



DEVELOPMENT CONTROL AND REGULATORY BOARD

18 JUNE 2026

APPLICATION FOR A PUBLIC PATH DIVERSION ORDER - PROPOSED DIVERSION OF PUBLIC FOOTPATH P12 (PART) AT BUTT LANE, BLACKFORDBY WITHIN THE PARISH OF ASHBY DE LA ZOUCH

REPORT OF THE DIRECTOR OF GROWTH, ENVIRONMENT AND TRANSPORT

PART A

Purpose of the Report

1. The purpose of this report is to seek determination of an application made by Mr and Mrs Jarvis to divert part of Public Footpath P12 at Butt Lane, Blackfordby in the Parish of Ashby De La Zouch, as shown on Plan No. 2575(P) attached as Appendix A to this report.
2. Under the proposal, Public Footpath P12 would be diverted from the route A-B and C-D-E to the route F-G-B and C-H-I-E shown 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 P12 (Part) at Butt Lane, Blackfordby as shown on Plan No. 2575(P) appended to this report.

Reasons for Recommendation

4. The application to divert Public Footpath P12 satisfies the relevant statutory criteria set out under Section 119 of the Highways Act 1980. It is expedient in the interests of the landowners to divert the path. The effect of the Order does not alter the termination point at point E on the plan. In relation to the route connecting to Butt Lane, at Point F, the report concludes that this is as convenient and would not have a significant negative effect on public enjoyment of the path as a whole.

Circulation under the Local Issues Alert Procedure

5. This report has been sent to Mr. D. Harrison CC (Ashby De La Zouch).

Officer to Contact

Edwin McWilliam, Access Manager
Growth, Environment and Transport Department
Tel: 0116 305 7086
Email: footpaths@leics.gov.uk

PART B

Background

6. In July 2020, the Council received an application from Mr and Mrs Jarvis of 200 Butt Lane, Blackfordby to divert the part of Public Footpath P12 which currently runs through their garden, to run along an alternative route, also on land stated to be in their ownership, which the public are currently using as an alternative to the legal line.
7. The reason given for making the application is to resolve the anomaly whereby the line of the used path is not in accordance with the Definitive Map. The property has been in place for many decades.
8. Following submission of the application in 2020 protracted discussions with an adjoining landowner regarding landownership boundaries have taken place. A new housing estate has been developed north of the property and the diversion application has been extended to include the section of footpath constructed. A copy of the application form, plan and associated correspondence is attached as Appendix B.

Site Inspections

9. The most recent site inspection to the proposed diversion of Public Footpath P12 was undertaken on 11 February 2025. Photographs from the site inspection are attached as Appendix C.

Legal Considerations

10. The Highway 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)

11. 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.

12. 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.

Objections/Representations with Officer's Comments

- 13. Preliminary consultations were carried out between 4 July 2025 and 15 August 2025. Utility companies, user groups, adjoining landowners, North West Leicestershire District Council and Ashby Town Council were consulted by letter or email.
- 14. One objection was received from Platt White Partnership appointed by Mr Ball of 116 Butt Lane, Blackfordby dated 28 August 2025 and one objection was received from Mr Ball directly dated 29 August 2025. The main points raised in the representations/objections received during preliminary consultation are outlined in paragraphs 15 to 30 below.

R.B. Sunderland of Platt White Partnership on behalf of Mr Ball of 116 Butt Lane, Blackfordby – 28 August 2025

- 15. The full comments of R.B Sutherland are attached as Appendix D to this report and are summarised with officers' comments in paragraphs 16 to 20 below.
- 16. **Legal Line of Public Footpath P12** – Mr Sunderland is of the opinion that Public Footpath P12 is shown incorrectly on the Definitive Map for the part of the footpath that goes through Mr Ball's property, stating that the angle of the path has altered by approximately 2.5 degrees compared to the 1957 Definitive Map. Also, that the base mapping used on Preliminary Consultation Plan Number 2575(P) is unreliable and inaccurate.
- 17. The Definitive Map provides conclusive evidence in a court of law of the location of a Public Right of Way. Any person can challenge the information shown on the Definitive Map by making an application to the County Council for a Definitive Map Modification Order. This has been explained to Mr Ball previously. The base mapping used for the Preliminary Consultation Plan 2575(P) was provided by the Ordnance Survey. Any challenge to the accuracy of the legal line shown on the Definitive Map would need to be pursued by way of a Definitive Map Modification Order and is not a matter to be determined as part of this diversion application, it has however been thoroughly checked on several occasions by the Senior Access and Development Officer who is responsible for keeping the Definitive Map up to date, and the legal line of Public Footpath was found to be accurate.
- 18. **Application Form Declaration** – Mr Sunderland refers to the declaration below which is included on the signed diversion application form. Mr Sunderland states that the declaration made by the applicant is false.

I/we declare that the Right(s) of Way to be diverted/extinguished is/are in no way obstructed and that it is/they are fully available to the public and I/we undertake that it/they shall in no way be obstructed before the Order is confirmed.

19. This declaration should have been crossed out by the applicant before signing the application form, however this was not done. The applicants, the Highway Authority and the objector are aware of the current obstruction. The Preliminary Consultation email which was distributed to all consultees also stated that the reason for the diversion was to resolve a long-standing obstruction, making them aware of the current situation.
20. There is no legal requirement for a Public Right of Way to be free from obstruction in order for a diversion application to be processed or for an Order to be made. Any proposed diversion must satisfy the statutory criteria set out in the legislation referred to in paragraph 11 above, and this assessment must be carried out on the basis that the existing definitive legal line of the public footpath is open and available for use.

Mr Ball of 116 Butt Lane, Blackfordby – 29 August 2025

21. The full comments of Mr Ball are attached as Appendix E to this report and are summarised with officer comments in paragraphs 22 to 30 below.
22. **Link to Surfaced Path through Housing Development** - Mr Ball states that it appears that because the new path has been constructed on the development then it should adjoin the diverted path. When new estates are designed it is sometimes beneficial to move existing footpaths to provide integrated development with good access. Weight in favour of these types of changes is added to a planning application in those circumstances provided they follow the prescribed route. The process has not been adhered to in this case.
23. The application to divert Public Footpath P12 pre-dates the planning of the development. When the Planning Application for the development was submitted the Highway Authority advised the developer of the proposed diversion route, formalising the route being walked by the public. The developer surfaced a path which links into the walked path on the ground as it was anticipated that the diversion would have been finalised before the development was constructed. The proposed route to be surfaced was included in planning documentation submitted to the planning authority and available for consultation.
24. Should the diversion application be unsuccessful any surfacing, signage and furniture associated with the route currently being walked will be removed and the legal line made available for the public to use.
25. **Existing Waymarkers and Stile on unofficial footpath** – Mr Ball states that waymarkers and a stile have been directing walkers onto the unofficial route which is misleading.
26. The anomaly between the legal line of Public Footpath P12 was first brought to the attention of the authority in 2018. Before this date, a stile and a waymark post had been erected on the unofficial footpath. No representations were received during or after its installation. The stile has since been removed as it was no longer required, the waymark post has remained in situ to guide the public around the garden obstruction.

Should the diversion application be unsuccessful the waymark post will be removed and relocated onto the legal line of the Public Footpath.

27. **Steps taken to reinstate legal line** – Mr Ball states that no steps have been taken to have the footpath restored on its definitive line.
28. When the Authority was made aware of the anomaly between the legal line and walked line of Public Footpath P12 in the vicinity of 200 Butt Lane, the landowners were contacted to make them aware of the situation. In these instances, the Authority takes a pragmatic and fair-minded approach to request that the landowner makes an application to divert the public right of way if a suitable alternative is available. The landowner expressed an interest in applying for a diversion of the Public Footpath onto the route being walked and submitted an application in 2020. The applicant is aware that should the diversion application be unsuccessful, the legal line of the Public Footpath will need to be reinstated.
29. **Landownership** - Mr Ball states that he owns a section of land over which the proposed diverted route will run.
30. Landownership parcels within the vicinity of the diversion are challenging to define due to the number of changes which have occurred and the quality of the Land Registry documents. Both Mr Ball and the applicants have been advised to discuss the land boundary dispute as a private matter between themselves, the diversion application was previously put on hold whilst discussions were undertaken. No agreement was forthcoming and in June 2025 the applicant requested that the Authority proceeds with the diversion application. The applicant is aware of the indemnification clause on the application form set out below. The purpose of the clause within the application form is for circumstances such as this.

That you/your client will indemnify the County Council against any claim which may be made for compensation, as provided by Section 28 of the Highways Act 1980. Claims may be made if it can be shown that the value of a person's interest in land has depreciated, or that a person has been disturbed in his enjoyment of land, as a consequence of the coming into operation of a Public Path Diversion Order. However, it is unlikely that a claim would be forthcoming if the written agreement of all the owner(s) and occupier(s) of the land has been sought. Note:- this indemnification only applies to diversion Orders made under section 119 of the Highways Act 1980.

Views of the Local Member

31. The Local Member, Mr. D. Harrison CC, has been consulted on the proposal. Following a meeting with the Access Manager, Mr Harrison requested that the application be considered by the Development Control and Regulatory Board.

Financial Implications

32. 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 28 of the Highways Act 1980, as applied by s121(2) of that Act. 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 to bring the new path into a fit condition for use by the public, or where the council are not the highway authority any expenses that may become recoverable by the authority under section 27(2) of the Act.

33. The applicant has agreed as part of the application to indemnify the County Council in relation to any claim for compensation.
34. Part of the proposed alternative route for the public footpath is already being walked by the public and has been for a number of years and part has been constructed as part of the housing development, therefore no substantial works are required to bring the proposed alternative route up to a suitable standard and there are no financial implications for the Authority.

Equality and Human Rights Implications

35. 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.
36. 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 of Human Rights and take these issues into account when deciding if that scheme should proceed.
37. However, applications submitted to the County Council under Section 119 of the Highways Act 1980 must be determined by reference to the statutory tests set out in that section. Human rights considerations may be relevant to the exercise of the Authority's functions but objections based solely on a potential interference with Article rights are unlikely, without more, to determine whether the statutory criteria for making the Order are met.

Conclusion

38. The Authority must have regard to the legal considerations set out in Section 119 of the Highways Act 1980.
39. The Authority must be satisfied that it is expedient to divert the footpath in the interest of the owner, lessee or occupier of land crossed by the path or way or of the public.
40. Part of the Public Footpath to be diverted by this application currently runs through the garden of number 200 Butt Lane and has done for many years. The diversion regularises the situation on the ground where the public have walked around the garden of the property. The remaining part of the footpath to be diverted regularises the legal line of the Public Footpath with the surfaced route constructed through the housing development.

41. A public path diversion order should not alter a point of termination of the path or way – a) if that point is not on a highway; or b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
42. As shown on Plan No. 2575(P), the proposed diversion route will terminate on Butt Lane rather than Hepworth Road. This is the point where the Public Footpath meets the Public Highway and where, before the housing development was constructed, there was access to the footpath from Butt Lane via a stile. Butt Lane is a Public Highway which is connected to Hepworth Road and is substantially as convenient to the public for the purposes of Section 119. The termination of the diversion route at the rear of 200 Butt Lane remains the same. The proposed alternative route for the Public Footpath is not considered to be substantially less convenient as it is approximately 16 metres shorter in length and utilises a route which is currently being walked as an alternative to the legal line.
43. Finally, the Authority should not confirm the Order unless it is satisfied that it is expedient to Confirm the Order having regard to the effect which (a) the diversion would have on public enjoyment of the path or way as a whole; (b) the coming into operation the order would have as respects other land served by the existing public right of way; and (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.
44. Addressing the points in turn, the report explains at paragraph 40 why the diversion is considered expedient in the interests of the landowners, and at paragraph 42 why the proposed alternative route is not considered substantially less convenient to the public.
45. It is not considered that there will be any negative effects on the enjoyment of the path as a whole. As previously stated, the public are already using the proposed diversion route as an alternative to the legal line adjacent to number 200 Butt Lane and the newly constructed path through the development.
46. The ownership of a strip of land, located at approximately Point E on Plan No. 2575(P), is being contested by an adjacent landowner whose land extends behind the neighbouring property “Brecon”. The owners of number 200 Butt Lane, who are the applicants, are confident that the land in question is within their ownership and they have signed the diversion application form which includes the indemnification clause indemnifying the County Council against any possible compensation claim.
47. The criteria for making an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath P12 at Butt Lane, Blackfordby have been met but there are unresolved representations / objections arising from the preliminary consultations. The objections, however, are not considered to raise matters which would prevent the Authority from being satisfied that the statutory criteria for making the Order are met.

Recommendation

48. It is recommended that an Order be made under Section 119 of the Highways Act 1980 to divert part of Public Footpath P12 at Butt Lane, Blackfordby in the Parish of Ashby De La Zouch, as shown on Plan No. 2575(P) attached.

Appendices

Appendix A – Plan Number 2575(P) Proposed Diversion of Public Footpath P12 (Part) at Butt Lane, Blackfordby.

Appendix B – Application Form, Application Plan and associated correspondence

Appendix C – Photographs of Proposed Alternative Footpath 11 February 2025

Appendix D – Objection from R.B. Sunderland of Platt White Partnership 28 August 2025

Appendix E – Objection from Mr Ball of 116 Butt Lane, Blackfordby 29 August 2025

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