

Planning Committee

8th July 2021

Report to:
Planning Committee

Director Approving Submission of the report:
Director of Transport and Highways

Ward(s) affected: Bablake

Title:
Town and Country Planning Act 1990 Section 257
Proposed Diversion of Public Footpath, M241 (part), Parish of Allesley City of
Coventry Formally in the County of Warwickshire

Is this a key decision?
No

Executive Summary:

The report outlines the investigations to divert part of a public footpath at Pickford Green, Allesley, City of Coventry. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward following an application that has been submitted by Countryside Access Management Ltd, on behalf of Piper Homes, the owner of the land crossed by the path.

The report makes a recommendation based on that information, for a decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

The Applicant has agreed to defray all expenses associated with the Order.

Recommendations:

That Planning Committee are recommended to:

- (1) Authorise the City Solicitor to make the necessary Diversion Order for all of the Public Footpath defined in this report, at Pickford Green, Allesley, City of Coventry pursuant to Section 257 of the Town and Country Planning Act 1990 on the grounds

that the City Council is satisfied that it is necessary to do so to enable development to go ahead.

- (2) Authorise the Public Notice of the making of the Order and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- (3) Endorse that in the event that objections be received to the making of the Order that cannot be resolved, then the matter be forwarded to the Secretary of State for determination and Coventry City Council be responsible for the conduct of any hearing or public inquiry.

List of Appendices included:

Appendix A – Plan of Proposed Order
Appendix B – Plan of Proposal with Development
Appendix C – Town and Country Planning Act 1990 Section 257.

Other useful background papers:

None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Report title: Town and Country Planning Act 1990 Section 257
Proposed Diversion of Public Footpath M241, Pickford Green, Allesley, City of Coventry.

1. Context (or background)

- 1.1 To seek authority for the City Solicitor to make an order for the permanent diversion of the Public Footpath (as shown on the plan at Appendix A).
- 1.2 The Council received an application for a permanent diversion of part of this public footpath. The path is recorded on the Definitive Map and Statement held by the City of Coventry.
- 1.3 In accordance with Section 257 of the Town and Country Planning Act 1990 (as amended):
 - “(1A) Subject to section 259, a competent authority may by order authorise the stopping up or diversion in England of any footpath, bridleway or restricted byway if they are satisfied that—
 - an application for planning permission in respect of development has been made under Part 3, and
 - (b) if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.”
- 1.4 Thus the Council, as the Local Planning Authority, can make an Order diverting a footpath if it is satisfied that an application for planning permission has been made and that if the application were granted it would be necessary to authorise the diversion (in this case) in order to enable the development to be carried out.
- 1.5 It is considered that it is necessary to divert the public footpath as illustrated on the plan at Appendix A to allow for the development to proceed, following planning committees decision on 11th February 2021 to grant planning permission subject to conditions and the completion of a s106 Agreement to secure the contributions listed in the report.
- 1.6 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 1.4 above.
- 1.7 In the event of objections to the Order being received and not resolved, the matter would be referred to the Secretary of State for determination and the Council would be responsible for the conduct of any hearing or public inquiry.

2. Options considered and recommended proposal

- 2.1 An application has been received from Countryside Access Management Ltd, on behalf of Piper Homes Ltd requesting that the Council make an Order under Section

257 of the Town and Country Planning Act 1990 to divert all of the part of the Public Footpath forming the application. The land crossed by the path to be diverted is currently owned by Piper Homes Ltd.

- 2.2 The path affected is shown on the plan at Appendix A as a solid black line, running from point A to B for 261 metres. It currently crosses agricultural land running in a roughly south easterly direction from a commencement point on Pickford Green Lane approximately 60 metres north of the junction between Pickford Green Lane and Pickford Grange Lane.

It is deemed necessary to divert the path due to the planned development which will obstruct the current path at various locations and the footprint of several of the new properties would obstruct the alignment of the public footpath. Furthermore, the current line of the path would pass through the gardens of several other properties as well as running along the main estate spine road for much of its length. This is illustrated on the plan at Appendix B, the current line of the path affected is shown as a solid black line (line **A-B**) and the proposed route as a dashed black line (line **C – D –E – B**).

- 2.3 The proposed route can be seen on both plans as a dashed black line and follows a more southerly route skirting the development along the alignment C-D-E-B and mainly crossing public open space parallel to residential access roads. The path will be two metres wide and will be provided with a hard bound surface and be approximately 280 metres in length. There will be no stiles, gates or other structures and where it meets Pickford Green Lane it will do so through a gap.
- 2.4 The proposed diversion would be in the interests of the landowner (the developer) to enable development to lawfully go ahead. Additionally, by routing the proposed diversion of the path to terminate at the junction of Pickford Green Lane and Pickford Grange Lane it is hoped that it will provide greater public utility by avoiding the need to walk along Pickford Green Lane from the current termination point of the footpath and provide a more direct link to onward travel along either lane and a more direct connection to Public Footpath M226 further along Pickford Grange Lane.
- 2.5 Whilst the development is being constructed and until the diversion has been physically installed and the legal process concluded the current alignment will be closed for the safety of the public using a Temporary Closure Order under the provisions of the Road Traffic Act 1984 s14. Whilst the closure is in place a temporary diversion will be installed by the developers which will roughly follow the proposed diversion route but on a more southerly alignment close to the development site boundary. The temporary diversion will be 2 metres wide, protected from the live development site by temporary fencing and will have a stoned surface wherever the ground conditions are not sufficiently dry.

Reasons

Whether the diversion of the footpath meets the legal tests.

- 2.6 It is considered that the proposed diversion is necessary to allow the development to proceed.

The extent of the loss and inconvenience likely to arise either to members of the public generally, or to persons whose properties adjoin, or are near the existing public right of way as a result of the diversion of the footpath.

- 2.7 The public will not be inconvenienced by the diversion of the footpath as the proposal will follow roughly the same route and offer similar views over agricultural land in the direction away from the new development. There will be no effects on any other residential properties.

3. Results of Consultations Undertaken.

- 3.1 The Council conducted a pre-Order consultation. As part of the consultation statutory undertakers and statutory consultees were consulted. Responses to consultations were received from the Ramblers Association and the Open Spaces Society; neither organisation made any representations or objected to the proposal. Of the statutory undertakers Cable and Wireless and Cadent Gas have responded and they have no objections. No other representations have been received.

4. Timetable for implementing this decision

- a. The Order will be made as soon as practicable. After the Order is made there will be a statutory consultation period of not less than 28 days.
- b. Should objections to the Order be received that cannot be resolved it can take more than six months before the matter is determined by the Secretary of State.

6. Comments from Executive Director of Resources

6.1 Financial implications

If the recommendation is approved, there will be no costs to the Council as the applicant has committed to defraying all costs.

6.2 Legal implications

None

7. Other implications

7.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

N/A

7.2 How is risk being managed

N/A.

7.3 What is the impact on the organisation?

N/A

7.4 Equalities / EIA

Consideration has been given to the City Council's Rights of Way Improvement Plan in considering this application and preparing this report. Thus the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property and transport considerations. An assessment in relation to the Equalities Act 2010 has been carried out and it is considered that the new path will be easier to use than the current alignment. As stated above no structures are required to be installed on the new alignment. There are no impacts in relation to equalities /EIA to take into account.

7.5 Implications for (or impact on) the environment

none

7.6 Implications for partner organisations?

none

Report author(s):

Name and job title: Alexander Le Marinel, Public Rights of Way Officer

Directorate: Place

Tel and email contact: 02476 972471

Alexander.lemarinel@coventry.gov.uk

Enquiries **should** be directed to the above person.

Contributor/approver name	Title	Directorate or organisation	Date doc sent out	Date response received or approved
Contributors:				
Colin Knight	Director (Transport and Highways)	Place	21/06/2021	27/06/2021
John Seddon	Head of Traffic and Innovation	Place	21/06/2021	19/07/2021
Carolyn Sinclair	Governance Services Officer	Place	21/06/2021	23/06/2021
Rob Back	Head of Planning	Place	21/06/2021	
Other members				
Names of approvers for submission: (officers and members)				
Finance: Graham Clark	Lead Accountant	Place	21/06/2021	23/06/2021
Legal: Clara Thomson	Legal	Place	21/06/2021	22/06/2021
Other members: Cllr Hetheron	Cabinet Member (City Services)		21/06/2021	

This report is published on the council's website:

www.coventry.gov.uk/meetings

Appendices

Appendix A

Plan of proposed diversion Order.

Appendix B

Plan of proposed diversion with the development plan overlaid.

Appendix C

Coventry City Council may make a Diversion Order under Section 257 of Town and Country Planning Act 1990:

S257 Footpaths, bridleways and restricted byways affected by development: orders by other authorities.

(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 section 293A, or

(b) by a government department.

(1A) 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—

(a) an application for planning permission in respect of development has been made under Part 3, and

(b) if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.

(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.

(3) An order may be made under this section authorising the stopping up or diversion of a footpath, bridleway or restricted byway which is temporarily stopped up or diverted under any other enactment.

(4) In this section “competent authority” means—

(a) in the case of development authorised by a planning permission, the local planning authority who granted the permission or, in the case of a permission granted by the Secretary of State or by the Welsh Ministers, who would have had power to grant it;

(b) in the case of development carried out by a government department, the local planning authority who would have had power to grant planning permission on an application in respect of the development in question if such an application had fallen to be made.

(c) in the case of development in respect of which an application for planning permission has been made under Part 3, the local planning authority to whom the application has been made or, in the case of an application made to the Secretary of State under section 62A or to the Welsh Ministers under section 62D, 62F, 62M or 62O, the local planning authority to whom the application would otherwise have been made.

S259 Confirmation of orders made by other authorities.

(1) An order made under section 257 or 258 shall not take effect unless confirmed by the appropriate national authority or unless confirmed, as an unopposed order, by the authority who made it.

(1A) An order under section 257(1A) may not be confirmed unless the appropriate national authority or (as the case may be) the authority is satisfied—

(a) that planning permission in respect of the development has been granted, and

(b) it is necessary to authorise the stopping up or diversion in order to enable the development to be carried out in accordance with the permission.

(2) The appropriate national authority shall not confirm any order under section 257(1) or 258 unless satisfied as to every matter as to which the authority making the order are required under section 257 or, as the case may be, section 258 to be satisfied.

(3) The time specified—

(a) in an order under section 257 as the time from which a footpath, bridleway or restricted byway is to be stopped up or diverted; or

(b) in an order under section 258 as the time from which a right of way is to be extinguished, shall not be earlier than confirmation of the order.

(4) Schedule 14 shall have effect with respect to the confirmation of orders under section 257 or 258 and the publicity for such orders after they are confirmed.

(5) The appropriate national authority, for the purposes of this section, is —

(a) in relation to England, the Secretary of State;

(b) in relation to Wales, the Welsh Ministers.