

**AREA COMMITTEE EAST (ACE) DALES, MAPPERLEY AND ST ANN'S**  
**9 SEPTEMBER 2014**

|  |   |                                    |
|--|---|------------------------------------|
| <b>Title of paper:</b>                           | <b>REQUEST FOR AUTHORISATION TO STOP UP A PUBLIC FOOTPATH AND CREATE A NEW PUBLIC FOOTPATH AT MELVILLE GARDENS, ST ANN'S</b>  |                                    |
| <b>Director(s) / Corporate Directors</b>         | David Bishop, Corporate Director for Development and Growth<br>0115 8762758<br>Email:david.bishop@nottinghamcity.gov.uk   | <b>Wards affected:</b><br>St Ann's |
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**Relevant Council Plan Strategic Priority:**

|                           |   |
|---------------------------|---|
| World Class Nottingham    |   |
| Work in Nottingham        | X |
| Safer Nottingham          | X |
| Neighbourhood Nottingham  | X |
| Family Nottingham         |   |
| Healthy Nottingham        |   |
| Serving Nottingham Better | X |

**Summary of issues (including benefits to customers/service users):**

This report seeks authority to make an order to stop up (close permanently) a public footpath at Melville Gardens, St Ann's and to create a new public footpath as a replacement for the one authority is sought to be stopped up. The report additionally seeks authority to confirm that order (if unopposed) or (if opposed) authority to refer the order to the Secretary of State for confirmation.

**Recommendation(s):**

|          |   |
|----------|---|
| <b>1</b> | It is recommended that Area Committee authorise the Corporate Director for Development and Growth to make an order pursuant to section 257 of the Town and Country Planning Act 1990 to stop up one footpath and create a new replacement footpath which are shown on the plan at Appendix 1; and |
|          | Authorise the Corporate Director for Development and Growth to confirm the order if unopposed; and  |
|          | Authorise the Corporate Director for Development and Growth to refer the order to the   |

## **1 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)**

- 1.1 During July 2014, as part of the regeneration scheme at Stonebridge Estate, Nottingham City Homes applied for planning permission under Planning Application Reference 14/01603/PFUL3. The proposed development consists of alterations and boundary treatments, creation of car park following demolition of existing garage block. Following the receipt of planning consent, to enable the proposed development to be carried out, it is necessary to stop up a footpath. Additionally, it is proposed that a new footpath will be created which will act as a replacement for the one authority is sought to be stopped up. The footpath to be stopped up and the replacement footpath are shown on the plan at Appendix 1. The footpath to be stopped up has a length of 20 metres, a variable width of between 1.8 and 2.0 metres, a tarmac surface and one street light which will be replicated by the replacement footpath. The proposed development is shown on the plan at Appendix 2.
- 1.2 Residents on Stonebridge Estate were consulted on the final Stonebridge Regeneration Masterplan which was approved in 2009. Further consultation was undertaken in December 2012 with the residents on Melville Gardens living adjacent to the garages which will be demolished, and their comments have been incorporated into the design of the proposed development shown at Appendix 2.
- 1.3 Should Area Committee approve the recommendations in this report for the stopping up of one footpath and the creation of a new replacement footpath, full consultation will be carried out as part of the Stopping Up Order process. Further details of the consultation process for the order, including dealing with objections, are set out under Legal Implications at Paragraph 5.4 below.

## **2 REASONS FOR RECOMMENDATIONS**

It is recommended that the footpath is stopped up under Section 257 of the Town and Country Planning Act 1990 on the grounds that it is necessary to enable the proposed development, if planning permission is granted, to be carried out. There is no other legislation available to the City Council to stop up the footpath on these grounds.

## **3 OTHER OPTIONS CONSIDERED IN MAKING THE RECOMMENDATIONS**

As no other legislation is available to the City Council to stop up the footpath on the grounds of development alone, the only other option is not to recommend the making and confirmation of the order at all. The developer would then either have to abandon these development proposals or, if it did proceed with the proposed development, would be liable to enforcement action being taken against it for unlawful obstruction of the footpath.

## **4 FINANCIAL IMPLICATIONS**

The cost of preparing and publishing the order, including officer's fees, is £3,000. This cost will be met by the Councils Housing Revenue Account allocated to the Regeneration Team. There will be no financial implications for Area Committee. If it is necessary to refer the order to the Secretary of State for its confirmation there will

be additional costs to the Traffic and Safety Service Area and Legal Services which would have to be recharged to the Housing Revenue Account.

## **5 RISK MANAGEMENT ISSUES**

### **5.1 LEGAL IMPLICATIONS**

The power to make a stopping up order in respect of a footpath under Section 257 of the Town and Country Planning Act 1990 is exercisable where the Council is satisfied that:-

- (a) An application for planning permission has been made under Part 3 of that Act; and
- (b) If the application were granted it would be necessary to authorise the stopping up or diversion of the public right of way to which the order relates in order to enable the development to be carried out.

5.1.2 The Planning Inspectorate (which would conduct any inquiry or hearing in the event of an objection to the order being received) has in published decisions established that the appropriate test to be applied in relation to necessity is whether the proposed development under the permission could be implemented if the right of way remained. The disadvantages or loss likely to arise as a result of the stopping up along with the advantages to be conferred by the stopping up would also be considered at an Inquiry. In the case of this particular development, the continued existence of the footpaths is incompatible with the proposed development. It is therefore considered that the exercise of the power to make the stopping up order is justified.

5.1.3 The approval of applications for footpath closures on grounds of development falls within the terms of reference of Area Committees in the Council's current Constitution. Should Area Committee be satisfied that it is necessary to stop up the footpath, authorisation for the making, confirmation or referral of the order will also be required from the Corporate Director for Development and Growth.

5.1.4 In the event that Committee authorise the stopping up of the footpath the following actions will be carried out as part of the 28 day statutory consultation period for the order. Following the making of the order, Notice of the order will be placed on site and published in a local newspaper setting out the effects of the order and inviting representations. A copy of the order will be sent to a number of statutory consultees including utility companies and relevant interest groups such as the Ramblers Association and Nottingham Local Access Forum. If objections are received to the order within the statutory period which are not withdrawn, the City Council has no power to confirm it. If, having considered any objections received, the applicant wishes to proceed with the order, confirmation of an opposed order can only be obtained via the submission of the order along with any outstanding objections to the Secretary of State for determination. This determination may involve the holding of a public inquiry. The order will not be effective unless or until it is confirmed. An unresolved objection will therefore lead at least to a delay in the proposed commencement date for the development.

## 5.2 CRIME AND DISORDER ACT IMPLICATIONS

One of the main principles of the Stonebridge Regeneration Scheme is to make streets safer for all. The design of the proposed development will help reduce the opportunity for anti-social activities, which although incidental to the legal grounds for the making and confirmation of the order, will have a positive effect on the local community.

## 6 EQUALITY IMPACT ASSESSMENT

Has the equality impact been assessed?

Not needed (report does not contain proposals or financial decisions)

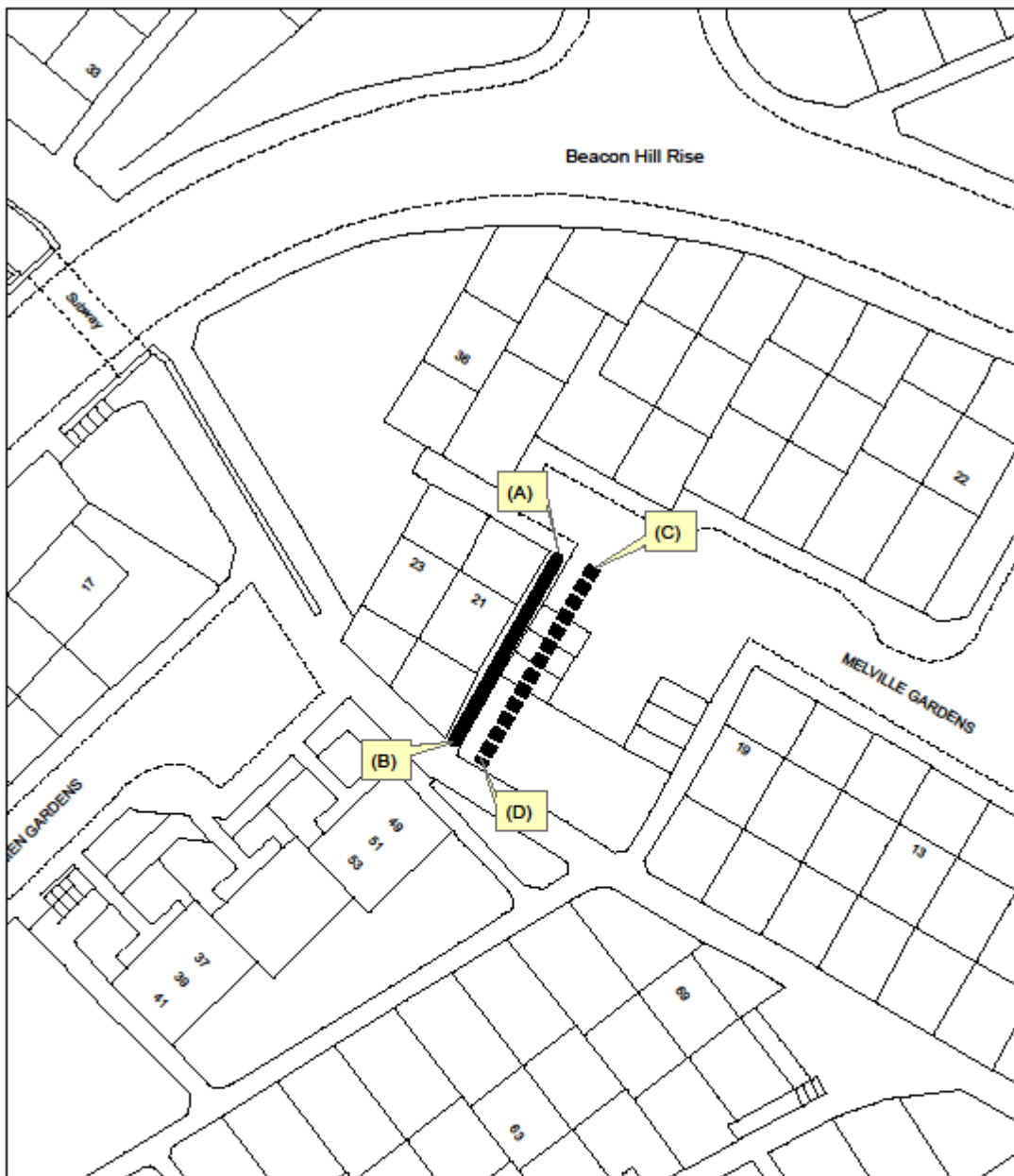
Yes – Equality Impact Assessment attached

Because the recommendations do not involve a new or changing policy there is no EIA for the stopping up order. The new replacement footpath (shown at Appendix 1) created by the order will be accessible by all citizens.

## 7 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

- 7.1 Town and Country Planning Act 1990
- 7.2 Stonebridge Regeneration Masterplan 2009
- 7.3 Planning Application Reference 14/01603/PFUL3

**APPENDIX 1: FOOTPATH TO BE STOPPED UP AND NEW FOOTPATH TO BE CREATED**



**Proposed stopping up of footpath and creation of new footpath at Melville Gardens**

|   |  |          |  |
|---|--|----------|--|
| <p><b>Legend</b></p> <p>  (A) - (B) footpath to be stopped up<br/>  (C) - (D) new footpath to be created         </p> | <p>  Map production<br/>  Map data<br/>  Map assembly         </p> | <p>N</p> | Nottingham City Council<br><p>Development</p> <p>Scale 1:500</p> |
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**APPENDIX 2: THE PROPOSED DEVELOPMENT AT MELVILLE GARDENS (INCLUDING THE FOOTPATH TO BE STOPPED UP AND NEW FOOTPATH TO BE CREATED)**

