



**DEVELOPMENT CONTROL AND REGULATORY BOARD**

**9 JANUARY 2025**

**APPLICATION FOR A PUBLIC PATH DIVERSION ORDER -  
PROPOSED DIVERSION OF PUBLIC FOOTPATHS E53 AND E54  
(PARTS) AT EDMONDTHORPE IN THE BOROUGH OF MELTON**

**REPORT OF THE DIRECTOR OF ENVIRONMENT AND TRANSPORT**

**PART A**

**Purpose of the Report**

1. The purpose of this report is to enable the Board to determine an application by Mr. A.J.P. Pochin to divert parts of Public Footpaths E53 and E54 at Edmondthorpe in the Parish of Wymondham, as shown on Plan No. 2647/a (the plan) attached as Appendix A to this report.
2. Under the proposal Footpath E53 would be diverted from the route C-B-A-H on the plan, to the route C-G-E-F on the plan.
3. The proposal would also necessitate moving part of Footpath E54 to maintain the integrity of the footpath network, from the route D-B on the plan, to the new route D-E on the plan.

**Recommendation**

4. It is recommended that an Order be made under Section 119 of the Highways Act 1980 to divert Public Footpaths E53 and E54 at Edmondthorpe as shown on the Plan No. 2647/a appended to this report.

**Reasons for Recommendation**

5. The application to divert Footpaths E53 and E54 satisfies the relevant statutory criteria set out under the provisions of the Section 119 of the Highways Act 1980. It is in the interests of the landowner to divert the paths. The diversion links with the same carriageway and will not have a significant negative effect on the public enjoyment of the path as a whole and links with other paths.

**Resource Implications**

6. 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 and a double sleeper bridge or culvert on the alternative route and their future maintenance will remain the responsibility of the landowner.

**Circulation under the Local Issues Alert Procedure**

7. This report has been sent to Mr. J.T. Orson CC (Melton Wolds Division).

**Officer to Contact**

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## **PART B**

### **Background**

8. In September 2023, the County Council received an application from Mr. A.J.P. Pochin, the owner of Church Farm, Stoneycroft and the neighbouring fields at Edmondthorpe, for the diversion of part of Public Footpath E53 which runs through the garden of Church Farmhouse and onto the access drive to Stoneycroft. The application also includes the diversion of part of Footpath E54 to retain the integrity of the footpath network. A copy of the application form and plan is attached as Appendix B.
9. The reason given for making the application is to improve security and privacy for the occupiers of Church Farmhouse and Stoneycroft. If diverted the Footpath would no longer run through the garden of Church Farmhouse, immediately adjacent to the property, and walkers would no longer use the Stoneycroft driveway which could then be gated and locked.
10. Part of the path to be diverted is not recorded as public highway. The recorded Footpath terminates at point "A" on the application plan. People are accustomed to using the driveway of Stoneycroft to link to Main Street where there is a Footpath Fingerpost. After discussions with the land agent for the landowner, it was agreed that the path from point A running along Stoneycroft driveway to Main Street, would be treated as part of the public footpath for the purpose of this Order. An extract based on the current Definitive Map and highlighting the "missing link" is attached as Appendix C. Plan No. 2647/a (Appendix A) incorporates this variation from the application plan. If the diversion goes ahead the "missing link" will be stopped up and any future claim for this path to be recorded as part of the highway network would be superseded. Conversely if the path is not diverted the missing section would need to be subject to a formal claim and order process if it were to be recorded as highway.

### **Legal Considerations**

11. When considering the proposal, the Authority must have regard to the legal considerations set out in Section 119 of the Highways Act 1980 as detailed below.

#### **Highways Act 1980 (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.

12. In this context “expedient” is used to mean that the proposal is considered an appropriate action to achieve the particular outcome in this circumstance. The use of the word expedient indicates that the decision maker should consider the matter broadly taking into account the various factors that may be relevant to the particular case.

### **Site Inspections**

13. An initial site meeting by officers with the land agent for the prospective applicant was held in May 2023 to ascertain the feasibility of the proposal. Further site visits were made in November 2024 in preparation of the report and photographs from these more recent visits are attached as Appendix D.

### **The Existing Route of Footpath E53**

14. The existing route of Footpath E53 approaches the village of Edmondthorpe from the south, over pastureland, then crosses a stile into the garden of Church Farmhouse. Photographs 1, 2 and 3 show the pasture, stile and route through the garden.

15. The Footpath climbs out of the garden to go through a pedestrian gate onto the driveway of Stoneycroft. Here the recorded highway terminates, but by custom and use members of the public turn along the driveway to reach its junction with Main Street. At Main Street there is an old footpath fingerpost. The slope, pedestrian gate, driveway and fingerpost can be seen in photographs 4, 5 and 6.

16. The total length of Footpath to be diverted is approximately 130m long. On reaching Main Street walkers could turn right to visit the church and then continue their journey east on one of three routes. Walkers could continue their journey north via Footpath E45 or Bridleway E47, or turn left at Main Street and continue west, past the bus stop to Cordhill Lane. These options can be seen on the Definitive Map extract provided as Appendix C.

### **Proposed Alternative Route for Footpath E53**

17. The proposed alternative route for the Footpath departs from the unaffected part of the route approximately two thirds of the way up the pasture field on the approach to

Edmondthorpe at point “C” on the plan. The new route would then bear left (northwest) rising gently across the pastureland, avoiding close proximity to residential curtilages. This is shown in photograph 7.

18. The route would then exit onto Main Street through a new kissing gate at point “F” on the plan chosen where there is a grass verge separating the footway from the carriageway and a natural break in the hedgerow suitable for installing the new gate. This is shown in photograph 8.
19. The section of proposed new footpath is approximately 175m long and exits onto Main Street at a point approximately 165m from the used path exit point. At an average walking speed of around 3 miles an hour it would take about two minutes to cover the additional 165m distance on the proposed route.
20. From the proposed exit at point “F” on the plan, walkers would be conveniently located to continue their journey north along Dairy Lane (Bridleway E46) or to the west along Cordhill Lane. Walkers going to look at the church or continue eastwards along the village Main Street would use the pavement and add two minutes to their journey. Photographs 9, 10, 11 and 12 illustrate the onward options from point “F”.

#### **The Existing Route of Footpath E54**

21. The existing route of Footpath E54 approaches the village of Edmondthorpe from Teigh Road to the west, crossing pastureland, to join Footpath E53 at point “B” on the plan where the stile takes the footpath into the garden of Church Farmhouse. Photograph 13 shows the view from point “D”.

#### **Proposed Alternative Route for Footpath E54**

22. The proposed alternative route for the Footpath departs from the unaffected part of the route approximately thirty metres from Teigh Road where it enters the pasture field at point “D” on the plan. The new route would be shortened to rejoin Footpath E53 on its new route at point “E” on the plan, a location which would be clearly marked with a yellow-topped waymark post.

#### **Formal Preliminary Consultations**

23. Preliminary consultations were carried out between 20<sup>th</sup> October 2023 and 1<sup>st</sup> December 2023. Utility companies, user groups, Melton Borough Council, and Wymondham and Edmondthorpe Parish Council were consulted by letter or email.
24. The County Council received no objections from the utility companies or from the Borough Council.
25. An observation was raised by the Cyclists Touring Club (CTC) (see paragraph 26 below). The Parish Council discussed the matter at a meeting held on 6<sup>th</sup> November 2023 but did not wish to submit a response. An objection was submitted by the Leicestershire Footpath Association (LFA) (see paragraph 28 below). All the comments have been compiled into a single document which is attached as Appendix E to this report.

## Objections/Representations and Officer Comments

### Cyclists Touring Club

26. The full comments of the CTC are attached in Appendix E to this report. In summary the Club does not have a direct interest in the use of the Footpath but remarked that a simpler diversion could perhaps achieve the aim of taking the path out of the curtilage of Church Farmhouse. The route suggested was to divert the Footpath onto the western side of the boundary wall at Stonecroft, a route parallel to A - B on the plan.
27. To establish the route suggested by the CTC would mean knocking a gap in the retaining wall close to point "B" and a significant engineering project to construct a slope or steps to accommodate the change in ground level. The wall is within the Edmondthorpe Conservation Area and thus alterations to the wall may not be received favourably. The applicant states that this route would be neither sympathetic nor practical given the agricultural activities in the adjoining field, it would not alleviate the problems regarding privacy or enable them to improve security of the storage yard at Stonecroft. The applicant's full response to the observation is attached as Appendix F.

### Leicestershire Footpath Association

28. The full comments of the LFA are attached in Appendix E to this report and are summarised below.
29. The LFA is concerned that the proposal makes it less convenient for walkers who wish to access the village or for villagers who want to access the network of Footpaths E53 and E54. The Association recognises the benefits for the applicant and that the proposal might be more convenient for some walkers going in other directions, but these do not in its view, outweigh the added inconvenience for others.
30. Officers agree that there are a number of factors to be weighed against each other in this case including policy and guidance.
31. Recent Government guidance on the diversion of public rights of way that pass through private dwellings, their curtilages and gardens was issued in August 2023 and applies in this case. It encourages the order-making authority to acknowledge the difficulties of paths through such areas and be predisposed to make an order. The guidance is just that and it remains that any order needs to satisfy the relevant legislative tests.
32. The Leicestershire County Council Rights of Way Improvement Plan (ROWIP) includes ***Policy D2: The County Council will consider proposals that move paths from working areas or curtilages. In each instance, any proposal must not reduce the likely use of a path, other than those that address specific safety issues.***
33. As described in paragraphs 17 to 20 above, the proposed new route for Footpath E53 is further from the village centre, but not excessively so, it may be less convenient for some but not all. The opportunity would be taken to replace a stile with a gate and a sharp slope would be avoided.

34. The proposal is not likely to reduce the use of Footpath E53. The route does not provide part of a short walk “loop” likely to be used by villagers. There are two short circuits to the north of Main Street which are well used dog walking routes. Footpath E53 is more likely to be used by ramblers and other walkers on longer linear or circular walks. The alteration in the exit point onto Main Street will not be significant to these users.
35. The proposal retains the connectivity with Footpath E54 which again does not fall into a short village loop or serve as a popular access to local amenities.
36. In the light of the objection from the LFA, the applicant has also provided some additional commentary to substantiate their reasons for the application. This is attached in full as Appendix F.

### **Views of the Local Member**

37. The Local Member, Mr. J.T. Orson C.C. has been consulted on the proposal. His view is that the application should be considered by the Board given the objection from the Leicestershire Footpath Association.

### **Financial Implications**

38. 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 “F”, a double sleeper bridge or culvert at point “G”, and two yellow-topped waymark posts at points “E” and “G” on Plan No. 2647/a. The applicant has agreed that the new parts of public footpath will have a specified width of 3m from C-G-E-F and from D-E. There are no other financial implications.

### **Equality Implications**

39. Footpath E53 currently has a stile along its route, at point “B” on the plan and a steep slippery slope where it climbs out of the garden of Church Farmhouse to point “A” on the plan. The proposed alternative route would no longer cross the stile or climb the steep slope. The proposal includes provision of a new kissing gate to give access through the field boundary at point “F” and there is no abrupt change in levels on the alternative route. This will be an overall improvement in access to the footpath for less agile walkers. There are no other equality implications.

### **Human Rights Implications**

40. 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.
41. Proposals by the County Council 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 on

Human Rights and take these issues into account when deciding if that scheme should proceed.

42. Where an application has been submitted to the County Council under the Highways Act 1980 for a Public Path Diversion Order it has to balance the human rights against the provisions of the legislation. 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**

43. Under Section 119 of the Highways Act, the Council 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 land subject to the order is in the ownership of the applicant and it is considered that the diversion would be in their interests. It would remove the footpath from the garden Church Farmhouse and the driveway of Stoneycroft thus providing greater privacy and opportunities to secure both properties. It would also resolve the current route not being recorded highway.
44. The Authority must be satisfied that the diversion is not substantially less convenient to the public. The proposal exits onto Main Street approximately 160 metres from the existing exit point, this would only take around two minutes additional walking time at an average walking speed to reach the original exit point, if that was the direction of travel. The terrain slopes more gently on the proposed route. There will no longer be a stile to climb but there will be a new kissing gate which will be easier to negotiate than a stile. Although the alternative route is in some ways less convenient, in others it is a little more so and therefore on balance, the diversion is not considered to be 'substantially' less convenient.
45. The new exit point will link into the wider path network allowing for users to remain on paths when reaching the rest of the village and the direct link to Wymondham.
46. Before confirmation, the County is also required to consider the effect the diversion would have on public enjoyment of the path as a whole. It is considered that a walker using either Footpath E53 or E54 would still be able to appreciate the context of the village as they approached Edmondthorpe and it is the opinion of officers that there would be no significant diminution of the quality of landscape views.
47. It is therefore recommended that an Order be made to divert parts of Public Footpaths E53 and E54 at Edmondthorpe.

### **Appendices**

- Appendix A - Plan No. 2647/a
- Appendix B - Application Form, Plan and supporting document
- Appendix C - Extract from the Definitive Map of Public Rights of Way
- Appendix D - Photographs of the Footpaths
- Appendix E - Representations received during preliminary consultations
- Appendix F - Applicant's additional comments