

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 17 DECEMBER 2002

PROPOSED DIVERSION OF PUBLIC RIGHT OF WAY SK 87 AT LANFINE ESTATE

Report by Director of Development Services

1. PURPOSE OF REPORT

- 1.1** To advise the Committee of the result of the formal public advertisement of the Diversion of Public Rights of Way (SK 87, Lanfine Estate) Order 2002 and to obtain the Committee's views on how the Council should proceed regarding the proposal.

2. BACKGROUND

- 2.1** In March 2002 the Head of Planning and Building Control was formally approached by Land and Forestry Management Ltd, owners of Lanfine Estate, indicating their wish to divert part of the above public right of way, including a section between Lanfine House and the Stables and Bothy houses. The main reason given by Land and Forestry Management Ltd for requesting the above diversion was to afford a degree of privacy to the residents of these properties while maintaining public access between Newmilns and Darvel through the estate.
- 2.2** The map appended to this report shows the suggested route by Land and Forestry Management Ltd for the diversion which is the subject of the Diversion Order formally advertised by the Council under the Countryside (Scotland) Act 1967. The map also shows the existing right of way and its place within the path which currently links Newmilns and Darvel.
- 2.3** The Planning and Building Control Division and the Community Services Department Access Unit were of the opinion that, even if appropriately surfaced, the gradients of the off-road sections of the proposed diversion might pose access problems for certain sections of the community. However, It was agreed that the Diversion Order be formally advertised to gauge local public opinion on the proposal, without prejudice to the recommendation which might ultimately be made to the Committee on the proposal.

3. RESULT OF ADVERTISEMENT OF THE DIVERSION OF PUBLIC RIGHT OF WAY (SK 87, LANFINE ESTATE) ORDER 2002

- 3.1** The above Diversion Order was formally advertised on Friday, 19 July 2002. Up to and including Friday, 16 August 2002, the date of expiry for receipt of objections to the Order, a total of 227 objections, had been received by the Council. The distribution of these objections are detailed in Appendix 2 to this report.

3.2 The main reasons for the objections to the proposed Diversion Order can be summarised as follows:

- The existing route is tarmacadamed and provides a surface which can be used by everyone in all weathers. The proposed new pathway would not have this type of road surface and consequently would not be all-weather and suitable for use by the elderly, disabled or people pushing prams.
- Long sections of the proposed diversion would have relatively steep gradients which would also militate against its use by less fit and able members of the community including the above groups. The greater length of the proposed diversion would similarly effectively discriminate against such members of the public.
- Concern was expressed at the implications of the removal of the existing public right of way through Lanfine Estate on the existing 'permitted' route from Newmilns (Browns Road) into the estate from the west.
- Darvel Community Council were of the opinion that the existing route was pivotal in the system of walks being developed by the Irvine Valley Regeneration Unit as part of the East Ayrshire path network.

3.3 Land and Forestry Management Ltd were advised of the result of the advertisement of the Diversion Order and were asked by the Head of Planning and Building Control whether, in view of the objections to the Order referred to above, they would consider withdrawing their proposal. Land and Forestry Management Ltd have not agreed to this request and have made the following points in continued support of their proposal:

- The proposed deviation would still allow a circular route between Newmilns and Darvel.
- The proposed deviation would not have steeper gradients than the existing route.
- The permitted access route from Brown's Road would enable continuance of a circular route originating in Newmilns.
- Land and Forestry Management Ltd had requested the Irvine Valley Regeneration Partnership that route SK 87 not be included as a Core Path until a formal decision on the proposed Diversion Order had been made by the Council.

4. PLANNING IMPLICATIONS

4.1 Under Policy ENV 12 of the East Ayrshire Finalised Local Plan any development will be expected to conserve and enhance existing public rights of way, footpaths and bridleways.

- 4.2** Under Policy TLR 7 of the East Ayrshire Finalised Local Plan the Council will seek to develop a definitive strategic and local footpath and cycleways network. Priority will be given to the development promotion of new circular routes and footpath links between settlements, including routes using forestry access roads.

5. LEGAL IMPLICATIONS

- 5.1** In terms of the Countryside (Scotland) Act 1967 an owner of land crossed by a public path may approach the planning authority with a request to divert the path. The Act prescribes the procedures to be followed by the planning authority in creating a new public path in replacement for the section of public path to be extinguished. This includes giving notice. If no objections or representations are made to the notice then the planning authority can make the diversion order without having to submit it to the Scottish Ministers for their confirmation. If there are objections to a proposed order and these are not withdrawn, this requires to be referred to the Scottish Ministers who must either hold a public inquiry or afford the objectors an opportunity of being heard prior to deciding whether to confirm the proposed order.

- 5.2** Under the provisions of the Countryside (Scotland) Act 1967 the Council has a duty to ensure that existing public rights of way or diversions of same remain free from obstruction. There is currently no explicit legal requirement for owners of land over which the public have a right of access to provide for multi-user access, eg pedal cycles, push chairs. However, the Draft Land Reform (Scotland) Bill aims to create greater opportunity for people to visit and enjoy the countryside without interfering unduly with legitimate land management operations and subject to persons living on adjacent or associated land to have reasonable measures of privacy and undisturbed enjoyment of the whole.

6. FINANCIAL IMPLICATIONS

- 6.1** None

7. CONCLUSIONS

- 7.1** Were the above Diversion Order to be approved the diverted part of public right of way, SK 87, through Lanfine Estate would be on a route with steeper gradients than the existing route. It would also form a substantial detour on the popular local walking route from Newmilns to Darvel. A section of the detour would include a public road with no footway. This could limit the number of members of the public that could use the route.

- 7.2** The existing route is not, however, included as part of the draft East Ayrshire Core Path Network and the Community Services Access Unit confirm that the deviated route would be acceptable in terms of the Council's Access Strategy. The inclusion of the existing route SK 87 on the IVRP Irvine Valley Paths map has no statutory force.

- 7.3** A further issue is that part of the current local walking route uses a driveway subject to the permission of the Estate Owners. This section links Browns Road, Newmilns to the public right of way within the Estate. If this was not open to the public the local walking route would be disrupted.
- 7.4** The diversion would ensure greater privacy for residents living within the estate.
- 7.5** In view of the large number of public objections to the proposed Diversion Order and the issues raised by Land and Forestry Management Ltd, as referred to in Section 3 above, there is clearly a requirement to reconcile the legitimate concerns of privacy and land management within the estate with the need for recreational routes that can be used by as many members of the local community as possible.

8. RECOMMENDATIONS

- 8.1** It is recommended that the Committee:
- (i) agree not to proceed with the promotion of the Diversion Order in its present form; and
 - (ii) authorise the Head of Planning and Building Control to Investigate with Land and Forestry Management Ltd and in conjunction with Community Services' Access Unit possible alternative options for a diverted route with a view to resolving the issues raised in Section 3 above.

Stephen Chorley
Director of Development Services
10 December 2002
SC/JT/MMM

LIST OF BACKGROUND PAPERS

1. The Diversion of Public Rights of Way (SK 87, Lanfine Estate) Order 2002.

APPENDIX 2

ORIGINS OF OBJECTIONS RECEIVED TO DIVERSION ORDER

Darvel and District Community Council

Newmilns and Greenholm Community Council

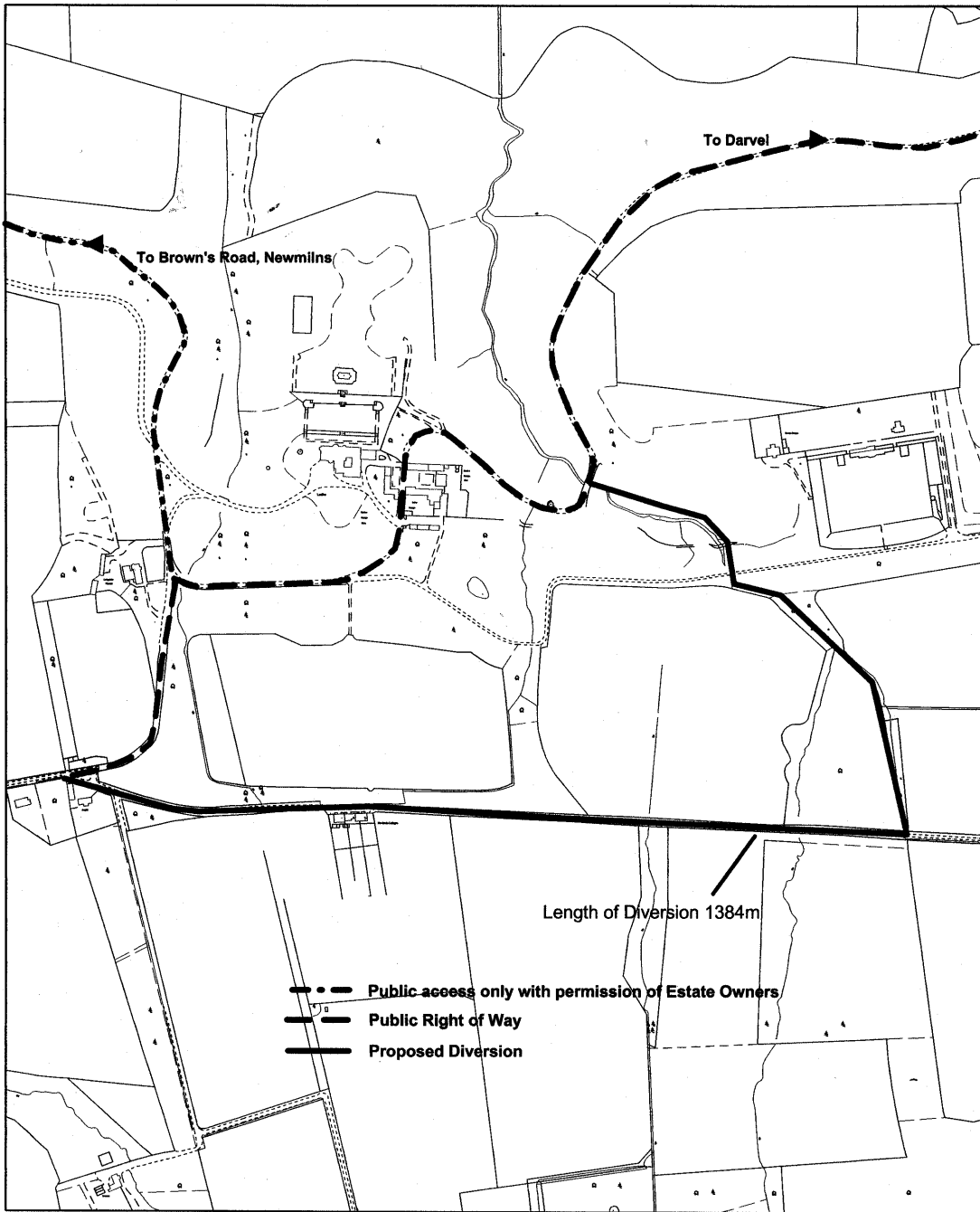
Darvel Improvement Group

The Ramblers Association

The Scottish Rights of Way and Access Society

Local Residents:

Darvel	183
Newmilns	16
Galston	8
Kilmarnock	5
Hurlford	1
Moscow	1
Others	4
No Address Supplied:	4



<p>Title Diversion of Public Right of Way (SK87, Lanfine Estate) Order</p>	<p>East Ayrshire Council Planning & Building Control Division 6 Croft Street Kilmarnock KA1 1JB Tel: (01563) 576790 Fax: (01563) 576774</p>
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