

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

5 August 2009

**AUTHOR/S:** Chief Executive / Democratic Services Manager

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### **HATLEY - PROPOSED DIVERSION OF PART OF PUBLIC FOOTPATH NO. 13**

**Recommendation: to make a public path diversion order to divert part of public footpath no.13 Hatley from its existing route to the proposed new route, and ask Cambridgeshire County Council to draft a document for sealing by South Cambridgeshire District Council.**

#### **Purpose**

1. To report on the proposed diversion of part of Public Footpath No.13, Hatley under Section 257 of the Town and Country Planning Act 1990.

#### **Background**

2. Cambridgeshire County Council has an agreement with South Cambridgeshire District Council to act as its agent in connection with applications to divert public rights of way under the Town and Country Planning Act 1990. The County Council's Countryside Access Team has received an application to divert part of public footpath no. 13 in Hatley. It relates to planning application S/0371/06/O, details of which can be viewed as part of the electronic version of this report.
3. An application to divert part of Public Footpath No.13, Hatley under Section 257 of the Town and Country Planning Act 1990 was made by Mr David Ward in December 2008. Mr Ward's application indicated that a diversion order is required in order to implement a planning permission in relation to planning application number S/0371/06/O. The planning application received Planning Permission from South Cambridgeshire District Council on 14<sup>th</sup> August 2006.
4. The planning application is for the erection of a dwelling and provision of access for existing dwelling at Touchwood, 38 East Hatley, Hatley. This property is sometimes indicated as no.34 East Hatley on ordnance survey plans. Public Footpath No.13 Hatley runs north-easterly across the meadow adjacent to no. 38 East Hatley, through the existing garage of no. 38 East Hatley, along rear of the property and through the extension at the rear of the property. The proposed new dwelling would obstruct part of the current line of the public footpath. It would be necessary, therefore, to divert this part of the public footpath to enable the building work to take place without obstruction of the highway.

#### **Considerations**

5. The diversion of the footpath falls to be determined by the relevant planning authority under section 257 of the Town and Country Planning Act 1990. In February 2007, South Cambridgeshire District Council entered into an agreement with Cambridgeshire County Council that all Public Path Diversion Order applications 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 (see Document D). Mr

Ward's application to divert part of the public footpath was therefore correctly made to Cambridgeshire County Council acting as agent for the Local Planning Authority.

6. The plan attached to this report shows the effects of the proposed diversion. The part of the existing definitive line of Public Footpath no.13, Hatley which it is proposed to divert leaves the road called East Hatley at Ordnance Survey Grid Reference TL2861 5048 (point A on the plan) and proceeds in a north-north-easterly direction for approximately 112 metres to OS GR TL2869 5058 (point B on the plan) where it continues in a north-north-easterly direction.
7. It is proposed to divert this section of path so that it leaves the road called East Hatley at Ordnance Survey Grid Reference TL2861 5048 (point A on the plan) and proceeds in a northerly direction for approximately 53 metres through a meadow to OS GR TL2862 5053 (point D) where the path will run in a north-easterly direction between the ditch and boundary fences of no..38 and no..32 East Hatley for approximately 65 metres to OS GR TL2869 5058 (point B) to meet the current recorded line of the path which proceeds in a north-north-easterly direction to join Main Street at point C. It is intended that the new route will have a recorded width of two metres.
8. The existing legal line of Public Footpath no. 13, Hatley is obstructed by the gardens of numbers 16 – 32 East Hatley and by the garden and house of number 38 East Hatley. This is a long-standing problem that was not addressed during the building of these properties.

### **Legislation**

9. 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.'
10. An Order will come into effect when certified by the Highway Authority that the new path has been constructed to a satisfactory standard.

## Grounds for diverting part of Public Footpath No.13 Hatley

11. The plans for the proposed development, which have been given planning permission, indicate that the new dwelling and access will obstruct the current line of Public Footpath no.13 Hatley. Obstructing a footpath is an offence under Section 137 of the Highways Act 1980. It is necessary to divert part of the Footpath from its current location to avoid such offences being committed, and, therefore, to allow the development to be carried out. The re-routing of part of this public footpath from its existing route to the proposed new route is required in order to implement a planning permission granted under Part III of the Town and Country Planning Act 1990. Section 1 (a) is therefore satisfied.
12. The proposed new route starts at the same point on East Hatley as the current recorded line, and is only approximately 3-4 metres longer. This is not considered substantially less convenient than the existing route. It is intended that the new route will have a recorded width of two metres, which is considered adequate for a public footpath. The applicants have agreed to undertake the necessary works required to implement the proposed new route at their own expense.

### Options

13. South Cambridgeshire District Council has three options. These are to
  - a. authorise Cambridgeshire County Council to draft an Order for sealing by South Cambridgeshire District Council in due course
  - b. decline to make an Order
  - c. suggest amendments to the proposals from Cambridgeshire County Council

### Implications

14. Financial	None for South Cambridgeshire District Council
Legal	South Cambridgeshire District Council is the Order Making Authority and will seal the Order. Obstructing a footpath is an offence under Section 137 of the Highways Act 1980
Staffing	None for South Cambridgeshire District Council
Risk Management	Agreeing to the proposed diversion would prevent a potential breach of the Highways Act 1980.
Equal Opportunities	None

### Consultations

15. The applicant corresponded with the land owner of the field on the western side of the ditch to purchase land on the edge of the field adjacent to the ditch to divert the path onto this side and therefore out of the gardens of nos. 16 - 38 East Hatley. Agreement could not be reached between the two parties.
16. South Cambridgeshire District Council, Hatley Parish Council, local County and District Councillors, the prescribed user groups and the utility companies were all consulted about the proposals. The following replies have been received:

**The Ramblers Association South Cambridgeshire District** stated that they do not object to the diversion but neither do they support it due to the part of Public Footpath No. 13 Hatley not affected by the proposed diversion being subject to a number of obstructions.

**Sebastian Kindersley and Bridget Smith** as the local District Councillors support the proposal.

**Sebastian Kindersley** as the local County Councillor supports the proposed diversion.

**Hatley Parish Council** does not object to the proposed diversion.

**National Grid Gas Distribution** has no objection to the proposal, as it has no apparatus that will be affected.

**Envoy** do not have any apparatus within the immediate proximity of the proposed diversion.

**The Trees and Landscape Officer** at South Cambridgeshire District Council has no comment to make.

**The Conservation Service** at South Cambridgeshire District Council (owners of the nearby Church of St Denis) has no objections to make.

**The Ecology Officer** at South Cambridgeshire District Council stated that there are Great Crested Newts in the moat and the surrounding habitat. If any works are to undertaken near the moat the Ecology Officer has asked to be consulted.

17. The owners / occupiers of nos. 22-30 East Hatley (the properties over which the unaffected part of the footpath runs through the gardens) were consulted. The occupier of 26 East Hatley contacted the County Council to draw attention to Great Crested Newts and toads being in the locality of the moat / ditch.
18. Cambridgeshire County Council's Service Director for Highways and Access makes the following comments: '...I am content that South Cambridgeshire District Council should make a Public Path Diversion Order to divert part of Public Footpath no.13 Hatley'
19. No other comments were received.

#### **Effect on Strategic Aims**

20. 

<b>Commitment to being a listening council, providing first class services accessible to all.</b>
The applicant seeks to make this right of way accessible to all members of the public.
<b>Commitment to ensuring that South Cambridgeshire continues to be a safe and healthy place for all.</b>
The diverted section of footpath would be constructed to the high standards required by Cambridgeshire County Council as the Rights of Way Authority.
<b>Commitment to making South Cambridgeshire a place in which residents can feel proud to live.</b>
Resolving potential conflicts between private individuals and users of public rights of way will be of benefit to everyone.
<b>Commitment to assisting provision for local jobs for all.</b>
N / a

<b>Commitment to providing a voice for rural life.</b>
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N / a
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### **Conclusion**

21. It is considered that the application to divert part of Public Footpath no.13 Hatley meets the requirements of Section 257 of the Town and Country Planning Act 1990. No objections have been received in response to consultation.

### **Recommendations**

22. It is recommended that South Cambridgeshire District Council make a Public Path Diversion Order to divert part of Public Footpath no.13 Hatley from its existing route to the proposed new route, as shown on the map attached to this report, and ask Cambridgeshire County Council to draft an Order for sealing by South Cambridgeshire District Council.

**Background Papers:** the following background papers were used in the preparation of this report:

- Copy of application to divert Public Footpath no.13 (part) Hatley
- Copy of planning application no. S/0371/06/O
- Copy of planning permission
- Copy of Memorandum of Agreement between South Cambridgeshire District Council and Cambridgeshire County Council
- Plan showing proposed diversion
- Copies of consultation responses
- Memorandum from Cambridgeshire County Council's Service Director, Highways and Access

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