

Agenda Item 32.

Development Management Ref No N/A

No weeks on day of committee

Parish: Shinfield

Ward Shinfield South

Listed by: Scheme of Delegation

Applicant: Persimmon Homes Thames Valley.

Location: The Manor, Shinfield

Postcode N/A

Proposal: Footpath Diversion

Type N/A

PS Category: N/A

Officer: Rebecca Walkley

FOR CONSIDERATION BY REPORT PREPARED BY

Planning Committee on 9 August 2017
Public Rights of Way Manager

SUMMARY

The Council has received an application to divert part of Shinfield Footpath No.10A under section 257 of the Town and Country Planning Act 1990.

Outline planning permission with reference number O/2011/0204 for the development of the land over which the footpath crosses was granted on appeal on 8th January 2013.

The grounds for the diversion are that it is necessary to divert the footpath to enable development to be carried out in accordance with the permission.

It is recommended that the order is made.

PLANNING STATUS

Legal Framework for the Decision:

Orders for the stopping up or diversion of footpaths, bridleways or restricted byways may be made under Section 257 of the Town & Country Planning Act 1990("1990 Act") if the planning authority is satisfied that it is necessary to do so in order to enable the development to be carried out in accordance with the planning permission.

With effect from 25th June 2013, orders may be made after a planning application has been submitted but before permission has been granted.

REPRESENTATIONS

Ramblers' Association – no comments
Open Spaces Society – no comments
Shinfield Parish Council – no comments
Local Access Forum – no comments
Local Members – no comments

APPLICANT'S POINTS

The western trajectory of the footpath 10A as it runs through the site needs to be diverted to follow pedestrian footpaths provided as part of the development. The diversion is therefore clearly required to enable consented development to be built out. As such it is considered that the test embedded in s.257 is met.

POLICY/ Legislation

s.257 Town and Country Planning Act 1990
Circular 01/09 Defra

RECOMMENDATION

1. That authorisation is given to the making of an order under s257 of the 1990 Act to divert part of Footpath Shinfield 10A as shown on the plan to enable development to be carried out.
2. If no objections to the order are received or any such objections are withdrawn, that the order may be confirmed
3. If objections are received and sustained, the order may be sent to the Secretary of State for confirmation.

BACKGROUND

1. Footpath Shinfield 10A commences on Hollow Lane and runs in a south westerly direction for approximately 274m before running south easterly for 60m then south westerly again for 68m to reach St. Mary's Church on Church Lane, Shinfield. The section of the path affected by the proposed development and which is required to be diverted runs between OS grid reference 473168 and OS grid reference 472168 as shown on the plan by a solid black line between the points B-C-D-E on the plan 'Diversion Shinfield 10A'.
2. The current path between B-E-F has high board fencing either side to protect against entry to land previously owned by Reading University which was associated with National Institute for Research in Dairying. The surface of this section of the footpath is sealed tarmac and varies in width between three and six metres. The remainder of the path is a mixture of grassed areas and some loose stone. There are no barriers along the route.
3. On 8th January 2013 a Planning Inspector granted planning permission (part outline, part full permission) for a residential development comprising up to 126 dwellings, a sports pavilion, public open space, landscaping and associated works at land at The Manor, Shinfield in accordance with the terms of application, O/2011/0204 subject to the conditions set out in the Schedule of the appeal decision ("the Permission")
4. The Council is now dealing with a reserved matters application (RM/2014/2062) in respect of the Permission (as varied by VAR/2013/0602) concerning details of appearance, landscaping and layout of the site. On 16th September 2015 Committee resolved to grant planning permission subject to completion of a s106 legal agreement. The s.106 negotiations are now complete and the path will be maintained by the resident's Management Company.
5. The development to be permitted allows for the construction of a number of houses across the line of the footpath. The building of houses across the route of the existing public footpath would constitute an unlawful obstruction of the public right of way. Accordingly, a diversion of the footpath as shown on the appended plan 'Diversion Shinfield 10A' will be necessary if the development is to proceed. A condition of the planning permission as varied will be that the footpath is diverted before development of the site is commenced. The length of Shinfield 10A to be diverted is approximately 188m. The section of the route to be diverted has two

dog legs; the proposed diverted section also has two dog legs along the route and is of similar length to the current route.

6. The diverted path will be 2m wide throughout the site. It will consist of block paving and tarmac, being predominately tarmac. The path will remain publicly maintainable. However, as the specification for the surface of the proposed urban path will be to a higher standard than would ordinarily be expected in respect of a rural right of way, the Management Company has agreed to maintain the new path surface and to indemnify the Council in respect of any claims arising as a consequence of any failure to maintain in the future. The Landowner owns land over which the current path runs and the proposed diversion will run.
7. Shinfield Parish Council, the Ramblers and the Open Spaces Society have been consulted and have made no objection to the proposed diversion. The Local Access Forum has also been consulted and has no objection to the diversion. They have asked that the footpath be signed. Local Members have been consulted and have no objections to the diversion.
8. Schedule 14 of the 1990 Act requires the Council to give notice if it intends to confirm the diversion order. If there are no subsisting objections the Council may proceed to confirm the order. Otherwise the order can only be confirmed by the Secretary of State who may decide to hold a Public Inquiry. The diversion order can only also be confirmed when planning permission is granted.
9. The following policy is relevant to this application: *Rights of Way Improvement Plan 2009* (Statement of Action Policy SOA3) Improve accessibility and quality of life: 'to identify ways to improve access on public rights of way for those with visual or mobility impairments'. The length of the footpath within the application site will be accessible for pushchair and wheelchair users.
10. The purpose of the diversion is to alter the definitive line of the path so that it enables development to take place. Whilst this is sufficient to satisfy the requirements of s257 such that the order may be made, consideration has also been given in the diversion proposal to the impact that the diversion would have on the amenity and convenience of the path. The current route runs through a disused building site and is boarded up for most of the length of the path, making it feel enclosed. Within the new development the path will have an open feel, will not be enclosed by high board fencing and the surface treatment will be to a higher specification than the existing route.
11. The difference in length between the length of path to be diverted and the alternative is less than 2 metres which is a negligible amount to inconvenience users of the path.
12. Guidance under s.7.8 of Rights of Way circular 01/09 states that routes should not be diverted on to estate roads. However, the section of this right of way to be diverted onto an estate road between B-C-F is currently enclosed and unattractive to walkers. The diverted route will have a more open aspect making it more convenient and enjoyable for walkers.
13. The merits of the planning application are not under consideration in this process.

SUMMARY

14. Officers are of the opinion that the proposed diversion satisfies the criteria required by section 257 of the Town & Country Planning Act 1990 in that it will be necessary to divert the footpath to enable development to be carried out in accordance with the proposed planning permission.

CONCLUSION

Officers are of the opinion that the proposed diversion satisfies the criteria required under section 257 of the Town & Country Planning Act 1990 and that it is necessary for the Council to make the order in that:

- 1) The proposed diversion is necessary to enable development to be carried out in accordance with planning permission that has been granted.
- 2) In general the proposed routes offer a more open and safer route for walkers

CONTACT DETAILS

Service	Telephone	Email
Green Infrastructure Service	0118 974 6295 07823 533 910	Publicrightsofway@wokingham.gov.uk