

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee

16 January 2019

AUTHOR/S: Joint Director of Planning and Economic Development

Proposal: Diversion of Hauxton Public Footpath No. 5

Site address: Redrow Homes Housing Development, East of the A10, Hauxton

Recommendation: Approval

Committee Site Visit: Yes

Presenting Officer: John Koch, Team Leader

Background

1. This proposal was considered by the Planning Committee at its meeting on 14 November 2018. The Committee resolved to refuse the diversion for the following reasons:
 - (i) That South Cambridgeshire District Council, as Order Making Authority, refuses the application for the proposed diversion of part of Public Footpath No. 5 in Hauxton because such diversion was not deemed necessary to enable development to be carried out; and
 - (ii) That this refusal be reported to Cambridgeshire County Council, in its capacity as agents for South Cambridgeshire District Council, indicating that an Order be not made.
2. The application is being brought back to Committee for re-consideration given that on further review of the proposal, the diversion is considered to be necessary and a continued refusal to approve the Order could result in a legal challenge or the illegal obstruction of a Public Right of Way.

Site and Surrounding Area

3. The site was formerly a parcel of land that formed part of a historic lane that served a farmstead. For many years, however, the land formed part of the Bayer Crop Science Site to the west and north of the villages of Hauxton and Harston respectively.
4. The application footpath as currently exists ran through part of the Bayer site which has since been remediated and given planning permission (in part) for housing. The land affected by the proposal is now owned by Redrow Homes who are currently building houses on site. While the site as a whole sits within the wider countryside, the site itself was previously heavily industrialised consistent with its use as a chemical works. The area immediately around the line of the existing footpath was consequently of no landscape or recreational value.
5. It should be noted that the path is no longer physically defined on the ground.

Relevant Planning History

6. S/2308/06/O - Redevelopment of 8.7 ha. of previously developed Land for a mix of uses including up to 380 Dwellings, up to 4,000 sq.m. of B1(a) office floorspace no greater than 250 sq.m (Gross) A1 retail floorspace and provision of open space and associated access engineering works – Approved 12 February 2010.

S/1152/12/RM - Phase 1 reserved matters for the layout, scale and appearance of 201 dwellings, hard and soft landscaping and associated infrastructure and works including a means of access from Church Road – Approved 24 December 2012.

S2034/12/VC - Removal of Condition 13 (provision of flood relief channel) of Outline Planning Permission S/2308/06/O – Approved 14 January 2015

S/0410/15/RM - Application for the approval of reserved matters comprising: layout, scale, appearance and landscaping in respect of part of phase 3 (14 dwellings) of the development approved under outline planning permission reference: S/2034/12/VC – Allowed on Appeal 13 June 2016

8. The County Council has already consulted on, and approved the acceptability of, the proposed footpath diversion. No objections have been received other than a holding objection from Cadent Gas which has since been removed.

Proposed Diversion

Diversion of the footpath falls to be determined under s257 of The Town and Country Planning Act 1990. It is due to become part of a new internal road network which will eventually be adopted as part of a section 38 Agreement under the Highways Act.

9. The actual (i.e. presently defined) route runs from a point at the south-west corner of the site entrance off the A10. It runs in a roughly northerly direction towards the end of a proposed residential cul-de-sac before joining up with the existing footpath across the Riddy Brook. The length of this part of the footpath is approximately 137 metres. It has a recorded minimum width of 1.5 metres.

10. The proposed line runs eastwards off the A10 as part of an estate road footway and then northwards around the end of the cul-de-sac before it joins with the existing line across the Riddy Brook. The length of this part of the footpath is approximately 213 metres. The path would have a recorded width of 2 metres in accordance with County Council policy.

11. The line of the actual footpath and that now proposed is shown on the plan at appendix 1 to this report. There are no gates, restricted widths, structures, steps or steep gradients which could preclude use of the path for less able users. It is proposed that small signage (Waymarker discs or similar) will be erected on existing planned street furniture at each end to help users navigate through the housing estate to the wider path network.

Material Considerations

13. Committee's decision to refuse the application to divert part of Public Footpath No. 5 was because the diversion was not deemed "necessary" to enable the housing development to be carried out.
14. Members need to be appraised of case law when considering the word "necessary".

The Court in *Network Rail Infrastructure Ltd, R (On the Application Of) v The Secretary of State for the Environment, Food And Rural Affairs* [2017] EWHC 2259 (Admin) has clarified the legal tests associated with highway stopping up following grant of planning permission pursuant to an application under section 247 or 257 of the Town and Country Planning Act 1990.

15. The legal principles confirmed in this case can be summarised as follows:

(i) Necessity Test

- (a) The relevant authority cannot make and/or confirm an order unless satisfied that a planning permission exists for development and that it is necessary to authorise the stopping up (or diversion) of the public right of way by the order so as to enable that development to take place in accordance with that permission;
- (b) Necessity should be interpreted in accordance with the plans and conditions of a planning permission which allow the development to be carried out. Thus, the necessity test is concerned with whether such an order is necessary for that purpose;
- (c) A Grampian planning condition can satisfy the necessity test; and
- (d) The word "necessary" does not mean "essential" or "indispensable", but instead means "required in the circumstances of the case." Those circumstances must include the relevant terms of the planning permission.

(ii) Merits Test

- (a) The relevant authority has discretion as to whether to confirm the order and therefore may refuse to do so;
- (b) In the exercise of that discretion the relevant authority is obliged to take into account any significant disadvantages or losses flowing directly from the stopping up order which have been raised, either for the public generally or for those individuals whose actionable rights of access would be extinguished by the order. In such a case they must also take into account any countervailing advantages to the public or those individuals, along with the planning benefits of, and the degree of importance attaching to, the development. They must then decide whether any such disadvantages or losses are of such significance or seriousness that they should refuse to make the order; and
- (c) The confirmation procedure for the stopping up order does not provide an opportunity to re-open the merits of the planning authority's decision to grant planning permission, or the degree of importance in planning terms to the development going ahead according to that decision.

16. The decision that the footpath isn't necessary does not reflect the nature and extent of development that has already been given planning permission. Between them, the approval of application S/1152/12/RM and more recently S/0410/15/RM result in part of the line of the actual footpath being obstructed by:

- (i) A block of apartments (Block A, Plots 46-62) and their community amenity space and car parking area; and
- (ii) The front car parking/amenity area for proposed houses (Plots 9-14)

17. This part of the development is shown on the plan at appendix 1. In addition, the area immediately to the north of the apartment block across which part of the existing footpath crosses is also approved as office accommodation.
18. Thus so far as the “necessity” test is concerned, a planning permission exists for development and that it is necessary to authorise the stopping up (or diversion) of the public right of way by the order so as to enable that development to take place in accordance with that permission. It was implicit at the time of the approval of reserved matters that the actual line of the footpath would need to be diverted to allow the development to proceed. Officers are unaware of any objections to the diversion of the footpath at that time. The chosen line ensures that the diverted route follows the original line as closely as possible.
19. There is nothing to be gained by insisting that the line of the actual footpath is retained. The additional length of the footpath in the context of its total length is negligible and instead of an undefined footpath which ran through the site of a chemical works, it would now provide a safe and useable pedestrian route. Extensive landscaping is being undertaken as part of the housing development to enhance the setting of the footpath and the diversion will provide a visually enhanced route than that which existed previously.
20. To this extent the “merits” test has also been met.

Conclusion

21. The recent planning history of the site and its development for housing has provided an opportunity, and indeed a necessity, to both maintain and improve the status of the existing footpath. The proposed diversion and with it the creation of a footpath suitable for all users will help improve the use of wider footpath network.
22. Members are therefore requested to approve the diversion so that the Order can be duly made and Cambridgeshire County Council advised of such.
23. In the event the diversion is refused, officers feel the need to advise members that there is a right of appeal. Given that the diversion of the footpath is necessary, officers are of the view that such an appeal is likely to succeed with an award of costs against the local planning authority.

Recommendation

24. Approval.

Background Papers:

The following list contains links to the documents on the Council’s website and / or an indication as to where hard copies can be inspected.

- Planning File References: S/2308/06/O, S/1152/12/RM, S/0410/15/RM

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