

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 M316 (part) Parish of Keresley, City of Coventry.

Is this a key decision?
No

Executive Summary:

The report outlines the investigations to divert part of a public footpath off Tamworth Road, Keresley, 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 Taylor Wimpey North Midlands, 2 Trinity Court, Broadlands, Wolverhampton, WV10 6UH. in conjunction with residential developments adjacent to Tamworth Road.

The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the sections of footpath 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 Footpath defined in this report, at land adjacent to Tamworth Road, Keresley, 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) Approve that 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 are 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 – 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

Report title: Town and Country Planning Act 1990 Section 257
Proposed Diversion of Public Footpath M316 (part), Keresley, 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 as footpath M316 Parish of Keresley.
- 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 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 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 footpath as illustrated on the plan at Appendix A to allow for the development to proceed as detailed within planning reference: OUT/2014/2282 Outline, RM/2019/1030 Phase 1RM/2020/2399 Phase 2.
- 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 Taylor Wimpey North Midlands, 2 Trinity Court, Broadlands, Wolverhampton, WV10 6UH requesting that the Council make an Order under Section 257 of the Town and Country Planning Act 1990 to divert parts of the Public Footpath forming the application. The land crossed by the path to be diverted has been acquired by the applicant.

2.2 The path affected is shown on the attached plan as a solid black line, running in a south westerly direction from Point A for approximately 360 metres to Point F where it terminates on Tamworth Road. The proposed diversion is shown as a thick black dashed line on the plan, running from C to D and E to H. The proposal will only make minor changes to the alignment of the path and the overall length of the path will not be changed. The proposed diversion alignment is intended to provide a route that will lie largely within a corridor of greenspace that is planned to run through the development. The path will be 3 metres wide and have a surface of compacted stone. It is intended that the path, whilst remaining as a public footpath will become a shared use path as a cycleway on a permissive basis, allowing multi-user communications within the development and onwards to Tamworth Road. As well as a proposed change of alignment to avoid the footprint of a planned residential property minor changes to the alignment are proposed that are intended to accommodate what is already the walked route which has not accurately followed the alignment of the path as shown on the Definitive Map.

Reasons

Whether the diversion of the footpath meets the legal tests.

2.3 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.

2.4 The public will not be inconvenienced by the diversion of the footpath as the proposal only envisages a minor deviation from the current alignment.

2.5 There are no other residential properties that will be affected by the diversion of the path.

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 Atkins Global have responded that 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 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 wellbeing for the community, thereby reducing health inequalities.

N/A

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 path will have a greater width than the current path, have an improved surface and will not have any 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 and 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 B

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.

