on Plan 1 by a pink line and is proposed to be diverted along the route indicated by the red and blue lines. The red line shows the extent of the diverted route which will be unfenced, whilst the blue line indicates the length of footpath to be enclosed by post and rail fencing.	
The fenced length of footpath will be entirely unencumbered with no gates. It will be 2.5 metres wide in order to allow for the maintenance of the surface and adjacent hedge. The surface is to be predominantly grass, which is level and will be regularly cut and maintained. New 1.5m wide gates will be installed at each end of the proposed diversion, along with a new pedestrian gate at the entry to the farm on the Melton Road.	
The diverted footpath will pass an existing small pond and a lake as shown on Plan 3. Fencing will be installed for safety reasons. A concrete culvert will be installed at the point indicated on Plan 3, the exact specification of which will be agreed with the Council should the application be approved.	
<b>LEGISLATIVE TESTS</b>	
Please explain why it is expedient to divert the public right of way in the interests of the owner, lessee or occupier of the land or of the public [Section 119(1), Highways Act 1980]:	
The diversion of the public right of way is expedient in the interests of the owner of the land for the following reasons:	
<ul style="list-style-type: none"> <li>i. The footpath presently runs through the residential garden of Whissendine Lodge and along the driveway of Home Close Bungalow. The diversion will prevent the public use of the footpath from intruding on these two residential properties, improving the security and privacy afforded to them.</li> <li>ii. The diversion will improve safety generally, steering the path away from busy farm tracks and removing the public right of way through the centre of a busy working farm.</li> <li>iii. Maintenance of the footpath will become easier, providing for an increased walking experience all year round.</li> </ul>	
Please describe the effect that the diversion will have on (a) public enjoyment of the path as a whole (b) other land served by the existing right of way (c) land over which the new right of way is to be created [Section 119(2), Highways Act 1980]:	

**(a) The Effect of the Diversion on Public Enjoyment of the Path as a Whole**

- i. The connection of two footpaths through field number 3262 from the layby off the Melton to Whissendine road creates the opportunity to join two footpaths, which accords with Rutland County Council policy
- ii. The diversion increases the length of the existing path from 1455 meters to 1745 metres and provides a more aesthetically interesting walk for members of the public, taking it through open countryside and providing an improved visual aspect.
- iii. The proposed diversion would create 1235 metres of unencumbered fenced footpath, improving access over uneven ground and increasing the width of the footpath without the need for gates or styles.
- iv. The diversion would steer members of the public away from livestock and the workings of a busy farm. In particular, the diversion would remove the risk of cattle interacting with users of the footpath in field 0405 and would keep the public away from busy farm tracks

**(b) The Effect of the Diversion on other land served by the existing right of way**

It is not anticipated that there will be any adverse effect on this land.

**(c) The Effect of the Diversion on land over which the new right of way is to be created**

It is not anticipated that there will be any adverse effect on this land.

## COSTS

The amount payable in respect of making the order will not exceed the costs actually incurred and will comprise the following elements:


- a) Initial discussion with applicant, research and consultation, publication of a legal order, confirmation and certification, estimated at £1400 (see appendix to guidance notes for schedule of costs)
- b) Fees for at least two notices placed in a local newspaper\*:
  - i. When the Order is made
  - ii. When the Order is confirmed / certified

\*NB: A further notice may be required to advertise the coming in to operation of a new route if it is not feasible to specify a completion date for works in the Order.

- c) The costs agreed in the attached estimated Schedule of Works (payable upon confirmation and certification of the route)

## DECLARATION

1. I/We understand that no authority for the diversion of a public right of way is conferred unless:
  - a. The appropriate Order has been made and confirmed.
  - b. Any works necessary to bring the alternative route into operation have been certified as acceptable by Rutland County Council.
2. I/We have noted the costs which are payable for processing a Public Path Order application and agree to pay the charges outlined above when invoiced by Rutland County Council. I/We understand that in the event that objections are received, a proportion of the specified fee and the cost of the initial newspaper notice will still be payable in the event the Order is not confirmed.
3. In the case of a Public Path Diversion Order being confirmed pursuant to the application, I/We agree that Rutland County Council will not be liable for any compensation which may become payable to a third party and I/We agree to defray any such claim. I/We also waive my/our right to claim compensation under Highways Act 1980 Section 28.
4. I/We understand that the information provided on this form cannot be treated as confidential and that all supplied information may be made available to members of the public on request.
5. I/We hereby declare that the information provided in respect of this application is correct to the best of my/our knowledge.

Signature	
Print name	John Gregory
Date of statement	27.9.21

Proposed Diversion. Red shows unfenced path. Blue shows fenced path.

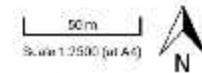


# Footpath Diversion Plan Whissendine Lodge Farm



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Field number 3262

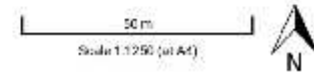


# Footpath Diversion Whissendine Lodge Farm



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A - B is an unenclosed section of the diverted path

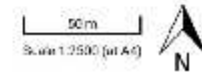


# Footpath Diversion Whissendine Lodge Farm



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D-C C-D & D-E enclosed by stock proof fencing with unrestricted access throughout

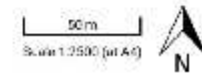


# Footpath Diversion Whissendine Lodge Farm



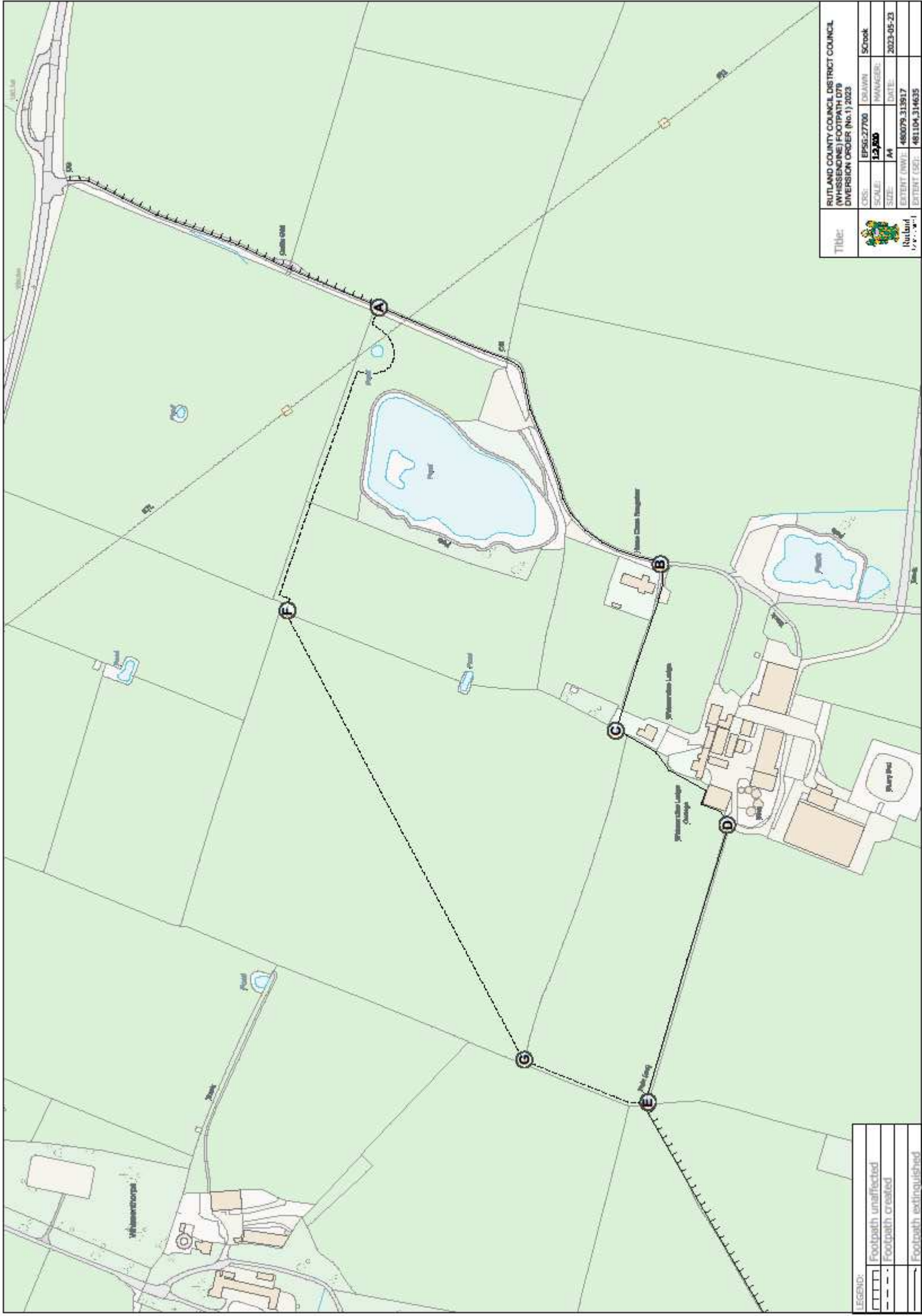
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D-E, E-F, F-G enclosed by stock proof fencing with unrestricted access throughout





## **Appendix B. Draft order plan**



RUTLAND COUNTY COUNCIL DISTRICT COUNCIL (WHISSENDINE) FOOTPATH D79 DIVERSION ORDER (No.1) 2023			
CSIS:	EP95-27700	DRAWN:	SCROOK
SCALE:	1:2,000	MANAGER:	
SIZE:	A4	DATE:	2023-05-23
EXTENT (NW):	480079.313917		
EXTENT (SE):	481104.314635		

LEGEND:	
	Footpath unaffected
	Footpath created
	Footpath extinguished



## Appendix C - Amended proposal



Amended proposal - Red unfenced. Black unfenced with a geotextile and stone subbase.

Current footpath (purple) is 1465m total length of which.

623 m is on hard surfacing / roadways

842 m is on grass

Original proposal was 1780 m total length of which

270 m is on hard surfacing / roadways

1510 m is on grass

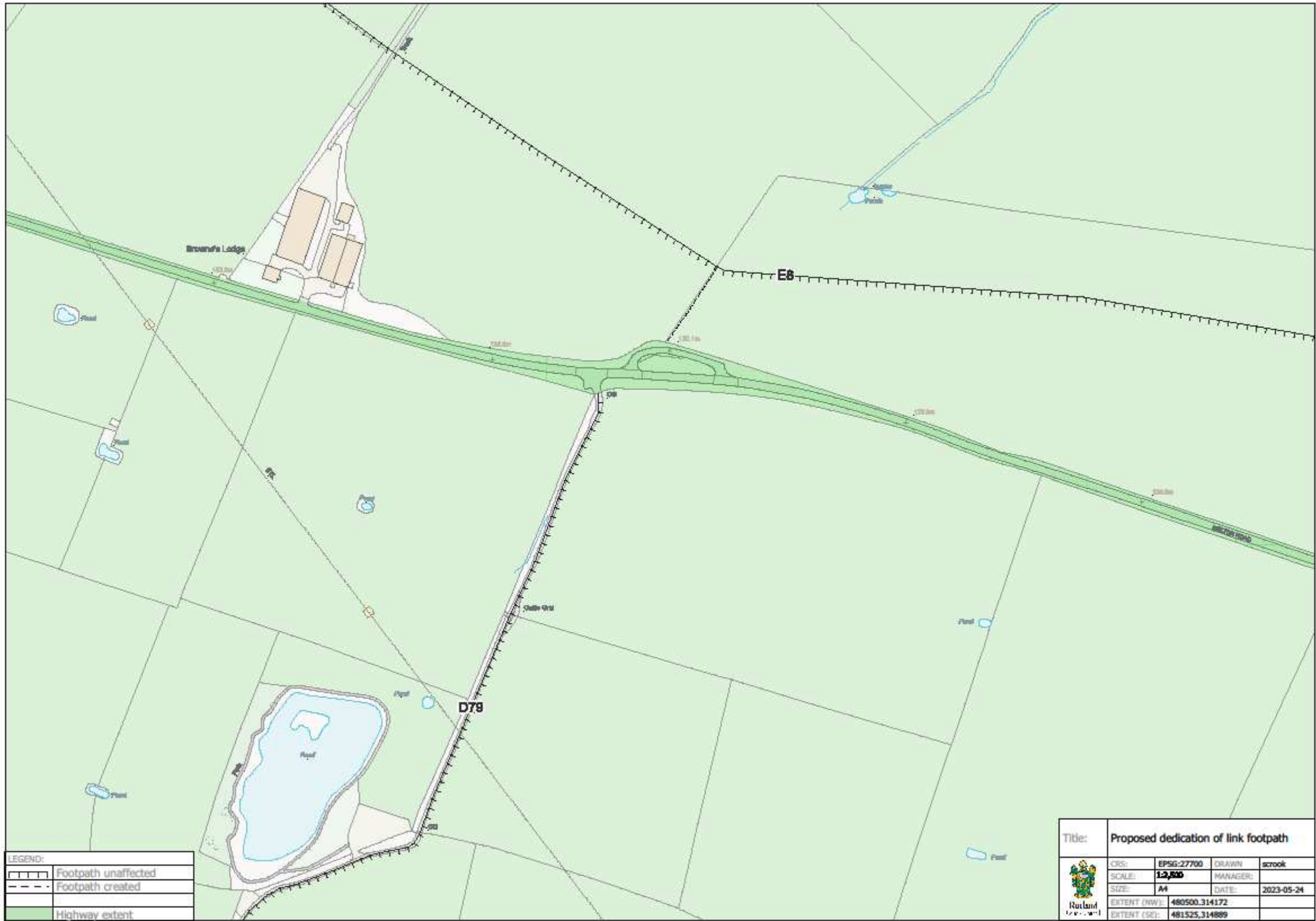
Amended Proposal route is 1405 m in length of which.

270 m is on hard surfacing / roadways

283 m is stoned geotextile subbase (black)

852 m is on grass

**Appendix D – Map showing proposed new footpath.**



LEGEND:

	Footpath unaffected
	Footpath created
	Highway extent

Title:	Proposed dedication of link footpath		
	CRS: EPSG:27700	DRAWN: scrook	
	SCALE: 1:2,500	MANAGER:	
	SIZE: A4	DATE: 2023-05-24	
	EXTENT (NW): 480500.314172		
	EXTENT (SE): 481525.314889		