

## FOR PUBLICATION

### Diversion of Public Rights of Way (footpaths) at Loundsley Green estate, Chesterfield.

**MEETING:** PLANNING COMMITTEE

**DATE:** 20<sup>th</sup> November 2017

**REPORT BY:** DEVELOPMENT MANAGEMENT &  
CONSERVATION MANAGER

**WARD:** Loundsley Green and Linacre

---

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

- 1.1 To consider routes of definitive footpaths in and around the Loundsley Green area which were affected by development of the estate and to consider the need for formal Diversion Orders.

#### **2.0 PLANNING BACKGROUND**

- 2.1 In the 1950s the area of Chesterfield, now known as Holme Hall and Loundsley Green, was primarily farmland. It was crossed by numerous definitive footpath rights of way which linked into the footpath and bridleway network in the local area. The planning records show that the affected routes were the subject of a temporary stopping Up Order in the late 1950s in connection with a scheme to open cast the land at the Folly House site prior to a residential redevelopment however on completion of the opencast operation the routes were reinstated along their original lines.
- 2.2 What followed was a major housing scheme by the Chesterfield Corporation as a new housing estate was required to provide for rehoused families relocating to the area as part of the new relocation of the Postmaster Generals department to the town (AGD). The outline planning permission for housing development and roads infrastructure was granted under code CHE/860/19 on 4<sup>th</sup>

November 1060 and various detailed schemes for the housing estate followed through the early 1960s.

- 2.3 The Holme Hall estate came along at a later date and was developed largely through the 1970s and 80s
- 2.4 The detail which is available on the planning record is not complete but it clearly shows that footpath routes crossing the land were affected by the new development. There appears however to be no reference to such in any letter or report and there is no correspondence which suggests that a formal diversion or closure of such routes was pursued or even considered.

### **3.0 THE ISSUE**

- 3.1 No 3 Southdown Avenue has recently been sold on the open market and a Ms Gittins has acquired the property. As part of the search process it has been revealed that definitive footpath 63 passes through the house on its original alignment. Whilst the sale proceeded and Ms Gittins now owns the property, she has sought a solution to the issues arising, via Councillor Wall, such that the matter is not raised in the future when the property is again placed on the market. Concerns are expressed regarding financial implications, property values and time delays associated with the uncertainties which may arise.
- 3.2 It seems very odd that this is the first time that this issue has been raised considering how long the development has been in place and the paths obstructed. Correspondence with the County Council confirms that the matter should have been dealt with at the planning stage so it may be appropriate for CBC to deal with the whole of the affected footpath sections. They say a resolution can be pursued by either DCC or CBC however if DCC were to pursue this there is a charge which would be typically £2000.00.
- 3.3 An assessment of the routes of the definitive footpaths and the housing which has been built in Loundsley Green and Holme Hall suggests that a considerable number of properties are affected and clearly the matter, which should

have been dealt with at the time in the 1960s now needs formally resolving.

- 3.4 The following is a list of 104 properties directly affected by the routes of definitive footpaths which pass through dwellings and gardens. Technically these dwellings represent illegal obstructions however on a pragmatic basis there has been no necessity to enforce the law. It is also worth noting that whilst the majority are residential properties which were dealt with through the planning process by the Borough Council at the time, there is also a school which obstructs footpath 63 and which was a County Matter for planning purposes and which was dealt with by DCC.

Loundsley Green FP63:

32, 34, 36 Quantock Way  
16, 18, 20, 22, 24, 11, 13, 15, 17 Blackdown Avenue  
34, 36, 38, 45 Cleveland Way  
1, 3, 5, 7 Southdown Avenue  
21, 23, 32, 34, 36, 38 Pennine Way  
2, 1, 3 Gower Crescent

Holme Hall FP63:

Holme Hall Primary school  
14, 15, 16, 17, 18, 19, 22, 23, 24, 25 Foston Drive

Loundsley Green FP66:

1 Sedgemoor Close  
16, 19, 21, 23, 25, 27, 29, 31 Grampian Crescent  
1, 2, 3, 4 Glencoe Way  
125 Cuttholme Road

Holme Hall FP66:

6, 8, 11 Carsington Close  
2 Taddington Road  
7, 9, 43, 56, 58 Holme Hall Crescent  
3 Tissington Close  
1, 3, 5, 7, 9, 11, 13, 15, 17, 19 Sudbury Close

Holme Hall FP60:

4 Kidsley Close  
165, 167 Linacre Road  
4 Brushfield Road

2, 4, 6, 11 Repton Close

Loundsley Green FP60:

10 – 18 Mercaston Close (9x flats)

Holme Hall FP165:

32, 34, 36, 38, 40 Horsley Close

24, 26 Weston Close

6 Repton Close

Holme Hall FP166:

17 Brushfield Road

2, 4, 6 Repton Close

Holme Hall FP167:

12, Brushfield Road

27, 29, 31, 33 Elkstone Road

## **4.0 PROCEDURE**

- 4.1 In normal circumstances s257 of the Planning Act is used to divert a footpath which is affected by development proposals however the legislation clearly states that there is no power under s257 to make or confirm a diversion order when the development concerned has already been carried out. This legislation cannot therefore be used so the procedure available will involve s118 and s119 of the Highways Act where either a Public Path Extinguishment Order or a Public Path Diversion Order can be made.
- 4.2 Under the legislation an application form would need to be completed and be accompanied by a 1/2500 scale plan showing the definitive and proposed diversion routes and any routes to be extinguished. It is also necessary to obtain the full written agreement from all affected landowners and to supply title of ownership of the land crossed by the existing and any proposed routes. A Public Path Diversion Order cannot alter a point of termination of the path if that point is not on a highway, or a highway connected with it, and which is substantially less convenient to the public.

- 4.3 The process also involves publicising an Order in a local newspaper and on site allowing 28 days for representations or objections to be made. If no objections or representations are received or any received have been withdrawn, the Order can be confirmed followed by posting a notice of confirmation on site and in a local newspaper. Following a minimum period of 42 days allowed for procedural challenge to the High Court from date of confirmation the definitive map is amended to show changes and the County Council and ordnance survey are informed.
- 4.4 If objections to an order are received, they have to be considered including the prospect of amendment of the proposals. If objections are not withdrawn then the order must be referred to the Secretary of State for determination after which the Borough Council loses all jurisdiction and timing over the process. The Secretary of State would appoint an independent inspector to consider a written representation procedure, a hearing or a full Public Inquiry.
- 4.5 It is necessary also to consider the provisions with regard to the payment of any compensation which may be necessary.

## **5.0 CONSIDERATIONS**

- 5.1 The legal test in relation to a Public Path Diversion Order under s119 Highways Act 1980 requires that the Council is satisfied that the diversion is in the interests of the owner, lessee or occupier of land crossed by the path, or in the interests of the public and that it is expedient that the line of the path, or part of that line, should be diverted.
- 5.2 For an Extinguishment Order under s118 the legal test is whether the Authority is satisfied that the path is not needed for public use.
- 5.3 Where routes are diverted the new route should be substantially as convenient as the original route. New routes should not unreasonably lengthen the path other than where it is in the interests of an overall improvement to the local network. Any new route should avoid introducing unnecessary “dog legs” into the path, or introduce substantially increased walking distance. It should retain or

improve a connection with other public rights of way to reduce the distance travelled along metalled carriageways. Where paths are being diverted for development purposes, the new routes should not follow estate roads/existing roads as this would effectively amount to an extinguishment of the path.

- 5.4 In this case there is clearly a need and an opportunity to undertake minor diversions and extinguishments as shown on the plans attached to this report and as described below.

### FP63

The eastern part of FP 63 from where it crosses Loundsley Green Road to Pennine Way should be extinguished. The plan at appendix C shows that the logical diversion of the route and the most direct route is onto existing public highway and it is the case therefore that this part of FP63 becomes irrelevant (point I to J).

From Pennine Way progressing to the east however the route crosses the recreation ground and enters via an existing metalled path running from the junction of Gower Crescent with Pennine Way to the south of 1 Gower Crescent. This is the well established footpath route into the recreation ground and is no less convenient or commodious than the definitive route slightly further to the north. The opportunity can be taken to undertake the minor diversion of a small section of FP63 for the reasons explained above (point J to K).

To the west from Loundsley Green Road the definitive route of FP 63 crosses open space and then directly through the middle of Holme Hall Primary school. The issue of the route should have been considered and dealt with by Derbyshire County Council at the time they granted planning permission for the development of the new school. The plan at appendix B shows that the route requires diversion to the paths which are used to the east of the primary school and which pass the school entrance. This route is a well established footpath route around the school and is no less convenient or commodious than the definitive route (point C to D). The opportunity can be taken to undertake the minor diversion of a small section of FP63 for the reasons explained above.

### FP66

The southern part of this route from where it crosses Loundsley Green Road should be extinguished. The plan at appendix A shows that the logical diversion of the route and the most direct route is to the west onto Grampian Crescent and Glencoe Way and beyond to the Ashgate Road roundabout. It is the case therefore that FP66 becomes irrelevant because this part of the route would be on the existing highway (point A to B).

The northern part of the route between Loundsley Green Road and Linacre Road requires a number of short diversions to footpath connections built into the estate as shown on appendix B. The diversion route maintains connections to all routes which run to or from the site, therefore maintaining continuity and the route achieves as safe and direct route as possible. In proportionate terms the new route is no less convenient, desirable or commodious than the existing (points E to F and G to H).

The opportunity can be taken to undertake the minor diversion of a small section of FP66 for the reasons explained above.

### FP60, FP165, FP166 and FP167

FP60 runs from Wardgate Way in a north direction to its junction with FP165/FP166 to the north. FP165, FP166 and FP167 run from a none definitive footpath linking between the cul de sac heads of Weston Close and Horsley Close to the south and west through to Elkstone Road. All these routes are no longer of relevance since the diversions would be onto existing highways as shown on the plan at appendix D. The public highway route, in proportionate terms, is no less convenient, desirable or commodious than the existing routes and it is appropriate therefore to extinguish these routes (points L to O; O to P; O to Q and Q to R).

- 5.5 The disadvantages or loss likely to arise as a result of a diversion of routes or extinguishment 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. In this case the definitive routes have not been available to walk for over 50 years and surprisingly no one has contested this. It appears there would be significant advantages to the property owners

affected by the existing definitive routes with no disadvantage to any other party as anyone will continue to be able to walk along existing routes as they have done over the last 5 decades

- 5.6 Whilst there appears to be an opportunity and good reason to pursue a resolution of this matter, the committee will need to be aware that it brings with it considerable resource issues in the officer time needed to satisfactorily pursue the matter to conclusion including the cost of establishing title ownership of 104 individual properties. It is the case that Derbyshire County Council charge a minimum of £2000 to process a simple Public Path Diversion Order. It is considered that further conversations should take place with DCC to exploring sharing the responsibility to resolve this matter especially since DCC did also not deal with the diversion of the path affected by Holme Hall Primary School

## 6.0 **RECOMENDATION**

- 6.1 That the opportunity for a joint CBC and DCC approach should be pursued to resolve the Diversion and Extinguishment issues referred to in the report involving:
1. under s119 of the Highways Act 1980 FP 63, 66 be diverted as shown on the plans appended to the report and 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.
  2. under s118 of the Highways Act 1980 FP 60, 63, 66, 165, 166 and 167 be extinguished as shown on the plans appended to the report and 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.