

To: South Cambridgeshire District Council – Planning Committee  
From: Tom Ruzsala, Asset Information, Definitive Map Officer  
Ref: P117  
Date: 15 August 2022

## Report on the proposed diversion of part of Public Footpath No. 10, Gamlingay

### 1 Purpose

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- 1.1 To report on the proposed diversion of part of Public Footpath No. 10, Gamlingay.
- 1.2 **Appendix A** comprises a copy of the application to divert part of Public Footpath No. 10, Gamlingay. A plan showing the effect of the proposals is at **Appendix B**, along with an annotated Highway Adoption Extent plan, marked up with the points of reference relevant to the proposed public path order is attached at **Appendix C**.

### 2 Background

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- 2.1 On 9 March 2022 Morris Homes applied to Cambridgeshire County Council to divert the part of Public Footpath No. 10, Gamlingay ('Gamlingay Footpath 10') which crossed through a development site in Gamlingay.
- 2.2 The application to divert part of Gamlingay Footpath 10 is necessary in order to implement a planning permission (reference S/4085/19/RM) for the layout, scale, appearance and landscaping of an outline planning permission (reference S/2068/15/OL – **Appendix D**) for 90 dwellings at Green End Industrial Estate, Gamlingay. The reserved matters application was approved by South Cambridgeshire District Council on 18 June 2020 (see decision notice **Appendix E**). Under the Town and Country Planning Act 1990 the powers to divert the footpath in order for the development to take place are held by the planning authority, South Cambridgeshire District Council, under section 257.
- 2.3 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 F**.

- 2.4 Gamlingay Footpath 10 starts at Green End at a point between the allotments and Rainbow pre-school and, prior to the development, continued generally west along a shared access road to Green End Industrial Estate and a point where it turned generally north-north-east and continued to a junction with Cinques Road. When the Definitive Map was first published in the 1950s the footpath was originally a rural footpath connecting two roads. The character of the footpath has since changed from rural to urban with the development and expansion of Gamlingay since the 1950s.
- 2.5 Gamlingay Footpath 10 is maintainable at public expense by the County Council. The Definitive Statement for Gamlingay Footpath 10 records a width of 3 feet for a short section over former allotment gardens. This section however is not thought to cover the part Gamlingay Footpath 10 presently proposed to be diverted. Other than the short section over the former allotment gardens, there is no recorded width for Gamlingay Footpath 10 in the Definitive Statement or any conditions or limitations to the public's use of the footpath.
- 2.6 Part of the legal line of Gamlingay Footpath 10 has been unavailable due to demolition and construction work since October 2020. A temporary traffic regulation order was previously in place between October 2020 and December 2021 to facilitate the closure of part of the public footpath. At the end of December 2021, the temporary traffic regulation order expired, and an extension was not granted by the County Council due to local objections to the severing of a useful link between Green End, Maple Court, Beechside and Cinques Road. As a result, the developer has since re-opened up a temporary access path through the site along an alignment very similar to the existing footpath between Maple Court and Green End.

### **3 Site Description**

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#### Existing public footpath (A-B-C) – prior to commencement of development

- 3.1 The public footpath commences at a junction with Green End Road at OSGR TL 2354 5235 (point A) proceeding generally west-north-west along a shared pedestrian and vehicular surface for approximately 119 metres to OSGR TL 2342 5236 (point B). The public footpath continues generally north-west along the shared surface for approximately 37 metres to OSGR TL 2341 5239 (point C) where the public footpath continues as a metalled footpath between fences. The total length of the public footpath is 156 metres. **Appendix K** contains two images extracted from Google Street View, dated April 2019, which show the part of Gamlingay Footpath 10 to be diverted prior to development works.

### Proposed diversion route (D-E-F-G-H-I-J-C)

- 3.2 The proposed diversion route generally follows the northern footway of the roads due to be adopted under a section 38 agreement by the County Council. A plan of the extent of the routes to be adopted, together with annotations showing the points where the public footpath is to be diverted, is available at **Appendix C**. Additionally, photographs of part of the proposed diversion route are available at **Appendix G**. These depict the proposed route during construction work at the end of May 2022. The works to construct the route remain in progress at the time of the preparation of this report.
- 3.3 The proposed footpath commences at a point on the footway of Green End at a tactile paving crossing point at OSGR TL 2354 5235 (point D) generally north-west, along the northern footway of a road, for approximately 21 metres to a point at OSGR TL 23 52 5237 (point E). The footpath continues along the footway generally north-east for approximately 10 metres to a raised crossing point at OSGR TL 2352 5238 (point F). The footpath continues generally north-west across the raised crossing for approximately 6 metres to OSGR TL 2352 5238 (point G). The footpath then continues along the footway generally south-west for approximately 11 metres to OSGR TL 2351 5237 (point H). The footpath then continues along the northern footway of a road generally west north-west for approximately 73 metres to OSGR TL 2344 5239 (point I). The footpath then continues along the northern footway of a road generally north-west for approximately 16 metres to a point at a raised crossing at OSGR TL 2343 5240 (point J). The footpath then continues generally west-south-west across the raised crossing and along a footpath between fences for approximately 25 metres to OSGR TL 2341 5239 (point C), where the public footpath continues as a metalled footpath between fences. The total length of the proposed footpath is 163 metres.
- 3.4 Photographs taken from Google Streetview (**Appendix H**) provide examples of the type of raised crossings to be constructed on the route of the proposed public footpath between points F and G and J and C.
- 3.5 The proposed diversion route is 7 metres longer than the existing route.
- 3.6 No structures such as gates, culverts, bridges or steps are proposed on the proposed diversion route.
- 3.7 The proposed footpath forms part of the routes due to be adopted by the County Council under Section 38 of the Highways Act 1980 as part of the ordinary road network. The maintenance liability placed on the County Council therefore would not be any greater than those routes already proposed for adoption. Once adopted, the proposed public footpath would be removed from the Definitive Map and Statement by Legal Event Modification Order. This is because the route would be subsumed within the adopted road network and therefore would no longer be of a status capable of being recorded on the Definitive Map and Statement.

- 3.8 If an order is made to divert the public footpath and it is confirmed, the proposed route will be initially made up to binder course whilst development works are on-going allowing the order to be confirmed and certified prior to the substantial completion of the development. The proposed footpath will later be fully surfaced in line with the County Council's Estate Road Specification and the S.38 adoption agreement.
- 3.9 The proposed footpath will have a recorded width of two metres in line with the County Council's Rights of Way widths policy.
- 3.10 The location of the proposed footpath is not part of any protected or designated site such as a Site of Special Scientific Interest or a Scheduled Monument.

## 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, 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 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, 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.

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

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- 5.1 The County Council's own Non-Motorised User (NMU) policy (approved by Highways & Community Infrastructure Committee on 21<sup>st</sup> 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 In addition to the numerical scoring matrix within the NMU policy, there are six pass or fail criteria relating to County Council requirements that must be met in order for an application to be considered. If an application fails one of these criteria, it fails regardless of its numerical score unless an exemption is granted by the Assistant Director, Highways Maintenance if it is considered to be appropriate. The criteria are as follows:

1. Viability (cost of implementation) and Affordability (cost of ongoing maintenance)
2. Pre-application consultations have been carried out with the prescribed bodies
3. 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 Assistant Director Highways Maintenance as to whether or not that is appropriate.
4. 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. If the County Council consider the objection to be irrelevant, this will class as a pass.
5. 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, the County Council may, taking into account all the available facts, require such a width as it considers reasonable and appropriate.
6. The proposed route would have no stiles or gates, or allows for access for people with mobility issues.

5.4 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.

5.5 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. Any proposal to divert will not be considered which is in conflict with the Statements of Action set out in the Cambridgeshire ROWIP.

5.6 The County Council does not encourage Public Rights of Way to be diverted onto estate road footpaths, apart from small development sites where there is little or no scope to provide a path which is separate from the roadway. In

this case, the proposed development layout has been approved by the Planning Authority and therefore there is no scope to secure an alternative off road route at this stage in the process.

## 6 Consultations

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- 6.1 A consultation with the local Ramblers' Association, the British Horse Society, South Cambridgeshire District Council, Gamlingay Parish Council, the local Members, the Rights of Way Officer and utility companies was undertaken on the application to divert part of Gamlingay Footpath 10 in March 2022.
- 6.2 The alignment of Gamlingay Footpath 10 proposed to be diverted in the consultation in March 2022 differed from the current proposed alignment and is available to view at **Appendix I**. The alignment proposed in March 2022 originally followed the southern footway of the road into the development rather than the northern footway as presently proposed. Replies to the consultation were received from the British Horse Society, the Parish Council and the Rights of Way Officer. Copies of the responses received to the consultation are available to view at **Appendix J**.
- 6.3 The secretary for Cambridgeshire for the British Horse Society confirmed on 14 March 2022 that they had no comments to make on the application.
- 6.4 Gamlingay Parish Council responded to the consultation stating that they had concerns about the proposal following the southern footway. This was because the Parish Council felt that the majority of footpath users from the Green Acres and Elizabeth Way estates would be using the route to access the primary school and other facilities in the centre of the village which would involve having to cross the main road into the estate at Green End. The Parish Council suggested that a route on the northern footway would be preferable in order to make use of the proposed crossing facilities on the roads.
- 6.5 The Rights of Way Officer stated that the footpath crossing points over the estate roads should be fully accessible by dropped kerbs and were putting in a holding objection to the application until such time that details had been provided showing such crossings.
- 6.6 No other responses were received.
- 6.7 In response to the comments of the Parish Council and the Rights of Way Officer, the proposed alignment of the diversion route was amended with the agreement of the applicant to follow the northern footway of the estate road, crossing roads in two places at raised crossing points. Following the changes to the alignment of the route, the Parish Council and the Rights of Way Officer confirmed that they were satisfied with the changes and withdrew their objections to the proposals.

- 6.8 Ultimately both the southern and northern footways of the estate access road from Green End will become public highway through the S.38 agreement and therefore the public will be open to choose which side of the road that they wish to walk on. Making the changes to the alignment of the footpath however has resulted in a greater general understanding of the proposed highway network in this location and should minimise the potential for any unnecessary objections to an order to divert part of Gamlingay Footpath 10.

## 7 Grounds for diversion: S.257 Town and Country Planning Act 1990

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- 7.1 The re-routing of part of Gamlingay Footpath 10 from its existing route to the proposed new route is required in order to implement a planning permission (reference S/4085/19/RM) granted under part III of the Town and Country Planning Act 1990. Section 1 (a) is therefore satisfied.
- 7.2 The applicant has agreed, through the consultation and development of the planning permission, to provide an alternative alignment for part of Gamlingay Footpath 10 as part of the local highway network to be adopted by the County Council under section 38 of the Highways Act 1980. The works required to create the new highways are to be implemented by the applicant at their own expense. The works to the proposed new alignment of Gamlingay Footpath 10 will be subject to certification by the County Council as the Local Highway Authority.
- 7.3 It is not considered that the rights of statutory undertakers will be affected by the proposal to divert part of Gamlingay Footpath 10. It is therefore considered that Subsection 2 of Section 257 TCPA 90 is satisfied.
- 7.4 The proposed diversion route of Gamlingay Footpath 10 is eight metres longer than the existing route. It is therefore considered that the proposed diversion route is reasonably as convenient for the public to use as the existing route.
- 7.5 The existing route prior to the commencement of the development followed a road shared between pedestrians and vehicles accessing Green End Industrial Estate (see extract images from Google Street view April 2019 – **Appendix K.**) The proposed diversion route in the main will follow a footway separated from the vehicular traffic except for two raised crossing points. It is therefore not considered that there will be any significant negative impact on the public's enjoyment of the public footpath.
- 7.6 The proposal is not considered to be in conflict with the provisions of the Equality Act 2010 as it is not considered to disproportionately impact upon any users with protected characteristics. Additionally, the proposed diversion route does not propose any features or structures that would restrict or limit



its use by any particular group or groups of users. It may be considered that the proposed diversion route will result in an improvement to the accessibility of the footpath by separating pedestrians from traffic for the majority of the route and providing a higher standard surface for walking. When the proposed route crosses estate roads, raised crossings are proposed which provide safe and accessible access across the roads.

## 8 Grounds for diversion: Cambridgeshire County Council policy including Maintenance Liability

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- 8.1 The proposal to divert part of Gamlingay Footpath 10 has been assessed against the County Council's NMU Diversion policy. The assessment can be found at **Appendix L**.
- 8.2 The proposal scored 21 out of 30 representing a score of 70% which meets the threshold for a proposal to be considered acceptable by the Highway Authority.
- 8.3 In addition to the numerical scoring assessment and legislative requirements the County Council's pass or fail criteria concerning rights of way diversions are considered below.
- 8.4 Viability (cost of implementation) and Affordability (cost of ongoing maintenance)  
The implementation costs will be met in full by the applicant. It is considered that the proposal will not result in any additional ongoing maintenance costs which are not already proposed to be adopted by the County Council's Highways Development Management service.
- 8.5 Pre-application consultations have been carried out with the prescribed bodies  
The proposal to divert part of Gamlingay Footpath 10 formed part of an approved planning application which was consulted on by the Local Planning Authority. A further statutory consultation was carried out by the County Council with the local user groups, including the Ramblers Association in March 2022 (see section 8.7 below).
- 8.6 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 Assistant Director Highways Maintenance as to whether or not that is appropriate.  
The existing line of Gamlingay Footpath 10 was previously unavailable for approximately 18 months from October 2020 when demolition works commenced on the development site. A temporary traffic regulation order was in place between October 2020 and December 2021 to facilitate the closure of part of the public footpath. Following local objections, the majority of the existing alignment of Gamlingay Footpath 10 was reopened to the public

in May 2022. This follows the majority of the existing route except for the eastern part of the route near to the junction with Green End where the route follows a footway along the access road to the development.

- 8.7 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. If the County Council consider the objection to be irrelevant, this will class as a pass.

Two objections were received during the statutory consultation period (one from the Rights of Way Officer and one from the Parish Council). The alignment of the proposed diversion route was changed in response to the objections, and this resulted in both objections being withdrawn. There are no outstanding objections to the proposals.

- 8.8 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, the County Council may, taking into account all the available facts, require such a width as it considers reasonable and appropriate.

The applicant is providing a width of 2 metres for the proposed diversion route along the footways of the development.

- 8.9 The proposed route would have no stiles or gate or allows for access for people with mobility issues.

The proposed route will have no structures in place which would limit public access. The proposed route crosses two roads at raised crossings which are flush with the road, so there are no raised kerbs for users to negotiate.

- 8.10 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 will not be permanently obstructed by development and that new facilities are provided to an acceptable standard.

## 9 Conclusions

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- 9.1 It is considered that the proposed diversion of part of Gamlingay Footpath 10 meets the requirements of section 257 of the Town and Country Planning Act 1990 and the County Council's NMU adoption policies.

- 9.2 The County Council’s Assistant Director of Highways Maintenance resolved on 15 August 2022 that the proposal would not have any detrimental impact on 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 (**Appendix M**).

## 10 Recommendations

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- 10.1 That it is expedient that an order is made by South Cambridgeshire District Council under section 257 of the Town and Country Planning Act 1990 to divert the part of Gamlingay Footpath 10 which is necessary to enable the development of 90 dwellings at Green End Industrial Estate, Gamlingay to take place.
- 10.2 That the width of the proposed public footpath to be recorded is 2 metres.
- 10.3 That the proposed public footpath should have no limitations to the public’s use recorded on the Definitive Statement.
- 10.4 That South Cambridgeshire District Council informs Cambridgeshire County Council of its decision in writing, as agents for the District Council.

### Appendix Documents

<b>A</b>	Application form S.257 Town and Country Planning Act 1990 – 1 October 2021
<b>B</b>	Plan of proposed diversion of Gamlingay Footpath 10
<b>C</b>	Annotated Proposed Highway Adoption Extent Plan
<b>D</b>	Master Plan and Decision notice of South Cambridgeshire District Council on S/2068/15/OL – 7 December 2016
<b>E</b>	Open Spaces Plan and Decision notice of South Cambridgeshire District Council on S/2068/15/OL – 18 June 2020
<b>F</b>	Memorandum of Agreement for the processing of Public Path Orders between Cambridgeshire County Council and South Cambridgeshire District Council 2007
<b>G</b>	Photographs of the proposed diversion route taken 30 May 2022
<b>H</b>	Examples of raised pedestrian crossings from Google Street View
<b>I</b>	Plan showing originally proposed diversion route of Gamlingay Footpath 10 – March 2022
<b>J</b>	Consultation responses – March 2022
<b>K</b>	Extracts from Google Street View of original route of Gamlingay Footpath 10 – April 2019
<b>L</b>	Cambridgeshire County Council NMU Authorisation
<b>M</b>	Memo of Jon Munslow, Assistant Director Highways Maintenance, Cambridgeshire County Council, 15 August 2022.