

## Planning Committee

<b>DATE</b>	<b>01/04/2020</b>
<b>REPORT OF</b>	<b>Clive Tritton, Interim Director of Economy and Growth</b>
<b>SUBJECT</b>	<b>Application for the diversion of an un-adopted path – between Barnoldby Road and Salisbury Avenue, Waltham and to be recorded as a Public Footpath on the Definitive Map.</b>
<b>STATUS</b>	<b>Open</b>

### 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 will prevent the landowner being concerned that possibly users may try using the Public Footpath and making them feel safe by removing the Public Footpath from the Definitive Map.

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

The purpose of this report is to recommend the making of an Order to divert the path that runs across the middle of a plot of land in Waltham. The path is proposed to be diverted to the edge of the plot to enable development to be undertaken. The development includes the construction of a grassed playing field and forest garden within the grounds of Salisbury Court, including the erection of a forest garden classroom with toilets, installation of a security camera and lighting pole, fencing, relocation of public footpath, and the erection of a single storey rear extension to the existing nursery building.

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

### RECOMMENDATIONS

That the unrecorded rights are extinguished and an order be made under the Town and Country Planning Act 1990 section 257, and then to add a path to the edge of the site.

- a. To approve the making of an Order in accordance with Town and Country Planning Act 1990 section 257.

- b. To confirm the deletion Order as made, subject to there being no objections or in the event of objections which cannot be resolved and withdrawn, for the Order to be referred to the Planning Inspectorate for determination.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**

The path across the plot of land is subject to a Definitive Map Modification Order to add the path to the definitive map. However, 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 delete the path as it has never been laid out on the ground and create a Public Footpath for the diversion.

### **1. BACKGROUND AND ISSUES**

The path that has been used runs in a south south easterly direction from Barnoldby Road for 47metres where it changes direction to south south westerly for approximately 56 metres to Salisbury Avenue. The path was measured as 70cm wide.

The Definitive Map and Statement does not record the path on the Definitive Map. However, it is subject to a Definitive Map Modification Order (DMMO) application, where the path has been used for more than 20 years uninterrupted use.

The DMMO application evidence included thirty six people that had used the path, the longest being since 1948. Out of these thirty six users, twenty six had used it for twenty years or more.

The evidence recorded showed that twenty eight people used the path daily and seven weekly. Four users had used the path on a cycle once a week and one used the path daily. There were two users of mobility scooters or wheel chairs and one used the path daily and the second at least once a month.

The main use of the path was for pleasure purposes, followed by getting to work and getting to the shops.

Following the DMMO application, a planning application DM/1152/19/FUL was received for a playing field and forest garden within the grounds of Salisbury Court. This also included the erection of a forest garden classroom with toilets, installation of a security camera and lighting pole, fencing, relocation of public footpath and the erection of a single storey rear extension to the existing nursery building.

The application places a path around the edge of the site. The proposed width is one metre with 50cm of grass either side of the path.

Diverting the line of the path under this Order will divert the unrecorded rights, the a decision will need to be made not to make a DMMO on the basis the route is no longer a Public Rights of Way as it has been extinguished.

A 21 day pre-order making consultation letter sent on 21st January 2020 to adjacent

landowners, user groups, ward Councillors and Waltham Parish Council. There were three responses during this time, the responses are recorded below:

Ramblers comment:

“I can see no reason to object to these proposed plans”.

Lincolnshire Fieldpaths Association made the following comment:

“We imagine that it would be considered unreasonable not to allow a diversion of this path in view of the planning permission already granted. Our remarks are therefore addressed to the route and design of the new route, not to the principle of a diversion.

It is well established as bad practice to create urban paths of this kind which become blind alleys, that is a user cannot see the whole length of the path from each end. Many people, especially women, very reasonably want to be sure they can see if anyone is lurking on the path before entering it, for example. A path with a bend in it halfway along creates just this effect of a blind alley. This can be mitigated if the route has only low fences and is surrounded by gardens or open space which allows the user to see beyond the bend. It is also mitigated if the path is overlooked by house windows etc. so that anyone hanging about in the path knows they are being observed, or probably are.

Please bear these points in mind when considering this application, and ensure that either no bends are in the new route or that permissions have binding conditions attached which ensure that the whole route will remain open to view, and not become enclosed by fences or buildings which create blind areas. We think the authority should be robust in this attitude, because both safety and perceptions of safety are major inhibitions against walking, while we all now know that encouraging people to walk for local journeys has many beneficial effects”.

Waltham Parish Councils said the following:

“Waltham Parish Council comments that the proposed 1 metre wide hard-standing path is not wide enough to facilitate the passing of mobility scooters etc. and there is no information in the planning application DM/1152/19/FUL regarding maintenance of the proposed grassed areas either side of the path. The proposed path is open on one side which caused concern. The Parish Council expressed concerns around the appearance of the proposed palisade fencing, and in the planning application DM/1152/19/FUL there was no proposal for lighting along the proposed path, whilst the Local Authority have installed a street light along the existing right of way”.

In response to the comments from the Lincolnshire Fieldpaths Association, the fencing is palisade fencing which is open, and the path will not be enclosed. The path will be looked over by residents along Barnoldby Road.

With regard to the comments from Waltham Parish Council, they mention the path being 1 metre in width. The current path which was used for 20 plus years was only 70 centimetres in width. It is unclear what happened when two mobility scooters passed during this time. The grass either side of the path can be added to the way clearance for grass cutting and will be cut three times a year. The street light on the existing path will still be on the proposed line of the Public Footpath, and an additional light installation is being looked at for the corner.

## **2. RISKS AND OPPORTUNITIES**

There is a risk that there could be objections from members of the public or stakeholder groups to the proposed diversion of the path.

Failing to delete the path will impact on the owner of nursery school and have the path running over a plot of land that divides the area that should be safe for children to use.

## **3. OTHER OPTIONS CONSIDERED**

The Council could choose to do nothing and not implement the diversion application. If this was the case the applicant could refer the case to the Planning Inspectorate, as the only test in the Town and Country Planning Act 1990 is that the diversion is necessary to aid development. As the proposed diversion is to aid development of the site, the decision is likely to be to divert the path, and costs could be awarded against the Council.

## **4. REPUTATION AND COMMUNICATIONS CONSIDERATIONS**

The application seeks to add a Public Footpath to the Definitive Map which will be protected, unlike the current path which has no legal protection. There may be objections regarding the width of the path. However, the applicant has included two passing places in the application.

The results of the consultation highlighted the main concern was the width of the path and the path being enclosed. Palisade fencing is proposed to provide the boundary of the development, so the path will be open and users can see who is using the path. The use by two mobility scooters passing each other will be rare.

## **5. FINANCIAL CONSIDERATIONS**

If there are objections to the Order and the case goes to the Planning Inspectorate, a public inquiry may be required to make the final decision on the path.

## **6. FINANCIAL IMPLICATIONS**

- The making of the extinguishment order would not result in additional costs to the Council as it will be met by the Regeneration Partnership
- Costs could be incurred if objections are received that require works to be completed to open up the path, and/or if the decision results in a public hearing or enquiry.
- There will be no call on council reserves.
- The proposal does not affect any other policies as it is to divert the path and then record the path on the Definitive Map.
- The proposal adds the path to the Definitive Map and legally creates the path for future use.

## **7. LEGAL IMPLICATIONS**

As laid out in the main body of the report.

## 8. HUMAN RESOURCES IMPLICATIONS

There are no direct HR implications

## 9. WARD IMPLICATIONS

This path lies within the Waltham Ward.

## 10. BACKGROUND PAPERS

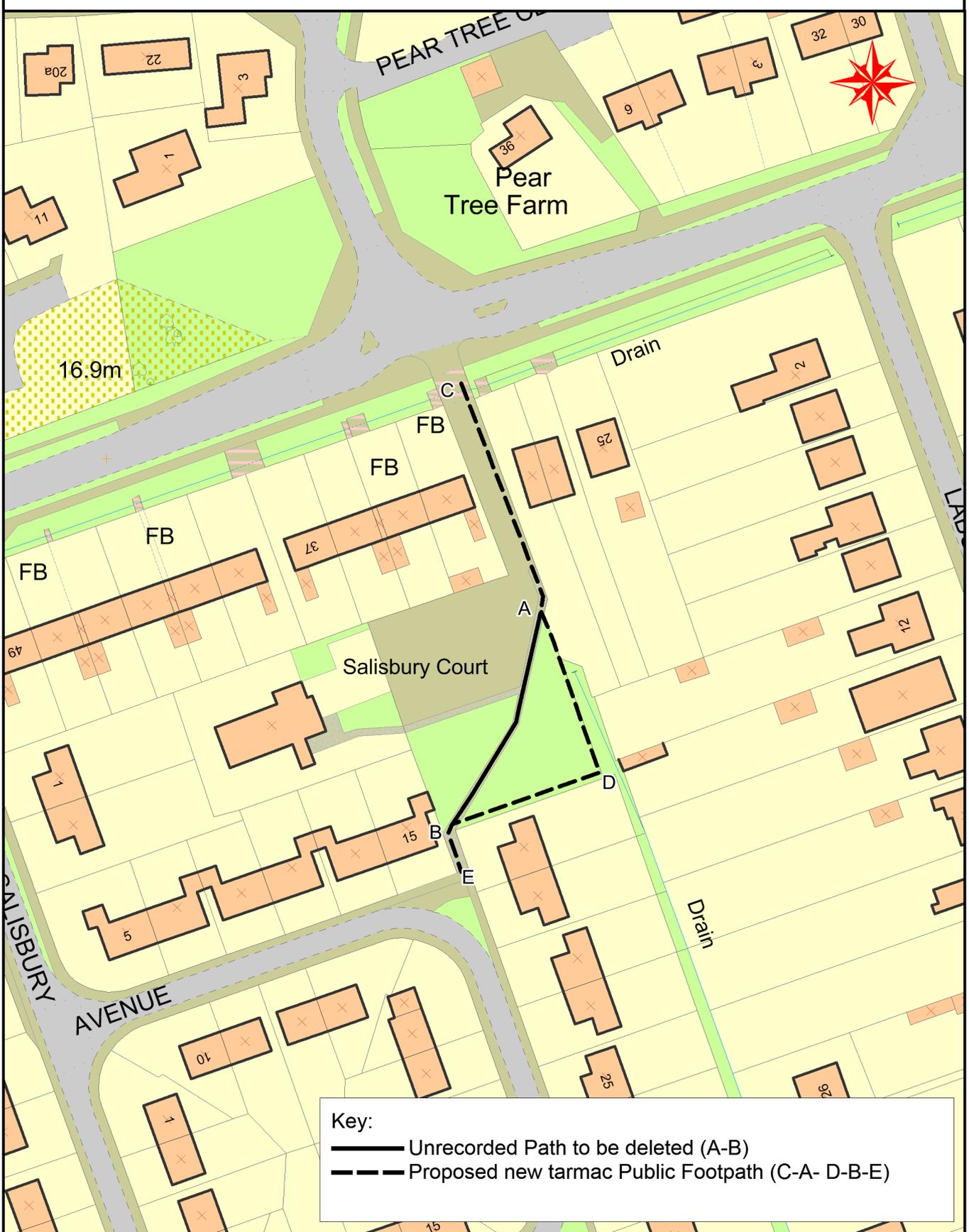
Public Path Order 24 Salisbury Court, Waltham.

## 11. CONTACT OFFICER(S)

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**Clive Tritton**  
**Interim Director of Economy & Growth**

# Proposed Diversion of unrecorded Footpath, Salisbury Court, Waltham



**Key:**

- Unrecorded Path to be deleted (A-B)
- Proposed new tarmac Public Footpath (C-A- D-B-E)

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