
REPORT TO:	ENVIRONMENTAL AND DEVELOPMENT SERVICES COMMITTEE	AGENDA ITEM: 14
DATE OF MEETING:	15th AUGUST 2019	CATEGORY: DELEGATED
REPORT FROM:	STRATEGIC DIRECTOR (SERVICE DELIVERY)	OPEN
MEMBERS' CONTACT POINT:	TONY BURDETT, 01283 595746 tony.burdett@south-derbys.gov.uk	DOC:
SUBJECT:	SWARKESTONE PUBLIC FOOTPATH No. 9 (PART) STOPPING UPORDER	
WARD(S) AFFECTED:	ASTON	TERMS OF REFERENCE:

1.0 Recommendations

- 1.1 That the Committee authorises the making of an Order under Section 257 of the Town and Country Planning Act 1990 in respect of the Proposed Permanent Stopping Up of Public Footpath No 9 (Part) in the Parish of Swarkestone, as shown the attached plan; and
- 1.2 Agrees to the subsequent confirmation of the Order in the event of there being no unresolved objections arising from the formal consultation stage.

2.0 Purpose of the Report

- 2.1 To seek the Committee's authority to make an Order to stop up the above mentioned public footpath to enable the development permitted under planning permission 9/2016/0951, in respect of the widening of the existing slipway to facilitate the construction of a dry dock at Swarkestone Boat Club Pingle Lane Swarkestone.

3.0 Detail

The Application

- 3.1 Planning permission 9/2016/0951 permits the widening of the existing slipway to facilitate the construction of a dry dock at Swarkestone Boat Club, Pingle Lane, Swarkestone. This development affects the line of Footpath No 9 as shown on the County Council's Definitive Map. The footpath coincides with Sustrans Route No. 6 at the north-eastern boundary of the Boat Club site and Footpath 11 near the south-eastern boundary.
- 3.2 Following the granting of planning permission an application has been made to stop up the footpath so that users would no longer be able enter the Boat Club site on a

right of way. A short new length of public right of way would be created along the existing Sustrans route, to connect Footpath 9 with the public highway. It is apparent that the footpath through the Boat Cub site has been obstructed for a considerable number of years. However this particular enforcement matter is not directly relevant to the criteria applicable to the requested Order.

Applicant's Supporting Information

- 3.3 In summary, the applicant states that support for removing the public footpath from the active boat yard, with its attendant safety and security issues, has been received from Barrow on Trent Parish Council, Ramblers Association and Canal and River Trust. It is further contended that the provision of the new dry dock would create an additional safety risk for footpath users on any part of the Boat Club site.
- 3.4 Planning application 9/2016/0951 was put forward to enable the club to expand its facilities to accommodate the larger boats that are now moored at the site. The dry dock, even when not in use, will present a sheer drop and when in use there will be work underway such as welding, removal of coatings from hulls etc. Many of these operations will require a controlled working environment, precluding public access in the interest of health and safety. Public access also raises issues of security to the site.
- 3.5 When viewed on the ground the Boat Club site is not particularly large and diversion of the route away from the premises onto an alternative route that already exists (non-classified highway and Sustrans route) would cause no inconvenience to users and would not be disproportionate.
- 3.6 In the event of objection to the Order (and thus referral to the Secretary of State) the applicant is willing to take the lead in any proceedings in support of the Order leaving the Council to either support it or adopt a neutral stance.

Responses to Informal Consultation

- 3.7 The Ramblers Association objected to two previous (1979 & 2013) Highways Act applications. However this time it suggests that the footpath through the boatyard be diverted onto the Sustrans track to ensure the footpath is continuous down to the canal. It is expected that there will be plenty of objections and proposals to route the path around the dock, but the Association sees no reasonable prospect of the obstructions at each end of the path being removed so diverting the path onto the Sustrans track seems a sensible option.
- 3.9 Peak and Northern Footpaths Society does not object subject to the creation of a right of way on the unadopted section of cycle route and suitable gate to the connection with Footpath 11.
- 3.10 Derbyshire County Council reports its local ward member's comments:

"To note I am very familiar with the problem outlined in the attached report. I have no objection to stopping up the footpath and moving it outside of the boundary fencing of Swarkestone Boat Club which would make a lot of sense in this case. I also know from conversations held that ramblers have not used the existing route for some considerable time (years). Once the order has been completed it may be useful to write to local rambling groups (Melbourne area) to note the changes and encourage more use of this walking route."

- 3.11 The County Council's Rights of Way Officer supports the creation of the short length of path.
- 3.12 The Open Spaces Society objects because the work involved to provide the dry dock could be achieved by a simple diversion of the definitive path. It is The Society's contention that the provisions of the Highways Act 1980 s118 would need to be employed in order to stop up this path. There is no objection to the diversion of the path, under the terms of the Town and Country Planning Act, around the dry dock to enable it to be constructed and would expect that obstructions are removed at both ends of the site at the same time.
- 3.13 A third party objects to the proposal on the basis that the existing footpath has been illegally blocked, denying walkers access to this historic section of the junction of the Trent and Mersey Canal with the Derby and Sandiacre Canal.

Assessment

- 3.14 Section 257 of the Town and Country Planning Act provides that *"...a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable the development to be carried out..."*.
- 3.15 Paragraph 7.15 of Defra Rights of Way Circular 01/09 makes it clear that having granted planning permission for development affecting a right of way, an authority must have good reasons to justify a decision not to make an order.
- 3.16 If an order were to be made it would be subject to a requirement to consult and publicise. In the event of it being opposed it will have to be submitted to the Secretary of State for a decision on whether or not it should be confirmed.
- 3.17 In this case the development in question is granted permission under Ref. no. 9/2016/0951. The applicant has supplied a reasoned argument as to why the proposed order should take the form as proposed. Objectors have suggested that the stopping up is more extensive than necessary to facilitate the development. However, whilst the principal legislative criterion is the starting point, account needs to be taken of all relevant information. In this particular case it is difficult to perceive what benefits walkers would experience by being able to navigate a path closer to the permitted dry dock compared with a route that, by reasonable analysis is more convenient for users, whilst not depriving them of the ability to appreciate the natural and heritage assets of the immediate locality.

4.0 Financial Implications

- 4.1 Normal administrative costs for making the Order are absorbed by the fee paid by the applicant in accordance with the Council's published fees and charges. In the event of referral to the Secretary State, parties are expected to meet their own expenses, although costs may be awarded against a party that has behaved unreasonably; and the unreasonable behaviour has caused the other party to incur unnecessary costs that they would not otherwise have incurred.

5.0 Corporate Implications

Employment Implications

- 5.1 The diversion would enable the Boat Club to enhance its offer to customers thereby safeguarding the future viability of the club.

Legal Implications

- 5.2 It is possible that legal representation may be required should the case proceed to a Public Inquiry.

Corporate Plan Implications

- 5.3 The proposed diversion would contribute towards corporate priorities of:
- Increasing levels of participation in sport, health, environmental and physical activities
 - Support provision of cultural facilities and activities throughout the District.

Risk Impact

- 5.4 There are no implications in relation to identified risks in the risk register.

6.0 Community Impact

- 6.1 **Consultation:** A round of informal consultation has taken place which has revealed the possible areas of contention as set out elsewhere in this report.
- 6.2 **Equality and Diversity Impact:** The proposed diversion is designed to make the route of the footpath safer and more accessible for all users of the network.
- 6.3 **Social Value Impact:** Enhancement of the network will assist in the provision and enhancement of sustainable development will enhance public health and well-being.
- 6.4 **Environmental Sustainability:** Better alternatives to more sustainable transport will contribute toward the achievement of economic, social and environmental objectives.

7.0 Conclusions

- 7.1 This diversion would result in enabling the current club to enhance its offer to customers and offer greater convenience for users, whilst not depriving them of the ability to appreciate the natural and heritage assets of the immediate locality.

8.0 Background Papers

- Planning application file 9/2016/0951
- Application to divert public Footpath No 9.
- Responses to informal consultation.