

Peter Graham

From: Peter Graham
Sent: 06 March 2017 12:16
Cc: Jenifer Clifford; Tim Ducker
Subject: SUO48294 - The City of Sunderland (Chapelgarth) Public Path Extinguishment Order 2016
Attachments: SUO 48294 - Objection Reply Document.pdf
Importance: High

I am writing with reference to your objection to the above Order and, having reviewed all objections received, would offer the following comments:

In the interests of clarity, I would first wish to give some additional background:

Prior to this process, there were no recorded rights of way across the site. It was however apparent that there were a number of desire lines, some of which have recently been subject to a rights of way claim. In order to take this matter forward the council, in its capacity as landowner, chose to acknowledge all of the desire lines across the site as public footpaths. This together with the previous appropriation of the land enabled an extinguishment Order to be sought for those footpaths affected by development.

The grounds on which rights of way may be extinguished under Section 258(1) of The Town and Country Planning Act 1990, are set out below:

“Where any land has been acquired or appropriated for planning purposes and is for the time being held by a local authority for the purposes for which it was acquired or appropriated, then, subject to section 259, the local authority may by order extinguish any public right of way over the land, being a footpath, bridleway or restricted byway, if they are satisfied-

(a) that an alternative right of way has been or will be provided; or

(b) that the provision of an alternative right of way is not required.”

On scrutiny of the outline planning application, with particular regard to the recreational routes and highway network, the Highway Authority noted that the development would provide highway along broadly similar routes to that of the existing, with a vast number of additional routes and greater permeability of the site. The proposed highway would also, as a minimum, provide like for like status, i.e. footpath for footpath, or a higher highway status, i.e. multi-user route or all-purpose highway (carriageway & footway), increasing the legitimate highway network across the site and providing links to the wider non-motorised highway network. Key routes around and through the site would however remain segregated from carriageway, running through green corridors adjacent to retained hedgerow/woodland and/or passing through open space/parks and natural vantage points. The Council, in its capacity as Highway Authority, therefore concluded that the required statutory test was satisfied and proceeded to make an extinguishment Order.

Note for information: The process for an extinguishment Order differs slightly from some other statutory processes. The Order is first made, then subject to advert/consultation. The Order does not come into effect unless it is confirmed. The making of the Order did not prejudice the outcome or remove your right to object, although it is easy to see why some came to that conclusion.

Matters such as; land use, panorama and amenity, are planning considerations and do not form part of the statutory highway test. These considerations would have been taken into account by planning colleagues when determining the outline planning application. The grassed field to the west of the site, locally known as 'The Flats', a corridor to the south-western/southern boundary as well as key hedgerows are however being retained as they are.

It is also important to clarify that this extinguishment Order is not seeking to extinguish any part of the Walney to Wear (W2W) / National Cycle Network Route 70 (NCN70) bridleway to the southern boundary of the site. The developer has yet to finalise and submit details, but must provide an improved (wider and fit for purpose post development) bridleway to the north-east of the existing route, with greater noise mitigation between the bridleway and the A19. At this stage it would be premature to formally propose changes to the W2W bridleway, this route will be dealt with separately once details are available. Anyone wishing to obtain further information on this matter, or suggest possible improvements for the new bridleway, should contact Siglion directly via info@siglion.co.uk

Having reviewed the objections received, the Council, in its capacity as Highway Authority, conclude that none of the objections raised any material highway points. We remain satisfied that alternative provision will be provided by the development. We will therefore be referring the matter to the Secretary of State for determination, with a view to having the Order confirmed.

This is not to say that we do not value your comments, it is clear that this is an emotive issue for many, we have therefore sought additional assurances around the development and rights of way, and where possible we have tried to address the issues raised. Please find attached a document outlining the key points raised during the consultation together with a response, including plans.

What happens next?

The Order, together with supporting documentation and a copy of all remaining objections received, will be referred to the Secretary of State for determination, where it will be allocated to an Inspector. The Secretary of State will decide whether to hold a public inquiry or if the matter can be determined through written representation.

The Inspector will likely contact all outstanding objectors in due course.

Finally, I am obliged to ask that you reflect on the information provided and consider withdrawing your objection. Should you wish to withdraw your objection I would be grateful if you could do so in writing (letter or email) **by 20th March 2017** at the latest, should I not hear from you by this date I will assume that you wish for your objection to remain.

I trust the above is self-explanatory, however should you have any questions please do not hesitate to contact me.

Regards,

Peter

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The City of Sunderland (Chapelgarth) Public Path Extinguishment Order 2016

Reply to Objection Summary

1. Loss of greenspace/countryside through building of houses

- The site was designated as a housing site in the 1998 Unitary Development Plan (UDP). The suitability of the site for residential use has been established through its designation and through the grant of planning permission. The Chapelgarth site is identified in the 1998 UDP as 'Chapelgarth Doxford Park', with an indicative capacity for 860 units. A planning application was approved in 1997 (Ref: 97/00614/FUL) for the 1st Phase of the development at Chapelgarth for 128 dwellings at Burdon Vale, which was later increased to 130 units in 1998 (Ref:97/01693/FUL and Ref:98/00059/FUL). These units and the two roundabouts with 'stub' exit roads to the wider development site, were built out between 1998 and 2000. The neighbouring land was allocated as land for a new educational facility in the 1998 UDP and Portland School received planning permission in 2000 (Ref:00/01156/LAP) and was constructed in 2001.
- The new development which has been granted planning permission in December 2016 for up to 750 residential units and up to 1000sqm of ancillary commercial uses (Ref: 16/00388/HY4) will also retain 17 hectares of open space, the equivalent of 23 football pitches or more than ¼ of the overall site. The development itself must also retain key hedgerows and woodland, with housing punctured by green corridors, parks and natural vantage points. Therefore large amounts of open space will remain accessible to members of the public living within the new housing development and beyond, catering for a wide range of recreational activities.

2. Loss of views of surrounding countryside

- The developer has carried out detailed survey work to identify 'view corridors' through and the development, this forms part of the approved Masterplan for the site. The development must therefore maintain key views across the countryside, wider city and out to sea, as shown on Plan 2.

3. The site provides the only means of outdoor exercise close to existing homes, avoiding travel

- The development will deliver extensive areas of publicly accessible open space, known in planning terms as Suitable Alternative Natural Greenspace (SANG) incorporating a circular/perimeter route; green links; amenity open space; and two strategic open space areas (Joe's Paddock and Central Park) providing for a range of outdoor activities – the exact form and specification yet to be agreed with the Council. The location of the public open space is shown on Plan 2. The delivery of The Open Space Strategy is also a planning condition. The landowner is also bound by an obligation contained in the section 106 agreement dated 21.12.16 to continue to maintain public access to the SANG area at all time, except where works are being carried out, and to carry out the improvement works forming part of the planning permission in respect of a phase of the development before occupation of the final dwelling in the respective phase.
- The development will also deliver links to the surrounding countryside maintaining further recreational opportunities. The provision of these recreational routes is also a planning condition. The attached Plan 2 shows how these routes connect to the wider network of footpaths, cycleways and bridleways in the surrounding area.

4. The paths are used all year round

- The new routes to be created as part of the development will be established as rights of way and will therefore be available all year round.
- Aside from identifying footpaths to be extinguished, the Order Map identifies, in red, routes which are unaffected by the proposals and which are now formally acknowledged to be rights of way and will be retained as such. This provides certainty in relation to the continued availability of these routes.
- Over and above this, subject to the extinguishment order being confirmed, all existing routes will remain available on a permissive basis until a time that an area is required for development. At this point, only those routes within the construction area will be unavailable, where possible and safe alternative routes would be provided, whilst routes on the wider site would remain open.

5. Extinguishment of the routes would impact on the health/wellbeing of residents

- The development will deliver extensive areas of new publicly accessible open space and new recreational routes (see point 3 above). These will significantly enhance the legitimate use of the site and access to the surrounding countryside for recreational use, with resulting health benefits.
- In addition to the amenity open space and play areas to be created within individual neighbourhood areas, the development will deliver two strategic areas of public open space – Joe's Paddock and the Panoramic Park. The design of these two areas has yet to be finalised and will be worked up in conjunction with the Council and agreed through the reserved matters planning application process. The developer is keen to explore the creation of activity areas, such as an outdoor gym, in these two areas. The developer has already engaged with the local Youth Group, the Box Youth Project to determine what sort of activities children would like to see in these areas. These areas would be maintained by a management company and available to all members of the public. They would represent a significant betterment to the existing opportunities that the site affords for recreational use, again with health benefits for users.
- The formal circular route will provide a route of more than 3km and could be an excellent opportunity for a 5km 'Park Run' in this area, this was featured on Page 58 of the supporting Design Access Statement submitted with the approved application and is illustrated on Plan 3.

6. The paths/area are used regularly for dog walking

- The public open space to be provided by the development will continue to offer enhanced opportunities for dog walking throughout the site and connecting to the wider area.
- A substantial area of Suitable Alternative Natural Greenspace (SANG) on the north, west and south edges of the site will be created as part of the development (covering an area of up to 14 hectares) and will incorporate a circular walk of more than 3km. The landowner is bound by an obligation contained in the section 106 agreement dated 21.12.16 to maintain public access to the SANG area and to carry

out improvement works to the SANG as part of each phase of the development (see point 3 above).

7. The paths have been used for a significant number of years (e.g. 25, 30, 40 years)

- This point is not disputed; the Council has formally acknowledged the status of the routes as footpaths. The historic use is why an extinguishment Order has been made, had use of the routes only been more recent there would be no requirement for this statutory process, no right of objection and no statutory requirement to provide alternative routes.
- The test applied in this instance is not of use or period of use, but whether the Council is satisfied that an alternative right of way will be provided, which it is.

8. Removal of the paths is unnecessary and the development should accommodate the existing routes

- Whilst producing the Masterplan an existing network of footpaths was identified across the site and, where possible, this was used these to inform the proposed highway network, including; footpaths, multi-user routes and bridleways, as well as the new roads and streets or all-purpose highway. In a development of this scale and nature it is necessary for many of the existing footpaths to be extinguished in order to enable the proposed development to be built out. However, each phase of the development will involve the creation of a highway network which will be established as new rights of way. In a number of cases, these new routes will follow the alignment or broadly similar alignment of an original footpath. In many other cases the new routes will provide links within the site that have not previously existed. Collectively the new routes will provide alternative rights of way to the footpaths that currently exist within the site. In each case, the new routes will be formed to a high specification with details to be approved by the Council and the routes will either be adopted and maintained by the Council or maintained by a management company. This represents significant betterment to the current level and quality of footpath provision on the site.
- Again, subject to the extinguishment order being confirmed, all existing routes will remain available on a permissive basis until a time that a phase is required for development. At this point, only those routes within the construction area will be unavailable and, where possible, safe alternative routes would be provided, whilst routes on the wider site would remain open.

9. The footpaths are used regularly by runners and/or cyclists

- The approved development must provide Suitable Alternative Natural Greenspace (SANG) area running around the north, west and south edges of the site, including a circular route of more than 3km. There is an obligation of the landowner under the section 106 agreement to maintain public access to the SANG area and to carry out improvement works to the SANG as part of each phase of the development (see point 3 above) This will provide a resource ideally suited to runners and/or cyclists, and represent betterment to the existing provision. The circular route also contains connections to further routes within the wider countryside allowing for longer distance runs/rides. Potential exists to explore the establishment of a 5km 'Park Run' utilising the new circular route (as illustrated on Plan 3).

10. The site is used for activities by school users, including the adjoining Portland Academy

- The new development will retain 17 hectares of open space, the equivalent of 23 football pitches or more than ¼ of the overall site. The development itself must also retain key hedgerows and woodland, with housing punctured by green corridors, parks and natural vantage points. Therefore large amounts of open space will remain accessible to for use by local schools and the general public, catering for a wide range of recreational activities.
- The developer has actively sought the views of local schools in relation to the design of the two strategic open spaces – Joe’s Paddock and the Panoramic Park – to inform the type of activity area that may be accommodated within these spaces. The developer has already engaged with The Box Youth Project in connection with this and would welcome the views of any school or other organisation.

11. The site has been used for recreations and local sports for decades and should be considered for a Village Green Application

- An application to register land as a Village Green cannot be made after an application for planning permission for that land is first publicised. In this case, a planning application has been made and planning permission has been granted therefore this prevents an application being made for registration of the land as a Village Green.

12. Impact of loss of countryside on wildlife

- In addition to assessing the environmental impact on biodiversity as part of the Environmental Statement, the following ecological surveys were undertaken in support of the recent planning application:
 - Phase 1 Habitat Survey;
 - Bat emergence and transects surveys;
 - Automated monitoring survey of bats;
 - Brown hare transect survey;
 - Great crested newt surveys;
 - Badger, otter and water vole surveys;
 - Breeding bird surveys.
 - Further Breeding Bird Survey
 - Habitat walkover survey
- The potential impact of the proposed development in terms of encroachment, damage to trees and contamination of the water course have also all been considered throughout the planning application process and appropriate buffers and long term management plans prepared to safeguard the long term health of the site.
- A number of mitigation measures have been incorporated into the design of the proposed development in order to avoid or minimise impacts on important ecological features, including retention of hedgerows and woodland with appropriate buffer zones. A network of open space has been incorporated into the development

design, including areas which are designed to function as Suitable Alternative Natural Greenspace (SANG). A Sustainable Urban Drainage Scheme (SUDS) also provides opportunities for ecological mitigation and enhancement measures. These ensure the development complies with protected species legislation and relevant national and local policies.

13. Closure of the bridleway would remove a well-used route for horse riders

- We wish to make clear that the Order seeks to extinguish only the footpaths identified on the Order Map.
- The Order does not seek to extinguish the bridleway which runs along the south and west edges of the site (National Route 70/Walney to Wear – W2W). The developer has yet to finalise and submit details, but must provide an improved (wider and fit for purpose post development) bridleway to the north-east of the existing route, with greater noise mitigation between the bridleway and the A19. At this stage it would be premature to formally propose changes to the W2W bridleway, this route will be dealt with separately once details are available. Anyone wishing to obtain further information on this matter, or suggest possible improvements for the new bridleway, should contact Siglion directly.
- In addition to this we would wish to give an assurance that the existing W2W bridleway route will remain open, on its current alignment, at least until a time that a suitable alternative is available for use.

14. Closure of the bridleway would and push horse riders on to the local road creating more danger for horse riders

- See point 13 above.
- The development must also install traffic calming on Weymouth Road to influence vehicle speeds in the vicinity of the site, which will contribute to an improvement in safety for horse riders. For pedestrians, a new crossing facility on Weymouth Road will allow residents from the surrounding area to access the new footpaths and retained open space safely.

15. The site is often used by off road motorcycles and 4x4 vehicles, extinguishment of the footpaths will limit the choice of pedestrians when trying to avoid these vehicles and therefore increase the risk to pedestrians

- The use of the site by these vehicles is illegal, we are however aware that the Police have difficulty enforcing this and due to the large perimeter it is difficult to control access at present. As part of the development the new network of footpaths, multi-user routes and bridleways will include access control measures which will physically prohibit the use of these routes by 4x4 vehicles and make motorcycle access considerably more difficult.
- Again, subject to the extinguishment order being confirmed, all existing routes will remain available on a permissive basis until a time that an area is required for development. At this point, only those routes within the construction area will be unavailable, where possible and safe alternative routes would be provided, whilst routes on the wider site would remain open. Pedestrians would therefore continue to have freedom of choice, whilst access controls will be introduced with each phase of development, making illegal use of the site more difficult.

16. The Statement of Reasons does not provide enough information on the alternative routes to determine whether they will be suitable, whether they will be highway or permissive

- New routes are not being delivered by the Order, due to the nature and size of development there needs to be some degree of flexibility regarding the exact alignment, width and make-up of the new routes. The exact details of these routes will be defined under reserved matters applications for each phase and resulting highway agreements under S.38 of the Highways Act 1980. These routes must however be delivered in accordance with the outline planning permission.
- The statutory test is whether the local authority is satisfied that alternative rights of way have or will be provided; on scrutiny of the outline planning application, with particular regard to the recreational routes and highway network, the Highway Authority noted that the development would provide highway along broadly similar routes to that of the existing, with a vast number of additional routes and greater permeability of the site. The proposed highway would also, as a minimum, provide like for like status, i.e. footpath for footpath, or a higher highway status, i.e. multi-user route or all-purpose highway (carriageway & footway), increasing the legitimate highway network across the site and providing links to the wider non-motorised highway network. Key routes around and through the site would however remain segregated from carriageway, running through green corridors adjacent to retained hedgerow/woodland and/or passing through open space/parks and natural vantage points. The Council, in its capacity as Highway Authority, therefore concluded that the required statutory test was satisfied and proceeded to make an extinguishment Order. The Statement of Reasons gives a broad overview of the new highway that will be provided.
- All new routes will be highway, either as part of the adoptable highway or that to be under the Management Company that is to be established. Subject to the extinguishment order being confirmed, all existing routes will remain available on a permissive basis until a time that an area is required for development. At this point, only those routes within the construction area will be unavailable, where possible and safe alternative routes would be provided, whilst routes on the wider site would remain open.

17. Planning permission had not been granted when the extinguishment Order was made, this pre-judged the planning application

- Extinguishment orders can be made in the absence of planning permission being granted. In this case, at the date of making of the Order, a planning application had been made to the Council and consulted upon and the Council had resolved to grant planning permission. The planning application contained appropriate information to demonstrate that alternative rights of way will be provided and this allowed the Council to satisfy itself that the statutory test was met (see point 16 above).

Plan 1

Existing Recreational Routes & Well Trodden Site Paths Including Off-Site Networks























- Key**
- Public Right of Way - [Footpath]
 - Public Right of Way - [Bridleway]
 - Great North Forest Trail
 - National Route 70 / Walney to Wear [W2W] Long distance coast to coast cycle route
 - Advisory cycle route (Taken from SCC Cycling in Sunderland)
 - Traffic free cycle route (Taken from SCC Cycling in Sunderland)
 - Existing desire lines across site [Well trodden paths]
 - Off-site roadside footways
- Existing site access and gaps in hedgerows**
- Existing vehicle access points
 - Existing gaps in hedgerows and breaks between field margins
 - Existing well worn accesses into woodland areas

Plan 2

Proposed On-Site Recreational Routes & Off-Site Networks



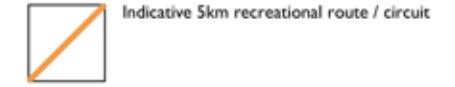
- Existing offsite networks**
-  Public Right of Way - [Footpath]
 -  Public Right of Way - [Bridleway]
 -  Great North Forest Trail
 -  National Route 70 / Walney to Wear [W2W] Long distance coast to coast cycle route
 -  Advisory cycle route (Taken from SCC 'Cycling in Sunderland')
 -  Traffic free cycle route (Taken from SCC 'Cycling in Sunderland')
 -  Off-site roadside footways
 -  Existing crossing
- Proposed on-site networks**
-  Modifications to existing networks: Diverted section of W2W on multi-user route
 -  Track through Blakeney Woods 'Extinguished Road', to be developed as a bridleway.
 -  Multi-user route [including equestrian use]
 -  Proposed combined cycleway / pedestrian route
 -  Footpath pedestrian route away from a road
 -  Proposed crossing
 -  Circular walking route To connect areas of SANG and open spaces
 -  Important outward views framed by streets
 -  Green visual connections to the end of each street
 -  Existing Woodland
 -  Proposed public open spaces
 -  Proposed built form (Indicative block plans to be developed through detailed design)

Plan 3

Chapelgarth – Open For Recreation Display Board

The use of drawings by the Customer acts as an agreement to the following statements. The Customer must not use the drawings if it does not agree with any of the following statements:

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This illustrates the opportunity to create local fitness opportunities such as a 5km park run around the neighbourhood



02	Base updated	23.02.16	SWM	-
01	First Issue	21.01.16	SWM	-
Rev	Amendments	Date	Drwn	Chkd

Project
 Chapel Garth, Sunderland
 Drawing Title
 Green networks - indicative 5km route / circuit

Project No. 1515	Scale @ A3 1:5000	Project Status FOR INFORMATION
Drawing No. L-1515-PRP-025		Revision 02



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