

Report of the Interim Chief Executive

APPLICATION NUMBER:	Footpath Diversion Order
LOCATION:	Former Lynncroft School, Eastwood
PROPOSAL:	Proposed diversion of Eastwood Footpath number 27

1. Purpose of Report

1.1 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 Eastwood footpath number 27 and create an alternative footpath. The site forms part of the Former Lynncroft School in Eastwood.

2. Recommendation

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

3. Detail

3.1 Planning permission was granted on 07 August 2024 (planning reference 20/00844/OUT) for site and infrastructure works including construction of 104 residential dwellings and associated infrastructure.

The application to stop up part of the route of Eastwood footpath number 27 and divert this footpath has been submitted in order to enable development to take place.

The current footpath runs along the north-western boundary of the site. The diversion is to take pedestrians from the southern boundary connecting to the adopted spine road of the development. Pedestrians will need to cross the road using the installed tactile paving and turn West to walk along the footpath for approx. 25m before turning north and traveling approx. 28m to the boundary which connects to the existing footpath.

The section of the existing footpath to be diverted is approximately 50m in length and runs in a generally north-westerly direction between points A, (SK 4718 4716), and B, (SK 4716 4720).

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.

3.2 Planning Considerations

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.’

4. Financial Implications

4.1 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.

5. Legal Implications

- 5.1 The comments from the Monitoring Officer / Head of Legal Services were as follows:

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.

6. Climate Change Implications

- 6.1 The climate change implications are contained within the report.

7. Data Protection Compliance Implications

- 7.1 This report does not contain any OFFICIAL(SENSITIVE) information and there are no Data Protection issues in relation to this report.

8. Equality Impact Assessment

8.1 As this is a change to policy / a new policy an equality impact assessment is included in the appendix to this report.

9. Background Papers

9.1 These are papers that you have used to inform your recommendation that haven't been published as part of the report.