

Agenda Item	A12
Application Number	Associated with 21/01284/FUL
Proposal	To permanently divert a section of Public Footpath No. in Brookhouse to enable the implementation of residential development pursuant to the proposals set out in application 21/01284/FUL for the erection of 25 adaptable bungalows for over 55's with associated access, internal roads and landscaping.
Application site	Public Footpath No:
Applicant	Applethwaite Homes
Agent	Miss Olivia McQuaid
Case Officer	Mrs Jennifer Rehman
Departure	N/A
Summary of Recommendation	<ol style="list-style-type: none"> 1) That, subject to planning permission being granted for planning application 21/01284/FUL, an Order be made pursuant to Section 257 of the Town and Country Planning Act 1990 to divert Public Footpath 1-10-FP17 in Brookhouse in the manner set out in the report and the subsequent Order to enable the development to be carried out in accordance with the planning permission, and in the event of no objections being received or any objections being received are withdrawn, the Order be confirmed. 2) That the Chief Officer Planning and Climate Change be granted delegated powers to take or authorise any action considered necessary in respect of the making and confirmation of the Order duly authorised to be made.

(i) Procedural Matters

Planning application 21/01284/FUL was reported and resolved to be approved, subject to legal agreement, at last month's planning committee.

1.0 Application Site and Setting

1.1 Public Footpath 1-10-FP17 is a public right of way that lies within the Lower Lune Valley Ward in the Parish of Caton-with-Littledale. This footpath runs south from Brookhouse Road for approximately 67 metres along Hawthorn Avenue. The public footpath then extends approximately 55 metres alongside the garden boundary of No. 6 Hawthorn Avenue and a further 118 metres south, through

the fields to the southern boundary of the planning application site where it connects to public footpath 1-10-FP11.

- 1.2 The condition, surfacing and width of the footpath varies along its length. The initial section is located within the adopted highway (including footway). Alongside the adjacent dwelling (No. 6 Hawthorn Avenue), the footpath is narrow where it is enclosed by the adjacent garden boundary fences and the boundary treatment and vegetation alongside the field track. Beyond this section, the footpath is unmade and grassed within no defined edging. There are gate arrangements in the centre of the footpath and at the connection with footpath 1-10-FP11.

2.0 Background

- 2.1 On 24 April 2023, the Planning Committee resolved to approve a full planning application for 25 bungalows with associated access and landscaping (21/01284/FUL). The resolution was conditional and subject to a legal agreement, which is still pending drafting and agreement. Consequently, the planning permission has not yet been granted.
- 2.2 In order to secure an acceptable and safe vehicular access into the development site and to deliver the residential development, which comprises 25 bungalows, it is necessary to divert the existing public right of way. The resolution to grant planning permission included a Grampian condition to ensure the diversion order is confirmed before development commences.
- 2.3 Section 257 of the Town and Country Planning Act 1990 (the Act) provides that the local planning authority authorised to grant planning permission may, by Order, authorise the stopping up or diversion of any footpath or bridleway if they are satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted under Part III of the Act.
- 2.4 When an Order is made by a local planning authority under Section 257, it is necessary for the local authority to give notice of the Order by publishing a notice in a local newspaper, displaying a notice on site and notifying specified persons and bodies. In the event that objections are made and not withdrawn, the Order will need to be referred to the Secretary of State for consideration and confirmation. If there are no objections or all objections are withdrawn or resolved, the Order can be confirmed by the local planning authority.

3.0 The Proposal

- 3.1 The applicant has applied to divert Public Footpath 1-10-FP17 alongside their planning application. The application does not seek to divert the entire length of the footpath. The submitted diversion route plan shows only a short section of the route to be diverted to accommodate plots 8 and 20. Officers are seeking confirmation as to the extent of the alternative route to be diverted given the level changes across the site, especially at the access. Officers are of the opinion that the route to be diverted should be from the junction of the new estate road with Hawthorn Close/Avenue up to the southern boundary of the site. This is largely a consequence of the extend of earthworks proposed at the site access and the layout of the housing development. The final position of the alternative route is a matter that shall be addressed and formalised through the diversion order process.
- 3.2 Fundamentally, any alternative route for the diverted public right of way shall maintain its connections to footpath 1-10-17 along Hawthorn Close/Avenue (connecting to Brookhouse Road) and the connections to footpath 1-10-11, which runs adjacent the southern boundary of the site.
- 3.3 The alternative route shall be provided with no gates or stiles along its route and shall be up to 2 metres wide. The precise position of the diverted route shall be provided on an amended Diversion Route Plan before the Order is made and publicity takes place. Part of the consultation and publicity will involve the County Council's public right of way team who are already aware of the development proposals and the need for the diversion order.

4.0 Advice

- 4.1 The existing footpath provides an important and well used connection between the village and the wider network of existing public rights of way beyond the village into the countryside. It therefore provides a valuable recreational asset to the community and is enjoyed by many. The existing path is narrow in sections as it navigates between boundary fences of the adjacent garden and the boundary fence/vegetation to the field access track. After which, it opens up and is an unmade, grassed path through the paddock.
- 4.2 The development proposals would alter the character and form of the public right of way, with the existing path replaced largely by estate roads. The effect of the development on the landscape character and visual amenity of the site and surroundings has already been assessed as part of the determination of the planning application for residential development. The critical part of this application is to ensure a public right of way is legally protected through the site and that the alternative route maintains connections both to the north and south. There are various options to secure the alternative route. For example, one option could be to provide the alternative route along the eastern footway of the main spine road. An alternative route could be to align the diverted path through the open space or indeed the western footway. The final position shall be determined before the Order is made and in consultation with the County Council Public Rights of Way team.
- 4.3 Section 257 of the Act gives local planning authorities a power to change the route of a public footpath where a diversion is necessary to enable development to be carried out in accordance with a planning permission (the test). It was clear when the Council resolved to grant planning permission for the redevelopment of the site for housing (under 21/01284/FUL) that Footpath 1-10-17 would need to be diverted to make the development acceptable in planning terms. In view of the circumstances set out above and the suitability and availability of an alternative route, it is considered that the test set out in Section 257 is satisfactorily met. Further, it is considered the applicant should pay the costs of diverting the public right of way. The applicant has confirmed agreement to this point.

5.0 Recommendation

- 5.1 That the local planning authority proceeds to make an Order pursuant to Section 257 of the Town and Country Planning Act 1990 to divert Footpath 1-10-17 in Brookhouse to enable the development to be carried out in accordance with the planning permission. In the event of no objections being received to the Order, or any such objections received being withdrawn, the Order be confirmed. This is on the terms the developer pays the cost of diverting the footpath and providing the alternative route in accordance with the requirements of the confirmed Order.
- 5.2 That the Chief Officer of Planning and Climate Change be granted delegated powers to take or authorise any action considered necessary in respect of the making and confirmation of the Order duly authorised to be made.

Background Papers

None