

## RIGHTS OF WAY COMMITTEE

11 July 2017

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### PUBLIC RIGHTS OF WAY

#### PARISH OF FELTON (PUBLIC FOOTPATH No 5) DIVERSION ORDER 2017

Report of the Executive Director of Local Services  
Cabinet Member: Councillor Glen Sanderson, Environment and Local Services

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#### **Purpose of report**

In this report, the Committee is asked for its views on the action now thought appropriate in determining the above mentioned Order.

#### **Recommendations**

**It is recommended that the Committee agree that, unless the objection to this Order is subsequently withdrawn, or an alternative diversion order attracts no objections, this Order, together with the objection, be submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination, accompanied by a recommendation that the Order be confirmed, as made.**

#### **1.0 Background**

- 1.1 The Order seeks to divert a short length of existing Public Footpath No 5, by closing the path from a point marked A, on the C111 road, 80 metres north of number 1 Benlaw Grove, Felton, in a general northerly direction for a distance of 85 metres to a point marked B, 10 metres south of the access road to Moldshaugh, 160 metres north of number 1 Benlaw Grove, and by creating a 1.5 metre wide footpath, from a point marked A, on the C111 road, 80 metres north of number 1 Benlaw Grove, Felton, in a northerly direction for a distance of 70 metres to a point marked C, then in a north-easterly direction for a distance of 30 metres, to a point marked B, 10 metres south of the access road to Moldshaugh, 160 metres north of number 1 Benlaw Grove.
- 1.2 The diversion order was made following an application by Bellway Homes who secured planning permission in September 2016 (16/00138/FUL) to build 80 homes on land north of Felton. Three of the proposed houses / gardens, at the north-west corner of the site, would affect the public footpath.

## **2.0 The Order**

- 2.1 The proposal was the subject of a public path diversion order, made under section 257 of the Town & Country Planning Act 1990, on 11<sup>th</sup> January 2017, and advertised on 26<sup>th</sup> January 2017. Public advertisements were displayed in the local press and on site, and all known owners and occupiers of the land affected were notified, with 42 days given for formal objections / representations.

## **3.0 Objections**

- 3.1 One objection to Parish of Felton (Public Footpath No 5) Diversion Order 2017 was received.
- 3.2 By email, on 3 March 2017, Mr G Krzyzosiak of Felton objected to the Order, stating:

"I hereby object to the Public path diversion order applied to Felton Parish path 5 dated 11 January 2017.

The following are a list of my objections :-

1. Planning consent was granted on the proviso that land would be gifted to Felton PC from Bellways for the purposes of a doctors surgery. The proposed route of the diversion moves the path further into the area of gifted land. In fact it cuts it in half. This route would prevent future development as it would require a further order to divert the path again to allow development of the doctors surgery.
2. Once the Bellway development is complete, there will be no suitable second alternative route for the footpath, without significantly impinging on the proposed gifted land for the proposed doctors surgery
3. For the second time Bellways are trying to move an impediment to their own development, into public land (the gifted land) which will require additional public expense to move in the future once a doctors surgery is built at public expense. The first occurrence was leaving an existing section of cross site sewer in place within the gifted land, which again would need to be moved at public expense to enable a doctors surgery to be built.
4. The above demonstrates that the proposed diversion does not satisfy the overall plan for this site, i.e. a housing development which includes a doctors surgery, as described in the planning officers report and accepted by the planning committee.
5. The gifted land will now effectively cut into four separate quarters by both the public footpath and the section of existing main sewer. Clearly it will not be possible to build a doctors surgery with these two

impediments in place without substantial additional public expense to remove and re-route the impediments.

6. It will be logistically difficult if not impossible to re-route either impediment, once the Bellway houses are occupied by private residents.
7. It is reasonable to expect that the new private residents will object to any major works required to divert the two impediments.
8. The path diversion cannot be considered in isolation, but needs to be viewed in the light of the other factors mentioned above.
9. The above points demonstrate the county council accompanying simplistic statement and analysis is incorrect
10. I would urge the council to look at this again and if they continue to support it, I believe it should be referred to the responsible secretary of state for a final decision.

Extract of county council statement"

The County Council is satisfied that the proposed alternative route of the footpath is substantially as convenient for the public, will not lead to a significant loss of amenity, and that enjoyment of the route as a whole, and the local network of paths, by the general public, will not be reduced.

#### **4. Discussion**

- 4.1 The procedures under the 1990 Act empower this Authority to confirm proposals only where these are unopposed and no modification is needed. Where there is an unresolved objection, or where a modification, however minor is needed, the proposal may be submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination.
- 4.2 Mr Krzyzosiak is mistaken. The proposal for a doctors surgery is not part of the current planning consent. There is no guarantee that any surgery will be built in the future. If it is to be built, this will require a separate planning permission and the merits of any further diversion of the footpath could (and properly should) be considered at that time. The existing public footpath needs to be diverted, now, to enable the Bellway housing development (that does have planning permission) to take place.
- 4.3 The existing path diversion proposal seeks to make a minimal change to the alignment of the path - just enough to allow the planned housing development to take place. One other alternative would be simply to divert the footpath onto estate roads. This would avoid the proposed site of the doctors surgery (and the possible expense of secondary diversion order) but would be less desirable, should the surgery proposals come to nothing.

- 4.4 Mr Krzyzosiak argues that the path diversion cannot be considered in isolation. Whilst his desire to think strategically, and minimise unnecessary expenditure could be considered commendable, officers consider that it would be wrong, both as a general principle and, also, in the individual case of Felton Footpath No 5, to promote a less attractive diversion on the basis of a potential future development, which may never actually take place. The correct approach was to make the diversion order on the basis of known definite development proposals. Mr Krzyzosiak's objection will, itself, result in additional costs for both Bellway Homes and Northumberland County Council.
- 4.5 As Mr Krzyzosiak has indicated he does not wish to withdraw his objection, Bellway Homes has requested that the order and objection be submitted to the Secretary of State for determination at the earliest opportunity. Bellway Homes has also requested that a second diversion order to be made, based on the estate road option. The estate road option may address Mr Krzyzosiak's concerns (and would, most likely, be the recommended alternative route in the event of a doctors surgery actually going ahead) but it is possible, of course, that other people may object on the basis that they consider the diversion to be excessive based upon what is actually necessary to allow the housing development to take place.
- 4.6 If the matter is submitted to the Secretary of State for determination and results in a public hearing or public local inquiry, it is proposed to make an application for costs against Mr Krzyzosiak.

## **5. Council's Position Regarding Submitting the Order to the Secretary of State**

- 5.1 It is necessary for a short length of Felton Footpath No 5 to be diverted in order for the Bellway Homes housing development (which has planning permission) to proceed. The County Council believes that the proposed alternative route, as set out in Northumberland County Council Parish of Felton (Public Footpath No 5) Diversion Order 2017, is the most suitable alternative route. On that basis, the Council considers that the Order should, therefore, be confirmed, as made.

## **6. Background Papers**

Local Services Group File: A/15/5z

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(01670) 624133  
Alex.Bell@Northumberland.gov.uk

## **Public Path Diversion Order**

### **Town and Country Planning Act 1990, Section 257**

#### **Northumberland County Council**

#### **Parish of Felton (Public Footpath No 5) Diversion Order 2017**

This Order is made by Northumberland County Council ("the Authority"), under section 257 of the Town & Country Planning Act 1990 ("the 1990 Act"), because it is satisfied that it is necessary to divert the footpath to which this order relates in order to enable development to be carried out in accordance with planning permission granted under Part III of the 1990 Act, namely: 16/00138/FUL.

#### **By this Order:**

1. The footpath over the land shown by a bold continuous line on the map contained in this Order and described in Part 1 of the Schedule to this Order ('the Schedule') shall be stopped up as provided below.
2. There shall be created to the reasonable satisfaction of the Northumberland County Council an alternative highway for use as a replacement for the said footpath as provided in Part 2 of the Schedule and shown by a bold dotted and dashed line on the map contained in this order.
3. The diversion of the footpath shall have effect on the date on which the Northumberland County Council certify that the terms of Article 2 (above) have been complied with.
4. Where immediately before the date on which the footpath is diverted there is apparatus under, in, on, over, along or across it belonging to statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.

**Schedule**

**Part 1**

**Description of site of existing path or way**

**Public Footpath No 5 (Parish of Felton)**

From a point marked A, on the C111 road, 80 metres north of number 1 Benlaw Grove, Felton, in a general northerly direction for a distance of 85 metres to a point marked B, 10 metres south of the access road to Moldshaugh, 160 metres north of number 1 Benlaw Grove.

**Part 2**

**Description of site of new path or way**

**Public Footpath No 5 (Parish of Felton)**

As a 1.5 metre wide footpath, from a point marked A, on the C111 road, 80 metres north of number 1 Benlaw Grove, Felton, in a northerly direction for a distance of 70 metres to a point marked C, then in a north-easterly direction for a distance of 30 metres, to a point marked B, 10 metres south of the access road to Moldshaugh, 160 metres north of number 1 Benlaw Grove.

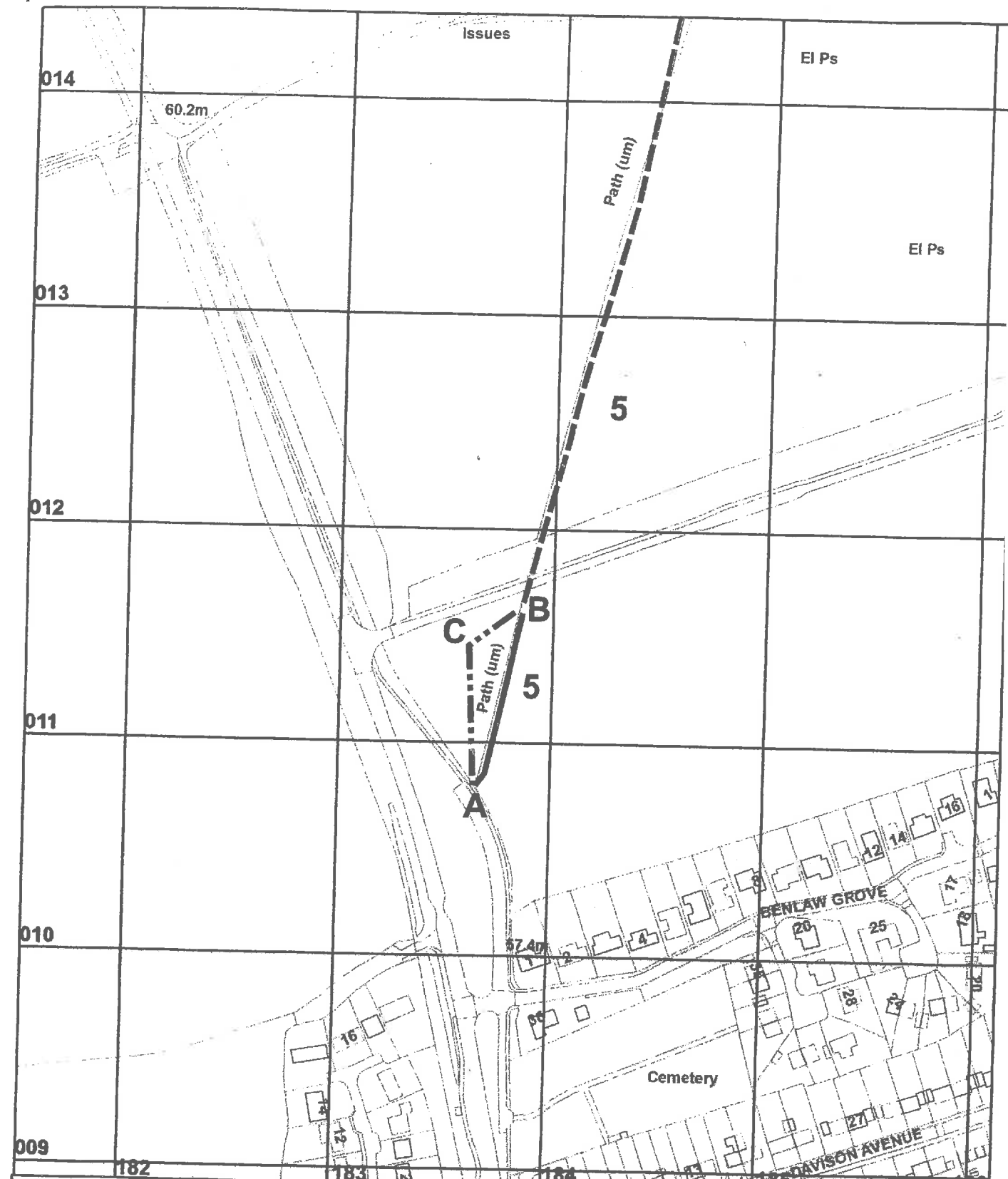
In witness whereof the Common Seal of the County Council was hereunto affixed  
this 11<sup>th</sup> day of January  
2017

The Common Seal of the County  
Council of Northumberland was  
hereunto affixed in the  
presence of:-



Duly Authorised Officer





# NORTHUMBERLAND

Northumberland County Council  
 Infrastructure  
 Local Services Group  
 County Hall Morpeth Northumberland  
 Telephone 0845 600 6400 NE61 2EF

## Public Rights of Way

-  Existing Public Footpath
-  Public Footpath to be closed
-  Public Footpath to be created

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Former District(s)  
**Alnwick**  
 Def. Map No.  
**96**

Parish(es)  
**Felton**  
 O.S. Map  
**NU 10 SE**

Scale  
**1:2500**  
 Date  
**December 2016**

From: Gary <gary.krzyzosiak@btinternet.com>

Date: 3 March 2017 at 07:12

Subject: objection to path 5 diversion Felton dated 11 Jan 2017

To: liam.henry@northumberland.gov.uk, Tony Derbyshire <tony.derbyshire@northumberland.gov.uk>

I hereby object to the Public path diversion order applied to Felton Parish path 5 dated 11 January 2017.

The following are a list of my objections :-

1. Planning consent was granted on the proviso that land would be gifted to Felton PC from Bellways for the purposes of a doctors surgery. The proposed route of the diversion moves the path further into the area of gifted land. In fact it cuts it in half. This route would prevent future development as it would require a further order to divert the path again to allow development of the doctors surgery.
2. Once the Bellway development is complete, there will be no suitable second alternative route for the footpath, without significantly impinging on the proposed gifted land for the proposed doctors surgery
3. For the second time Bellways are trying to move an impediment to their own development, into public land (the gifted land) which will require additional public expense to move in the future once a doctors surgery is built at public expense. The first occurrence was leaving an existing section of cross site sewer in place within the gifted land, which again would need to be moved at public expense to enable a doctors surgery to be built.
4. The above demonstrates that the proposed diversion does not satisfy the overall plan for this site, i.e. a housing development which includes a doctors surgery, as described in the planning officers report and accepted by the planning committee.
5. The gifted land will now effectively cut into four separate quarters by both the public footpath and the section of existing main sewer. Clearly it will not be possible to build a doctors surgery with these two impediments in place without substantial additional public expense to remove and re-route the impediments.
6. It will be logistically difficult if not impossible to re-route either impediment, once the Bellway houses are occupied by private residents.
7. It is reasonable to expect that the new private residents will object to any major works required to divert the two impediments.
8. The path diversion cannot be considered in isolation, but needs to be viewed in the light of the other factors mentioned above.
9. The above points demonstrate the county council accompanying simplistic statement and analysis is incorrect
10. I would urge the council to look at this again and if they continue to support it, I believe it should be referred to the responsible secretary of state for a final decision.

Extract of county council statement

The County Council is satisfied that the proposed alternative route of the footpath is substantially as convenient for the public, will not lead to a significant loss of amenity, and that enjoyment of the route as a whole, and the local network of paths, by the general public, will not be reduced.

Regards

Gary Krzyzosiak



**STATEMENT TO ACCOMPANY THE PUBLIC PATH DIVERSION  
ORDER FOR PUBLIC FOOTPATH No 5**

**(Parish of Felton)**

Northumberland County Council has made this diversion order at the request of Bellway Homes Limited, who wishes to divert a small part of the above public footpath to enable three houses with gardens to be built within their housing scheme at Felton. This housing development has already been granted planning permission.

The County Council is satisfied that the proposed alternative route of the footpath is substantially as convenient for the public, will not lead to a significant loss of amenity, and that enjoyment of the route as a whole, and the local network of paths, by the general public, will not be reduced.

The alternative route of the public footpath and the length of footpath being closed are shown on the map which accompanies this statement.

If there is anything relating to the making of the order that you wish to discuss in further detail, you can do so by contacting:

Tony Derbyshire, Area Countryside Officer, Northumberland County Council, County Hall, Morpeth, NE61 2EF.

Telephone: 01670 623024

E-mail: [tony.derbyshire@northumberland.gov.uk](mailto:tony.derbyshire@northumberland.gov.uk)

The order will only come into effect after it has been confirmed and the alternative path has been completed to the County Council's satisfaction. Further notices will be advertised to indicate when this has taken place. At this stage the making and advertising of the order provides an opportunity for objections and representations to be made by anyone wishing to do so.

Objections or representations should be made in writing to the Legal Services Manager, Northumberland County Council, County Hall, Morpeth, NE61 2EF no later than 9<sup>th</sup> March 2017.

**This statement does not form part of the legal order.**

Notice of Public Path Order

Town and Country Planning Act 1980, Section 257 and Paragraph 1 of Schedule 14  
Northumberland County Council

Parish of Felton (Public Footpath No 5) Diversion Order 2017

The above Order was made on 11th January 2017. The effect of the Order will be as follows:

Public Footpath No 5 (Parish of Felton)

To extinguish the footpath, from a point marked A, on the C111 road, 80 metres north of number 1 Benlaw Grove, Felton, in a general northerly direction for a distance of 85 metres to a point marked B, 10 metres south of the access road to Moldshaugh, 160 metres north of number 1 Benlaw Grove.

To create a 1.5 metre wide footpath, from a point marked A, on the C111 road, 80 metres north of number 1 Benlaw Grove, Felton, in a northerly direction for a distance of 70 metres to a point marked C, then in a north-easterly direction for a distance of 30 metres, to a point marked B, 10 metres south of the access road to Moldshaugh, 160 metres north of number 1 Benlaw Grove.

These details are shown on the Order map. A copy of the Order and map have been placed, and may be seen free of charge at the Council offices of the Legal Services Manager, County Hall, Morpeth, during normal working hours. Copies of the Order and map may be purchased.

Any representations about or objections to the Order may be sent or delivered in writing addressed to the Legal Services Manager at the address shown below not later than 9<sup>th</sup> March 2017. Please state the grounds on which they are made.

If no such representations or objections are duly made, or if any so made are withdrawn, the Northumberland County Council may confirm the Order as an unopposed Order. If the Order is sent to the Secretary of State for the Department of Environment, Food and Rural Affairs for confirmation any representations and objections which have not been withdrawn will be sent with the Order.

Enquiries should be directed to: 01670 623024

Dated this 26<sup>th</sup> day of January 2017

Liam Henry  
Legal Services Manager  
Northumberland County Council  
County Hall  
Morpeth  
NE61 2EF