

Highways Committee

2 September 2010

Unregistered Footpath, South Street to Fairview, West Rainton Parish

Proposed Public Path Stopping Up Order



Report of Ian Thompson, Corporate Director, Regeneration and Economic Development

1.0 Purpose of the Report

1.1 To consider an application to stop up an unregistered footpath between South Street and Fairview (North Street), West Rainton.

2.0 Background

2.1 An unregistered footpath runs from Fairview, via the allotments and No. 12a South Street, in a generally north westerly direction to North Street, West Rainton. The total length of the path is approximately 123 metres. The path is not recorded on the Definitive Map of public rights of way but there is strong evidence that public rights exist. The applicant accepts the existence of the public rights and therefore the need to make a formal application to stop them up. **Plan A** shows the full length of the path and the other public highways in the area.

2.2 The proposal is to stop up approximately 39 metres of the footpath between South Street and North Street, as shown on **Plan B**. Access from Fairview to the allotments will not be affected.

2.3 An application to stop up the footpath has been made by the owner of No 12a South Street under the provisions of Section 257 of the Town and Country Planning Act 1990 to enable development to take place in accordance with planning permission, namely access for private car parking, the construction of a retaining wall, erection of gates and associated landscaping as part of the conversion of a former retail property to residential accommodation.

2.4 Planning permission was granted by Durham County Council on 20 July 2010. **Document C**.

- 2.5 Consultations have been carried out for this proposal with the Local Members, West Rainton and Leamside Parish Council, the Ramblers', the British Horse Society and other user groups. County Councillor Woods has objected to the proposal, and the Parish Council have commented that having canvassed opinion within the village there is considerable support for the path to remain open, and also support for the stopping up. Any responses received are shown in **Document D**. A number of local residents have acted as representatives of those objecting to the stopping up and have submitted a petition asking for the path to be retained. Whilst the petition itself has been dealt with under separate procedures a representative has been given the opportunity to present their case to the Committee.
- 2.6 Previous discussions and correspondence about the path and its status have highlighted local concerns about anti-social behaviour associated with the path, and the local Police Officer supports the closure of the path for that reason. There are also differing views within the community as to the popularity and value of the path to local residents.

3.0 Legal Framework

- 3.1 The relevant statutory provision for the stopping up of a public path in order to enable development in accordance with planning permission is Section 257 of the Town and Country Planning Act 1990.
- 3.2 Development is defined in the Act as 'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land'.
- 3.3 The granting of planning permission does not constitute permission to close or divert a public right of way affected by the development
- 3.4 The Act gives discretionary authority to a Council to make a Public Path Stopping Up Order if it is satisfied that it is necessary to do so to enable development to be carried out in accordance with planning permission. It is not sufficient that the making of an Order would facilitate the carrying out of the development. The Order must be necessary in the sense that without the Order the development could not be carried out.
- 3.5 Consideration of an Order made under Section 257 cannot reconsider the merits of the development itself, as those are planning matters which have already been determined by the granting of planning permission.
- 3.6 An Order cannot be made if the development is already substantially complete.
- 3.7 An Order under Section 257 may, if the County Council is satisfied that it should do so, provide for the creation of an alternative highway as a replacement for the one to be stopped up.

- 3.8 Any disadvantages to the public arising from the closure of the path need to be weighed against the advantages to the developer in carrying out the development for which permission has been granted.

4.0 Objections

- 4.1 County Councillor Woods objects to the proposal “in support of many local residents”. Mrs Newton, on behalf of some local residents, has objected on the grounds that the path is an important short cut to the post office, bus stop, church and other community facilities, and that its closure would inconvenience residents. Mrs Newton’s comments are in **Document E**.

Response

The retention of a footpath through the development site would prevent the development proceeding in accordance with the planning permission, as there is insufficient room for a footpath without compromising the security and privacy of the proposed residential dwelling, and severely limiting the capability for off-road parking at the property. The path would cross a proposed landscaped garden and a patio, pass through a garden gate onto a private parking area then via electric security gates to North Street. There is no scope within the development site for an alternative route. It is accepted that there will be some inconvenience for some residents, and the alternative routes via adopted highways are longer.

5.0 Recommendations and reasons

- 5.1 The Committee must first be satisfied that it is necessary to stop-up the path to enable the development to take place, and if so, then consider whether any alternative route should be provided as a replacement.
- 5.2 Therefore it is **recommended** that, provided the Committee are satisfied that no alternative route is required, the Committee agrees to the making of a Stopping Up Order under the provisions of Section 257 of the Town and Country Planning Act 1990, as it is not possible for the development to proceed without the stopping-up of the path.

Background Papers

Correspondence and consultations – File 4/18/18

Appendix 1: Implications

Finance

Administrative and advertising costs to be borne by the applicant.

Staffing

Not applicable

Equality and Diversity

Not applicable

Accommodation

Not applicable

Crime and disorder

This is not contained in any of the substantive tests under Section 257 of the Town and Country Planning Act 1990.

Sustainability

Not applicable

Human rights

Not applicable

Localities and Rurality

As detailed in the report

Young people

Not applicable

Consultation

As detailed in the report

Health

Not applicable