

FOR PUBLICATION

AGENDA ITEM

Diversion of Public Rights of Way (Bridleway and Footpaths) at Peak Resort site off Sheffield Road, Unstone, Chesterfield (P850).

MEETING:	PLANNING COMMITTEE
DATE:	December 6 th 2021
REPORT BY:	DEVELOPMENT MANAGEMENT & CONSERVATION MANAGER
WARD:	Old Whittington
Plot No:	2/1903

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 BACKGROUND

- 2.1 Outline planning approval was granted on 17th 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 1st 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 10th 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 12th 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 and reserved matter approvals were granted in Oct 2019 for the Summit scheme (CHE/19/00394/REM) and in February 2021 for the healthcare facility on the site (CHE/20/00188/REM1).

- 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.
- 2.6 On 16th 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 to provide a circulatory route. These were FP38, FP40, FP41, FP43, FP44, FP45, FP47, FP178 and BR39.
- 2.7 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.
- 2.8 The Order was the subject of required local publicity and consultation and which resulted in one outstanding unresolved objection. This meant that the decision on the Order had to be referred to the Secretary of State for examination. A hearing was held on 10th November 2015 and which resulted in the issue of a confirmation of the Order with minor modification in a decision dated 15th December 2015.

- 2.9 Works proceeded to complete the circulatory footpath and bridle routes around the site perimeter and which were generally completed in 2017.
- 2.10 Planning Committee considered a report on the works undertaken on 31st October 2017 when it was resolved that the 2015 Stopping Up Order should be certified as being satisfactorily provided however amendments to the route of BR39 as a result of changes to the scheme arising out of the s278 agreement for the new highway roundabout should be pursued with an additional diversion order, subject to the precise route being delegated to officers, and that 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 in due course. This further Diversion Order was made on 29th May 2018 and advertised, but because of further consideration of the as built alignment has not been progressed. The order will be withdrawn.

3.0 THE CURRENT POSITION

- 3.1 The existing routes as shown on the definitive map and referred to in the previously confirmed Diversion Order and the proposed diversions required to reflect the as built position are shown on the attached plan.

4.0 EFFECT OF PROPOSED DIVERSION

- 4.1 The general effect of the proposed diversions would be to update the definitive map to reflect the routes constructed on site.

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.

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

- 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 routes the subject of this report have all been constructed in accord with the specifications which have been accepted across the site and are all profiled and graded to connect to the existing surrounding routes with which they connect. All the routes are suitable for pedestrians and cyclists.
- 6.2 There are three separate sections on the Peak Resort site where further diversion is necessary
- (a) at the new roundabout site to the south east of the Peak site (as reported on 31st October 2017)
 - (b) at the entrance to the former golf club clubhouse at the north east of the Peak site
 - (c) at the north west corner of the site (North East Derbyshire area)

- 6.3 at the new roundabout site to the south east of the Peak site (as reported on 31st October 2017). This is shown on the attached plan as G to I and G to L. The route shown on the definitive plan was to link from the riverside route (Chesterfield BW207) beneath the new access road constructed into the site via a tunnel arrangement to connect to Chesterfield Footpath FP178. The proposed diversion is to reflect what has been constructed on site and which links the riverside walk (Chesterfield BW 207) to Footpath 178 via a Pegasus crossing. The diversion would also remove a section of Chesterfield BW39 between J and K which has been partly built over with the new highway roundabout and partly which is redundant.
- 6.4 at the entrance to the former golf club clubhouse at the north east of the Peak site. This is shown on the attached plan as C to D and E to F and reflects the as built positions on site to accommodate the access route into the site at this point. The as constructed route connects Chesterfield BW208 to the west to Chesterfield BW210 which links to Unstone BW68 through to Sheffield Road to the east and also to Unstone BW67 which runs to the south east alongside the river parallel with Sheffield Road.
- 6.5 at the north west corner of the site (North East Derbyshire area). This is shown on the attached plan as A to B and is a part of the circulatory path. It is constructed further to the north west into the North East Derbyshire District Council area than the route shown on the previous Diversion Order. The route runs through a treed area along a former golf course access track and is a natural route which connects seamlessly into Chesterfield BW208 to the east and west.

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 reflect the as built routes and which allow for the agreed development of the site as referred to in the various planning permissions referred to above. 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 representations have already been received from the Peak and Northern Footpaths Society commenting that the routes on site do not reflect the agreed routes on the definitive plan. This is required to be addressed in a formal manner.
- 7.3 The diversion routes are necessary to ensure the routes on site reflect the recorded definitive routes. The diversion routes are equally appropriate in terms of their standard of construction and width and which all connect into existing routes which are unaffected. The new routes are no less commodious to the users compared with what currently exists. Whilst the new route along A to B may be slightly longer than the existing it is considered that this is not excessive. The route at C to F is marginally shorter and the routes at the roundabout access to the site are more appropriate given that they avoid a tunnel arrangement beneath the access road. The diversion routes are laid out and designed to achieve the safety requirements which are determined as necessary alongside the new highway.
- 7.4 As with the previous Diversion Order it will be necessary to get authority from North East Derbyshire District Council to act on their behalf in respect of the diversion route A to B

which is located in their administrative area.

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 Chesterfield bridleway BW208 (part) which runs into NEDDC at the north west corner of the Peak Resort site and
 - (b) the Chesterfield bridleway BW208 (part) located at the former golf course entrance in the north east corner of the Peak Resort site and
 - (c) the Chesterfield bridleway BW207 (part), Chesterfield Footpath FP178 and Chesterfield bridleway BW39 (part) located at the Peak Resort site entrance at the south east corner of the site.
- 8.2 That subject to approval by North East Derbyshire District Council the part of the proposed order within that authority's area be included in the order made by this Council.
- 8.3 That the Development Management & Conservation Manager be authorised to adjust the path routes within the proposed Diversion Order as appropriate following the County Council comments as Highway Authority.
- 8.4 That the public path Order made on 29th May 2018 be withdrawn.

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