

Report of the Head of Legal Services**PROPOSED STOPPING UP OF BRINSLEY FOOTPATH NUMBER 31
LAND TO THE REAR OF BRINSLEY RECREATION GROUND,
CHURCH LANE, BRINSLEY****1. Purpose of report**

This item is brought to Committee to make a Stopping Up Order under the Town and Country Planning Act 1990 following an application received by the Council for a public path diversion order to stop up Brinsley Footpath No 31.

2. Details

The application to stop up Brinsley Footpath No 31 Brinsley Parish has been submitted by the Developer (Barrat David Wilson Homes) in order to enable residential development to take place on the land shown on plan attached at appendix 2. The stopping up order is included at appendix 1.

Planning permission was granted on 7 July 2021 (planning reference Ref:20/00641/FUL) for the construction of 115 dwellings, associated infrastructure, attenuation pond and vehicular access from Cordy Lane.

The existing footpath to be stopped up is approximately 79m in length and approximately 0.7m wide, the path is 'constructed' of stone and top soil with a grass verge either side. The existing path runs north to south east from Cordy Lane (marked between points SK4661 4946 and SK4664 4942 on the attached plan). There are no gates, steps or utilities identified along the length to be diverted. It should be noted that the existing path is little used by pedestrians and one of the aims of the diversion is to regularise the path that is taken.

If the footpath is not stopped up the existing footpath would run through plot 1 and its proposed private garden. In addition, the diversion would ensure that construction can take place in a safe manner, and that the access to the site can be built out in line with health and safety regulations.

The proposed diversion would be approximately 58m long and 2m wide and would utilise the existing trodden path running parallel to the existing path which would result in a more convenient and safe route for users.

The developer has carried out a pre Order Consultation and letters have been sent to the Rights of Way Officer at Nottinghamshire County Council, the Ramblers Association and other interested parties. There have been no objections following this initial consultation.

The Association of Chief Police Officer guidance 'Secured by Design' have advised that public footpaths should not run to the rear of dwellings as this would create an unsupervised footpath which could lead to crime and anti-social behaviour. The existing footpath is un-surfaced and of uneven ground and muddy in wet conditions and if not stopped up would cause a significant

security and privacy issue for the residents and also a health and safety issue for users of the footpath.

3. Planning Considerations

Section 257 of the Town and Country Planning Act 1990 states that a competent Authority may by Order authorise the stopping up or diversion of any footpath if they are satisfied that it is necessary to do so in order to enable development to be carried out in accordance with a planning permission. The procedure for doing so is set out in Schedule 14 of the Town and Country Planning Act 1990.

S7.15 of the Rights of Way Circular (1/09) Guidance for Local Authorities Version 2 issued by DEFRA advises that in the making of an Order for the diversion of a Public Right of Way to enable approved development:

‘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.’

S7.8 of the Rights of Way Circular (1/09) states:

‘In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estates paths through landscaped or open space areas away from vehicular traffic’.

The main planning considerations in the determination of this application are that the existing footpath would cause safety issues for users with the potential increase of anti-social behaviour and also security and privacy issues for the residents if the footpath were not stopped up.

4. Legal Considerations

Following pre-order consultations carried out by the developer, s257 of the Town and Country Planning Act 1990 gives the Council (as the local planning authority), a discretionary power to make an Order for the stopping up or diversion of a footpath which is necessary to enable development to be carried out in accordance with planning permission. On making the Order, a public

Notice describing the Order must be advertised in the press and the Order placed on deposit for public inspection. This public notice and Order map must also be placed at each end of the length of public footpath to be diverted. Owners of the land affected by the Order and various statutory consultees must be contacted and served with the Order and Notice and allowed the opportunity to make objections within 28 days from the making of the Order. If no objections are made the Order may then be recommended for confirmation as an unopposed order. The Order does not become affective until it has been confirmed. Any opposed Orders are sent to the Secretary of State for determination.

On confirmation of the Order similar steps to those outlined above must be repeated enclosing a copy of the Confirmed Order. Objectors may challenge the confirmation in the High Court within six weeks after Notice of the Confirmation is published on the grounds that the Confirmation is outside the Council's powers or that there has been a procedural defect. The Stopping Up Order does not come into effect until the Council certifies that the provisions of the Order have been complied with.

In these circumstances, a footpath Stopping Up order is necessary to allow an authorised development to be carried out. In these circumstances, a footpath diversion order is necessary to allow an authorised development to be carried out whilst ensuring the footpath is provided without any disadvantage or loss to members of the public.

Recommendation

The Committee is asked to RESOLVE that the Stopping Up Order be made.

In the event that no relevant objections are made to the proposal or that any relevant objections that are made are withdrawn then the Order be confirmed without further reference to the Committee.

Background papers

Nil.