

TOWN AND COUNTRY PLANNING ACT 1990

Rugby Borough Council

PART OF FOOTPATH R190 BOURTON ON DUNSMORE

STATEMENT OF THE GROUNDS ON WHICH IT IS CONSIDERED THE ORDER SHOULD BE CONFIRMED AND STATEMENT OF CASE

1.0 The relevant criteria

1.1- The Order is made under section 257 of the Town and Country Planning Act 1990 because Rugby Borough Council (“the Council” hereafter) are satisfied that it is necessary to stop up part of Footpath R190 and create a new footpath in order to enable development to be carried out in accordance with a pending planning permission under Local authority reference R23/0365. The proposal description is the following;

PROPOSED NEW BUILD DWELLING WITH ASSOCIATED LANDSCAPING, PARKING AND BOUNDARY TREATMENTS AND DIVERSION OF EXISTING PUBLIC FOOTPATH.

1.2- An illustrative block plan of the proposed along with the PROW diversion (shown in blue) has been submitted to the council and shown below;

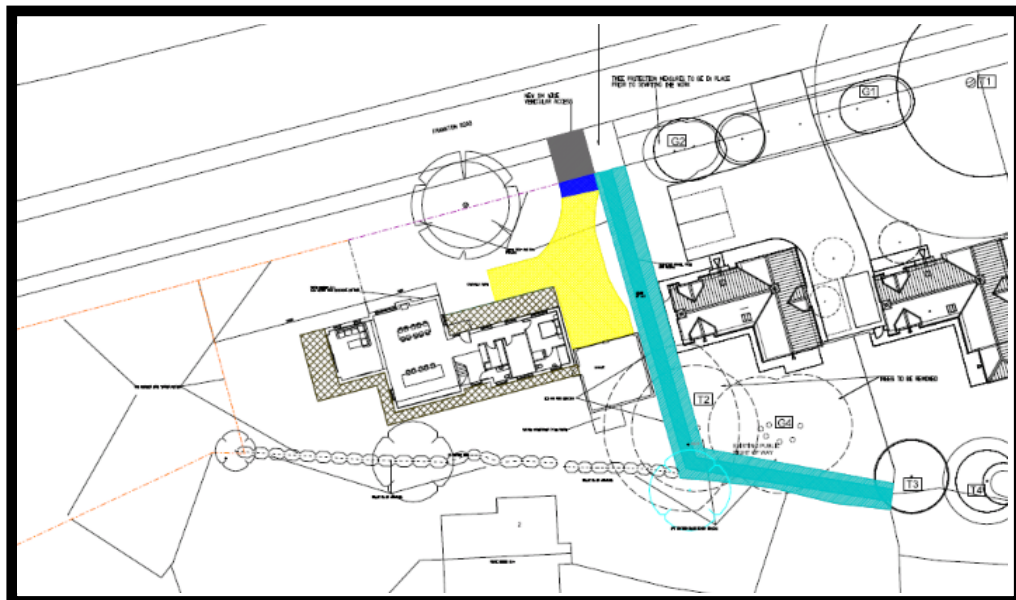


Figure 1 showing the proposed development in R23/0365 (western side of the site) along with the proposed PROW diversion indicated in blue.

2.0 Site Location

2.1- The site of the footpath lies within the parish of Bourton on Dunsmore in the district of Rugby Borough Council. The application site comprises an area of scrubland, containing a range of vegetation and trees and is located on the south side of Frankton Rd. The site is located just within the settlement boundary of the village of Bourton – on –Dunsmore

adjacent to the surrounding Green Belt land. The site frontage is marked by a line of trees, 2 of which are protected by preservation orders along with some additional hedgerow remnants and a ditch running alongside Frankton Rd.

- 2.2- Cherry Tree Lane and some individual houses adjoin the southern boundary of the application site. To the east there is another area of former shrubland which also owned by the applicant and has consent for 2-detached dwellings resulting from application R19/1442 (shown in figure 1). Within the site is an existing Public Right of Way which intersects the shrubland and provides pedestrian movement from Frankton Rd to Cherry Tree lane and onto Main street. Bourton Village hall (Grade II) also lies to the west of the site, with its car park on the opposite side of Frankton Rd to the north.
- 2.3- At current the footpath with reference to figure 2 below is a 99m length right of way which from point A (grid reference 43370 70627) curves westerly for approximately 87 metres to Point B (grid reference 43295 70638) where it turns northerly for approximately 12 metres to Point C (grid reference 43270 70638).

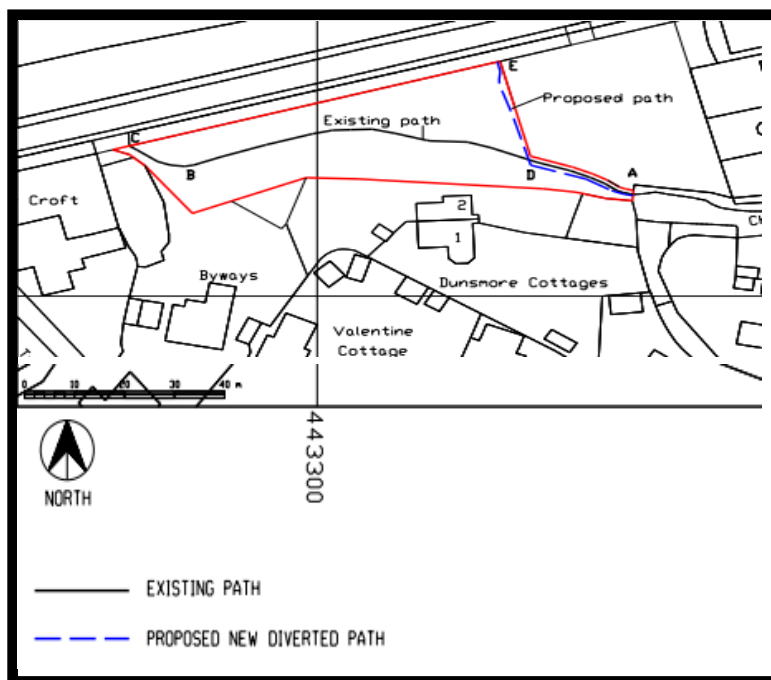


Figure 2 illustrating the existing PROW R190 shown in black with the proposed re-alignment shown in blue.

3.0 Planning history and proposal

- 3.1- On the 22nd March 2023, the developer and land owner applied for planning permission for the erection of a dwelling with associated parking and boundary treatments Ref R23/0365.
- 3.2- In order for any development in this proposal to be implemented the diversion of the existing footpath R190 is required to be diverted and re-aligned through the site. This will intersect the proposed single dwelling and its residential curtilage in R23/0365 and the approved and already implemented two dwellings resulting from R19/1142.
- 3.3- The new proposed diverted route will be 45 metres and will start at the same point (a) as illustrated in figure 2 (grid reference 43370 70627) where it is proposed to then re-align

westerly for approximately 21 metres to Point D (grid reference 43345 70634) and then turns northerly for approximately 24 metres to Point E (grid reference 43340 70658).

- 3.4- The public right of way has been rerouted to the East of the site and will be separated from the site by a timber fence to include cleft chestnut post and rail fencing. This will be a minimum of 3m in width and will be bound surfaced by a 1.2m path to enable users to use the right of way in all seasons.
- 3.5- Whilst no official decision has been issued for R23/0365 at this time, the council consider that the application as currently presented is acceptable in planning terms subject to the successful diversion of R190 and the completion of a signed s106 agreement relating to Biodiversity Net gain.
- 3.6- On completion of the Section 106 and the undertaking, the planning permission will be issued by the council should the additional outstanding matter of the successful PROW diversion be resolved.

4.0 R190 Diversion and consultation

- 4.1- Two letters of objection were received within the consultation period for the PROW diversion. One of which has been withdrawn with the other still outstanding. The key points raised are detailed below, with the council's response to each thereafter.
- 4.2- **Point 1**- This area has previously been designated as "meadow grassland" which was part of conditions 4 & 10 in approved application R19/1442 and will sit as part of the existing footpath linking the villages of Bourton to Frankton. This meadow grassland was designated in order to ensure a biodiversity net gain resulting from R19/1442.

Council response;

The objection is correct in stating that the ecological Appraisal Report made by Philip Irving, stipulates as a condition for planning consent where a new area of meadow grassland will be created on the land to the west of the development site in R19/1442. This was put in place to provide a gain for biodiversity as required by the NPPF, and this condition was made to offset & mitigate the Impact on the local wildlife caused by the development of 2 properties.

The council consider that many of the points raised in the diversion objection relate to issues regarding the overall development of the site as detailed in the proposal for R23/0365. The conditions which they refer to (4 & 10 from R19/142) are subject to an additional application currently under consideration by the council (Ref R23/0815) which proposes to vary these conditions. The council currently have a draft S106 agreement which details a financial contribution from the applicant to Warwickshire County Council Ecology in order for the removal of biodiversity (termed meadow grassland in the objection letter). This financial contribution will cover the required biodiversity net gain for the two dwellings (R19/1442) which was offset on the site subject to application R23/0365 along with the required biodiversity net gain for the currently proposed dwelling providing an overall mitigation for the site as a whole in accordance with the National Planning Policy Framework and Local Plan policy NE1 and therefore acceptable in planning terms.

- 4.3- **Point 2-** The existing footpath is an amenity to village life passing through a pleasant green space (known locally as The Green). Any redirection would deviate from this purpose and become a local biodiversity loss.

Council response;

Whilst the Council concede that this development in R23/0365 if built out will impact on the biodiversity of the site and the natural amenity of the area, the site is within the village boundary and is not part of any additional protection such as a conservation area designation or any ecological restriction which prohibits development. Whilst the immediate area will result in a loss of biodiversity, the financial contribution does make the proposal acceptable in planning terms and the PROW diversion is required in order to allow the development to take place.

- 4.4- **Point 3-** This area provides shelter for biodiversity such as Badgers, Muntjac, common lizards and bird life. A bee apiary has been located adjacent to this site for 11 years.

Council response;

Warwickshire CC Ecology have raised no concerns with respect of protected species on the site and any development taking place impacting on this basis.

5.0 Conclusion

- 5.1- The Council is satisfied that the diversion is required to enable the development to be carried out and confirms that it has complied with the procedures required by the legislation.
- 5.2- During the consultation process for application R23/0365, Warwickshire CC PROW team offered a stance of no objection to the diversion. This was subject to conditions in the event of an approval. There stance is detailed below;

We note that the applicant is proposing a 3-metre width for the diverted public footpath, which would conform with policy RW5c of Warwickshire County Council's Rights of Way and Recreational Highway Strategy which requires a width of at least 2 metres for a diverted public footpath where unenclosed, and at least 3 metres for any section that is to be enclosed. The proposed diversion route must be well drained with firm, level ground across its full legal width and the final specifications for surfacing must be agreed with the Highway Authority in due course.

The Rights of Way team therefore has no objection to the proposals but as the Highway Authority responsible for protecting and maintaining the public footpath we require the following conditions to be carried on any consent, if granted, to mitigate or minimise any potential impact on the public footpath and its users:

- *No site security fencing may be erected on or within 1m of public footpath R190 (unless closed by legal order).*
- *Prior to commencement of any works involving disturbance of the surface of public footpath R190 the developer must contact Warwickshire County Council's Rights of Way team as Highway Authority to obtain any necessary consents and make any necessary arrangements for the protection of the public footpath and its users.*
- *Prior to the commencement of any works to resurface public footpath R190 the specifications for the new surface must be submitted to Warwickshire County Council's Rights of Way team for approval. All resurfacing works on public rights of*

way must be completed to the satisfaction of the Highway Authority prior to the first occupation of any property at this site.

- *The applicant must carry out remedial works to make good any damage or address any flooding on the surface of public footpath R190 caused by the development and any remedial works must be completed to the satisfaction of the Highway Authority prior to the first occupation of any property at this site.*
- 5.3- A separate process is now taking place between the applicant of application R23/0365 and Warwickshire CC Ecology in order for the off-setting agreed in R19/1442 to be compensated for and for the whole site (3 dwellings) to provide a new appropriate mitigation for the loss of biodiversity resulting from the overall developments. Therefore, the ecological reasons for the diversion to not take place are being adequately dealt with.
- 5.4- The Council respectfully ask the Secretary of State for Environment, Food and Rural Affairs to confirm the Borough of Rugby (Part of Footpath R190 Bourton on Dunsmore) Public Path Order 2024.