

FOR PUBLICATION

AGENDA ITEM

Diversion of Public Rights of Way at Markham Vale Chesterfield.

MEETING:	PLANNING COMMITTEE
DATE:	3 rd April 2023
REPORT BY:	DEVELOPMENT MANAGEMENT & CONSERVATION MANAGER
WARD:	Lowgates and Woodthorpe
Plot No:	2/2404

1.0 REASON FOR THE REPORT

- 1.1 To seek authority for Chesterfield Borough Council (CBC) to discharge its functions in regard to the proposed footpath diversion to Bolsover District Council (BDC) who will then consider a Diversion Order affecting the routes of Footpaths Staveley FP29 and Bolsover FP34, as affected by the Markham Vale expansion proposal considered under planning applications CHE/21/00554/OUT for CBC and 21/00424/OUT for BDC, pursuant to section 257 of the Town and Country Planning Act 1990.

2.0 BACKGROUND

- 2.1 At the planning committee meeting of the 12th December 2022 Members resolved to grant planning permission subject to conditions and the signing of a S106 agreement for: Outline

planning for erection of warehouse units (Class B2/B8) up to 68,000 sq. m gross, with ancillary office accommodation; construction of new access road; provision of service yards and internal vehicle circulation and parking areas; erection of covered cycle parking areas, pump house and sprinkler tank, gate houses and perimeter fencing; associated drainage works, site levelling and landscaping; and realignment of existing public right of way.

- 2.2 As yet the S106 remains outstanding and therefore permission has not yet been granted. As noted above the planning application included the construction of two large warehouse units and the scheme necessitated the diversion of Footpaths Staveley FP 29 and Bolsover FP34 which cross the site and which would need to be the subject of a formal diversion order.
- 2.3 The routes of the footpaths were considered in detail through the above mentioned planning application where it was concluded in regard to the footpath that: “It is clear from the comments above that the changes to the route of the footpath will result in a more circuitous footpath route through the site due to the need to divert around the buildings, and this is a negative of the scheme. However, the route itself is intended to be an attractive tree lined route along the water course, it will also be a surfaced route rather than walking across the centre of the field, and the existing hazards will be addressed. Therefore, there is considered to be sufficient mitigation and enhancement of the footpath route arising from the proposal sufficient to ensure the diversion is appropriate. The comment of Peak and Northern Footpaths is noted and there will be the right to make objections under the statutory process for footpath diversions under S257 of the Town and Country Planning Act.”

3.0 THE PROPOSED DIVERSION ROUTES

- 3.1 The route which would be affected by the development is the line straight across the site from the edge of the M1 crossing to the access point onto the Clowne Branch Greenway. The existing route and the proposed diversion are shown on the attached plans.
- 3.2 As yet the formal process for consultation and notification of the diversion has not occurred as permission for the development has not yet been granted. This report is merely for the authorisation for the procedures to consider the diversions to be undertaken by BDC on behalf of CBC as the route covers both Local Planning Authority areas. BDC would then take the lead in the consideration of the case.

4.0 EFFECT OF PROPOSED DIVERSION

- 4.1 The general effect of the proposed diversions would be to discontinue the present sections of footways and to replace them with the new sections as shown on the attached plan.

5.0 PROCEDURES

- 5.1 Under the Council's constitution the consideration of matters relating to diversion of footpaths and other rights of way is a non-executive function delegated to Planning Committee.
- 5.2 Consideration of whether to pursue diversion of relevant footpaths and rights of way (in the event that detailed planning permission is granted for the development) is a separate matter from consideration of the application itself. Consideration is not prejudiced by the Committee having already considered the diversion application, and members would not have to declare interests if they were at the Committee which considered the diversion.

5.3 The Government's Rights of Way Circular (1/09)¹ says:

7.15 The local planning authority should not question the merits of planning permission when considering whether to make or confirm an order, but nor should they make an order purely on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order.

5.4 Applications to divert footpaths to enable development to take place are dealt with by this Council under procedures under the Town and Country Planning Act 1990 and under the Highways Act 1980.

5.5 Under the the Local Government Act 1972 an authority has power to discharge their functions to any other local authority. Therefore, in this case given the cross boundary nature of the matter it is considered reasonable for one authority to seek the diversion order in line with the Town and Country Planning Act 1990.

5.6 The order would be confirmed, or not confirmed, in due course depending on consideration of objections made to the order (if any). If members approve the discharge of this function to BDC then the full and due process would be carried out by BDC in consultation with CBC.

6.0 DESCRIPTION OF DIVERSION ROUTES

- 6.1 The new route would be a fully surfaced path meandering between the proposed buildings rather than cutting straight across the fields in a diagonal line. This will be a more circuitous route through the buildings but a more commodious route due to the proposed surrounding landscaping proposed adjacent to the water course but also due to the existing path being difficult to use in some areas in particular; over the Oxcroft Branch Line where the stepped access is broken and at the start of the route adjacent to the M1 where there is a very narrow section adjacent to a ditch.
- 6.2 Currently Bolsover FP34 merges seamlessly route A to B into Staveley FP29 route B to C on plan which cuts a diagonal route across the undulating fields and over the Branch Line and onto the Greenway.
- 6.3 The new route will be A to D which is along the edge of the field to the immediate south of the Clowne Greenway. Then under the bridge of the former rail line route D to E. the route then cuts through at a lower level between the development platforms and building beginning to take the route along the landscaped water course E to F and F to G. the route then comes out from the valley to higher ground from G to H to J. The route then runs along the woodland edge to the M1 from J to K back to the crossing to the M1.

7.0 CONSIDERATIONS

- 7.1 The power to make an order depends on the Council as the local planning authority who granted planning permission being satisfied that it is expedient to divert the path.
- 7.2 The diversions described above and shown on the attached plans are required to allow the proposed development to be implemented. Various organisations will need to be consulted

through the diversion process and any comments made will need to be taken into consideration in deciding the most appropriate course of action. The Order making procedure requires the further consultation prior to the Order being made all of which would be undertaken in liaison with BDC as leading Local Authority in this matter.

7.3 The merits of the 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 is recommended to be granted this does not mean that the public rights 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.

7.4 In this case the diversion routes are clearly necessary to allow for the development. The routes provide a more suitable and superior solution to what is currently available which is very difficult to use in some areas. The new routes will have an increased width and improved and appropriate surface. The new routes join into existing routes which are unaffected and are no less commodious to the users compared with what currently exists. Whilst the new route would be longer than the existing it is considered that this is not excessive and this is balanced by the easier walkability of the new routes.

8.0 RECOMENDATION

8.1 Due to the cross boundary nature of footpath route and the need for one Authority to lead on this matter, it is recommended that the Council Under the Local Government Act 1972 discharge their functions for the diversion order to Bolsover

District Council who will then undertake the procedures for the consideration of the Order.

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