



## Application to divert part of public footpath MR218 at Stansted under section 257 of the Town & Country Planning Act 1990

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A report by the Director of Central Services to Tonbridge & Malling Borough Council's Area Committee on 11 April 2018.

**Recommendation: I recommend that the applicant be informed that an Order to divert part of public footpath MR218 is made in order to allow development to take place.**

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Local Member: Mr Harry Rayner

Unrestricted item

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### Introduction

1. Section 257 of the Town & Country Planning Act 1990 provides that a diversion of a public right of way may be pursued when necessary to allow development to take place for which planning permission has been obtained.
2. An application has been made by the landowners, Mr and Mrs Higgins, of *Buzzards* (formerly known as *The Barn*), Hatham Green Lane, Stansted, to divert part of public footpath MR218. Planning permission has been approved, reference 16/03754/FL, for the construction of a garage which would block the current alignment of the footpath.
3. It is necessary to divert part of the path in order for the development to take place (as is required by the Town & Country Planning Act 1990). The diversion of the footpath to the boundary will enable the development to take place. The footpath will be fenced to a width of 2.5 metres.
4. The length of footpath MR218 to be diverted is shown by a solid black line between points A–B on the plan at **Appendix A**. The proposed new route is shown by bold black dashes between the points A-C-B. An extract from the Definitive Map can be found at **Appendix B** to show the path in context with the rest of the public rights of way network.

## **Procedure**

5. Tonbridge & Malling Borough Council may make an Order under Section 257 of the Town and Country Planning Act 1990 to divert a Public Right of Way to enable development to take place.

## **Consultations**

6. Consultations have been carried out as required by the Act and no objections have been received. However, two suggestions were made by the Ramblers' representative, and were supported by the Parish Council for improvement. Firstly that the path could run south-south-east from point C and through the boundary to meet up with the path much further south, thereby decreasing the angle at the corner; secondly, that the corner at point C should be amended slightly to create two 45 degree angles rather than one 90 degree angle. The first suggestion was not a viable option as it would involve a different landowner who did not want to make any changes. The applicant did agree to the second suggestion whereby the path turns 1.5 metres before the boundary, runs for approximately 1.0 metre and then turns again to continue on its proposed alignment to point B.

## **View of Members**

7. County Member Mr Harry Rayner and Borough Councillors Martin Coffin and Robin Betts have been consulted. No responses have been received.

## **Discussion**

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

8. 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."

9. 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".

10. Although the above is the only test, the Secretary of State 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.

11. 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.

12. 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”.

### **The Case – Town & Country Planning Act 1990**

13. An application has been received to divert part of public footpath MR218 to allow for the construction of a garage which would block the current alignment of the path. Planning consent has been granted, reference 16/03754/FL. As a consequence the diversion of this part of public footpath MR218 is necessary in order for development to be carried out.

14. There is no negative effect on the public rights and enjoyment of the highway. The new route (as shown in **Appendix A**, between Points A-C-D-B) will run alongside the garden boundary, enabling the landowner to fence the path to a width of 2.5 metres. The surface of the pathway will be grass.

## **Conclusion**

15. 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 & Country Planning Act 1990 for the development, and that this section of MR218 would be adversely affected by the development.

## **Recommendation**

13. An Order should be made under Section 257 of the Town and Country Planning Act 1990 to divert public footpath MR218 at Stansted, shown in **Appendix A** to this report, in order for development to be carried out.

The case file is available for viewing on request at the PROW & Access Service, Invicta House, County Hall, Maidstone, Kent, ME14 1XX. Please contact the Case Officer for further details.

## **List of appendices**

Appendix A - Plan of proposal

Appendix B - Extract from the Definitive Map, sheet 024 (TQ56SE)

## **Case reference:**

PROW/MR218/0055/TMBC

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