



# Planning Committee Report

**Application Number:** N/2020/0112

**Location:** Land To The East Of Hardingstone, North of Newport  
Pagnell Road, Northampton

**Development:** Application for the permanent diversion (part) of Footpath  
KN6 Northampton in relation to development at  
Hardingstone Sustainable Urban Extension

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**Applicant:** Kier Living Ltd

**Agent:** N/a

**Case Officer:** Nicky Scaife

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**Ward:** Nene Valley Unitary Ward

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**Referred By:** Assistant Director of Planning and Development

**Reason for Referral:** Application under Section 257 of Town and Country  
Planning Act 1990

**Committee Date:** 3 August 2023

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## EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION

### RECOMMENDATION: That:

- (i) A draft Order be made pursuant to Section 257 of the Town and Country Planning Act 1990 to divert part of Public Right of Way Footpath KN6, as detailed on the submitted Section 257 application, subject to delegated authority to the Assistant Director of Planning and Development to resolve any outstanding objections, and to confirm the un-opposed Order.
- (ii) In the event that objections remain and the draft Order is still opposed, to seek delegated authority for the Assistant Director of Planning and Development to refer the matter to be determined by the Secretary of State.

### Proposal

The Section 257 application has been submitted to divert part of Public Footpath KN6 Northampton.

The diversion is required to allow the development of Phase 1 of the Land South of Brackmills Sustainable Urban Extension (SUE) for the erection of 385 dwellings with associated infrastructure and open space approved under a reserved matters application, reference N/2019/0048, on 21<sup>st</sup> August 2019.

The reserved matters application follows the grant of outline planning consent, reference N/2013/0338 for the following:

‘Sustainable Urban Extension to include up to 1,000 dwellings (Class C3); local centre up to 1,320 sqm net floor space of retail, professional and financial services, restaurant/cafes (Classes A1, A2 and A3); up to 375 sqm net public house (Class A4); 2.09ha of land for a two form entry primary school (Class D1); up to 750 sqm of community uses which may include a medical centre, pharmacy and community centre (Class D1). Infrastructure improvements including a pumping station, green infrastructure and highway access from Landimore Road and Newport Pagnell Road.’

## **Consultations**

The following consultees have raised **no objection** to the application:

- The Ramblers
- Definitive Map Officer/Public Footpath Officer

One letter of **objection** has been received from a third party.

## **Conclusion**

The application has been assessed against the relevant legislation and statutory requirements in respect of applications made under Section 257 of the Town and Country Planning Act 1990.

The report looks into the key issues in detail, and Officers recommend that, an Order be made pursuant to Section 257 of the Town and Country Town and Country Planning Act 1990 to permanently divert part of Public Right of Way, Footpath KN6, as detailed on the submitted Section 257 application and shown on the submitted plan.

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, the Officer's assessment and recommendations, and Members are advised that this summary should be read in conjunction with the detailed report.**

## **MAIN REPORT**

### **1 APPLICATION SITE AND LOCALITY**

- 1.1 The Land South of Brackmills SUE application site is located to the south west of Hardingstone, Northampton and to the north of Newport Pagnell Road. The overall site comprises two parcels of agricultural land located either side of Landimore Road. The western parcel of land has a site area of approximately 9.8 hectares and the eastern parcel of land has a site area of approximately 8.6 hectares.
- 1.2 The site is bounded by residential properties on Newport Pagnell Road to the south west and residential properties on Pagnell Court to the south east. Brackmills Wood

is located to the north of the site Wood beyond which Brackmills Industrial Estate extends northwards to the Nene Valley.

- 1.3 Public Footpath KN6 bisects both parcels of land diagonally, extending from the northwest in Hardingstone across the site south-eastwards towards Pagnell Court and onto Newport Pagnell Road.

## 2 RELEVANT PLANNING HISTORY

- 2.1 The following planning history is considered relevant to the current proposal:

Application Ref.	Proposal	Decision
WNN/2022/0559	Reserved Matters Application (Appearance, Landscaping, Layout and Scale) pursuant to Outline Planning Permission N/2013/0338 for Phase Two development comprising Community Centre, Primary School, Playing Fields and other associated works including landscaping and parking	Approved 23/03/23
N/2019/0048	Reserved Matters Application pursuant to Outline Planning Permission N/2013/0338 (Sustainable Urban Extension for up to 1,000 dwellings; local centre; primary school; community uses; associated infrastructure improvements and highway access from Landimore Road and Newport Pagnell Road) for Phase One development comprising 385no dwellings with associated infrastructure and open space areas	Approved 21/08/19
N/2013/0338	Outline planning application for the development of a sustainable urban extension to include up to 1,000 dwellings (Class C3); local centre up to 1,320 sqm net floor space of retail, professional and financial services, restaurant/cafes (Classes A1, A2 and A3); up to 375 sqm net public house (Class A4); 2.09ha of land for a two form entry primary school (Class D1); up to 750 sqm of community uses which may include a medical centre, pharmacy and community centre (Class D1). Infrastructure improvements including a pumping station, green infrastructure and highway access from Landimore Road and Newport Pagnell Road.	Allowed at appeal 14/04/16.

## 3 STATUTORY DUTY

- 3.1 The application to permanently divert Footpath KN6 will be made pursuant to section 257 of the Town and Country Planning Act 1990.

- 3.2 The Local Planning Authority may by order authorise the diversion of any footpath if it is satisfied that it is necessary to do so in order to enable development that has been approved by virtue of a planning permission to be carried out.
- 3.3 Any order granted under section 257 of the Town and Country Planning Act may, if the Local Planning Authority is satisfied that it should do so, provide:
- (a) for the creation of an alternative highway for use as a replacement for the one authorised by the order to be diverted, or for the improvement of an existing highway for such use;
  - (b) for authorising or requiring works to be carried out in relation to any footpath for whose diversion, creation or improvement provision is made by the order;
  - (c) for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across any such footpath;
  - (d) for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.

#### **Government Guidance**

- 3.4 The Department for Transport has issued advice in relation to the diversion of public footpaths. This echoes the provisions set out in section 257 of the Town and Country Planning Act 1990. This guidance incorporates the procedural changes brought about by the Growth and Infrastructure Act, 2013 and now enables applications for diversion Orders to be submitted in advance of planning permission being granted.
- 3.5 The changes create a more expeditious process and give greater choice as to when an application is made by those wishing to seek the diversion of highway land.
- 3.6 Rights of Way Guidance by the Planning Inspectorate also provide some helpful guidance;
- 3.7 When considering an order made under section 257, members should be mindful that the planning merits of the development itself are not at issue for consideration in the diversion of a right of way and members should not allow the determination of the planning merits to be re-opened. The weighing up of the planning merits and demerits will have been determined in favour of the development (where planning permission has already been granted).
- 3.8 The power contained in section 257 of the Town and Country Planning Act 1990 is only available if the development, insofar as it affects Footpath KN6, is not yet substantially completed. If the development has been substantially completed then another type of order would need to be applied for and an order under section 257 would not be available in this situation. A House of Lords in *Sage v Secretary of State for the Environment Transport and the Regions* UKHL 22 2 All ER 689, set out the legally correct approach when determining whether a building has been completed for was a “holistic” one which looked at the whole operation and asked whether that operation had been “substantially completed”.
- 3.9 In respect of this application, the development approved under Phase 1 of the reserved matters approval for 385 dwellings associated with the proposed diversion is currently under construction with, and at the time of writing this report, a total of 243

plots commenced on site, with 104 dwellings completed of which 90 are occupied. As such, and in line with case law it is the Officer's opinion that the development has not been substantially completed and that Section 257 of the Town and Country Planning Act 1990 remains the relevant statutory instrument by which to consider for the proposed diversion.

#### 4 RESPONSE TO CONSULTATION

4.1 Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website.

Consultee Name	Position	Comment
Ramblers Association	Consultee	No objection
WNC Definitive Map Officer	Consultee	No objection

#### 5 RESPONSE TO PUBLICITY

Below is a summary of the third party and neighbour responses received at the time of writing this report.

5.1 There were two initial objections from one third party raising the following comments:

- The application is provided subsequent to the development that has already taken place over the original path route, as such the housing development is illegal.
- The path route shown as the original drawing route is incorrect.
- The footpath had vegetation to the left of it, from points A to B. Some replanting has taken place but this does not run the full length of these points and does not provide the full run that was agreed would be re-established. The vegetation must extend to at least points A to B.
- The footpath was subject to a closure notice for 6 months. There was no indication of renewal to this period yet the path had been closed for more than 18 months.

The additional objector raised the following concerns:

- The footpath elevation has been raised by over 1m from points L-M and removed privacy and is a security risk to the residents of Pagnell Court. The planting of hedges and trees has not extended the length of L-M and leaves the rear of Pagnell Court open to abuse.
- Insufficient room for path, hedging and drainage ditch.

5.2 Following receipt of the objections a meeting was held on site with the developer and objector to seek to resolve the concerns raised. The following measures have been agreed with the developer and objector in order to address the concerns and, subject to implementation of the measures below the objector has confirmed that the concerns are being constructively addressed:

- The installation of a 1.8m fence installed along a section of the footpath at the top of the bank level adjacent to gardens on Pagnell Court extending along the path down towards Newport Pagnell Road to screen views to adjacent gardens.
- The planting of an additional 3 Acer Campestre trees along the footpath route to provide additional screening to Pagnell Court.
- The installation of 1.8m hit and miss fence installed on a section of existing fence line.
- Installation of 1.2m high close boarded fence adjacent to the drive of 1 Pagnell Court.
- Hedge re-aligned along section of footpath from Newport Pagnell Road to provide a 1.5m width (wider than existing route).
- Pipe installed to convey water from Pagnell Court to ditch.

## **6 APPRAISAL**

- 6.1 The principal test (amongst others) under Section 257(1A) of the Town and Country Planning Act 1990 to be applied to applications of this type is whether it is necessary to stop up the footpath in order to enable development to be carried out.
- 6.2 Condition 6 of the outline planning consent for the Land South of Brackmills SUE, N/2013/0338, required the approval of a detailed Masterplan and a Design Code. The details approved under this condition and in the subsequent reserved matters approval for Phase 1, N/2019/0048, accepted the principal of the diversion of part of Public Footpath KN6 in the eastern parcel of the overall site to allow for a more efficient housing layout to come forward to seek to deliver the quantum of development approved under the outline planning permission and in the interests of good design. The Public Footpath would predominantly retain its current alignment extending from the northwest in Hardingstone in a south easterly direction across the SUE site extending across Landimore Road via a proposed pedestrian crossing. The footpath would then deviate to follow the alignment of a proposed crescent road in part of Phase 1 of the development and would be located within a landscaped strip of open space to form a strong feature of the development before returning to its existing alignment to meet Newport Pagnell Road.
- 6.3 As such, the diversion is considered necessary to enable the development to be carried out in accordance with the relevant planning outline planning permission and subsequent reserved matters approval in accordance with Section 257(1A) of the Town and Country Planning Act 1990.
- 6.4 The existing route of Public Footpath KN6 from point A to point K as shown on the submitted plans is approximately 929.6m in length and is predominantly laid to grass due to tracking across fields. The proposed diversion would extend the route by some 97.9m to approximately 1027.5m in length. The route as proposed within the section to be diverted would follow newly constructed paths 3m in width constructed of tarmac with concrete kerbs until it meets Point J as shown on the submitted plans where the route becomes an unmade grass path varying in width throughout its length between 2-3m and 1.5m in width between points L-M.

6.5 Whilst it is acknowledged that the diversion would extend the existing route and indeed alter the character of the route from that through agricultural fields to a route through a residential area, the site is subject to an outline planning consent and subsequent reserved matters approval for residential development. The route has been designed to allow for an efficient delivery of housing on the site contributing towards the Council's 5 year housing supply and to allow for a positive design feature in the form of a crescent green route through the development. As such, it is considered the route as proposed would not lead to any significant adverse impact to users of the existing route and would provide an acceptable route for proposed users in future.

6.6 The Ramblers Association and the Council's Definitive Maps Officer raise no objection to the proposed diversion.

6.7 In addition to the measures to address the third party objection detailed in paragraph 5.2 above, in response to the third party objection and the points raised, comments are as follows:

- The development of Phase 1 is currently under construction. The developer has confirmed that some buildings works have taken place along the alignment of the original route of Public Footpath KN6. This comprises of 3 dwellings erected across the route.
- The relevant Temporary Closure Orders are in place in respect of the existing footpath. Subject to the objection remaining and the Section 257 application being referred, the issue that there is an existing interference with Public Footpath KN6 would be a matter for the Secretary of State to consider.
- The plans as originally submitted with the Section 257 application have been amended to show the correct alignment of the original route of Public Footpath KN6 as confirmed by the Definitive Maps Officer and have been subject to formal consultation.
- The approved landscaping scheme for the development includes the planting of a Hornbeam hedge and a mix or replacement trees along the alignment of the proposed footpath route between Points A to B to replace those previously removed along the boundary with Pagnell Court. The planting has been carried out in accordance with the landscaping scheme approved as part of the reserved matters approval. Additional planting as detailed in paragraph 5.2 above will be carried out to provide additional screening along parts of the route.
- The relevant Temporary Closure Order has been renewed under Section 14 of the Road Traffic Regulation and has been in place with effect from 8<sup>th</sup> April 2021 until 8<sup>th</sup> October 2023.

## **7 FINANCIAL CONSIDERATIONS**

7.1 None.

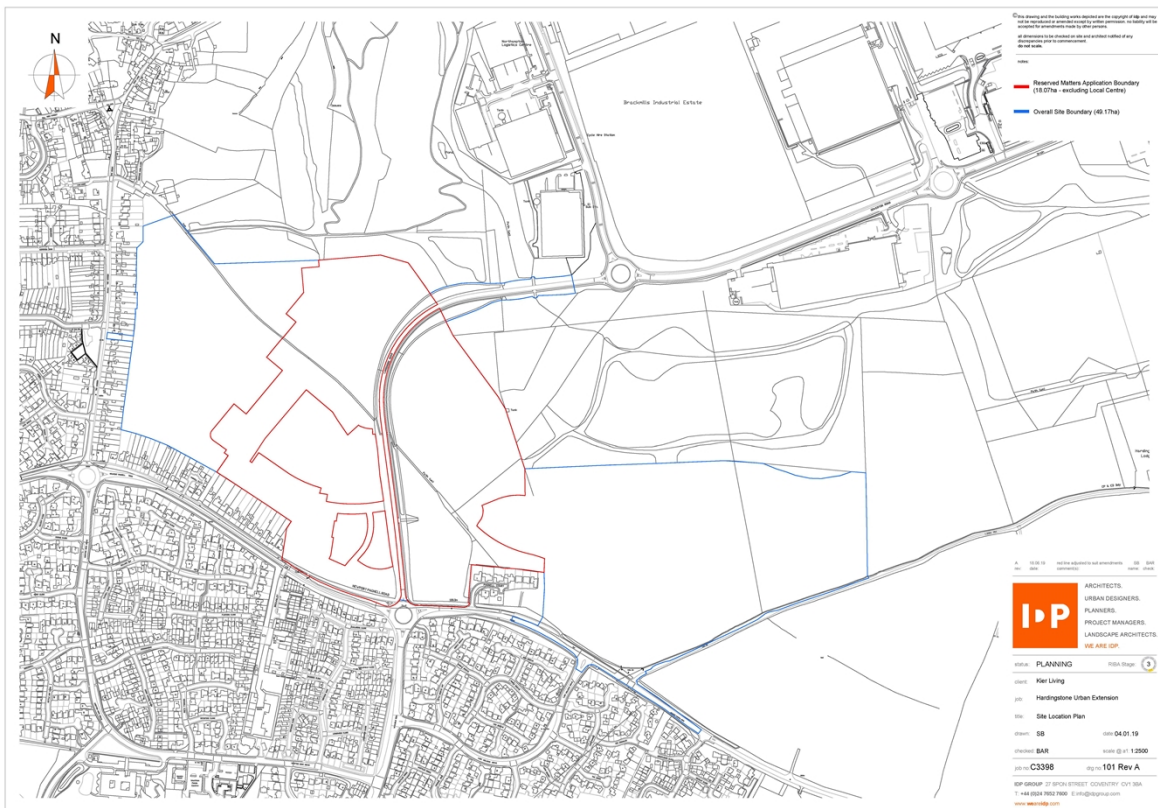
## **8 PLANNING BALANCE AND CONCLUSION**

8.1 The diversion of part of Public Footpath KN6 as shown on the plans submitted with the Section 257 application is considered necessary in order to implement the development as approved under outline planning permission N/2013/0338 and

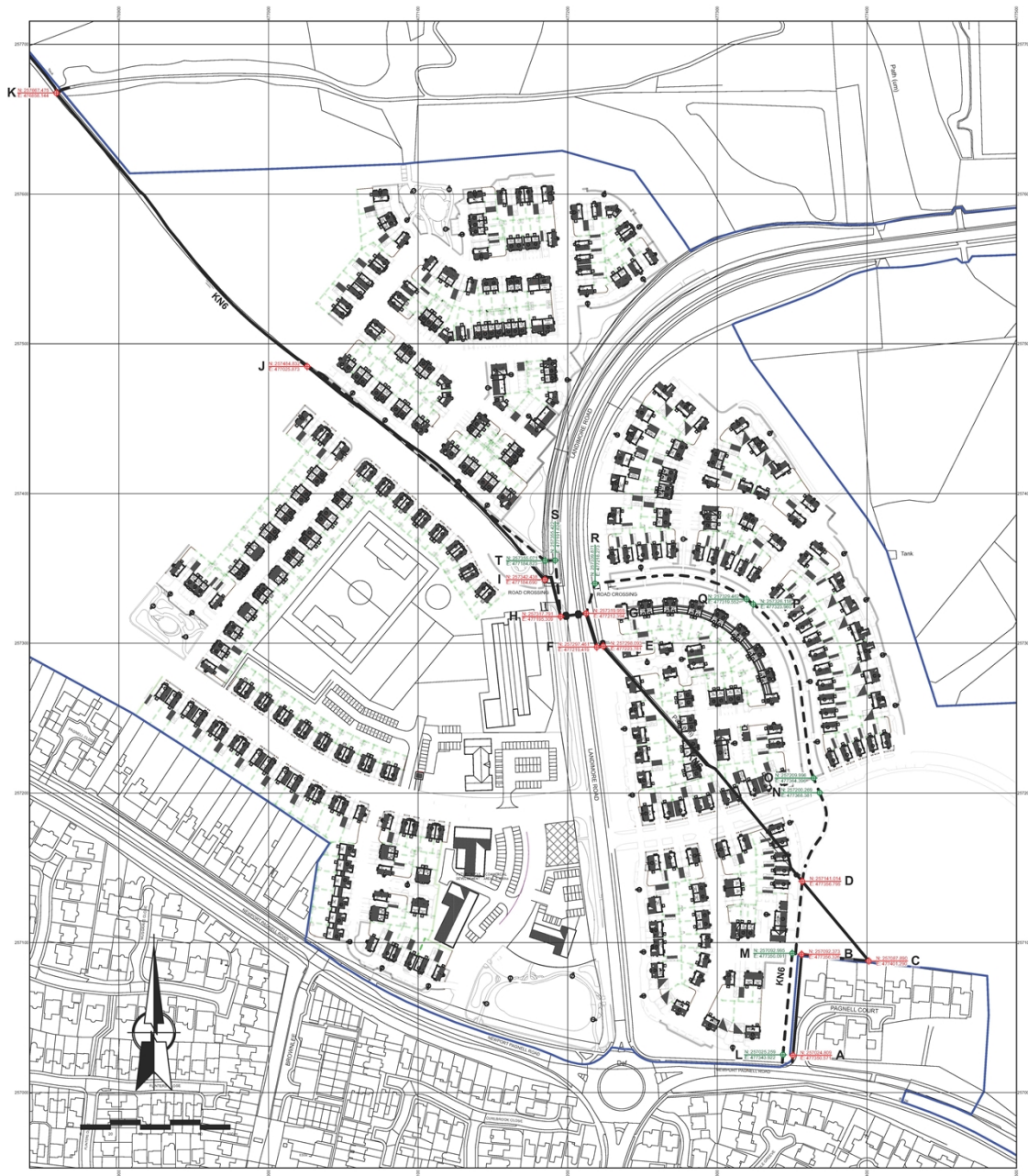
reserved matters approval N/2019/0048 in accordance with the requirements of Section 257 of the Town and Country Planning Act 1990

## 9 RECOMMENDATION

- 9.1 That, subject to the resolution of any outstanding objections, an Order be made pursuant to Section 257 of the Town and Country Town and Country Planning Act 1990 to permanently divert part of Public Right of Way, Footpath KN6, as detailed on the submitted Section 257 application and shown on the submitted plan. And, in the event the Order is unopposed, to confirm the Order.
- 9.2 In the event, that objections remain, the Order be referred to the Secretary of State to determine.







- KEY**
- A-B-C-D-E-F-G-H-H - Existing Route to be diverted
  - - - L-M-N-O-P-Q-R-G-H-S-T-J - Proposed new route
  - Extent of Land Ownership

**Existing Route**

Section	Distance (m)	Path Width (m)
A-B	67.8	6.0
B-C	45.2	6.0
C-D	69.3	6.0
D-E	207.1	6.0
E-F	4.4	6.0
F-G	23.6	6.0
G-H	17.2	6.0
H-I	31.8	6.0
I-J	214.2	6.0
J-K	249.0	6.0

**Proposed Route**

Section	Distance (m)	Path Width (m)
L-M	69.1	6.0
M-N	174.3	6.0
N-O	10.5	6.0
O-P	126.3	6.0
P-Q	5.5	6.0
Q-R	104.9	6.0
R-S	20.7	6.0
S-T	17.8	6.0
T-J	6.8	6.0
J-K	235.4	6.0
J-K	249.0	6.0

**NOTES**  
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REV DATE DRAWN CHECKED NOTES  
 A 11/04/2018 AAB Drawing created 10/04/2018  
 B 08/07/2020 JRM Drawing updated with new information  
 C 08/07/2020 JRM Drawing updated with new information  
 D 08/07/2020 JRM Drawing updated with new information  
 E 14/03/21 JRM Drawing updated with new information

**PROJECT**  
 Hardington  
 Northampton

**SCALE** 1:2500 @ A3

**CLIENT**  
 Kier Living Ltd

**DATE** Aug 2020

**DRAWING TITLE**  
 Section 257- Proposed Diversion (part) of PROW KN6, Hardington (Existing & Proposed Route)



**DRAWING NO.** HA-101-01  
**REV** F

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