

To: South Cambridgeshire District Council - Planning Committee
From: James Stringer, Asset Information Definitive Map Officer
Ref: P106
Date: 10th November 2021

Report on the proposed stopping up of part of Public Footpath No. 9 and provision of an alternative bridleway in the parish of Fen Ditton

1 Purpose

- 1.1 To report on the proposed stopping up of part of Public Footpath No. 9 and provision of alternative bridleway in the parish of Fen Ditton as part of the Marleigh development developed by Marshall and Hill.
- 1.2 Appendix **A** comprises a copy of the agent's application. Appendix **B** includes a copy of the relevant planning application decision notice and site plan. Appendix **C** is a copy of the memorandum of agreement between Cambridgeshire County Council and South Cambridgeshire District Council. A map showing the effect of the proposals is at Appendix **D**. Consultation responses received by the County Council can be found at Appendix **E**. The NMU Diversion and Adoption Policy Matrix can be found at Appendix **F**. The decision reached by the County Council's Interim Director of Highway Maintenance can be seen at Appendix **G**.

2 Background

- 2.1 An application has been received by PlanSurv on behalf of the landowner, Hill, for the diversion of part of Public Footpath No.9 in the parish of Fen Ditton. The application falls to be determined by the relevant planning authority under section 257 of the Town and Country Planning Act 1990. A copy of this Public Path Order application is attached at Appendix **A**.
- 2.2 During discussions with the applicant, the proposal is, in line with the considered provisions of section 257, to stop up the affected section of Public Footpath No. 9 and provide an alternative highway, the status of which would be public bridleway.
- 2.3 As part of Hill's proposal for the Marleigh development site, it is also proposed that a number of additional recreational routes will be offered for dedication as public bridleways to the County Council under Section 25 of the Highways Act 1980. This element of the proposal falls to be determined by the County Council, as Highway Authority. The County Council considered this element via delegated powers on the 30th September 2021 and resolved to approve the dedication of these additional public bridleways. A copy of the determination by the Interim Director of Highway Maintenance can be found at Appendix **B**.

- 2.4 The landowner considers that a public path order is necessary in order to implement the approved development of up to 1,300 homes, primary school, food store, community facilities, open spaces, landscaping and associated infrastructure and other development under outline permission S/2682/13/OL (see Appendix C).
- 2.5 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 explaining the procedure is attached at Appendix D.
- 2.6 The application for a Public Path Order was made to Cambridgeshire County Council on the 14th May 2020. A map showing the effect of the proposal is at Appendix E. The sections of the path subject to this determination are shown in black, with the sections of path subject to the County Council's determination referred in 2.3 above shown in blue.
- 2.7 The existing public footpath runs from Newmarket Road adjacent to the BP filling station and the Newmarket Road Park & Ride before running north and then subsequently north-west across what was previously an arable field to the disused railway line, continuing to High Ditch Road near Shepherd's Court, Fen Ditton.

3 Site Description

Existing public footpath (A-B-C-D-E)

- 3.1 The existing public footpath starts from a point at OSGR TL 4915 5924 (Point A) and proceeds in a northerly then north-westerly direction between the boundaries of the BP filling station and the Newmarket Road Park & Ride for 126 metres to OSGR TL 4911 5933 (Point C). The path then proceeds adjacent to the Park & Ride boundary in a north-north-easterly direction for 300 metres to a junction with the Jubilee Cycleway at OSGR TL 4918 5962 (Point D). The path continues in a north-westerly direction across what was previously an arable field (now construction site) for 370 metres to a point south of the disused railway embankment at OSGR TL 4896 5992 (Point E). The total length of existing public footpath is 796 metres.
- 3.2 The existing public footpath has been closed for a number of years via a Temporary Traffic Regulation Order to allow groundworks to take place as part of the development. As such, there are no gaps, gates, stiles or any other highway structures (i.e. culverts or steps) on the existing route.
- 3.3 The public footpath has a recorded width of two metres for the section A-B-C and 4ft for the remaining section C-D-E. The land over which the existing route runs is not covered by any protected designation. This land forms part of the Marleigh development by Marshall and Hill.

- 3.4 The public footpath is maintainable at public expense by the County Council, as Highway Authority.

Proposed alternative public bridleway (F-G-H-J-K-L-E)

- 3.5 The proposed bridleway would commence from an alternative point on Newmarket Road at OSGR TL 4940 5928 (Point F) and would proceed as a grass verge path adjacent to an adoptable shared cycleway in a north-north-easterly direction for 274 metres to a point at OSGR TL 4944 5955 (Point G). The path would then continue as a grass verge path adjacent to an adoptable shared use cycleway in a west-north-westerly direction for 87 metres to a point at OSGR TL 4936 5958 (Point H). The proposed path would then proceed as a standalone gravel (hoggin) path in a generally but varying north-north-easterly direction for 299 metres to a point at OSGR TL 4947 5985 (Point K). The path would continue in a generally but varying north-westerly direction for 357 metres to OSGR TL 4914 5997 (Point L), before turning and continuing in a west-south-westerly direction for 189 metres to a junction with the unaffected section of Public Footpath No. 9 at OSGR TL 4896 5991 (Point E).
- 3.6 The total length of the proposed bridleway is 1,206 metres.
- 3.7 No structures such as gates, culverts, bridges, steps or boardwalks are proposed as part of this alternative bridleway. As such, no further authorisation or approval is required from CCC or SCDC such as Watercourse Consent or Structural approval.
- 3.8 New finger posts and waymarking signage will be required as a result this proposal. This would be agreed with the applicant as part of the implementation of the new route.
- 3.9 It is proposed as part of the development to replace the public footpath with a public bridleway. This has been a commitment made by the developer throughout the planning process as part of their consultation with stakeholders including the County Council and British Horse Society. The proposed bridleway between Points F-G-H would run parallel with a bound asphalt shared use cycleway. This cycleway is being offered to the County Council via a Section 38 adoption agreement currently being processed by colleagues in the County Council's Highways Development Management.
- 3.10 For the section of the path parallel with the shared use cycleway, it is proposed to record a legal width for the bridleway of two metres. For the section of bridleway that is standalone (Points H-J-K-L-E), the proposed recorded width is four metres.
- 3.11 The location of the proposed bridleway is not part of any protected or designated site.

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, bridleway or restricted byway 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 is 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, bridleway or restricted byway 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, bridleway or restricted byway;
- (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. The County Council as highway authority will undertake the certification.

4.3 The Equality Act 2010 consolidated previous anti-discrimination legislation. Of particular importance to the highway authority (a public authority as defined in the Act) is section 149. This section of the Equality Act 2010 requires public authorities to have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (the public sector equality duty). These considerations are the need to:

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

- 4.4 The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 4.5 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 people with the relevant protected characteristics 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.
- 4.6 The Crime and Disorder Act 1998 states that the District Council as a relevant authority has a duty to consider the impact of all its functions and decisions on crime and disorder in its area with due regard to the need to all it can reasonably do to prevent crime and disorder (including anti-social behaviour and other behaviour adversely affecting the environment).

5 **Cambridgeshire County Council and South Cambridgeshire District Council Policy (including maintenance)**

- 5.1 The County Council's own Non-Motorised User (NMU) policy (approved by Highways & Community Infrastructure Committee on 21st February 2017 and replacing the previous Public Path Order Policy) requires that certain criteria are met if a public path order is to be made.
- 5.2 The policy is applicable to any new or diverted NMU route which would become maintainable at public expense. The relevant criteria is made up of a numerically scored set of criteria which consider accessibility relating to the County Council's duty under the Equality Act 2010; the benefit to the Authority and communities from resolving long term maintenance problems; the benefit to the Public Rights of Way (PRoW) network; and the benefit to landowners from improved land management.
- 5.3 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.
- 5.4 The District Council does not have an explicit policy on the application of Section 257 and the interaction of proposals to divert Public Rights of Way as part of the planning process. It does however make reference to Public Rights of Way as part of its Local Plan Policy TI/2: Planning for Sustainable Travel. It notes:

"Planning permission will only be granted for development likely to give rise to increased travel demands, where the site has (or will attain) sufficient integration and accessibility by walking, cycling or public and community transport, including:

... c. Protection and improvement of existing cycle and walking routes, including the Rights of Way network, to ensure the effectiveness and amenity of these routes is maintained,

including through maintenance, crossings, signposting and waymarking, and, where appropriate, widening and lighting;”

6 Consultations

- 6.1 The local Ramblers’ Association, the British Horse Society, South Cambridgeshire District Council, Fen Ditton Parish Council, local 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 F):
- 6.2 The British Horse Society, Cambridge Ramblers’ and CTC Cambridge all raised a number of points of representation and clarification but were supportive of the overall proposal.
- 6.3 Vodafone had no objection to the diversion of the existing public footpath. Cadent Gas have raised an objection, indicating that they have apparatus in the vicinity of the proposed bridleways. However, it is considered that Cadent Gas have misinterpreted the consultation that was undertaken. The physical delivery of the path surface and its associated infrastructure is secured by the planning permission and is the responsibility of the developer to implement in accordance with any requirements of Cadent Gas. This process is to determine the legal status of those constructed routes and whether Cadent Gas rely in anyway on the existence of Public Footpath No. 9 to gain access to its apparatus. From the information provided by Cadent, it does not appear that this is the case, and it is therefore considered that Cadent Gas’ objection should be discounted.
- 6.4 No other responses were received.

7 Grounds for stopping up and provision of alternative highway: Town and Country Planning Act 1990 and Other Legislation

- 7.1 The stopping up of the affected section of Public Footpath No. 9 is required to enable the delivery of the permitted development of Phase 1 of the Marleigh site. Those works which this Order would enable have been granted planning permission by the Local Planning Authority.
- 7.2 It is therefore considered that the stopping up of that part of Public Footpath No. 9 is necessary to implement a planning permission granted under part III of the Town and Country Planning Act 1990. Section 1 (a) of Section 257 TCPA 90 is therefore satisfied.
- 7.3 The applicant has agreed, through the consultation and development of the planning proposals, to provide an alternative highway, to the standard and status of public bridleway along a replacement alignment. The applicant has also agreed to undertake the necessary works to implement the proposed new route at their own expense. These works will be subject to certification by the County Council as the Local Highway Authority.

- 7.4 It is not considered that the rights of statutory undertakers will be affected for this proposal. It is therefore considered that Subsection 2 of Section 257 TCPA 90 is satisfied.
- 7.5 The proposed alternative bridleway will be approximately 1,206m in length, compared to 796m for the existing public footpath. This is a considerable increase in length and in isolation, could impact of the convenience of the PRow network if travelling from Fen Ditton to Newmarket Road. The increase could also impact on those users who may have difficulties in walking or riding longer distances.
- 7.6 However, the stopping of the existing footpath is required to enable a large-scale residential development. That development is delivering a number of new routes, including the realigned Jubilee Cycleway. Therefore, the alternative public bridleway will form part of a wider highway network and will no longer be the sole route between Fen Ditton and Newmarket Road. Those users whose mobility may be restricted will be able to travel along shorter alternative routes delivered as part of the wider development, whilst the alternative public bridleway will retain an unbound, recreational highway notwithstanding the wider housing development.
- 7.5 The proposal is not considered to be in conflict with the provisions of the Equality Act 2010 as the stopping up of the existing route is not felt to disproportionately impact users with protected characteristics. Additionally, the provision of an alternative public bridleway does not propose any features or structures that would restrict or limit its use by any particular group or groups of users.

8 Grounds for stopping up, provision of alternative highway and creation of additional public bridleways: Cambridgeshire County Council criteria including Maintenance Liability

- 8.1 Both proposals have been assessed against the County Council's NMU Diversion and Adoption policies respectively. The two NMU assessments can be found at Appendix G.
- 8.2 The proposal subject to Section 257 of the Town and Country Planning Act 1990 scored a total of 26 out of a possible 30 points, representing a score of 86%. The threshold score for a proposal to be considered acceptable by the Highway Authority is 21.
- 8.3 Of the six criteria which must be met for an application to be considered, four have been fully met.
- 8.4 The existing route had been available for use for many years. This changed a number of years ago when construction works commenced on site and the path closed via a Temporary Traffic Regulation Order (TTRO). Due processes have been followed throughout the closure period, and therefore It is not considered that in light of the permissions granted to develop the site that seeking the reopening of the route ahead of any potential Public Path Order would offer any benefit. The County Council's Interim

Director of Highway Maintenance agreed that this criterion be waived in this instance in their approval of the proposal dated 20th September 2021.

- 8.5 The criteria require a minimum width of four metres for any alternative or new public bridleway. This width is considered the minimum width in ensuring that differing users would be able to be safely accommodated within the extent of the highway.
- 8.6 Along some sections of the alternative bridleway, the route is adjacent to a 3-metre-wide shared pedestrian and cycle path. It is therefore considered that the full four metres would not be necessary along these sections and a reduced recorded width of two metres is proposed. For the sections of the alternative bridleway that are standalone, the minimum width of four metres will be met. The County Council's Interim Director of Highway Maintenance agreed that this criterion be waived in this instance in their approval of the proposal dated 20th September 2021.
- 8.7 The provision of a bridleway adjacent to an adoptable shared use cycleway not only ensures that additional width of accessible public highway is provided, it would also secure rights for equestrians and ensure all three users have the appropriate width and different surface type to mitigate conflict between users.
- 8.8 The remaining four criteria which must be met are considered to have been met. These include:
- 1) Cost of implementation and ongoing maintenance;
 - 2) Pre-application consultation;
 - 3) No objections;
 - 4) No gates or stiles;
- 8.9 The proposal is in-line with existing permissions granted by South Cambridgeshire District Council. Given the approved planning layout on this site, the proposed alternative public bridleway is considered the most suitable and appropriate alignment, meeting the criteria set out in the NMU policy.
- 8.10 Whilst this does increase the maintenance liability placed on the County Council, it is considered in-line with our Rights of Way Improvement Plan, Health and Well-being Strategy, Climate commitments, modal shift and other policies in securing additional NMU provision through the delivery of strategy housing developments. The surfacing of the proposed routes have also been approved by the County Council's Public Rights of Way Officer and are to a specification that is considered to mitigate any unnecessary increase in liability.
- 8.11 Consideration should be given to the Cambridgeshire Rights of Way Improvement Plan (ROWIP). It is considered that this proposal supports the aims of the ROWIP under:
- SoA3: 72,500 new homes, as it ensures that this public footpath is protected from development and that new facilities are provided to an acceptable standard.

- SoA5: Filling in the Gaps, as the proposal delivers significant lengths of new bridleways, improving the overall bridleway network.

8.12 The proposal is also considered to be in accordance with the Cambridgeshire Health and Wellbeing Strategy including:

- Priority 5: Create a sustainable environment in which communities can flourish

9 Conclusions

9.1 It is considered that the proposed stopping up of part of Public Footpath No. 9 and provision of an alternative bridleway meets the requirements of Section 257 of the Town and Country Planning Act 1990.

9.2 The County Council's Interim Director of Highway Maintenance has resolved that the overall proposal would not have any detrimental impact on the connectivity of the surrounding highway network or place a significant and unjustifiable additional burden on the affected or alternative routes which may cause concern to the County Council, as Local Highways Authority.

10 Recommendations

10.1 That South Cambridgeshire District Council approves the making and confirmation (subject to no objections) of a Public Path Stopping Up Order under Section 257 of the Town and Country Planning Act 1990 for the stopping up of that part of Public Footpath No. 9, Fen Ditton between Points A-B-C-D-E on the Plan at Appendix E and the provision of an alternative public bridleway between Points F-G-H-J-K-L-E.

10.2 That any made Public Path Order include a legally recorded width of two metres for the section between Points F-G-H and four metres for the section between Points H-J-K-L-E.

10.3 That South Cambridgeshire District Council indicates its formal decision to Cambridgeshire County Council, as agents for the District Council.

LIST OF DOCUMENTS

A	Copy of diversion order application
B	Copy of CCC decision dated 30 th September 2021
C	Copy of planning application No. S/2682/13/OL
D	Copy of Memorandum of Agreement between the District Council and Cambridgeshire County Council
E	Map showing proposed changes to PRow Network
F	Copies of consultation responses
G	NMU Diversion Policy Matrix