

**AREA 8 COMMITTEE (BRIDGE, CLIFTON NORTH AND SOUTH) 23 MAY 2013**

<b>Title of paper:</b>	<b>REQUEST FOR AUTHORISATION TO DIVERT FOOTPATH NO. 28 NOTTINGHAM MIDLAND STATION</b>	
<b>Director</b>	David Bishop Corporate Director of Development Tel: 0115 8763758 Email:david.bishop@nottinghamcity.gov.uk	<b>Wards affected:</b> Bridge
<b>Contact Officer(s) and contact details:</b>	Steve Hunt, Traffic Manager Development Tel: 0115 8765294 Email: steve.hunt@nottinghamcity.gov.uk  John Lee, Senior Rights of Way Officer Development Tel: 0115 8765246 Email: john.lee@nottinghamcity.gov.uk	
<b>Other officers who have provided input:</b>	Judith Irwin, Senior Solicitor Resources Tel: 0115 8764419 Email: judith.irwin@nottinghamcity.gov.uk	
<b>Relevant Council Plan theme(s):</b>		
World Class Nottingham		X
Work in Nottingham		X
Safer Nottingham		
Neighbourhood Nottingham		X
Family Nottingham		
Healthy Nottingham		X
Leading Nottingham		X
<b>Summary of issues (including benefits to customers/service users):</b>		
This report seeks authority to make an order to divert part of Footpath No. 28 at Nottingham Midland Station. 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.		
<b>Recommendation(s):</b>		
<b>1</b>	Authorise the Corporate Director for Development to make an order pursuant to section 119 of the Highways Act 1980 to divert part of Footpath No. 28 as shown on the plan at Appendix 2;	
<b>2</b>	Authorise the Corporate Director for Development to confirm the order if unopposed; and	
<b>3</b>	Authorise the Corporate Director for Development to refer the order to the Secretary of State for confirmation if opposed	

## **1 BACKGROUND**

### Stopping Up Order 2010

- 1.1 On 3 March 2010 Area Committee authorised the making of an order to stop up (close) the whole length of Footpath No. 28 at Nottingham Midland Station. The order was made under section 257 of the Town and Country Planning Act 1990 to enable the development of the station (the Hub Development) under planning reference 06/00694/PFUL3 to be carried out. The alternative route proposed would be along the footways of Station Street, Carrington Street and Queens Road. The footpath to be stopped up and the alternative route are shown on the plan at Appendix 1 between points (A) and (B).
- 1.2 As a consequence, the Nottingham City Council (Midland Station Footpath No. 28) Stopping Up Order 2010 (SUO5015) was made and published on 24 March 2010. During the statutory period for representations a number of objections were received. This meant that the Council could not confirm the order and the footpath could not be closed. The opposed order together with the objections were referred to the Secretary of State for confirmation. A public inquiry into the opposed order was held in front of Inspector Susan Doran on 8 November 2011. The Inspector's decision dated 13 December 2011 (please see paragraph 8.7 and [www.planningportal.gov.uk/uploads/pins/row/documents/fps\\_q3060\\_5\\_3.pdf](http://www.planningportal.gov.uk/uploads/pins/row/documents/fps_q3060_5_3.pdf)) was that it was necessary to stop up the footpath to enable the development to be carried out because of the conflict between the development and the footpath. However, on considering the wider issues, the Inspector concluded that the alternative route (as shown on the plan at Appendix 1) was not a suitable replacement for Footpath No. 28 as it would be less direct and therefore less convenient, would close the only traffic free route crossing the station and would result in the loss of a unique footpath through an historic station environment. The order was not confirmed.

### Post Inquiry consultation

- 1.3 Following receipt of the Inspector's decision, discussions have been ongoing between the objectors to the stopping up order, Nottingham Local Access Forum, Network Rail and the Council. These discussions have focused on diverting part only of Footpath No. 28 (leaving intact the right of way over the railway line itself via the footbridge) and providing a suitable alternative route to replace that part of the footpath to be diverted.

## **2 REASONS FOR RECOMMENDATIONS (INCLUDING OUTCOMES OF CONSULTATION)**

### Proposed Diversion Order 2013

- 2.1 As a result of the post Inquiry discussions, the Council has received a request from Network Rail for an order to be made under Section 119 of the Highways Act 1980 to divert the southern section of the footpath only between Platform 6 and Queens Road shown on the plan at Appendix 2 between points (B) and (C). For the purpose of brevity in the remainder of this report, the part of the footpath which it is proposed to be diverted is referred to as the "Southern Section". This commences at the bottom of the steps on the western side of the footbridge and runs onto the station platform then continues south then west to the steps adjacent to the eastern boundary of the compound and western boundary of the car park (which have been

replaced with the new Multi Storey Car Park (MSCP) and operational service area) to Queens Road.

- 2.2 The order would divert the Southern Section onto a new alternative alignment, commencing at the bottom of the steps on the eastern side of the footbridge, running onto the station platform then running along the platform onto the ramp then along a footway onto Queens Road. The proposed alternative route is shown on the plan at Appendix 2 between points (B) - (D) - (E) and (F). A more detailed plan showing the eastern end of the proposed alternative route is attached at Appendix 3.
- 2.3 It is recommended that the Southern Section be diverted under Section 119 of the Highways Act 1980 on the grounds that it would enable the efficient use of the land (the operational service area) over which this part of the footpath runs. This is the most appropriate power available to the Council in the circumstances to make a diversion order.
- 2.4 The statutory criteria to be met when deciding whether to make and subsequently to confirm a request for an order under section 119 of the Highways Act 1980 are set out at paragraph 5.1 and 5.2 of this report. Dealing with those tests it is noted that:-
- (a) As to whether it is expedient to make an order in the interests of the making of the order is expedient in the interests of the owner, lessee or occupier of land or of the public, the diversion of the Southern Section would enable Network Rail as the owner of the land to use the operational service area more efficiently.
  - (b) As to the relative convenience of the new alternative route to the public, the new route to be provided (shown on the plan at Appendix 2 between points (A) – (B) – (D) – (E) – (F) ) would add 120 metres onto a person's journey by comparison with the existing footpath. Additionally, the new route would run largely through the station environment and offer a more direct route to the Meadows, West Bridgford and Summer Leys Lane, which was a key preference of the objectors to the stopping up order. In the light of those factors, it is considered that the new route is not substantially less convenient to the public.
  - (c) (i) Because the public would be able to walk through the station environment the diversion is likely to increase the public's enjoyment of the route as a whole  
(ii) The existing footpath does not serve any other land. Because the new route would cross land owned by Network Rail, the applicant for the order, there are no implications for the Council regarding compensation.
  - (d) The proposed diversion of the footpath does not conflict with the Council's Rights of Way Improvement Plan (November 2007).
- 2.5 It is the report author's view that the tests for the making and confirmation of the order are met.

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

- 3.1 As part of the post Inquiry discussions set out under paragraph 1.3 above, 4 options for the new alignment of the alternative route were considered. Options 1, 3, and 4 would retain the footbridge (a key preference of the objectors to the 2010 Stopping Up Order) and Options 3 and 4 would divert the Southern Section, incorporating into

the new alignment a ramp and footway to the east of the MSCP towards Queens Road.

3.2 The 4 options are described below and are shown on the plan at Appendix 4:-

3.2.1 Option (1): Reinstate the footpath onto its original alignment on completion of the development (shown between (A) - (B) – (C)).

This option was considered unsuitable because the footpath would run through the operational service area (located between points (B) and (C)) which would potentially put users in conflict with HGV's, service / delivery vehicles.

3.2.2 Option (2): Diverting the majority of the footpath along the new NET bridge with access via the lift on Station Street and the MSCP lift and concourse (shown between (D) - (E)).

To access the NET Bridge / ground floor, footpath users would have to use the lift on Station Street (point (D)) and the lift in the MSCP (point (E)). Combined with the impracticalities of this route being managed as a public right of way, this option was considered unsuitable.

3.2.3 Option (3): Diverting the Southern Section along the grass verge between platform 6 and the MSCP and onto Queens Road via a ramp and footway as option 4 below (shown between (B) - (G)).

This option was considered unsuitable because it would create a separate route between 2 fences and a feeling of isolation from the station environment for footpath users; or

3.2.4 Option (4): Diverting the Southern Section along Platform 6 and onto Queens Road via a ramp and footway as option 3 above (shown between (B) - (F)).

Option 4 was considered the most suitable because the entire footpath as diverted would form an integral part of the station environment and would be covered by a new platform canopy with adequate lighting and good natural surveillance. However, concerns were raised over the narrow width of the platform (currently 3.0 metres at its narrowest point) and the potential conflict between footpath users and passengers. To address this, Network Rail has agreed to widen the platform by 1.8 metres on its southern side. Option 4 would run largely within the station and therefore satisfy the preference of the objectors to the stopping up order by keeping the alternative route within the historic station environment.

3.3 Additionally, option 4 improves pedestrian journeys and connectivity through and around the Station. For example, journeys southwards towards Summer Leys Lane, Meadows and West Bridgford and northwards onto Trent Street and Canal Street would be improved. When travelling west from London Road to Carrington Street pedestrians would have the option of using either Queens Road or Station Street. There is also the option to walk north - south across the new NET Bridge, and depending on their destination, pedestrians may choose to use the footpath as part of their journey. These pedestrian routes (including the proposed alternative route for Footpath No. 28 and the new NET Bridge) are shown at Appendix 5.

3.4 Since the Inquiry was held in November 2011 the development has progressed to a point where the development (in so far as it affects Footpath No. 28) is considered to be substantially complete and it is therefore not appropriate to make an order using powers under the Town and Country Planning Act 1990. Having considered the powers available to the Council to alter the alignment of the footpath the power under Section 119 of the Highways Act 1980 would appear to be the most appropriate.

#### **4 FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY)**

The cost of preparing and publishing the diversion order will be met by Network Rail. There will be additional costs, some of which will have to be met by the Council's relevant service areas, namely Legal Services and Traffic and Safety Service Area, if it is necessary to refer the order to the Secretary of State for its confirmation. There will be no financial implications for Area Committee. The principles of Value for Money have been incorporated into this report and will be incorporated into the preparation of the making and confirmation of the diversion order.

#### **5. RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS, CRIME AND DISORDER ACT IMPLICATIONS AND EQUALITY AND DIVERSITY IMPLICATIONS)**

##### LEGAL IMPLICATIONS

##### 5.1 Section 119 Highways Act 1980

The Council may make an order to divert a footpath, bridleway or restricted byway if it is satisfied that it is expedient to do so either in the interests of the owner, lessee or occupier of land crossed by the relevant right of way or that it is expedient in the interests of the public.

5.2 Section 119(6) and section 119(6A) imposes additional tests which must be met before the Council (or, if the order is opposed, the Secretary of State) can confirm an order. These are as follows:-

- (a) The new route to be provided would not be substantially less convenient to the public; and
- (b) It is expedient to confirm the order having regard to:-
  - (i) the effect of the diversion on public enjoyment of the footpath as a whole; and
  - (ii) the effect that the coming into operation of the order would have with respect to other land served by the existing right of way; and the land over which the new right of way would be created together with any land held with them, having had regard to the provision for compensation; and
- (c) The material provisions of a Rights of Way Improvement Plan.

5.3 The approval of requests to divert footpaths falls within the terms of reference of Area Committees in the Council's current Constitution.

5.4 If objections are received to the Section 119 order within the objection period, the Council has no power to confirm it, but must, if it wishes the order to be confirmed,

submit the order to the Secretary of State who will determine whether the order should be confirmed in the light of those objections. This determination may involve the holding of a public inquiry. The order will not be effective unless and until it is confirmed.

#### 5.5 CRIME AND DISORDER ACT IMPLICATIONS

None

#### 6. EQUALITY IMPACT ASSESSMENT

The part of the footpath running over the footbridge (which is not affected by the proposed diversion order) has a series of steps between Station Street and Platform 6. The new alignment of the footpath will be no less unsuitable for disabled users than the current footpath.

#### 7. LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

None

#### 8. PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

8.1 Highways Act 1980

8.2 Town and Country Planning Act 1990

8.3 Nottingham City Council Rights of Way Improvement Plan (November 2007)

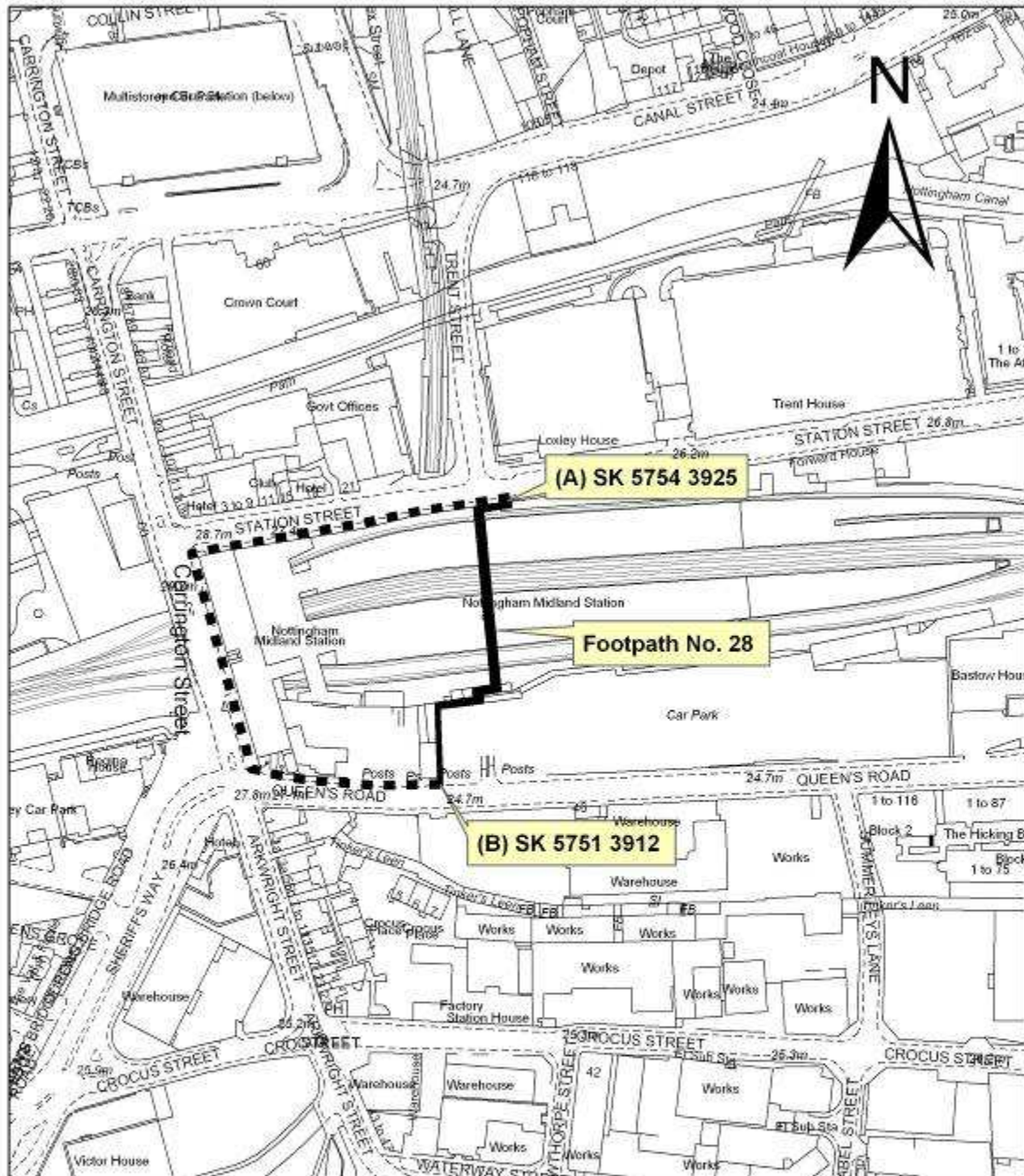
8.4 Planning Application Decision Notice Reference 06/00694/PFUL3 dated 9 April 2009

8.5 Report to Dunkirk, Lenton and Bridge (Area 8) Committee titled "Nottingham Hub Development – Request for Authorisation to stop up Footpath No. 28 Nottingham Midland Station" dated 3 March 2010

8.6 Minute No. 58 of the meeting of the Dunkirk, Lenton and Bridge (Area 8) Committee dated 3 March 2010

8.7 Planning Inspectorate Order Decision: Ref FPS/Q3060/5/3 dated 13 December 2011 Nottingham City Council

**APPENDIX 1: FOOTPATH 28 AND THE ALTERNATIVE ROUTE (THIS WOULD HAVE BEEN STOPPED UP UNDER SECTION 257 TOWN AND COUNTRY PLANNING ACT 1990)**



Nottingham City Council (Nottingham Midland Station Footpath No. 28) Stopping Up Order 2010 (SU05015)

**Legend**

- (A) - (B) footpath no. 28 subject of stopping up order
- alternative route (replacement for footpath no. 28)

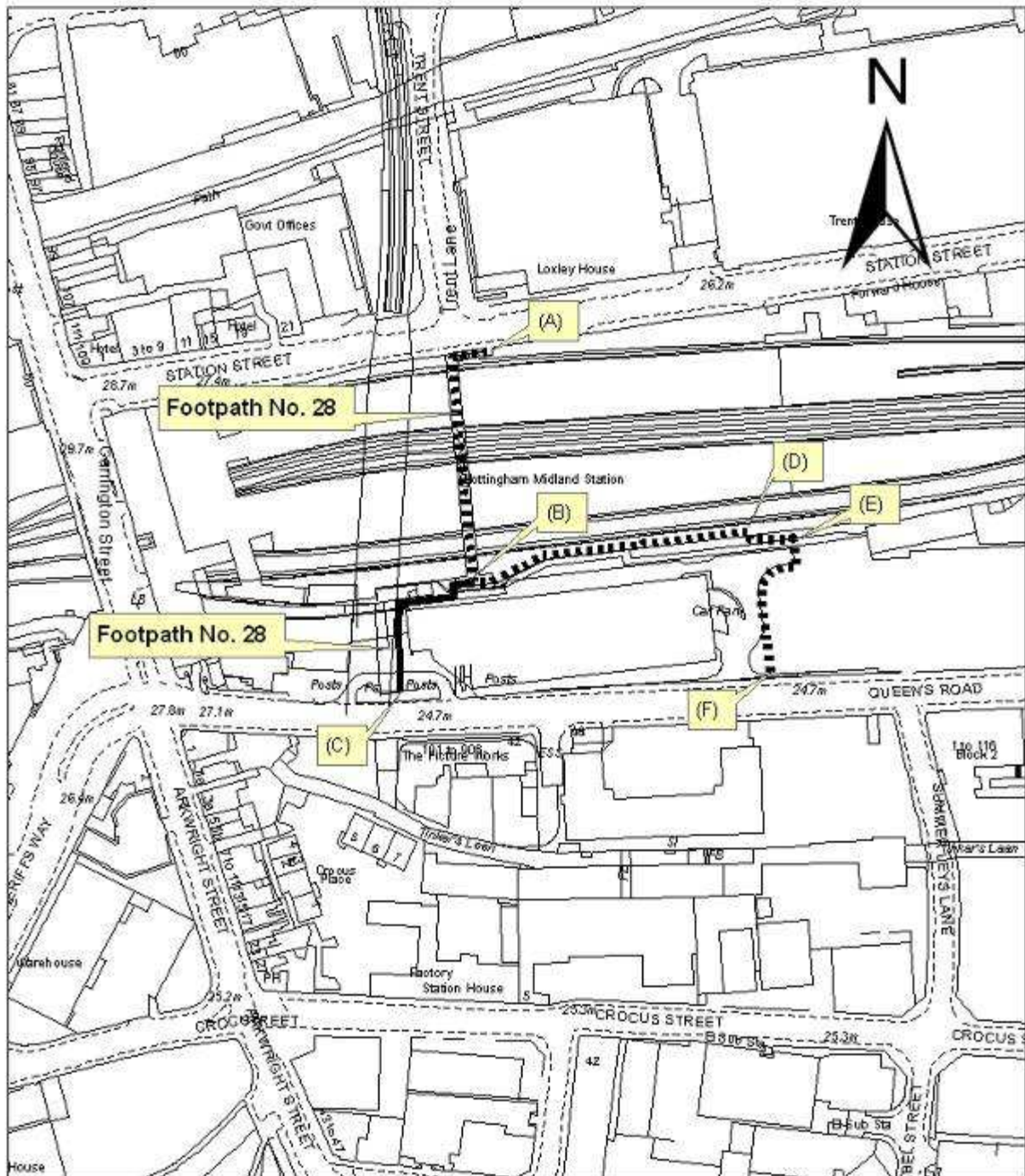


Environment and Regeneration

Scale 1:2,500

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Nottingham City Council 160015017.2010.

**APPENDIX 2: PART OF FOOTPATH 28 TO BE DIVERTED AND THE ALTERNATIVE ROUTE TO BE CREATED (SECTION 119 HIGHWAYS ACT 1980)**



Nottingham City Council (Nottingham Midland Station Part of Footpath 28) Diversion Order 2013 (DO5016)

**Legend**

- (A) - (B) - (C) footpath subject of diversion order
- (B) - (C) part of footpath to be stopped up and diverted onto a new line
- (A) - (B) - (D) - (E) - (F) new line of alternative footpath

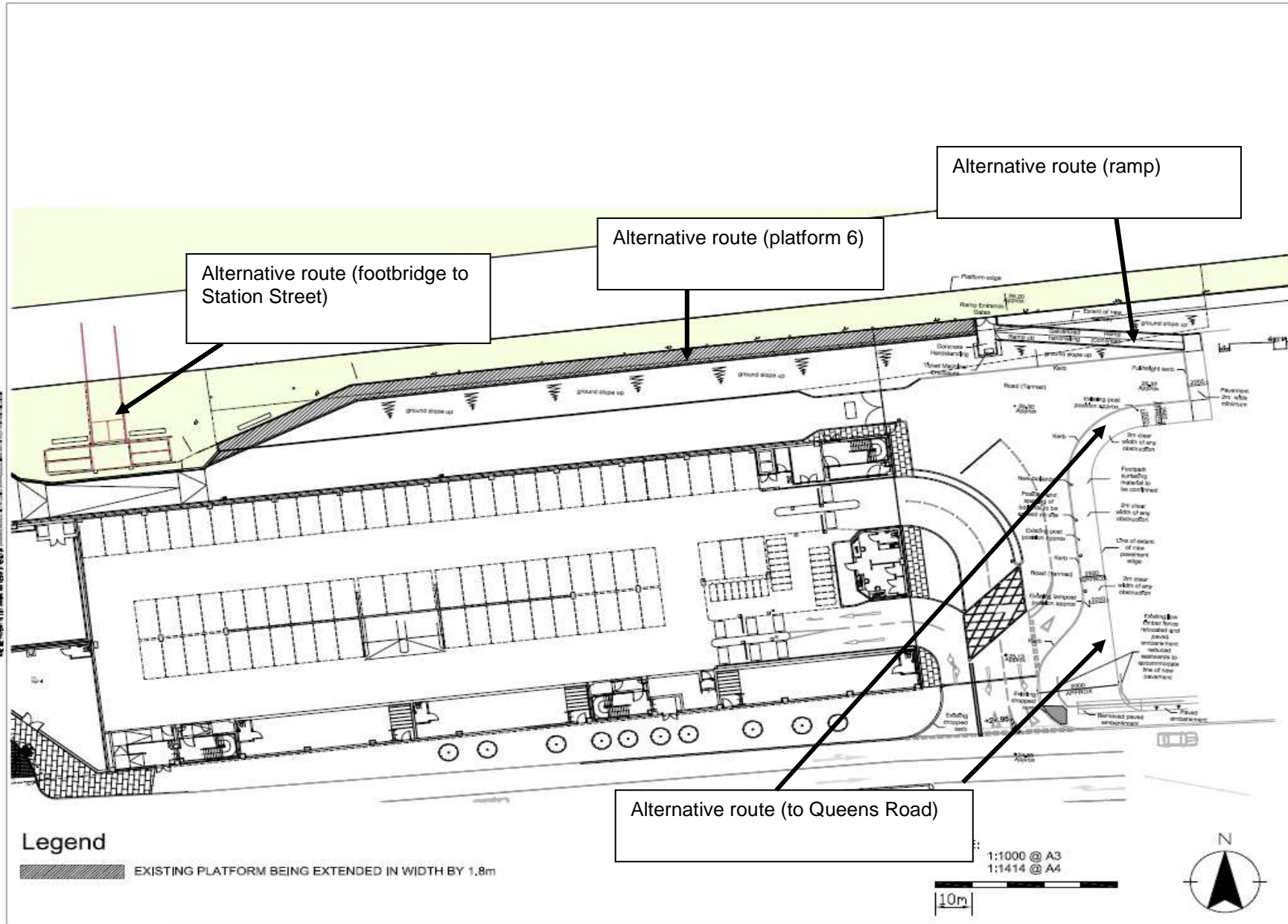


Development

Scale 1:2,000



# APPENDIX 3: THE PROPOSED ALTERNATIVE ROUTE (SECTION 119 HIGHWAYS ACT 1980) (OPTION 4)



**NOTTINGHAM STATION**

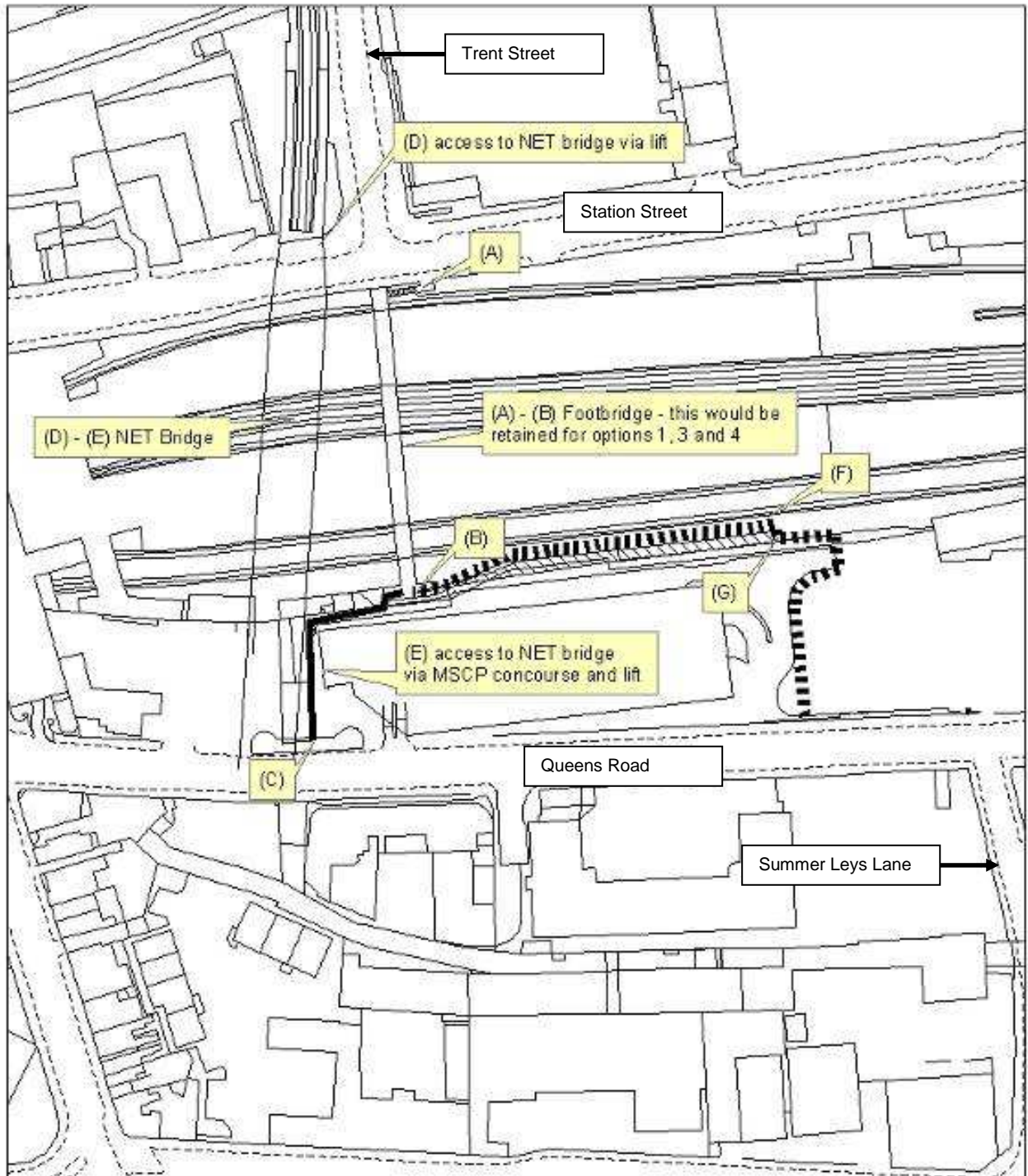
IMPROVEMENT TO FOOTPATH 26 DIVERSION ROUTE BETWEEN THE RAMP AND QUEENS ROAD

**Network Rail**

**Pascal+Watson architects**  
 2, Collyer Quay, Collyer Quay Road, London, E9 5JG  
 Telephone: 020 7461 8811  
 Fax: 020 7461 8812  
 Email: info@pascal-watson.co.uk

Project No: WA0008-PWA-SKT-GEN-RR-310008 PG3

**APPENDIX 4: THE FOUR OPTIONS CONSIDERED FOR THE ALTERNATIVE ROUTE**

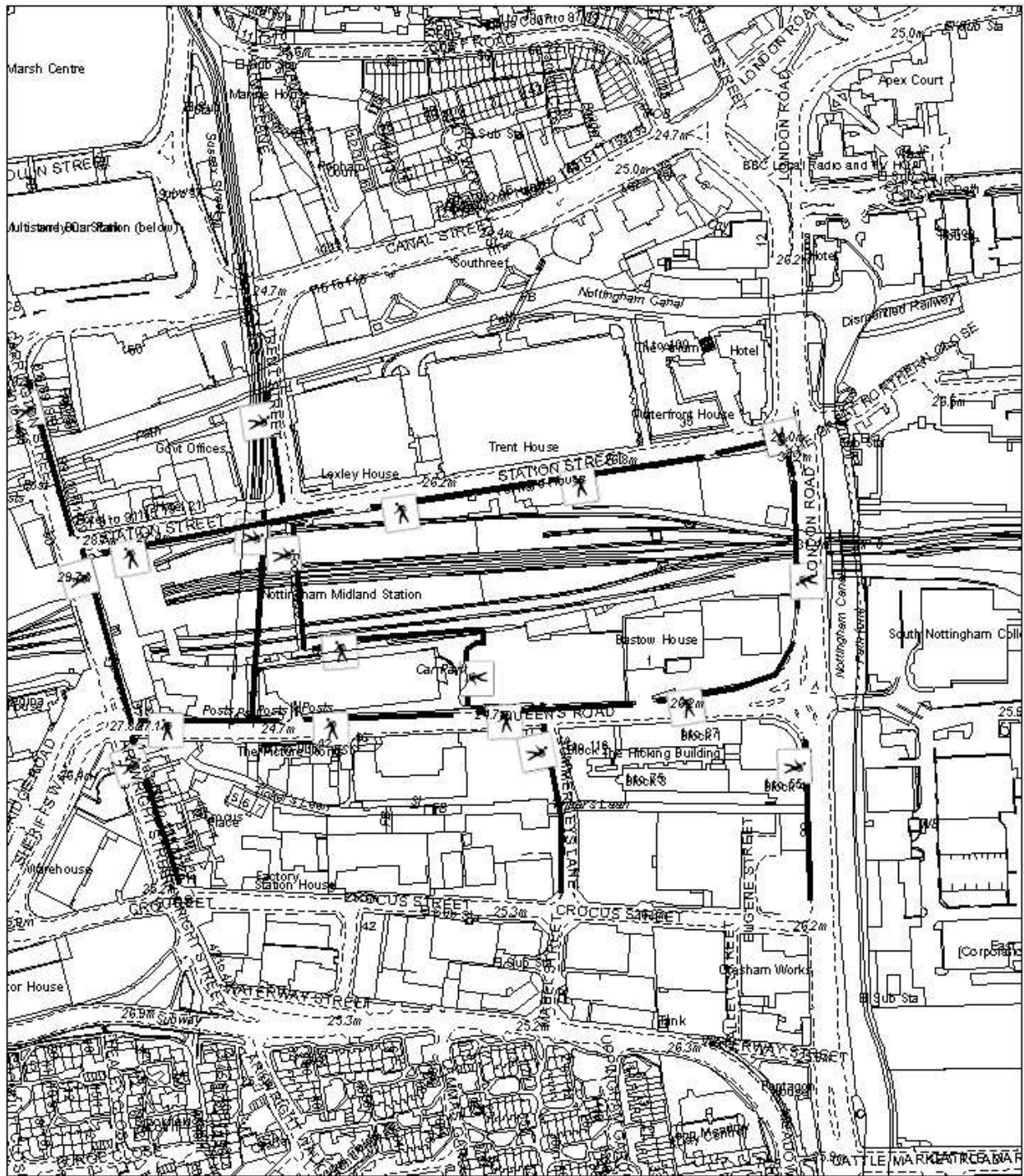


**ALTERNATIVE ROUTE OPTIONS 1 - 4**

<p><b>Legend</b></p> <ul style="list-style-type: none"> <li>— (A) - (B) - (C) Option 1 (original alignment)</li> <li>- - - (D) - (E) Option 2 (NET Bridge)</li> <li>▨ (B) - (G) Option 3 (grass verge)</li> <li>▤ (B) - (F) Option 4 (platform 6)</li> </ul>	<div style="text-align: center;">  </div> <div style="text-align: right;">  <p>Nottingham City Council</p> <p>Development</p> <p>Scale 1:1,500</p> </div>
--	---

Produced by Perkins + Will for the City of Nottingham. © Crown copyright and database right 2012. Ordnance Survey. Licence number 100016517 2013.

# APPENDIX 5: PEDESTRIAN ROUTES



## PEDESTRIAN ROUTES

### Legend

— pedestrian routes

N



Development

Scale 1:3,500