



Planning Report for 2025/0129



Report to Planning Committee

Application Number: 2025/0129

Location: Calverton Footpath 22, Land off Georges Lane, Calverton

Proposal: Footpath Diversion Order - Calverton Footpath 22

Applicant: A Lymn Funeral Service

Agent: Marrons

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 Calverton Footpath No. 22, off George's Lane, Calverton, for a distance of approx. 200m. The application is made pursuant to Section 257(1A) of the Town and Country Planning Act 1990 (as amended), which allows for a footpath to be diverted provided it is necessary to enable development to be carried out in accordance with a valid planning permission.

2.0 Site description

- 2.1 The application site is an open agricultural field and the public right of way links George's Lane with land to the north.

3.0 Relevant planning history

- 3.1 2022/0006 Full planning permission was granted in August 2022 for "*Change of use of agricultural land to a mixed traditional, natural and woodland burial ground, erection of facilities building and associated car park, landscaping and new access arrangements onto Georges Lane.*"
- 3.2 2023/0913 Full planning permission was granted in April 2024 for "*Construction of two open round barrows and a grass covered barrow for the placement of cremation urns, access path and landscaping.*"

4.0 Proposed development

- 4.1 Calverton Footpath No. 22 crosses the development site subject to applications 2022/0006 and 2023/0913. As part of the proposed works related to the approved applications, the footpath route is to be diverted to follow the newly approved grass track within the cemetery before re-joining the original route prior to leaving the site.

- 4.2 Currently the footpath runs in a northern direction in a straight line along the hedgerow boundary of the field for approx. 180 metres. It then turns in a north-east direction to exit the field.
- 4.3 It is proposed that the footpath be diverted to follow the newly approved grass track within the cemetery which is between 13 and 43 metres to the east of the existing footpath before joining with the original footpath line to exit the field. The existing and proposed route is shown on drawing no. 2019-18-30B.

5.0 Consultations

- 5.1 **Calverton Parish Council**;- No response received
- 5.2 **Nottinghamshire County Council Rights of Way Officer**;- No objection
- 5.3 **Neighbours**;- A site notice has been displayed at both ends of the section of footpath that is to be diverted. No neighbour letters have been received.

6.0 Planning considerations

Legal Framework

- 6.1 Section 257(1) of the Town and Country Planning Act 1990 as amended 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 allow a development to be carried out in accordance with a planning permission and is not yet substantially complete, as is the case here.

Section 257 - Footpaths, bridleways and restricted byways affected by development: orders by other authorities

(1) Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out -

(a) in accordance with planning permission granted under Part III or section 293A, or

(b) by a government department

(1A) Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that –

(a) an application for planning permission in respect of development has been made under Part 3, and

(b) 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

(2) An order under this section may, if the competent authority are satisfied that it should do so, provide—

(a) for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing highway for such use;

(b) for authorising or requiring works to be carried out in relation to any footpath, bridleway or restricted byway for whose stopping up or diversion, creation or improvement provision is made by the order;

(c) for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across any such footpath, bridleway or restricted byway ;

(d) for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.

(3) An order may be made under this section authorising the stopping up or diversion of a footpath, bridleway or restricted byway which is temporarily stopped up or diverted under any other enactment.

(4) In this section “competent authority” means—

(a) in the case of development authorised by a planning permission, the local planning authority who granted the permission or, in the case of a permission granted by the Secretary of State [or by the Welsh Ministers]⁵ , who would have had power to grant it;

(b) in the case of development carried out by a government department, the local planning authority who would have had power to grant planning permission on an application in respect of the development in question if such an application had fallen to be made

(c) in the case of development in respect of which an application for planning permission has been made under Part 3, the local planning authority to whom the application has been made or, in the case of an application made to the Secretary of State under section 62A or to the Welsh Ministers under section 62D, 62F, 62M or 62O, the local planning authority to whom the application would otherwise have been made.

6.2 The procedure for making such an Order is set out in Schedule 14 of the Town and Country Planning Act 1990. This includes the process for giving notice, consultation and publication; and dealing with representations and objections . The footpath diversion will not be in effect until the Order is confirmed. Confirmation would be by the Council or, where there are unresolved objections, by the Secretary of State.

Policy Framework

- 6.3 Paragraph 7.15 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".

- 6.4 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".

Assessment

- 6.5 The alteration to the path will have no discernible impact on the permeability of the site or footpath as a whole, which will have the same access points at George's Lane and land to the north of the field. The whole of the path will still run through the field and have a rural setting and it is not considered there would be a detrimental impact on the enjoyment of people using the path. Not re-routing the path would result in a path that is less visually pleasing route than what is proposed.
- 6.6 Taking into account the above it is recommended that the Director of Place is authorised to make the diversion order as it is necessary to enable development to be carried out in accordance with a planning permission and that it complies with relevant guidance within circular 01/09.
- 6.7 If Members are minded to approve the making of an order divert the footpath, the Council will be required to undertake further relevant consultation with statutory consultees and interested parties, erect a site notice at each end of the footpath and advertise the making of the order in a local newspaper, in accordance with Schedule 14 of the Town and Country Planning Act 1990. If after the statutory consultation period of 28 days has passed, and there are no outstanding objections to the making of the order, it is proposed that authority is given to the Director of Place, without additional reference back to the Planning Committee, to confirm the order. However, if any objections to the making of the order remain unresolved, the matter would then need to be referred to the Secretary of State for determination.

Recommendation: That Members: (i) authorise the Director of Place to make an order under s257(1A) of the Town and Country Planning Act 1990 (as amended) to divert Calverton Footpath No. 22 for a distance of approx. 200m as per drawing ref 2019-18-30B, to carry out the procedure under Schedule 14 of the Town and Country Planning Act 1990 for confirmation of the order and, (ii) following consultation and publication, to confirm the order if there are no outstanding objections to the order. However, if there are outstanding objections, the matter be referred to the Secretary of State for determination.