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## Order Decision

Site visit made on 10 November 2015

**by Alison Lea MA (Cantab) Solicitor**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 15 December 2015**

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### **Order Ref: FPS/A1015/5/3**

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Peak Resort Site, Unstone, Chesterfield (Bridleway BW39 (Part) and Public Footpaths FP40, FP41, FP43, FP44, FP47 and FP178 (Part) Public Path Stopping Up Order 2014.
- The Order is dated 16 December 2014 and proposes to extinguish the public rights of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when Chesterfield Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is confirmed subject to modifications set out below in the Formal Decision**

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### **Procedural and Preliminary Matters**

1. The effect of the Order as made is to stop up the footpaths and bridleway shown on the Order plan and described in Part 1 of the Schedule to the Order. The Order also provides for the creation of alternative highways for use as replacements, which footpaths and bridleway are also shown on the Order plan and are described in Part 2 of the Schedule. The Order provides that the stopping up shall not take effect until the replacement highways have been created to the reasonable satisfaction of the Council.
2. Some of the routes to be stopped up are not visible on the ground and it was apparent at my site visit that some of the tracks on the ground do not correspond with those shown on the definitive map. At my site visit I walked the routes shown on the definitive map in so far as possible plus all of the routes to be created. I was accompanied at all times by a representative of the Council and the objector plus a number of other interested parties.
3. Part of the routes to be created fall within the area of North East Derbyshire District Council (NEDDC). NEDDC have delegated powers to Chesterfield Borough Council in respect of the making and confirming of the Order.
4. Mr Wilson, the objector, states that his objection to the Order was in fact made on behalf of the owners and riders of horses stabled at his livery yard at Birch Hall Farm. This is not readily apparent from his objection but ten standard letters from those owners and riders have now been provided. Although made outside the statutory period for objection I shall take them into account in making my decision. I shall also take into account a number of other representations which have been made outside the statutory period.

5. The Order plan shows existing footpath 178 between Points D and I to be retained, with a new route provided between Points I and Z. The Schedule does not reflect this position. The Council has clarified that the Schedule requires modification to reflect the Order plan and I am satisfied that such modifications should be made.

### **The Main Issues**

6. The Order was made because Chesterfield Borough Council considered it necessary to stop up the bridleway and footpaths to which the 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 (the 1990 Act). Section 257 of the 1990 Act requires that, before confirming the Order, I must be satisfied that it is necessary to stop up the paths in question to allow development to be carried out in accordance with a valid planning permission. The development permitted must not be substantially complete.
7. Even if I am satisfied on these issues, my confirmation of the Order is discretionary. In exercising that discretion I must consider the merits and demerits of the proposed extinguishments in relation to the particular facts of the case, and in particular the effect that the confirmed Order would have on those entitled to the rights that would be affected by the Order. I must also approach the exercise of my discretion on the basis that the issue has been resolved in favour of allowing the development to proceed, and consider whether the disadvantages and losses flowing from the proposed extinguishments would be of such significance that I should refuse to confirm the Order.

### **Reasons**

#### **Whether it is necessary to extinguish the paths to enable development to be carried out in accordance with a valid planning permission**

8. Outline planning permission was granted in 1989 for a major leisure venue on a 280 acre site at Birch Hall Golf Course. It included a dome containing a hotel with indoor and outdoor related leisure and educational facilities, and the provision of accommodation lodges and a lake. A reserved matters submission was made within 3 years of the outline permission and a number of subsequent permissions have provided details of the scheme and have varied a number of conditions. The Council confirmed in August 2015 that the 1989 outline permission, plus a number of subsequent permissions, had been implemented by the carrying out of substantial earthworks in relation to the dome and access to the site. I am satisfied that there is valid planning permission for the scheme. It was clear at my site visit that the development permitted is not substantially complete.
9. The site masterplan drawing shows a large domed structure plus holiday lodges (stated by the Council to be 250 in number), an 18 hole golf course, a driving range and a substantial car park. The planning permission provides for a perimeter fence and it is clear that it is intended that the scheme will be a secured, fenced facility. Some of the routes to be stopped up are located where built development, including the domed structure and holiday lodges, is proposed. Other routes cross the proposed golf course and given the nature of the facility proposed, access to them would not be possible. No-one has

suggested that any of the routes through the development site should remain open and I accept that it is necessary to extinguish the routes in order to allow the development to be carried out in accordance with the planning permission.

**The disadvantages or loss likely to arise to members of the public as a result of the Order**

10. The Order would result in the stopping up of about 4420 metres of public footpaths and about 1020 metres of public bridleway. It would provide for about 950 metres of new public footpath and about 2245 metres of new public bridleway. It is proposed that the bridleway would be constructed to a greenway standard, comprising of a width of 3 metres with a 0.3 metre margin and an additional minimum of 1 metre soft landscaped margin to both sides. It would be finished with a Toptrec or equivalent material laid on a sub-base. The footpath routes would be 1.8 metres in width with a 0.3 metre margin on both sides and finished with a Toptrec or equivalent material surface. The new routes, which in general terms, follow the perimeter of the site, would be outside a chain link fence, which would rise to 3 metres in height in places.
11. Although the Order would result in a reduction in the overall length of the public paths within the site, many of the footpath routes are currently not used and are inaccessible. The new routes would have a superior surface and increased width and would maintain the connections to all the routes which run to or from the site. The footpath would allow for a complete circuit of the site to be made, and although routes crossing the centre of the site would be lost, the route would be varied, passing through a mixture of hilly woodland, open grassland and along the riverside adjacent to Sheffield Road. Although it would be steep in places, I am satisfied that it can be constructed to an acceptable standard and it would be easier to negotiate than some of the current routes.
12. The bridleway, although not providing a circular route due to the topography of part of the site, would connect existing routes and would be longer and have a superior surface and greater width than the existing routes. Although concern has been expressed that the section approaching Point C would be steep, it was apparent at my site visit that an acceptable gradient could be provided in this location and that it would be similar to the gradient of part of BR 39. I accept that some of the views currently available from BR39 would be lost and that in parts the route would be close to a chain link fence. However, riders would no longer need to ride along Sheffield Road but would benefit from the riverside route adjacent to Sheffield Road.
13. The objector's main concern relates to safety. A pedestrian underpass would allow walkers to continue around the perimeter of the site without crossing the access road. However, no such facility is to be provided for horse riders who, in order to continue along the part of BR39 to be retained, would need to cross the access road close to the new roundabout. I am informed that the detail of the crossing will be provided within an agreement to be entered into under s278 of the Highways Act 1980 and that it will accord with the standards and guidance contained in TA 57/87 – Roadside Facilities for Ridden Horses. Although the precise detail has not been made available to me, I am satisfied that a safe crossing can be provided. I also note that the British Horse Society have no objections to the Order and have confirmed that the route of the new bridleway is acceptable to them

14. Currently BR 39 can be accessed either from BR 51 near Point C (which access would be unaffected) or directly from Sheffield Road close to Point Y. Mr Wilson, the objector, states that riders based at his livery yard currently access BR39 by riding south along Sheffield Road to the access point close to Y. This access point would remain available. However the access road to the site would also be in this location and a new roundabout would be constructed to which the slip road from the A61 would connect. It would therefore be necessary for a horse rider to negotiate a roundabout which is likely to carry a considerable volume of traffic. Although when travelling from Unstone Green the right turn across Sheffield Road already involves crossing traffic I agree that negotiating a busy roundabout would be more difficult and is not a manoeuvre to be promoted.
15. However a new access is also to be provided from Sheffield Road. A parking facility would be provided thereby providing easy access for walkers arriving by car or those with horse boxes. For riders travelling from Unstone Green a right turn off Sheffield Road would be required. Concern has been expressed about visibility at this point and I note the curve in the road. Nevertheless at my site visit I considered visibility to be acceptable and although I accept that horse riders would prefer not to turn across traffic on Sheffield Road a similar manoeuvre is currently required at Point Y. The proposed access point is also closer to Unstone Green, thereby shortening the distance which would need to be ridden on Sheffield Road, and considerably further from the busy A61 slip road, than the access at Point Y.
16. I note Mr Wilson's suggestion that access could be provided from his livery yard via an existing gate which gives access to the golf course. It would be a short distance to the proposed new bridleway, which riders could then access without any road work. However, this does not form part of the Order and is a matter for private negotiation. I also note the suggestion of providing access from the cul-de-sac on Cheetham Avenue, but again this does not form part of the Order.
17. The Order is supported by the Peak and Northern and Dronfield Footpaths and Bridleway Society and by the Chesterfield Cycle Campaign. The British Horse Society states that it is satisfactory. Although I have some concerns with regard to the prospect of horse riders attempting to access the route from the roundabout at Point Y, I am satisfied that other access points are available and safe. Taking into account all the matters raised I consider that, on balance, the proposed routes provide an overall improvement to the current network of public rights of way available within the site.

### **Advantages**

18. In addition to the overall improvement to the rights of way network, the extinguishments would allow a major development scheme to proceed. The Peak resort scheme is a priority for the Council which is reflected in the Council's adopted Core Strategy 2011-31. I am informed that it has secured the required £400 million funding and would secure 1300 permanent jobs when completed and support hundreds of construction jobs as the site is developed.

### **Other matters**

19. It has been suggested that diverting the public rights of way to the perimeter of the site will increase the value of the land to the benefit of the owner.

Although that may be the case, it is not a matter which weighs against confirming the Order.

20. Complaints about land maintenance and the presence of ragwort are also not matters for me to comment on in considering the merits of the Order.

### **Conclusions**

21. For the reasons given, I conclude that the disadvantages and losses which would flow from the Order are minor and that the benefits of confirming the Order clearly outweigh those disadvantages and losses.

### **Formal Decision**

22. I confirm the Order subject to the following modifications:

- In Part 1 of the Schedule to the Order under "Footpath 178" delete "D-I-Z" and insert "I-Z"
- In the final paragraph of Part 1 of the Schedule to the Order after the words "commencing at" delete "Point D" and the grid reference and insert "Point I (GR SK 437125 375376) and after the words "for a distance of" delete the remainder of the paragraph and insert "approximately 200 metres to Point Z (GR SK 437290 375474)"

*Alison Lea*

**Inspector**