

To: Legal and Democratic Services Manager, South Cambridgeshire District Council
From: Andy Davison, Definitive Map Officer, Rights of Way and Access Team, Cambridgeshire County Council, CC1305
Ref: TCPA90/196-18/AD
Date:

Report on the proposed diversion of Public Footpath No.18, Sawston

1.0) Purpose

- 1.1) To report on the proposed diversion of Public Footpath No.18, Sawston between Mill Lane and The Baulks (Footpath No.20). The application for the diversion and a plan showing the effect of the proposals are attached in Appendix **A**.

2.0) Background

- 2.1) This diversion order is required in order to implement a planning permission in relation to planning application number S/2435/07/F, made by Fabco Ltd, which was granted on appeal on 4th December 2008 (see Appendix **B**). The application is for the "Change of use of Combined Dwelling / Shop to Dwelling with Home Office, Erection of Bungalow and Garage, Formation of Driveway and Realignment of Public Right of Way, Erection of Boundary Fencing".
- 2.2) The diversion of the footpath therefore falls to be determined by the relevant planning authority ("competent authority") under section 257 of the Town and Country Planning Act 1990.
- 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 **C**.
- 2.4) The application for a diversion order was therefore correctly made to Cambridgeshire County Council, who began the formal consultation procedure on August 4th 2011. (Strictly speaking this is a renewed application, due to the time elapsed since discussions first started on this case, and the fact that the developer has employed a new agent.)

3.0) Site Description (Pictures attached in Appendix **D**)

- 3.1) The present route of Footpath 18 starts on Mill Lane at TL 4803 4944 next to a former shop, and runs in somewhat meandering fashion northwards for approximately 60 metres across a rather unkempt informal green space to meet The Baulks, Footpath 20, at TL 4803 4949. The defined path on the ground has a tarmac surface approximately 1 metre wide.

- 3.2) The proposed diversion would relocate the path to the eastern side of the site, adjacent to the boundary fence of no.80, Mill Lane, starting at TL 4804 4943 and joining The Baulks at TL 4804 4949.
- 3.3) The new path would be 2 metres wide with a tarmac surface constructed to the specification of the area Highway Supervisor.

4.0) Legislation

- 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 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 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) Under Schedule 14 of the Act (*Part 1: confirmation of orders*):
 - '(2) If no representation or objections are duly made, or if any so made are withdrawn, the authority by whom the order was made may, instead of submitting the order to the Secretary of State, themselves confirm the order (but without any modification).
 - ...
 - (3)(2) If [an] objection is made by a local authority...the Secretary of State shall, before confirming the order, cause a local inquiry to be held.'
- 4.3) Section 336 makes clear that a "local authority" means a "billing authority or precepting authority"
- 4.3) 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.

- 4.4) 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.

5.0) Grounds for diversion of Public Footpath No.18, Sawston

- 5.1) The proposed development envisages a new driveway and a new bungalow, with its curtilage, being constructed on the route of the existing footpath. The diversion is thus required in order to implement a planning permission granted under part III of the Town and Country Planning Act 1990. Section 257(1)(a) is therefore satisfied.
- 5.2) The proposed new route for will provide an alternative footpath:
- The new path will be constructed to the Highway Authorities specification. The applicants have agreed to undertake the necessary works required at their own expense.
 - The rights of statutory undertakers will not be affected.
 - The requirements of Section 257(2) are therefore satisfied.
- 5.3) It is not considered that the Equality Act 2010 is relevant in this case – both the existing path and the proposed diversion are surfaced and fully accessible, with no obstacles.

6.0) Consultations

- 6.1) The local branch of the Ramblers' Association, the regional branch of the British Horse Society, Sawston Parish Council, Local County and District Members, the immediate neighbours, 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 E):
- The local Ramblers' Association drew attention to their comments at the previous consultation, but “[saw no reason] *why the RA should object to the diversion as currently proposed*”.
 - The regional British Horse Society “*makes no comment on the proposed diversion*”.
 - Mr Thomas of 84 Mill Lane felt “*that a path such as that planned...would be a considerable improvement*” and supported the proposed diversion.
 - Mr and Mrs Smith of 80 Mill Lane wrote: “*We wish to object to the footpath being diverted to run adjacent to our western boundary fence. At present the footpath runs through open land several metres from our boundary, the new path would become enclosed, dark and uninviting especially at night. The new proposed route would result in people and cyclists banging and knocking against our fence and causing a nuisance to us as the new path would run parallel to our*

home. If the application to divert Footpath No. 18 is successful we wish to request that the Developer supplies and erects a 1.8 metre closeboard fence to our western boundary. This would be similar to our northern boundary fence which also runs adjacent to a footpath."

- Virgin Media, National Grid, BT Openreach, Atkins – Cable & Wireless and Anglian Water had no objection.
- 6.2) No other responses were received from statutory undertakers or prescribed bodies.
- 6.3) Sawston Parish Council reiterated that they *"still object to moving the footpath to the side of the existing property (No.80)."* Copies of e-mail correspondence with them, and extracts from the Parish Council minutes are attached as Appendix **F**.
- 6.4) The developer's agent submitted documents to meet the planning conditions relating to the path diversion. These are attached as Appendix **G**.
- 6.5) As this is an urban location, and involves a path with a tarmac surface, the Cambridgeshire County Council area Highway Supervisor was consulted as the officer responsible for future maintenance. His specification for the construction of the new path is attached as Appendix **H**.
- 6.6) The Service Director, Infrastructure Management and Operations, Cambridgeshire County Council made the following comments:..... attached as Appendix **I**

7.0) Discussion

- 7.1) The planning application was made in 2007 and attracted several objections, including one from the County Council Rights of Way and Access Team, as well as from one of the neighbouring properties, the Parish Council and the local Ramblers' Association. The substance of this team's objection was that the path diversion proposed by the developer would be confined by high fences on both sides, and thus would not meet our planning guidelines.
- 7.2) Permission was refused by South Cambridgeshire District Council, but granted on appeal to the Planning Inspectorate. The Inspector made several conditions, specifically agreement with the appropriate authorities on landscaping, boundary treatments and the diversion of the public footpath.
- 7.3) The developer's new agent has submitted new plans for landscaping and fencing and a new application to divert the path. Under the revised plans most of the western side of the path is not to be fenced; the northern stretch of less than 15 metres would have a high fence on the eastern side and a 1.2 metre fence around the new bungalow on the west. A 2 metre wide path would be provided, constructed to the highway authority's specification and not confined on both sides.
- 7.4) This addresses the County Council's concerns; as noted above, the Ramblers' Association have also indicated that they would consider this satisfactory.

- 7.5) However, the neighbouring householders at no.80 still have an outstanding grievance, essentially of loss of amenity or privacy. They feel that their existing fence is not substantial enough to withstand the extra wear due to the proximity of the diverted path, or to provide adequate privacy. The southern section of fence is nominally 1.8 metres, and the northerly section 1.5 metres. The two parties have been put in touch with each other and it is hoped that they will reach an agreement for the developer to provide a fence that that will be acceptable to the householder. It is not, however, considered appropriate to make the provision of a new fence for the neighbouring householder a condition of the path diversion. The criterion for a diversion under the legislation is that it is “necessary to...enable development to be carried out...”
- 7.6) Sawston Parish Council objected to the planning application, and have expressed their opposition to the diversion in support of the neighbours. They have intimated that they will sustain their objection, even if the developer reaches an agreement with the neighbours. As noted above, under Schedule 14 of the Act, if an order is made and the Parish Council objects, a local inquiry must be held before it can be confirmed.
- 7.7) Notwithstanding this, it appears that the criteria for making a diversion order have been met – the diversion is needed to enable the development to be carried out, and an alternative path will be provided. A Planning Inspector has granted permission for this development to be carried out, and it would not be appropriate to introduce unreasonable obstacles as a means of frustrating it.
- 8.0) Recommendation**
- 8.1) It is recommended that an order is made under section 257 of the Town and Country Planning Act 1990 to divert Public Footpath No.18, Sawston between Mill Lane and The Baulks, as described in this report, to enable the development proposed in planning application S/2435/07/F to take place.

LIST OF DOCUMENTS

A	Application for proposed diversion, and a plan showing the effect
B	Copy of the Planning Inspector's appeal decision
C	Copy of Memorandum of Agreement between the District Council and Cambridgeshire County Council
D	Photos of the site
E	Copies of consultation responses
F	Copies of consultation response from Sawston Parish Council, and extracts from their minutes.
G	Developer's documents detailing how they will meet planning conditions.
H	County Council Highway Supervisor's specification for construction of the path
I	Memo from the County Council Service Director, Infrastructure Management and Operations.

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