

Substantive response of the Local Highway Authority to a planning consultation received under The Development Management Order.



Response provided under the delegated authority of the Director of Environment & Transport.

APPLICATION DETAILS

Planning Application Number: 23/00374/ROW

Highway Reference Number: 2023/0374/04/H

Application Address: Land North East Of 238 Watling Street Nuneaton Warwickshire

Application Type: Full

Description of Application: Application to divert footpath T50 in relation to permission 23/00039/FUL

GENERAL DETAILS

Planning Case Officer: Matt Jedruch

Applicant: Mr Paul Withers

County Councillor: Bertie Harrison-Rushton

Parish: Higham on the Hill

Road Classification: Unadopted / Private

Substantive Response provided in accordance with article 22(5) of The Town and Country Planning (Development Management Procedure) (England) Order 2015:

The Local Highway Authority does not consider that the application as submitted fully assesses the highway impact of the proposed development and further information is required as set out in this response. Without this information the Local Highway Authority is unable to provide final highway advice on this application.

Advice to Local Planning Authority

Background

The Local Highway Authority (LHA) is in receipt of a full application to divert footpath T50 in relation to planning permission 23/00039/FUL at Land North East of 238 Watling Street, Nuneaton, Warwickshire.

Public Rights of Way (PROW)

The 10/02/2023 LHA response to application 23/00039/FUL includes a Public Rights of Way section outlining the history of Public Footpath T50 in this location and the reasons a legal diversion is needed to regularise a physical diversion which was done sometime in the past without lawful authority. The LHA welcomes that such a diversion has been applied for. However, at present, the LHA advise additional information is required for the following reasons:

Where a diversion is being done by the Local Planning Authority (LPA) under the Town and Country Planning Act (TCPA) 1990 Section 257, the process needs to follow the 1993 regulations (see <https://www.legislation.gov.uk/ukxi/1993/10/contents/made>); the 2013 amendments (see <https://www.legislation.gov.uk/en/ukxi/2013/2201/made>); and the TCPA 1990 Schedule 14 (see <https://www.legislation.gov.uk/ukpga/1990/8/schedule/14>). At present the information on the LPA website for this application does not reflect these requirements.

The focus of consultation is a draft legal notice and legal order and an accompanying map. The 1993 regulations within Schedule 1 include 'Form 1' which is an example legal order (in this case a Public Path Diversion Order). In the text of 'Form 1' sections 1 and 2 describe the line styles that should be used on the accompanying plan. Section 4 of an order relates to the physical works to be done. Those should be outlined there or in the schedules.

The LHA requests the following conditions are included in the draft order. These are based on past orders by this LPA and County Council experience with Public Path Orders under the Highways Act 1980, and under TCPA 1990 as a minerals planning authority (MPA).

- A) The alternative path shall have a minimum clear width of 2.0 metres.
- B) The alternative path shall be surfaced to a width of at least 1.5 metres to a specification approved by Leicestershire County Council.
- C) No trees or shrubs should be planted within 1 metre of the existing boundary fence of the alternative path.
- D) If the stile on the alternative path is to be retained, in line with their responsibility under Highways Act 1980 section 146, the applicant should check and (where necessary) repair the existing stile to ensure it is structurally sound and safe for the public.
- E) Where immediately before the date on which the footpath is diverted there is apparatus under, in, on, over, along or across it belonging to statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.

In respect of draft condition B), in this location the LHA would request surfacing of self-binding stone such as Breedon gravel for which we recommend the Forestry Commission Scotland specification https://www.satinonline.org/Documents/93-004_self-binding-gravel-specification-Rev-A.pdf

In respect of draft condition D) though the existing stile could be retained, reflecting the Equality Act 2010, government policy is that barriers on public rights of way should be the 'least restrictive' option possible. Where no barrier is needed to retain livestock then a signposted 'gap' is preferred. This is because stiles can be awkward even for otherwise able walkers, such as older people, who have mobility limitations such as hip or knee problems that make it more difficult to climb over barriers.

Informatives

The regulations require a statutory consultation process of public notices in newspapers and on site. The regulations specify the organisations who must be formally consulted. This and

other LHAs precede that with an informal consultation process emailing public utilities, local councils and councillors, and public rights of way user groups whose details we can provide.

Note that, unlike a planning application, where any of the affected public right of way is on land not owned by the applicant, the written agreement of that owner is an essential pre-requisite for processing an application, though the letter itself should not be made public.

Date Received
21 June 2024

Case Officer
Oliver Rivera

Reviewer
BD

Date issued
19 July 2024