

FOR PUBLICATION

AGENDA ITEM

Diversion of Public Rights of Way at site off Chesterfield Road and Northmoor View, Brimington, Chesterfield (P850).

MEETING: PLANNING COMMITTEE

DATE: December 6th 2021

REPORT BY: DEVELOPMENT MANAGEMENT & CONSERVATION MANAGER

WARD: Brimington South

Plot No: 2/1903

1.0 REASON FOR THE REPORT

1.1 To seek authority for a Diversion Order affecting the routes of Footpaths Brimington FP16 and FP17 as affected by the development of 150 houses on land off Chesterfield Road and Northmoor View pursuant to section 257 of the Town and Country Planning Act 1990.

2.0 BACKGROUND

2.1 Reserved Matters planning approval was granted on 24th August 2021 for the development of 150 houses on fields off Chesterfield Road and Northmoor View, Brimington. (CHE/20/00869/REM). A previous outline permission was granted under code CHE/18/00532/OUT on 5th August 2019. The decision followed an appeal against the Councils

refusal. The permission was granted subject to conditions and a s106 legal agreement.

- 2.2 The report considered by planning committee considered the impact on two footpath routes which crossed the site including the route of Brimington FP17 which crosses the field from Northmoor View to the east to Chesterfield Road to the west. At its western end FP17 links onto Briar View. The route of Brimington FP16 also crosses the field from the northern boundary where it links from Top Pingle Close and Cotterhill Lane across to where it meets FP17 at the corner of the field to the rear of Ivy House Farm scrap yard.
- 2.3 The proposed Diversion scheme involves the diversion of Brimington FP16 (part) and Brimington FP17 (part) which cross the site and which would need to be the subject of a formal diversion order.
- 2.4 The agreed development schemes features the formation of a new access cul de sac from Chesterfield Road through where the car sales pitch formerly existed and which serves the development of the 150 dwellings proposed for the site. To facilitate the development of a number of the dwelling units (plots 11, 76, 77, 78, 79, 80, 94, 95, 96, 97, 98, 99, 100, 101 and 102) the public rights of way will need to be diverted.

3.0 THE PROPOSED DIVERSION ROUTES

- 3.1 The existing routes and the proposed diversions are shown on the attached plan.
- 3.2 The diversions are required as the present routes pass through the works required to facilitate the development of the houses and which have received planning approval.

4.0 EFFECT OF PROPOSED DIVERSION

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

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

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69304/pb13553-rowcircular1-09-091103.pdf

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 1990 Act a local planning authority has power to authorise by order the diversion of any path if it is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted.
- 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 commencement of diversion procedures a further report would therefore be submitted in due course for objections to be considered and the matter considered further. However, under delegation reference P860D the Head of Regulatory Law may confirm (with or without modifications) footpath orders which are unopposed.
- 5.7 The Council is permitted by law to recover its reasonable costs for pursuing such an order.

6.0 DESCRIPTION OF DIVERSION ROUTES

- 6.1 The new routes would be generally 3.0 metres wide and will be hard surfaced.
- 6.2 The Vistry Group is to carry out all the works as part of the agreed housing development scheme.

- 6.3 The routes will be profiled and graded to connect to existing surrounding routes and will be suitable for pedestrians and cyclists.

Brimington FP16

- 6.4 This section is shown on the attached plan as D to E.
- 6.5 Brimington FP16 cuts diagonally across the field (south west to north east) in a straight line linking the path from the Top Pingle Close estate to the north to the corner of the field opposite where it joins Brimington FP17 and onwards towards Ivy House Farm Lane to the west. The path is unsurfaced. The new route is deflected to the south east to link to the new estate cul de sac and across to FP17 along the frontage of plots 105-108 and 149-150.

Brimington FP17

- 6.6 This section is shown on the attached plan as A to B to C.
- 6.7 Brimington FP17 cuts across the field from Northmoor View to the east in a north westerly direction to the opposite corner where it joins FP16 but then onwards along the field edge to where it joins Briar View. There is a short section which continues and links Briar View through to Chesterfield Road to the north west alongside the former car sales pitch now demolished. This route would be realigned to run along the pavement alongside the new cul de sac into the site.

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 agreed

housing development to be fully carried out. Various organisations will need to be consulted through the formal process (eg Highway Authority, footpath groups, local users) and any comments made will need to be taken into consideration in deciding the most appropriate course of action.

- 7.3 In this case the diversion routes are clearly necessary to allow for the full development of the housing scheme. Compared with the field path the new routes will have an increased width and improved and appropriate surface through the new housing estate site. 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 routes may be slightly longer than the existing it is considered that this is not excessive and this is balanced by the easier walkability of the new routes. The diversion routes are laid out and designed to achieve the safety requirements which are determined as necessary alongside the new cul de sac.
- 7.4 The applicant has also applied to Derbyshire County Council for temporary diversion of these footpaths to allow development to take place. The temporary closure of the public rights of way were scheduled to start on the 1st November 2021.

8.0 RECOMENDATION

- 8.1 That the Council makes an order under Section 257 of the Town and Country Planning Act 1990 as described in this report to divert:
 - (a) the public footpath Brimington FP17 (part) which runs between Northmoor View and Chesterfield Road and

- (b) the public footpath Brimington FP16 (part) which runs between Cotterhill Lane to where it joins Brimington FP 17.
- 8.2 That officer delegation is provided to allow for adjustment of the Diversion Order where appropriate following the County Council comments as Highway Authority.

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