

Agenda Item 36.

Application Number	Expiry Date	Parish	Ward
N/A		Wokingham	Norreys;

Applicant	Bellway Homes Ltd
Site Address	London Road, Wokingham
Proposal	Diversion Order FP Wokingham 16
Type	N/A
PS Category	N/A
Officer	Andrew Fletcher
Reason for determination by committee	Scheme of delegation

FOR CONSIDERATION BY	Planning Committee on 11 th September 2019
REPORT PREPARED BY	Assistant Director – Delivery & Infrastructure

SUMMARY
<p>The Council has received an application to divert part of Wokingham Footpath No.16 under section 119 Highways Act (1980).</p> <p>The grounds for the making of the diversion order are part of the line of the path should be diverted in the interests of the owner of land crossed by the path and of the public.</p> <p>It is recommended that the order is made.</p>

PLANNING STATUS
<p>Major Development Location</p> <p>Legal Framework for the Decision: Orders for the stopping up or diversion of footpaths, bridleways or restricted byways may be made under section 119 of the Highways Act (1980), if the highways authority is satisfied that it is necessary to do so in the interests of the owner of the land owner and the public.</p> <p>Defra Rights of way Circular 01/09 is also relevant</p>

RECOMMENDATION
<p>That the committee authorise the DIVERSION ORDER:</p> <ol style="list-style-type: none"> 1. That authorisation is given to the making of an order under s.119 Highways Act 1980 Act to divert part of Footpath Wokingham 16 as shown on the plan no. 1, in the interests of the public and of the landowner; 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 If no objections to the order are received or any such objections are withdrawn, that the order may be confirmed; 3.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.

PLANNING HISTORY

Outline planning permission with reference number O/2014/2435 for the development of the land over which the footpath crosses was granted on 20th March 2015.

A Reserved Matters application number 153247 pursuant to the Outline permission was approved on 25/07/2016. This established details for matters of access, landscaping, scale and appearance for 300 residential dwellings, up to 800 square metres of restaurant /public house (use class A3 and A4), public open space and landscaping, allotments, acoustic mitigation, surface water drainage, foul water pumping stations, land reserved for park and ride and a Suitable Alternative Natural Greenspaces (SANGs). A second Reserved Matters application (173082), which made a number of minor changes to the approved plans (substituting house types on 26 plots) was approved on 19/01/2018.

CONSULTATION RESPONSES

Ramblers' Association – no objection
Open Spaces Society – no comments
Wokingham Town Council – no comments
Local Access Forum – no objection
Local Members – no comments

APPLICANTS POINTS

Small sections of footpath Wokingham 16 need to be diverted to allow development (car parking spaces) to take place in accordance with the approved Reserved Matters layout. At the south east boundary of the site, the footpath is to be diverted away from a constructed noise bund, on to a route which will also be used by cyclists. As such it is considered that the test embedded in requirements of s.119 is met (that the new route is as substantially convenient to the public and in the interests of the landowner and/ or the public.)

BACKGROUND

1. Footpath Wokingham 16 commences at the end of Wainwright Close and runs in a north easterly direction for 250m then in a south easterly direction for 180m ending adjacent to the Coppid Beech roundabout on the A329 at Amen Corner.
2. The section of the path affected by the proposed development and which is required to be diverted is shown by a solid black line between the points A-E on the plan no.1.
3. The path between A-C was originally a grassed unsealed path over a field, however with the new development underway there are a number of estate roads and dwellings under construction as well as the Northern Distributor Road. The path C-D-E runs along the top of a bund adjacent to the A329. However, the Definitive Line is a parallel path at the base of the bund a few metres south west of the used line. The line of the path from Wainwright Close to point E is currently subject to a Traffic Regulation Order during development and therefore this section is closed to the public. There is no defined width on the ground (or the Definitive Statement) of section A-C. However C-D-E has tarmacadam path. There are no barriers along the route.

4. Reserved Matters applications 153247 (25/07/2016) and 173082 (19/01/2018) (both pursuant to Outline planning permission O/2014/2435) have established an approved layout for the site – detail of access, landscaping, scale and appearance.
5. The approved development allows for the construction of a number of car parking spaces across the line of the footpath. An estate road will also cross the line of the path and the diversion order would allow for realignment for a pedestrian crossing point. Development 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 no.1 will be necessary for the development and therefore in the interest of the landowner.
6. The constructed sound bund would interfere with the line of the used path. However, this is not the definitive line but could potentially carry public rights. It makes sense to divert the definitive line to the base of the bund where a cycleway is to be constructed to create one single highway. This would mean that the public would not be walking adjacent to the noise bund but several metres away making it more convenient for users.
7. The length of Wokingham 16 to be diverted is approximately 360m between points A-E. The A-B section of the route to be diverted has no dog legs; the proposed diverted section A-F-G-H-B has two dog legs along the route and is approximately 18m longer than the current route. The B-C-D-E section of the route to be diverted has one dog leg; the proposed diverted section B-J-K-E-L has no dog legs and is approximately 5m longer. The new route will therefore be substantially as convenient to the public, meeting the test in s.119.
8. The diverted path will be approximately 2m wide throughout the site with standard hard surfacing. It is a mixture of materials including block paving in part but predominantly tarmac. The path will remain publicly maintainable. The specification for the surface of the proposed urban path will be to a higher standard than would ordinarily be expected. Maintenance of the footpath will be the responsibility of the Authority as the route will be publicly maintainable.
9. Wokingham Town Council, the Ramblers and the Open Spaces Society have been consulted and have made no objections to the proposed diversion. The Local Access Forum has also been consulted and has no objection to the diversion. Local Members have been consulted and have no objections to the diversion.
10. 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.
11. 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.
12. The purpose of the diversion is to alter the definitive line of the path to provide an improved path for users and to enable the development to go ahead and to be more

convenient to users. The test under s.119 of the Highways Act (1980) is whether the new route is as substantially convenient to the public and in the interests of the landowner and/ or the public. The current route crosses an open field, the ground is uneven underfoot. Within the new development the path will have the usual features of an urban path. However, it will be more accessible to users due to the higher specification surfacing. Also, part of the route will be accessible to cyclists. Therefore the route will be more convenient to the public.

13. The difference in length between the length of path to be diverted and the proposed alternative is approximately 23 metres. However, it is considered that any perceived disadvantage as a consequence of the additional length will be outweighed by the improved surface and accessibility, overall the right of way is improved by the development and subsequent diversion.

14. Guidance under s.7.8 of Rights of Way circular 01/09 states that where possible routes should not be diverted on to estate roads. Part of the diverted route, A-F-G-H-B will be alongside and crossing an estate road but this would be inevitable given the proximity of the new development to the existing footpath. However, the diverted route will have improved surfacing making it more convenient for walkers.

15. The merits of the planning permission are not under consideration in this process.

CONCLUSION

Officers are of the opinion that the proposed diversion satisfies the criteria required under section 119 of the Highways Act (1980) and that it is expedient for the Council to make the order in that:

- 1) It is in the interests of the owner of the land and of the public;
- 2) In general the proposed routes will be substantially as convenient to the public.

It is recommended that the order is made.