



SHEFFIELD CITY COUNCIL Planning & Highways Committee

Report of: Director of Development Services

Date: 3 September 2013

Subject: PROPOSED DIVERSION OF PUBLIC FOOTPATH
BETWEEN CHORLEY DRIVE AND SLAYLEIGH
LANE, FULWOOD

Author of Report: Richard Day 0114 273 6301

Summary: To seek authority to submit the City of Sheffield (Public Path between Chorley Drive and Slayleigh Lane Fulwood) Diversion Order 2013 to the Secretary of State for Environment, Food and Rural Affairs for confirmation in the light of two objections having been received.

Reasons for Recommendations: The only justification for diverting the path is that it is necessary to do so in order to enable the development to be carried out in accordance with the planning permission. Officers' view is that the objections, despite being detailed, are not persuasive in making a case that a diversion is unnecessary to allow the planning consent to be implemented. Therefore, having regard to the primary legislation and published guidance, and the planning consent determined on the 4th December 2012, it is proposed that the Order be submitted to the Secretary of State for confirmation.

Recommendations: The Director of Legal Services submits the City of Sheffield (Public Path between Chorley Drive and Slayleigh Lane Fulwood) Diversion Order 2013 to the Secretary of State for confirmation.

Background Papers: (Full copies of the objection letters circulated to Committee Members in advance of meeting)

Category of Report: *Open/Closed *(delete as appropriate)

PROPOSED DIVERSION OF PUBLIC FOOTPATH BETWEEN CHORLEY DRIVE
AND SLAYLEIGH LANE, FULWOOD

1. PURPOSE

- 1.1 To seek authority to submit the City of Sheffield (Public Path between Chorley Drive and Slayleigh Lane Fulwood) Diversion Order 2013 to the Secretary of State for Environment, Food and Rural Affairs for confirmation in the light of two objections having been received.

2. BACKGROUND

- 2.1 Following authority obtained along with planning consent 12/02429/FUL at the West & North Planning & Highways Committee on 4th December 2012, the City Council made an Order on 18th June 2013, under Section 257 of the Town & Country Planning Act 1990, for diversion of part of the public footpath which runs between Chorley Drive and Slayleigh Lane, Fulwood, as shown on the Order plan, a copy of which is included at Appendix A to this Report.
- 2.2 This supersedes/replaces an Order made on 19th March 2013 for which, unfortunately, omissions were made in the public advertising process, in terms of display on the Council website and deposit for public viewing at the Town Hall Reception as at the stated publication date. Consequently, given the potential defect in the process, and in view of the recently reported 'Tinseltown' court case in London, it was decided for the avoidance of doubt that the order should be re-served.
- 2.3 Appendix B to this Report is a context plan showing the wider location within Sheffield of the path in question.
- 2.4 The justification for the proposed diversion (indeed, the only justification there can ever be to use this particular power) is that it is necessary in order to enable the development to be carried out in accordance with the planning permission.
- 2.5 Following the publication of the Order, the Director of Legal Services has received two objections, one from a resident of one of the houses adjoining the development site, and one from the residents of another house on Chorley Drive.
- 2.6 Full copies of the letters of objection have been circulated to Committee Members prior to the meeting. The contents of the objections are summarised

in Appendix C to this Report, along with Officers' opinions in response.

3. LEGAL IMPLICATIONS

- 3.1 If objections are made to a Town & Country Planning Act Section 257 Order then the Council cannot confirm the Order as unopposed. Therefore, to progress the matter, the Order has to be submitted to the Secretary of State for confirmation, which process includes his consideration of those objections.
- 3.2 There is no absolute requirement that any Order which is opposed (as in the present case) must be sent to the Secretary of State. Therefore, if an authority feels that, as a result of new information raised in an objection, it can no longer support the Order, then a formal resolution by that authority not to proceed is all that is required to bring the procedure to an end. The City Council has taken similar action to this in the past. This would be the outcome here if Committee chooses not to approve this Report – the Order would be cancelled, and the development would not be able to go ahead, despite its planning consent.

4 HIGHWAY IMPLICATIONS

- 4.1 The highways issues around the proposed footpath diversion (and the proposed development in general), were described in the planning report approved by the West & North Committee on the 4th December 2012. The proposal has not altered since that date, and indeed the development has now got planning consent, hence it is still recommended that the footpath should be diverted.

5. CONSULTATIONS

- 5.1 Having been through the planning process and obtained planning consent, the applicant has requested that authority be sought to refer the Order to the Secretary of State as soon as possible. However, in the meantime, Officers have offered to meet the two objectors, in the hope of dialogue about their concerns, and as to what compromise, if any, might lead to withdrawal of their objections. A verbal update on this will be given in the meeting.
- 5.2 Both objectors have been informed that the matter is to be considered at this meeting.

6. EQUAL OPPORTUNITY IMPLICATIONS

- 6.1 No particular equal opportunity implications arise from the proposals in this report.

7. ENVIRONMENTAL IMPLICATIONS

- 7.1 No particular environmental implications arise from the proposals in this report.

8. FINANCIAL IMPLICATIONS

- 8.1 All costs associated with the diversion of the footpath, including any costs arising out of the Secretary of State's requirements for confirmation of the Order, will be met by the applicant, therefore the effect on the existing Revenue Budget is considered to be neutral.

9. CONCLUSION

- 9.1 In summary, Officers' view is that the objections, despite being detailed, are not persuasive in making a case that a diversion is unnecessary to allow the planning consent to be implemented.
- 9.2 Therefore, having regard to the primary legislation and published guidance, and the planning consent determined on the 4th December 2012, it is proposed that the Order be submitted to the Secretary of State for confirmation.

10. RECOMMENDATION

- 10.1 The Director of Legal Services submits the City of Sheffield (Public Path between Chorley Drive and Slayleigh Lane Fulwood) Diversion Order 2013 to the Secretary of State for confirmation.

Steve Robinson
Head of Highway Maintenance
Development Services

3 September 2013

PUBLIC PATH DIVERSION ORDER

TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 257

CITY OF SHEFFIELD
(PUBLIC PATH BETWEEN CHORLEY DRIVE AND SLAYLEIGH
LANE FULWOOD)
DIVERSION ORDER 2013

This Order is made by Sheffield City Council (hereinafter referred to as 'the Council') under Section 257 of the Town and Country Planning Act 1990 because it is satisfied that it is necessary to divert the footpath to which this Order relates in order to enable development to be carried out in accordance with planning permission granted under Part III of the Town and Country Planning Act 1990, namely the erection of a dwellinghouse with integral garage and associated landscaping at Chorley Drive, Fulwood, Sheffield.

BY THIS ORDER:

1. The footpath over the land shown by a bold black line on the attached Map and described in Part 1 of the Schedule to this Order ('the Schedule') shall be diverted as provided below.
2. There shall be created to the reasonable satisfaction of the Council an alternative highway for use as a replacement for the said footpath as provided in Part 2 of the Schedule and shown by bold black dashes on the attached Map.
3. The diversion of the footpath shall have effect on the date on which the Proper Officer, Development Services, of the Council certifies that the terms of Article 2 above have been complied with.
3. Where immediately before the date on which the footpath is diverted there is apparatus under, in, on, over, along or across it belonging to statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.

SCHEDULE

PART 1

Description of site of existing path or way

That part of an adopted public footpath which runs between Slayleigh Lane and Chorley Drive, Fulwood, commencing at a point marked A on the Order Map, point A being 62 metres from the south western kerbline of Slayleigh Lane, and

extending for a distance of 47 metres to point B on the Order Map, point B being at the point where the footpath meets the back of the north eastern footway of Chorley Drive, having a width of 3 metres.

PART 2

Description of site of alternative highway

An irregular shaped area of new public footpath commencing at point A on the Order Map 6 metres in length and having a varying width from 2.5 metres to 5.5 metres from point A to C on the Order Map and continuing for a distance of 42 metres to point D on the Order Map, having a width of 3 metres.

DATED this 18th June, 2013

EXECUTED as a DEED)
By The Sheffield City Council)
Whose Common Seal)
was hereunto affixed in the)
presence of:-)



13/28/130


Duly Authorised Signatory

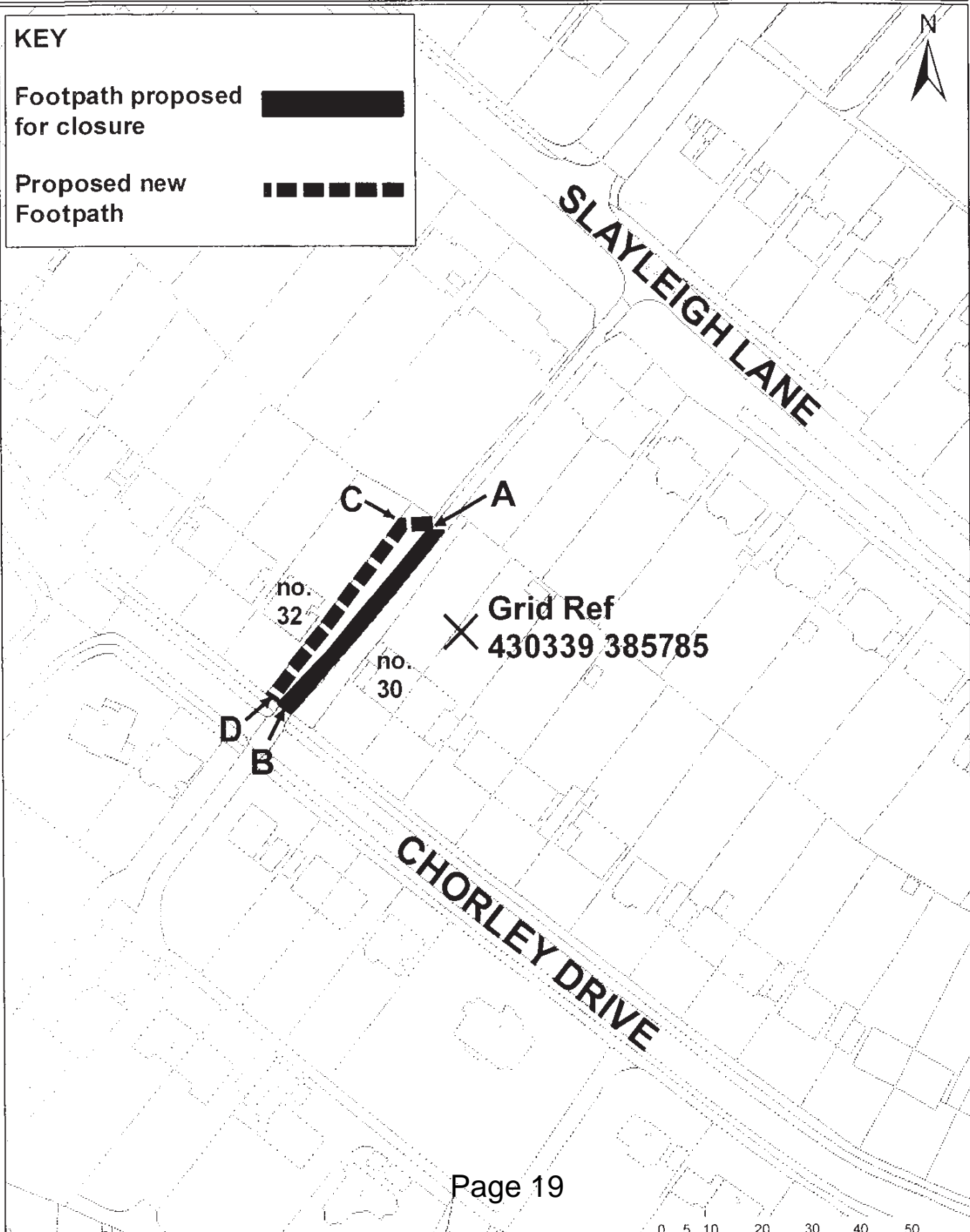


KEY

Footpath proposed
for closure



Proposed new
Footpath





13/28/130

EXECUTED as a Deed by
The Sheffield City Council whose
Common Seal was hereunto
affixed in the presence of:-

Duly Authorised Signatory



PROPOSED DIVERSION OF PUBLIC FOOTPATH BETWEEN CHORLEY DRIVE AND SLAYLEIGH LANE, FULWOOD
SUMMARY OF OBJECTIONS

VIEWS EXPRESSED	OFFICER OPINION
<p>Objection 1, from a resident of Chorley Drive: 1. The footpath is currently straight, with a clear view from one end to the other. Object on safety grounds that the proposed diversion will not allow this clear view, exacerbated by the proposed 2m high fence around the new building, allowing unsavoury characters to lurk, and oncoming cyclists to be obscured.</p>	<p>The issue of the dog-leg was raised by respondents to the planning process, and was referenced in the planning report considered by West & North Planning & Highways Committee, 4 December 2012. The Committee granted planning consent, so the matter now to be decided is whether it is necessary to divert the path in order to enable the development to be carried out in accordance with the planning permission.</p>
<p>Objection 2, from the resident of a property adjoining the proposed development site on Chorley Drive: 2.a. Did the Council carry out its consultation in accordance with Rights of Way Review Committee Practice Guidance Note 1? (Evidence requested).</p>	<p>Yes. This will be evidenced to a Planning Inspector, should they require it.</p>
<p>2.b. Reference to a case described in Rights of Way Review Committee Practice Guidance Note 6 where a Local Authority elsewhere was found guilty of maladministration where it sought to use planning consent and then Section 257 to convert a right of way into a garden. Assertion that, in the Chorley Drive case, only part of the length of the footpath being diverted is actually to be built on, and the rest is to become the garden of the new house, therefore the Order does not satisfy the condition that it is necessary to enable the development to take place.</p>	<p>The maladministration case actually refers to an instance where <i>nothing</i> was to be built. (The use of planning consent for 'change of use' from path to garden, followed by a Town & Country Planning Act Section 257 Order, was deemed to be a contrivance to stop up a footpath without using the Highways Act powers which would have been appropriate for use in that situation). In the Chorley Drive case, it is quite clear that the planning consent is for the new house to be built right across where the footpath currently runs. Very happy to let a Planning Inspector rule on this.</p>
<p>2.c. The Council is inadequately considering the points of objection being raised by the resident.</p>	<p>Points of objection (and Officers' opinions in response) are summarised in this Appendix. Committee Members have been sent full copies of the objection letters. Officers' view, having read and considered the objections, is that no issues have been raised which should prevent referral of the Order to the Secretary of State for a Planning Inspector to rule on, hence the recommendation to Members in this Report that it should be referred.</p>
<p>2.d. Questioning the formal status of the path: do vehicular rights exist on the path?</p>	<p>It is fully accepted that, in the past, there would have been <i>private</i> vehicular access rights to Slayleigh Cottages, but it is understood that these were extinguished by agreement between the relevant property owners some years ago. The Council has no indication in its records that the path is a vehicular highway. Nor has any record been found on file of any complaints from any members of the public who felt that they had the right to drive along it but were being prevented from doing so by the actions of either the</p>

VIEWS EXPRESSED	OFFICER OPINION
	Council or the landowner.
2.e. Contention that a small triangular area of the proposed new footpath is not shown on the Order plan, thus making it unclear, defective and flawed, and thus insufficient for a proper decision making process in confirming the Order.	The Order plan uses notation consistent with guidance. Happy to let a Planning Inspector rule on this matter.
2.f. The objector uses the path himself, along with many others.	Noted.
2.g. The objector has maintained the land between the path and his property, when it has become overgrown or untidy, for more than 50 years.	Noted.
2.h. Raises a point of "private law": the objector's lease places a restrictive covenant on the landowner of the development site that they " <i>will not lay out or construct any drive street road lane or footpath adjoining to or abutting on or touching [the objector's property] without the previous written consent of the Lessee</i> " (the Lessee being the objector). The Council should be aware in its decision-making process that, as well as securing confirmation of the Order, the applicant will need the objector's consent, and so the Council should not be seeking to confirm the Order without reference to this matter.	Noted. To the best of Officers' knowledge, the proposed new footpath does not adjoin, abut or touch the objector's property, so it appears that this remains a private matter between the objector and the applicant. Happy to let a Planning Inspector rule on this matter.
2.i. The Council has not attempted to investigate entering into negotiations with the objector, and thus appears to be pre-judging that there is no prospect of negotiation leading to withdrawal of his objection.	Having been through the planning process and obtained planning consent, the applicant has requested that authority be sought to refer the Order to the Secretary of State as soon as possible. However, in the meantime, Officers have offered to meet the two objectors, in the hope of dialogue about their concerns, and as to what compromise, if any, might lead to withdrawal of their objections. A verbal update on this will be given in the meeting.
2.j. The Council has not referred to the Equality Act 2010 in any of its discussion about the issue of the introduction of the dog-leg to the footpath. (Objector has concerns appertaining to the safety needs/requirements of visually impaired people, wheelchair users and children, particularly toddlers and babies accompanied by mothers as well as primary school children in connection with their use of the new footpath).	The issue of the dog-leg was raised by respondents to the planning process, and was referenced in the planning report considered by West & North Planning & Highways Committee, 4 December 2012. Officers believe that, by having no steps, and by having a dog-leg rather than two right angles, the new path is non-discriminatory. The Committee granted planning consent, so the matter now to be decided is whether it is necessary to divert the path in order to enable the development to be carried out in accordance with the planning permission.
2.k. The proposed width of the new path (2 metres tarmac plus 1 metre verge) does not conform to Rights of Way Review Practice Guidance Note 6, which states that if a path is enclosed by fencing or hedges, it should be a minimum width of 4 metres. This has	The Note referred to is advisory guidance, not a statutory requirement. The Council is cognisant of the guidance but, in this particular case, in assessing the planning application, Officers' view was that it was neither reasonable nor proportionate to require a 4 metre width.

VIEWS EXPRESSED	OFFICER OPINION
<p>health and safety implications for users of the path, especially people with disabilities.</p>	<p>Committee granted planning consent, so the matter now to be decided is whether it is necessary to divert the path to enable the development to be carried out in accordance with the planning permission.</p>
<p>2.l. Numbers 65 and 67 Slayleigh Lane have pedestrian gates in the vicinity of the dog-leg area, adding to the objector's safety concerns. The situation is exacerbated by the apparent boundary encroachments of those two properties.</p>	<p>Properties abutting a highway have a right to make a pedestrian access onto it. Officers have seen no evidence of encroachment onto the highway by properties adjacent to this path.</p>
<p>2.m. The Order plan does not correctly show the extent of the triangular area between points A and C as being in the new highway to be adopted.</p>	<p>The Order plan is not a construction finishes drawing. It has to simply show the current route and the proposed new route, not details such as verges, etc. However, the Schedule to the Order does refer to the width going up to 5.5m on this section of the new route, which takes into account the inclusion of the triangular area in the new Adopted Highway.</p>
<p>2.n. Point A on the Order plan does not correctly denote the proper location of the commencement point of the new footpath.</p>	<p>Officers believe the Order plan is clear and adequate. Happy to let a Planning Inspector rule on this matter.</p>
<p>2.o. The current problem of surface water run-off onto the objector's property from the land on which the footpath is situated is likely to be increased by the diversion of the footpath, in conjunction with the construction of the development, as it will cause an increase in the proportion of the land which is hard-surfaced.</p>	<p>The proposed diversion takes the path <u>further away</u> from the property in question than it is currently. However, if surface water run-off from the Highway onto private property is currently a problem, it should be reported to the Council's Customer Services, as the Streets Ahead Highway maintenance contractor has a duty to address it. The new footpath will need to be constructed so that it does not cause run-off into any private property. In any case, the development has planning consent, so the matter now to be decided is whether it is necessary to divert the path in order to enable the development to be carried out in accordance with the planning permission.</p>
<p>2.p. Discrepancy between the grid references quoted on the original Order plan and the one now being objected to.</p>	<p>The grid reference is correct on the plan with the current Order (copy attached as Appendix A to this report).</p>