

REPORT TO: Cabinet

MEETING DATE: 9 May 2023

BY: Executive Director for Place

SUBJECT: The New Mains, Dirleton, Right of Way

1 PURPOSE

- 1.1 To seek Cabinet approval for officers to undertake any of the processes below (at paragraph 2.1(i), (ii) and (iii)) to ensure public access is maintained along a route through Dirleton New Mains between the John Muir Way and the access road to Yellowcraig. The preferred option would be to undertake a right of way diversion order along a proposed new route (paragraph 2.1 (i)), but if this is not possible, then to explore options for the constitution of new public access rights along the proposed new route (paragraph 2.1(ii)), or to enter into a path agreement (paragraph 2.1 (iii)) with the landowner along the new route. (The preferred option is only available if the original right of way is in existence. If it were found not to be in existence either option (ii) or (iii) would be required.)

2 RECOMMENDATIONS

- 2.1 That Cabinet approves officers pursue the processes below to ensure that public access rights remain along a route through Dirleton New Mains between the John Muir Way and the access road to Yellowcraig:
- i) a diversion of the current right of way along a proposed new route under Section 208 of the Town and Country Planning (Scotland) Act 1997, to enable the development of the steading at New Mains, Dirleton, East Lothian;
 - ii) the constitution of new public access rights along the proposed new route;
 - iii) the option to enter into a path agreement with the landowner along the new route.

3 BACKGROUND

- 3.1 The track through Dirleton New Mains steading has long been used by the public as a walking, cycling and horse-riding route between the John Muir Way and the access road to Yellowcraig. In 2008 the then landowner applied for agricultural funding to promote and maintain this route. As part of this package, he erected signs at either end of the track, stating that it was a public path.
- 3.2 In 2018 Dirleton New Mains steading and the adjacent land was sold. Shortly afterwards work commenced on site and the track though the steading was closed by the new owner in the interest of public safety.
- 3.3 After a number of complaints to the Council, the local community gathered what we believe to be sufficient evidence to prove that the route through the steading was a public right of way.
- 3.4 In September 2019 planning permission was granted for three houses to be built on the site of Dirleton New Mains Steading. One of the buildings was proposed across the route of the claimed right of way through the steading. A condition of the planning permission was that “No development shall commence on site unless and until the alternative route of the public right of way footpath as detailed on drawing no. 003-PL0-010D docketed to this permission has been formed and made available for use. Thereafter the alternative route of the public right of way footpath as formed shall remain available for use unless otherwise approved in writing by the Planning Authority.”
- 3.5 The developer quickly built an alternative route along the north and western boundaries of the property. This consisted of a 1.5 metre wide Type 1 gravel path.
- 3.6 Concerns were raised by the community that the alternative route may not have been built on land belonging to the developer. However, overlaying the Land Registers boundary line onto the aerial photograph shows that the path is on the developer’s land. The community have also commented that the alternative route is narrow compared to the original track. A 1.5 metre wide path is consistent with other countryside paths, but its proximity to the security fence makes it feel narrower.
- 3.7 The remainder of the route is not obvious. The signs promoting the path, erected by the previous owner, have been removed and the eastern access road to the property has been surfaced in tarmac and formalised with gates, walls and flowerbeds. Anyone not knowing the area would not know that public access was permitted along the route.
- 3.8 The landowner’s agent has recently written to the Council disputing the existence of the original right of way, but we are having an ongoing dialogue with them.
- 3.9 It is felt that a formal process, as suggested above, is required to protect the alternative route that was built by the developer. Because of the recent

correspondence with the landowner a formal diversion of the right of way may not prove to be possible, in which case other options will be pursued.

4 POLICY IMPLICATIONS

- 4.1 In terms of Section 46 of the Countryside (Scotland) Act 1967, it is the duty of a local planning authority to assert, protect and keep open and free from obstruction or encroachment any public right of way which is wholly or partly within their area.
- 4.2 In terms of Section 1 of the Land Reform (Scotland) Act 2003, it is the duty of the local authority to assert, protect and keep open and free from obstruction or encroachment any route, waterway or other means by which access rights may reasonably be exercised.
- 4.3 Local authorities have power to enter into paths agreement with the owners of land in respect of which access rights are exercisable (in terms of Section 21 of the 2003 Act).
- 4.4 Local authorities have the power to delineate paths by paths orders (in terms of Section 22 of the 2003 Act).
- 4.5 Local authorities can authorise the diversion of a footpath or bridleway if they are satisfied that it is necessary to do so in order to enable development (in terms of Section 208 of Town and Country Planning (Scotland) Act 1997).
- 4.6 The recommendations are consistent with the legislation noted above and in accordance with the Council's powers and duties under that legislation. The recommendations are also consistent with policy and good practice set out in the Scottish Government Guidance for Local Authorities and National Park Authorities on Part 1 Land Reform (Scotland) Act 2003.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the wellbeing of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – None.
- 6.2 Personnel – None.
- 6.3 Other – None.

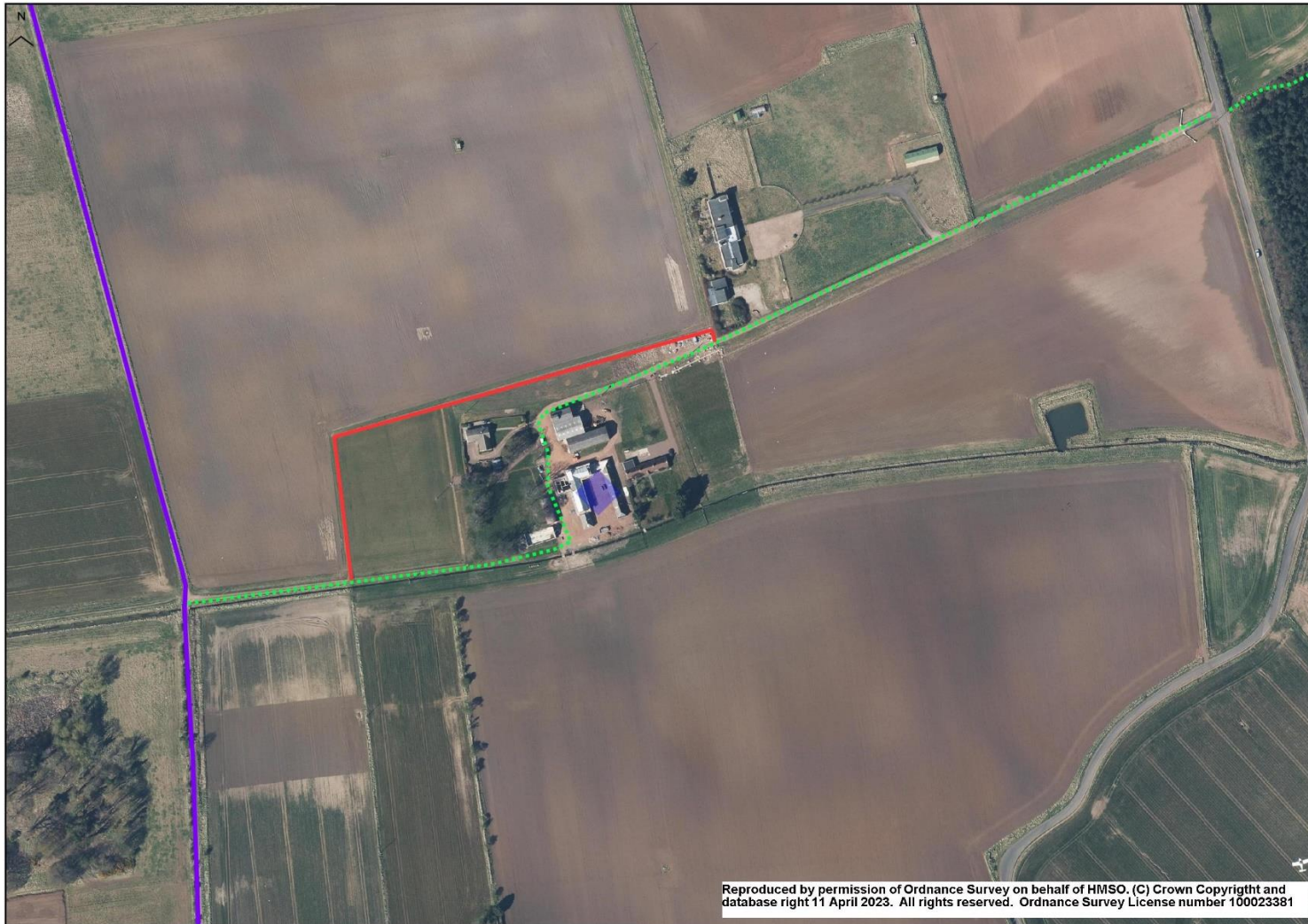
7 BACKGROUND PAPERS

- 7.1 None.




Appendix 1: Map showing the original route of the right of way through New Mains Steading, Dirleton and the alternative route that has been built and which we are seeking to formalise.

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Appendix 1. New Mains, Dirleton paths.



Key

-  The John Muir Way, Core Path
-  Original route of the public right of way
-  Alternative route built by developer, to be formalised

