

## PLANNING COMMITTEE – 10 SEPTEMBER 2019

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|------------------|---|
| <b>Proposal:</b> | <b>Diversion of Southwell Footpath 69</b>   |
| <b>Location:</b> | <b>Land between Shady Lane and Potwell Dyke, Lower Burgage, Burgage Lane, Southwell</b> |

**This application will be determined by Nottinghamshire County Council as Rights of Way authority. The site is within the District of Newark and Sherwood and the District Council has been consulted for comment.**

**Following consultation with District Council ward Members and an Officer site visit, the District Council submitted an informal objection to the proposed diversion. 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 foot path 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, SINC).

### Relevant Planning History

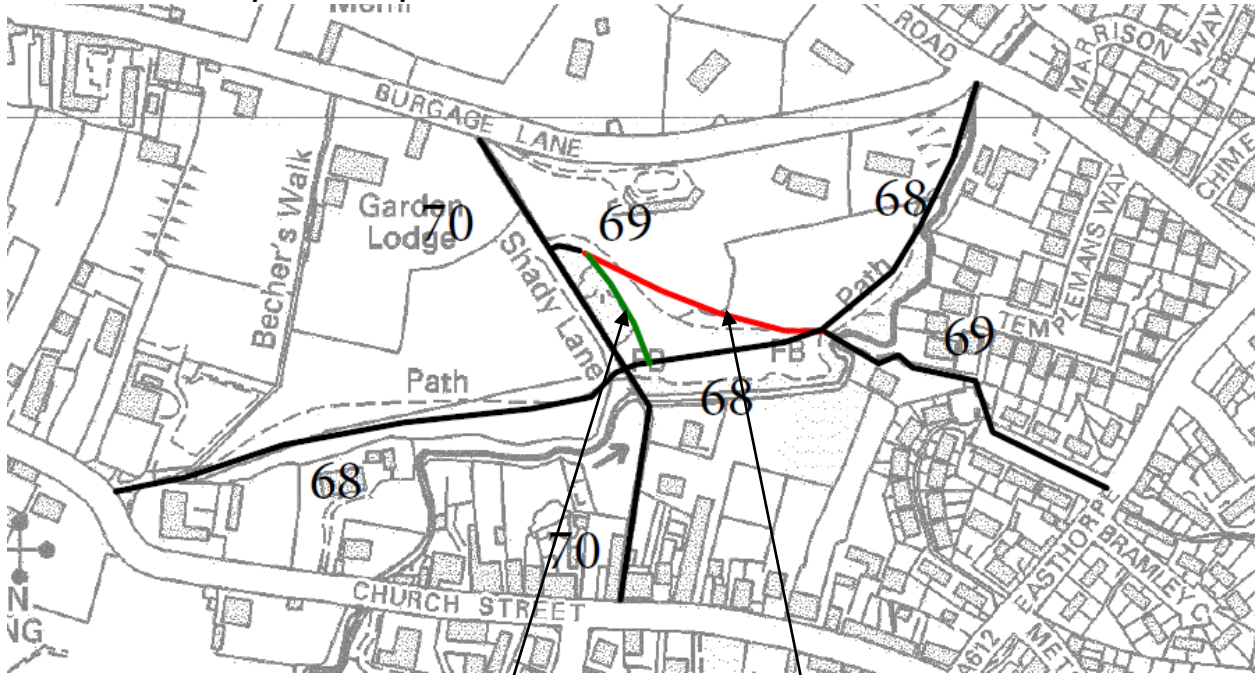
EXP/00047/18 – Requested information about erecting a post and wire fence. The exemption letter concluded that the proposal was permitted development and a fence has subsequently been erected.

19/00112/ENF – A current enforcement case is investigating the alleged use of a field in the Main Open Area / Local Wildlife Site as garden land, including the alleged erection of football goal posts.

### The Proposal

The Council received notification of a proposed footpath diversion from Nottinghamshire County Council on the 18<sup>th</sup> June 2019. It 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”* This proposal is shown in Plan A below:

**Plan A – Initial Proposed Footpath Diversion**

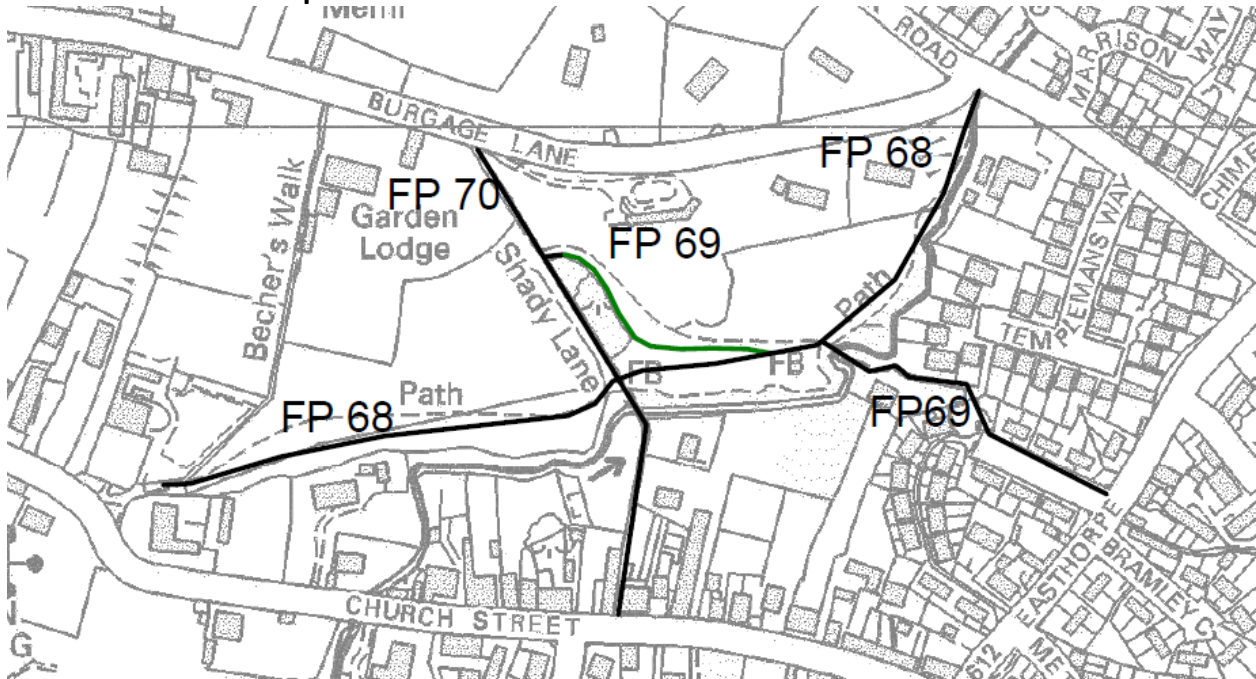


*Proposed diverted line of the footpath*

*Current Line of the Footpath*

Subsequent to this initial consultation the District Council received notification that an amendment to the proposed diversion had been made following a meeting on site between the County Council, the Town Council and the land owner to seek to address the Town Council's (and the District Council's) initial objections. Plan B shows the proposed compromise route:

**Plan B – Amended Proposed Diversion**



## Consultation

As part of the process of responding to proposals from the County Council on Highways and Rights of Way, 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 26<sup>th</sup> 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 the Amended Proposed Diversion a further consultation was undertaken. Councillor Harris responded on the 15<sup>th</sup> 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.”*

## Planning Policy Framework

### **The Development Plan**

#### **Southwell Neighbourhood Plan (October 2016)**

Policy E4 – Public Rights of Way and Wildlife Corridors  
Policy E5 – Green Link  
Policy CF2 – Green and Open Spaces and Burial Grounds

#### **Newark & Sherwood Amended Core Strategy (March 2019)**

Spatial Policy 7 – Sustainable Transport  
Core Policy 12 – Biodiversity and Green Infrastructure  
Southwell Area Policy 1 - Role and Setting of Southwell

#### **Newark & Sherwood Allocations & Development Management DPD (July 2013)**

Policy So/MOA - Southwell - Main Open Areas  
Policy So/PV - Southwell Protected Views

### **Other Material Planning Considerations**

- National Planning Policy Framework 2019
- Planning Practice Guidance 2014

## Comments of the Business Manager (Planning Policy)

Following consultation on the initial diversion proposal, officers objected to the County Council on the 18<sup>th</sup> July 2019 as follows:

National Planning Policy Guidance requires that planning policies and decisions protect and enhance rights of way and access. The Council has a range of policies which surround the protection and enhancement of Green Infrastructure, of which public footpaths form an important part. We support their maintenance and extension wherever possible.

Paragraph 98 of the NPPF requires decisions protect and enhance public rights of way and access. Spatial Policy 7 of the Newark and Sherwood District Council adopted Core Strategy requires development to provide safe convenient and attractive access to the existing network of footways so as to maximise opportunities for their use. Core Policy 12 requires the Council to “seek to...increase provision of and access to green infrastructure” of which the footpath network is a part.

Southwell Neighbourhood Plan policy E4 notes that “Public Rights of Way... [contribute] not only to the Green Infrastructure but also, where relevant, to open spaces...” Paragraph 6.25 of the Plan makes clear that the policy “seeks to conserve and enhance the... extent of PROWs...”

I have consulted the Southwell Ward members and Cllr Harris responded:

“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.”

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.

### *Conclusion*

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.

Subsequently the revised proposal for diverting the footpath was proposed following a site meeting between various parties (but not the District Council) and an alternative diversion has been proposed.

The Development Plan contains a number of policies which support the retention and enhancement of public rights of ways and the Footpath 69 lies within a particular important area of townscape within Southwell; Shady Lane Main Open Area. Policy So/MOA states that Main Open Areas are *“areas of predominantly open land within Southwell that play an important part in defining its form and structure.”* The plan notes that whilst not always public accessible they mostly are viewable from public land or accessible via public footpaths through them.

The proposal will move the footpath further down towards Footpath 68 than the original proposal but on visiting the site Officers could not reconcile the proposed diversion with the facts on the ground. In order for the diversion to link up with Footpath 68 it would need to punch through a line of trees which run north to south across the site, apart from the current route of the footpath. It should be noted that as the site is in the Conservation Area, officers are going to investigate the importance of the trees as a matter of urgency to see if they are worthy of protection in their own right.

The site is also in the view cone for the Southwell Protected Views (Policy So/PV). However following the site visit officers have concluded that this part of the main open area is relatively enclosed and does not have views of the principal heritage assets.

It should also be noted that in order to move the footpath a new line will need to be cut through the field to the south of the existing line resulting an environmental impact on the Local Wildlife Site 2/758 “Shady Lane Pasture” which is recorded as “a noteworthy grassland in an urban location”.

Whilst the proposal will allow footpath users the ability to continue to enjoy the upper area of the Main Open Area more effectively than the original proposed diversion, it will still result in less of the area being viewable and will require an access to be punched through the trees and require a new path being laid through protected grassland. Given that the applicant has erected a post and wire fence to ensure that footpath users do not stray into their garden I cannot see any need to divert the footpath from its current route.

## **RECOMMENDATION**

**That NSDC continue to raise an objection to the proposed diversion for the reasons set out above.**

### Background Papers

None

For further information, please contact Eric Smith on ext 5855.

**Matt Lamb**  
**Director of Growth & Regeneration**