

PLANNING COMMITTEE

DATE	31/03/2021
REPORT OF	Sharon Wroot, Executive Director for Environment, Economy and Resources
SUBJECT	Application for the diversion of Public Footpath 89, Ashby cum Fenby
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) 2008.

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 proposal will contribute to the Council's 'Stronger Community' objective. Diverting part of the Public Footpath on the Definitive Map will ensure the path is available for continued use and ensure both the landowner and users of the path feel safe.

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 aim to Improve Health & Wellbeing within the Borough.

EXECUTIVE SUMMARY

This report recommends the making of an Order to divert part of Public Footpath 89 from the middle of a plot of land in Ashby cum Fenby to the south western boundary of the plot as shown in Appendix 1.

The purpose of the diversion is to enable a single dwelling development to be undertaken in line with planning approval DM/0957/18/OUT. The approved plan is shown in Appendix 2.

The Council has a duty to make an Order under Town and Country Planning Act 1990 section 257.

RECOMMENDATIONS

That an Order is made for the diversion of part of Public Footpath 89 to the edge of the plot of land under the Town and Country Planning Act 1990 section 257.

- a. To approve the making of an Order in accordance with Town and Country Planning Act 1990 section 257.
- b. To confirm the diversion Order as made, subject to there being no objections or in the event of objections which cannot be resolved and withdrawn, for the Order to be referred to the Planning Inspectorate for determination.

REASONS FOR DECISION

Public Footpath 89 crosses the plot of land which is subject to a planning application DM/0957/18/OUT. Under Section 257 of the Town and Country Planning Act diversions should only be made if it is considered that it is `necessary to do so to enable development to be carried out`.

It is the opinion of officers that it is appropriate to divert the Public Footpath.

1. BACKGROUND AND ISSUES

- 1.1 Public Footpath 89 runs in a north east / south west alignment across a parcel of land. The planning application is for one residential property. The location of the property is in the middle of the plot of land where the Public Footpath is situated. The proposed diversion route is currently a well-used path, though has not been used for the twenty years to generate a Definitive Map Modification Order claim.
- 1.2 A 28-day pre-order making consultation letter was sent on 12th October 2020 to adjacent landowners, user groups, Ward Councillors and Waltham Parish Council. The only responses received were from Councillor Swinburn, Portfolio for Environment and Transport, and the landowner, neither had any concerns about the diversion.

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 received will be referred to planning inspectorate for a decision. May delay the decision.

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. The Planning Inspectorate decision is likely to be to divert the path, and costs could be awarded against the Council.

4. REPUTATION AND COMMUNICATIONS CONSIDERATIONS

- 4.1 The approval of the diversion order 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 was undertaken with adjacent landowners, user groups, Ward Councillors and Waltham Parish Council. No objections were received.

5. FINANCIAL CONSIDERATIONS

5.1 If there are objections to the Order and the case is referred to the Planning Inspectorate, a public inquiry may be required to determine the final decision on the diversion of the path.

6. FINANCIAL IMPLICATIONS

6.1 The making of the extinguishment order would not result in additional costs to the Council as it will be met by the Regeneration Partnership.

6.2 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.

6.3 There will be no call on Council reserves.

6.4 The proposal does not affect any other policies as it is to divert a footpath and then record the path on the Definitive Map.

6.5 The proposal adds the path to the Definitive Map and legally creates the path for future use.

7. LEGAL IMPLICATIONS

7.1 As laid out in the main body of the report.

8. HUMAN RESOURCES IMPLICATIONS

9.1 There are no direct HR implications

9. WARD IMPLICATIONS

9.1 This path lies within Waltham Ward. There are no implications.

10. BACKGROUND PAPERS

10.1 Public Path Order 40, FP89, Ashby cum Fenby.

11. CONTACT OFFICER(S)

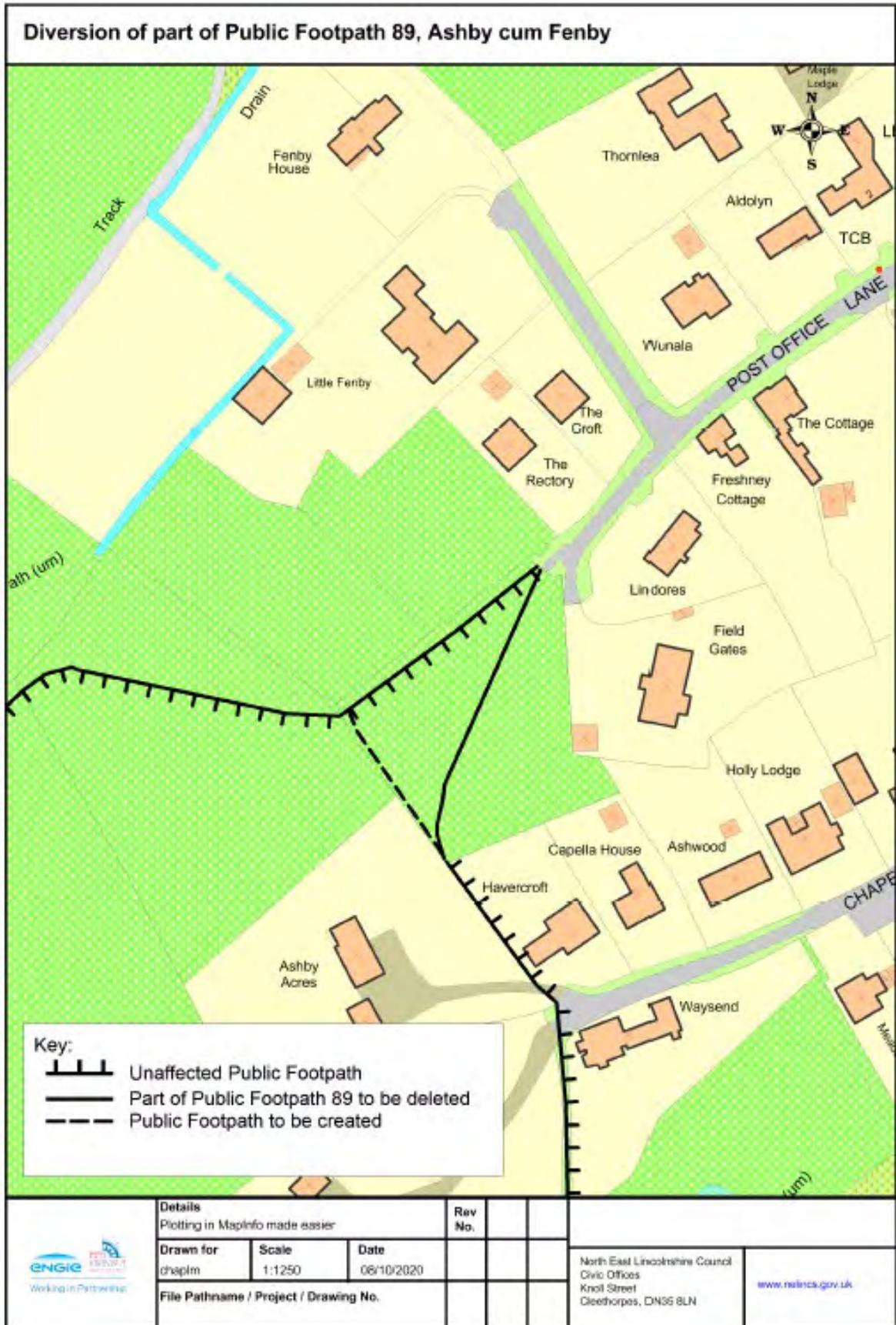
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Appendix 1. Proposed diversion



Not to scale

