

## Special Highways Committee

2 September 2019

### Proposed diversion of Public Bridleway No. 29 Murton Parish Town and Country Planning Act 1990 Section 257



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### Joint Report of Ian Thompson, Corporate Director of Regeneration and Local Services and Helen Lynch, Head of Legal and Democratic Services

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#### Electoral division(s) affected:

Murton

#### Purpose of the Report

1. To consider a proposal to divert a section of Public Bridleway No. 29 Murton Parish by public path order (Town and Country Planning Act 1990 Section 257) at Jade Business Park. The Council's Constitution requires the Committee to decide whether to make an Order, as the proposal has attracted objection from the Ramblers Association.
2. Full Planning permission has been granted for the development of Phase 1 of the Jade Business Park, on the site of the former Hawthorn Colliery and Hawthorn/Murton Coke Works. To enable this development to proceed in accordance with the planning permission granted, it is necessary to divert a section of Public Bridleway No. 29. Accordingly, the developer has requested the Council to make such a Diversion Order. A consultation on the proposed diversion resulted in an objection from the Ramblers Association.

#### Recommendation

3. The proposal is in accordance with the Council's policy and the statutory framework on the diversion of public rights of way.
4. It is recommended that the Committee agrees to the making of a Public Bridleway Diversion and Definitive Map Modification Order for Public Bridleway No. 29 Murton Parish, under the provisions of section 257 of the Town and Country Planning Act 1990 and

section 53(A)(2) of the Wildlife and Countryside Act 1981, and that the Corporate Director of Resources be informed accordingly.

5. The Order shall subsequently be confirmed as an unopposed Order or referred to the Secretary of State for determination in the event of objections.

## **Background**

6. The development of Jade Business Park is a major economic project in East Durham, bringing employment to the site of the former Hawthorn Colliery. The site was reclaimed after the closure of the pit in 1991.
7. Public Bridleway No. 29 Murton Parish runs in a roughly north-easterly direction across the site, commencing in South Hetton and roughly following the line of the former mineral railway. It only became a Public Right of Way in 2004 when it was legally created as part of the reclamation of the site. An extract of the Definitive Map of Public Rights of Way for County Durham is at **Appendix A**.
8. On 12 July 2019 full planning permission DM/19/01316/FPA was granted for Phase 1 of Jade Business Park, comprising 5 buildings and associated works, following a meeting of the County Planning Committee on 2 July 2019. A copy of the planning permission is at **Appendix B**.
9. An application to divert Public Bridleway No. 29 was received in May 2019. The relevant statutory provision for the diversion of a public path to enable development to be carried out in accordance with planning permission is section 257 of the Town and Country Planning Act 1990.
10. The Act gives authority to a Council to make a Public Path Diversion Order if it is satisfied that it is necessary to do so to enable development to be carried out in accordance with planning permission.
11. The existing route of Bridleway 29 would conflict with the development and the proposed diversion is the minimum necessary to enable the development to proceed, and maintains the integrity of the route, keeping walkers, cyclists and horse-riders away from the area to be developed and minimising potential interaction with vehicles. The proposed diversion will

move the Bridleway to a more southerly route around the southern edge of the development, and is shown at **Appendix C**.

12. Consultations on the proposed Diversion Order have been carried out with the Local Members, Murton Parish Council, the Ramblers' Association, the British Horse Society and other user groups. A copy of the consultation letter is at **Appendix D**.
13. An objection was received from Mr Blackburn on behalf of the Ramblers' Association. This objection is at **Appendix E**. There were no objections from the other consultees.
14. The objection is that the proposed diversion is significantly longer, and may therefore be an inconvenience to walkers.

### **Response to objection and assessment of the application**

15. It is of note that the statutory test is one of necessity to enable the development to be carried out and it is considered that this test is satisfied. Although the proposed diversion is approximately 263 metres longer than the current route it is the minimum diversion necessary. The additional distance might be significant if this was a short path which was used as the most direct route to a key location, but in the context of a recreational route that is more than 3 kilometres long between South Hetton and the A19 roundabout, and more than 2.5 kilometres between South Hetton and Murton, the additional distance is not considered to make the alternative route unsuitable.
16. An order which is made and unopposed can be confirmed by the Council. However, confirmation is discretionary; it does not automatically follow the making of an Order. Case law has established that the Council must consider the effect of the Order on those entitled to the rights which would be affected by it. In this case, for the reasons set out in paragraph 15 above, it is not considered that the diversion would result in a route which is unsuitable for the public.

### **Options**

17. Retaining the route of the Bridleway through the development site is not feasible. The size and access requirements of the various buildings are such that there is no safe way of accommodating a Public Bridleway within Phase 1 of the development. A diversion to the north of Phase 1 was considered, but would potentially need to be moved again when future phases are developed, or

would become a corridor between business and industrial units. A much bigger diversion to the south of the site was also considered, but was felt to be beyond the scope of a Diversion Order under the provisions of Section 257. The proposal is the minimum necessary to protect public access and allow the development to proceed. Accordingly, there are no other realistic options.

### **Main Implications**

18. The proposal would enable development to proceed in accordance with planning permission already granted, whilst retaining a Public Bridleway between South Hetton and Murton. If the Order is not made and subsequently confirmed, the development as currently permitted will not be able to proceed.

### **Conclusions and recommendation**

19. In conclusion, it is considered that the grounds for making and confirming an Order are satisfied. It is therefore recommended that a Diversion and Definitive Map Modification Order should be made in respect of Public Bridleway No. 29 Murton Parish, under the provisions of section 257 of the Town and Country Planning Act 1990 and section 53(A)(2) of the Wildlife and Countryside Act 1981, and subsequently either confirmed or referred to the Secretary of State for determination.

### **Process for a public path order (for information)**

Should Members resolve that a Diversion Order be made in accordance with the recommendation above, this is merely the start of the legal process. In particular, once a Diversion Order has been made, it must be publicised and anyone will have an opportunity to formally object to it. Should objections be received, the Diversion Order would have to be referred to the Secretary of State who would usually hold a Public Inquiry before making a decision upon whether or not to confirm the Diversion Order. If there are no objections, the Council can confirm the Order as unopposed.

## Attached Documents to report

<b>Document A</b>	Extract from Definitive Map of public rights of way
<b>Document B</b>	Planning permission
<b>Document C</b>	Diversion proposal plan
<b>Document D</b>	Consultation letter
<b>Document E</b>	Objection

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## Appendix 1: Implications

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<b>Finance</b>	The applicant will cover the costs associated with this proposal as described in the report
<b>Staffing</b>	Part of routine officer responsibilities
<b>Risk</b>	Low
<b>Equality and Diversity / Public Sector Equality Duty</b>	The new route of the  Public Bridleway will be as accessible as possible  for the location
<b>Accommodation</b>	None
<b>Crime and Disorder</b>	Not applicable
<b>Human Rights</b>	All those affected by the proposal will have the opportunity to submit objections and to present their case to an Inspector appointed by the Secretary of State for the Environment in the event of objection at the formal order making stage.
<b>Consultation</b>	As detailed in the report at paragraph 11
<b>Procurement</b>	None
<b>Disability Issues</b>	The proposal is the most accessible of all the options discussed in the report as described
<b>Legal Implications</b>	The Order can be contested through a statutory process so a legal challenge is unlikely to be appropriate