

PLANNING COMMITTEE

DATE	04/01/2023
REPORT OF	Sharon Wroot, Executive Director for Environment, Economy and Resources
SUBJECT	Diversion of Public Footpath 72, Waltham
STATUS	Open

CONTRIBUTION TO OUR AIM

The maintenance and review of the Definitive Map and Statement is identified as a key action in the Council's Rights of Way Improvement Plan (ROWIP) 2021.

The proposal will contribute to the Council's Stronger Economy objective by recording a path on the Definitive Map and will not be deleted in the future.

The ROWIP is identified as a key policy document within the Council's Local Transport Plan, which seeks to provide an opportunity for healthy lifestyle choices and supports the Council's strategic aims to Improve Health & Wellbeing within the Borough.

EXECUTIVE SUMMARY

This report recommends the making of an Order to divert part of Waltham Public Footpath 72 and to create two extra Public Footpaths as part of a residential development shown in Appendix 1.

The purpose of the diversion is to enable development to be undertaken in line with planning application DM/1222/21/FUL. The planning application plan is shown in Appendix 2.

The Council has a power to make a diversion Order under Town and Country Planning Act 1990 section 257 to aid development of the site.

The developer is also creating two new Public Footpaths which provide new links from the new estate footways to Public Footpath 72. These require creation Orders and are also covered under this report.

RECOMMENDATIONS

That an Order is made for the diversion of part of Public Footpath 72, which is to be diverted under the Town and Country Planning Act 1990 section 257, and the creation of two Public Footpaths under Highways Act Section 25.

- a. To approve the making of Orders and creation agreement in accordance with Town and Country Planning Act 1990 and Highways Act 1980.
- b. To confirm the diversion Orders as made, subject to there being no objections, or in the event of objections which cannot be resolved and withdrawn, for the Order/s to be referred to the Planning Inspectorate for determination.

REASONS FOR DECISION

Public Footpath 72 crosses the plot of land which is subject to a planning application DM/1222/21/FUL. It is considered that it is `necessary to do so to enable development to be carried out` and as such as a planning application has been made it meets the criteria under Section 257 of the Town and Country Planning Act 1990 diversions should only be made if it is considered that it is `necessary to do so to.

The creation of a Footpath under the Highways Act 1980 will be beneficial to the Public Rights of Way by increasing the number of users onto Public Footpath 72 and the onward links.

There are two objectives relevant from the ROWIP these are: objective R1A/b which relates to Public Path Orders and Definitive Map Modification Orders and to ratify and make improvements to the network for users. The other objective is NMA1B/b which is to improve community safety through ensuring that access to and from Public Rights of Way is safe and practicable.

It is the opinion of officers that it is appropriate to divert the Public Footpath and to create two new Public Footpaths.

1. BACKGROUND AND ISSUES

- 1.1 Public Footpath 72 runs in a north west / south east alignment across a parcel of land which is currently being developed shown in Appendix 1. The developer's plan is shown in Appendix 2. There is a temporary closure on this Public Footpath with a diversion provided by the developer, this is shown in Appendix 3 and the temporary diversion is shown as the red line.
- 1.2 Consideration was given to keeping the Public Footpath on the current line however with the proposed estate road layout, the path would have crossed two junctions creating an increased safety risk for users of the Public Footpath.
- 1.3 Diverting the Public Footpath on to the woodland is identified as a safer option which also keeps the path in a semi-rural setting rather than on estate roads. The path will end at a new adopted highway and then continue its original line. The Public Footpath will not run over the new adopted highway as there will already be pedestrian rights over it.
- 1.4 A 28-day pre-order making consultation letter was sent on 13th July 2022 to user groups, Ward Councillors and Waltham Parish Council. The responses received are as follows:
 - The Ramblers Northern Area Footpath Officer responded: *"on behalf of the Ramblers they will not object providing the new route is established before the work commences on the existing Footpath"*.
 - Waltham Parish Council said *"The Parish Council response to the pre-order consultation is that they would hope that the new woodland path is constructed and in use as soon as possible and that the trees are planted as*

soon as possible to become established”.

1.5 The response from the developer regarding the construction of the Public Footpath:

- *“We would form the footpath in this location E to F at the same time. But yes, this section could be brought forward early in order to gain support”.*

“We will still be working on the roads in the area A to C to D and the plots 34 to 52 so for public safety would like keep the temporary diversion dotted orange until the Road and houses are completed”.

“The extra bits of connectivity B to F and B to J would be subject to programme (Phase Two)”.

1.6 The Council can enter into creation agreements with those that have the power to dedicate the land, such as the landowner/ developer.

1.7 At the current time Public Footpath 72 is closed and the developer is providing a diversion as shown in Appendix 3. The developer is intending to keep this diversion while the dwellings are built and to create the link.

2. RISKS AND OPPORTUNITIES

2.1 There is a risk that there could be objections from members of the public or stakeholder groups to the proposed diversion of the path.

2.2 Failure to divert the Public Footpath could prevent the development commencing as it is illegal to obstruct a Public Right of Way. If objections are received the matter will be referred to planning inspectorate for a decision. This may delay the decision and subsequently the development.

3. OTHER OPTIONS CONSIDERED

3.1 The Council could choose to do nothing and not implement the diversion application. In this case the applicant could refer the case to the Planning Inspectorate, as the only test in Town and Country Planning Act 1990 is that the diversion is necessary to aid development of the site. It was considered the better option to have the path stay on its original line, however with the two crossing points at junctions it was considered a potential safety risk to users.

4. REPUTATION AND COMMUNICATIONS CONSIDERATIONS

4.1 The approval of the diversion and creation orders will have positive reputational implications for the council as the application seeks to divert a Public Footpath that is recorded on the Definitive Map and will ensure the continued availability of the path for future use.

4.2 A consultation has been undertaken with user groups, utility companies, Ward Councilors and Waltham Parish Council, no objections were received.

5. FINANCIAL CONSIDERATIONS

- 5.1 If there are objections to the Orders the case will be referred to the Planning Inspectorate, a public inquiry or written representations may be required to determine the final decision on the diversion of the path.

6. CHILDREN AND YOUNG PEOPLE IMPLICATIONS

- 6.1 There are no children and young people implications.

7. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

- 7.1 There are no climate change or environmental implications.

8. FINANCIAL IMPLICATIONS

- 8.1 The making of the diversion and creation Order would not result in additional costs to the Council as it will be met by the Regeneration Partnership.
- 8.2 Costs would be incurred by the developer if objections are received that require works to be completed to open the path, costs will be incurred by the developer if the decision results in a public hearing or enquiry.
- 8.3 There will be no call on Council reserves.
- 8.4 The proposal does not affect any other policies as it is to divert a footpath and then record the path on the Definitive Map.
- 8.5 The proposal adds the path to the Definitive Map and legally creates the path for future use.

9. LEGAL IMPLICATIONS

- 9.1 The relevant tests are laid out in the main body of the report.

10. HUMAN RESOURCES IMPLICATIONS

- 10.1 There are no Human Resource implications.

11. WARD IMPLICATIONS

- 11.1 This path lies within the Waltham Ward.

12. BACKGROUND PAPERS

- 12.1 Public Path Order 46, FP72, Waltham.
- 12.2 Planning documents with regards to DM/1222/21/FUL
<http://planninganddevelopment.nelincs.gov.uk/online-applications/caseDetails.do?caseType=Application&keyVal=R45PZHLJ03D00>

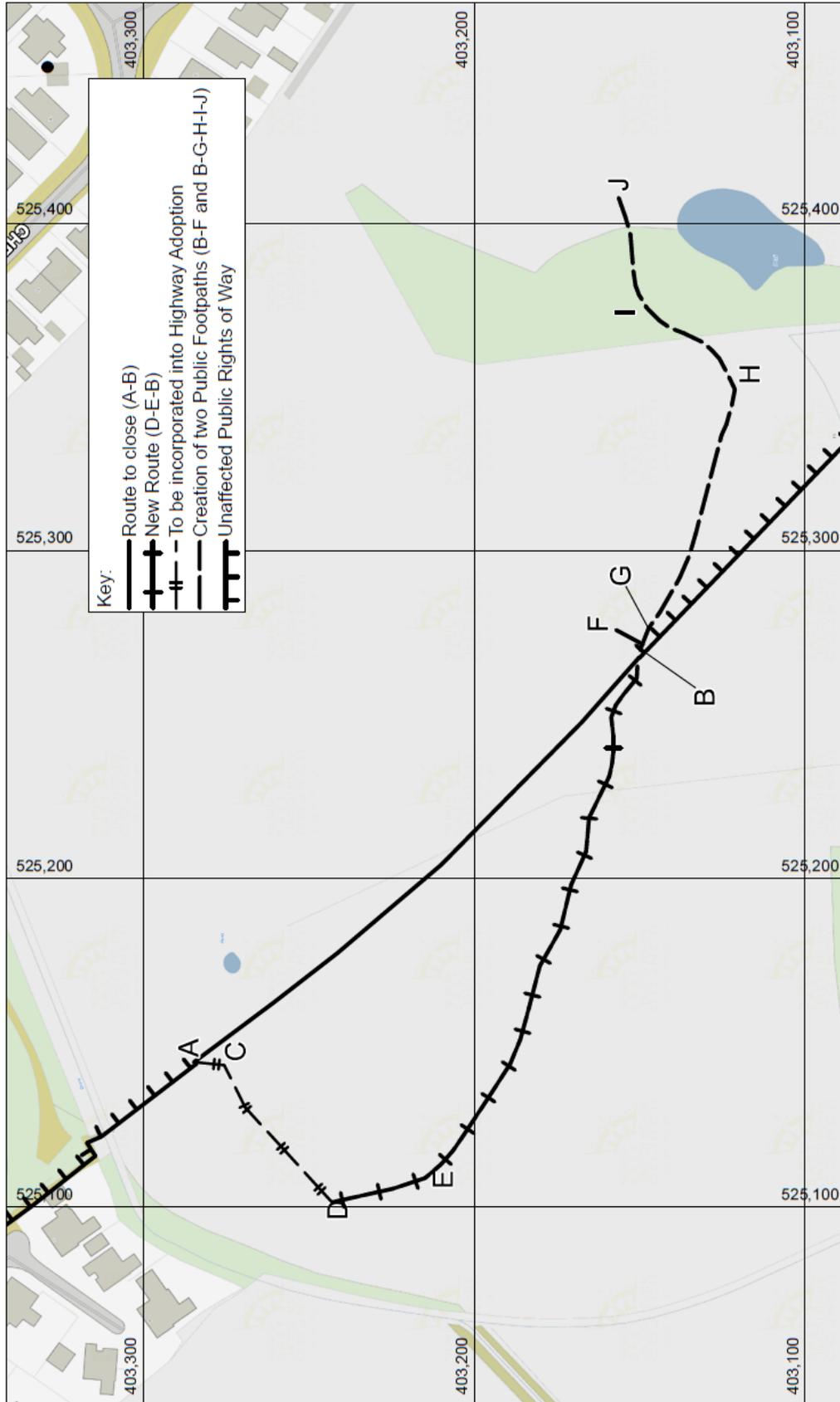
13. CONTACT OFFICER(S)

- Sharon Wroot Executive Director for Environment Economy & Resources NELC, Tel: 01472 324423
- Mark Nearney, Assistant Director of Housing, Highways, Transportation, Planning and Assets, NELC, Tel: 01472 323105
- Matthew Chaplin, Public Rights of Way Mapping Officer, Equans, Tel: 01472 324789

Sharon Wroot
Executive Director for Resources and Governance

Appendix 1.
Plan of diversion of Public Footpath 72 and creation of Public Footpaths.

Diversion of Part of Public Footpath 72, and the creation of two Public Footpaths, Waltham



Details:

0 25 metres
 Scale 1:1,500

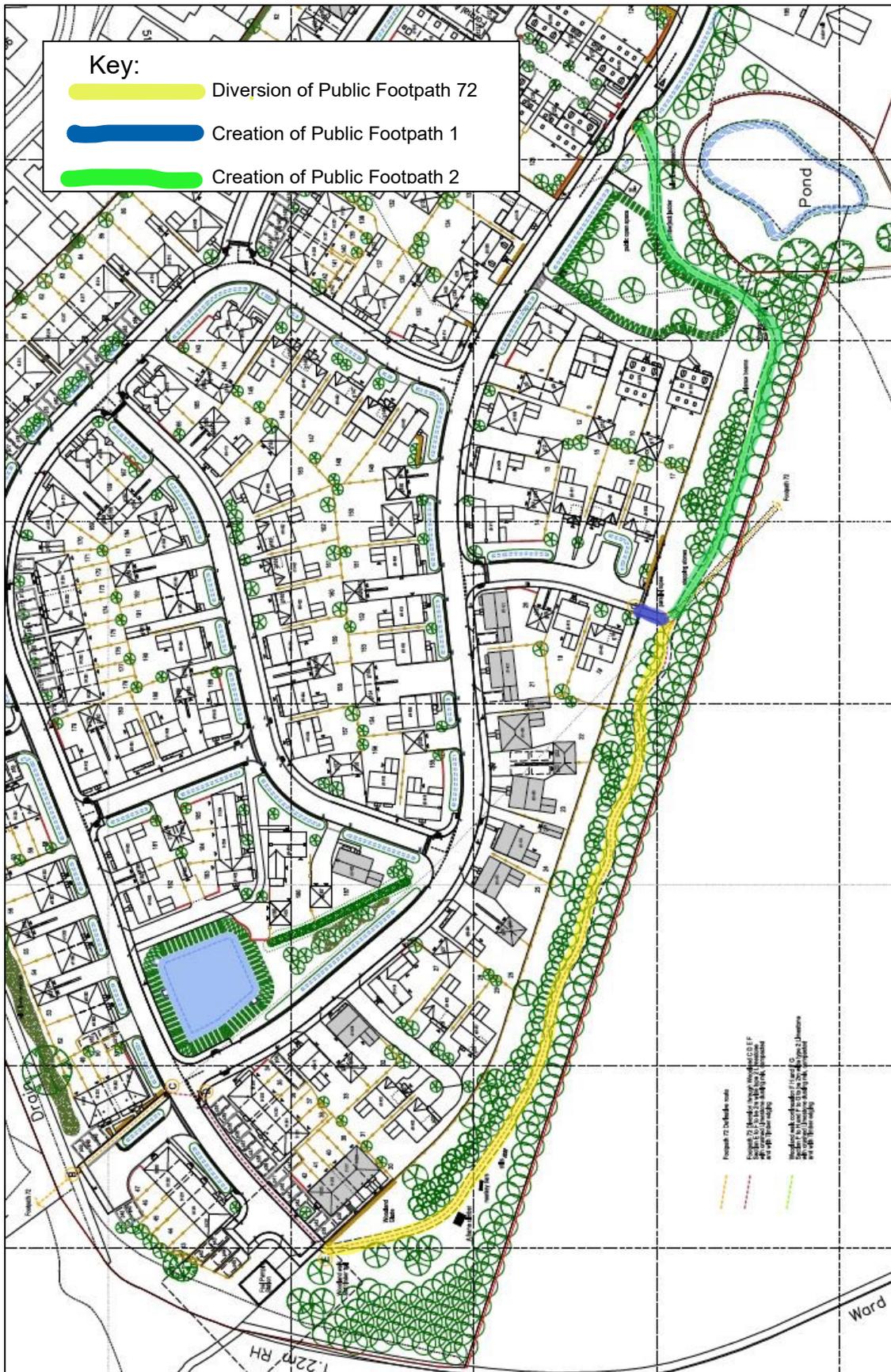
12/08/2022

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Appendix 2. Developers plan of the Public Footpath



Appendix 3.
Temporary diversion location plan

