

EAST RENFREWSHIRE COUNCIL

CABINET

28 January 2016

Report by the Director of Environment

SECTION 21 PATH AGREEMENT AT GLENNIFER VIEW, NEILSTON

PURPOSE OF REPORT

1. The purpose of this report is to seek Cabinet approval for a proposed Section 21 Path Agreement between East Renfrewshire Council and Sheila Smith and Margaret Laurie. The Agreement will allow for the introduction of a path running across the proposed housing development site at Neilston Road, towards the Public Right of Way at Low Broadlie Road.

RECOMMENDATIONS

2. The Cabinet is asked to approve the proposed Section 21 Path Agreement in relation to Gleniffer View, Neilston.

BACKGROUND

3. The Land Reform (Scotland) Act gives Local Authorities powers to enter into a Section 21 Path Agreement. Such agreements allow the construction or improvement of paths on private land by agreeing the line of a path and defining the responsibility and duties of both parties. A Section 21 Agreement does not create a right of access, as a statutory right of responsible access is established under Part 1 of The Act.

4. The planning application for the site at Neilston Road, Neilston was approved in August 2015, subject to satisfactory conclusion of the Section 75 legal agreement. This agreement associated with the housing development requires the developer to pay a contribution of £24,832 towards the construction and maintenance of the path (see location at Appendix 1).

5. The adopted East Renfrewshire Local Development Plan sets out a range of Policies in relation to new development proposals. In particular, Policy D4; Green Network requires that "where proposals are likely to adversely impact upon the green network appropriate mitigation will be required". The proposed new path will create access to an attractive area of natural greenspace on the edge of Neilston.

REPORT

6. The proposed Section 21 Agreement, attached as Appendix 2, will allow the creation of 301 metres of surfaced path over land in private ownership. The proposed agreement will commence three months after the granting of full planning consent (Planning Permission in Principle was granted on 12 August 2015 subject to conditions and the satisfactory conclusion of the Section 75 Agreement).

7. The Agreement will last for a period of 15 years and covers the public liability for the path, the maintenance and management of the path and the dimensions and location of the path and the associated structures.

8. The path is located to the north west of Gleniffer View in Neilston. The exact alignment of the path across the open fields will be agreed with the landowner prior to its construction.

FINANCE AND EFFICIENCY

9. The new path will be built with a developer contribution of £24,832. This sum includes an allowance for future maintenance of the path.

CONSULTATION

10. This agreement has been prepared in consultation between the Council and landowners.

PARTNERSHIP WORKING

11. There has been no partnership working associated with this report.

IMPLICATIONS OF THE PROPOSALS

12. There are no IT, sustainability, staffing, state aid or other implications arising from this report.

CONCLUSIONS

13. This Agreement will enable the release the Development Contributions to allow the construction of the proposed footpath.

RECOMMENDATIONS

14. The Cabinet is asked to approve the proposed Section 21 Path Agreement in relation to Gleniffer View, Neilston.

Director of Environment

Further information can be obtained from: Iain MacLean, Head of Environment on 0141 577 3720 or iain.maclea@eastrenfrewshire.gov.uk

Convener contact details

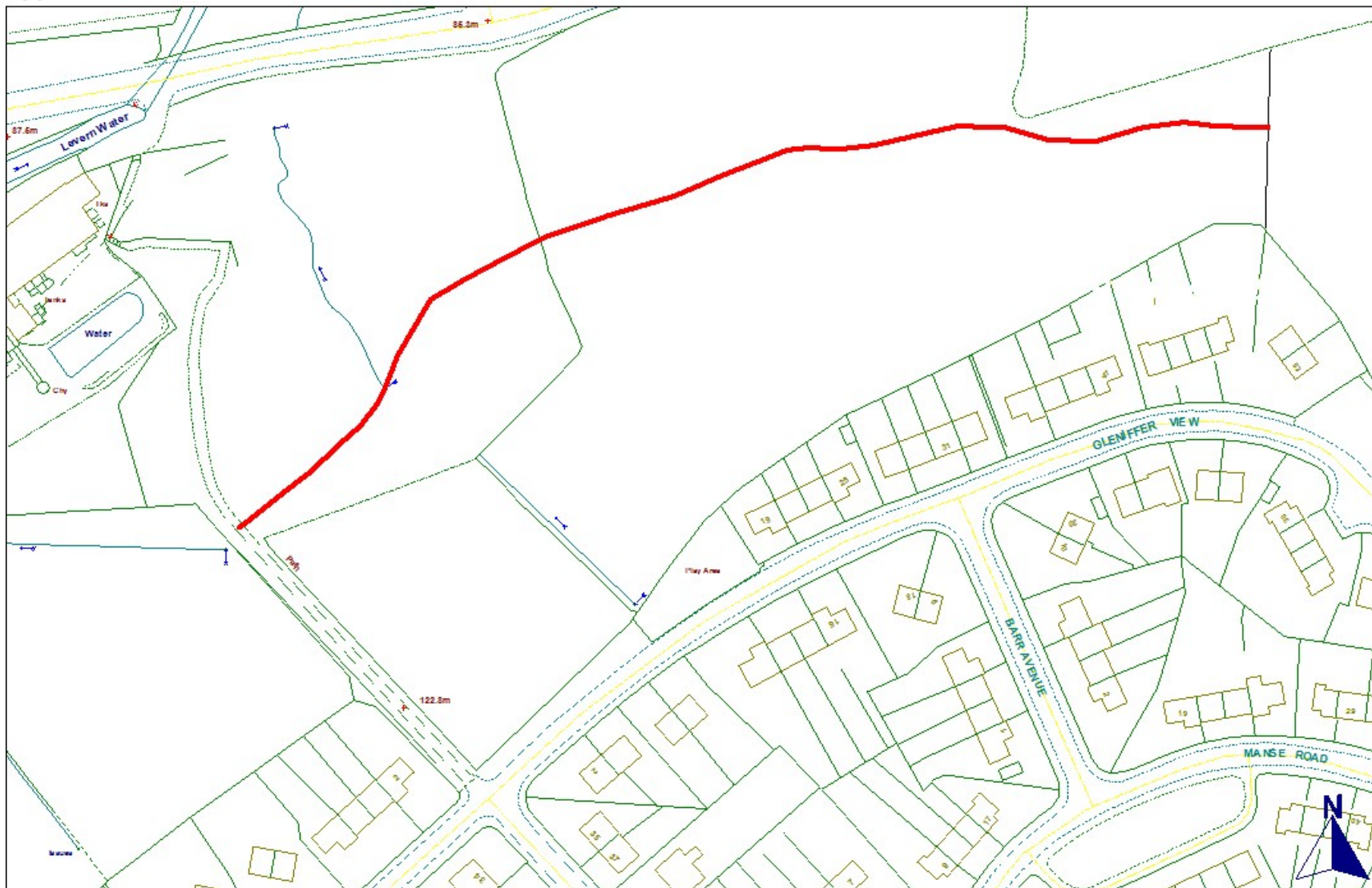
Councillor Tony Buchanan
(Convener for Infrastructure and Sustainable Growth)

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January 2016

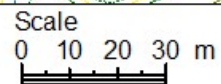
KEY WORDS Land Reform (Scotland) Act, Section 21 Path Agreement, Gleniffer View, Neilston,

Appendix 1: Plan of Path



DATE: 21/12/2015
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Appendix 2: Copy of Path Agreement

Section 21 PATH AGREEMENT: Path at Gleniffer View, Neilston

between

East Renfrewshire Council, Eastwood HQ, Eastwood Park, Giffnock, G46 6UG (hereinafter referred to as 'the Local Authority'),

SHEILA SMITH

address 1 Springhill Cottages, Springhill Road, Barrhead, G72 2SE

and

MARGARET LAURIE

address Stud Farm, Terregles, Dumfries, DG2 9RT

(hereinafter referred to as 'the Owner'), being the [*owner/tenant/crofter*] of the property situated north of Gleniffer View, Neilston under the title reference [.....] and known as the Salterland Path.

1. This Agreement is a Path Agreement under Section 21 of the Land Reform (Scotland) Act 2003, ('the Act') for the creation and maintenance of a path within land in respect of which access rights are exercisable. Nothing in this Agreement shall diminish or displace the rights, responsibilities, duties or powers under the Act or under the Scottish Outdoor Access Code, made under section 10 of the Act and approved by the Scottish Parliament on 1 July 2004, ("the Code") of either party, nor of any third party nor of the public.

2. Delineation -

The path is as shown delineated in red on the plan attached and signed as relative to this agreement (Annex One). Prior to installation the exact line of the route will be marked on the ground to the satisfaction of the Owner.

3. Creation / Improvement of the Path -

The Local Authority shall create the path through the installation of a surfaced pathway with associated drainage (as specified in Annex Two), all at its own expense. The Local Authority shall make good all damage to the Owner's land arising from the creation of the path as soon as reasonably practicable following being called upon to do so.

4. Management and Maintenance of the Path -

The Local Authority or its approved agent (as set out in paragraph 15) shall manage and maintain these specified pathworks for the duration of the Agreement (as detailed in Annex Three). Access for such management and maintenance work shall be taken under the terms and conditions of Section 26 of the Act, and under such agreed additional terms as may be set out in Annex Three.

5. Promotion -

The Local Authority shall be allowed to promote and encourage public use of the route. The Local Authority will encourage, by reasonable means, users of the route to behave responsibly in keeping with the Code.

6. Public Right of Way -

Nothing in this Agreement shall create or extinguish any public right of way.

7. Reimbursement for Quantifiable Losses -

Where the Owner suffers actual and quantifiable losses resulting from this Agreement, the Local Authority will make one or more payments to reimburse the Owner. Actual losses include loss of productive land and reductions in income from leases.

8. Management of the Property -

The Owner shall be free to manage their property surrounding said path provided that public access is not impeded or deterred and that the public is not put at danger or prevented from using any facilities along it.

The Owner shall be able, with the prior agreement of the Local Authority (which shall not be unreasonably withheld), to divert access from the route of the said path for a limited period to enable necessary land management works, in keeping with the Code. The Owner shall make good, to the satisfaction of the local authority when any damage to the said route caused by land management operations or by the Owner's fault or negligence.

9. Liability -

The Local Authority shall be responsible for meeting all actions, claims, costs and expenses which may be made against the Owner by reason of the construction, improvement, management including maintenance, or use of the path.

The Owner, or his agents or any interested party listed in paragraph 10, shall remain liable for any damage, injury or death which may be caused directly or indirectly through their respective fault or negligence.

10. Other Interested Parties -

The Owner agrees to notify and obtain the relevant compliance from those parties as listed below who have an interest in the land over which the path passes to the terms of this agreement:

Farm Tenant
Sporting Tenant
Secured Creditors

11. Duration of Agreement -

This Agreement shall commence three months after the granting of planning permission for the path to be constructed under this Agreement and shall continue for a period of fifteen years from the commencement date, unless terminated for any of the reasons in paragraph 13 below. The Agreement can be extended on completion of the agreed period.

12. Review -

The Local Authority and the Owner may agree to adjust this Agreement by mutual consent, which must not be unreasonably withheld. The Agreement shall also be reviewed when the Local Authority is preparing its Core Paths Plan under section 17 of the Act, in order that the potential for the path to which this Agreement relates to be listed as a core path may be considered at that time and the Agreement adjusted accordingly at the Local Authority's expense.

13. Termination -

The Agreement may not be terminated before the date stated in the paragraph 11 above except, given a written notice of at least six months by one party to the other, for the following reasons:

1. by agreement between the parties for clear and justifiable reasons, and only if an alternative route is not practical; or
2. failure by either party to comply with the terms of the Agreement, following Notice to Remedy issued by the other party.

14. Professional Costs -

The Local Authority shall meet all usual reasonable professional expenses, fees and outlays incurred by the Owner as shall be agreed relating directly to the negotiation and conclusion of this Agreement.

15. Transfer of Ownership or Responsibilities -

If at any time after this Agreement has been signed the Owner proposes to dispose of, assign or otherwise grant any interest in the land, the Owner must disclose the fact that this Agreement exists and require the person(s) acquiring such interest to be bound by the terms of the Agreement.

The Local Authority, with the Owner's consent (which will not be unreasonably withheld), may transfer its responsibilities for creating, maintaining, improving or managing the path to another agent demonstrably capable of implementing the Local Authority's obligations arising under this Agreement.

16. Arbitration -

In the event of an unresolved dispute over the interpretation of this Agreement, an Arbitrator shall be appointed on the application of either party to the Chairman the Royal Institution of Chartered Surveyors in Scotland. The apportionment of the costs of arbitration shall be decided by the Arbitrator. The Arbitrator's decision shall be final and binding on both parties.

Signed

On behalf of East Renfrewshire Council

Date

Signed

On behalf of the Owner

Date

Witness

Signed

Name

Address

Signed

On behalf of the Owner

Date

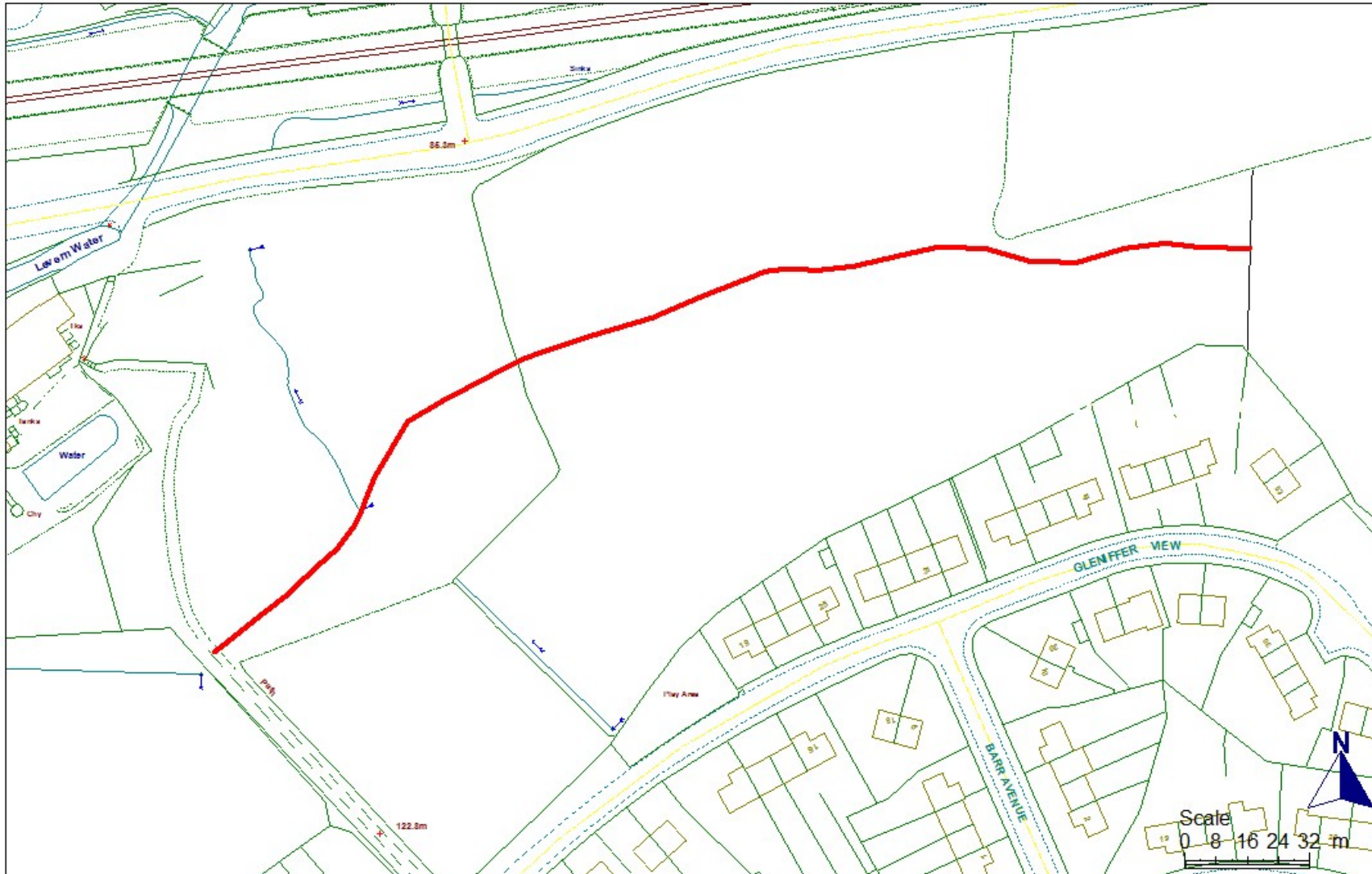
Witness

Signed

Name

Address

Annex A: Plan of Path



Annex A: Section 21 Path Agreement
Gleniffer View, Neilston

Map Ref 1:1250 @A4

NS4757NE DATE: 11/12/2015



Annex Two - Inventory and details of installations and structures subject to this Agreement

A path is to be established from the Right of Way north west of Gleniffer View to the application boundary of a new housing development at Neilston Road, Neilston. The path and its elements will consist of:

1. A surfaced path: 301 metres long and 1.5 metres wide with 300mm deep excavated ditch to uphill slope.
2. The land owner will be informed 4 weeks in advance of path construction. Arrangements for the contractor to access the site, details of path construction methods and arrangements for site restoration will be agreed in advance on work commencing.

Annex Three - Schedule of inspection, management and maintenance programme to be undertaken by the Local Authority, or its approved agent (including works for which prior notice to the Owner will not be required).

1. A monthly litter (12 times per annum) pick to 2 meters each side of the path surface.
2. Annual grass cut to 1 metre each side of the path surface.
3. Annual application of herbicide to path surface and edges.
4. An annual inspection of the path surface, with repairs to surface as required.
5. Access for management and maintenance work will be via Right of Way and the Council owned ground to the west of Robertson Crescent.