

## PLYMOUTH CITY COUNCIL

<b>Subject:</b>	Public Path Diversion Order – Former Downham School site
<b>Committee:</b>	Planning Committee
<b>Date:</b>	11 February 2016
<b>Cabinet Member:</b>	Councillor Mark Coker, Cabinet Member for Transport
<b>CMT Member:</b>	Anthony Payne (Director for Place)
<b>Author:</b>	Liz Wells, Public Rights of Way Officer
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<b>Ref:</b>	TCPA.001
<b>Key Decision:</b>	No
<b>Part:</b>	1

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### Executive Summary:

This report presents to Members an opposed Public Path Diversion Order (PPO) for consideration. The Order was applied for by Astor Homes Ltd. and seeks to divert a public right of way located to the south of the former Downham Special School site Horn Lane, Plymstock. The path runs from Horn Lane to the green space. The relevant legislation is Section 257 Town & Country Planning Act 1990. This report sets out the legal criteria to be met and provides members with all relevant evidence.

The report is accompanied by an Order plan showing the existing and proposed routes.

The PPO is to be considered by Planning Committee alongside the application for planning permission for the development of the former school site for 31 dwellings. However, Members should not question the merits of planning permission when considering whether to support the confirmation of the Order, but nor should they make an order purely on the grounds that planning permission has been granted. The only legal test that needs to be satisfied for an Order application under Section 257 is that the Order is *necessary* to enable development to be carried out should planning permission for that development be granted. The discretionary decision is whether the disadvantages and losses flowing from the proposed diversion would be of such significance that the Council should refuse to support the confirmation of the Order.

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### The Brilliant Co-operative Council Corporate Plan 2013-14-2016/17:

The report is considered in the context of the priorities set out in the Local Transport Plan 2011-2016 for addressing the Council's requirement to comply with relevant legislation.

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**Implications for Medium Term Financial Plan and Resource Implications:  
Including finance, human, IT and land:**

Should the Order be referred a public inquiry could be called which will require external legal support. Estimated costs are £3, 000 - £6,000. Funding would be met from existing revenue budgets.

There is a freehold disposal pending completion, but the Council are still the owners of the property in question. This lease would need to react to any changes to public highways within the land subject to the lease.

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**Other Implications: e.g. Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:**

Community safety – (i) the proposed route will be lit, surfaced, wider, drained, maintained and benefit from natural surveillance from the new residential properties which is likely to make it safer for future users.

(ii) removing the existing path which would otherwise run along the back of proposed gardens and create concern for the security of residents of the proposed dwellings.

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**Equality and Diversity:**

Has an Equality Impact Assessment been undertaken? No

The proposed route is along the footway which is intended to be of an adoptable standard for highways and therefore will be DDA compliant.

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**Recommendations & Reasons for recommended action:**

That members support confirming the Order and that it is referred to the Secretary of State for determination if the planning permission for the development be granted and the objections to the Order are not withdrawn.

Reason - The recommendation is made on the basis that the test set out by Section 257 Town & Country Planning Act 1990 have clearly been met if planning permission is granted and, given there have been objections to the diversion which raise predominantly planning matters which are irrelevant to the considerations for a Public Path Order, then these could be addressed by a Planning Inspector on behalf of the Secretary of State if not withdrawn.

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**Alternative options considered and reasons for recommended action:**

Abandonment of the application. This option is not recommended because the legal tests have been met therefore the correct course of action is referral to an external decision maker. Abandonment may strengthen the opportunity for the developer to apply to extinguish the public right of way which would remove one of the public access points to this greenspace.

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**Background papers:**

All background papers are available online at [www.plymouth.gov.uk/tcpad001](http://www.plymouth.gov.uk/tcpad001)

Order Plan

A copy of the application made by Astor Homes

Letters of Representation (Objectors)

Letter of support from Police Architectural Liaison Officer

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**Sign off:**

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Originating SMT Member												

## **1.0 Introduction**

- 1.1 The committee has before it a Public Path Diversion Order which seeks to divert a public right of way which runs from Horn Lane to the south of the former Downham Special School site, Horn Lane, Plymstock and joins the green space to the east of the former school site. The alternative route proposed leads through the former school site as part of the proposed redevelopment of the site for 31 dwellings. The proposed route lies 30 metres to the north of the existing route.
- 1.2 The report is accompanied by an Order plan showing the existing and proposed routes.
- 1.3 This application is being considered under Section 257 of the Town & Country Planning Act 1990 (TCPA) which allows for a public right of way to be diverted if it meets specific criteria. Whilst this report will explain in some detail those tests which must be met, for the purposes of an introduction Members should be aware that S.257 is one of a number of powers for the legal alteration of a public right of way. Most Public Path Order applications are considered under powers within the Highways Act 1980. Applications under Section 257 of TCPA relate specifically to footpaths and bridleways affected by development.
- 1.4 This report sets out the developer's application for diversion, the legal and discretionary tests Members are asked to measure the application against and advice as to whether, and to what degree, those tests have been met.

## **2.0 Background to the developer's application for diversion**

- 2.1 The former Downham Special School site is one of several sites owned by PCC and being offered for development under the Plan for Homes initiative. A developer has made a planning application to develop the site for housing. The applicants entered into pre-application discussion with the Council and through this process it became apparent that their original housing proposal which retained the existing right of way, as well as providing an additional route into the Plymouth City Council land to the rear of the site would not meet secured by design standards and would not be deemed safe for the new residents, as it would run directly along the back of the rear gardens.
- 2.2 At the pre-application stage, the path in question was not a recorded public right of way therefore had no legal status as public right of way and no legal protection as such. The

Council has sought to use powers available to them to protect the public rights over this route by dedicating it as a public footpath following discussions with the developers about this issue. The Council therefore dedicated the path as a public right of way on 21 October 2015. This dedication gave this access way this protection and in turn, this requires the developer to go through the additional procedure of the Public Path Order.

### **3.0 Legal Context and Legislative Background**

3.1 This application is being considered under Section 257(1)(a) of the Town & Country Planning Act 1990 (TCPA) which provides that an Order authorising the stopping up or diversion of any footpath or bridleway may be made where the competent authority are satisfied:

(1) ...that it is necessary to do so in order to enable development to be carried out...

(a) in accordance with planning permission granted under Part III ...

These two aspects make up the only legal test for such an application.

3.2 In this case, a planning application has been made and is currently pending decision by this authority. The Growth & Infrastructure Act 2013 amended section 257 of TCPA to enable a developer to seek an order stopping up or diverting a public path to be made in anticipation of planning permission.

3.3 However, the decision to confirm this order is discretionary. In deciding whether or not to exercise that discretion the Council must have regard to the disadvantages or loss likely to arise as a result of the diversion of the way to members of the public.

### **4.0 Procedural Matters**

4.1 The decision as to whether or not an Order should be made is currently delegated to the Assistant Director of Strategic Planning & Infrastructure. Before taking this decision, Ward Members and user groups were informally consulted. The fact that an Order had been made was advertised by notices on site and in the local newspaper. As confirming the Order is discretionary, the matter comes before Planning Committee to decide its future.

4.2 As objections have been received Plymouth City Council no longer has the authority to confirm the Order, this power now lies with the relevant Secretary of State. The options open to Members today are to either abandon the Order or refer the Order to the Minister. However, it is open to Officers to seek the removal of objections where they are not relevant to the established criteria against which we will consider the Order application. If this is achieved, the power to confirm the Order returns to the Council. Irrelevant of who considers the Orders confirmation, the legislation specifies they must have regard to all the circumstances but in particular the matters set out in Section 257.

4.3 At the time of making the Order, letters are also sent to the Statutory undertakers to ask if they have any apparatus in, on, under, along or across, the route to be extinguished which would require them to raise an objection to the Order. No objections have been received from Statutory Undertakers.

## 5.0 Representations to the Order

5.1 The public consultation period for the Order ran from 7 December 2015 to 7 January 2016. Six letters of objection from local residents were received by the prescribed date of 7 January 2016. Four of the objections have since been withdrawn and two of the objectors have clarified their grounds for objection.

5.2 A summary of the letters of objection have been provided in the table below, along with Officer comments in relation to the Order.

<b>Grounds for objection to the diversion Order</b>	<b>Officer comments in relation to the Order</b>
The hedgerow beside the Scout Hut on the original pathway is natural and the path is not narrow or overgrown.	This objection could be interpreted as loss of public enjoyment resulting from the existing route to be lost.
The existing path is not slippery.	The state of the existing route is not at question in the diversion Order.

The proposed route means that valuable mature trees have to be felled and local bat population fly and feed around those trees.	This is a planning matter and not relevant to the diversion Order.
Young people who frequent the park cause problems with rubbish and noise – I would not like to have some of the rubbish in my front garden.	This issue is considered in the Case for and against the order in section 7 below.

5.3 Copies of two outstanding representations to the Order can be found online at [www.plymouth.gov.uk/tcpad001](http://www.plymouth.gov.uk/tcpad001)

## 6.0 The Test

6.1 The site layout plan shows the existing line of the footpath which would be stopped up as a result of the development. The plans submitted as part of the application for planning permission propose to build over this line.

6.2 In your officers' opinion, the legal test is considered to have been met.

6.3 It therefore falls on the committee to consider whether the disadvantages and losses flowing from the proposed stopping up would be of such significance that they should refuse to support the confirmation the diversion Order.

6.4 The proposed route from the existing access on Horn Lane (point A on the attached order plan) to the greenspace at point C, is longer than the existing path from point A to point B. The existing path, shown as a solid black line point A to point B, is approximately 69 metres in length. It is likely that most users will be using the route as part of a longer route, to link through to the Broadway shops or for dog walking, in which case, the difference in length of the proposed route will depend on the starting point and destination of the user. At its worst, the proposed diversion would be 30 metres longer. Officers do not consider the small difference in the length of the proposed route will result in any significant disadvantage to users.

- 6.5 The existing path runs between the chain-link fence which forms the boundary of the former Downham School site and the wall/hedge adjoining the Scout Hut. The proposed route will run along a dedicated footway to the proposed cul-de-sac of new dwellings. One letter of objection infers the loss of the path with a hedge beside it will disadvantage the enjoyment of users of the route. The proposed landscaping plan includes a number of trees adjoining the proposed route. Both routes are on level ground. Users of the proposed route may have their walk interrupted by car movements which is not the case on the existing route. Officers consider the convenience, safety and enjoyment of the proposed route to users will not be substantially reduced by the proposed diversion, and that any interruption for car movements will be a minor inconvenience rather than a significant danger when considering the route in this suburban context.
- 6.6 Consideration needs to be given to the disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to persons whose properties adjoin or are near the existing highway.
- 6.7 The existing path is bounded by the development site to the north and the Scout Hut to the south. The stopping up of the existing route is not considered to result in any disadvantage to these properties. Indeed, the justification from the developer's highlighted the potential security issues to the future residents of the proposed dwellings if the existing route was retained.
- 6.8 The proposed route is along a footway which passes the front of the new dwellings. It is likely that this footway would be provided as part of the proposed development, whether the existing route was stopped up or not. The function of the footway as a public right of way into the adjacent greenspace may result in more pedestrian movements than would be generated solely from the new dwellings. One letter of objection has commented on the issues of noise and rubbish caused by young people who frequent the park. It infers that this disadvantage could be transferred to the new residents adjacent to the proposed route who could potentially have rubbish deposited in their front gardens. Some elements of boundary treatment are shown in the proposed layout plan, however the off-street parking spaces will not have any. The relationship of the footway to the new properties is not significantly different to the relationship of the footway to the frontage of majority of residential properties in the area. Officers do not therefore consider that future residents of these



dwellings adjoining the route will be significantly disadvantaged by the proposed diversion along this footway.

6.9 Perhaps the most significant advantage of confirming the Order is that it will allow the development to be carried out in accordance with the submitted plans. The applicant's statement in support of the application details the pre-application consideration of their original housing proposal, which sought to retain the existing path, not meeting Secured by Design standards and would not be deemed safe for their new residents. The application for diversion has been supported by the Police Architectural Liaison Officer. The full comments of the Police Architectural Liaison Officer can be found in online at [www.plymouth.gov.uk/tcpad001](http://www.plymouth.gov.uk/tcpad001). By diverting the path they are able to provide larger recreational areas for the new family houses as well as providing a safer access to the green space.

6.10 The existing path comprises a tarmac'ed strip approximately 1.5m wide along the majority of its length with grass verges either side which then opens up into the greenspace, where it is unsurfaced. The footway will be 2 metres wide, surfaced, drained and lit. Officers consider that the lighting and natural surveillance offered by the residents in the new dwellings is likely to make users feel safer than on the existing route. In addition, the stopping up of the existing route may result in some improvement to the security of the Scout Hut site and reduction in problems of rubbish and noise experienced by properties near the existing route.

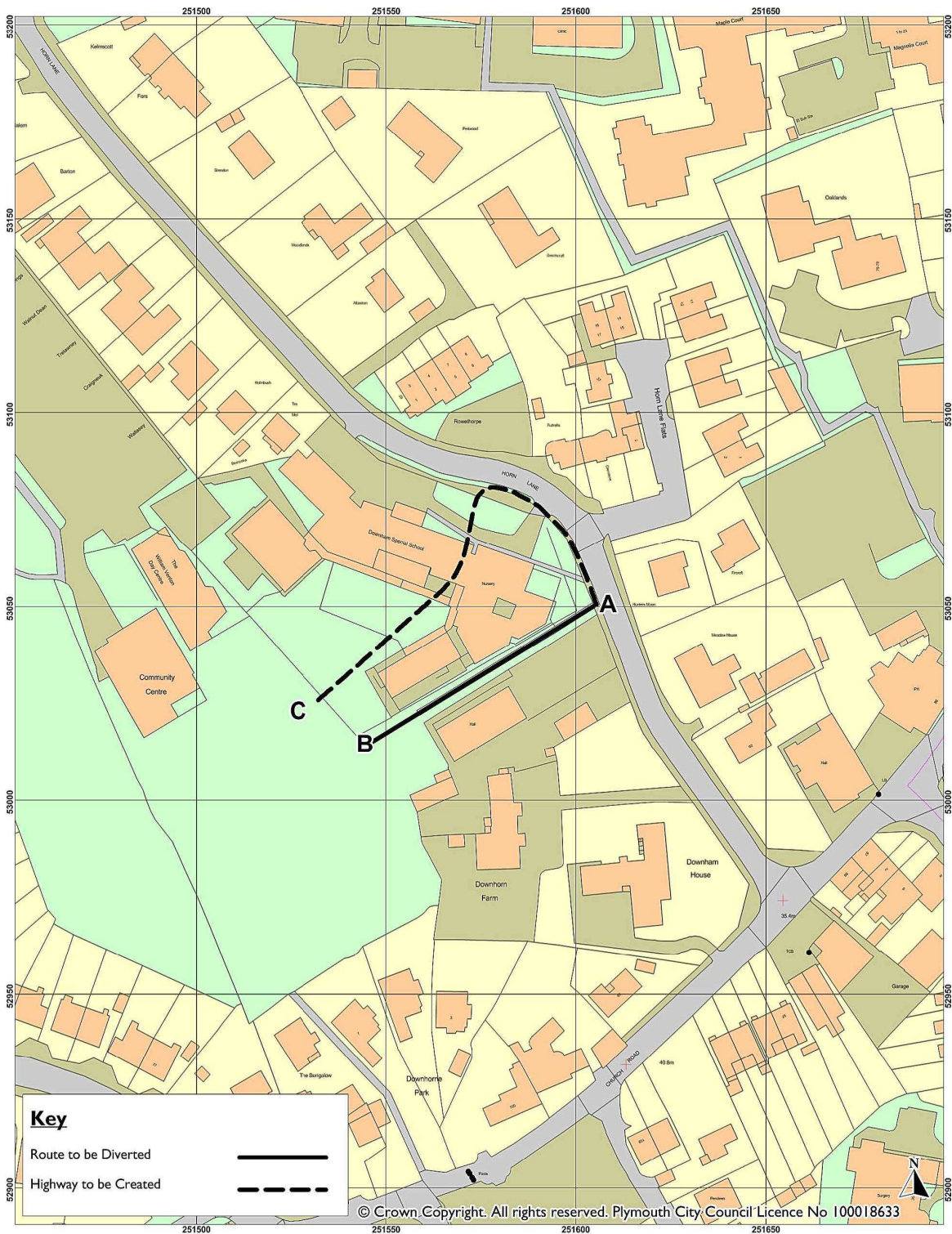
## **7.0 Officer Recommendation**

7.1 Officers consider there to be no features of the proposed route that would be likely to make it substantially less convenient than the current path. The advantages of supporting the confirming the Order are that the development can be carried out as permitted whilst retaining the public access between Horn Lane and the greenspace. Officers conclude that the disadvantages are not significant enough to outweigh the advantages to be conferred by the confirmation of the Order, and would therefore advise the Members that's the tests for confirmation set out in the legislation are met. If planning permission for this development affecting this right of way is granted, Members must have good reasons to justify a decision not to confirm this order. Officers therefore recommend Members to support confirming of Order and that it is referred to the Secretary of State for determination if the planning

permission for the development is granted and the objections to the diversion Order are not withdrawn.

## **8.0 Alternative Options**

8.1 The alternative option open to the committee is to abandon the Order. This option is not advised because the legal test has been met and the disadvantages are not considered to be significant therefore the correct course of action is referral to an external decision maker. Abandonment would create an opportunity for the developer to apply to extinguish the public right of way which would remove one of the public access points to this greenspace. A public right of way extinguishment application is generally only accepted by Plymouth City Council where diversion is either not possible or has been attempted but failed. It is therefore important to recognise that should this attempt to divert the path fail then the applicant will be free to seek the total permanent closure of the path. The statutory test for extinguishment is that doing so is necessary to enable development to take place. This would be relatively easy for the applicant to satisfy this test should planning permission for the development be granted.



**TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257**

DIVERSION OF A PUBLIC FOOTPATH FROM HORN LANE TO FORMER DOWNHAM SCHOOL PLAYING FIELD

