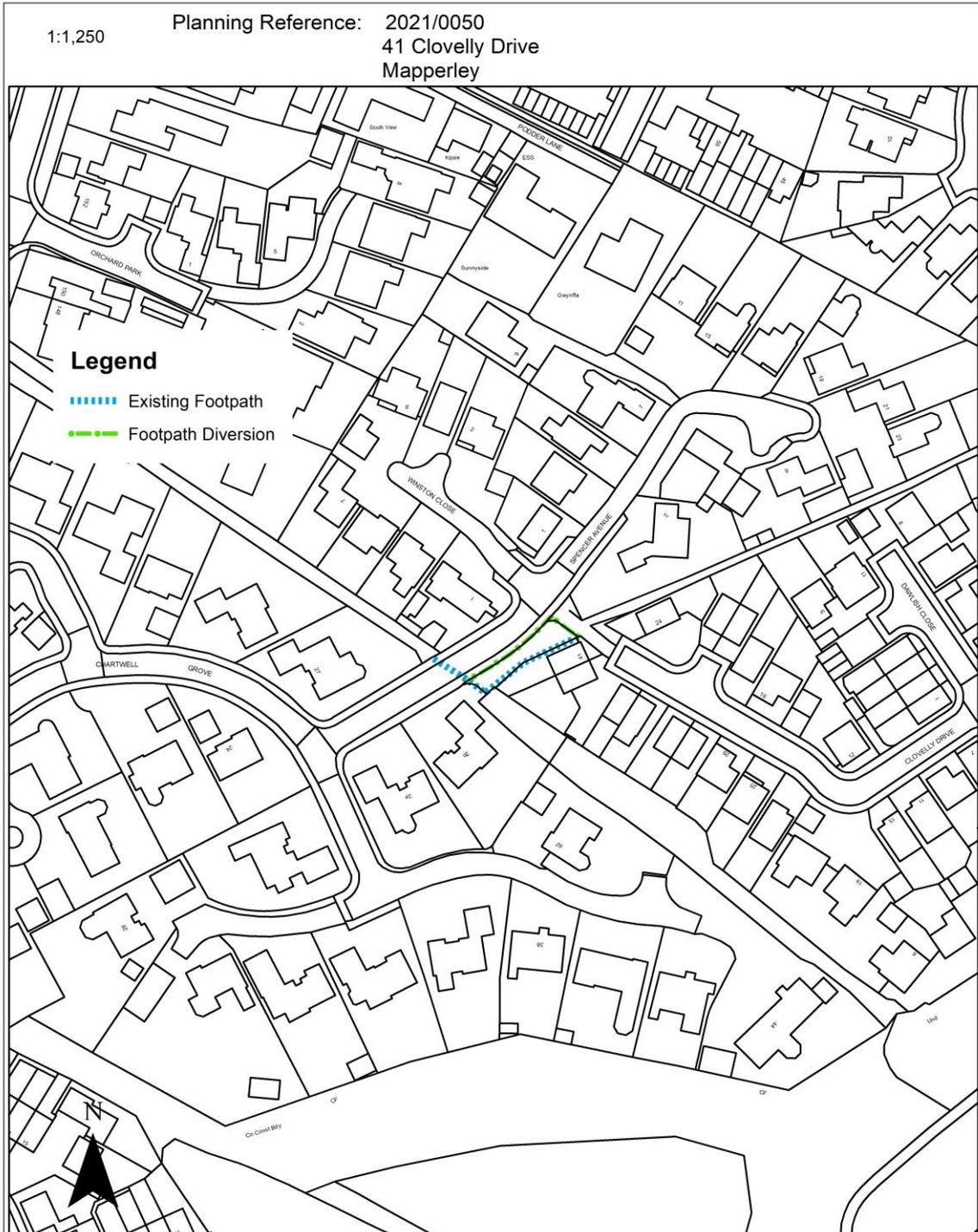




Planning Report for 2021/0050



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Report to Planning Committee

Application Number: 2021/0050
Location: 41 Clovelly Drive Mapperley NG3 5NJ
Proposal: Footpath Diversion
Applicant: Miss Emma Rogerson
Agent:
Case Officer: Claire Turton

1.0 Purpose of report

1.1 The application is before Planning Committee to seek authorisation to make an order to divert Arnold Footpath No. 1 in Mapperley. Part of the footpath currently runs across a parcel of land adjacent to no. 41 Clovelly Drive. It is proposed to divert this section on to the adjacent pavement. The application is made pursuant to Section 257(1A) of the Town and Country Planning Act 1990, which allows for a footpath to be diverted where an application for planning permission has been made which, if approved, would require the footpath to be diverted to enable the development to be carried out (see the relevant planning history part of this report below).

2.0 Site description

2.1 The application site is a parcel of vacant grassland located to the side of no. 41 Clovelly Drive. There is a part retrospective planning application currently pending consideration by the Local Planning Authority for the change of use of this parcel of land to garden land associated with 41 Clovelly Drive and to enclose the land with a garden wall. Surrounding properties are modern residential properties. The larger footpath runs through this modern housing estate from the B684 (Mapperley Plains) to Spring Lane.

3.0 Relevant planning history

3.1 **2020/1160** Planning permission was refused in February 2021 for:-

“Retrospective change of use of land to garden land and erection of fence.”

The reason for refusal related to the visual impact of the fence on the surrounding area. The full reason for refusal is detailed below:-

“The development is considered to be out of keeping with the surrounding area and has an unacceptable impact on the visual amenity of the area. The

character of Spencer Avenue, particularly to the north-east of the site, is residential development with relatively open and "green" frontages. The part of Spencer Avenue to the south-west of the site does have examples of taller boundary treatment located up to the back edge of the pavement. However, these are considered to be well designed low level walls with planting to the rear or walls with tall brick pillars and fencing infills. By contrast, this development consists of fencing 17 metres in length x 7 metres / 3.7 metres in width, located almost up to the back edge of the pavement. Its location on the corner of the footpath exasperates its prominence within the streetscene. As such, the proposal is contrary to Part 12 of the NPPF and Policy 10 of the ACS."

- 3.2 **2021/0225** This is a re-submission of 2020/1160 for "Part retrospective change of use of land to garden land and erection of wall with fence panelling." This application is pending consideration. The change of use of the land to garden land is retrospective but the garden wall proposed is not yet currently in place. The garden wall proposed (as part of application 2021/0225) is to replace the unauthorised garden fence (as part of application 2020/1160).

4.0 Consultation Responses

- 4.1 **NCC Rights of Way Officer**;- No objection.

- 4.2 **Neighbours** – One letter of objection and one letter of support have been received from neighbouring occupiers.

Objection;-

The reason for this application is due to someone stealing public land
This area has been a footpath for many years
There are no issues with the current footpath

Support

The old footpath has previously been amended to prevent vehicles using it.
The site has been used for young people gathering and causing a disruption

5.0 Proposal

- 5.1 Arnold Footpath 1 crosses the application site for planning application reference 2021/0225. If that planning permission is granted, in order to facilitate the change of use of the site into garden land as well as enclosing the site with a garden wall, a small section of Arnold Footpath 1 would need to be diverted on to the adjacent pavement.

6.0 Planning considerations

- 6.1 Section 257(1A) 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 an application for planning permission in respect of development has been made and, if the application were granted, it

would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out. The procedure for doing so is set out in Schedule 14 of the Town and Country Planning Act 1990.

- 6.2 S7.15 of the rights of way circular (01/09) advises that in the making of an order for the diversion of a Public Right of Way to enable 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”.

- 6.3 Paragraph 7.8 of the circular explores what the determining authority should consider when determining an application:-

“In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic”.

- 6.4 In this instance, alteration to Arnold Footpath 1 as proposed would have no discernible impact on the permeability of the footpath as a whole, which will have the same access points at the B684 (Mapperley Plains) and Spring Lane. Part of the path will now run along a section of pavement on [Spencer Avenue]. However, this is not dissimilar to other parts of the public footpath, further towards Spring Lane where pavements are used to connect different parts of the footpath. The vast majority of the remainder of the path will pass through the housing estates between the rear and side boundaries of residential properties. It is therefore not considered there would be a detrimental impact on the enjoyment of people using the path. Furthermore, the highway along which it would run is not a main road but one that is used by a small number of residents to access their properties. Taking into account the above it is recommended that the order be made and that it complies with relevant guidance within circular 01/09.

- 6.5 Procedurally, in accordance with Section 257(1A) of the Town and Country Planning Act 1990, if Members are minded to approve the Order the Council would make the Order and then undertake relevant statutory consultation with interested parties, erect a site notice at each end of the footpath and advertise the Order in a local newspaper. If after a consultation period of 28 days has passed, and there have been no objection to the application the Order, the Order could be confirmed under Section 259 of the Town and Country Planning Act 1990 if planning application 2021/0255 has been granted. However, there were an unresolved objection to the making of the

Order, it would then need to be referred to the Secretary of State for determination.

6.6 In this instance, it is requested that if planning application 2021/0255 is granted and there are no objections made to the Order that the Order can be confirmed without additional reference back to the Planning Committee.

7.0 Recommendation: That Members authorise the Head of Governance and Customer Services to make an order to divert Arnold Footpath No. 1 as set out in the submitted plans and, if planning application 2021/0255 is granted and the Order is unopposed following the requisite 28 day consultation period, that the Order be confirmed thereafter.