



## Order Decision

Inquiry held on 1 May 2018

Site visit made on 30 April 2018

**by Martin Elliott BSc FIPROW**

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

**Decision date: 11 June 2018**

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### **Order Ref: ROW/3181702**

- This Order is made under Section 258 of the Town and Country Planning Act 1990 (the 1990 Act) and is known as The City of Sunderland (Chapelgarth) Public Path Extinguishment Order 2016.
- The Order is dated 15 December 2016 and proposes to extinguish the public rights of way shown on the Order plan and described in the Order Schedule.
- There were 54 objections outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is confirmed.**

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### **Procedural Matters**

1. I held a public local inquiry on 1 May 2018 at the Civic Centre, Sunderland. I carried out an unaccompanied inspection of the land crossed by the routes subject to the Order, and the order routes themselves, on the evening of 30 April. I did not carry out a further site visit following the close of the inquiry as there were no issues which required me to do so. None of the parties required me to revisit the site.
2. The Council requested that I substituted the Order plan with an A3 sized plan by way of modification. However, there are no powers of modification to substitute an Order plan in a sealed Order. Whilst an Order plan at A3 size would have been preferable to the A4 plan in the sealed Order the Order plan is clear as to the location of the footpaths to be extinguished. There is nothing to indicate that anyone will have been misled or prejudiced.
3. After the deadline for the submission of documents set out in the Notice of Order further correspondence was received from one of the objectors. This should have been returned to the objector as there was no indication as to extraordinary circumstances to explain the late submission. I have not had regard to this additional correspondence but in any event it did not raise any additional relevant issues to those already raised in the objections and other submissions.

### **The Main Issues**

4. The Order has been made under section 258 of the 1990 Act. Subsection 1 provides that 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 has been acquired or appropriated, then, the local authority may by order extinguish any public right of way over the land if they are satisfied that an alternative right of way has been or will be provided.

5. The main issues to be considered are whether the land is held by the Council and has been acquired or appropriated for planning purposes. Further, whether alternative rights have or will be provided for those being stopped up. The merits of any planning permission and development are not relevant to my consideration.
6. An objection makes the point that planning permission had not been granted when the Order was made and this prejudged the planning application. However, section 258 of the 1990 Act does not require planning permission to have been granted. The relevant tests are set out above.

## **Reasons**

### ***Background issues***

#### *Public rights of way*

7. There are currently no public rights of way over the site recorded on the definitive map. Resulting from publicity in relation to the planning application for the development of the land the Council received claims for public rights of way on the site and on adjacent land. Following investigation by the Council the Council and the developer acknowledged the claimed rights of way, and other routes over the site, as public footpaths. These are the routes subject to the Order.
8. Evidence to the inquiry was that some of the Order routes had been used by equestrians and it was suggested that these routes should be acknowledged as public bridleways in consequence of that use. Mr Ducker advised that on the examination of the evidence there was insufficient evidence of use to raise a presumption of dedication of any bridleway, either under section 31 of the Highways Act 1980 or at common law. Whilst I note that some routes may have been used by equestrians there is insufficient evidence before me to enable me to conclude that any of the Order routes should be recorded as bridleways. It should be noted that it is not my role to make a determination on the status of any route based on limited evidence. Such investigations should be properly dealt with under the provisions of the Wildlife and Countryside Act 1981. I will therefore consider the Order on the basis that the Order routes are public footpaths.
9. Miss Sully advised that, following discussions with equestrians, the provision within the development of additional equestrian routes appeared to satisfy demands. However, she informed the inquiry that Siglion and the Council would be happy to enter into dialogue with a view to considering further opportunities as the site develops. Mr Bradshaw wished to see an unbroken boundary route of the development which would include linking points L and H. He also welcomed a link between P, O and CC. It should be noted that no bridleways will be extinguished by the Order and my role is to consider the extinguishment of public footpaths against the relevant criteria set out above.

#### *Planning history*

10. The site is a major housing development site within South Sunderland. It has been designated as a future housing development site since its inclusion in the City of Sunderland Unitary Development Plan adopted in 1998. The site also forms part of the South Sunderland Growth Area which is identified as a major new growth area for housing development in the emerging Core Strategy.

11. Outline planning permission for the site was granted on 21 December 2016 in respect of a hybrid application for 750 residential units and other development. The development will be delivered in phases and with each reserved matters application a compliance statement would be required to be submitted to show how any development conforms with the Masterplan and 'Design Code' approved as part of the hybrid planning consent. The Design Code includes the provision of the new routes including all-purpose highways, multi-user routes and circulatory footpaths. In addition to the Design Code a master section 106 agreement<sup>1</sup> controls the provision of 'Suitable Alternative Natural Greenspace' (SANG) and the provision of a circular walk contained therein. Any developer will be required to enter into a section 106 agreement on the same (or substantially the same) terms as the master section 106 agreement. The planning conditions and the section 106 agreement, which is enforceable, provide an appropriate level of control over the approved development and any subsequent phases so as to provide for alternative routes for the footpaths to be stopped up.
12. The section 106 agreement requires public access to be provided and maintained at all times within the SANG with new routes being made available on a phase by phase basis. Until such time as development commences in each phase the existing routes will be maintained and continued public access will be permitted. The section 106 agreement contains obligations in respect of future maintenance of privately maintained areas and the SANG. A management plan will introduce a high standard of maintenance and would result in a significant improvement over the current provision and would address such matters as unauthorised access by vehicles and antisocial behaviour. Roads and footways would be adopted by the Council subject to the completion of a highways maintenance agreement and would be maintainable at public expense.
13. On 17 May 2017 approval was given in respect of an application for reserved matters for up to 160 residential units, public open space, landscaping, internal road networks, equipped play areas and 2.88 Ha of SANG. This phase 1 development is located within the north western part of the site.

***Whether the land has been appropriated for planning purposes***

14. In 1971 land at Silksworth, which includes land affected by the Order, was acquired by the Council (inquiry document 2) for housing purposes. On 23 March 2016 it was resolved by Cabinet that the land subject to the Order was no longer required for housing purposes and that the land be appropriated for planning purposes by the Council pursuant to Section 122(1) of the Local Government Act 1972 (within the meaning of Section 246 of the 1990 Act). The land continues to be held by the Council for planning purposes.
15. There is no dispute that the land is held by the Council and has been appropriated for planning purposes.

***Whether alternative footpaths will be provided***

16. The Council recognise that in relation to the footpaths to be extinguished alternative routes will be required. The development has been landscape led with existing open space and recreational routes taken fully into account. The

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<sup>1</sup> Section 106 of the Town and Country Planning Act 1990

- Council makes the point that it is evident from the plans that alternative rights of way will be provided. Mr Ducker and Mr Owens set out in their proofs (also at Appendix J of the Council's statement of reasons) an analysis of each footpath and the alternative right of way; inquiry document 1 identifies existing routes and the alternative routes. From my examination of the analysis, assisted by the map, it is clear that in each case there will be an alternative right of way provided through the network of new footpaths, multi-user routes and all-purpose highways. The alternative routes are in reasonably close proximity to the routes to be extinguished. None of the objections argue that alternative routes for the footpaths to be extinguished have not been provided.
17. The delivery of the new highway provision is secured by Conditions 3 and 20 of the planning permission which requires that the development is to be provided in accordance with the relevant regulatory plans<sup>2</sup>. As each phase comes forward the developer is required to demonstrate compliance with the Masterplan and Design Code and enter into a section 106 agreement on the same (or substantially the same) manner as the master agreement (paragraph 11 above). Although Mr Bradshaw raised concerns that developers do not honour promises made with plans and consultations a section 106 agreement is enforceable by the Local Planning Authority in this case Sunderland City Council. In my view the planning conditions and the section 106 agreement are sufficient to secure alternative rights of way.
  18. Bearing in mind the above the statutory test has been met in that for each route to be extinguished an alternative will be provided.
  19. Objections make the point that the site provides the only means for outdoor exercise, including dog walking, and that the extinguishment of the routes would impact on the health and wellbeing of residents. Whilst I note these concerns access will be available along alternative routes, albeit that some routes will be along footways adjacent to the carriageway and through a built environment. The development proposals also include an expanded network of routes with areas of public open space. Notwithstanding the above the test is whether alternative ways will be provided. I have concluded at paragraph 18 that such ways will be provided. It is also suggested in opposition that the paths have been used for decades. However, this does not preclude their extinguishment under Section 258 of the 1990 Act subject to the relevant criteria being met.
  20. It is also contended that extinguishment of the paths is unnecessary and that the development should accommodate such routes. The proposed development does accommodate the existing routes albeit that their alignment may have changed. Section 258 of the 1990 Act provides for the extinguishment of routes subject, in this case, to the provision of alternative ways.
  21. I note the concerns raised in respect of the loss of equestrian access, noting my comments at paragraph 8 above. Mr Weightman advises that his diversified farm business has a popular horse livery yard which is reliant on safe areas for riding. However, no bridleways will be extinguished by the Order and additional equestrian routes will be provided as part of the development as shown on inquiry document 1. The Wear to Wear bridleway is to be retained.

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<sup>2</sup> Regulatory Plan 944 Reg. 02 Rev A Access, Movement and Streets; Ref 944 Reg. 13 Rev O Recreational Routes and Drawing No. L1515-GAP-002

22. One objector raises concerns that closure of 'a footpath' will prevent equestrian access to Herrington Country Park. However, given that no equestrian route will be extinguished there is nothing to indicate that access to Herrington Country Park will be prevented by the Order. A further objection makes the point that the land has been open space for many years and enjoyed by horse riders. Whilst the land may have been used by horse riders the land is not designated as public open space such that it is open to the public for use other than along the existing, but unrecorded, public footpaths. Mr Weightman made the point that the land was opened up in the 1970s which produced the current situation in respect of access. In any event the fact that the land has been used does not preclude development from taking place or an Order being made under Section 258 of the 1990 Act.
23. Another objector contends that the closure of the footpaths between Doxford Park and Burdon would impact on her life and finances as she would no longer be able to walk to the farm where her horse is stabled. However, the alternative routes will still enable access over the land and Mr Ducker informed the inquiry that all entrances and exits on the site are preserved although they may not be exactly in the same place. In my view there is nothing to indicate that this objector will not be able to walk from Doxford Park to Burdon on a reasonably direct alignment.
24. Objections raise concerns that unlawful use of the area by motor vehicles and extinguishment of the footpaths will limit the choice for pedestrians. However, whilst the Order will extinguish footpaths alternatives will be provided in every case. Mr Ducker acknowledged that unlawful use by motor vehicles is a problem and that the proposed expanded network and SANG will include access control measures to alleviate the problem.

### ***Conclusions on relevant matters***

25. The land is held by the Council and has been appropriated for planning purposes. The Order seeks to extinguish a number of public footpaths for which alternatives will be provided. The relevant criteria are therefore satisfied and the Order should be confirmed.

### **Other Matters**

26. Both Mr Weightman and Mr Bradshaw raised issues in respect of the design of the alternative routes, additional equestrian routes and greenspace. These are not matters for my consideration.
27. Objections raise concerns in respect of the loss of greenspace and countryside, loss of views, impact on wildlife, development of green belt, planning policy and matters relating to the development of the land. Whilst I note these concerns they are not matters which I can take into account in making my decision. The relevant criteria are set out at paragraphs 4 and 5 above. The merits of any planning permission is not for my consideration.

### **Conclusion**

28. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed.

**Formal Decision**

29. The Order is confirmed.

*Martin Elliott*

Inspector

## APPEARANCES

### **For the Council of the City of Sunderland:**

Miss R Stockley	Of Counsel, Instructed by Sunderland City Council
who called	
Mr P Owen	Landscape Architect, Colour
Mrs D Pearson	Development Control Manager, Sunderland City Council
Mr T Ducker	Engineer, Sunderland City Council
Miss K Sully	Development Director, Siglion

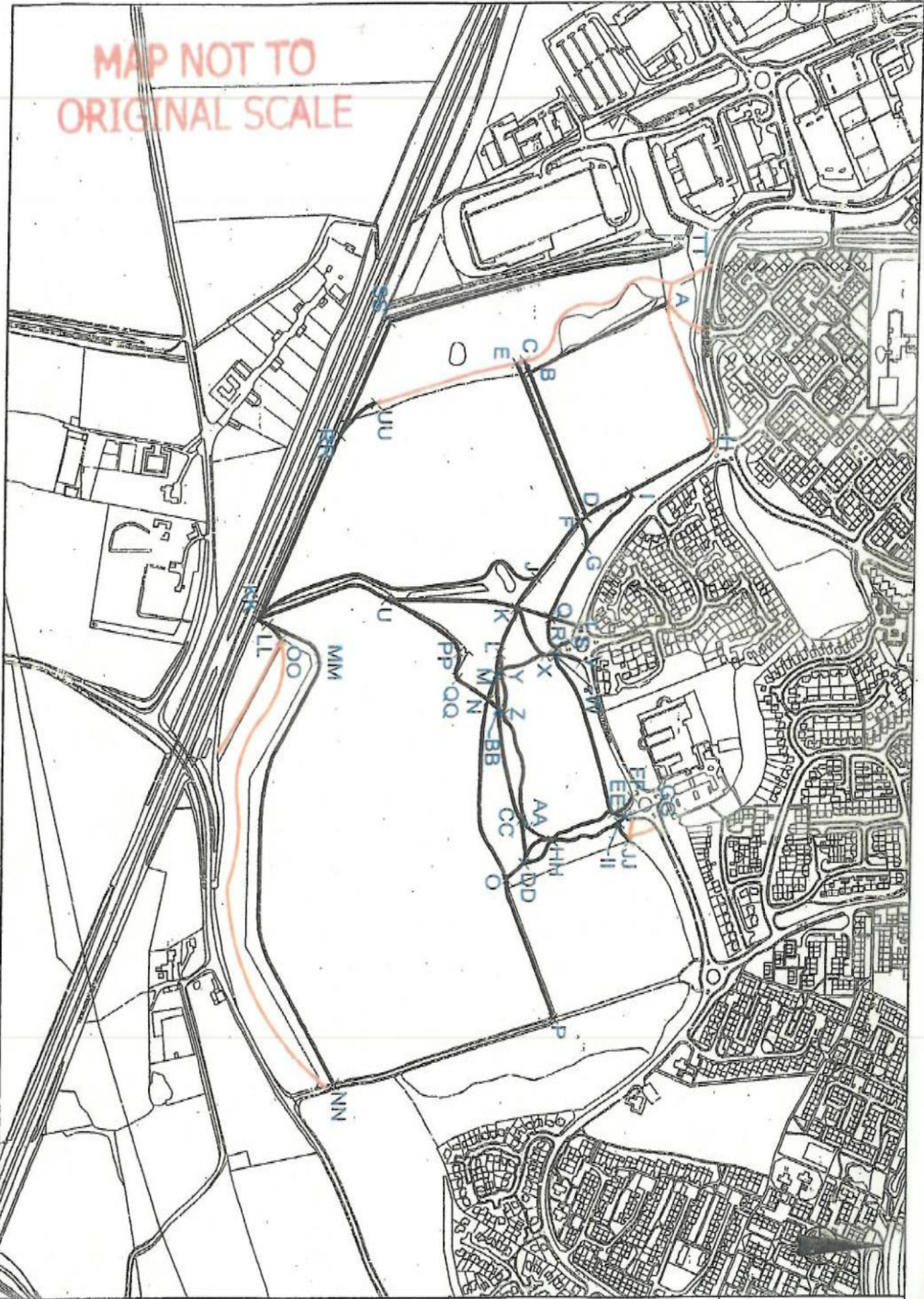
### **In opposition to the Order:**

Mr S Weightman	Tenant Farmer
Mr R Bradshaw	Statutory objector
Councillor C English	Councillor for Doxford Ward (did not give evidence)

### **Documents handed in at the Inquiry**

- 1 Plan of existing and proposed movement routes (L-1515-PRP-027-Rev.12)
- 2 Conveyance, 29 December 1971
- 3 Summary proofs of evidence (Peter Owens and Katie Sully)
- 4 Statement of Ray Bradshaw
- 5 Closing Submissions on behalf of Sunderland City Council

MAP NOT TO ORIGINAL SCALE



**KEY:**  
 — Footpath to be extinguished  
 — Footpath to be retained

*2018*

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AUTHORISED SIGNATORY

For registered professional only. All a matter opinion is the basis of this report. The user of this report is advised to seek independent professional advice. The user of this report is advised to seek independent professional advice. The user of this report is advised to seek independent professional advice.

**Sunderland City Council**

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**Project:** EXTINGUISHMENT OF HIGHWAY S218 TCEPA 1990  
**Scheme:** VARIOUS FOOTPATHS SOUTH OF MORNINGSIDE RD & WETWOODTH RSD  
**Contractor:** P4010101  
**Contract No:** 1-5900  
**Date:** November 2016  
**Drawing No:** S1004254/03  
**Revision:** 01