

Planning Committee

20 July, 2023

Report to:

Planning Committee

Director Approving Submission of the report:

Director Transportation and Highways

Ward(s) affected: Bablake

Title:

**Town and Country Planning Act 1990 Section 257
Proposed Diversion of Public Footpath M249 (part) Parish of Allesley, and Public
Footpath M240 (part) Parish of Allesley, City of Coventry.**

Is this a key decision?

No

Executive Summary:

The report outlines the investigations to divert parts of two public footpaths adjacent to the A45 at Pickford Bridge, 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 Brookbanks, 6150 Knights Court, Solihull Parkway, Birmingham Business Park, Birmingham, B37 7WY in conjunction with highway developments associated with the A45 at Pickford Bridge, Allesley.

The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to divert the sections of the footpaths concerned.

In accordance with Coventry City Council's constitution any matters which change the public rights of way network must be considered by the Planning Committee.

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 Footpaths defined in this report at land adjacent to the A45 at Pickford Bridge, 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) Public Notice of the making of the Order be given 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 if 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 for the diversion of Footpath M249 (part).
Appendix B – Plan of Proposed Order for the diversion of Footpath M240 (part).
Appendix C – Town and Country Planning Act 1990 Section 257 and Section 259.

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

**Title: Town and Country Planning Act 1990 Section 257
Proposed Diversion of Public Footpath M249 (part) Parish of Allesley, and Public
Footpath M 240 (part) Parish of 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 Footpaths (as shown on the plans at Appendix A and Appendix B).
- 1.2 The Council received an application for a permanent diversion of part of these public footpaths. The paths are recorded on the Definitive Map and Statement held by the City of Coventry as footpath M249 Parish of Allesley and footpath M240 Parish of Allesley.
- 1.3 In accordance with Section 257 of the Town and Country Planning Act 1990 as amended by Section 12 of the Growth and Infrastructure Act 2013:
- “(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 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 it is necessary to do so to enable development to be carried out in accordance with a planning permission granted.
- 1.5 It is considered that it is necessary to divert the public footpaths as illustrated on the plans at Appendix A and Appendix B to allow for the development to proceed as detailed within planning reference: The development is a scheme for improvements to the A45 including new slip roads, a new roundabout and a new road over bridge and associated footways.
- 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, Coventry City Council 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 Brookbanks, 6150 Knights Court, Solihull Parkway, Birmingham Business Park, Birmingham, B37 7WY, requesting that the

Council make an Order under Section 257 of the Town and Country Planning Act 1990 to divert those parts of the Public Footpaths forming the application. The land crossed by the paths to be diverted has been acquired by the applicant.

- 2.2 The part of Footpath No M249 Allesley affected is shown on the attached plan at Appendix A as a solid black line. Footpath No M249 will be diverted between points A and B, commencing some 100 metres north of its current termination on the A45 to run in a generally easterly direction, between points A to C, shown on the plan as a thick black dashed line. It will terminate on Brick Hill Lane which is to be stopped up for through vehicular traffic where it meets the A45, thus making it a safe space for pedestrians. The proposal will be approximately 25 metres longer than the current path and will be 3 metres wide with a surface of compacted stone. All the gradients will generally be at 1 in 20 and no less than 1 in 12. From Brick Hill Lane pedestrians who choose to continue southwards may cross the A45 by means of a graded path to the new over bridge where a further graded path will descend the embankment on the south side of the A45 to make a connection with Footpath M240.
- 2.3 The part of Footpath M240 Allesley affected is shown on the attached plan at Appendix B as a solid black line. Footpath M240, currently runs in a southerly direction from its northerly termination on the A45 as shown A to B on the on Plan at Appendix B. Its northern termination point is to be moved approximately 375 metres west to the new A45 over bridge opposite the end of Brick Hill Lane, to maintain a connection with the rights of way network north of the A45 connected by footpath M249 Allesley, as described above at para 2.2. The proposal provides a significantly greater length of public footpath away from the A45, whilst also ensuring that it maintains a connection with the rest of the rights of way network north and south of the A45. From point F on the Plan at Appendix B it will initially run in a south easterly direction for approximately 500 metres, between points F, E and D on the plan. At the point where it crosses its current alignment, approximately 90 metres west of point D the proposed path will cross a new access road. This will be achieved by graded access ramps at each side, predominantly at a gradient of 1 in 20 but no greater than in 12. At point D it will then turn southwards for approximately 180 metres to point C before turning north westerly for approximately 90 metres to point B and its existing junction with the rest of the rights of way network. It is intended that the proposed diverted path will be 3 metres wide and have a surface of compacted stone.

Reasons

Whether the diversion of the footpaths meets the legal tests.

- 2.4 It is considered that the proposed diversion of parts of Footpaths M249 Allesley and M240 Allesley 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 ways as a result of the diversion of the footpaths.

- 2.5 The public will not be inconvenienced by the diversion of the footpaths as the proposal only envisages a minor deviation from the current alignment.
- 2.6 There are no other residential properties that will be affected by the diversion of the paths.

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. Of the statutory undertakers Atkins Global made representations that they have apparatus that would be affected by the proposals.
- 3.2 The Ramblers Association has made representations that the proposed alignment of Footpath M240 between points D and E appears to be squeezed between buildings and the brook on the overall site plan that is available on the council's website. The overall site plan at the moment is not fixed and is purely indicative until the internal site development has received reserved matters consent. The proposed alignment of the path will be a material factor in determining the reserved matters and it is the council's intention that the path will run within a wide green corridor, rather than be constrained between buildings or other site features. This has been relayed to the Ramblers Association which has not said that it would sustain an objection.
- 3.3 The Open Spaces Society has raised concerns that on the northern side of the A45, opposite the northern termination point of Footpath M240 at Point A on the plan the society has registered an application to modify the Definitive Map for Coventry by adding a public right of way running northwards towards Allesley. They are concerned that the proposal to move the northern termination point of Footpath M240 some 375 metres west to the new proposed A45 overbridge will break the link with this alleged right of way. The society acknowledge that because this alleged right of way is at the moment only that, an allegation, and not at the moment a recorded right of way then it cannot be taken into account by a diversion process under the provisions of Town and Country Planning Act 1990 s 257. However they expressed concern and frustration that the council has not determined their application for 19 years, thus the council has potentially lost the opportunity for further connectivity in the network with this development. The society will not sustain their concerns as an objection.
- 3.4 The applicants, Brookbank have undertaken extensive consultations with the statutory undertakers, including Atkins Global to ensure that their apparatus will be

accommodated. Atkins Global will not sustain their representations as a formal objection.

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 28 day objection period.
- b. Should objections be received that cannot be resolved it can take more than six months before the matter is determined by the Secretary of State.

5. Comments from Chief Operating Officer (Section 151 Officer) and Chief Legal Officer

5.1 Financial Implications

All costs for making the Order will be pay for by the applicant.

5.2 Legal Implications

None

6. Other Implications

6.1 How will this contribute to the Council Plan (www.coventry.gov.uk/councilplan/)?

The proposal in this report is aligned with the One Coventry Plan.

In particular, the proposals set out in section 2 are closely aligned with three delivery priorities that are described in the One Coventry Plan:

- Improving outcomes and tackling inequalities within our communities
- Improving the economic prosperity of the city and regions
- Tackling the causes and consequences of climate change.

Protecting and enhancing Coventry's Public Rights of Way network, is also aligned with the councils Transport Strategy and supports use of sustainable, active modes of travel, which improves health and well being for the community, thereby reducing health inequalities.

6.2 How is risk being managed

N/A.

6.3 What is the impact on the organisation?

N/A

6.4 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. The proposed paths will have a greater width than the current paths, have improved surfaces and will have no structures. An assessment in relation to the Equalities Act 2010 has been carried out and it is considered that there are no impacts to take into account.

6.5 Implications for (or impact on) climate change the environment

The proposals in this report are also closely aligned with the council's emerging Sustainability and Climate Change Strategy and includes actions which will directly contribute to Coventry achieving its targets to reduce greenhouse gas emissions.

6.6 Implications for partner organisations?

none

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This report is published on the council's website:

www.coventry.gov.uk/meetings

Appendices

Appendix A

Plan of proposed extent of Extinguishment Order.

Appendix C

Coventry City Council may make an Extinguishment 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.

