

Highways Committee

23 March 2012

Closure of Footpaths - St Marys Close, Bishop Auckland



Report of Terry Collins, Corporate Director, Neighbourhoods Services Councillor Bob Young, Cabinet Portfolio Holder Strategic Environment and Leisure

1.0 Purpose of the Report

- 1.1 To consider the closure of adopted footpaths at St Mary's Close, Bishop Auckland by the making of an Order under Section 257 of the Town and Country Planning Act 1990.

2.0 Background

- 2.1 St Mary's Close is a small cul de sac consisting entirely of aged persons bungalows with two adopted footpath alleyways accessing the cul de sac through the neighbouring houses and a central adopted footpath traversing the grassed area.
- 2.2 Works are planned to produce an amenity communal planted area within the central grassed area which will enhance the experience and living conditions for the residents and also provide for additional garden areas to numbers 7 & 9 Hardisty Crescent and 42 & 44 Abbey Road. These works necessitate the closure of these footpaths.
- 2.3 Planning permission was granted for a change of use from adopted footpaths to amenity garden area and residential curtilage by Durham County Council on 18 August 2011. **Document A**
- 2.4 Consultations have been carried out for this proposal with the Local Members, Dale and Valley Homes, other neighbouring properties, other stakeholders and user groups. This consultation included all directly affected properties in St Mary's Close, Abbey Road, Hardisty Crescent and Vart Road, a total of 85 properties in all, and there were no negative replies received.
- 2.5 Previous discussions and correspondence with residents in this area has highlighted the need for a central communal area where residents can enjoy the experience especially during the summer months. As a result of these discussions there is overwhelming support for the closure.

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 The granting of planning permission does not constitute permission to close or divert footpaths affected by the development.
- 3.3 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.
- 3.4 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.
- 3.5 An order cannot be made if the development is already substantially complete.
- 3.6 Any disadvantages to the public arising from the closure of the footpaths need to be weighed against the advantages arising from the carrying out of the development for which permission has been granted.

4.0 Objections

- 4.1 There has been one objection to this proposal from Miss Jo Bird of the Open Spaces Society on two grounds:
 - that the consultation was only carried out on a limited basis and a wider audience should have been canvassed
 - the closure is only to combat antisocial behaviour and the police should be encouraged to deal with this problem themselves. **Document B**

Response

The scope of the consultation exercise was substantial and included all relevant persons who could use the footpaths for access on a regular basis. Without exception they were all in favour of the closure

The closure has not been sought on the grounds that it will combat an anti social behaviour problem but merely as a requirement to enable the development to proceed. It is accepted that there will be a knock on effect on the anti social behaviour problem in this area but that has not been the overriding reason for the closure.

5.0 Recommendations and reasons

- 5.1 The Committee must first be satisfied that it is necessary to stop up the footpaths to enable the development to take place.
- 5.2 Therefore it is recommended that 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 paths.

Background papers

Plan of Closure

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Appendix 1: Implications

Finance - All funding for these works will be met by the local members Councillor J Lethbridge/Councillor J Lee

Staffing - N/A

Risk – N/A

Equality and Diversity / Public Sector Equality Duty - N/A

Accommodation - N/A

Crime and Disorder - Significantly reduce the incidence of anti social behaviour in this area

Human Rights - N/A

Consultation - Significant consultation has already been carried out by the housing provider to which there were no objections. Further statutory consultation will be undertaken as part of the legal stopping up process.

Procurement - N/A

Disability issues - N/A

Legal Implications - N/A