



BARNSLEY METROPOLITAN BOROUGH COUNCIL

**Report of Assistant
Director, Highways,
Engineering and Waste
Management to Planning
Regulatory Board on
30th June 2015**

**Diversion of a public footpath at Persimmon
Homes development site at Penistone.**

1.0	<u>Purpose of Report</u>
1.1	To consider an application to divert Penistone footpath no. 43 between Chapel Field Lane and Schole Hill Lane at Penistone.
2.0	<u>Recommendations</u>
2.1	That, in exercise of statutory powers, the Council makes a Public Path Order under the provisions of section 257 of the Town and Country Planning Act 1990 for the diversion of Penistone footpath no. 43 as shown on the plan attached at Appendix A of this report.
2.2	That the Common Seal of the Council be affixed to the Order and that the Director of Legal and Governance be authorised to publish the proposal and to submit the Order for confirmation by the Secretary of State or to confirm it himself in the event of there being no objections thereto.
2.3	That the Director of Legal and Governance be authorised to make a Definitive Map Modification Order to make the necessary changes to the Definitive Map and Statement for the area.
3.0	<u>Background and Proposal</u>
3.1	Persimmon Homes have been granted planning permission for a new housing development off Hartcliff Road at Penistone. (Planning Application reference: 2013/0785.)
3.2	The legally recorded alignment of Penistone footpath no. 43 runs through the curtilage of some of the new properties and 2 proposed garages. However, the route that is walked by the public runs on a different alignment up to 10 metres further north.
3.3	The developer proposes to stop up the legal alignment of the path and formally recognise the walked line as a definitive public footpath. The

	walked line runs through an area of open space and will be retained in its current condition with no changes to its surface type or width. The only physical change will be at the point where the new estate road crosses the footpath, where drop crossings will be provided.
3.4	Informal consultations have been carried out with user groups, ward councillors and utilities companies. Notices have also been put up on site at either end of the path to make local residents aware. No objections or negative comments have been received.
4.0	<u>Statutory Criteria</u>
4.1	Section 257 of the Town and Country Planning Act 1990 (as amended) enables public rights of way to be diverted where the Council, as Planning Authority, is satisfied that it is necessary to do so in order to enable development to take place.
4.2	The existing public footpath runs directly across the curtilage of some of the new properties and through 2 proposed garages. Therefore the Council is satisfied that the statutory criteria have been met.
4.3	DEFRA Rights of Way Circular 1/09 provides guidance for local authorities and is used by inspectors when considering objections to public path orders made under the Town and Country Planning Act. It states in paragraph 7.15; 'That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order.'
4.4	The proposed diversion will stop up the legal alignment of the path, which is not currently used by the public or physically available on the ground, and will formally recognise the walked line as a public footpath. As this path is to be retained in its current condition within an area of open space, the diversion is not considered to cause any disadvantage or loss to the public or to negatively affect any nearby properties. No objections have been raised during informal consultations and therefore the proposals are considered to be the best way forward, in line with government advice.
5.0	<u>Options</u>
5.1	The Council makes the order applied for. Officers are satisfied that the necessary statutory criteria are met and that the proposed alternative route is the best available. There have been no objections to the proposals during the informal consultation process.

5.2	The Council could decline to make the order applied for, but as the relevant statutory criteria have been satisfied it is not considered reasonable to do so.
6.0	<u>Local Area Implications</u>
6.1	There are no implications for the local area beyond a minor change to the legal record of public rights of way.
7.0	<u>Compatibility with European Convention on Human Rights</u>
7.1	This proposal is considered to be compatible with the Convention.
8.0	<u>Ensuring Social Inclusion</u>
8.1	The proposal will have no negative impact on social inclusion.
9.0	<u>Reduction of Crime and Disorder</u>
9.1	The proposal is not considered to have any effect on crime and disorder. In response to consultations, South Yorkshire Police's Crime Reduction Officer raised no objections.
10.0	<u>Financial Implications</u>
10.1	If the order is made and objections are received there will be additional costs to the Council that cannot be passed on to the applicant. This is especially the case if the matter has to be resolved at a public inquiry. However, no adverse comments have been received to the informal consultations for the application, so it is considered unlikely that this will be necessary.
11.0	<u>Risk Assessment</u>
11.1	The Council has powers under the Town and Country Planning Act 1990 to make the order applied for. The statutory process provides an opportunity for objections which, if upheld, may result in the order not being confirmed by the Secretary of State. However, as the application fulfils the relevant criteria and has received no objections during informal consultations, the risk is likely to be low.
12.0	<u>Consultations</u>
12.1	User groups (including the Barnsley Local Access Forum), ward councillors, other Council departments and utilities companies have been consulted on the application.
12.2	No objections or adverse comments have been received following the informal consultation process.

13.0	<u>Proposal</u>
13.1	Councillors approve the recommendations in section 2.
14.0	<u>Glossary</u>
15.0	Appendices Appendix A – Map 1 proposed footpath diversion Appendix B – Map 2 location plan
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