

Planning and Rights of Way Committee

29 June 2021

Town and Country Planning Act 1990, Section 257 Stopping up or Diversion of a Public Footpath, Bridleway or Restricted Byway

**Proposed diversion of Public Footpath 318 at land to the north of
Eastergate and north-west of Barnham**

Application No: WSCC/020/21/S257

Report by Head of Planning Services

Local Member: Councillor Trevor Bence

Electoral Division: Fontwell District: Arun

Summary

This report relates to an application under Section 257 of the Town and Country Planning Act (TCPA) 1990, which authorises the County Planning Authority to stop up or divert any footpaths, bridleways or restricted byways where they are satisfied that it is necessary to enable development to be carried out in accordance with a planning permission.

The proposal is to divert part of Public Footpath no.318 at land to the north of Eastergate and north-west of Barnham. The diversion has been proposed to enable the construction of a new section of highway of around 1.3km in length, linking the A29 (south of Eastergate Lane) with the B2233 Barnham Road (west of Downview Road). The proposed road, which would sever the footpath, is the subject of a separate but related planning application (WSCC/52/20) - see Item 4a on this agenda.

This report provides description of the site and the proposal and appraises it against the relevant legislation.

Informal (non-statutory) consultation with selected consultees has been undertaken. Although no objections have been received, the diversion of the footpath was raised in third party representations on the planning application for the proposed road. Concerns were raised about impacts on the amenity value of the footpath and the safety of an uncontrolled pedestrian crossing.

Relevant Considerations

In determining the application for the proposed diversion, the merits of the

separate but related planning permission for the new road should not be questioned. If planning permission for the new road is granted, the County Council must have good reasons to justify a decision either not to make or not to confirm the order.

In considering whether or not to make an order, and if no objections are received to confirm the order, the disadvantages or likely loss to members of the public or to property owners adjoining or near the existing PROW must be weighed against the advantages of the proposed order.

Conclusion

On balance, although the proposed diversion would result in some impact to experiential qualities of the section of the footpath affected, owing to the very enclosed nature of the existing path and given the future context of urban development planned in the locality, the proposed diversion is unlikely to be significantly less enjoyable a route than the existing definitive footpath.

The diversion would result in a slightly longer route, gentle slopes and structures required to ensure pedestrian safety associated with the introduction of a highway, but also a wider and improved surface with lighting and thus not substantially less convenient than the definitive route. The extent of the footpath affected would be relatively short, away from any residential receptors, and is required to enable the implementation of a planning application for a strategic highway development.

Overall, it is not considered there would be any disadvantages or loss to members of public or nearby properties that suggest that an order should not be made.

Recommendation

It is recommended that an order is made under S257 of the TCPA 1990 for the diversion of Public Footpath no.318.

1. Introduction

- 1.1 This report relates to an application under Section 257 of the Town and Country Planning Act (TCPA) 1990, which authorises the County Planning Authority to stop up or divert any footpaths, bridleways or restricted byways where they are satisfied that it is necessary to enable development to be carried out in accordance with a planning permission.
- 1.2 The proposal is to divert part of footpath no.318 at land to the north of Eastergate and north-west of Barnham. The diversion has been proposed to enable the construction of a new section of highway of around 1.3km in length, linking the A29 (south of Eastergate Lane) with the B2233 Barnham Road (west of Downview Road). The proposed road, which would sever the footpath, is the subject of a separate but related planning application (WSCC/52/20) - see Item 4a on this agenda.

2. Site Description and Proposal

- 2.1 The wider area, to which the planning application for a new road relates,

forms an arc shaped area of some 12 hectares principally between the A29 (Fontwell Avenue) and B2233 (Barnham Road) consisting of relatively flat land including arable fields, woodland, hedgerows, orchard and managed grassland.

- 2.2 Footpath no.318 is some 800m in length and runs north-south across this area, connecting Eastergate Lane in the north to Barnham Road in the south. At either end, the footpath passes alongside residential properties bordering the highway, with the remainder and majority of the route passing across the rural area. In general terms, the footpath forms a narrow corridor predominantly enclosed by mature trees, hedgerows and vegetation (see solid black line in **Appendix 1 – Footpath 318 and Proposed Diversion**).
- 2.3 The application proposes to divert the PROW, roughly at its mid-point between Eastergate Lane and Barnham Road involving the existing line of the footpath being extinguished for a length of some 27m in length (where it is crossed by the proposed road) and diverted between points A-H along the route (see dashed black line in Appendix 1).
- 2.4 The proposed diverted route would be a total of some 105m in length and 3m in width and include a lit pedestrian crossing, staggered barriers and a post and rail fence alongside the northern side of the proposed road. Owing to the proposed road being on a low embankment (some 1m above ground level), the diverted section of the path would include a shallow gradient on east-west sections, to ensure safe slopes for path users.

3. Relevant Planning History

- 3.1 WSCC/052/20: Construction of a single carriageway with shared cycleway / footway, roundabouts, road markings, traffic signals, bus stops, provision of hard and soft landscaping, construction of a substation building, installation of a noise barrier, and other associated works - see Item 4a on this agenda.

4. Legislative Background and Procedure

- 4.1 Section 257(1) of the Town and Country Planning Act 1990 gives Local Planning Authorities (LPA) the power to make an order to extinguish or divert public footpaths, bridleways or restricted bridleways, where they are satisfied that it is necessary in order to enable development to be carried out either (1) in accordance with a planning permission or (2) by a government department. An order under this legislation cannot be made where the development is not yet substantially completed.
- 4.2 When an application is received, informal consultation on the proposal is undertaken by the LPA before deciding whether to make an order. Consultation with the appropriate parish council, user groups and local councils helps to gauge views and identify particular concerns. It should be noted that this is not formal consultation nor is it a statutory requirement.
- 4.3 Following the informal consultation, the LPA must consider whether to make an order for the extinguishment or diversion of a PROW.
- 4.4 Before an order can be made by the LPA, it must be apparent that there is a conflict between the development and the PROW, such as an obstruction.

Although an order may be made in anticipation of a planning permission being granted, it cannot be confirmed by either the LPA or the Secretary of State until the planning permission has been granted. It should be noted that planning permission does not entitle applicants to obstruct a PROW until an order has been confirmed.

- 4.5 When an order to divert a PROW is made, the diversion must commence and terminate at some point on the definitive line of the original way so that the public can return to the original way. The LPA should also give consideration to any necessary works required to bring the new route into use.
- 4.6 If an order is made, site notices advertising details of the order are to be posted at both ends of the affected section of the PROW. Similar notices are published in at least one local newspaper and a formal consultation period of 28 days is undertaken.
- 4.7 If no objections have been received or if objections can subsequently be resolved and withdrawn, the LPA may confirm the order without modification. If there are objections that have not been withdrawn, the LPA must refer the order to the Secretary of State for a decision.
- 4.8 The Secretary of State would determine whether to confirm the order with or without modification(s) via either written representations, an informal hearing, or a Public Inquiry.
- 4.9 If confirmed, the order only amends the definitive map and statement insofar as the route of the PROW, that is, it does not alter the status of the PROW.

5. Consultations

- 5.1 Informal consultation has been undertaken with selected consultees. Formal consultation will only be undertaken once an order has been made and prior to confirmation.
- 5.2 **Arun District Council:** No comments received.
- 5.3 **Barnham and Eastergate Parish Council:** No comments received. However, concerns raised in relation to planning application WSCC/052/20 about the safety of an uncontrolled pedestrian crossing.
- 5.4 **Walberton Parish Council:** No comments received. However, endorse the concerns raised by Barnham and Eastergate Parish Council in relation to planning application WSCC/052/20.
- 5.5 **WSCC Public Rights of Way:** Support. Note that it is evident that a diversion is necessary to enable the proposed road to be constructed and the proposed diversion will provide a reasonable alternative route.
- 5.6 **Sussex Ramblers:** Support. Note it is a minor diversion in line with the recommendation of WSCC PROW and is a necessary consequent of the granting of any planning permission for the A29 realignment.
- 5.7 **Open Spaces Society:** No comments received.

- 5.8 **Sussex Sunday Walkers/Friends of the South Downs:** No comments received.
- 5.9 **Sussex Police:** No objection.
- 5.10 **Southern Water:** No objection.
- 5.11 **Councillor Trevor Bence:** No comments received.

6. Representations

- 6.1 There is no requirement for public consultation at this stage. However, it should be noted that the diversion of the footpath was raised in third party representations on the separate planning application for the proposed road. Concerns were raised about impacts on the amenity value of the footpath and the safety of an uncontrolled pedestrian crossing.

7. Relevant Considerations

- 7.1 The proposed road would sever a section of the Public Footpath no.318. For the development to be implemented in full, it would be necessary to divert the PROW, as the grant of planning permission does not entitle applicants to obstruct a PROW.
- 7.2 In determining the proposed diversion, LPA should not question the merits of a planning permission when considering whether to make or confirm an order. However, the effect of the development on the PROW is a material consideration in determining the planning application. If planning permission for a development is granted, an authority must have good reasons to justify a decision either not to make or not to confirm an order.
- 7.3 In considering whether or not to make an order, and if no objections are received to confirm the order, the disadvantages or likely loss to members of the public or to property owners adjoining or near the existing PROW, should be weighed against the advantages of the proposed order. Therefore, the following paragraphs address this balancing exercise.
- 7.4 No objections have been raised by consultees. WSCC PROW officers support the diversion noting it is evident that a diversion is necessary to enable the proposed road to be constructed and the diversion will provide a reasonable alternative route. This is echoed by the support of the Sussex Ramblers.
- 7.5 Although no objections have been received from consultees in relation to the S257 application for the proposed footpath diversion, concerns about the proposed diversion were raised in representations on planning application WSCC/052/20 (see Section 6). Therefore, if an order is made, objections may be made during formal consultation and, if they cannot be overcome, the order will need to be referred to the Secretary of State for a decision.
- 7.6 The proposed diversion would result in a relatively short length of the existing footpath (27m) being diverted via an easterly dog-leg, 105m in length, along a new path (in part shared with a cycleway) and via a pedestrian crossing across the proposed carriageway. The proposed new alignment would involve the introduction of staggered barriers and a post

and rail fence alongside the northern side of the proposed road, and include a shallow slopes on east-west sections, to ensure safe gradients to the proposed road level which is slightly elevated. The termination points of the footpath (i.e. at either end where joining with the existing highway network) would remain unchanged.

- 7.7 Given the location of the proposed diversion, in a central location of the PROW distant from residential properties, it would not be likely to result in any disadvantage to those members of the public whose properties are nearby.
- 7.8 Views and experiential qualities for footpath users would inevitably be impacted by the proposed diverted route, as result of a change in views, increase in noise, loss of a section of trees/vegetation, and the introduction of urban features and moving vehicles within the landscape. It would also be impacted by the introduction of a lit roadway crossing.
- 7.9 However, the location of the path is not in an area designated for cultural or landscape important associations, existing views from the footpath are currently generally limited to the narrow, unpaved path, being bound to the east by a hedgerow and trees, and to the west by a chain-link fence and vegetation which provide significant enclosure (see **Appendix 2 – Photo of PROW**). As result, views are not of particularly high value or sensitivity and any change in views would be limited to a short section of the footpath (i.e. views from the sections of the PROW that are not diverted would remain largely unchanged).
- 7.10 It is of further note that the site of the proposed diversion lies within an area of know future change i.e. adjacent to an area allocated for strategic housing development in the Local Plan. Although not determinative, this will inevitably impact on the future setting of the PROW, further reducing the sensitivity of the proposed diverted route to urban influences.
- 7.11 Any impacts experienced by users would be generally transient in nature, and the proposed road includes landscaping that, in time, would help soften views from the proposed diverted section of the footpath and blend with the wider landscape.
- 7.12 The proposed diversion would not affect the overall pedestrian link provided by the existing PROW, maintaining existing points of termination at either end. Although it would result in a slightly longer route of the footpath overall, and involve a highway crossing, the length of the diversion is considered limited and a pedestrian crossing with island and lighting would be provided. On that basis, it is not considered it would result in any unacceptable impact on the convenience of the footpath.
- 7.13 The diverted section of the path would be of a gradient and width and finish appropriate for a Public Footpath, and arguably an improvement in terms of accessibility and perceptual safety when compared with the existing narrow unmade path, with an increased width, level hard surface, and lighting. The proposed crossing would be designed to relevant highway specifications and safety standards.

8. Conclusions and Recommendation

- 8.1 On balance, although the proposed diversion would result in some impact to experiential qualities of the section of the footpath affected, owing to the very enclosed nature of the existing path and given the future context of urban development planned in the locality, the proposed diversion is unlikely to be significantly less enjoyable a route than the existing definitive footpath.
- 8.2 The diversion would result in a slightly longer route, gentle slopes and structures required to ensure pedestrian safety associated with the introduction of a highway, but also a wider and improved surface with lighting and thus not substantially less convenient than the definitive route. The extent of the footpath affected would be relatively short, away from any residential receptors, and is required to enable the implementation of a planning application for a strategic highway development.
- 8.3 Overall, it is not considered there would be any disadvantages or loss to members of public or nearby properties that suggest that an order should not be made.
- 8.4 Therefore, it is **recommended that** an order is made under S257 of the TCPA 1990 for the diversion of Public Footpath 318.

Factors taken into account

9. Consultations

- 9.1 See Sections 5 & 6 above.

10. Resource Implications and Value for Money

- 10.1 Not applicable.

11. Equality and Human Rights Assessment

- 11.1 The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act. Officers considered the information provided by the applicant, together with the responses from consultees and other parties, and determined that the proposal would have no material impact on individuals or identifiable groups with protected characteristics. Accordingly, no changes to the proposal are considered required to make it acceptable in this regard.
- 11.2 This application has been considered in light of statute and case law and any interference with an individual's human rights is considered to be proportionate to the aims sought to be realised.

12. Risk Management Implications

- 12.1 Section 257 of the Town and Country Planning Act (TCPA) 1990 provides for making an order to extinguish or divert public footpaths, bridleways or restricted bridleways, subject to legal tests. If this is not done, any decision could be susceptible to an application for Judicial Review.

13. Crime and Disorder Reduction Assessment

13.1 There are no implications.

14. Social Value and Sustainability Assessment

14.1 Not applicable.

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Appendices

Appendix 1 – Footpath 318 and Proposed Diversion.

Appendix 2 – Photo of PROW.

Background papers

None.