

RIGHTS OF WAY COMMITTEE

14 November 2017

PUBLIC RIGHTS OF WAY

PARISH OF FELTON (PUBLIC FOOTPATH No 5) DIVERSION ORDER 2017 (No 2)

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

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It is recommended that the Committee agree that, unless the objections to this Order are subsequently withdrawn, this Order, together with the objections, be submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination, accompanied by a recommendation that either Parish of Felton (Public Footpath No 5) Diversion Order 2017 OR Parish of Felton (Public Footpath No 5) Diversion Order 2017 (No 2) is capable of being confirmed, as made.

1.0 Background

- 1.1 An earlier Order, for the same section of Footpath No 5, was made in January 2017. This Order attracted one objection (from Mr Krzyzosiak). At its meeting in July 2017 the Rights of Way Committee approved the submitting of this Order to the Secretary of State for determination. The Order and objection were subsequently submitted to the Secretary of State in September 2017.
- 1.2 The second diversion Order sought to address Mr Krzyzosiak's concern that the alternative route identified in the first diversion order could compromise proposals to build a doctors' surgery in that vicinity. It 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 Mouldshaugh, 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 north-easterly direction for a distance of 33 metres to a point marked D, then in a north-westerly direction for a distance of 57 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 Mouldshaugh, 160 metres north of number 1 Benlaw Grove.

- 1.3 As before, 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 latest proposal was the subject of a public path diversion order, made under section 257 of the Town & Country Planning Act 1990, on 31st July 2017, and advertised on 10th August 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 Two objections to Parish of Felton (Public Footpath No 5) Diversion Order 2017 (No 2) 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 made on 31 July 2017 and published 10 August 2017.

“The following are a list of my reasons for objecting :-

- “1. I challenge the legality of this order on the following grounds
- a. An order has already been made, published, objection received, submitted to PROW committee.
 - b. The legal process is for that order to be submitted to the secretary of state for consideration, as per the requirements of the legislation. There is nothing in the legislation allowing it to be linked and conditional on a second alternative order.
 - c. There is only one footpath, you can therefore only have one proposed diversion, it's not a game of multiple choice.
 - d. Introducing a so called second order, is confusing to the public

Has the first order been withdrawn

What's the maximum number of orders that can exist simultaneously, 2/3/4..... 100

Does my original objection automatically apply to the second order.

Felton PC have already confirmed their confusion in their monthly minutes

In short it is a nonsense.

“2. NCC highways department have already rejected the route proposed in the second order during the initial planning stages

- a. It does not meet national guidelines
- b. It uses estate footpaths
- c. It crosses estate roads, extract of highways report below

As part of the development an existing Public Right of Way will require diverting. The Public Rights of Way team have commented in so as to the legal process required to divert this Public Right of Way but it is our opinion that the diversion would not represent a betterment for Public Rights of way users as they are required to use footway connections within the site and walk around the turning head provided for Plots 1 to 7. It is considered that a more

“3. Minutes of Felton PC show Bellways have had an interest in this site since 2010.

- a. They have had six years to plan a site layout which did not involve diverting the footpath as recommended by national guidance
- b. The footpath is on the very edge of the site, so was very easy to avoid.

“4. I have proposed a third route option in my objection to the first order using the route of the existing temporary diversion order.

- a. This takes the footpath out of the site altogether.
- b. Does not use site footpaths
- c. Does not cross any roads
- d. Historically was used in wet weather due to mud in the field
- e. Also removes it from Proposed new doctors surgery gifted land
- f. Has been in place and used for nearly a year to everyone's satisfaction.
- g. Obviously acceptable to NCC as they proposed its use in the first place.
- h. It provides a more pleasing route
- i. As it does not interfere or impinge on the developers site at all, they cannot have any legitimate objection to it.

3.3 By letter, dated 12 September 2017, Felton Parish Council objected to the Order, stating:

"I write on behalf of Felton Parish Council in relation to Parish of Felton (Public Footpath No 5) Diversion Order 2017 (No 2) which was made on 31 July 2017.

"Felton Parish Council wishes:

- 1) to object to the diverted route as per the Order ("the Order route"); and
- 2) to suggest that the current temporary route (as approximated on the attached plan) ("the Current Route") is made permanent.

"Objection to the Order Route

The footpath crosses the Bellway housing development at the north-east corner of the site. This area of the site has been set aside for the construction of a new doctors' surgery and money was allocated for this purpose under the s106 agreement signed by Bellway.

"The Order Route runs along the boundary between the proposed surgery area and the housing development. There is a very real concern that this route will impact upon the development and construction of the surgery in due course. Once built, there will be increased traffic to and from that area of the site from patients and a number of parked vehicles can be expected at any time, with an increased inherent risk to pedestrians using the footpath.

"The Current Route

By contract, the Current Route runs along the edge of the development site, behind the proposed surgery. Once the development and surgery are completed, the Current route will allow use of the right of way without walking through the built-up area. The Current Route has been in place for wapproximately one year and is well used by residents. There have been no reported issues with the Current Route. The Parish Council strongly feel that this is a better route for the permanent footpath."

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 There is no requirement for a path diversion order which attracts objections to be submitted to the Secretary of State. It is recognized that it may, potentially, be confusing to have more than one public path order affecting the same route (and, hence, this is usually something which the County Council seeks to avoid) but officers are unaware of any regulations that prohibit this. Mr Krzyzosiak's original objection would not apply to the second order - it's a different order seeking to achieve a different outcome. A "betterment for public rights of way users" is not a necessary requirement for making or confirming a s.257 diversion order. The fact that Bellway have had an interest in the site for

six years and could have designed a different site layout is not a reason for this particular diversion order not to be confirmed. Mr Krzyzosiak did not propose a third route in his objection to the first Order. The alternative route he is proposing (i.e. the temporary diversion route) affects land which is not Bellway's, and the owner of that land is understood not to want the path permanently diverted onto this alignment. The diversion route does not require anyone to cross more roads than the existing route or Mr Krzyzosiak's preferred route. The temporary alternative route was chosen so that the public would be safely removed from where construction work was taking place, whereas the permanent diversion route does not need to be so extensive - it only needs to avoid the finished houses and gardens.

- 4.3 Felton Parish Council's solution would require the making of a 3rd diversion order (which might also attract its own objections) to move the footpath onto land not owned by Bellway. Moving the footpath more than is necessary to achieve the planned development is likely to mean this diversion order would have to be made (and be justifiable) under section 119 of the Highways Act 1980. Under s119 of the Highways Act 1980, Bellway's housing development is less significant in the decision making process than it is for diversion orders made under s257 of the Town & Country Planning Act 1990. The proposed doctors' surgery does not, yet, have planning permission and might never be built. In their 2016 consultation response, Felton Parish Council appeared to accept that future plans for a doctors' surgery should be considered independently of the diversion order required to facilitate the housing development.
- 4.4 In his objection to the first Footpath No 5 diversion Order, Mr Krzyzosiak indicated a (very laudable) desire to avoid unnecessary public expenditure on a wasteful second diversion order that would be required if the doctors' surgery were to be built, at the location which had been proposed. The doctors' surgery does not have planning permission, proposals for it might not, ultimately, proceed as planned and the County Council did not, therefore, consider that it would be reasonable to divert Footpath No 5 by more than was actually necessary to permit the planned housing development. The County Council made this second diversion Order (at the request of Bellway Homes, who wished to try to achieve a speedy resolution), again trying to minimise the change to Footpath No 5, but this time avoiding the footprint of the proposed doctors' surgery.
- 4.5 The first diversion order was submitted to the Secretary of State for determination on 22 September 2017. It is proposed that this second diversion order Order also be submitted to the Secretary of State for determination, with the Council inviting the Inspector appointed by the Secretary of State to confirm either the initial diversion order OR diversion order number 2.
- 4.6 Since both diversion orders are being made in the interests of Bellway Homes, (to facilitate the housing development which has planning permission), and there is no intrinsic public benefit in either diversion, it is proposed that the Council take a neutral stance in the determination of these Orders. Although the Council is content for either Order to be confirmed, it is considered

4.7 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 the objector(s).

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 (No 2), is a suitable alternative route. On that basis, the Council considers that the Order is capable of being confirmed, as made.

6. Background Papers

Report Author Alex Bell – Definitive Map Officer
(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 (No 2)

This Order is made by Northumberland County Council, 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 Mouldshaugh, 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)

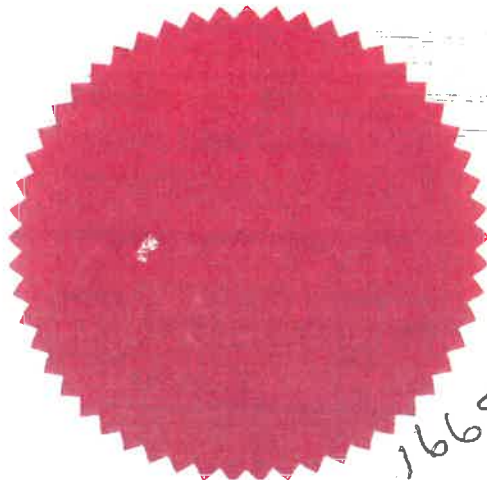
As a 1.5 metre wide footpath, from a point marked A, on the C111 road, 80 metres north of number 1 Benlaw Grove, Felton, in a north-easterly direction for a distance of 33 metres to a point marked D, then in a north-westerly direction for a distance of 57 metres, to a point marked C, then in a north-easterly direction for a distance of 30 metres, to a point marked B, 10 metres south of the access road to Mouldshaugh, 160 metres north of number 1 Benlaw Grove.

In witness whereof the Common Seal of the County Council of Northumberland was hereunto affixed this 31st day of July 2017.

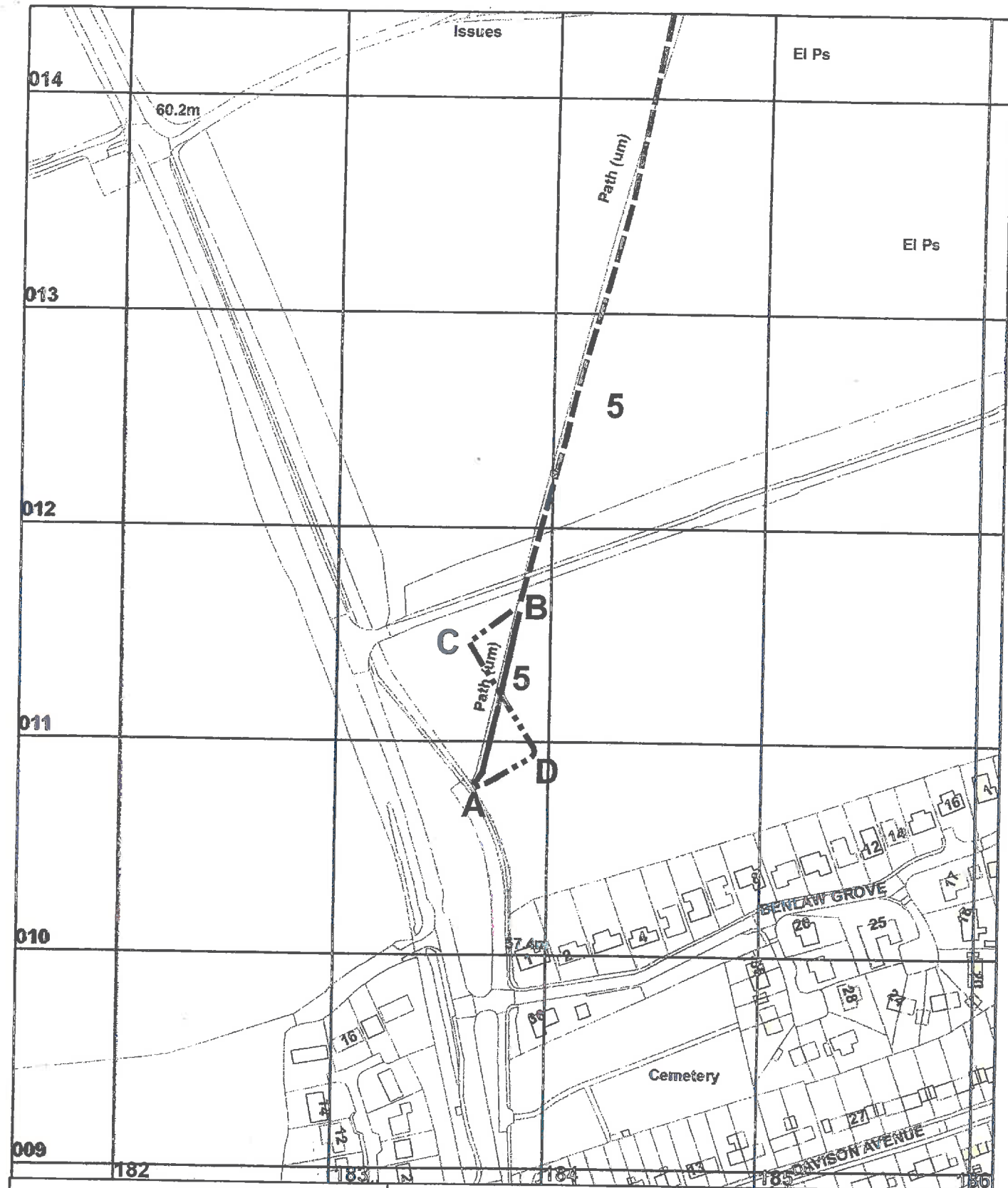
The Common Seal of Northumberland
County Council was
hereunto affixed in the
presence of:-



Duly Authorised Officer



16653



Northumberland

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

This map is reproduced from Ordnance Survey material
with the permission of Ordnance Survey on behalf of the
Controller of H.M.S.O. © Crown Copyright.
Unauthorised reproduction infringes Crown Copyright
and may lead to prosecution or civil proceedings.
Northumberland County Council O.S. Licence No.100049048 (2016)

Public Rights of Way

Existing Public Footpath

Public Footpath to be closed

Public Footpath to be created

Former District(s)
Alnwick

Parish(es)
Felton

Scale
1:2500

Def. Map No.
96

O.S. Map
NU 10 SE

Date
July 2017

FW: objection to the Public path diversion order applied to Felton Parish path 5 made on 31 July 2017 and published 10 August 2017

Barbara McCabe <Barbara.McCabe@northumberland.gov.uk>
To: Alex Bell <alex.bell@northumberland.gov.uk>

7 September 2017 at 16:04

From: Gary K [mailto:
Sent: 07 September 2017 14:20
To: liam.henry@northumberland.gov.uk; 'Tony Derbyshire'
Subject: objection to the Public path diversion order applied to Felton Parish path 5 made on 31 July 2017 and published 10 August 2017

I hereby object to the Public path diversion order applied to Felton Parish path 5 made on 31 July 2017 and published 10 August 2017.

The following are a list of my reasons for objecting :-

1. I challenge the legality of this order on the following grounds

- An order has already been made, published, objection received, submitted to PROW committee.
- The legal process is for that order to be submitted to the secretary of state for consideration, as per the requirements of the legislation. There is nothing in the legislation allowing it to be linked and conditional on a second alternative order.
- There is only one footpath, you can therefore only have one proposed diversion, it's not a game of multiple choice.
- Introducing a so called second order, is confusing to the public

Has the first order been withdrawn

What's the maximum number of orders that can exist simultaneously, 2/3/4..... 100

Does my original objection automatically apply to the second order.

Felton PC have already confirmed their confusion in their monthly minutes

In short it is a nonsense.

2. NCC highways department have already rejected the route proposed in the second order during the initial planning stages

- It does not meet national guidelines
- It uses estate footpaths
- It crosses estate roads, extract of highways report below

As part of the development an existing Public Right of Way will require diverting. The Public Rights of Way team have commented in so as to the legal process required to divert this Public Right of Way but it is our opinion that the diversion would not represent a betterment for Public Rights of Way users as they are required to use footway connections within the site and walk around the turning head provided for Plots 1 to 7. It is considered that a more

d.

3. Minutes of Felton PC show Bellways have had an interest in this site since 2010.

- They have had six years to plan a site layout which did not involve diverting the footpath as recommended by national guidance
- The footpath is on the very edge of the site, so was very easy to avoid.

4. I have proposed a third route option in my objection to the first order using the route of the existing temporary diversion order.

- This takes the footpath out of the site altogether.

- b. Does not use site footpaths
- c. Does not cross any roads
- d. Historically was used in wet weather due to mud in the field
- e. Also removes it from Proposed new doctors surgery gifted land
- f. Has been in place and used for nearly a year to everyone's satisfaction.
- g. Obviously acceptable to NCC as they proposed its use in the first place.
- h. It provides a more pleasing route
- i. As it does not interfere or impinge on the developers site at all, they cannot have any legitimate objection to it.

Regards

Gary Krzyzosiak

27 Park View

Felton

Morpeth

NE65 9DQ

FELTON PARISH COUNCIL

<https://northumberlandparishes.uk/felton>

Chairman: Mr Stephen Walton

Clerk: Mrs Clair Lewis
65 Main Street
Felton
Northumberland
NE65 9PT

feltonparishcouncil@gmail.com

LEGAL SERVICES

REC'D

Mr L Henry
Legal Service Manager
Northumberland County Council
County Hall
Morpeth
NE61 2EF

12 September 2017

Dear Mr Henry

I write on behalf of Felton Parish Council in relation to Parish of Felton (Public Footpath No 5) Diversion Order 2017 (No 2) which was made on 31 July 2017.

Felton Parish Council wishes:

- 1) to object to the diverted route as per the Order ("the Order Route"); and
- 2) to suggest that the current temporary route (as approximated on the attached plan) ("the Current Route") is made permanent.

Objection to the Order Route

The footpath crosses the Bellway housing development at the north-east corner of the site. This area of the site has been set aside for the construction of a new doctors' surgery and money was allocated for this purpose under the s106 agreement signed by Bellway.

The Order Route runs along the boundary between the proposed surgery area and the housing development. There is a very real concern that this route will impact upon the development and construction of the surgery in due course. Once built, there will be increased traffic to and from that area of the site from patients and a number of parked vehicles can be expected at any time, with an increased inherent risk to pedestrians using the footpath.

The Current Route

By contrast, the Current Route runs along the edge of the development site, behind the proposed surgery. Once the development and the surgery are completed, the Current Route will allow use of the right of way without walking through the built-up area. The Current Route has been in place for approximately one year and is well used by residents. There have been no reported issues with the Current Route. The Parish Council strongly feel that this is a better route for the permanent footpath.

Yours sincerely

Clair Lewis

Parish Clerk