



DEVELOPMENT CONTROL AND REGULATORY BOARD

6 APRIL 2023

**APPLICATION FOR A PUBLIC PATH DIVERSION ORDER -
PROPOSED DIVERSION OF PUBLIC FOOTPATH I63a (PART) AT
RATCLIFFE ON THE WREAKE (CHARNWOOD BOROUGH)**

REPORT OF THE DIRECTOR OF ENVIRONMENT AND TRANSPORT

PART A

Purpose of the Report

1. The purpose of this report is to seek determination of an application by Mrs Michelle Skinner to divert a part of Public Footpath I63a at Ratcliffe on the Wreake, as shown on Plan No. 2585/R1 attached as Appendix A to this report.
2. Under the proposal Footpath I63a would be diverted from the route H-C-D on the plan, to the route H-J-K-G-C on the plan.

Recommendation

3. It is recommended that an Order be made under Section 119 of the Highways Act 1980 to divert Public Footpath I63a at Ratcliffe on the Wreake as shown on the Plan No. 2585/R1 appended to this report.

Reasons for Recommendation

4. The application to divert Footpath I63a satisfies the relevant statutory criteria set out under the provisions of the S119 of the Highways Act 1980. It is expedient in the interests of the owner to divert the path, the effect of the order does not alter either point of termination of the path, the alternative route is not substantially less convenient and would not have a significant negative effect on the public enjoyment of the path as a whole.

Resource Implications

5. There are no resource implications for the Council directly arising from the recommendations in this report. The proposed alternative route will be over grass and will provide a like-for-like alternative route. The applicant will provide a single new

kissing gate on the alternative route and its future maintenance will remain the responsibility of the landowner.

Circulation under the Local Issues Alert Procedure

6. This report has been sent to Mr. J. Poland CC (Syston Fosse Division).

Officer to Contact

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PART B

Background

7. In March 2021 the Council received an application from Mrs Michelle Skinner of Priory House, Ratcliffe on the Wreake, for the diversion of part of Public Footpath I63a which runs across the adjacent field and through the paddock field immediately adjacent to Priory House. A copy of the application form and plan is attached as Appendix B.
8. The application affects land belonging to a third party. A letter of agreement to the proposal accompanied the application form and is signed by P.M.M. Lewis on behalf of the Hackett family. A copy of the letter is included within Appendix B.
9. The reason given for making the application is to provide privacy and security for Priory House.
10. Following preliminary consultations in January 2022 and having received objections to the proposal within that period, the proposed diversion was modified. Plan No. 2585/Rev, attached to this report as Appendix C, illustrates these changes.
11. The original application sought to divert the footpath from point "J" on the plan in a generally northerly direction to the junction of Footpaths I63a and I66 (marked "A" on Plan No. 2585/Rev Appendix C). However, as described below, there were objections to this proposal and the applicant has agreed to foreshorten the diversion to start at point "H" thus leaving Footpath I63a on its historical line from Main Street as far as point "H". From point "C" southwards, the footpath has already been moved from its historical line by a diversion Order dated 1997 at the request of the previous owner of Priory House.

Legal Considerations

12. The Highway Authority must have regard to the legal considerations set out in S119 of the Highways Act 1980 as detailed below.

Highways Act 1990 (Section 119)

1. The primary criteria which must be met before a Highway Authority makes a public path diversion order are as follows:-
 - a) Before making an order the Authority must be satisfied that it is expedient to divert the path in the interests of the public or the owner, lessee or occupier of the land crossed by the path.
 - b) The Authority must also be satisfied that the diversion order does not alter any point of termination of the path, other than to another point on the same path, or another highway connected with it, and which is substantially as convenient to the public. Nor can the termination be altered where this is not on a highway (i.e. cul-de-sac).
 - c) Before confirming an order the Authority or the Secretary of State must be satisfied that:-

- i) The diversion is expedient in the interests of the person(s) stated in the order,
 - ii) The path will not be substantially less convenient to the public as a consequence of the diversion,
 - iii) It is expedient to confirm the order having regard to the effect it will have on public enjoyment of the path as a whole, on other land served by the existing path and on land affected by any proposed new path, taking account the provisions for compensation.
2. An authority has the discretion not to make an order if it does not consider that the statutory criteria to enable it to confirm the order can be met.

Site Inspections

13. An initial site meeting by an officer with the prospective applicant was held on 17th February 2021. A further site visit was made on 9th March 2022 to review the viability of modifying the proposed diversion to mitigate objections. Photographs from the second visit are attached as Appendix D.

The Existing Route of Footpath I63a

14. The existing route of Footpath I63a leaves Main Street by the church and crosses a field in which there are earthworks from an abandoned part of the village. The path joins the route of an historical holloway, or sunken lane, known as Martin's Lane. Photographs 1 and 2 show the earthworks and Martin's Lane.
15. From the southern end of Martin's Lane, the footpath crosses a stile and then runs across the paddock immediately adjacent to Priory House. This can be seen in photograph 3.
16. The section of footpath proposed to be diverted is approximately 140m long and crosses a grassy paddock with a close view of the Priory House. To the west the view is over pasture towards the village.

Proposed Alternative Route

17. The proposed alternative route for the footpath departs from the unaffected part of the route at the southern end of Martin's Lane at point "H" on the plan. The new route would climb the shallow embankment of Martin's Lane Holloway to skirt around the fenced curtilage of Priory House. This is shown in photograph 3.
18. The route would then cross a bund or embankment across the eastern end of another ancient village street named Colleborough Lane. This is shown in photograph 4.
19. The alternative footpath would then continue along the fence line of the pasture field to its southern end where the path would turn through a new kissing gate to cross the bottom of the paddock and thence re-join the unaffected Footpath.
20. The section of proposed new footpath is approximately 175m long and crosses a grassy pasture field with a more distant view of the Priory House. To the west the view would be very similar, over the same pasture towards the village. At an average

walking speed of around 3 miles an hour the additional 35m distance on the proposed route would take about half a minute with a gate to negotiate rather than a stile.

Formal Preliminary Consultations

21. Preliminary consultations were carried out between 17th January 2022 and 28th February 2022. Utility companies, user groups, Charnwood Borough Council and the Parish Council were consulted by letter or email.
22. The Council received no objections from the utility companies or from the Borough Council.
23. The Ratcliffe on the Wreake Parish Council discussed the matter at a meeting held on 24th January 2022 and again on 16th March 2023 and concluded that the path diversion was not required and would change the character of the village. The Parish Council comments are attached as Appendix E.
24. Objections were raised by five local residents attached as Appendix F to this report.
25. An objection was also received from the Ramblers' Association, submitted on 3rd February 2023, outside of the consultation period, and is attached as Appendix G.
26. As a result of concerns raised during the consultation period, the County Planning Archaeologist was consulted. Consequently, the proposed alternative route was modified in discussion with the applicant to that shown on Plan No. 2585/R1 attached as Appendix A to this report.

Objections/Representations and Officer Comments

Ratcliffe on the Wreake Parish Council

27. The full comments of the Parish Council are attached as Appendix E to this report and are summarised in paragraphs 28 to 30 below.
28. The Parish Council have looked in detail at this proposal in the specific context of the Ratcliffe on the Wreake Conservation Area Character Appraisal carried out and adopted by Charnwood Borough Council in 2013. A copy of this report is attached to this report as Appendix I. The Parish Council concludes that the path diversion is not required and would change the character of the village and goes against the spirit of the Conservation Report as it will prevent people from using the ancient way in the future.
29. The Parish Council are concerned at the loss of an ancient way that connects listed buildings. The old kissing gate at point C was installed by the Parish Council and should be retained and used. The proposed route means climbing a slope used by tractors and cattle making it slippery in wet weather. The embankment the proposed route would cross is narrow with steep sides, a churned up surface, no obvious drainage and could collapse. The embankment also destroys part of the ancient Cottlebrough Lane and should perhaps be removed.
30. The existing path is outside the perimeter of Prior House and is already screened from it. Altering the route would reduce the privacy of neighbouring properties, increase

the length of the footpath and people may not stick to the waymarked route but simply take a direct line across the historical house bases in the adjacent field.

31. In consultation with the Archaeologists in the County Council's Historic and Natural Environment Team, the proposal has been modified to exclude taking the proposed new footpath across the earthworks (former part A-J). The ancient Footpath along the historic village street known as Martin's Lane (A-H) will be retained and its relationship to the cottages preserved. The existing Footpath south of Martin's Lane already deviates from the ancient route, having been previously diverted in 1997. The reduced diversion proposal still serves the applicant's interest whilst preserving the historic features of the Footpath.
32. The proposed new path would climb out of Martin's Lane on a diagonal line which is easy to negotiate and not out of character for a rural footpath. The embankment does remove the need to drop down and again climb out of the old Cottlebrough Lane and does give a view of the lane not seen from the existing route. The embankment is wide enough to safely carry a public footpath and if it drops or is indeed removed the new footpath would simply follow the contours of the land.
33. The Highways Act does provide for landowners to divert a public footpath in their own interests and in this case the owner is concerned with ongoing invasions of privacy and security which the diversion would enable her to improve. The diversion route adds less than half a minute to the time taken to walk the path. When the waymark posts are installed sight lines can be checked to ensure the best locations to encourage people to keep to the old path as far as the point of diversion to avoid the earthworks and retain the same relationship with neighbouring properties.

Ms. Joy Osborne (local resident)

34. Ms Osborne is concerned at the loss of an important historical feature of the village simply on the grounds of providing a greater degree of privacy for the applicant. Ms Osborne lives in close proximity to the same footpath and it does not present a problem for her. She highlights the fact that the ancient footpaths of the village are mentioned in the 2013 village conservation report and that document seeks to protect the distinct "grain" or pattern of builds which clearly define the village's historic development. Within this context the footpath passes two listed buildings, including Priory House, and has an important historical relationship to the property.
35. The proposal has been modified to exclude taking the proposed new footpath across the earthworks (former part A-J). The ancient Footpath along the historic village street known as Martin's Lane (A-H) will be retained and its relationship to the cottages preserved. The existing Footpath south of Martin's Lane already deviates from the ancient route, having been previously diverted in 1997. The reduced diversion proposal still serves the applicant's interest whilst preserving the historic features of the Footpath.

Mr. and Mrs. Rigby (local residents)

36. Mr. and Mrs. Rigby are concerned at the loss of a path they walk frequently across an area of historic significance. Diverting the Footpath would alter the character of the village, go against the spirit of the Conservation report 2013 and prevent people from using the ancient way in the future.

37. The proposal has been modified to exclude taking the proposed new footpath across the earthworks (former part A-J). The ancient Footpath along the historic village street known as Martin's Lane (A-H) will be retained and its relationship to the cottages preserved. The existing Footpath south of Martin's Lane already deviates from the ancient route, having been previously diverted in 1997. The reduced diversion proposal still serves the applicant's interest whilst preserving the historic features of the Footpath.

Mr. and Mrs. Chaplin (local residents)

38. Mr. and Mrs. Chaplin note that the private residential areas of Priory House are already screened from the footpath by attractive hedges and trees. They live in a village property bordered by two footpaths and do not have any problems with walkers. They are concerned that any change to the Footpath would have a significant effect on the historic layout and appearance of the village as described in the Ratcliffe on the Wreake Conservation area Character Appraisal 2013. Mr. and Mrs. Chaplin are concerned that the proposed footpath passes over historical remains of house bases and that the new earthwork has interfered with the historical remains of Cottleborough Lane. They are concerned at the additional distance proposed by moving the path, the climb up from Cottleborough Lane and the dog-leg introduced into the route.
39. The Highways Act does provide for landowners to divert a public footpath in their own interests and in this case the owner is concerned with ongoing invasions of privacy and security which the diversion would enable her to improve.
40. The proposal has been modified to exclude taking the proposed new footpath across the earthworks (former part A-J). The ancient Footpath along the historic village street known as Martin's Lane (A-H) will be retained and its relationship to the cottages preserved. The existing Footpath south of Martin's Lane already deviates from the ancient route, having been previously diverted in 1997. The reduced diversion proposal still serves the applicant's interest whilst preserving the historic features of the Footpath.
41. The diversion route adds less than half a minute to the time taken to walk the path and therefore the change is not a significant inconvenience. The climb up from Cottleborough Lane is ameliorated by the embankment. At the point of the dog-leg there is an open and unenclosed aspect so the use and enjoyment of the footpath will not be significantly affected.

Ms. Karina Curtis (local resident)

42. Ms. Curtis is concerned about the safety issues raised by the proposed new footpath running across the middle of land used for grazing cattle, in particular the area of the sunken lane where the cattle may congregate. The existing footpath through the Priory House paddock is safe from cattle. Ms. Curtis is also concerned at the loss of an historical part of the village and that this diversion could set a precedent for diverting other historic paths in the village. She also states that Priory House sits in a dip, there are no direct sight lines to and from the existing footpath, additional trees could be planted to improve privacy and the proposed route still enters the paddock at its southern end.
43. Walking through cattle is a concern for pedestrians but not withstanding the diversion, the existing Footpath already runs through the pasture. The proposal has been

modified and no longer takes a direct route further into the middle of the field. From the start of the amended proposal the route would run along the edge of the field where walkers will feel most comfortable. The possibility of cattle congregating on the footpath in the area of the sunken lane has been ameliorated by the embankment.

44. The Highways Act does provide for landowners to divert a public footpath in their own interests and in this case the owner is concerned with ongoing invasions of privacy and security which the diversion would enable her to improve. Each application for a diversion must be considered on its own merits within the criteria set out in the Highways Act and therefore in this context case cannot set a precedent.
45. The applicant is concerned that people can see into her property. She has taken measures to address this matter but instances persist and the diversion would further reduce the likelihood of it happening.

Mrs. Rachel Wright (local resident)

46. Mrs. Wright is concerned that the applicant does not own one of the fields crossed by the proposed new footpath and that an embankment has been constructed to facilitate the proposed route over the "Dovecote" ditch. Mrs. Wright is concerned at the loss of an important historical feature of the village simply on the grounds of providing a greater degree of privacy for the applicant whilst making her own property more overlooked. She highlights the fact that the ancient footpaths of the village are mentioned in the 2013 village conservation report and that the document seeks to protect the distinct "grain" or pattern of builds which clearly define the village's historic development.
47. The applicant has sought and obtained the agreement of the adjacent landowner. Having modified the proposal, the neighbouring landowner is now only impacted by a minor change in route on their land from point H-C (a distance of approximately 13m) to the proposed new route H-J (a distance of approximately 25m).
48. The proposal has been modified to exclude taking the proposed new footpath across the earthworks (former part A-J). The ancient Footpath along the historic village street known as Martin's Lane (A-H) will be retained and its existing relationship to her own cottage preserved. Waymark posts marking the footpath route can be positioned to encourage walkers to stay on the correct line.

The Ramblers' Association

49. The Ramblers' Association is concerned that the alternative Footpath may be fenced in the future, that a new boundary with additional gate may be erected in the future and that the existing dog-leg will be extended.
50. The alternative route will be 4 metres wide over 150m of the new 175m length. The remaining 25m will be 3 metres wide. Therefore if the landowner does choose to fence the path in the future the ability for the public to pass and repass each other with ease will be guaranteed.
51. Before a landowner can erect a new gate it is a statutory requirement for them to apply for permission from the Highway Authority. Therefore the desirability or otherwise would be given consideration at that time.

52. The new section of path would only add approximately 35 metres extra walking and where the path is proposed to make a sharp turn (at point "G" on the Plan), there is an open and unenclosed aspect and so the use and enjoyment of the path will not be significantly affected.

Views of the Local Member

53. The Local Member, Mr. J. Poland C.C. has been consulted on the proposal. His comments reiterate the concerns outlined above regarding the historical context of the proposal and the presence of cattle in the fields. Mr Poland's response is attached as Appendix H.

Financial Implications

54. The diversion of a public right of way onto land not in the ownership of the applicant may give rise to a claim for compensation pursuant to section 121 and 28 of the Highways Act 1980. A claim may be made if it is shown that the value of an interest of a person in land is depreciated, or that person has suffered damage by being disturbed in his enjoyment of land, in consequence of the making and confirmation of a diversion order. Section 119(5) of the Act provides that before determining to make a public path diversion order the council may require the applicant to enter into an agreement to defray, or make such contribution as may be specified in the agreement, towards compensation which may become payable, expenses incurred in bring the new site of the path into fit condition for use by the public, or where the council are not the highway authority any expenses that may become recoverable by the highway authority under section 27(2) of the Act. The applicant has agreed in the application to indemnify the County Council in relation to any claim for compensation.
55. The applicant has agreed to carry out the work needed to open up the alternative route on the ground, namely a kissing gate at point "G" and two yellow-topped waymark posts at points "K" and "J" on Plan No. 2858/R1. The applicant has agreed that the new parts of the public footpath will have a specified width of 3m from H-J-K and 4m from K-G-D.

Equality Implications

56. The Footpath currently has a stile along its route, at point C on the plan. The proposed alternative route would no longer cross this stile. The proposal includes provision of a new kissing gate to give access through the boundary at point G. This will be an overall improvement in access to the footpath for less agile walkers. There are no other equality implications.

Human Rights Implications

57. The E.U. Convention Rights and the Articles that set out the rights of individuals (such as respect for family life) can impact on certain decisions where the County Council is making decisions or setting policy of public access and Rights of Way issues. However, this impact is confined to the exercise of those powers and functions the County Council has to exercise discretion about proposals that require a balance

between the benefits of the scheme and the potential adverse implications for landowners and others.

58. Proposals to divert a Right of Way or to use statutory powers to compulsorily create a new Right of Way should have reference to the Convention of Human Rights and take these issues into account when deciding if that scheme should proceed.
59. However, applications submitted to the County Council under the Highways Act 1980 for a Public Path Diversion Order have limited discretion. For that reason, arguments based on a potential breach of any of the Article rights have no relevance to such applications. The Secretary of State has indicated that objections based on such rights will not be regarded as relevant.

Conclusion

60. Under S119 of the Highways Act, the authority needs to be satisfied that the proposal is in the interests of the owner, occupier or lessee of the land, before considering making an order. The majority of the land subject to the order (93%) is in the ownership of the applicant. It is considered that the diversion would be in the Applicants' interests. It would place a greater distance between the Priory House and the public right of way thus providing greater privacy.
61. The authority could not confirm the order unless it was satisfied that the diversion is not substantially less convenient to the public. The proposal is only approximately 35 metres longer than the existing route. This is not significant and would only take around a quarter of a minute additional walking time at an average walking speed. The terrain is similar on both routes. There will no longer be a stile to climb but there will be one kissing gate to negotiate.
62. Before confirmation, the authority is also required to consider the effect the diversion would have on public enjoyment of the path as a whole. The proposal has been amended to mitigate objections to the loss of the historical route of the Footpath. A walker using the route would still be able to appreciate the context of the path within the historic village layout and it is the opinion of officers that there would be no significant diminution of the quality of landscape views.
63. There are unresolved objections concerning walking through cattle and the creation of an embankment feature. However, the existing Footpath, north of the section to be diverted, already runs through the pasture field. The proposed new route would run along the edge of the southern pasture field where walkers will feel most comfortable. Concerns relating to the embankment feature would be a matter for Charnwood Borough Council to address. Notwithstanding any future changes to the embankment, the Highway Authority remain satisfied with the suitability of the proposed route.
64. It is therefore **recommended** that an Order be made to divert part of Public Footpath I63a at Ratcliffe on the Wreake.

Appendices

A - Plan No. 2585/R1

B – Application Form

C - Plan No. 2585/Rev.

D - Photographs of the Footpath

E – Representations against the proposal

F – Representation from the Ramblers' Association

G – Response of Local County Councillor Mr Poland (Member for Syston Fosse Division)

I - Ratcliffe on the Wreake Conservation Area Character Appraisal 2013

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