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**[Your Full Name] \*[Your Address]\* [Your Postcode]\* [Your Email Address] [Your Phone Number]**

**Date:** [Current Date]\*

**To:** Planning Department Erewash Borough Council Town Hall Ilkeston Derbyshire DE7 5RP

**By Email:** [planning@erewash.gov.uk](mailto:planning@erewash.gov.uk)

**RE: FORMAL OBJECTION TO PLANNING APPLICATION PP-14809820 / PA/2026/0182 TEMPORARY CONSENT FOR OVERNIGHT CLOSURE OF NCR 67 CYCLE ROUTE**

**Site:** NCR 67 Cycle Route, Quarry Hill Road, Ilkeston / New Stanton

**Park Applicant:** Verdant Regeneration **Application Submitted:** 27 March 2026 **Agent:** K LW Planning

Dear Sir/Madam,

I am writing to formally object to the above application, which seeks temporary consent for the overnight closure of the relocated National Cycle Route 67 (NCR 67) between 6pm and 7am for a period of three years.

**This application fails to meet the statutory tests required by law, creates an unacceptable safety hazard for cyclists and pedestrians, and represents an attempt to circumvent existing planning conditions that have already been breached.**

I request that **this application be refused** and that the Council instead enforce compliance with the original planning conditions, which require the cycle path to be open 24 hours a day, 7 days a week.

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## SUMMARY OF OBJECTIONS

1. **The applicant admits they are installing perimeter security fencing** – proving the path closure is not necessary for site safety.
2. **Condition 31 of the outline permission (ERE/1221/0002) has been breached** – Unit 1 has been occupied before the path was opened, as required.
3. **No alternative route is proposed** – the forced diversion fails the statutory test of being "equally convenient."

4. **The diversion route is demonstrably unsafe** – unlit, without footways, through heavy HGV traffic.
  5. **The three-year "temporary" closure is excessive** and represents an abuse of temporary consent.
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## **DETAILED OBJECTIONS**

### **1. ADMISSION OF PERIMETER FENCING – CLOSURE IS NOT NECESSARY**

**The applicant's own application form (Page 5, Materials section) admits:**

"Proposed up to 2.4m high paladin fencing (Green, RAL 6005) Proposed up to 2.4m high paladin pedestrian gate (Green, RAL 6005) Proposed up to 2.4m high palisade fence (Green, RAL 6005)"

**This admission is fatal to the application.**

If Verdant Regeneration is installing 2.4m high security fencing around the site perimeter, they have the means to **secure the site without closing the public path**. The gates on the cycle path are not a necessity – they are a convenience to avoid the cost and effort of extending the perimeter fence to fully enclose the site boundary.

**Under the Construction (Design and Management) Regulations 2015 (CDM 2015)**, it is the developer's legal duty to secure their construction site to prevent unauthorized access. This must be achieved through **proper perimeter security (fencing)**, not by restricting public rights of way.

**The applicant's own covering letter (KLW Planning, dated [Date]) states:**

"Fencing on the north side of the Biodiversity Enhancement Area will be installed shortly, which will secure part of the site from the Nutbrook Trail."

This confirms that the developer **can and will install fencing**. There is no reason why this fencing cannot be extended to fully secure the site boundary **without closing the cycle path to the public**.

**The proposal is therefore illogical and unjustified.** The correct solution is to install complete perimeter security, not to lock the public off a designated cycle route.

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## **2. BREACH OF CONDITION 31 – THE PATH SHOULD ALREADY BE OPEN**

**The application form (Page 5, Existing Use) confirms:**

"Cycle path within New Stanton Park which has the benefit of an **extant permission for use classes B2, B8 and Eg(iii).**"

This refers to the **outline/hybrid permission (ERE/1221/0002)**, which was approved in August 2022 and imposed **Condition 31**, which states:

"The provision of the relocated Cycle Route 67 shall be undertaken in accordance with the details approved on Cycle Path Diversion Plan - Dwg No: 20-188-SGP-XX-XX-DR-A-111002, **surfaced and made available for use prior to first occupation of any building.**"

**Reason:** "To ensure the enhancement of cycle provision across the site in the interests of enhancing sustainable travel and recreation routes."

**The Facts:**

- **Unit 1 has been occupied**
- **The cycle path has NOT been opened to the public** (it remains blocked).
- **Condition 31 has been breached.**

The developer cannot use a new planning application to regularize or avoid compliance with an existing, binding planning condition. **The path must be opened immediately to comply with Condition 31.**

By submitting this application for a three-year closure, the applicant is attempting to:

1. Avoid enforcement action for the Condition 31 breach.
2. Obtain retrospective permission to keep the path locked indefinitely.
3. Shift the burden of site security onto the public, rather than meeting their own legal obligations.

**This is not acceptable.** The Council must enforce the original condition and require the path to be opened without delay.

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## **3. NO ALTERNATIVE ROUTE PROPOSED – FAILS THE "EQUALLY CONVENIENT" TEST**

**Statutory Test:** Under **Section 257 of the Town and Country Planning Act 1990** and **Sections 118-119 of the Highways Act 1980**, any closure or diversion of a public right of way must be justified by demonstrating that:

1. The closure/diversion is "**expedient**" (necessary and in the public interest).
2. Any alternative route is "**equally convenient**" to the original.

### **The Application Fails Both Tests:**

The application provides **no justification** for why the path must be closed and **no alternative route** is proposed. The applicant simply states:

"The gates will be locked each evening by the site management security force, and re-opened each morning. The cycle path will therefore be fully accessible during daylight hours."

**This is inadequate.** When the gates are locked at 6pm, users are forced to find their own alternative. The reality is that users face:

### **The Forced Diversion:**

- **Un-signposted 1-mile diversion** through Stanton industrial estate
- **Heavy articulated lorry usage** – HGVs with significant blind spots
- **Hallam Fields Road section with NO FOOTWAY** – pedestrians and cyclists forced to share the carriageway with traffic
- **Complete darkness** – no street lighting in winter months (path closes at 6pm)
- **No safe crossing points** or designated cycling infrastructure

### **Why This Fails the "Equally Convenient" Test:**

**1. Increased Distance & Time:** The diversion adds approximately **one mile** to the journey. For a commuter or student, this represents a significant increase in travel time and effort. This is **not equally convenient**.

**2. Lack of Directness:** The original path provides a **direct connection** between the Erewash Canal (to the east) and the Nutbrook Trail (to the west). The forced diversion is **circuitous and indirect**, breaking the utility of the National Cycle Network.

**3. Unsafe Surface & Lack of Continuity:** The original path is a purpose-built, designated cycle route. The forced diversion mixes cyclists with heavy HGV traffic on roads designed for vehicles, not vulnerable road users. This is **not equally convenient** – it is objectively **less safe**.

**4. Lack of Lighting & Visibility:** In winter months, the path closes at 6pm when it is already dark. Users forced onto the unlit Hallam Fields Road are **invisible to drivers** and at severe risk of collision. This is **not equally convenient** – it is a **safety hazard**.

**5. Lack of Footway:** The section of Hallam Fields Road has **no footway**. Pedestrians are forced to walk in the carriageway alongside traffic. This is **not equally**

**convenient** – it is **dangerous and potentially illegal** under the Equality Act 2010 (disabled users, parents with pushchairs, etc., cannot safely use this route).

**Conclusion:** The forced diversion is **not "equally convenient"** as required by law. It is longer, darker, more dangerous, and less direct. **The statutory test is not met.**

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#### **4. THE DIVERSION ROUTE IS DEMONSTRABLY UNSAFE**

##### **A. Heavy Industrial Traffic – HGVs with Blind Spots**

The forced diversion routes users through a **busy industrial estate with heavy articulated lorry usage**. Large goods vehicles (HGVs) have:

- **Significant blind spots** on all sides, particularly at the front and rear
- **Limited manoeuvrability** in confined spaces
- **High speed** on industrial access roads
- **Frequent reversing** with audible alarms

Cyclists are particularly vulnerable to HGVs because they may be invisible in these blind spots, especially in poor light or weather conditions.

##### **B. Hallam Fields Road – No Footway, No Street Lighting**

The critical section of the forced diversion along **Hallam Fields Road** has:

- **NO FOOTWAY** – pedestrians forced to walk in the carriageway
- **NO STREET LIGHTING** – in winter, the path closes at 6pm (already dark)
- **Heavy traffic** – cars, vans, and HGVs
- **No designated cycling infrastructure** – cyclists forced to mix with motor traffic

This is **objectively unsafe** for:

- **Cyclists** – invisible to drivers, at risk of collision
- **Pedestrians** – forced to share carriageway with traffic
- **Disabled users** – unable to navigate safely (wheelchairs, mobility aids, etc.)
- **Parents with children** – cannot safely supervise children on a busy road
- **Vulnerable users** – elderly, visually impaired, etc.

##### **C. Breach of Equality Act 2010**

By forcing users onto an unsafe, unlit road without a footway, the Council risks breaching the **Equality Act 2010**, which requires that public services and infrastructure be accessible to disabled people. An unlit road without a footway is **not accessible** to:

- Wheelchair users
- Visually impaired cyclists
- Parents with pushchairs
- Elderly users with mobility issues

#### **D. Breach of Road Traffic Act & Highway Code**

The forced diversion may also breach the **Road Traffic Act 1988** and **Highway Code**, which prohibit:

- Pedestrians walking in the carriageway where a footway is available (or should be available)
- Cyclists riding on roads without adequate lighting or infrastructure

#### **E. Developer's Duty of Care**

By locking the path and forcing users onto a dangerous alternative, **Verdant Regeneration assumes liability** for any accidents, injuries, or deaths that occur on the forced diversion. The Council, by approving this application, would **share that liability**.

**Conclusion:** The forced diversion is **unsafe and creates a demonstrable risk to public safety**. This is grounds for refusal under planning law and public safety principles.

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### **5. CONDITION 31 BREACH – DEVELOPER'S FAILURE TO COMPLY**

#### **The Original Condition (ERE/1221/0002, Condition 31) Required:**

"The provision of the relocated Cycle Route 67 shall be undertaken in accordance with the details approved on Cycle Path Diversion Plan - Dwg No: 20-188-SGP-XX-XX-DR-A-111002, **surfaced and made available for use prior to first occupation of any building.**"

#### **The Facts:**

1. **Unit 1 has been occupied**
2. **The cycle path has NOT been made available for use** – it remains blocked.
3. **Condition 31 has been breached.**

#### **The Developer's Response:**

Rather than comply with Condition 31 by opening the path, the developer has submitted **this application** seeking a three-year exemption from the condition. This is an attempt to:

- **Regularize the breach** through a new planning application
- **Avoid enforcement action** by obtaining retrospective consent
- **Shift responsibility** for site security onto the public

**This is not acceptable.** Planning conditions are legally binding. If a developer breaches a condition, the remedy is **enforcement action**, not a new application for exemption.

#### **The Council Should:**

1. **Refuse this application** – do not grant retrospective consent for the breach
2. **Serve an Enforcement Notice** – requiring the developer to comply with Condition 31 immediately
3. **Require the path to be opened** within 28 days (or other reasonable timeframe)

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## **6. THREE-YEAR "TEMPORARY" CLOSURE IS EXCESSIVE & ABUSIVE**

The application seeks a **three-year "temporary" closure**. (In addition to the existing closure since Early July with and expected opening date August 2025) This is:

- **Effectively permanent** for most users' purposes
- **An abuse of "temporary" consent** – temporary should mean weeks or months, not years
- **Disproportionate** – if the site requires three years of construction, the solution is full perimeter security, not path closure

**Precedent:** Granting a three-year temporary closure would set a dangerous precedent, allowing developers to:

- Avoid installing proper site security
- Restrict public rights of way indefinitely under the guise of "temporary" consent
- Shift the burden of site management onto the public

#### **The Correct Approach:**

If the site requires security for three years, the developer must install **full perimeter fencing** that does **not include the cycle path**. This is the standard approach for construction sites and is required under CDM 2015.

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## 7. LACK OF PROCEDURAL JUSTIFICATION

The application provides **no justification** for why the path must be closed. The covering letter (KLW Planning) states:

"This is due to significant concerns that if it were open, then at present, the public could gain access to the New Stanton Park site because there is no fencing along a long stretch of the path."

**This admission proves the point:** The problem is **lack of fencing**, not the existence of the path. **The solution is to install fencing**, not to close the path.

The applicant also admits:

"Fencing on the north side of the Biodiversity Enhancement Area will be installed shortly, which will secure part of the site from the Nutbrook Trail."

**If fencing can be installed**, why can't it be extended to fully secure the site boundary? The answer is: **It can be. The applicant simply chooses not to.**

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## 8. EVIDENCE OF OFFICIALLY APPROVED DANGEROUS DIVERSION

**A sign posted on the site (see attached image) explicitly states:**

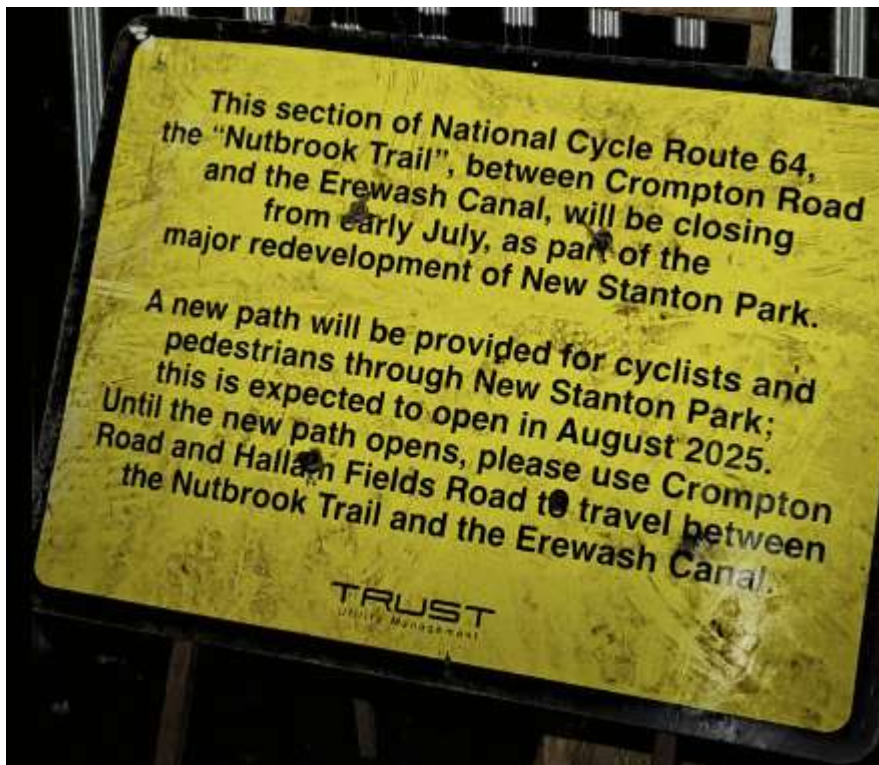
"Until the new path opens, please use Crompton Road and Hallam Fields Road to travel between the Nutbrook Trail and the Erewash Canal."

**This sign proves:**

1. **The Council and Developers have already approved this dangerous route** as the official diversion during the construction period.
2. **The route is inherently unsafe:** If Hallam Fields Road is safe enough for daytime use (as the sign implies), then the path should be open 24/7. If it is not safe at night, it should not be safe during the day.
3. **The developer is acting in bad faith:** By locking the path at night, they are forcing users onto a route they *knew* was dangerous, simply to avoid the cost of fencing the path boundary.

**The Contradiction:** If the new path was "expected to open in August 2025" (as the sign states), why is the developer now seeking a 3-year closure starting in 2026? This suggests the "new path" is not ready, not safe, or the developer is delaying its opening to avoid the cost of full security fencing.

**Conclusion:** The sign proves the developer **knew** Hallam Fields Road was the only alternative. By locking the path at night, they are forcing users onto a route they *knew* was dangerous, simply to save the cost of fencing the path boundary.



## CONCLUSION & FINAL REQUEST

The attached site sign provides irrefutable evidence that the Council and the Applicant have already directed cyclists and pedestrians onto Hallam Fields Road—a route with no footway, no street lighting, and heavy HGV traffic.

By locking the cycle path at night, the Applicant is not "mitigating risk" as claimed. They are forcing users onto a route that the Council has already admitted is the only alternative, but now in total darkness.

**This creates a direct conflict with the Council's duty of care:**

1. **Daytime:** The Council directs users to Hallam Fields Road (unsafe but lit).
2. **Nighttime:** The Applicant locks the path, forcing users to Hallam Fields Road (unsafe AND dark).

**This is not a "temporary" measure; it is a permanent hazard.** The Applicant admits they are installing 2.4m fencing. The only logical solution is to **extend that fencing to fully secure the site boundary** while keeping the cycle path open 24/7, as required by **Condition 31**.

**I therefore request the Council to:**

1. **REFUSE** this application immediately.
2. **Enforce Condition 31** to require the path to be opened without delay.

3. **Revoke or amend** the site sign if it directs users to an unsafe route, or clarify that the path must remain open.
4. **Investigate** why the path was not opened in August 2025 as originally promised on the sign.

**Approving this application would be an admission that the Council is willing to allow cyclists and pedestrians to be forced onto an unlit, HGV-heavy road at night, simply to save a developer the cost of a few metres of fencing.**

I reserve the right to attend any public inquiry or hearing to present this case in person and answer any questions from the Inspector.

Yours faithfully,

**[Your Signature]**

**[Your Printed Name]**