

# FOR PUBLICATION

## AGENDA ITEM

### Diversion of Public Rights of Way (Bridleway and footpaths) at Peak Resort (Ecodome site) Sheffield Road, Chesterfield.

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<b>MEETING:</b>	PLANNING COMMITTEE
<b>DATE:</b>	30th October 2017
<b>REPORT BY:</b>	DEVELOPMENT MANAGEMENT & CONSERVATION MANAGER
<b>WARD:</b>	Old Whittington

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#### **1.0 REASON FOR THE REPORT**

- 1.1 To consider works undertaken in relation to the Stopping Up Order which closes and diverts the bridleway and footpaths crossing the Peak Resort site and the creation of new routes on the site perimeter
- 1.2 To consider the need for a further Diversion Order.

#### **2.0 PLANNING BACKGROUND**

- 2.1 Outline planning approval was granted on 17<sup>th</sup> August 1989 for the development of the 280 acre Peak Resort site for a major leisure venue under code CHE/0389/0210. This included a single domed structure containing hotel together with indoor and outdoor related leisure and educational facilities centred on a reconfigured golf course and lake together with 250 holiday lodges on the upper part of the site.

- 2.2 A subsequent Reserved Matters permission was made for phase 1 of the scheme under code CHE/0892/0496 and which was not determined until 1<sup>st</sup> July 2008. This resulted in the reduction in the mass of the building with a series of interlinked domed structures allowing for a phased building of the project. The permission reserved further detail for subsequent approval and the scheme therefore remains valid since the original condition on the outline permission allowed the scheme to be begun before the expiry of two years from the date of approval of the last of the reserved matters to be approved. The scheme and the permission has now been implemented.
- 2.3 A number of formal changes were made to the scheme over the years with amendments to the conditions in 2005 under code CHE/0301/0164 and which resulted in a S106 agreement dated 10<sup>th</sup> August 2005 concerning highway matters, travel planning, ecology management and Community Liaison. An alternative access to the site was also considered and agreed under code CHE/09/00075/FUL on 12<sup>th</sup> November 2009 and this resulted in the access to the site being created from a new roundabout at the junction of the A61 slip road with Sheffield Road.
- 2.4 In 2016 a further revision to the phase 1 component of the scheme was agreed and which proposed an arrival gateway building set in advance of an Aspire Hotel linked to a University building via a Union building all linked with a colonnade overlooking a lake and amphitheatre and with a first phase car park to the north.
- 2.5 The scheme was always intended to be a secured and fenced facility and it was envisaged that the footpaths and bridle route crossing the site would require diversion to the site perimeter into a new route. The permission to amend the scheme granted in 2005 specifically proposed diversion of all routes crossing the site to the perimeter of the site. Conditions of the permission sought full details of the enclosure of the site and the full details of the new footpath and bridle route.

### **3.0 THE DIVERSION ORDER**

- 3.1 On 16<sup>th</sup> December 2014 the Council made a Stopping Up and Diversion Order which resulted in a number of Public Rights of Way across and within the site being diverted to the site perimeter. These were FP38, FP40, FP41, FP43, FP44, FP45, FP47, FP178 and BR39. The Order plan is attached at Appendix A. There were also a considerable number of other 'desire line' paths which criss crossed the site at various locations.
- 3.2 Bridle Route 39 diagonally crossed the site from the south east corner of the site and connecting to Bridle Route 51 which runs to the north west towards Ouzle Bank. The route was well used by horse riders, walkers and cyclists but was in poor condition being largely churned up and thick mud for much of its length. Bridle Route 51 beyond the Peak Resort site was no different. Other footpath routes on the site were largely narrow, up to a metre wide trodden woodland paths and which were also generally in poor condition.
- 3.3 The scheme proposed the creation of a new circulatory route comprising of new bridle path, existing forestry track and new footpath. The new bridle path links into the bridle path 51 at the top north west corner of the site and runs around the northern perimeter of the site down to the former golf club house where it links to Sheffield Road providing an access opportunity from Unstone. There is also a new car park and facility for horse box parking at this location and which is accessed via the former golf club entrance. The new bridle route continues along the eastern boundary of the site along the Drone riverside running parallel to Sheffield Road all the way to the south east corner of the site where it connects to Sheffield Road and bridle route 39 and subsequently to the track 38 along the bypass side. The existing forestry track 38 remains unchanged providing an opportunity to connect to the south west corner of the site at which point a new footpath cuts up through the steep sloping woodland along the western perimeter of the site and around to its connection to bridle path 51, thereby providing the complete circuit.

- 3.4 The new length of bridle path was shown as 2075 metres in length compared with the existing bridle route of 1265 metres. The existing definitive footpaths on the site extend to a length of 5605 metres and this was proposed to be reduced to 2125 metres.
- 3.5 The Order set out the standards for new routes and referred to the bridle path standard comprising of a 3.0 metres width with 0.3 metre margins and an additional 1.0 metres minimum soft landscaped margin both sides. It was to be finished with a Toptrec or equivalent material laid on an appropriate subbase. The footpath route would be 1.8 metre in width with a Toptrec or equivalent material surface. All the routes would be provided with way marking signage.
- 3.6 The Order was the subject of required local publicity and consultation and which resulted in one outstanding unresolved objection from Birch Hall Farm. This meant that the decision on the Order had to be referred to the Secretary of State for examination. A hearing was held on 10<sup>th</sup> November 2015 and which resulted in the issue of a confirmation of the Order with minor modification in a decision dated 15<sup>th</sup> December 2015.

#### **4.0 ASSOCIATED WORKS AND PROGRESS**

- 4.1 SCRIF funding of £2.8m had been agreed to implement the creation of a new access to the site via an associated s278 agreement together with the footpath and bridle path diversions and the fencing of the site as a way of facilitating the development of the site. Detailed landscaping plans for the perimeter route were agreed together with the fencing detail around the site perimeter. This detail included incorporated badger gates, ditches etc.
- 4.2 The land owner has completed the new bridle path and footpath routes and the fencing of the site however gates have been provided in the fencing to allow access to the existing footpaths which cross the site pending their closure at which point the gates would be closed and locked. A photographic presentation of the route around the site will be shown to planning committee.

- 4.3 The County Council has agreed a fully detailed layout for the site access and which is now the subject of a signed s278 agreement. Work has started on site. The County Council has also imposed a Temporary Diversion Order of bridle route 39 adjacent to the bypass slip road to allow for the roundabout construction works to proceed unhindered.

## **5.0 PROCEDURE**

- 5.1 On completion of the works referred to in the Stopping Up and Diversion Order it is the role of the Order making authority to certify that the works have been satisfactorily completed. On certification, there is a requirement to notify the Ordnance Survey and Derbyshire County so that the definitive maps can be changed to reflect the new routes. Derbyshire County Council would from that point take over the responsibility for maintenance and public liability for the new routes. The opportunity however for Derbyshire County Council to challenge the certification arises if they consider the works have not been carried out in accord with the Order. There is also an opportunity for any other party to seek a judicial review of any decision which is taken regarding certification.

## **6.0 CONSIDERATIONS**

### **Certification**

- 6.1 The land owner has implemented the new bridle path and footpath route works as shown in the photographic presentation of the route and considers the works are complete. The routes are currently restricted by temporary barriers and not available for public use until they are certified as being completed however public access is still being obtained. The land owner is wanting the Order to become operational as soon as possible as they are wanting to let contracts for development of the site and which are currently limited by the presence of definitive rights of way which cross the site.
- 6.2 It is only possible to certify that the works have been completed in their entirety rather than in respect of a part of the Order scheme.

6.3 Officers are satisfied that the works undertaken are appropriate and acceptable however three issues arise which require further consideration.

- The footpath route through the woodland between points R and T on the Order plan has not been provided with a Toptrec or equivalent surface;
- The footpath route through the woodland is less than 1.8 metres in width in some locations;
- The bridle path route linking to Sheffield Road between point Z to Y has yet to be provided.

6.4 Bullet point 3 is dealt with in more detail below in connection with the need to seek a further Diversion Order in connection with the construction of the new access roundabout.

6.5 Bullet points 1 and 2 concern the same section of footpath which cuts up the steep sloping hillside through ancient woodland and along the crop woodland edge. Notwithstanding the land owners original intention and specification to provide a Toptrec surface (a 100% recycled semi bound material using aggregate products screened from road planings, concrete and brick) it was decided to retain the route as a more natural woodland walk with a softer bark chipping, forest floor surface and which retained trees wherever possible. It has meant however that in isolated locations through the steepest section that the width of the path is less than 1.8 metres however for the majority of the section the route is far more than this width. To create a 1.8 metre width would involve the felling of more trees and creation of a more engineered solution.

6.6 In response the County Council has expressed concern that such a route without a Toptrec surface would add to the maintenance liability which ultimately would be the responsibility of the County Council and there was a concern that the County Council may well object to any certification of the route by the Borough Council.

6.7 At Paragraph 10 of the decision letter the Inspector described the new footpath routes as follows:

*The footpath routes would be 1.8 metres in width with a 0.3 metre margin on both sides and finished with a Toptrec or equivalent material surface.*

The inspector also says in paragraph 11:

*The new footpaths would have a superior surface and increased width and would maintain the connections to all the routes which run to and from the site. The footpath would allow for a complete circuit of the site to be made.....*

6.8 It is considered that the bark chipping surface provided is a superior surface to the previous surfacing of footpaths within the site and that the width of the path is appropriate for its woodland location. Provision of a widened route where necessary would clearly require tree felling and would be detrimental to the character of the woodland and the walk through it. This would be at odds with the enjoyment potential for the user. The routes which run away from the site and which are connected into the new route are narrow muddy paths and far less superior than what has been provided on the site by the land owner. It would however not be correct to say that the bark chippings are “equivalent” to Toptrec as bark chippings are loose whereas Toptrec is a semi bound material. With hindsight it is considered that a Toptrec surface through the woodland would not actually be appropriate in the circumstances given the steep slope and twisting route and the inevitable encouragement of unlawful use of the footpath route by users other than walkers (eg: cycle and horse use). This would be difficult to manage and control given the isolation of this part of the site. A cyclist for example would undoubtedly travel very quickly down a Toptrec surfaced path which would be at odds with the safety of any walkers on the route.

6.9 Representatives of local walking organisations, including the Ramblers Association, Peak and Northern and the Dronfield and Unstone footpaths Society have walked the route and raise no significant issues with the new footpath.

- 6.10 The Borough Council has sought counsel's opinion on this matter.
- 6.11 In counsel's opinion, the requirement in Article 2 of the Order, that the Council be reasonably satisfied that the provided paths and bridleways are as provided for in Part 2 of the Order, provides the Council with a sensible measure of operational discretion. While the existing bark chipping surfacing cannot be said to be equivalent to a Toptrec-like bound surface, the western section is but one of seven proposed new paths and bridleways. It is only this part of the network which is proposed to have a different surface than that specified in the Order and, on the face of it, that is for sensible reasons. The discretion can therefore be exercised with minimum risk.
- 6.12 Counsel, after considering all the issues, concludes that a challenge to the exercise of the discretion would be both expensive and disproportionate action in relation to what appears to be a relatively minor operational issue in the context of the Peak Resort development in general or the proposed paths and bridleways envisaged under the Order in particular. In any event, in his view, the prospects of such action would be questionable in light of the express discretionary element contained in Article 2 discussed above. Counsel advice is that the Council take note of the small risk of challenge but proceed with the certification of the Order.
- 6.13 Further detailed conversations with the County Council at an Executive level has since confirmed that whilst they remain concerned regarding future maintenance they are unlikely to contest a certification of the Order.

### **Diversion of BR39**

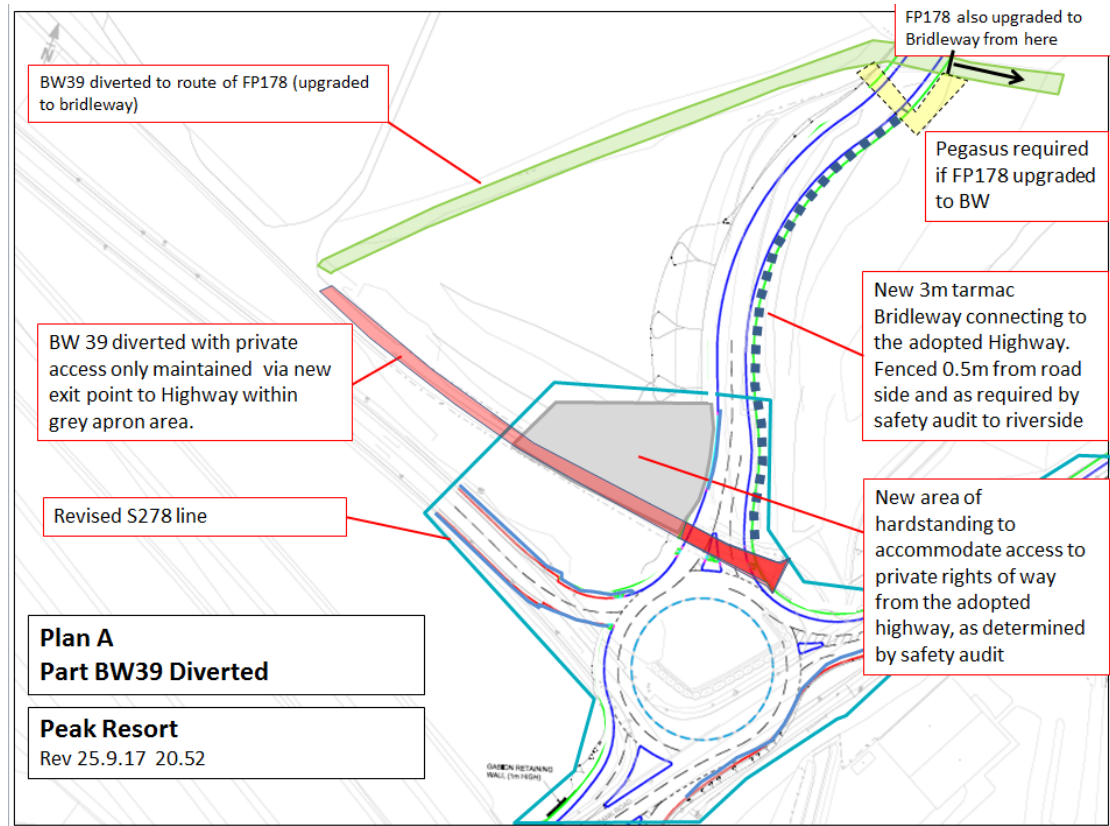
- 6.14 The Order was based on an indicative understanding of the roundabout location on Sheffield Road and how proposed routes achieved a circulatory and safe access. The issue with safety for horse riders was considered by the inspector in her decision on this matter. At the time the scheme promoted a bridle route along the riverside and around to the new roundabout on Sheffield Road with a crossing to the



existing bridle route 39 and the track alongside the a61 bypass close to the roundabout junction radii. An underpass beneath the site access was proposed by the land owner. The inspector referred to the underpass proposal but that would not be appropriate for horse riders and so there was a conflict if riders needed to join bridle route 39 and the track. The inspector was however satisfied that a safe crossing could be provided and she referred to TA 57/87. The inspector commented that negotiating a busy roundabout would be more difficult and is “not a manoeuvre to be promoted”. Since the inspectors decision, the land owner has promoted a “Pegasus” crossing of the access route into the site in lieu of the underpass. This would be positioned away from the roundabout and enable horse riders to safely cross the new access and ride from the riverside route onto bridle route 39 and the track alongside the bypass.

- 6.15 Discussions have continued with DCC regarding the s278 agreement in respect of the roundabout construction and now that the agreement has been signed they have issued a temporary closure of part of bridle route 39 which will be in place until the end of April 2018. This will allow for the construction of the roundabout without having to facilitate the public access to the network at this point. Users in the meantime would link along footpath 178 through to Sheffield Road opposite Mallory Close.
- 6.16 In processing the s278 agreement it became clear that on completion of the roundabout works the temporary closure of BR39 will cease and would reopen along its original alignment. This would be to provide a bridle route access directly onto a roundabout junction radii which would not be safe. It is clear that a further minor diversion of route 39 at the new roundabout end will be required to facilitate a safe connection to the highway after the roundabout construction (see diagram below).
- 6.17 A solution has now been promoted by the land owner (as shown below) and which has given the County Council some comfort that a solution will be secured prior to the end of the Temporary closure period. At the time of writing this report the land owner is preparing an application for the diversion,

and has undertaking to pay the Council's costs of processing the application up to a specified cap.



6.18 The diagram shows that a section of BR39 linking to Sheffield Road will be closed and diverted onto an upgraded footpath 178 to bridle path standards. This will include the Pegasus crossing of the new access and linking into the riverside bridle route. A new bridle route will then connect back to the Sheffield Road alongside the new access as a 3 metre wide tarmac route separated from the access road by fencing and 0.5 metre margin. The former route of BR39 will be retained only in so far as the route of the forestry track for logging access and the intention is that its junction with the new access road will be adjusted to allow an appropriate and safe access position. It will be necessary for the new bridle route connection back to Sheffield Road to incorporate safeguarding measures which comply with TA 57/87 – Roadside Features.

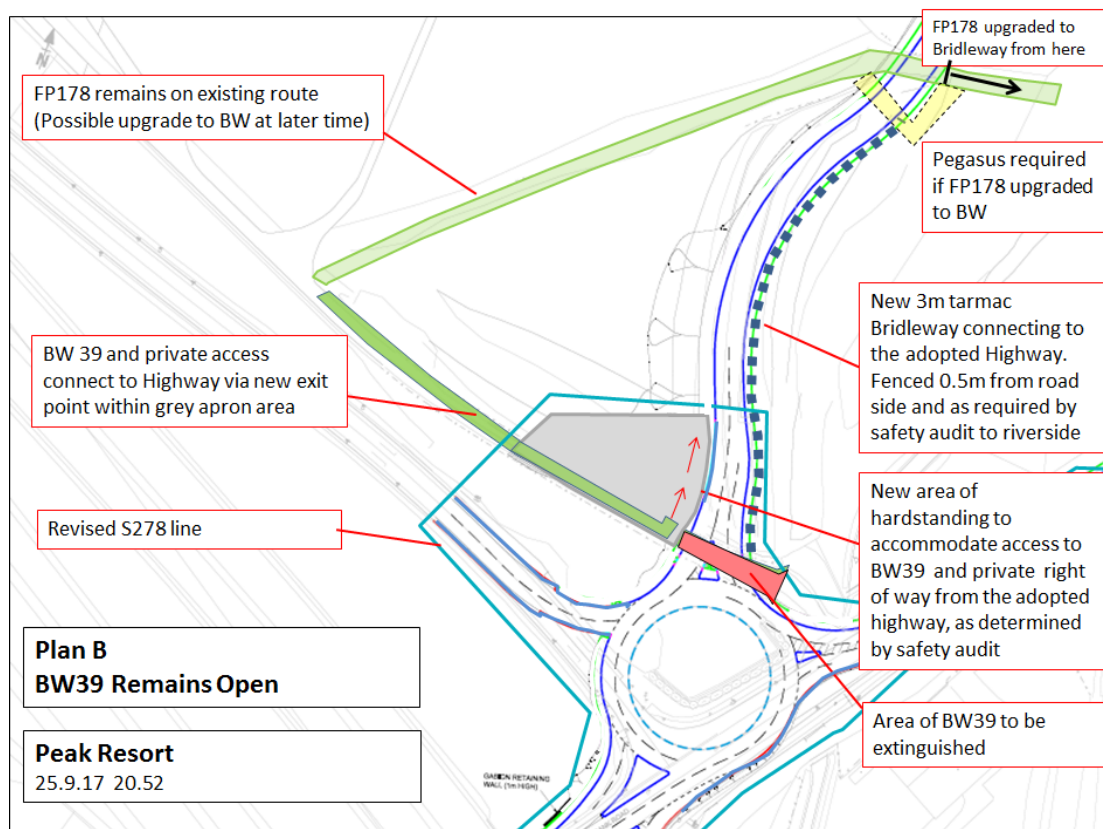
6.19 The merits of a planning permission should not be questioned when considering whether to make an Order, nor should an order be made purely on the grounds that planning

permission has been granted. Whilst planning permission has been granted for a development and the access arrangement this does not mean that the public right of way will automatically be diverted however there must be good reasons to justify a decision not to make an order. The disadvantages or loss likely to arise as a result of the diversion of the route to members of the public generally or to persons whose properties adjoin or are near the existing route should be weighed against the advantages of the proposed Order.

- 6.20 In this case the diversion route enables the implementation of a significant new access to a development of importance to the Borough and region delivering considerable investment, employment and regenerative benefits. It is clear that the position of BR39 would result in an unsafe arrangement for users emerging directly onto the new roundabout radii. The test is to consider the impact of the diversion route on public enjoyment of the route as a whole and whether the new route will be substantially less convenient to the public.
- 6.21 It is clear that the diversion is necessary in the interest of public safety and in this respect is a more suitable, superior route when compared with the existing route. The new route provides an opportunity to link to Sheffield Road to the same point as the existing route position and whilst the new route will be a little less convenient for users, in the scale of the overall network being provided, is a relatively minor change and no less convenient to potential users. The diversion route maintains connections to all routes which run to or from the site, therefore maintaining continuity and the route would be detailed to achieve as safe and direct route as possible providing an enhanced multi user circuit opportunity. In proportionate terms the new route is no less convenient, desirable or commodious than the existing.
- 6.22 The procedure involves the Council making a Diversion Order which is given a full 4 weeks publicity and consultation process involving press advert, site notices and consultation with affected groups and organisations and interested parties. Any representations received have to be taken into consideration in determining the outcome of the diversion or

closure order and the Council is not able to confirm such an order if there are outstanding objections. In such circumstances there is usually a referral to the Secretary of State who will make the decision by the written representation method, a hearing or a full inquiry depending on the responses received.

6.23 In the event that the diversion route cannot be resolved prior to the completion of the roundabout works and the existing route of BR39 has to be reinstated the land owner has provided an intermediate solution whereby bridle route 39 has to track back up the access road to a safe crossing point as shown in the following diagram however this option (B) is not the preferred option and one which is not being pursued by the Council in this case.



## **7.0 RECOMENDATION**

- 7.1 That the 2015 Stopping Up Order be certified as being satisfactorily provided;
- 7.2 That BR39 be diverted as described in this report, subject to the precise route being delegated to officers, and the required full publicity and consultation exercise and that any unresolved objections received to the proposed Order be considered by Planning Sub Committee and referred to the Secretary of State for a decision.