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To: Legal and Democratic Services Manager, South  
Cambridgeshire District Council

From: Robert Kemp, Asset Information Definitive Map Officer CC1305

Ref: 119/1

## Report on the proposed diversion of part of Public Footpath No.1, Hauxton

### 1 Purpose

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1.1 This report is prepared for South Cambridgeshire District Council by Cambridgeshire County Council in their role as agent for South Cambridgeshire District Council in processing public path orders under s157 of the Town and Country Planning Act 1990, under the memorandum dated February 2007.

1.2 To report on the proposed diversion of part of Public Footpath No.1 Hauxton, required to enable development of the former Bayer Crop Science site in Hauxton.

#### 1.3 Contents

Appendix A: A copy of the diversion application.

Appendix B: A map showing the effect of the proposals.

Appendix C: The Planning Applications and Decision notices.

Appendix D: Consultation Responses.

Appendix E: Site Visit Photographs.

Appendix F: An Aerial Photograph of the site

Appendix G: Memorandum of Agreement with South Cambridgeshire District Council.

Appendix H: Memo from Cambridgeshire County Council Service Director Infrastructure Management and Operations giving approval for this diversion.

Appendix I: Confirmation from Redrow Homes of the proposed surface of the path.

### 2 Background

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2.1 The land is owned by Harrow Estates. The applicant for this diversion was Harrow Estates. The land is in the process of being sold to Redrow Homes who will be continuing the development to the site; including taking forward this footpath diversion. At the present time the land is still owned by Harrow Estates but both parties are in favour of this proposed footpath diversion.

2.2 This diversion order is required to implement a planning permission in relation to planning application numbers S2308/06/O and S/2269/10 which were submitted to South Cambridgeshire District Council on 1 December 2006 and 20 December 2010. The application is for the *Demolition of Buildings, Remediation of land and formation of a development platform and the redevelopment of 8.7 Hectares of previously developed land for a mix use including up to 380 dwellings, office floor space and retail floor space*

*and provision of Open Space at Land East of the A10 known as the Former Bayer Crop Science Ltd Site, Hauxton.*

- 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. Copies of the planning application decision notices can be found at Appendix C.
- 2.4 In February 2007, South Cambridgeshire District Council entered into an Agreement with Cambridgeshire County Council providing that all Public Path 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. A copy of the Agreement is attached at Appendix G.

### **3 Site Description**

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- 3.1 Site photos of the existing route and proposed route taken on 13 November 2012 can be seen at Appendix E. An aerial photograph of the site can be found at Appendix F.

#### **Existing**

The current legal line of Hauxton Public Footpath No. 1 commences at its junction with Hauxton Public Footpath No.5 near The Mill House at Ordnance Survey Grid Reference (OSGR) TL 4323 5264 (Point A on the plan) and then proceeds in an east-south-easterly direction along the western bank of the Riddy Brook for approximately 105 metres to Point B before running south-south-east for approximately 30 metres to OSGR TL 4333, 5256 (Point C) where the path crosses a footbridge and proceeds in an east-north-easterly direction for approximately 17 metres to OSGR TL 4334, 5257 (Point D on the plan) on the west bank of the River Cam where the path continues in a south-south-easterly direction towards Hauxton Village. The length of the section of the existing route to be diverted is approximately 154 metres.

#### **Proposed**

The proposed diversion route would commence at OSGR TL 4323 5266 on the western bank of the River Cam at the point where Hauxton Public Footpaths No.4 and No.5 meet (Point E). The path would then proceed along the western bank of the River Cam in a generally south-easterly direction for 122 metres to OSGR TL 4333 5259 (Point F). The path would then proceed in a south-south-easterly direction for approximately 24 metres to OSGR TL 4334 5257 (Point D). The length of the proposed diversion route would be approximately 146 metres and would have a width of 2 metres.

### **4 Legal Framework**

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- 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.

4.3 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. Section 7.5 below documents the position in relation to this case.

## **5 Cambridgeshire County Council Policy (including maintenance)**

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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 policy is set out with public path orders under the Highways Act 1980 in mind, but it is sensible to consider the criteria in relation to any proposal under the Town & Country Planning Act 1990, because any new path will be vested in Cambridgeshire County Council as the highway authority and as such responsible for managing them. The highway authority is also responsible for protecting and asserting the public's existing rights, and not allowing them to be removed unless the legal tests are met. The Policy 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 Highways & Access 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 Where there is a desire line on the ground that is not on the definitive route because that is obstructed we will consider that to be evidence of a desire to get from points A-B, and will require the definitive route to be opened up or diverted onto the desire line or another mutually agreed route.

## 6 Consultations

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- 6.1 The local Ramblers' Association, South Cambridgeshire District Council, Hauxton Parish Council, Local County and District Council Members, the prescribed user groups and the utility companies were all consulted about the proposals. The following replies have been received (copies are attached as Appendix D):
- 6.2 The Cambridge Ramblers Group pre-application comments stated that the proposed route has been used by the public for a number of years and that an established path already exists and that provided that a minimum width of 2 metres was available they had no objection to the proposals. In their letter in response to the formal consultation the Cambridge Ramblers Group had no objection to the proposed diversion having been assured by the case officer that 2 metres width existed along the whole of the proposed diversion route. The Ramblers accepted the need by the applicant to close the section of the legal route of footpath No.1 that runs inside the former Bayer Crop Science factory site whilst works were ongoing in the site. The Ramblers also commented that they assumed that the temporary fencing that has been erected along the boundary of much of Footpath No1 will be removed as the development proceeds.
- 6.3 South Cambridgeshire District Council's Ecology Officer acknowledged that the section of Footpath No.1 that will be extinguished by the proposed diversion will become part of the Riddy Walk within the proposed development and that the proposed diversion route is the route already in use by the public and therefore the public will not see any change from the proposals.
- 6.4 Hauxton Parish Council has no objection to the proposed diversion.

- 6.5 South Cambridgeshire District Councillor Lockwood stated that the proposed diversion legitimises the current walked route and therefore she has no objection.
- 6.6 Anglian Water, National Grid, Atkins, Open Reach and Virgin have no objections to the proposals.
- 6.7 The Environment Agency was consulted during the formal consultation period and no response was received.
- 6.8 No other responses were received.

## **7 Grounds for stopping up and provision of alternative route: Town & Country Planning Act 1990 and Equality Act 2010**

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- 7.1 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) of the act is therefore satisfied (see section 4.1).
- 7.2 The new route will provide an alternative path. The proposed new route will legitimise the path alongside the western bank of the River Cam that has been used by the public for some years. The new footpath will be provided in accordance with the Highway Authority's policy for public footpaths.
- 7.3 The applicant has agreed to undertake the necessary works required to implement the proposed new route at their own expense.
- 7.4 The rights of statutory undertakers will not be affected. Subsection 2 of the act is therefore satisfied.
- 7.5 In terms of the Equality Act 2010, the diversion would be neutral and could be considered an improvement, in that the current legal route has a bridge to cross and the proposed route does not require path users to cross over the Riddy Brook but instead remains on the western bank of the River Cam.

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

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- 8.1 Pre-application consultations have been carried out by the applicant.
- 8.2 The current legal line of the footpath is currently obstructed. The legal line has been closed by a temporary traffic regulation order for health and safety reasons whilst the former Bayer Crop Sciences site is re-developed. Given the existence of a nearby alternative along the proposed diversion route, which is open and available for public use, it is reasonable to waive the requirement that the existing route be available for use in this case.
- 8.3 The proposed new route is substantially as convenient to the public as the original if not more convenient as users will no longer have to cross the Riddy Brook but will remain on the western bank of the River Cam. It is also likely to be at least as appealing as the

original route for users as a walk beside the river with views of Hauxton Mill. The existing route and the proposed route are very similar in length.

- 8.4 The proposed new route would not be less convenient for maintenance than the original as there will no longer be a bridge across the Riddy Brook to maintain and the proposed route will have a similar natural surface to the current route. The current bridge is the responsibility of Cambridgeshire County Council to maintain by virtue of the 1974 diversion order which previously altered the route of the path.
- 8.5 Cambridgeshire County Council Bridges Team were consulted as to consider any liability issues which could arise from moving the path and they confirmed that no piling works were required. There are therefore no maintenance or liability issues on behalf of the Cambridgeshire County Council.
- 8.6 No objections were received during the statutory consultation period. The County Council's other requirements regarding width and works for making an order have all been met. The proposed new route would have a width of 2 metres.
- 8.7 Where diversion orders to Rights of Way have been made in order to make way for development to be undertaken a certification clause is included. This requires that a new route will not come into effect until the County Council as Highway Authority has deemed it satisfactory.
- 8.8 The County Council Service Director of Infrastructure, Management and Operations considered this application on 16th August 2013. The director concluded that he had no objection in principle to the proposed diversion as set out in the report, but needed to be satisfied that the new path would be constructed to a sufficient standard to withstand increased usage resulting from the new development in the area. A further report on the current condition of the path was prepared which concluded that the following works needed to be undertaken to stabilise the surface of the path alongside the river:
  - Raise the low spots along the length of the route to the remaining surface height.
  - Raise the newly built up low spots and existing surface by 25 mm using a suitable compacted stone to ensure a consistent level surface along the whole route of the diverted path.
  - Raise the sides using treated wooden boards or recycled plastic boards pegged into the ground to retain suitable compacted stone and to give a full two metre width at the height above.

On 6<sup>th</sup> February 2015 the developer of the site (Redrow Homes) confirmed in writing (see Appendix I) that they were planning to create a Hoggin Footpath with a timber peg and board edging, satisfying the above requirements. This was discussed with the Rights of Way Officer who was also satisfied with this proposal. On 5<sup>th</sup> March 2015 The County Council Service Director of Infrastructure Management and Operations agreed that Cambridgeshire County Council as Highway Authority should approve the application to divert part of Footpath No.1 Hauxton.



## 9 Conclusions

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- 9.1 It is considered that the application to divert part of Public Footpath No.1 Hauxton meets the requirements of s.257 of the Town and Country Planning Act 1990 and the policy of Cambridgeshire County Council.

## 10 Recommendations

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- 10.1 That South Cambridgeshire District Council, as Planning Authority, indicate to Cambridgeshire County Council that the Order should be made.
- 10.2 That an Order is made to divert part of the Public Footpath No.1 Hauxton, as requested by the applicant.
- 10.3 That the final route be inspected by the Cambridgeshire County Council as Highways Authority and certified as satisfactory before the Order comes into effect.

### LIST OF DOCUMENTS

<b>A</b>	Copy of the application to divert part of the public footpath No.1 Hauxton
<b>B</b>	Map showing the proposed diversion
<b>C</b>	Copy of planning application S/2308/06/O
<b>D</b>	Consultation Responses
<b>E</b>	Site photographs
<b>F</b>	Aerial Photo of the Site
<b>G</b>	Copy of Memorandum of Agreement between the District Council and Cambridgeshire County Council
<b>H</b>	Memorandum from Cambridgeshire County Council Service Director Infrastructure Management and Operations giving approval for this diversion.
<b>I</b>	Confirmation of surface of the path from Redrow Homes.