

PLANNING DEVELOPMENT CONTROL COMMITTEE

12 JANUARY 2012

PUBLIC PATH ORDER AND DEDICATION AGREEMENT – FOOTPATH 24,
BARFIELD CLOSE, WINCHESTER

REPORT OF HEAD OF LEGAL SERVICES

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RECENT REFERENCES:

PDC907 – Development Control Schedule (Item 1, Bar End Industrial Estate) – 25 August 2011

EXECUTIVE SUMMARY:

The purpose of this report is to seek authority firstly for the extinguishment of a public footpath (Footpath 24) , which passes through the site of the proposed new depot at Barfield Close, Winchester and secondly for the dedication of the proposed alternative route (which already has the benefit of planning permission) as a public footpath.

A contract for the construction of the alternative footpath has been let and the works are programed to be completed by the end of January 2012. Following completion, the alternative route will be made available for public use immediately.

RECOMMENDATIONS:

- 1 That following completion of the new alternative footpath, the Head of Legal Services be authorised to make an Order under Section 118 of the Highways Act 1980 to extinguish Footpath 24 as shown on the plan attached at

Appendix 1, and to confirm the Order as unopposed if no objections are made.

- 2 That following completion of the alternative route shown on the plan attached as Appendix 1, the alternative route be dedicated as a public footpath and the Head of Legal Services be authorised to execute the appropriate documents and enter into a dedication or other appropriate agreement with Hampshire County Council under the Highways Act 1980, to secure such dedication.

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DETAIL:

1 Introduction

- 1.1 On 13 September 2011 planning permission was granted under ref 11/00872/FUL for the redevelopment of land at Barfield Close, Winchester, including construction of an office and workshop building, store building, external oil and fuel tanks, cycle shelter and associated external areas, new boundary fences and gates, new vehicular bell-mouth access off of Barfield Close and creation of a new footpath. The site is owned by the City Council and the redevelopment is to facilitate a new depot for contractors providing the new Environmental Services contract, to replace the existing Bar End Depot. The route of an existing public footpath (Footpath 24) passes through the development site and the re-development cannot take place in its current approved form if the public footpath remains in its current location.
- 1.2 The grant of planning permission includes consent for the provision of a footpath alongside the northern perimeter of the site to provide a pedestrian link from a point further north along Barfield Close than the existing footpath. The new footpath works will include the widening of the footways adjacent to the bell mouth of the highway forming the entrance of the new pedestrian route. The footpath will link with Domum Road via a series of steps, and a ramp to provide level access for wheelchairs and pushchairs. The new footpath will be approximately 2 metres wide, alongside a 1 metre landscaped margin which will be planted with 3 new trees. A 2.2 metre high galvanised palisade security fence will form the boundary between the footpath and depot site.
- 1.3 The official route of Footpath 24, as shown on the Definitive Map held by Hampshire County Council, starts at the junction of Bar End Road and Barfield Close, before following a route running parallel to Barfield Close behind the existing Citroen garage and entering the depot site and joining Domum Road, via a set of steps (see plan at Appendix 1). In practice, much of the route has been obstructed for many years and the public generally walk along Barfield Close before entering the footpath as it crosses through the depot site.
- 1.4 Appendix 1 shows Footpath 24 as shown on the Definitive Map. Before Footpath 24 is physically and legally stopped up, it is proposed that the alternative route will be constructed and made available for public use.

Although planning permission has been granted for the redevelopment of the site, including the construction of the new footpath, the existing footpath cannot be physically closed until the footpath has been extinguished by making an Order under either s 257 of the Town and Country Planning Act 1990 or under s 118 of the Highways Act 1980.

- 1.5 Generally, a Stopping Up or Diversion Order would be made under the provisions of the Town and Country Planning Act where changes to the footpath network were required directly as a result of development for which planning permission had been granted. In this instance, however, part of the footpath is already obstructed and passes through land that is not wholly on the proposed development site. Furthermore, the necessity to extinguish part of the footpath does not arise solely as a result of the proposed redevelopment of the site. It is not feasible to only extinguish or divert just that part of the footpath that runs through the site. Therefore, the Head of Legal Services advises that the Stopping Up Order should be made under the Highways Act provisions.
- 1.6 Before making a Stopping Up Order under section 118 of the Highways Act, the Council must be satisfied that it is expedient that the path be stopped up on the ground that it is not needed for public use. When confirming an Order, the Council (or the Secretary of State where there are objections to the making of the Order) must have regard to the extent to which it appears the path would, apart from the Order, be likely to be used by the public, and to the effect which the stopping up would have as respects the land served by the path.
- 1.7 The part of the current route which is not obstructed is well used, particularly by people using the Park and Ride car park who walk along Barfield Close, before joining the footpath to Domum Road and on to the City Centre. It passes through the site of an existing industrial depot and is accessed/egressed by way of a set of steps. The existing path is not lit and can only be used by able bodied pedestrians. Although the existing site is not currently in active use, the site does benefit from an existing lawful use for industrial/storage purposes.
- 1.8 Prior to making the Stopping Up Order, the new alternative path will be constructed and made available for public use. It is recommended that it be dedicated as a public footpath so that its use by the public can take place as soon as possible. The alternative route will replace that part of the current footpath that is currently used by the public to walk between Barfield Close and Domum Road. When the new footpath is provided, it is envisaged that the public will not need to use the existing footpath. The new footpath will be an improvement in terms of its surface, lighting and accessibility whilst at the same time being no less convenient to the vast majority of users.

2 Consultations

- 2.1 The applicant (the Head of Estates, on behalf of the City Council) carried out consultations during the planning application process. Initially, objections were

received from a number of residents and users of the footpath expressing concerns over pedestrian safety in relation to the new footpath, and general concerns over loss of the existing public footpath with its more open aspects (with the new footpath being perceived as being more too enclosed and too long). Objections were also received from Hampshire County Council Rights of Way section and the Ramblers Association.

- 2.2 Subsequently, amended plans were provided for the works for the proposed new footpath, which increased the width of the footpath to 2 metres with a further 1 metre wide landscaped belt between the footpath and the depot site. The amended plans form part of the approved planning permission.
- 2.3 The Ramblers and Hampshire County Council have both confirmed that they will not object to the stopping up of the existing footpath and the provision of a new footpath in accordance with the amended plans.
- 2.4 Site Notices were displayed on 14 December 2011 at each end of the footpath, inviting comments and representations from users of the footpath to be submitted by 10 January 2012. The results of this additional non-statutory consultation exercise will be included in an update sheet at the meeting, in order that Members can take these into consideration prior to making a decision.

3 Procedure to be followed when making a Public Path Order

- 3.1 There is a statutory process to be followed in making a Stopping Up Order. Once the Order is made, all affected owners, and various other prescribed groups, must be notified of the Order, including the Ramblers Association and the Open Spaces Society and Hampshire County Council. The Order must be advertised in the local press and site notices must be displayed at each end of the relevant part of the footpath to be stopped up. A period of at least 28 days must be allowed for objections.
- 3.2 If no objections are received or if any objections that are received are all withdrawn, the Council can itself confirm an Order. If objections are received, and are not withdrawn, then an Order can only be confirmed by a Planning Inspector appointed by the Secretary of State who will either hold a Public Inquiry or a Hearing, or deal with the matter by a Written Representation procedure. Whichever option is chosen will depend on the number and nature of any objections and who submits them. If objections are received, the Council is not obliged to pursue the Order process and can withdraw the Order. In practice, if objections are received, officers will seek to resolve these if possible, and if necessary a further report would be brought to Committee to consider what further steps, if any, should be taken.
- 3.3 Once an Order is confirmed, either by the Council itself or the Secretary of State, it is again advertised in the same way as when the Order was made, giving another opportunity for challenge, but on legal grounds only.

4. Conclusions

- 4.1 At the time of writing this report, no representations had been made in response to the informal consultation process. The Ramblers Association and Hampshire County Council, two of the statutory consultees in the stopping up process, have indicated they would not object to the stopping up of the existing footpath if the new alternative footpath is constructed.
- 4.2 It is considered that the new footpath will offer a safer and improved route for users than the existing route across the depot site, which will be equally as convenient for the vast majority of users. The part of the existing footpath from Bar End Road to the depot site is currently obstructed and Barfield Close has for many years been used as an alternative by users.
- 4.3 It is therefore considered that once the new footpath has been constructed and made available, the whole of Footpath 24 will not be needed for public use (as there will be an adequate and safe alternative available. The requirements for the making of an Order under Section 118 of the Highways Act 1980 will therefore be met.

OTHER CONSIDERATIONS:

4 SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLANS (RELEVANCE TO):

- 4.1 Effective management of the public rights of way network has a positive impact on sustainable transport by encouraging alternative forms of transport to the car, and a positive impact on health by encouraging cycling and walking and will therefore contribute to the High Quality Environment outcome of the Sustainable Community Strategy.
- 4.2 It is considered that the new footpath will be an improvement to the existing footpath and therefore of benefit to users of the network (many of whom are using the Park and Ride car parks)

5 RESOURCE IMPLICATIONS:

- 5.1 The legal and administrative work involved in making the Order, if there are no objections, will be met from existing resources apart from the cost of advertising the Orders in the local press (approximately £500). Construction costs are budgeted for in the depot development project. Should it be necessary to submit the Order to the Planning Inspectorate for confirmation, a further report will be brought to Committee and which will include details of anticipated additional costs.

6. RISK MANAGEMENT

- 6.1 Extensive discussions have taken place with key agencies such as the Ramblers Association and the County Council, and local residents' views

which were made known as part of the planning application process have been taken into account in designing the new alternative footpath. Further consultation has taken place by the posting of notices on the footpath, and any responses to this will be reported to the meeting for Members to take into account.

- 6.2 This will reduce the likelihood of objections being made to the Order. If objections are made, officers will seek ways of dealing with these to allow them to be withdrawn if possible, and the Order to be confirmed.

BACKGROUND DOCUMENTS:

Consultation responses received.

APPENDICES:

Appendix 1 – Plan showing existing and proposed footpath routes.

