



Highway Records

Operational Services

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[Redacted]

Dear [Redacted]

Proposed Closure of the Public Right of Way Linking Cobden View Road and Northfield Road. Ref. LS/RC/3950160

Thank you for your letter of objection to the proposal to close the “public” path linking Cobden View Road and Northfield Road. I would like to take this opportunity to address the points that you have raised.

For the purpose of the planning application, and the subsequent footpath Order we have considered the path to be public. However, it should be noted that until the path is added to the Definitive Map and Statement no public rights will formally exist. We are aware of the claim (which is not yet finalised) that has been submitted under Schedule 14 of the Wildlife and Countryside Act 1981 and it is due to the strength of that claim that we are treating the path as though it were public. This was acknowledged in the Planning Officer’s report (submitted to the Planning and Highways Committee for the meeting held on the 14th June 2022, and included at pages 41-75 of the agenda) that states at page 70:

“Lastly, a path crosses the site that currently has no public status. It can’t be used due to the placement of hoardings around the site. It has clearly been well used down the years, with at least 30 years usage. As such, it could easily be claimed as a public footpath. Indeed, the Council is currently dealing with a claim that the footpath is public. For the purposes of this planning application, the path will be treated as a public footpath. If planning permission is granted, the path would need to be formally closed under Section 257 of the Town & Country Planning Act. This process invites objections, which if they remain unresolved, a decision on the path’s closure would be taken by a Planning Inspector. Development can’t take place until the path has been formally closed. The Highway Authority, when consulted, is unlikely to object to the closure as the feeling is that the alternative route is a reasonable one and not excessively longer.”

Therefore, I hope that you will agree that it was not the case that the Planning and Highways Committee were unaware of the existence of the path and were able to

consider this as part of their decision made at that meeting. An extract of the report is enclosed as Appendix A.

It is correct that where an objection is made it is only likely to be upheld where it is considered that closure of a footpath is unnecessary to facilitate development. Though I note that your objections do not refer to this. In a situation where objections are raised (regardless of the reason) and are not withdrawn, the making of the Order must be referred to the Secretary of State (SoS). The SoS will appoint an Inspector to look at the objections and decide how best to deal with the matter, either by written representation or by a public inquiry. Where multiple objections are received it is likely to be the latter. Though there appears to have been very strong public objection to the planning application, only one objection has been received in relation to the proposed footpath closure.

The applicant did not declare the footpath in their application as it was not considered public at that time, and as far as they were aware it was private.

On the 13th of September 2022 a further report was submitted to the Planning and Highways Committee seeking approval to make the Order closing the footpath under Section 257 of the Town and Country Planning Act and that report can be seen in the extract included as Appendix B.

The powers to close a public path are limited to Section 118 of the Highways Act 1980 and Section 247 (where all-purpose highway is included within an application) and 257 of the Town and Country Planning Act 1990. Though the processes are similar the test is quite different. In the case of this application the test applied to Section 118 of the Highways Act, that it is unnecessary for public use, does not apply, and the public use of the path has been considered during the planning decision process.

This application has been made on the grounds that it is necessary to facilitate a development for which planning permission has been granted. There can be no argument that this is not the case as the approved development cannot go ahead without the removal of the path. Consequently, unless objections are removed, we have no option other than to refer the making of the Order to the Secretary of State, subject to approval being granted by the Planning and Highways Committee.

I hope that you will agree that, given the above, no part of the process has been irregular. I hope that you will consider my response and give some consideration to removing your objection. If you wish to discuss this further, please do not hesitate to contact me.

Yours sincerely

Mark Reeder

Acting Principal Engineer

Highway Records and Address Management