

# TONBRIDGE & MALLING BOROUGH COUNCIL

## AREA 2 PLANNING COMMITTEE

16 April 2014

### Report of the Director of Central Services

#### Part 1- Public

#### For Recommendation to Council

#### **1 DIVERSION OF RESTRICTED BYWAY MR221A, LONDON GOLF CLUB, SOUTH ASH MANOR, ASH**

1.1 Members will recall that this matter was the subject of a report to the Area 2 Planning Committee on 14 August 2013 and it was recommended to Council that approval be given for the Kent County Council to draft and advertise the Diversion Order under section 257 of the Town and Country Planning Act 1990. Approval was given by Council on 5 December 2013.

1.1.1 Consultations have been carried out by the Kent County Council as required by the 1990 Act. It has been necessary to send out two consultations, as a number of objections were received to the first proposal (diversion of MR221A and SD257/MR234). Following discussions with the applicant, the objectors and after discussing various options a new proposal was put forward. The main changes are: - a new alignment is proposed for the diversion of Restricted Byway MR221A, the diversion of SD257/MR234 is not being taken forward and it is proposed to create a new length of footpath and bridleway. Whilst the creation of the new length of footpath (as shown at Appendix A, between Points A-B) and bridleway (as shown at Appendix A, between the points X-F-G) will be processed by the County Council under section 26 of the Highways Act 1980, for completeness reference will be made to them throughout this report. The following details the responses to the second consultation.

#### **1.2 Views of consultees**

1.2.1 County Members, Mrs Sarah Hohler and Mr David Brazier were consulted but no responses were received.

1.2.2 Parish Council: Ash-cum-Ridley Parish Council is satisfied with the current proposals for Restricted Byway MR221A and the creation of a public footpath and bridleway. West Kingsdown Parish Council objected to the first consultation but no response was received to the second proposal. No response was received from Stansted Parish Council.

- 1.2.3 District/Borough Councils: Councillor Ann Kemp has no objections to the proposed diversion. Sevenoaks District Councillor Alan Pett made a number of comments regarding the proposed diversion. He queried how the planting clusters that are proposed along the eastern side of the route can be relied upon as a safety measure, to protect public rights of way users, when there are gaps along the length. He is reluctant to see the new route ending up as a tree lined tunnel stating that one of the joys of the existing route is the open nature and vistas it offers. He asked if the driving range could be re-aligned so that its axis is more north easterly, which would address the safety issue more effectively. He does state that he is reasonably content with the proposed re-routing as long as the planting is set back 2.5 metres from the edge of the path to prevent encroachment. Councillors Cameron and Carol Clark endorsed the comments made by Cllr Pett.
- 1.2.4 User Groups: The British Horse Society/British Driving Society stated that “the proposals for diverting MR221A and adding a new bridleway look excellent and are a really nice addition to the network”. The only comment they made was with reference to the proposed equestrian gates on the new length of bridleway. The representative for the Ramblers has requested gaps within the proposed planting along the eastern side of the route so that walkers can still enjoy views from the path and an enclosed corridor is not created
- 1.2.5 Statutory undertakers: Southern Gas Networks stated that there is a high pressure pipeline in close proximity to the site; however on inspecting the plan, the pipeline will not be affected by the proposal. No other objections have been received.

### **1.3 Legal Tests –Town and Country Planning Act 1990**

- 1.3.1 Section 257 of the Town and Country Planning Act 1990 “The 1990 Act” states that “a competent authority may by Order, authorise the stopping up or diversion of any footpath, bridleway or restricted byway if it is satisfied that it is necessary to do so in order for development to be carried out in accordance with planning permission granted under Part III of the Town and Country Planning Act 1990” or “if it is satisfied that an application for planning permission has been made under Part 3 of that Act and if the application were granted it would be necessary to authorise the stopping up or diversion of the footpath, bridleway or restricted byway...to enable development to be carried out” The competent authority in this instance is the Tonbridge and Malling Borough Council and the Order will need to be sealed by the Borough Council.
- 1.3.2 To satisfy the test there must be conflict between the development and the right of way. Section 55 of the 1990 Act defines development as “the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of a material change in the use of any buildings or other land.
- 1.3.3 Although the above is the only test, the Secretary of State, should the matter go before him, has discretionary powers to balance the need for development against

the effect on the public rights and enjoyment of the highway. The planning authority must therefore act in a quasi-judicial manner to consider the relevant merits of any application.

- 1.3.4 In addition consideration should be given to the case of *Vasiliou v. Secretary of State and Others [1991]* where the Court of Appeal held that the effect an Order would have on those entitled to the rights which would be extinguished had to be taken into account.
- 1.3.5 Circular 1/09 – published by DEFRA - contains the following advice to planning authorities: “The local planning authority should not question the merits of the planning permission when considering whether to make or confirm an order, but nor should they make an order purely on the grounds that planning permission has been granted. 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”.

## 1.4 Discussion

- 1.4.1 As stated above, the proposed new practice facility will extend across the line of MR221A and it is therefore considered essential, in order to enable development to take place, to divert MR221A away from this new facility. Consent for the development was granted as a result of the planning application TM/09/03149/FL. The proposed diversion is shown on the plan at Appendix A to this report. Stopping up MR221A and the provision of an equally pleasant and safe alternative route will eliminate the potential risk presented to users of MR221A as a result of the practice facility. Furthermore the creation of a new length of bridleway and footpath will improve the network in the local area.
- 1.4.2 It was intended to maintain the existing junction with South Ash Lane (at point C on Appendix A); however a view was expressed during the consultation process that access to Public Footpath SD257 should be provided from the proposed bridleway. The applicants have agreed with this view and in order to comply it has been agreed to extend Restricted Byway MR221A south by a further 57 metres. This will therefore provide access to South Ash Lane, the public footpath and the proposed bridleway. This further extension is shown between the points C and X at Appendix A.
- 1.4.3 The length of Restricted Byway MR221A to be diverted commences at its junction with South Ash Road (point C on the plan) and runs for approximately 302 metres in a generally east south easterly direction to its connection with Byway MR200 (point D on the plan). The new length of Restricted Byway MR221A commences

at a new connection with South Ash Road, approximately 57 metres south of its existing connection (point X on the plan) and runs for approximately 451 metres in a generally north easterly through east north easterly direction to a new connection with Byway MR200 (point E on the Plan).

- 1.4.4 The new length of path will have a width of 4.0 metres and will have a geotextile base to ensure that there is no risk of the surfacing works moving under use. Then approximately 100mm of sub base with 35mm of fines will complete the surfacing. In addition to this a number of soak aways will be installed along the route to ensure that it drains adequately in inclement weather. It is proposed to install a Kent Carriage Gap at the southern end of the route (point X on the plan).
- 1.4.5 Concerns were raised regarding the proposed planting along the eastern edge of the path, with some consultees requesting that the planting is set back 2.5 metres from the edge of the path and that there are gaps in the planting so as to allow views from the path. It was also suggested that the practice facility could be realigned. In response to this, the vegetation planting across the site is subject to an imposed condition as part of the planning permission granted for the practice facility and the 9 hole golf course. It is not possible to realign the practice facility as this would require a whole new planning application which would be an expensive process. However, the screening along the proposed route E-C-X will be in clusters and will therefore allow light into the route whilst also providing views out, which in effect will stop the route from becoming a tree lined tunnel. In terms of the location of the planting, ordinarily where a route is to be bounded on either side, the County Council would ask for an additional 0.5 metres to allow for vegetation overgrowth. A 2.5 metre gap between the route and the vegetation is deemed to be excessive and would encroach too far into the practice facility. However, as a compromise the applicants are prepared to set the vegetation back 1.0 metre from the defined width which will be more than sufficient to allow for growth.
- 1.4.6 Concerns were raised in relation to the additional walking/riding, which would be necessary if the diversion were successful, to reach Byway MR200 and Footpaths MR221 and MR199. These comments were taken on board and after in-depth discussions it is proposed that the County Council takes concurrent actions, to create by way of a Public Path Creation Order under the Highways Act 1980, a new length of public footpath between the points A-B and a new length of bridleway between the points X-F-G. The new length of footpath will benefit walkers wishing to head south, to connect with the newly created bridleway, on the eastern side of South Ash Road and the new length of bridleway will improve the network substantially and in conjunction with MR221A and MR200 provide a circular route for pedestrians and equestrians. This will also result in less road walking thereby benefitting users.
- 1.4.7 Overall, it is considered that there will not be a negative effect on the local public rights of way network as a result of the diversion.

1.4.8 An assessment under the Equality Act 2010 has been undertaken and there will be no adverse impact on the use of the affected path as a result of the diversion.

1.4.9 Kent County Council is satisfied that the legal tests are met in all respects in that the Borough Council has granted planning consent under Part III of the Town and Country Planning Act 1990 for the development of the site, and that Restricted Byway MR221A would be adversely affected by such development.

## **1.5 Financial and Value for Money Considerations**

1.5.1 The costs incurred by the Kent County Council will be recovered from the London Golf Club and there will be no cost to the Borough Council.

## **1.6 Risk Assessment**

1.6.1 The proposed diversion is considered to be necessary to allow the development proposal to be implemented and to pose acceptable changes that will improve the public rights of way network in this location.

## **1.7 Equality Impact Assessment**

1.7.1 See 'Screening for equality impacts' table at end of report

## **1.8 Recommendations**

1.8.1 Members are asked to **RECOMMEND** to Council that approval be given to :

1) the making of an Order under section 257 of the Town and Country Planning Act 1990 to divert Restricted Byway MR221A at Stansted (as shown at Appendix A to this report) in order to enable the proposed development to be carried out;

2) the confirmation of the Order, if unopposed; or

3) referral of the Order to the Secretary of State for Communities and Local Government for determination if any objections are sustained.

Background papers: Correspondence file TM-H1-2

contact: Cliff Cochrane

Nil

**Adrian Stanfield**

Director of Central Services

<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	N/A	N/A
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	N/A
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

*In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.*