

To: South Cambridgeshire District Council
Date: 14th November 2018
From: James Stringer, Asset Information Definitive Map Officer
Ref: P079

Report on the proposed diversion of Hauxton Public Footpath No. 5

1 Purpose

- 1.1 The subject of this report is a proposal to divert part of Public Footpath No.5, Hauxton in the district of South Cambridgeshire.
- 1.2 Appendix **A** comprises a copy of the developer's application. A plan showing the effect of the proposal is at Appendix **B**. A copy of the Planning Permission is at Appendix **C**. Previous case decisions can be found at Appendix **D**. Site Photos are at Appendix **E**. Consultation responses can be seen at Appendix **F**. The NMU Diversion Assessment can be seen at Appendix **G**.

2 Background

- 2.1 All of the land affected by this proposal is owned by Redrow Homes ("the applicant"). A copy of the application can be found at Appendix **A**. A plan showing the proposal can be found at Appendix **B**.
- 2.2 This proposal is to divert part of Public Footpath No. 5, Hauxton as part of a new housing development.
- 2.3 The diversion of the footpath therefore falls to be determined by the relevant planning authority under section 257 of the Town and Country Planning Act 1990 ("TCPA 90"). Copies of the planning application decision notices can be found at Appendix **C**.
- 2.4 The proposal is to divert the public footpath onto the road edge footways being constructed as part of the new internal road network. The footway alongside the new road forms part of a draft section 38 Adoption Agreement that Redrow Homes have submitted to the County Council's Highway Development Management Team.
- 2.5 In January 2018, the Highway Development Management Team granted Redrow Homes technical approval of their Section 38 submission.

- 2.6 The definitive line of Public Footpath No. 5 currently runs across a parcel of land that previously formed part of a historic lane serving a farmstead. More recently the land formed part of the Bayer CropScience agrochemical production site and now forms part of Redrow's Hauxton Meadows housing development.
- 2.7 The path has a recorded width of a minimum of 1.5 metres in the Definitive Statement. The path is no longer physically defined on the ground, as it has been subsumed by the housing development. However, the path is subject to an active Temporary Traffic Regulation Order (TTRO) which legally allows the developer to close the existing route whilst construction works are ongoing
- 2.8 In February 2007, South Cambridgeshire District Council entered into an Agreement with Cambridgeshire County Council providing that all Public Path Order applications made under section 257 of the Town and Country Planning Act 1990 should be processed by the County Council, acting as agents for the District Council.
- 2.9 The case was presented to the County Council Assistant Director – Highways, the post holder with delegated powers in matters associated with Public Path Orders in September 2018. A decision was taken to approve the acceptability of the application to the County Council as Local Highway Authority. A copy of the director's case decision can be found at Appendix D.

3 Site Description

- 3.1 Site photos can be seen in Appendix E.

Current Route of Public Footpath No. 3 (A-B)

- 3.2 The current route of the affected section of Public Footpath No. 5 starts at a point at OSGR TL 4319 5251 (Point A, Photos A-B) and runs in a north-easterly direction for approximately 137 metres to its junction with Public Footpath no. 1 at OSGR TL 4322 5263 (Point B).
- 3.3 There are no structures, gaps, gates or stiles recorded or present on this public footpath.
- 3.4 The path has a recorded width of a minimum of 1.5 metres in the Definitive Statement. The path is no longer physically defined on the ground, as it has been subsumed by the housing development.
- 3.5 The land over which the existing route runs is not covered by any protected designation.
- 3.6 The total length of affected path is approximately 137 metres.

Proposed Route of Public Footpath No. 3 (C-D-B)

- 3.7 The proposed path starts on the eastern footway at the newly formed road junction with the A10 at OSGR TL 4320 5251 and follows the footway in a generally easterly then northerly direction for 173 metres to a point at OSGR TL 4319 5262 (Point D). The path crosses the road at the end of the adopted section of carriageway and continues in a south-easterly then northerly direction for 40 metres to join the existing unaffected section of FP5 at OSGR TL 4322 5263(Point B).
- 3.8 The proposed route is along an adopted tarmac footway. These works will be certified by the County Council's Highway Development Management Team when completed and will provide the most suitable surface for users of foot. The total length of the affected section of Public Footpath No. 5 is 213 metres. This path would have a recorded width of 2 metres in accordance with the County Council policy for a footpath.
- 3.9 There are no gates, restricted widths, structures, steps or steep gradients which could preclude use of the path for less able users.
- 3.10 The affected section of path will egress onto the A10 Cambridge Road at the newly constructed junction for Hauxton Meadows. The egress is onto roadside footways and therefore there is no direct egress onto the carriageway.
- 3.11 No drainage works or vegetation planting are required as part of this proposal.
- 3.12 It is proposed that small signage (Waymarker discs or similar) will be erected on existing planned street furniture at each end of the path to assist existing and future residents and other walkers navigate through the housing estate to the path network.

4 Legal Framework

- 4.1 Section 257 of the Town and Country Planning Act 1990 allows that:
- (1) Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath or bridleway if they are satisfied that it is necessary to do so in order to enable development to be carried out—
 - (a) in accordance with planning permission granted under Part III, or
 - (b) by a government department.
 - (2) An order under this section may, if the competent authority are satisfied that it should do so, provide—

- (a) for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing highway for such use;
- (b) for authorising or requiring works to be carried out in relation to any footpath or bridleway for whose stopping up or diversion, creation or improvement provision is made by the order;
- (c) for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across any such footpath or bridleway;
- (d) for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.'

4.2 An Order shall come into effect once the new route has been certified by either the order-making authority or the highway authority as being of a satisfactory standard for public use. In this instance the County Council as highway authority will undertake the certification.

4.4 The Equality Act 2010 consolidated previous disability legislation. There is currently little formal guidance on how the Act interacts with existing rights of way legislation. However, it is generally understood to require order-making authorities to take into account the reasonable needs of disabled people (using the term in its broadest sense) in considering changes to the rights of way network. The Act requires authorities to be more proactive in recording their thought-processes in making their decisions. A recent Planning Inspectorate decision said that the Act only applies to the alternative route in a diversion.

5 Cambridgeshire County Council Policy (including maintenance)

5.1 The County Council's own policy (approved by Cabinet in 2003 and revised on 25 May 2010) requires that certain criteria are met if a public path diversion order is to be made. The criteria are as follows:

- I. Pre-application consultations have been carried out with the prescribed bodies.
- II. The existing route is available for use and any 'temporary' obstructions have been removed, in order to allow a comparison to be made. Any request for exemption will be decided by the Director Infrastructure Management and Operations as to whether or not that is appropriate.
- III. A suitable alternative path is provided for every path that is to be diverted.
- IV. The proposed new route is substantially as convenient to the public as the original
- V. The proposed new route is not less convenient for maintenance than the original

- VI. No objections are received to the proposals during the statutory consultation period prior to making an order. However, the County Council will review this criterion in individual cases in light of objections and potential public benefit of the proposal.
 - VII. The maintenance burden on the County Council is no greater than that of the original. If the maintenance burden is greater, the landowner may be required to enter into a maintenance agreement with the County Council.
 - VIII. A minimum width of 2m is provided for a diverted footpath, and a minimum width of 4m for a diverted bridleway. In exceptional cases, e.g. cross-field paths, it may, taking into account all the available facts, require such a width as it considers reasonable and appropriate.
 - IX. That all the works required to bring the new route into operation are carried out at the expense of the landowner and to the County Council's specifications unless otherwise agreed.
- 5.2 The County Council reserves the right to refuse to make an Order where it feels the criteria of the legislation are not met, even where consultation responses suggest there are no public objections.
- 5.3 Furthermore, the County Council adopted a Non-Motorised User (NMU) Diversion Policy in February 2017. This policy sets out how the County Council will decide what NMU routes it should adopt in future in terms of need, affordability and consistency based on criteria applied equally to all potential applications.
- 5.4 Within the Cambridgeshire Rights of Way Improvement Plan (ROWIP), several Statements of Action are listed which identify specific ways in which issues that the Rights of Way network face can be addressed now and in the future. This diversion addresses issues identified under the following action:
- SOA 3 '57,000 new homes'**
- 5.5 New development should not damage countryside access provision, either directly or indirectly. New settlements should be integrated into the rights of way network, and improved provision made for the increased population. Where appropriate, development should contribute to the provision of new links and/or improvement of the existing rights of way network.

6 Consultations

- 6.1 South Cambridgeshire District Council, Hauxton Parish Council, Local County and District Members, the prescribed user groups and utility companies were all consulted about the proposals. The following replies have been received (copies are attached as Appendix F):
- 6.2 Virgin Media and Vodafone had no record of any apparatus in the area.

- 6.3 Cadent Gas did have records of apparatus in the area, specifically under the A10, and therefore objected to the proposal.
- 6.4 Apparatus located within an adjacent highway, which is in this instance the A10, would be unaffected by the diversion of Public Footpath No. 5 and no rights would be diverted or removed that would affect Cadent Gas.
- 6.5 Both the applicant and the County Council have written to Cadent Gas to clarify the proposal being considered and the effect of any order made. No response has been received. A copy of this response can be found at Appendix F.
- 6.6 The Area Rights of Way Officer for South Cambridgeshire has expressed concerns that the proposed diversion order, if made, could expose the County Council to an unacceptable level of risk. This is discussed further in section 8.
- 6.7 No other responses were received.

7 Grounds for diversion: Town and County Planning Act and Equality Act 2010

- 7.1 The re-routing of Public Footpath No. 5, Hauxton is required in order to implement a planning permission granted under part III of the Town and County Planning Act 1990. Section 1(a) of the act is therefore satisfied.
- 7.2 The existing route of Public Footpath No. 3 is approximately 137 metres long. The proposed route is approximately 76 metres longer at 213 metres.
- 7.3 The character of the site has changed as a result of the approved planning layout. As a result, the public footpath no longer serves the same purpose as it once did.
- 7.4 The new route will provide an alternative path. The new footpath will be provided in accordance with the Local Highway Authority's Housing Estate Road Specification.
- 7.5 The applicant has agreed to undertake the necessary works required to implement the proposed new route at their own expense as part of the Section 38 Agreement.
- 7.6 The rights of statutory undertakers will not be affected. Subsection 2 of the act is therefore satisfied.
- 7.7 The proposal is not considered to be in conflict with the provisions of the Equality Act 2010 because there will be no limitations to public use such as gates or steps on the proposed route.

8 Grounds for diversion: Cambridgeshire County Council criteria as Highway Authority including Maintenance Liability

- 8.1 The existing route is 137 metres in length. The proposed route is 76 metres longer at 213 metres. Pre Application consultation has been undertaken in line with criteria (i) of the County Council's own policy on Public Path Orders.
- 8.2 The existing path is no longer physically defined on the ground, as it has been subsumed by the housing development. However, the path has an active Temporary Traffic Regulation Order (TTRO) which legally allow the developer to close the existing route whilst construction works are ongoing. Therefore in these circumstances, it is recommended that the requirement of criteria ii. should be waived by the director on this occasion.
- 8.3 The Area Rights of Way Officer for South Cambridgeshire has expressed concerns that the proposed diversion order, if made, could expose the County Council to an unacceptable level of risk.
- 8.4 This is because, until such time that the Section 38 Agreement has been sealed and agreed between both parties or even implemented in full, there cannot be complete certainty that the footway onto which this public footpath will be diverted will be constructed to the County Council's adoptable standard as set out in the Housing Estate Road Specification.
- 8.5 There is the potential for a situation to arise whereby a diversion order under the TCPA 90 is made and confirmed before the path has been inspected or certified as part of the Section 38 process, which would ordinarily transfer maintenance liabilities to the County Council. The developer, in line with standard industry practice, would not look to construct the footway in line with the agreed specification in full until the development has been completed. This is to ensure that the surface is not damaged unnecessarily whilst construction vehicles are still on site.
- 8.6 Therefore, the County Council could choose to delay the making or confirmation of any diversion order until such time that full certainty can be provided with regard to the completion of the Section 38 Agreement.
- 8.7 However, the powers contained within the TCPA 1990 are only available to the Order-Making Authority to allow a development to be carried out. Where the development, in so far as it affects a right of way, is substantially completed before the necessary order to divert or extinguish the right of way has been made or confirmed, the powers under section 257 of the TCPA to make and confirm orders are no longer available. This is because the development, which the order is intended to enable, has already been carried out.

- 8.8 If such a development has already been completed or is considered to be 'substantially complete', then it is not possible for an order to be made under section 257.
- 8.9 Therefore it is not possible to delay the diversion process until there is certainty that the S38 Agreement will proceed, as the powers of diversion would no longer be available at that time, by which the development will be considered 'substantially complete'.
- 8.10 It is therefore considered that if an order is deemed acceptable to the County Council, as Local Highway Authority and deemed necessary by South Cambridgeshire District Council, as Order Making Authority then an order should be made.
- 8.11 The made order would be advertised as part of the required process and subject to there being no objections, the order should be confirmed. The path will then become maintainable at public expense as a result of the order, but only to the standard that the path has been constructed to at the time of the order. This would likely be to the sub-base type 1 compacted material, similar to a compacted stone or hoggin surface which is uncommon across the Rights of Way network. The path would then be 'adopted' with a higher specification surface once the works associated with the Section 38 Agreement had been completed to the satisfaction of the County Council's Highway Development Management Team.
- 8.12 In the unlikely event that the Section 38 Agreement is never signed, then the path will remain maintainable at public expense but to a lesser condition than that specified within the Section 38 Agreement.
- 8.13 The proposed route is not considered to result in a significant additional maintenance liability being placed on the County Council in relation to the Right of Way. Any increase in liability resulting from the development of the internal road network will be assessed and mitigated accordingly by the County Council's Highway Development Management Team in liaison with the developer to ensure that the roads are constructed to an adoptable standard.
- 8.14 As of September 2018, Redrow Homes had requested some changes to the wording of the clauses within the Section 38 Agreement which are not acceptable to the Local Highway Authority. Discussions are currently ongoing regarding this matter.
- 8.15 The diverted route of the path forms part of the applicant's s38 road adoption application. The diverted route of the path will become adopted highway once the s38 Agreement has been completed.
- 8.16 It will then no longer fall to be maintained as a public footpath and will instead be maintained as part of the County Council's road network. There are not considered to be any maintenance issues with the surface of the proposed diverted route of the path, which will be recorded on the County Council's Road Records and the List of

Streets as a highway maintainable at public expense. It is therefore considered that criteria iii., v., vii. and ix. have been met in this instance.

- 8.17 Once the carriageway has been adopted by the County Council, acting as Local Highway Authority, it would look to make a Legal Event Modification Order to remove the affected section of path from the Definitive Map and Statement.
- 8.18 The County Council does not encourage Public Rights of Way to be diverted onto estate road footways, however in this case it is considered that there is no other alternative route available in the vicinity for footpath No. 5.
- 8.19 The diversion is of a minor nature and does not propose any new limitations, gradients or steps which may affect accessibility or convenience. It is not therefore considered that the proposed route would be substantially less convenient to the public as a result of the diversion. It is therefore considered that criteria iv. has been met in this instance.
- 8.20 A objection has been raised to the proposal by Cadent Gas, who have apparatus in the vicinity of the public footpath. The apparatus in question are actually located under the A10 and would be unaffected by this proposal. The County Council has written to Cadent Gas to clarify this point but no response has been received. The County Council waived the requirement for criteria vi. to be met when coming to its decision in September 2018.
- 8.21 This path would have a recorded width of 2 metres in accordance with County Council policy for a footpath. It is therefore considered that criteria viii. has been met in this instance.
- 8.22 This proposal has been assessed against the County Council's NMU Diversion policy. The NMU diversion assessment can be found at Appendix G. This proposal scored a total of 15 out of a possible 20 points, representing a score of 75%, exceeding the pass mark of 70%. The threshold score for an application to be considered is 14. This proposal is clearly beneficial to the landowner whilst being considered to have no negative impact on user enjoyment or convenience.

9 Conclusions

- 9.1 It is considered that the application to divert Public Footpath No.5 Hauxton meets the requirements of s.257 of the Town and Country Planning Act 1990.
- 9.2 Most of the criteria of the County Council's own Public Path Order policy have been met. However, the requirement for no objections to be received is not met, however

was waived by the County Council in coming to its decision in September 2018 as explained in paragraph 8.20.

10 Recommendation

- 10.1 That the District Council, as Local Planning Authority gives their approval that the proposed diversion of part of Public Footpath No. 5 Hauxton meets the legislative tests set out in S257 of the Town and County Planning Act 1990.
- 10.2 That this approval to be reported to Cambridgeshire County Council, as agents for South Cambridgeshire District Council and indicate an order should be made.

APPENDICES

A	Landowner Application
B	Order Plan
C	South Cambridgeshire Planning Permission (S/0410/15/RM)
D	CCC Assistant Director formal decision – September 2018
E	Consultation responses
F	Site Photographs
G	NMU Diversion Policy Assessment