

 Nottinghamshire County Council	Report to Rights of Way Committee
	11 September 2013
	Agenda Item:
REPORT OF CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)	
TO CONSIDER OPTIONS IN RESPECT OF PUBLIC FOOTPATHS CROSSING LAND TO THE EAST OF CARLTON ROAD, WORKSOP (TESCO SITE)	

Purpose of the Report

1. This report is intended to explain the background in respect of public footpath issues on the site of the new Tesco Development, Carlton Road, Worksop. The Report also seeks direction from the Committee as to the stance of the Authority in anticipation of revised footpath diversion/extinguishment proposals being submitted by Bassetlaw District Council in its role as local planning authority.

Information and advice

2. Following the granting of Planning Permission for a new Tesco Store (in September 2011) Bassetlaw District Council made a public footpath stopping-up/diversion Order under Section 257 of the Town and Country Planning Act 1990 (TCPA90). A copy of the Order is shown as Appendix A.
3. In order to divert or extinguish a public footpath under these provisions, the local planning authority must be satisfied that it is **necessary** to do so in order to enable development to be carried out. The order may also provide for the creation of alternate highways and for the improvement of existing highways as replacements.
4. The Bassetlaw footpath diversion/extinguishment Order had the intention of ;
 - extinguishing unregistered rights of way on paths across the site (Routes A-E and B-C).
 - making a minor diversion to the legal line of an existing path which currently exists on the southern boundary of the site alongside the railway (Route D'-E).
 - creating a 'permissive pedestrian route' through the site (Route G-C).
5. The Order received a number of objections (including one by the County Council) and was subsequently referred to the Secretary of State for Environment for confirmation. However, the Order was rejected by the Planning Inspectorate (acting on behalf of the Secretary of State) on grounds that the Order contained a "fundamental error", or as the Planning Inspectorate has put it; "it has been noted that the alternative route [G-C] shall be a permissive pedestrian route. A right of way must be definitive rather than permissive. This is

to ensure that the right of the public is protected". A copy of the Planning Inspectorate's letter to Bassetlaw District Council is shown as Appendix B.

6. In light of the approved development, it is clearly necessary to extinguish the routes shown on the Order plan as A-E and B-C because they are directly in the line of the proposed new store. However, it can also be considered as necessary that an alternative route is created to replace public rights of way which are being lost.
7. It is anticipated that Bassetlaw District Council will shortly consult on a revised Footpath Order setting out final plans for rights of way over the site.

The Petition

8. In respect of the land in question, a petition containing 259 signatures was presented to the Chairman of the County Council by Councillor Glynn Gilfoyle at the Council meeting on 25 April 2013. The petition was entitled; A petition "Requesting Tesco to reopen the footpath to the north of their development from South Parade to Blyth Road and the Worksop Technical College, as previously agreed with the Nottinghamshire County Council and contractors acting for Tesco. This should ensure a safe access between these two points, both for the general public and the children who have been using this path to attend the Valley Comprehensive School and the people using the technical college. We the under signed, are concerned people who live in this area and who have been inconvenienced by the closing of this footpath".
9. The footpath requested to be re-opened was constructed by Tesco in 2009 for use by pedestrians following the closure (by Tesco) of several unrecorded paths on the site. The path consisted of a narrow 'corridor' around the northern boundary of the development, with a hedge/fence to either side and laid with stone chippings. Notices were put in place which stated that use of the path was by permission of Tesco Stores only. In 2012, for reasons which have not been clarified, the permissive path was permanently closed to the public when the hoardings were extended across either end of the path.
10. Although the wording of the petition is open to some interpretation (i.e. as to whether a permissive footpath or a public footpath petition is being requested) it does demonstrate a high degree of public support for a footpath in this location.
11. The petition was sent to Tesco Stores Limited and copied to Bassetlaw District Council and Nottinghamshire County Council. It is understood that Tesco and Bassetlaw District Council have both confirmed that they do not intend to take any action over the petition.
12. Although the petition is directed towards Tesco Stores Ltd (as landowner) it also refers to an 'agreement' between Tesco and Nottinghamshire County Council. One of the petition organisers subsequently confirmed that this particular point was based on a presumption. It can be confirmed that the path was not constructed under any agreement with the County Council. However, regardless of issues in respect of the wording of the petition, it is clearly relevant to the general issue of public access on the land in question.
13. It should be noted that the County Council (as Highway Authority) does not have any powers to compel a landowner to reinstate a path which he created solely for permissive use. Furthermore, in 2012 Tesco pro-actively explored the possibility of constructing a shared foot/cycle path around the northern boundary by submitting a supplementary

planning application to Bassetlaw District Council. This proposal was rejected on grounds of security, safety and crime. A copy of Tesco's Design and Access statement submitted as part of the Application and a copy of the relevant decision notice is shown as Appendix C1-2 respectively.

14. The County Council has compulsory powers for the creation of footpaths (under section 26 of the Highways Act 1980), having regard to issues such as convenience for the public, the effect on landowners and possible landowner compensation, nevertheless, given the circumstances here, it may be more expedient to explore a resolution through consultation with Bassetlaw District Council via procedures set out in Section 257 of TCPA90 i.e. a revised footpath diversion/extinguishment Order.

Consultation

15. In order to fully gauge local opinion in respect of the petition, the Countryside Access Team contacted the five households whose gardens lie adjacent to the northern boundary of the site. Three responses were received and are summarised below;
 - A footpath is needed but there are 'grave concerns' about siting a path in this location. When a permissive path had previously been in place, used drug needles had been thrown into the garden.
 - When a permissive path had been in place the boundary fence had been damaged, rubbish had been thrown into the garden and intruders had entered the garden and out buildings. The granted planning permission does not include a path in this location. Adequate access is provided via the footpath which runs alongside the railway line. A footpath in this location would prove dangerous to people walking alone at night. The proposal only reduces the walking distance by a few 100 yards.
 - When the permissive path was in place damage was caused to the property through stones and rubble being thrown into the garden. Youths had entered onto the property via the path. In November 2011 an arson attack caused £20,000 worth of damage and injured a pet animal. The householders felt continually vulnerable due to persistent damage.
16. One of the petition organisers wrote to the County Council in further support of a footpath around the northern boundary stating;
 - The reason given for the closure, according to Bassetlaw District Council was on health and safety grounds but this is one of the main reasons for conducting the petition. Though other routes have been mentioned the only safe way is on this disputed footpath. It is and will be in the future, be away from any kinds of vehicles. The route will provide a good safe environment for the men, women, children and the elderly who used this footpath until its closure.
17. The Nottinghamshire Police (Safer Neighbourhoods Team) were also invited to comment, especially in respect of the alleged problems caused when the permissive path was in place around the northern boundary of the site, however, no response has been received to date.

Reason/s for Recommendation/s

18. In respect of public access over the Tesco site, Committee is requested to consider three options, one of which will form the County Council's response in the likely event of further consultation by Bassetlaw District Council.
19. Option 1
Seek the extinguishment of all public rights of way over the site, save for retaining one public footpath alongside the railway (as per D-D'-E-F on the Footpath Order). Although, this option would result in a loss of two public footpaths, it could be argued that this is necessary given the change in the nature of the site from open space to superstore. For instance, siting a public right of way through the confines of a working store/car park could create difficulties for pedestrians in terms of ease of use and convenience and may create operational problems for the store in terms of controlling public access on their land.
20. Option 2
To seek the dedication of a definitive public footpath along route G-C. This option is supported by Tesco Stores Limited. The path would subsist within the confines of the approved development on the pedestrian footways and crossings designed for access to the store itself. Although this solution would not satisfy the request of those who signed the petition, it is possible that requests for a path around the northern boundary of the site might recede once the store is operational and the public have access to various pedestrian footways over the development.
21. Option 3
Creating a footpath around the northern boundary of the site (A-C) has a high degree of public support as evidenced by local residents who signed the petition. The advantages of setting a path around the northern boundary are that it could be used by the general public without having to pass through an operational car park. A path in this location would also complement the path D-D'-F which runs along the southern boundary of the site. However, this option is strongly opposed by some residents whose properties would lie adjacent to it, and there is potential that serious crime and anti-social behaviour activities previously experienced by householders might re-occur. Furthermore, as a similar solution was not previously favoured by Bassetlaw District Council, it might be necessary for the County Council to pursue this option through compulsory powers provided under section 26 of the Highways Act 1980.
22. It should be noted that any future footpath stopping-up/diversion Order made by Bassetlaw District Council could be subject to representations from other parties including members of the public. Accordingly, in the event that the District Council does not extinguish or divert the public rights of way under TCPA90 powers, the resources of the County Council as Highway Authority may be called upon to resolve issues in respect of maintenance and enforcement or further legal orders.

Statutory and Policy Implications

23. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

It is **recommended** that Committee resolve either:

- a) to authorise officers to support the extinguishment of all public rights of way on the site of the Tesco development, except for the addition of a definitive footpath along the southern boundary of the site alongside the railway (Appendix A route D-D'-E-F)

or

- b) to authorise officers to seek the creation of a definitive public footpath along route G-C (as shown by the dashed line on Appendix A).

or

- c) to authorise officers to seek the creation of a definitive public footpath around the northern boundary of the Tesco development between points A-C (Appendix A).

Eddie Brennan
Definitive Map Officer

For any enquiries about this report please contact:

Eddie Brennan (0115 9774709)
Definitive Map Officer

Constitutional Comments (SLB 29/08/2013)

Rights of Way Committee is the appropriate body to consider the content of the report; it is responsible for the Council's functions in relation to public rights of way including approving consultation responses.

Financial Comments (SEM 30/08/13)

There are no specific financial implications arising directly from this report.

Background Papers

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Modification Order Application case file

Electoral Division(s) and Member(s) Affected

Worksop East

Councillor Glynn Gilfoyle

ROW 98