

Samantha Ireson

From: Nikki Beers [REDACTED]
Sent: 27 March 2025 13:51
To: Samantha Ireson
Cc: Norman Paske; [REDACTED]; noelmanby [REDACTED]
Subject: DMMO Proposed Addition of Public Footpath K110 at Leconfield Road Nanpantan Loughborough
Attachments: 1905-ADC-HGN-XX-DR-CH-0101-S01-P03-Proposed footpaths.pdf
Importance: High
Follow Up Flag: Follow up
Flag Status: Flagged

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Dear Ms Ireson

My name is Nikki Beers and I am a consultant for Bowbridge Homes, and in that role, represent the Helen Jean Cope Charity as owners of the field at Leconfield Road, Nanpantan, which is the subject of a DMMO application for a new footpath, which is due to go before the Committee on Thursday the 3rd April 2025.

I have been provided with a copy of your report to the Committee dated 15th May 2024, which I understand is the most up to date report. If a later version exists I would be grateful if you could provide me with a copy. As you will know, the land the subject of the DMMO was granted outline planning permission on appeal for up to 30 dwellings under application ref P/20/2199/2, which contributes to the authority's 5-year housing supply. The proposed layout would not accommodate the claimed DMMO footpath route without the loss of a significant number of dwellings. An appeal against the DMMO and/or an application to divert the route would be required to enable the most efficient layout and use of the land for housing.

In light of the points made below, which cast significant doubt on the validity of the application when assessed objectively, we would like to suggest, without prejudice, a compromise route for the voluntary grant of a new footpath by the landowners, which will still achieve a suitable route for walkers from Leconfield Road, whilst enabling the current planning permission to be progressed without the need for further delays caused by a subsequent appeal and/or application to divert the route of the footpath.

The plan attached overlays the DMMO application route with the proposed site layout, with two choices of alternative routes shown in yellow and pink. The yellow route has the advantage of most closely following the claimed route A-E-D however it would follow the estate road for the majority of the route. The pink route has the advantage of a more attractive route through the open space for much of its length, and where it follows the rear boundaries of plots, can be provided at a width of 4m to make it more attractive. We understand from our engineer that both routes could meet the DDA requirements with regard to gradient. As an aside the claimed path A-B-C-D would not be able to meet the DDA requirements with regard to gradient.

Leaving aside the proposal above, and turning to the committee report, I am somewhat concerned that the report does not provide a full and objective summary of the evidence to the committee members. In particular:

1. The report states, categorically, at a number of points, including at paragraphs 4, 20 and 32, that the route being claimed can clearly be seen on aerial photographs from 2000-2022. Conversely, when summarising the Evidence of Rebuttal, at paragraph 31, sceptical language is used, such as 'They are also of the view', making it clear that you do not share this view. However, it is clearly and unequivocally the case, when examining the aerial photographs, that the southern section of the path, from Leconfield Road to the farmhouse (A-B-C-D), does not appear as a route until 2011. This should be stated in the committee report.

2. In addition, no reference is made to the requirement at Section 31 of the Highways Act 1980 that a highway must follow a known and defined line, nor to the case law provided by Ruth Stockley at paragraph 10 of her Opinion, in which Fordham J stated that it is *“an error of law to allow fluctuation in the course of passage across land”* and *“What is needed is greater precision”* (R. (on the application of Pereira) v Environment and Traffic Adjudicators [2020] EWHC 811 (Admin)). Neither of the claimed routes meet this test.
3. The report also appears to place greater weight on the unsworn user evidence than the three Statements of Truth, with no explanation or reasoning as to why this is the case. If we examine the reliability of the evidence objectively, and apply the appropriate weight to each then the opposite would be the correct conclusion to draw. The user DMMO and associated user evidence was submitted following an application for planning permission on the land for which there was much local opposition, and an action group formed, which was looking for methods to frustrate the proposed development. In contrast the three Statements of Truth were provided by previous tenants and a Chartered Surveyor of significant local standing and reputation. None of these parties have any personal interest in the outcome and nor would they be likely to risk their reputations by providing a Statement of Truth which they did not believe to be the truth. I would therefore respectfully suggest that on any reasonable application of this assessment, greater weight must be attributed to the three Statements of Truth than to the anecdotal user evidence.
4. The point made at paragraph 3 above is particularly relevant to the questions of (a) whether access was taken ‘by force’, and (b) whether or not those taking access were challenged over the years:
 - (a) With regard to the question of force, it is clear from the Statements of Truth, photographs and evidence of the new gate installation in 2008, that no access existed from Leconfield Road into the field until 2008. Therefore from 2000-2008, access could only be gained ‘by force’ by pushing through a substantial hedge or climbing over post and rail fencing. From 2008 onwards the new gate was secured by barbed wire, so again access could only be taken by removing the barbed wire or climbing over the gate or fence, constituting ‘by force’.
 - (b) With regard to challenge, the legal test does not require every user to be challenged every time they took access, but that as and when the legitimate occupiers of the land, acting on behalf of the owners, witnessed a trespass, they challenged it. From the three Statements of Truth, it is clear that these challenges were made. It is not surprising that the anecdotal user evidence does not volunteer this information, as it would not be in the interests of their case to do so and indeed, the fact that all but one deny having seen the signs erected in June 2020, even though there is no disputing that these were erected from the photographic evidence, calls into question the reliability and therefore the weight to be accorded to the user evidence. It is unclear why the evidence of independent parties provided in the three Statements of Truth have not been accorded significant weight in the committee report.
5. In summary:
 - (i) As shown by the aerial photos, the route does not follow a route which can be ‘identified with some certainty’, rather it shows ‘fluctuation in the course of passage across land’ and indeed the section A-B-C-D does not appear until 2011;
 - (ii) The path has not been used ‘as of right’ and ‘without interruption’ for the 20 year period. Users have been challenged and this has been clearly evidenced by Statements of Truth from three independent parties;
 - (iii) Access must also have been ‘by force’ for at least the period 2000-2008, when no access point at all existed at Leconfield Road.

In light of the above we would respectfully request that the committee meeting be postponed so that further consideration can be given to the matters we raise and the without prejudice footpath solution we propose can be explored further.

I would be very pleased to discuss this further on the telephone if you are able to give me a call.

Kind regards

Nikki



Nicola Beers BA (Hons) MSc MRICS
DIRECTOR

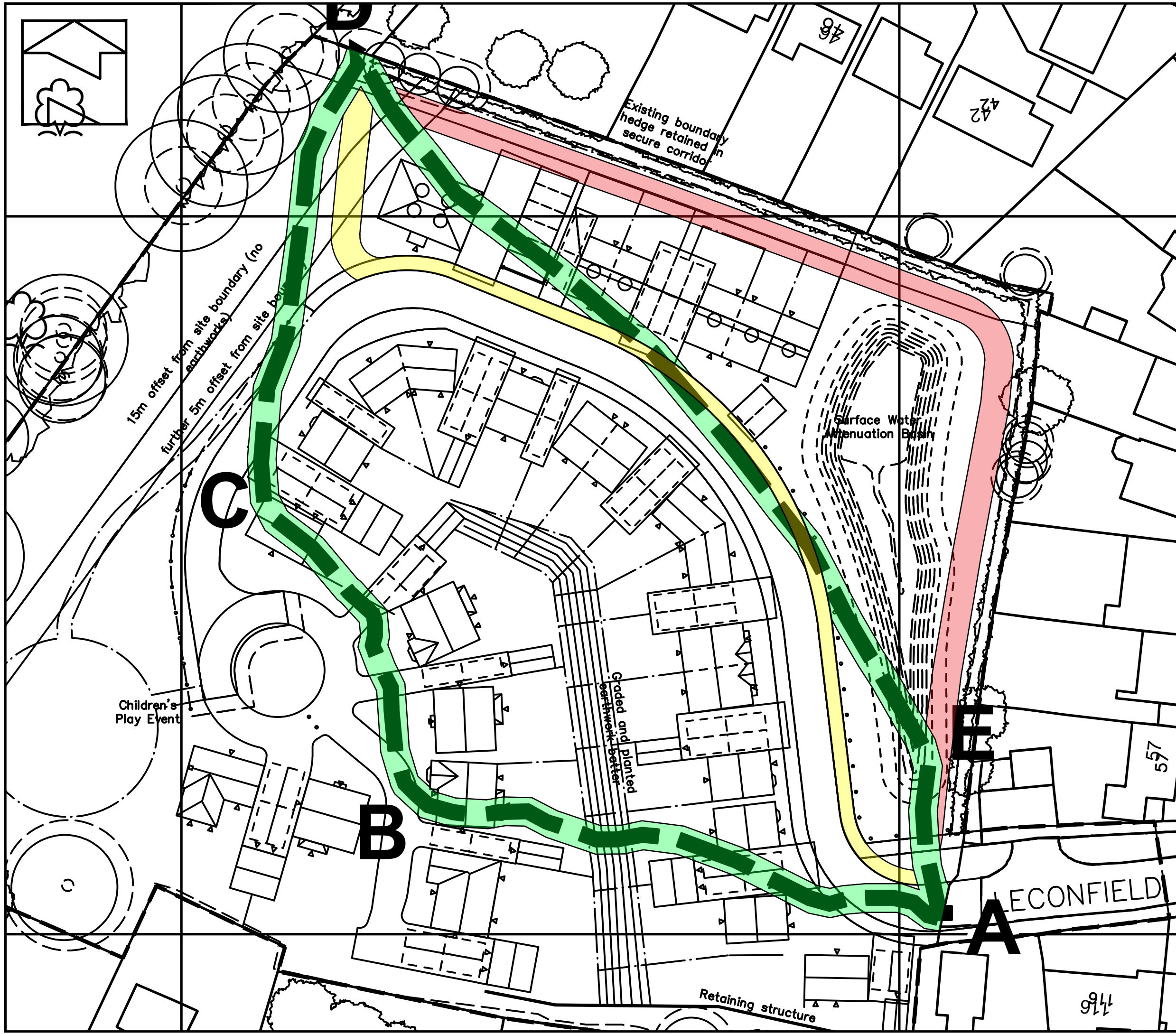


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- General Notes
1. Do not scale this drawing. All dimensions must be checked/verified on site.
 2. This drawing is to be read in conjunction with all relevant architects, engineers and specialists drawings and specifications.
 3. All dimensions are in metres unless noted otherwise. All levels are in metres unless noted otherwise.
 4. Any discrepancies noted on site are to be reported to the engineer immediately.

- 4M WIDE CORRIDOR OVERLAID ON PLAN (GREEN SHADING), FOLLOWING ROUTE OF EXISTING INFORMAL TRAILS
- ROUTE OPTION A - 4M WIDE CORRIDOR, OFFSET 3M FROM SITE BOUNDARY OVERLAID ON PLAN (RED SHADING)
- ROUTE OPTION B - 4M WIDE CORRIDOR CROSSING OPEN SPACE, WITH THE ROUTE THEN FOLLOWING THE 2M WIDE FOOTWAY ALONG THE ACCESS ROAD (YELLOW SHADING)

P03	24.03.25	Access road path (yellow) added	DH	DC
P02	18.03.25	Perimeter path (red) added	DH	DC
P01	14.03.25	First issue to client	DH	DC
Rev	Date	Description	Dr	Ch

Client:
Bowbridge Homes

Project:
Leconfield Road, Nanpantan

Title:
Proposed Public Footpath Alignment



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Size: **A3** Scale: **1:500**

Status: **PRELIMINARY**

Project	Originator	Volume	Level	Type	Role	Number	Status	Revision
1905	-ADC	HGN-XX-DR-CH-0101	S0	P03				