

## Report of the Chief Executive

### **PROPOSED DIVERSION OF BEESTON FOOTPATH NUMBER 55 – WILMOT LANE, BEESTON, NOTTINGHAM**

#### 1. Purpose of report

- 1.1 This item is brought to Committee to make a Diversion 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 and divert part of Beeston footpath number 55 to allow for development to take place. The existing footpath runs through the former Myfords site on Wilmot Lane, Beeston, Nottingham.

#### 2. Details

- 2.1 Planning permission was granted on 24 May 2018 (planning reference 17/00723/FUL) for the construction of 47 dwellings, retail unit (Class A1), car parking and highway infrastructure.
- 2.2 The application to stop up part of the route of Beeston footpath number 55 and divert this footpath has been submitted in order to enable development to take place.
- 2.3 The current footpath meanders from north to south within a corridor from Wilmot Lane to the High Road. The diversion is to take pedestrians around the edge of the proposed convenience store car park to re-join the route.
- 2.4 The section of the existing footpath to be diverted is approximately 45m in length and runs north to south along Wilmot Lane, the section of path to be diverted runs between points A and B on the attached plan, the diversion is to take pedestrians around the edge of the proposed convenience store car park to re-join the existing route (grid references Point 'A' East 452538 - North 336338 and Point 'B' East 452528 – North 336365).
- 2.5 The Agent acting for the owner has confirmed that a pre-order consultation has been carried out with letters having been sent to the Rights of Way Officer at Nottinghamshire County Council, the Ramblers Association and other interested parties. The Council are informed that no objections were received.

#### 3. Planning Considerations

- 3.1 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.
- 3.2 S7.15 of the Rights of Way Circular (1/09) 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.'

3.3 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'.

3.4 The main planning considerations in the determination of this application are that the existing footpath runs through the proposed development which when built would obstruct the footpath. It is therefore necessary to create a replacement route which allows safe access and movement for walking members of the public through the site and creates an acceptable alternative route with little impact on the locality.

4. Legal Considerations

4.1 Following pre-order consultations carried out by the developer, s 275 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 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 effective until it has been confirmed. Any opposed Orders are sent to the Secretary of State for determination.

4.2 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 diversion Order does not come into effect until the Council certifies that the provisions of the Order have been complied with.

- 4.3 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.
- 4.4 A copy of the order and a plan of the proposed diversion are included at the appendix.

**Recommendation**

**The Committee is asked to RESOLVE that the public path diversion order be made.**

**Background papers**

Nil