

## **Committee: Cabinet**

**Date: 15 August 2016**

Wards: Merton Park, Cannon Hill, Dundonald

### **Subject: Consideration of closure of footpath between John Innes Park and John Innes Recreation Ground**

Lead officers: Yvette Stanley, Director of Children, Schools and Families; and  
Chris Lee, Director of Environment and Regeneration

Lead members: Councillor Katy Neep, Cabinet Member for Children's Services;  
Councillor Caroline Cooper-Marbiah, Cabinet Member for Education; and

Councillor Nick Draper, Cabinet Member for Community and Culture

Contact officer: Julia Regan, Head of Democracy Services

#### **Recommendations:**

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1. That Cabinet notes the options set out in the report, results of the public consultation, representations received from individuals and groups and the findings of the police review of security at Rutlish School;
  2. That Cabinet confirms that option 3 is the preferred option and agrees the following actions:
    - A. That Cabinet agree to enter into a tripartite licence with the John Innes Foundation and Rutlish School to permit the school to close the gates at either end of the path between John Innes Park and John Innes Recreation Ground, 8am to 5pm, Monday to Friday in term time from the start of the autumn term, in September 2016;
    - B. That Cabinet agree to delegate authority to agree the terms of the licence and to agree any further appropriate legal action to the Director of Environment and Regeneration, in consultation with the appropriate Cabinet Members, to effect this partial closure of the gates;
    - C. That Cabinet notes that should recommendation 2 be agreed, further high priority school security works will be undertaken at the school at the earliest opportunity, jointly funded by the council's capital maintenance budget for schools and Rutlish School;
    - D. That Cabinet agree that officers should explore the feasibility and cost of the construction of a fully accessible alternative route between John Innes Park and John Innes Recreation Ground that would mitigate the impact that this partial closure would have on local residents, particularly those with mobility difficulties.
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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. Rutlish School is located on two sites either side of the footpath running from John Innes Recreation Ground to John Innes Park. For many years the school has expressed serious concerns to the Council regarding pupil

safety. In January 2012, following public consultation, Cabinet decided to keep the path open but to provide the school with the ability to close the gates when there was a known, immediate threat to security:

<http://democracy.merton.gov.uk/Data/Cabinet/20120116/Agenda/1109.pdf>

- 1.2. The school has continued to raise safety concerns to the Council and the recent series of bomb hoaxes at a number of schools in the borough have illustrated the vulnerability of the school. A police review of security at the school earlier this year concluded that the closure of the footpath during school hours was essential to safeguarding and promoting students' welfare, safety and health.
- 1.3. In response to these concerns the Council has consulted local residents, parents and park users on a proposal to close the path to the public during school hours. The results of this consultation as well as representations received from stakeholder groups and other interested parties are set out in this report.
- 1.4. The report also includes the police security review, risk assessments and an equalities impact assessment.

## **2 DETAILS**

### **Background**

- 2.1. Cabinet, at its meeting on 16 January 2012, considered a request from Rutlish School to close the gates during school hours. Cabinet was presented with a number of options including no action, closure of gate during school hours, closure during school hours with an identity pass system for residents, provision of a foot tunnel or bridge for use by the school, building a new path to link the path and recreation ground and keeping the gates open with the provision of gates at either end that could be locked remotely by the school for emergency use.
- 2.2. In making its decision on this matter, Cabinet were mindful of the results of public consultation that found a majority (60%) of respondents to the questionnaire were opposed to closure of the gates. Cabinet also took into account a statement from the Merton Park Ward Independent Residents Group councillors that described the inconvenience and loss of amenity to local residents and asked the school to consider taking measures to mitigate the identified risk but that stopped short of closure of the path. The councillors highlighted the risks that pedestrians would face in using an alternative route along a section of Watery Lane that had no pavement.
- 2.3. Cabinet's decision in January 2012 was to keep the path open to the public and to install gates at either end of the path to assist the school in managing the ongoing risk so that the school could lock the gates remotely in the event of an emergency.
- 2.4. Rutlish School has continued to raise security and safeguarding concerns with the Council. The findings of the police review of security at the school in March 2016, in particular the recommendation that the path should be closed immediately, has prompted Cabinet to review this matter.

## **Ownership and the restrictive covenant**

- 2.5. John Innes bequeathed John Innes Park and Recreation Ground and the pathway connecting them to the public. Ownership of these three component parts was transferred by the John Innes Charity to the Council's predecessor, Merton and Morden UDC in 1949. A restrictive covenant was imposed in 1949 as part of the transfer.
- 2.6. The covenant protects the right of the public to use the pathway to walk from John Innes Park to John Innes Recreation Ground and vice versa. The covenant does not require the footpath to be kept open at all times and therefore by closing the footpath from 8am to 5pm, Monday to Friday in term time (190 days) would not, in the opinion of the South London Legal Partnership (the Council's legal service), constitute a breach of covenant.
- 2.7. The South London Legal Partnership has written to the John Innes Foundation to make it aware that the Council is considering the school's request for partial closure of the path and inviting them to enter into a licence to document the arrangement or, alternatively, whether they would agree to a variation of or release of the restrictive covenant so that the school may close the gates during school hours in term time.
- 2.8. The John Innes Foundation has considered the Council's proposals and has indicated that they would be prepared to enter into a tripartite licence agreement with the school and the council to close the footpath during school hours in term time, 8am to 5pm for 190 days a year. This is on the basis the Council will meet their fees and expenses.
- 2.9. Full details of the conditions set out in the covenant and the South London Legal Partnership's correspondence with the John Innes Foundation on this issue are set out in section 7 of this report (legal and statutory implications).

## **Rutlish School's position**

- 2.10. Rutlish School was built within the grounds of John Innes Park in 1957. The school has two main sites, which are situated either side of the footpath. Whilst most transit across the footpath occurs at normal lesson changeover and is monitored by members of staff, small numbers of staff and students are required to cross the path alone at other times.
- 2.11. This has created difficulties for the school in delivering its responsibility to safeguard students and staff. The open access to the school sites, afforded by the path, increases the possible risk of harm to both students and staff. The recent police security review identified the immediate closure of the path as essential to students' safety. The report identified a number of other security measures that need to be taken but concluded unless that the gates were closed, other security measures would be ineffective.
- 2.12. The review report author summarised thus :  
*"over the past 16 years I have had the unique opportunity to provide security advice to over 200 schools across 19 boroughs around London. This school in my professional opinion is without a doubt the most vulnerable to unauthorized access I have ever been to. Safeguarding and promoting students' welfare, safety and health is paramount, this cannot be achieved because the site is so insecure. In order to ensure full child protection the*

*footpath needs to be closed during the school working day, this needs to be followed immediately with changes to the perimeter security around the whole site. But until the footpath is secured any changes to the perimeter will be ineffective”*

- 2.13. The police review report is set out in full in Appendix 1 - this is an exempt document (by virtue of paragraph 7 of Part 1 of Schedule 12A of the Local Government Act 1972) because it includes specific information about security weaknesses that would make the school more vulnerable to crime thus placing students, staff and school property at risk.
- 2.14. Representations in support of the proposed closure of the gates from 8am to 5pm, Monday to Friday during term time, have been received from:
- Headteacher of Rutlish School
  - Stephen Hammond, MP
  - NASUWT (teachers’ trade union)
  - Number of local residents/parents/governor/members of staff
  - Police officer based at Rutlish School
- 2.15. These representations highlight safety and security concerns and contend that safeguarding students and staff is of the utmost importance. Statements from the Headteacher, school police officer and the NASUWT describe how the open footpath exposes the school to risk from intruders and also allows students to leave the school without staff being aware of this. They state that they have had to deal with numerous unauthorised visitors, many of whom have been aggressive and threatening. Recent examples of this and the logistical difficulties posed by open access from the path are set out in the statement from the police officer based at Rutlish School. The NASUWT stressed the employer’s care of duty to staff as well as the safeguarding responsibility for students.
- 2.16. These representations are set out in full in Appendix 2.

### **The impact on local residents**

- 2.17. The path currently provides an access route between John Innes Park and John Innes Recreation Ground and, more widely, an east-west access route, via the park and recreation ground, between Mostyn Road and Cannon Hill Lane. John Innes Park contains tennis courts, a bowling green and a croquet lawn, all of which are used regularly.
- 2.18. Closure of the path would necessitate residents taking an alternative route via Church Path, Watery Lane and Manor Road. Part of Watery Lane (from the junction with Church Path to the entrance to the Rutlish School north site) is a single-track road with no path. Also, the only current access to the recreation ground from Manor Road is via steps.
- 2.19. A risk assessment examining the risk to path users of closing the path has been carried out by the Council’s Greenspaces team and is set out in Appendix 3.

- 2.20. The risk assessment shows that the overall impact on park users and staff of closing the path and using the existing alternative route is rated as “requires immediate attention to bring the risk down to an acceptable level”, meaning that both the likelihood and impact of identified risks is high. The risks include safety risks for park users through having fewer exits should they feel under threat; and road safety risks from using that part of Watery Lane where there is no pavement. The proposed control measures include provision of a new DDA-compliant alternative access route.
- 2.21. Representations against the proposed closure of the gates from 8am to 5pm, Monday to Friday during term time, have been received from:
- The John Innes Society
  - Merton Park Croquet Club
  - Merton Park Ladies Bowls Club
  - A number of individual residents and park users
- 2.22. These representations question the extent of the actual risk to students and staff, asking for evidence to be given of this and asking why the police security report has not been made available to the public. Respondents strongly believe that the footpath is a public right of way and that, because it predates the school and is protected by covenant, it should not be closed to the public. The John Innes Society stated that it would oppose any application to waive the covenant. Respondents highlighted the inconvenience caused to park users and the safety risk posed by alternative routes (the Croquet Club raised specific concerns in relation to elderly and frail club members). They suggested that instead of closing the path there should be a bridge between the school sites or closure of the school’s gates either side of the path. Respondents indicated that closure would adversely affect the relationship between the school and the local community.
- 2.23. Cabinet is advised that the path is not a right of way – further information on this is given in paragraph 8.11 in the legal and statutory implications section.
- 2.24. These representations are set out in full in Appendix 4.
- 2.25. The three Merton Park Ward Independent Residents (MPWIR) councillors have sent in a written statement that provides an overview of the current situation and the differences of opinion in relation to closure of the path. The councillors state that the concerns of the school and the findings of the police report should not be ignored but that, should Cabinet decide to close the path, it should be mindful of the associated risks. These risks include resentment felt by those local residents who do not believe that the path should be closed. The ward councillors also highlight the safety risks associated with the use of Watery Lane as an alternative route as well as the lack of alternative escape routes for park users who feel threatened.
- 2.26. The MPWIR councillors have urged Cabinet to ensure that Rutlish School addresses all the other security weaknesses that were addressed in the police report. They suggest that in order to ensure this is done, a temporary licence to close the gates could be issued and, should the school not address these within a specified time, this could then be revoked.

- 2.27. The South London Legal Partnership has advised that a temporary licence would not be required now that Rutlish School has given an undertaking to carry out the security works detailed in the police security review and has reached an agreement on funding this as set out in paragraph 3.12 below.
- 2.28. The statement by the MPWIR councillors is set out in full in Appendix 5.

### Results of the public consultation

- 2.29. A public consultation was undertaken by the Council between 10 June and 25 July. 4000 leaflets were distributed to households in the streets of Merton Park, Cannon Hill and Dundonald ward which are closest to the park. The survey was also available online on the council's website. The methodology is described in more detail in section 5 of this report.
- 2.30. 1117 questionnaires were completed – 694 (62%) on paper and 423 (38%) online.
- 2.31. Respondents were asked to categorise themselves as local residents, park user, parent of child at Rutlish School, staff/governor at Rutlish School or other. Respondents could select as many categories that were applicable to them, therefore totals in the table below sum to more than 100%:

	Number	Percentage
Local resident	909	81.4%
Park user	498	44.6%
Parent of child at Rutlish School	261	23.4%
Staff or governor at Rutlish School	56	5.0%
Other	45	4.0%

- 2.32. In total, 655 (59%) of questionnaire respondents agreed with the proposed partial closure of the footpath. This represents a shift in public opinion since the previous consultation on this issue in 2010 which found 40% of the 412 respondents in favour of partial closure (see report to Cabinet, 16 January 2012 for details).
- 2.33. 751 (67%) respondents agreed that the partial closure would cause no inconvenience or only minor inconvenience, 131 (12%) respondents said it would cause a significant inconvenience and 211 (19%) said it would cause a substantial inconvenience.
- 2.34. Analysis of the responses shows that parents, staff and governors at Rutlish School were most likely to agree with partial closure and park users the least. 91% of staff and 84% of parents strongly agreed with the proposal to close the path. Amongst local residents, 52% agreed with closure and 44% disagreed. 48% of park users strongly disagreed with closure. (see Table A in Appendix 6).
- 2.35. Respondents were asked if they had a disability, illness or specific need that would affect their ability to use an alternative route if the path was closed during school hours. 113 (10%) of respondents stated that they did.

- 2.36. Further analysis found that the frequency of usage of the path, level of inconvenience caused by partial closure and attitude toward partial closure differed for those who reported that they had a disability, illness or specific need that would affect their ability to use an alternative route:
- 44% of disabled respondents said they used the path daily compared to 11% of non-disabled respondents.
  - 80% of disabled respondents said that partial closure of the path would cause them substantial or significant inconvenience. (Table B)
  - 72% of disabled respondents strongly disagreed with the proposed closure, with a further 10% disagreeing. Only 14% agreed. (Table C)
- 2.37. A full analysis of the results is set out in Appendix 6.
- 2.38. Questionnaire respondents were invited to comment on the impact that closure during school hours may have for them or why they believe it is important to close the path for pupil safety. 765 responses were left by respondents, 53% from those who agreed with the proposal and 44% from those who disagreed.
- 2.39. Amongst those who agreed, 379 made reference to the importance of security and safety for the pupils and staff of the school. 53 said that the impact or inconvenience caused by closure would be minimal or none at all. 18 respondents said that if the path was closed it would be important to improve the accessibility of the alternative route.
- 2.40. Examples of comments received from those in support of partial closure are:
- “Advice given by the police should be heeded - safety is important. I use the pathway as a part of a guided walk. An alternative route is possible.”
  - “Better safe than sorry - shouldn't have to wait for a serious incident for this to be made possible.”
- 2.41. Those respondents who disagreed with the proposal were most likely to cite the removal of a public right of way/amenity (139 mentions). 125 suggested or requested alternative solutions such as bridges, tunnels, cardkey access or additional security staff. 100 respondents felt that the path did not present any / or minimal security risks to the school. 81 raised the inconvenience of using the alternative route whilst 73 mentioned concerns about the accessibility or safety of the alternative route. 52 mentioned that the proposal would fail to address wider security issues on the school site. Other frequently mentioned issues were anti-social behaviour of the pupils (21), the fact this proposal was turned down at a previous consultation (18) and that closure would create safety issues for park users (14).
- 2.42. Examples of comments received from those opposed to partial closure are:
- “Closure of the John Innes footpath would cause 100% inconvenience to legitimate users -without substantially increasing school security. The present gates would not deter wilful trespassers: upgrading gates to the actual school areas would be more effective (especially if electronically controlled by PIN or magnetic card). Add CCTV and / or school footbridge.”

- “The school chose to extend across the path. This path is an important thoroughfare between the recreational grounds and the park. The school could build a bridge over the path if it was really concerned! However they are just being paranoid and pushing the cost onto the public!”
- 2.43. Two respondents sent in additional sheets of comments. These are set out in Appendix 4A.

### **3 SELECTING A COURSE OF ACTION**

- 3.1. Option 1- no change
- 3.2. Cabinet could decide that the needs of residents using the path as an access route are paramount and outweigh the safeguarding responsibilities of Rutlish School and the Council. If this were the case then the path would remain open to members of the public during the opening times for the Park and Recreation Ground.
- 3.3. This option is not recommended to Cabinet.
- 3.4. Option 2 – partial closure with no further action by Cabinet
- 3.5. Cabinet could decide that the duty to safeguard students and staff is of paramount importance and outweighs the inconvenience that closure of the path from 8am to 5pm, Monday to Friday in term time would cause to local residents and park users. If this were the case then the path would be partially closed as set out in the proposals that were the basis of the public consultation.
- 3.6. This course of action would result in members of the public taking a longer, less safe route between John Innes Park and John Innes Recreation Ground that is in part inaccessible for wheelchair users and people with pushchairs. It could also lead to increased friction between the school and the local community.
- 3.7. This option is not recommended to Cabinet.
- 3.8. Option 3 – partial closure with additional action by Cabinet
- 3.9. Cabinet could decide that the duty to safeguard students and staff is of paramount importance and outweighs the inconvenience that closure of the path from 8am to 5pm, Monday to Friday in term time would cause to local residents and park users. If this were the case then the path would be partially closed as set out in the proposals that were the basis of the public consultation.
- 3.10. Cabinet could decide to explore the feasibility and cost of the construction of a fully accessible alternative route between John Innes Park and John Innes Recreation Ground that would mitigate the impact that this partial closure would have on local residents, particularly those with mobility difficulties.
- 3.11. Officers have identified a potential route which is shown in Appendix 8. This would reduce any diversion for pedestrians and importantly means a step free route without needing to cross any road and the only small section on the road includes a pavement. However, to achieve this it would be necessary to utilise two parcels of land within the grounds of Rutlish School

and owned by the Rutlish Foundation. The chair of the Rutlish Foundation has been approached and is amenable to the proposal subject to the path being closed as per recommendation 2 to this report and would seek approval from the board early in September. The estimated cost of this new access path is £29,000.

- 3.12. Given that closure of the path was just the first in an extensive series of security measures that the police report recommended to Rutlish School, CSF officers have worked with the school to receive an estimate of the cost to complete the priority works and to ensure it could be funded. The priority works have been estimated to cost £59,000. It has been agreed that on the basis of recommendation 2 to this report being agreed the council's capital maintenance fund for schools will meet £34,000 of this cost and the school will meet £25,000.
- 3.13. This option is recommended to Cabinet.

#### **4 ALTERNATIVE OPTIONS**

- 4.1. Cabinet could opt to keep the path open at all times rather than close it from 8am to 5pm, Monday to Friday during term time.
- 4.2. Unless an alternative route between the two school sites was found for the school to use, the continued public use of the path during school hours would continue to place students and staff at risk.
- 4.3. Alternative routes between the two school sites were considered and rejected as unfeasible by Cabinet in 2012, including the building of a footbridge or tunnel to link the two sites.
- 4.4. The pupil numbers crossing the path between lessons is considerable, with 500 pupils crossing hourly at the end of each lesson. An external footbridge with stairs would pose further issues in the management of pupils and pupil safety. Ramped access for disabled access would require significantly more land and would be more expensive to build. An underground foot tunnel would provide similar challenges.

#### **5 CONSULTATION UNDERTAKEN OR PROPOSED**

- 5.1. The Council carried out a public consultation for a period of six weeks from 10 June to 25 July. A leaflet containing a one page self completion survey was delivered by councillors and local volunteers to 4000 households in selected streets in Merton Park, Cannon Hill and Dundonald wards that were closest to John Innes Park. A3 laminated notices were put up in John Innes Park at either end of the footpath, on noticeboards and at park entrances.
- 5.2. An online version of the survey was set up on the Council's website and was advertised on the homepage and through the Council's Twitter accounts. The Headteacher of Rutlish School texted parents, staff and governors to send them the link to the online survey.
- 5.3. Letters were sent to a wide range of stakeholders alerting them to the public consultation so they could encourage their members to respond. They were also invited to send in a formal response on behalf of their organisation.

These stakeholders included the John Innes Society, Friends of John Innes Park, Merton Park Croquet Club, Merton Park Bowls Club, teaching unions, Headteacher and Chair of Governors at Rutlish School. The local MP, Stephen Hammond, was also informed of the consultation and has submitted a statement.

- 5.4. The results of the consultation are summarised in section 2 of the report and set out in full in Appendix 6.

## **6 TIMETABLE**

- 6.1. It is anticipated that closure of the gates from 8am to 5pm, Monday to Friday during term time would commence at the start of the autumn term in September 2016.
- 6.2. Should Cabinet approve the recommendation relating to an additional path, officers would endeavour to complete the additional path works as soon as possible, but it may take several months due to the possible need to obtain planning permission, and to obtain permission from the Rutlish Foundation to use part of their land and put the legal documentation in place with the Rutlish Foundation and the PFI contractor for use of school land.

## **7 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 7.1. While there is no cost to closing the relevant gates there is a cost to implementing option 3 to create a new access path from John Innes Rec to John Innes Park. This has been costed at £29,000.
- 7.2. There is also a cost of £59,000 to implement further high priority security works at the school. It has been agreed that on the basis of recommendation 3 to this report being agreed the council's capital maintenance fund for schools will meet £34,000 of this cost and the school will meet £25,000.
- 7.3. It is estimated that legal fees for the John Innes Foundation will be in the region of £5,000 plus the Foundation's costs (which are still to be established).
- 7.4. The Council's capital programme includes a sum of £650,000 per annum in the Schools' Capital Maintenance Fund. School contributions are added to this fund. There is sufficient funding within the approved Capital Programme to fund the items detailed within the financial implications. The budget adjustments necessary to reflect the timing of the schemes and the schools contributions will be progressed as part of the July Monitoring Report when the foundations estimated legal costs can be incorporated into the changes.

## **8 LEGAL AND STATUTORY IMPLICATIONS**

- 8.1. When the John Innes Park and John Innes Recreation Ground was conveyed to the Merton and Morden UDC on the 1 October 1949 it was subject to a restrictive covenant that the Council 'will not at any time ...use or allow to be used the ..(First ) piece of land ..for any purpose than as a Public Park and will not at any time ..use or allow to be used the second piece of land..for any purpose other than as a Sports or Recreation Ground and will not at anytime..use or allow to be used .. the strip of land ..for any

- purpose other than as a pathway connecting the two.. pieces of ground respectively first and second conveyed ..with borders of flower beds or shrubs on each side such three pieces of ground to be maintained for use of the Public in the same manner as the said pieces of ground have respectively been maintained.
- 8.2. The Council as successors in title to Merton and Morden UDC remains bound by the restrictive covenant. In addition the land was conveyed under a conveyance at nil consideration for the benefit of the public . (A point raised in the objections).
- 8.3. There is some ambiguity as to the construction of the covenant in that it does not say the pathway must be kept open at all times which gives some doubt as to its enforceability.
- 8.4. Should the covenant be enforceable, the John Innes Foundation would have the benefit of the restrictive covenant, which means they would in principle have the power to enforce the covenant. The Foundation have been approached by the council to see whether the Foundation would be prepared to enter into an arrangement with the Council to regulate the gates.
- 8.5. The John Innes Foundation have said they would be prepared to enter into a licence with the Council and Rutlish School to allow the gates to be closed Monday to Friday between 8am – 5pm during term time provided the council meets their reasonable costs and expenses.
- 8.6. The representations by members of the public and organisations objecting to the closure of the path indicate a concern that the decision making process by the Cabinet is at risk of being flawed, particularly in relation to the consultation process and the weight being given to the report from the police.
- 8.7. In relation to the consultation process, the Council decided to consult on this proposal, as it did in 2011/12. Whether or not there is in law an obligation to consult, where consultation is embarked upon it must be carried out fairly. Unless there is a statutorily prescribed procedure for consultation and subject to the overall requirements of fairness, there is a broad discretion as to how a consultation exercise should be carried out, although certain fundamental propositions must be adhered to. These propositions are known as the Gunning principles, which have been established in case law.
- 8.8. The Gunning principles are that:
- (i) Consultation must take place when the proposal is still at a formative stage;
  - (ii) Sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response;
  - (iii) Adequate time must be given for consideration and response; and
  - (iv) The product of consultation must be conscientiously taken into account
- 8.9. Representations from members of the public opposed to the closure of the footpath cite, in particular, that the consultation carried out by the Council in June and July 2016 was flawed on the basis that access was not given to

the police security report . This report contains specific information about security weaknesses at the school and its disclosure to the public would make the school more vulnerable to crime putting the students ,staff and school property at risk .The council is, therefore, under paragraph 7 of Part 1 of schedule 12A of the Local Government Act 1972 entitled to treat it as an exempt document .

- 8.10. In relation to the representations raising the adequacy of the consultation process, the legal view is that the consultation process has been carried out in accordance with the principles in paragraph 8.8 above.
- 8.11. Further representations from the public refer to the pathway as being a public right of way. The pathway between the John Innes Recreation Ground and the Park is not recorded as being a public right of way. Furthermore, as the pathway was conveyed to the Council together with the Recreation Ground and the Park for recreational use by the public, this use of the path is likely to be 'use by right' rather than 'use as of right' which would prevent highways rights from occurring.
- 8.12. In exercising its functions the Council must comply with its general equality duty under the Equality Act 2010. The Act requires the council to have "due regard" to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act; to advance equality of opportunity between people who share a relevant protected characteristic and those who do not and foster good relations between people who share a relevant protected characteristic and those who do not. Cabinet is referred to the Equalities Impact Assessment in Appendix 67 and section 9 below.
- 8.13. The council can be subject to judicial review proceedings on the basis of a flawed decision making process. It is important as in all matters before it , for Cabinet to take into account all relevant considerations and come to a reasonable view based on those considerations.

## **9 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 9.1. In considering the options for the footpath, Cabinet should take into account that the subject has proved to be an emotive one. The public consultation has demonstrated that, should the footpath be closed, many residents and park users would feel the loss of an amenity that they consider belongs to the public. Furthermore, some respondents have questioned the degree of risk that the school's students and staff face as a result of public use of the footpath during school hours. Closure may therefore result in strained relations between Rutlish School and local residents, thereby impacting on community cohesion.
- 9.2. An Equalities Impact Assessment has been undertaken to gauge the impact of closing the path on people with mobility difficulties and is attached as Appendix 7.
- 9.3. The Equalities Impact Assessment found that closure of the footpath would have a detrimental effect upon those with mobility difficulties, such as the elderly, wheelchair users and people with buggies or pushchairs. This is

because alternative routes between John Innes Park and John Innes Recreation Ground are marginally longer and require negotiating steps, travelling along a short section of road that has no pavement as well as walking along busy roads.

- 9.4. These issues have also been raised by respondents to the public consultation.
- 9.5. It is proposed that Cabinet should take mitigating action by agreeing to the creation of an additional path between John Innes Park and John Innes Recreation Ground that is fully accessible.

## **10 CRIME AND DISORDER IMPLICATIONS**

- 10.1. The crime and disorder implications have been covered in the main body of the report. In particular the police security review (Appendix 1) sets out the implications of leaving the footpath open and the risk assessment (Appendix 3) sets out the implication of closing it.

## **11 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

- 11.1. The risk management and health and safety implications have been covered in the main body of the report. In particular the police security review (Appendix 1) sets out the implications of leaving the footpath open and the risk assessment (Appendix 3) sets out the implication of closing it.

## **12 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

Appendix 1 – Police security review of Rutlish School, March 2016

Appendix 2 – Representations received in support of the proposed partial closure of the gates

Appendix 3 – Risk assessment

Appendix 4 – Representations received in opposition to the proposed partial closure of the gates

Appendix 5 – Statement received from the Merton Park Ward Independent Residents councillors, July 2016

Appendix 6 – Analysis of public consultation questionnaires, July 2016

Appendix 7 – Equality Impact Assessment

Appendix 8 – Map showing suggested additional alternative route

## **13 BACKGROUND PAPERS**

- 13.1. None

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