

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA 1 PLANNING COMMITTEE

11 September 2014

Report of the Director of Central Services

Part 1- Public

Matters for Recommendation to Council

1 DIVERSION OF PART OF PUBLIC FOOTPATH MU21 AT TONBRIDGE

1.1 Background to the application

1.1.1 An application has been received to divert part of Public Footpath MU21 at Tonbridge. The application has been made by Tonbridge School, to whom planning consent has been granted under reference TM/13/03834/FL for the construction of a replacement car park and associated landscaping. The proposed development directly affects the current alignment of Public Footpath MU21, and a diversion is therefore required in order to enable the proposed development to take place.

1.1.2 The administrative procedures relating to applications to divert public rights of way affected by development are dealt with by Kent County Council, acting on behalf of the Borough Council. However, the Borough Council is responsible (in its capacity as the Authority that granted the planning permission) for making and confirming any Public Path Diversion Order which relates to development.

1.1.3 The County Council has undertaken a consultation on the proposed diversion and the responses are set out below.

1.2 Views of consultees

1.2.1 County Members: Mr. R. Long and Mr. C. Smith were consulted but no responses were received.

1.2.2 Borough Council: Cllr. O. Baldock and Cllr. Ms. V. Branson were consulted. Cllr. Baldock confirmed that he had no objection to the proposed diversion.

1.2.3 User groups: The Ramblers' Association and the Open Spaces Society were consulted. The Ramblers' Association made representations to the original width of 1.2 metres for the new path proposed by the applicant and, as a result of this, the applicant has agreed to provide a width of 1.8 metres (of which 1.2 metres will be surfaced).

1.2.4 Statutory undertakers: No 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*’.
- 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 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 The reason for the application to divert part of Public Footpath MU21 at Tonbridge is to enable development to take place. Consent for the development was granted on 17th March 2014 as a result of planning application TM/13/03834/FL. The proposed diversion is shown on the plan at **Appendix A** to this report.
- 1.4.2 The land over which Public Footpath MU21 currently runs will be developed for the purpose of providing a car park, part of which involves the construction of a number of parking spaces over the existing line of the footpath. The car park is required in response to a growing demand for use of the school’s sports centre by members of the public and community groups, as well as additional parking to

compensate for that lost due to the construction of new tennis/netball courts (which are the subject of a separate planning consent).

- 1.4.3 Retaining the path on its current alignment would bisect the proposed car park and, because it would be extremely undesirable on safety grounds to have a Public Footpath running across the car park, would prevent the applicant from constructing the car park in accordance with the planning consent. Therefore, the proposed diversion is required in order to enable development to be carried out.
- 1.4.4 The length of Public Footpath MU21 to be diverted starts approximately 33 metres south of its junction with London Road and runs for approximately 88 metres towards the sports centre access road, as shown between points A and C on the plan at Appendix A. The proposed diversion will run along the edge of the new car park, commencing at point A and running in a generally south-south-westerly through east-south-easterly direction for approximately 107 metres to rejoin the existing line of Public Footpath MU21 at point C. The new path will have a recorded width of 1.8 metres, of which 1.2 metres will be hard-surfaced with tarmac and the remaining 0.6 metres will be grass. There will be no structures across the route, but a section of the path (between points B and C, where it immediately abuts the car parking spaces) will be fenced on one side with post and rail fencing in order to prevent encroachment by vehicles.
- 1.4.5 It is not considered that the proposed diversion would have any negative impact upon the public right of way. The proposed new route is marginally longer than the existing route (by 19 metres) but is not considered that it would unduly inconvenience walkers.
- 1.4.6 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.
- 1.4.7 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.
- 1.4.8 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 Public Footpath MU21 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 Tonbridge School and there will be no cost to the Borough Council.

1.6 Risk Assessment

- 1.6.1 A risk assessment has been undertaken and it is not considered that the proposed diversion would have any adverse effects. The proposed diversion route will be considerably safer for public use than if the existing alignment is retained.

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 part of Public Footpath MU21 at Tonbridge (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 Planning Inspectorate if any objections are sustained.

Background papers:

contact: Cliff Cochrane

Nil

Adrian Stanfield

Director of Central Services

Screening for equality impacts:		
Question	Answer	Explanation of impacts
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.