

Report of the Interim Chief Executive

APPLICATION NUMBER:	Footpath Diversion Order 63
LOCATION:	Thane Road to Beeston Canal, Beeston
PROPOSAL:	Stop up part of Beeston footpath number 63 and create an alternative footpath.

Purpose of Report

This item is brought to Committee to make a diversion Order under the Town and Country Planning Act 1990 following an application received by the Council for a public path diversion order to stop up part of Beeston footpath number 63 and create an alternative footpath. The site forms part of the Boots Campus in Beeston.

Recommendation

The Committee is asked to RESOLVE that the public path diversion order be made.

Detail

Planning permission was granted on 09 December 2022 (planning reference 21/00672/REM) for site and infrastructure works including construction of 397 dwellings.

The application to stop up part of the route of Beeston footpath number 63 and divert this footpath has been submitted in order to enable development to take place.

The current footpath runs along the western boundary of the site and via a footbridge to the southern towpath of the Nottingham and Beeston canal.

The section of the existing footpath to be diverted is approximately 534m in length and runs north to south from Lilac Grove at its junction with Humber Road South (adjacent to the Boots campus) between points SK5436 3631 and SK5442 3599.

The Agent acting for the owner has confirmed that a pre-order consultation has been carried out with letters having been sent to the Rights of Way Officer at Nottinghamshire County Council, and other interested parties. We are informed that no objections were received.

Financial Implications

The comments from the Head of Finance Services were as follows:

There are no additional financial implications for the Council with the costs/income being within the normal course of business and contained within existing budgets.

Any separate financial issues associated with S106s (or similar legal documents) are covered elsewhere in the report.

Legal Implications

The comments from the Head of Legal Services were as follows:

The Legal implications are set out in the report where relevant, a Legal advisor will also be present at the meeting should legal considerations arise.

Data Protection Compliance Implications

Due consideration has been given to keeping the planning process as transparent as possible, whilst ensuring that data protection legislation is complied with.

Climate Change Implications

Climate Change implications are considered within the report

Background Papers

Nil.

Appendix

Details of the application

Section 257 of the Town and Country Planning Act 1990 states that a competent Authority may by order authorise the stopping up or diversion of any footpath if they are satisfied that it is necessary to do so in order to enable development to be carried out in accordance with a planning permission. The procedure for doing so is set out in Schedule 14 of the Town and Country Planning Act 1990.

S7.15 of the Rights of Way Circular (1/09) advises that in the making of an order for the diversion of a Public Right of Way to enable approved development: -

‘The local planning authority should not question the merits of planning permission when considering whether to make or confirm an order, but nor should they make an order purely on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order.

The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order.’

Following pre-order consultations carried out by the developer, **s 275 of the Town and Country Planning Act 1990** gives the Council (as the local planning authority), a discretionary power to make an Order for the diversion of a footpath which is necessary to enable development to be carried out in accordance with planning permission. On making the Order, a public Notice describing the order must be advertised in the press and the Order placed on deposit for public inspection. This public notice and Order map must also be placed at each end of the length of public footpath to be diverted. Owners of the land affected by the Order and various statutory consultees must be contacted and served with the Order and Notice and allowed the opportunity to make objections within 28 days from the making of the Order. If no objections are made the Order may then be recommended for confirmation as an unopposed order. The Order does not become effective until it has been confirmed. Any opposed Orders are sent to the Secretary of State for determination.

On confirmation of the order similar steps to those outlined above must be repeated enclosing a copy of the confirmed Order. Objectors may challenge the confirmation in the High Court within six weeks after Notice of the confirmation is published on the grounds that the confirmation is outside the Council’s powers or

that there has been a procedural defect. The diversion Order does not come into effect until the Council certifies that the provisions of the Order have been complied with.

In these circumstances, a footpath diversion order is necessary to allow an authorised development to be carried out whilst ensuring the footpath is provided without any disadvantage or loss to members of the public.

If the planning application has been granted in outline only the local planning authority can only make the order, the other steps outlined above in relation to confirming and certifying the order cannot be undertaken until such time that the planning application is approved in full.

12.1 It is recommended that the public path diversion order be made.

Recommendation

The Committee is asked to RESOLVE that the public path diversion order be made.

Map (not to scale)