

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

14 April 2015

Report of the Director of Central Services

Part 1- Public

Matters For Decision

1 DIVERSION OF PUBLIC FOOTPATH MR244 (PART) IGHTHAM

Summary: To seek authority to divert Public Footpath MR244 (part) at Ightham under the provisions of section 257 of the Town and Country Planning Act 1990.

- 1.1 An application has been received to divert Public Footpath MR244 (part) (as shown in Appendix A) at Ightham. The application was made by Katy Yarnold on behalf of O'Keefe Ltd to whom planning consent has been granted to enable the development of Cricketts Farm to be used for construction maintenance and repair of heavy plant machinery. The existing route would run through a new building and the proposed route would take the right of way away from the development for safety and beneficial enjoyment reasons.
- 1.1.1 The administration 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 planning permission) for making and confirming any public path diversion order which relates to development.
- 1.1.2 The diverted route of MR244 would enter the development from the south in the same location as the existing definitive alignment. The proposed route will continue north east and then north along the boundary of the site. The weighbridge currently on this section of proposed route will be removed and appropriate fencing will be erected between the development site and the path. The route will then turn east along the northern boundary of the site, joining the existing route north and east of the main farm buildings. At the point where it turns east, it descends a steep bund and this gradient will be significantly reduced to a maximum of 1 in 12. The new route will have a minimum width of 2.5m and surfaced with compacted type 1 sub-base.

1.2 Procedure

- 1.2.1 Tonbridge and Malling Borough Council may make and 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.

1.3 Consultations

- 1.3.1 Consultations have been carried out as required by the Act and no objections have been received.
- 1.3.2 Borough Councillor Rodney Chartres and County Councillor Valerie Dagger have been consulted. No objections have been received.

1.4 Legal Tests

- 1.4.1 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 authorize the stopping up or diversion of the footpath, bridleway or restricted byway....to enable development to be carried out”.
- 1.4.2 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”.
- 1.4.3 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.
- 1.4.4 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.
- 1.4.5 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”.

1.5 The Case

- 1.5.1 As stated above an application has been received to divert part of Public Footpath MR244 in order to enable the development of Cricketts Farm to take place. Consent for the development was granted as a result of the Planning Application 14/00182/FL. There is no negative effect on public rights and enjoyment of the highway. The new route will run alongside the boundary of the site to be developed, taking the public away from the hard standing area that will be used for Construction maintenance and repair of heavy machinery. The proposed route will be cleared of all current obstruction and undergrowth, affording better public safety and enjoyment. All points will be waymarked with correct signage as deemed necessary. 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.
- 1.5.2 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 this section of MR244 as per the plan attached would be adversely affected by such development.

1.6 Recommendations

- 1.6.1 It is **RECOMMENDED** that approval be given by the Council to:
- 1) the making of an order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath MR244 (part) at Ightham, shown at Appendix A to this report in order for 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 Documents:

APPENDIX A - Plan showing the proposed diversion of Public Footpath MR244 (part), Ightham

APPENDIX B - Definitive Map showing existing route of MR244.

Case reference: PROW/MR244/022/TMBC

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