

PLANNING COMMITTEE – 4 FEBRUARY 2020

Proposal:	Diversion of Southwell Footpath 69
Location:	Land between Shady Lane and Potwell Dyke, Lower Burgage, Burgage Lane, Southwell
Applicant:	Landowner, Kevin Heath

This application has been determined by Nottinghamshire County Council as Rights of Way authority. The site is within the District of Newark and Sherwood and the Order has now been ‘made’. The District Council has been consulted for comment.

The County Council have ‘made’ an order to divert part of Footpath 69 and are inviting representations and/or objections. Only through a formal objection could the District Council be a party to any process relating to the proposals. The constitution sets out that Planning Committee are responsible for this particular function; therefore this report seeks approval for the District Council to submit a formal objection.

The Site

Southwell Footpath 69 extends from Shady Lane across a bridge over the Potwell Dyke and joins Easthorpe via Potwell Close. The area which the footpath runs through is a mixture of grassland and tree belts and it slopes down from Burgage Lane to Shady Lane and the Potwell Dyke. The site is within Southwell Conservation Area.

The site which the footpath runs through is part of the Shady Lane Main Open Area and the present route of footpath 69 appears to form the boundary of a Main Open Area. A newly-erected post-and-wire fence demarcates the public footpath from the applicant’s garden land. The area is also a Local Wildlife Site (formally a Site of Importance for Nature Conservation).

Background to the Proposal

The Council received notification of a proposed footpath diversion from Nottinghamshire County Council on the 18th June 2019 which stated that the Council:

“have been approached by a landowner to consider the part diversion of Southwell footpath no.69. Currently footpath no.69 is a cross field path through the land at the rear of the property. The proposed diversion will instead move the footpath to the western edge of the land and utilise footpath no. 68 as a connecting path to the remains of footpath no. 69”.

As part of the process of responding to proposals from the County Council on Highways and Rights of Way consultations, the Planning Policy Business Unit consults local Ward Members. Councillor Peter Harris responded to the initial proposal (as set out in Plan A) on the 26th June 2019 with the following objection:

“The land has recently been sold and the buyer understood the implications of having a

footpath through the land. I too have a path running in my garden! I suspect that the next thing that will happen is that we will get an application to close off the land where the footpath goes and make it an extended garden. This is not appropriate as this land is open space, and protected as such by the Neighbourhood Plan."

Following consultation with District Council Ward Members and an Officer site visit, the District Council submitted an informal objection to the proposed diversion in July 2019.

Following the Amended Proposed Diversion, a further consultation was undertaken. Councillor Harris responded on the 15th August 2019:

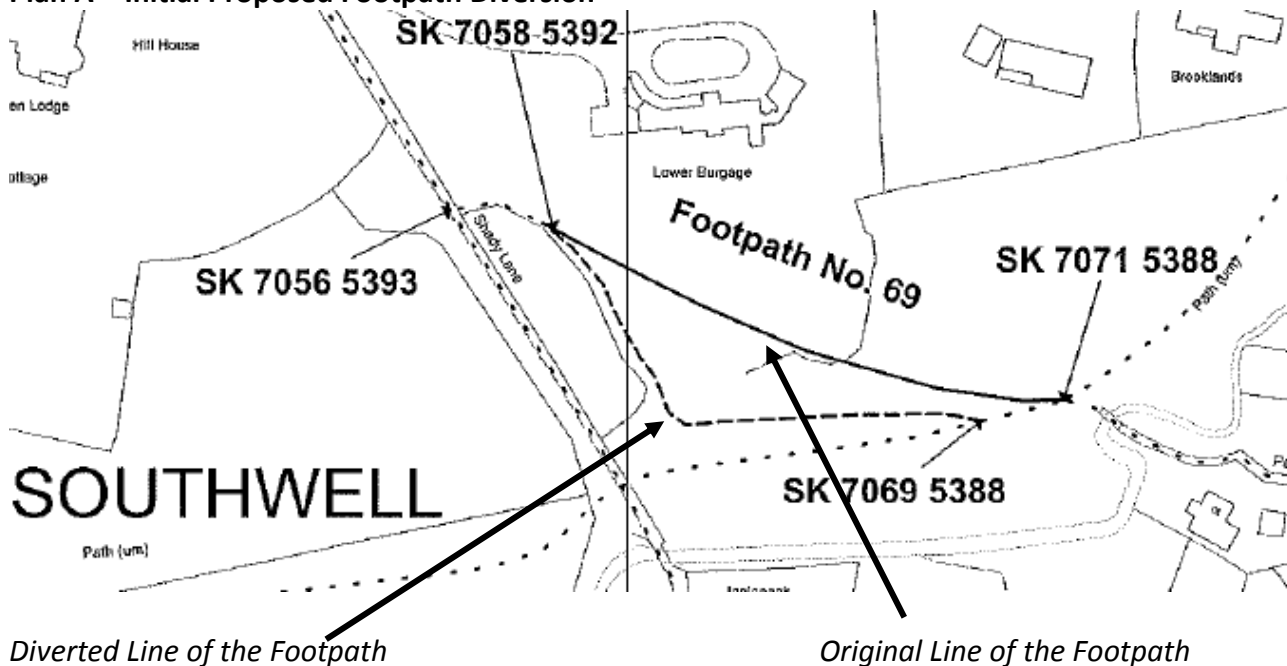
"I am afraid that I continue to object to any alterations to the footpath. The owner clearly bought the land recently knowing the footpath's location. It is well used and should not be diverted."

On 6th January 2020, Nottinghamshire County Council made an Order to divert part of Southwell Footpath No.69. The County Council are inviting representations or objections to be made in writing by 28th February 2020.

The Diversion

The Diversion is shown in Plan A below:

Plan A – Initial Proposed Footpath Diversion



Summary of Previous Comments from Business Manager – Planning Policy

I cannot comment on the future plans of the applicant. However, I have visited the site and there is a new post and wire fence enclosing the garden (erected under permitted development) which clearly demarcates the path and prevents accidental straying off the identified route (at least towards the house).

The land is designated as a Main Open Area in the Local Development Plan, duplicated in the Neighbourhood Plan. MOAs help define a settlement's form and structure and the Development Plan seeks to maintain their open nature. Whilst they are usually enjoyable from the public realm they may not necessarily be publicly accessible. They were reviewed in 2011 as part of the development of the current Local Plan, when this location was reduced to exclude garden land to the north and south. Any subsequent proposal to extend the residential curtilage would be subject to a planning application, where the implications regarding the MOA would be considered.

With a new fence preventing access onto garden land, there does not appear to be a compelling reason to divert the path. On this basis and for the reasons above I object to the proposed changes to the definitive map.

Right of Objection Process

Nottinghamshire County Council have now made an Order to divert part of Southwell Footpath No.69 and the County Council are now inviting representations or objections to be made in writing. If an objection is to be made and not withdrawn, the County Council will have to refer the Order to the Department of the Environment for determination. An Inspector from the Planning Inspectorate will then hear the objections at a Public Inquiry of Hearing, or in writing if the objector agrees. The Inspector can then confirm an Order, confirm it with modifications, or refuse to confirm it. If no objections are received or if any objections received are subsequently withdrawn, the Council will be able to confirm the Order itself, but it has no power to modify Orders.

Recommended Approach

In light of the above, the options are:

- (a) Do not submit an objection and order remains as 'made'; or
- (b) Maintain current objection subject to the above process.

It is recommended that the Council's objection to the diversion of footpath 69 is maintained because there is no compelling reason to divert the footpath as indicated on Plan A above.

RECOMMENDATION

The Committee endorses maintaining an objection to the diversion of Footpath 69.

Background Papers

Committee Report 10th September 2019

For further information, please contact Matthew Norton on Ext. 5852.

Matt Lamb
Director of Growth & Regeneration