

To: South Cambridgeshire District Council  
From: Steve Ouditt, Definitive Map and Records Officer Cambridgeshire  
County Council  
Ref: C400/131/7  
Date: 27/04/12

## **Report on the proposed diversion of part of Public Footpath No 7, Horseheath**

### 1.0) Purpose

1.1) To report on an application to divert part of Public Footpath No 7, Horseheath ("the footpath"). There is a plan of the proposed diversion at Appendix **A** and a copy of the diversion application at Appendix **C**.

### 2.0) Background

2.1) The footpath starts on Haverhill Road and crosses two properties, Montford House and Sasex House, before continuing across arable fields to Horseheath. The current legal line of the footpath is obstructed at several points by buildings and by fences. This seems to have been the situation for many years. Historic maps suggest that at some time in the past the curtilages of these two properties were extended over the footpath. There is currently a usable route available to the public which skirts the buildings and fences although this route is in rather poor condition. There is a footbridge at point F on the plan at Appendix A. This is on the used line of the footpath rather than on the legal line.

2.2) The proposed diversion would move the footpath approximately onto the route which is used now but would also require the footbridge at point F to be moved to point E.

2.3) This diversion order is required in order to implement a planning permission in relation to planning application number S/0184/11/F (see Appendix **B**). Permission for this development was granted by South Cambridgeshire District Council on 4<sup>th</sup> April 2011. The planning permission is for erection of an office building (B1a) and light industrial (B1c) and general industrial (B2) building following demolition of existing buildings. 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.

2.4) Planning permission was granted subject to the condition that "No development that obstructs the legal line of public footpath No. 7, Horseheath shall commence until the path has been formally diverted under s. 257 of the Town and Country Planning Act 1990, to the satisfaction of the Planning Authority and Highway Authority. "

2.5) Not all of the land affected by the diversion is owned by the developer, however the other landowner has given their written consent.

2.6) 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.

2.7) The application was therefore made to Cambridgeshire County Council.

### 3.0) Site Description

3.1) The current legal line of the footpath starts on Haverhill Road at point A on the plan at Appendix A (TL 6177 4688). It runs north-east for approximately 20 metres to point B (TL 6178 4689) then turns north-west for approximately 75 metres to point E where it crosses a ditch and continues across arable fields.

3.2) The new line of the footpath would start at point A and would run around the outside of the two properties via C, D and E with a total length of approximately 105 metres.

3.3) Some relatively minor levelling and clearance work would be required to bring the footpath to an acceptable standard.

3.4) The new line of the footpath would have a width of 2 metres and would have a largely natural grassed surface. Maintenance liability for the diverted route would be broadly similar to that for the current legal route as they are of similar length (105m and 95m respectively). The two are difficult to compare as the current legal route is obstructed.

3.5) It may be possible to include a section of the adjacent arable field into the diversion so that the footpath runs from point D to G via point F rather than point E. This does not form part of the application but would be preferred by the County Council's rights of way officer. This option is discussed below.

### 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 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. The County Council as highway authority will undertake the certification.

5.0) Grounds for diversion of Public Footpath No 7, Horseheath

5.1) The proposed development includes a new office building which would be constructed on the legal line of the existing public 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 will provide an alternative footpath

- The new footpath will be provided in accordance with the Highway Authority's policy for public footpaths. The applicants and landowners have agreed to undertake the necessary works at their expense.
- The rights of statutory undertakers will not be affected.
- The requirements of Section 257(2) are therefore satisfied.

## 6.0) Consultations

6.1) The Local Ramblers Association, the British Horse Society, Horseheath Parish Council, Local County and District 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 Document **E**):

- The local Ramblers Association had no objection to the diversion
- Openreach and Anglian Water indicated that they had no objection to the proposed diversion

6.2) The Service Director: Infrastructure Management and Operations, Cambridgeshire County Council made the following comments:

“I have considered the proposed diversion of footpath no.7 and give my consent, on behalf of the Highways Authority and the Surveying Authority, for the diversion order to proceed, subject to the new path being certified by the relevant Rights of Way officer, noting the County Council's criteria and the future maintenance liability have been considered”

6.3) No other responses were received.

## 7.0) Discussion

7.1) The proposed diversion is relatively minor in nature and would move the footpath by a few metres to a parallel line. As well as allowing development to take place this would resolve a long standing problem of obstruction of the legal line of this path.

7.2) The proposed diversion would introduce a dogleg into the path between D and E and would require the footbridge to be moved onto the legal line of the path. The dogleg would make future maintenance of the diverted footpath slightly more difficult. The County Council's rights of way officer would prefer the footbridge to remain in its current location and for the path to be diverted in the adjacent field to allow this, so that the path ran directly between D and G via point F rather than point E. This would require the consent of the adjacent landowner which was not included with the application.

7.3) The applicant would prefer the diversion to go ahead on the line applied for to avoid delays, but would not object to a diversion via point F.

7.3) The adjacent field is in the process of being sold and it is understood that the current and future landowners would not object to the diversion of a short section of the path in the arable field, but did not want this to interfere with the sale of the land. It is expected that the sale will be finalised within a week or two from the date of writing this report.

7.4) It may be possible to obtain the consent of the adjacent landowner before a diversion order can be made and this would be preferred by the County Council's rights of way officer. However this is not certain and it would be unreasonable to allow this to delay the making of a diversion order. The proposed diversion would meet the requirements of the relevant legislation in either case.

8.0) Recommendations

8.1) It is recommended that an order is made under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.7, Horseheath, from A-B-E to A-C-D-E, as described in this report, and shown on the plan at Appendix A, to enable the development proposed in planning application S/0184/11/F to take place. The width of the diverted route would be 2 metres.

8.2) It is further recommended that if it is possible to gain the landowners consent to divert the footpath from the line A-B-E-G to the line A-C-D-F-G without delaying a diversion order then this should be done rather than the diversion mentioned in the previous paragraph.

**LIST OF DOCUMENTS**

<b>A</b>	Map showing proposed diversion
<b>B</b>	Copy of planning application No. S/0184/11/F
<b>C</b>	Copy of diversion order application
<b>D</b>	Copy of Memorandum of Agreement between the District Council and Cambridgeshire County Council
<b>E</b>	Copies of consultation responses