

**NORTH LINCOLNSHIRE COUNCIL**

**PLANNING COMMITTEE**

**PUBLIC FOOTPATH 248, KIRTON IN LINDSEY**

**1. OBJECT AND KEY POINTS IN THIS REPORT**

- 1.1 Truelove Property and Construction (TPC) Limited want to divert part of Public Footpath 248 (FP248), Kirton in Lindsey.
- 1.2 FP248 runs through a building site. The next phase has planning permission. However, it cannot go ahead unless the footpath is diverted.

**2. BACKGROUND INFORMATION**

- 2.1 TPC Ltd requested the diversion under Section 257 of the Town and Country Planning Act 1990 on 6 May 2011. The diversion relates to Windmill Plantation, Kirton in Lindsey. The 1990 Act requires that certain criteria are met. First, the diversion has to enable development to take place. Secondly the development requires approval under Part Three of the Act. Finally, that the diversion is necessary, not just desirable.
- 2.2 Planning permission for house building was granted on 31 March 2000 (PA/1999/0920). How development affects a public footpath is a material consideration. The permission would have taken FP248 into account.
- 2.3 The latest phase has 12 houses. About 108 metres of FP248 affect it. A builder cannot obstruct a public footpath. Having planning permission makes no difference. The builder must divert or stop up the footpath before building starts. Furthermore, the council as highway authority must assert and protect the public's right of way. We must also try to prevent its unauthorised stopping up or encroachment.
- 2.4 Two other lengths of FP248 have been diverted at Windmill Plantation. Future diversions might be needed as the development continues northwards.
- 2.5 Between points A – D, FP248 would be two metres' wide. It would be tarmacked within a landscaped corridor. The latter would be five metres' wide (see Supplementary Planning Guidance (SPG4)). The

rest (between points D – C) would follow the site's northern boundary. (Appendix 1 shows the diversion. Appendix 2 shows the site layout.)

### **3. OPTIONS FOR CONSIDERATION**

- 3.1 Accept TPC Ltd's application and divert FP248 under section 257 of the Town and Country Planning Act 1990.
- 3.2 Reject TPC Ltd's application and notify them accordingly.

### **4. ANALYSIS OF OPTIONS**

- 4.1 Although planning permission is already in place, this is not a chance to reconsider. However, that does not mean we have to divert FP248 but we would need good reasons not to. Refusal to make or confirm an order would kill the planning permission. Members should take a balanced view and officers can think of no reasonable grounds for not diverting.
- 4.2 Orders have either two or three stages. Stage one is making and advertising the order. Anyone who wants to object or make representations must do so within 28 days. Unless withdrawn in writing, these prevent us from confirming the order. Confirmation is the second stage. If by then there are irreconcilable objections, members need to decide how to proceed. They can refer the order to the Secretary of State, with or without modifications. Or they can resolve not to continue. The order takes effect either on confirmation or after an optional third stage. In the latter case, the order would contain conditions for making the new footpath fit for use. When we are satisfied these have been complied with, the order is certified.
- 4.3 FP248 is maintainable at public expense. The new route would be too.

### **5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)**

#### **5.1 Financial**

- 5.1.1 TCP Ltd would pay for the making of the order and all advertising. The council's current policy is to charge applicants in full, as the law permits ("Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993").
- 5.1.2 TCP Ltd would also bring the new path physically into existence. They would pay any associated costs that arise.

#### **5.2 Staffing**

- 5.2.1 There are no staffing implications requiring consideration.

## **6 OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17-CRIME AND DISORDER, RISK AND OTHER)**

### **6.1 Statutory**

6.1.1 Under section 257 of the Town and Country Planning Act 1990, a local planning authority may by order authorise the stopping up or diversion of any footpath or bridleway. This is only if necessary to enable development under Part Three of the Act to proceed.

6.1.2 The definitive map and statement must reflect any change “as soon as practicable”. This is because we have a statutory duty to keep map and statement “under continuous review”. The definitive map is the public’s record of what public rights of way exist and where they are located. The definitive statement is the map’s schedule. It contains information such as width, limitations and route description. Modification can be by separate order. This is not advertised because it records a factual event. Namely, a diversion has taken place. Therefore it is not open to dispute. Or the diversion order can be a combined one. This means the map and statement are automatically modified as soon as the diversion order takes effect (Wildlife and Countryside Act 1981, section 53A). The modification element of a combined order cannot be challenged either.

### **6.2 Environmental**

6.2.1 Most of the diverted footpath would run within a five-metre-wide open corridor.

### **6.3 Risk**

6.3.1 Diversion orders can be objected to. North Lincolnshire Council cannot confirm orders with outstanding objections or representations duly served. We can formally resolve not to pursue an objected to order to confirmation. Or we can refer it to the Secretary of State for Environment, Food and Rural Affairs.

6.3.2 An objection from a statutory undertaker can become subject to special parliamentary procedure. This is if the order creates a public right of way over land covered by works used for the purpose of their undertaking.

6.3.3 The Secretary of State uses written representations, hearings or inquiries. We must normally meet our own costs. However, in the case of inquiries we can claim costs against a third party we think has acted unreasonably.

#### 6.4 Section 17 Crime and Disorder

6.4.1 The footpath would run within an open corridor in compliance with planning guidance. The design of the diverted footpath would be to council standards.

### 7. OUTCOMES OF CONSULTATION

7.1 We consulted all user groups, statutory undertakers and Kirton in Lindsey Town Council. We have received no objections to date. We do not expect that we will receive any objections.

### 8. RECOMMENDATIONS

8.1 That the Committee approves the making of a diversion order under section 257 of the Town and Country Planning Act 1990 to divert Public Footpath 248, Kirton in Lindsey, as per Appendix 1.

8.2 That the order takes effect on certification that the new footpath has been set out on the ground as per paragraph 2.5 of this report. This must be to North Lincolnshire Council's satisfaction that the new footpath is fit for use by the public.

8.3 That the order be a combined one using section 53A of the Wildlife and Countryside Act 1981 so the "County of Lindsey, Parts of Lindsey (Glanford Brigg)" definitive map and statement are modified as soon as the path is diverted.

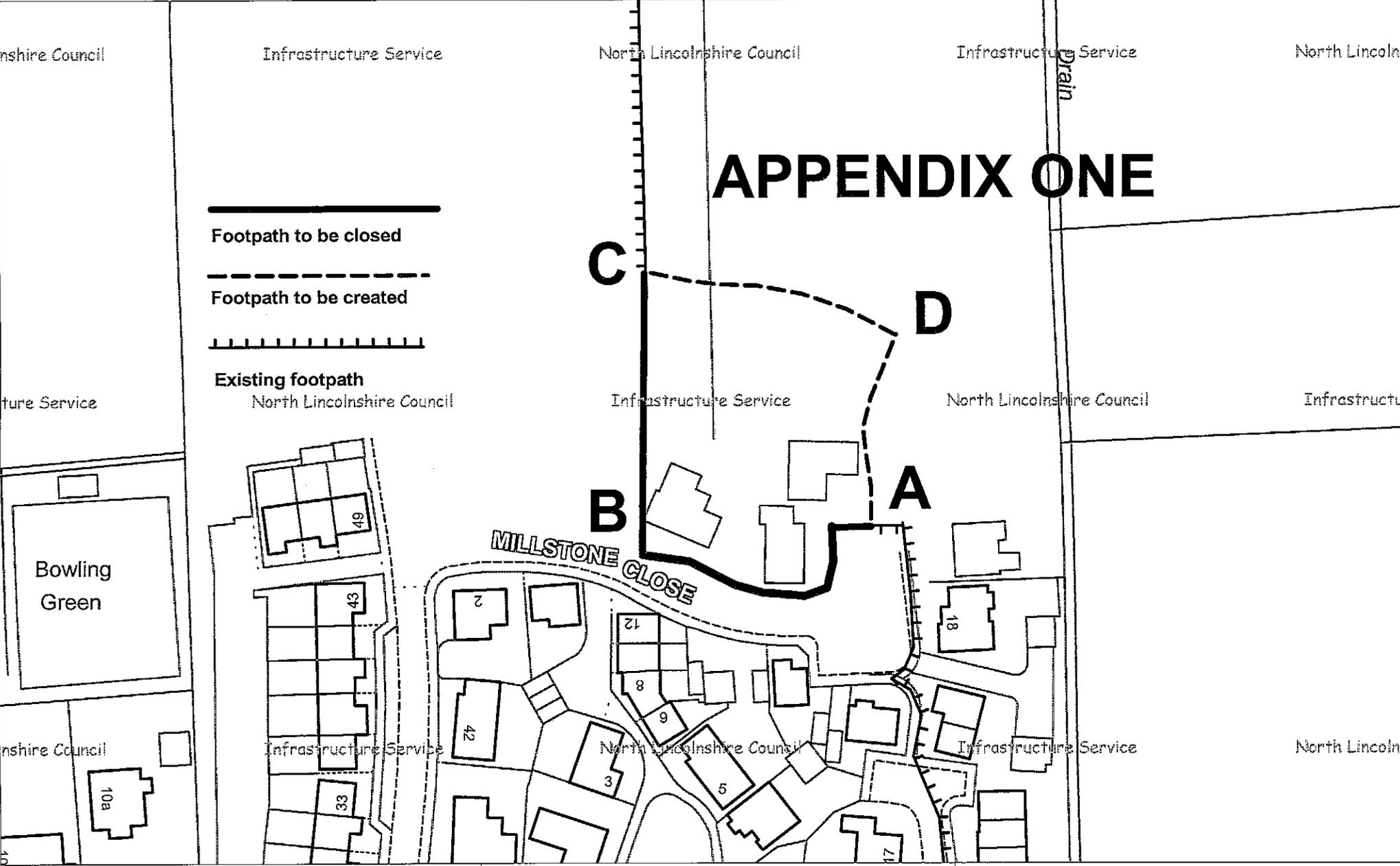
8.4 The Director of Infrastructure Services is authorised to confirm the order if it is unopposed.

### **DIRECTOR OF INFRASTRUCTURE SERVICES**

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Date: 12 May 2011

**Background Papers used in the preparation of this report:** office file "Diversion of Public Footpath 248, Kirton in Lindsey, Truelove" held electronically at Church Square House, Scunthorpe

# APPENDIX ONE




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**NORTH LINCOLNSHIRE COUNCIL 0100023560 2011**

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Scale: 1:1,000	OS Grid Ref: SK93619911



**Infrastructure Service**  
 Director,  
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**Highways and Planning Service**  
 Service Director,  
 G Popple

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