



Planning Committee Report

Application Number: 2023/5487/FPATH

Location: Roade Cemetery Manor Close Road

Development: Request to move the footpath KZ4, as the cemetery is being extended, to the outer perimeter of the new extension (S257 application in relation to planning permission S/2020/1343/FUL)

Applicant: Roade Parish Council

Agent: Roade Parish Council

Case Officer: Daniel Callis

Ward: Towcester and Roade

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

Committee Date: 3rd August 2023

EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION

RECOMMENDATION:

- (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 KZ4, as detailed on the submitted Section 257 application, subject to delegated authority to the Assistant Director of Place 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 Place to refer the matter to the Secretary of State.

Proposal

Request to move the footpath KZ4, as the cemetery is being extended, to the outer perimeter of the new extension (S257 application in relation to planning permission S/2020/1343/FUL)

The diversion is required to allow the implementation of planning permission S/2020/1343/FUL, which will deliver an enlarged burial ground for the parish of Roade.

Consultations

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

- WNC Highways
- The Ramblers Association

- WNC Definitive Map Officer/Public Footpath Officer

One third party objection have been received.

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, 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 KZ4, 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, planning policies, 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 application site comprises Roade Cemetery and a small section of an agricultural field adjoining the cemetery to the north. The Cemetery is located adjacent to the water tower. There is a public footpath which runs along the northern boundary of the cemetery. Residential properties are located to the east and open countryside to the north, south and west.

2 DESCRIPTION OF PROPOSED DEVELOPMENT

2.1 The planning permission grants consent for the change of use of a small section of the adjacent agricultural field to create an extension to the existing cemetery and to divert the footpath around the extended cemetery.

2.2 The S257 application seeks to formally divert the footpath (KZ4) around the perimeter of the enlarged burial ground.

3 RELEVANT PLANNING HISTORY

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

Application ref:	Proposal:	Decision:
S/2020/1343/FUL	Change of use of agricultural land to burial land and the diversion of footpath KZ4	Approval Feb 2021

4 RELEVANT PLANNING POLICY AND GUIDANCE

Statutory Duty

- 4.1 The application to permanently divert Footpath KN6 will be made pursuant to section 257 of the Town and Country Planning Act 1990.
- 4.2 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.
- 4.3 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

- 4.4 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 that enables applications for diversion Orders to be submitted in advance of planning permission being granted.
- 4.5 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.
- 4.6 Rights of Way Guidance by the Planning Inspectorate also provide some helpful guidance;
- 4.7 When consider an order made under section 257, members should be mindful that the planning merits of the development itself are not at issue 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).
- 4.8 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 KZ4, is not yet substantially completed. Officer can confirm that, at the time of writing this report, the development has not yet commenced.

5 RESPONSE TO CONSULTATION

- 5.1 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
WNC Highways	No objection	No further comment
Definitive Mapping Team	No objection	Question whether the Order map is legally valid, as it does not show the correct legal alignment as recorded on the definitive map. <i>(Officer note: Officers have checked with the Council's solicitor, who is satisfied that the Order map is satisfactory)</i>
The Ramblers Association	No objection	Whilst Ramblers have no specific objection, the proposed route does not seem the most sensible option. At present, most walkers are following an informal route through the field along the southern side of the burial ground. It would be more practical if the formal diversion reflected (and formalised) that route.

6 RESPONSE TO PUBLICITY

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

- 6.1 There has been one third party objection, citing the following points:
- the proposed diversion is quite unnecessary. It is often the case that public footpaths to go through cemeteries
 - why restrict the public and therefore discourage them to spend time in open spaces by shutting off the cemetery. It is often the case that people enjoy walking and spending time in cemeteries
 - plus the cost of the diversion to the Parish Council is an unnecessary use of public money which should have been pointed out by West Northamptonshire Council.
- 6.2 *(Officer note: Officers have replied to the Objector, responding to each of their points in turn, and, in light of those responses, have requested the Objector confirm whether they still wish to object.)*

7 APPRAISAL

- 7.1 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.
- 7.2 Informative 1 on planning permission S/2020/1343/FUL states:
The applicant's attention is drawn to the requirement to apply for a diversion order to be made under s. 257 of the Town and Country Planning Act 1990 prior to implementation of this planning permission. Furthermore it is an offence to block a public right of way.

- 7.3 Also, condition 3 on the same permission states:
Prior to work commencing on the re-routing of public footpath KZ4 details of the proposed wooden fencing and boundary planting shall be provided to the Local Planning Authority and agreed in writing. Thereafter the fencing and boundary planting shall be retained as per the approved details unless otherwise agreed in writing with the Local Planning Authority.
- 7.4 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.
- 7.5 The effect of the Order will be to divert part of Public Footpath KZ4 from a line between points A and B on the Order Map, which is a distance of approximately 98 metres. The proposed diversion would commence at point A and proceed in a generally north-westerly direction for a distance of approximately 36 metres to point C, where it then continues in a generally north-easterly direction for a distance of 46 metres to point D, then continues for a distance of approximately 44 metres to point E, where it then continues in a south-easterly direction for a distance of 12 metres to point B, at which point it re-connects with the existing alignment of Public Footpath KZ4.
- 7.6 The new route would have a minimum width of 1.8m throughout its length and have an unmade (grass) surface.
- 7.7 Whilst it is acknowledged that the diversion would extend the existing route, it 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.
- 7.8 Whilst the alternative route proposed by the Ramblers Association is noted, there is no reason not to approve the route proposed by the Parish Council.
- 7.9 The Order has already been made (5th June 2023), public consultation undertaken (15th June-13th July 2023). One objection was received from a third party and Officers and the Parish Council are working to resolve those points of concern with the Objector.
- 7.10 The recommendation to Committee is that delegated authority be granted to Officers to complete the process and enable the diversion to be implemented.

8 FINANCIAL CONSIDERATIONS

- 8.1 None

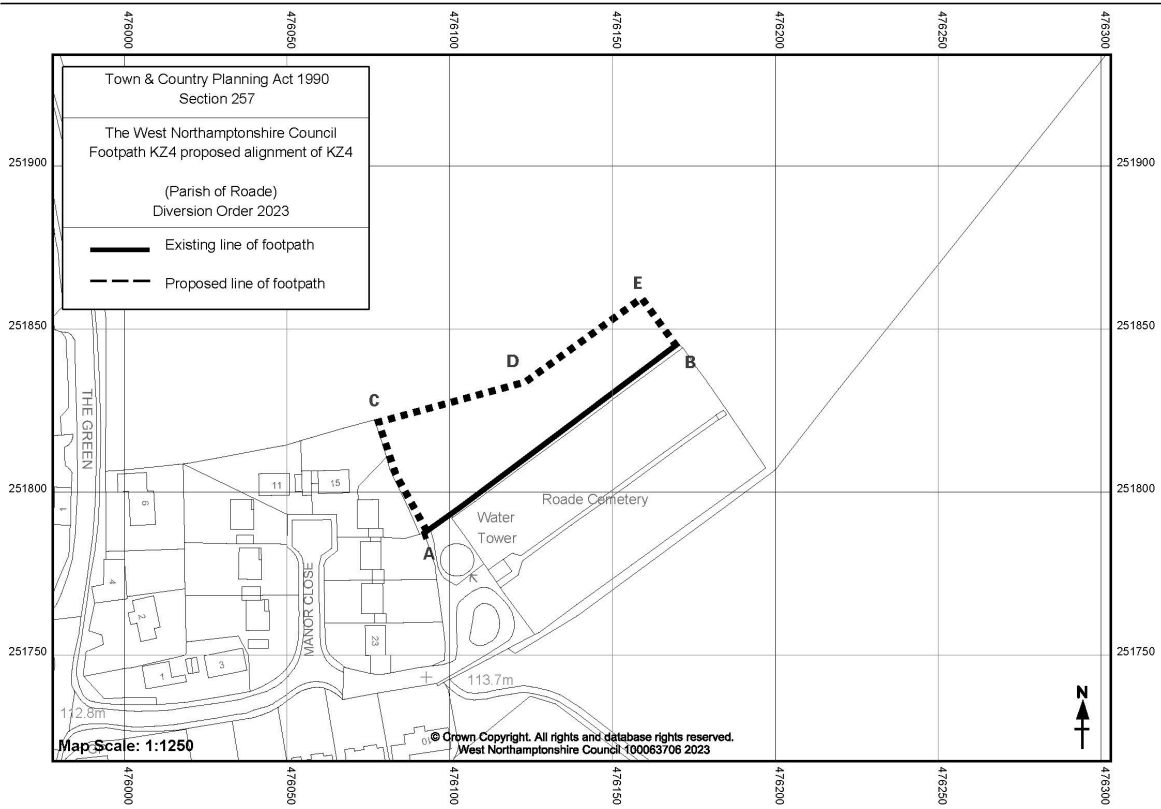
9 PLANNING BALANCE AND CONCLUSION

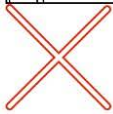
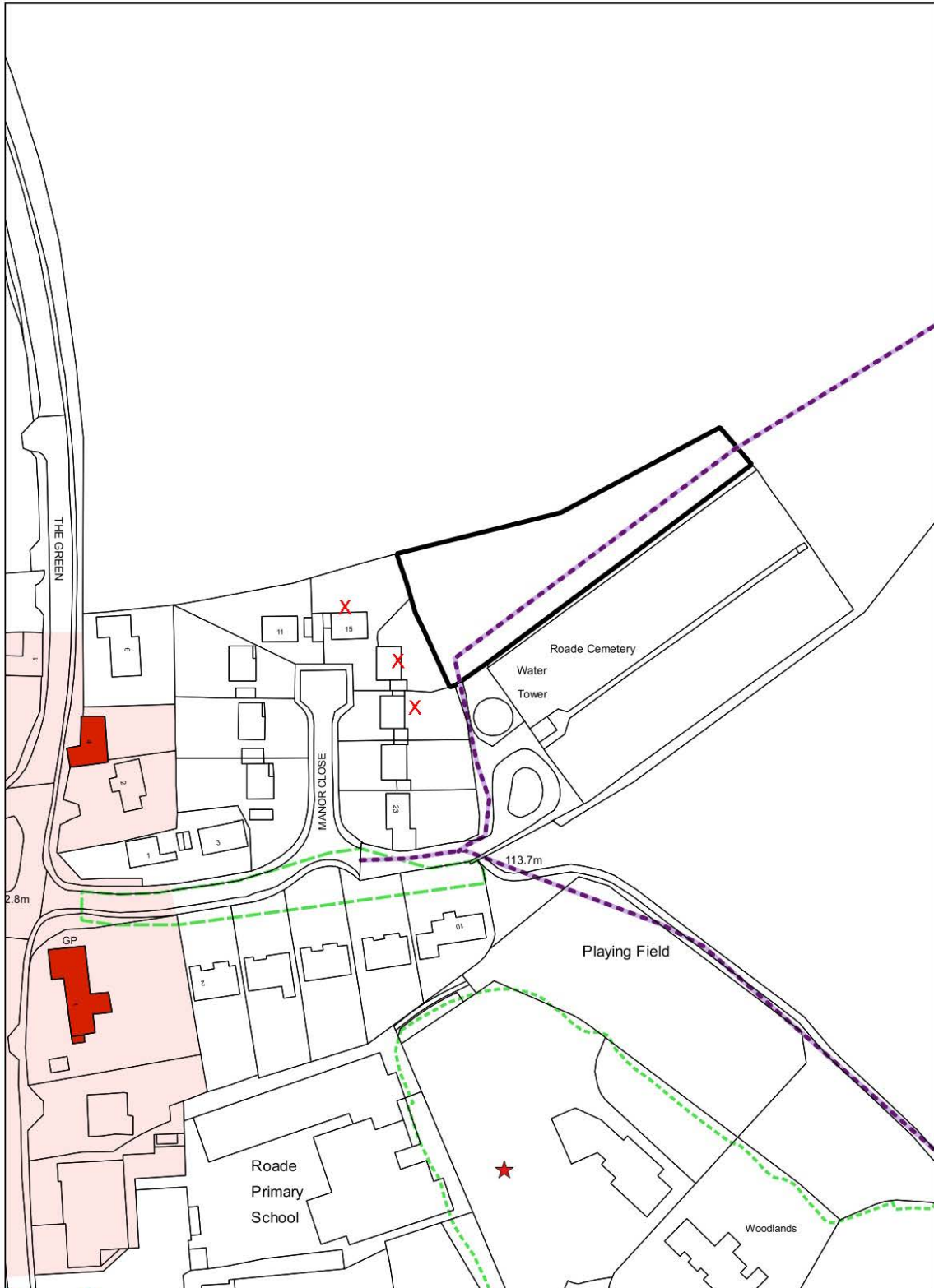
- 9.1 The diversion of part of Public Footpath KZ4, as shown on the plans submitted with the Section 257 application, is considered necessary in order to implement the development as approved under planning permission S/2020/1343/FUL in accordance with the requirements of Section 257.

RECOMMENDATION

That, subject to the resolution of any outstanding objections, an Order be made pursuant to Section 257 of the Town and Country Planning Act 1990 to permanently divert part of Public Right of Way, Footpath KZ4, 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.

In the event that objections remain, the Order be referred to the Secretary of State to determine.





↑ Map Scale:
N 1:1,250

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S/2020/343/FUL
Road