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## Order Decision

Inquiry held on 8 February 2018

by **Alan Beckett BA MSc MIPROW**

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

Decision date: 28 February 2018

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### Order Ref: ROW/3177783

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ('the 1990 Act') and is known as the Borough of Telford and Wrekin Footpath 1 Parish of Chetwynd Aston & Woodcote Diversion Order 2 of 2015.
- The Order is dated 21 April 2015 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 9 objections outstanding at the commencement of the inquiry.

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

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### Procedural Matters

1. I held a public local inquiry into the Order on 8 February 2018 having made an unaccompanied inspection of the route at issue the afternoon before. I was not required to make a further accompanied inspection following the close of the inquiry.
2. Of the 9 objections outstanding, 8 claimed that the making of the Order in April 2015 had been premature as planning permission for the development of the site off Station Road had not been obtained at that date. It is noted that planning permission for the development of the site at Station Road was not granted until 27 October 2016, although an application for permission to develop the site had been made by Shropshire Homes on 29 July 2013.
3. The Order is made under section 257 of the 1990 Act. Sections 257 (1A) and 259 (1A) were inserted into the 1990 Act by section 12 of the Growth and Infrastructure Act 2013. Section 257 (1A) provides: "*Subject to section 259, a competent authority may by order authorise the stopping up or diversion in England of any footpath, bridleway or restricted byway if they are satisfied that— (a) an application for planning permission in respect of development has been made under Part 3, and (b) if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.*"
4. Section 259 (1A) provides: "*An order under section 257(1A) may not be confirmed unless the Secretary of State or (as the case may be) the authority is satisfied — (a) that planning permission in respect of the development has been granted, and (b) it is necessary to authorise the stopping up or diversion in order to enable the development to be carried out in accordance with the permission.*"
5. The Order is validly made and the objections made to it on the grounds of prematurity are misconceived. Although the application to develop the site was

- only being considered at the time the Order was made, the making of a diversion order in tandem with a planning application is provided for under section 257 (1A) of the 1990 Act.
6. Some of the objections were also made on the grounds that the developer did not own or control the land which was to be used to provide access to the development site from Station Road. Having seen copies of the developer's title to the site, I am satisfied that the developer owns the relevant land and that there is no impediment to the development in this respect.
  7. None of the statutory objectors appeared at the inquiry in person, nor were they represented at the inquiry. I heard the case for the confirmation of the Order put by the Council, together with the Council's observations on the merits of the objections which had been made. In correspondence received prior to the inquiry, a number of objectors asserted that the Council had requested that an inquiry into the Order be held whereas the objectors would have been content to deal with the matter by way of written representations. However, as one of the objectors had been Chetwynd Aston and Woodcote Parish Council, the Secretary of State was required to hold an inquiry into the Order<sup>1</sup>. The objectors were therefore mistaken as to the reason for holding an inquiry into the Order.
  8. The Order provides for the stopping up of the existing footpath and the creation of the alternative footpath within 28 days of confirmation. For Shropshire Homes, Mr Sheldon stated that the phased development of the site meant that it was unlikely that the proposed alternative footpath would be constructed and available for use until the end of June 2018. The Council requested a modification to the Order to provide for the diversion to take effect when the Council certified that the works required to bring the new path into a condition fit for public use had been complied with.
  9. Given that it is unlikely that the proposed alternative path would be available until the end of June, I consider that if the Order were to be confirmed, a modification of the kind suggested by the Council would be appropriate. A suitable form of words for such a modification is to be found within the Town and Country Planning (Public Path Orders) Regulations 1993<sup>2</sup>.
  10. There is one minor error in the Order. The cover sheet to the Order describes it as the "Diversion Order 2 of 2015" as does the confirmation sheet, whereas the title on the face of the order is "Diversion Order 1 of 2015". Mr Ross submitted that this was a typographical error, the Order being the second such order made by the Council in 2015. Given that if it were to be confirmed the Order would require modification in the manner described in paragraphs 8 and 9 above, the correction of the typographical error would also be appropriate.

## **The Main Issues**

### ***The statutory requirements***

11. Section 257 of the 1990 Act requires that I must be satisfied that planning permission in respect of the development has been granted and that it is

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<sup>1</sup> Schedule 14 (3) (2) of the 1990 Act.: "If the objection is made by a local authority the Secretary of State shall, before confirming the Order, cause a local inquiry to be held". Chetwynd Aston & Woodcote Parish Council is a local authority for the purposes of Schedule 14 (3) (2); see section 336 of the 1990 Act and sections 69 (1) and 39 (2) of the Local Government Finance Act 1992.

<sup>2</sup> As amended by the Town and Country Planning (Public Path Orders) (Amendment) (England) Regulations 2013.

necessary to divert the footpath at issue to allow development to be carried out in accordance with the planning permission already given but not yet implemented.

***Effect of the proposal on other parties***

12. Paragraph 7.15 of Defra Circular 1/09 (version 2 of October 2009) advises that in considering whether or not to confirm the Order, the disadvantages or loss likely to arise as a result of the stopping up of the ways to members of the public generally or to persons whose properties adjoin or are near the existing public right of way should be weighed against the advantages of the proposed order.
13. These are the tests which have to be addressed when determining a s257 diversion order. None of the objections made to the Order address these tests; consequently the objections are without substance or merit and I have not attached any weight to them in my consideration of this matter.

**Reasons**

*Whether planning permission in respect of the development has been granted*

14. As noted above, permission for the erection of 50 dwellings with associated parking, garages and access on land adjacent to Station Road was granted on 27 October 2017 under reference TWC/2013/0855. A copy of the minutes of the relevant committee meeting at which permission was granted, and a copy of the permission have been submitted by the Council.
15. I am satisfied that planning permission in respect of the development has been granted.

*Whether the diversion of the footpath is necessary in order to allow development to take place*

16. I saw from my site visit that construction on site had commenced. The current line of the footpath at issue lies within the development site and a temporary diversion under the Road Traffic Regulation Act 1984 of the footpath is currently in force<sup>3</sup> with an alternative route being provided around the perimeter of the site. Although that section of the footpath which is proposed for diversion is unavailable for public use as it lies within the secured site, construction of that part of the development which would affect the footpath has not yet commenced.
17. At the date of the inquiry, construction had not commenced on 17 of the permitted 50 dwellings and a further 4 had only been partially constructed. I saw that no construction had commenced on the existing line of footpath 1 although some preparatory work had been undertaken. The approved plan (ST-1001) shows that upon completion of the approved development, footpath 1 would be obstructed by 5 dwellings and the boundary fences of two others. The sub-division of the land crossed by footpath 1 to provide dwellings with amenity garden space requires the erection of fences or walls which would obstruct the public footpath and prevent the public from using it.

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<sup>3</sup> The Borough of Telford and Wrekin Footpath between Station Road Newport and A518 Newport (Temporary Prohibition of Pedestrians) Order 2017

18. From the site plans and from my site visit, I am satisfied that the approved development has not yet been completed and could not be fully implemented if the footpath were to be retained on its existing line. I conclude that in order for Shropshire Homes to be able to implement the planning permission granted to it, it is necessary for the footpath at issue to be diverted.

***The extent of loss and inconvenience likely to arise either to members of the public generally, or to persons whose properties adjoin, or are near the existing public right of way as a result of the diversion of the footpath***

*Impact upon members of the public generally*

19. The proposed diversion would increase the length of footpath 1 by approximately 55 metres. Mr Careless considered that footpath 1 was a recreational route crossing open countryside and was unlikely to serve any utilitarian purpose; an increase in the overall length of the footpath arising from the proposed diversion would not have any adverse impact upon users. I noted from my site visit that that part of footpath 1 to the east of the development site continued over pasture land to the A518 and then continued east towards Stockton Roughs. I concur with Mrs Careless' assessment; given the overall length of footpath 1, anyone embarking upon a journey along the path from either end would not be significantly disadvantaged by the proposed diversion.
20. The proposed route would run over level ground through landscaped areas within the housing development. The proposed diversion would avoid the footpath being relegated to the margins of the development site where it may become fenced in between the site boundary and garden fences. It will be necessary for users to cross the internal estate road at two points as part of the diversion; the crossing of the road will be facilitated by the installation of dropped kerbs. However, it is unlikely that the estate road will be subject to high volumes of vehicular traffic and users are unlikely to be inconvenienced in this respect. I do not consider that there would be any disadvantage to users in terms of the physical characteristics of the proposed route.
21. The alignment of the proposed alternative allows for the most efficient and economically viable use of the development site. The proposed diversion would maintain a link between Station Road, Chetwynd Aston and Stockton Roughs; despite the marginal increase in overall length of the footpath the public will still be able to undertake a journey along footpath 1 should they so wish. There is no disadvantage or loss to the public in this respect.
22. Although the footpath within the development site would be somewhat circuitous compared with its current straight line route, the proposed path would be within landscaped open space and not at the side of the estate roads. I consider it unlikely that the enjoyment to be derived from a walk along footpath 1 would be diminished by the alteration to the alignment of the path.
23. The Council has clearly considered that in the interests of public safety a temporary closure of the current line of footpath 1 is necessary during the period when development of the site is actively proceeding. The temporary footpath is around the southern and western perimeter of the development site. Whilst the temporary diversion may cause some inconvenience to those pedestrians wishing to travel along footpath 1, any such inconvenience is likely

only to last until the development of the proposed alternative footpath is completed.

24. For the above reasons I conclude that the proposed diversion would not result in disadvantage or loss to members of the public who would seek to use the path.

*Impact upon persons whose properties adjoin or are near the footpath*

25. There is no evidence before me from which I could conclude that persons whose properties adjoin the existing right of way would suffer loss or inconvenience as a result of the proposed diversion.

**Whether the Order should be confirmed**

26. The Order has been made to enable Shropshire Homes to execute the planning permission applied for and subsequently granted. It is clear that the permitted development would obstruct part of footpath 1 and I have concluded that the proposed diversion would not result in inconvenience or loss to the public in general or to those whose properties are adjacent to the footpath.
27. The advantage of the order is that the planning permission already granted can be carried out whilst retaining use of footpath 1. I conclude that there would be no disadvantage or loss to other parties which would outweigh the advantages conferred by the Order.

**Other matter**

28. One of the objectors raised concerns about the removal of part of a hedgerow within the development site which was scheduled to be retained. Mr Sheldon acknowledged that part of the hedgerow adjacent to plot 45 had been removed in order to construct the foundations of the house and that assurances had been given to the Council that this would be replanted. Although of concern to the objector, any alleged breach of a planning condition is a matter for the Council as the Planning Authority to address; such matters are outside my remit and I have not taken this issue into account in reaching my decision.

**Conclusion**

29. 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 subject to the modifications outlined in paragraphs 8 – 10 above.

**Formal Decision**

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

In the title of the Order, amend 'Diversion Order 1 of 2015' to read 'Diversion Order 2 of 2015';

In the articles of the Order amend article 1 and article 3 to remove references to the diversion taking effect 28 days after confirmation; amend the existing article 2 and insert a new article 3 so that the amended articles read as follows:

BY THIS ORDER:

1. The public right of way over the land situated north-east of Station Road, shown by a bold continuous line on the map contained in this order and described in Part 1 of the Schedule to this order shall be stopped up as provided below.
2. There shall be created to the reasonable satisfaction of Telford & Wrekin Borough Council a public footpath over the land situated north-east of Station Road to cross the estate road and described in Part 2 of the Schedule and shown by a bold broken line on the map contained in this order.
3. The diversion of the footpath shall have effect on the date on which Telford & Wrekin Borough Council certify to the Secretary of State that the terms of article 2 above have been complied with.

*Alan Beckett*

Inspector

## APPEARANCES

For Telford and Wrekin Borough Council

Mr I Ross                      Solicitor, Telford and Wrekin Borough Council, Darby House, Lawn Central, Telford, TF3 4JA

who called:

Mr A Careless                Senior Rights Of Way Officer

Mr Andrew Sheldon        Land manager, Shropshire Homes Limited, The Old Workhouse, Cross Houses, Shrewsbury, SY5 6JH.

Interested Parties:

Cllr E Carter

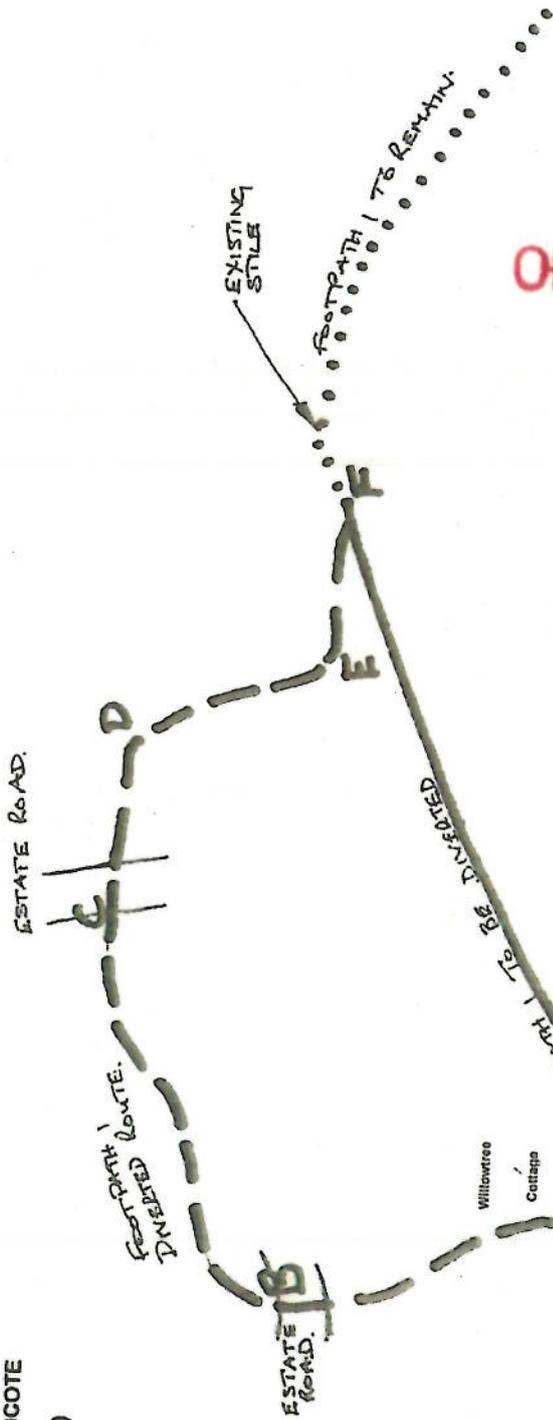
## Inquiry Documents

1. Opening remarks on behalf of Telford & Wrekin Borough Council.
2. Copy of approved plan SP-1001.
3. Copy extract of Definitive Map.
4. Copy of Borough of Telford & Wrekin Footpath Between Station Road and A518 Newport (Temporary Prohibition of Pedestrians) Order 2017 [dated 28 November 2017] and associated papers.
5. Emails regarding the removal of a section of hedge within the development and photographs of the hedge affected.
6. Email sent to Mr Walker dated 6 July 2015 regarding the provisions of section 257 (1A) of the Town and Country Planning Act 1990.
7. Copy of notice of the inquiry placed in the Advertiser newspaper Thursday November 16 2017.
8. Suggested amendments to the Order.
9. Closing remarks of Telford & Wrekin Borough Council.

TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 267

PARISH OF CHETWYND ASTON & WOODCOTE

DIVERSION OF FOOTPATH 1 (PART)



MAP NOT TO ORIGINAL SCALE

KEY:

PATH TO BE DIVERTED

ROUTE OF DIVERTED PATH

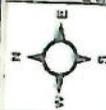
PATH TO REMAIN

*Ian Ross*  
IAN ROSS  
TEAM LEADER: PLACES  
523/15  
777(e)1974

Title:

Drawn By:

Scale: 1:500 Date:



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Borough of Telford & Wrekin  
Lea Valley District  
Telford  
TF3 4LB



Telford & Wrekin  
COUNCIL