

**THE PROPOSED DIVERSION OF FOOTPATH 4 WHITEPARISH (PART)**

**Purpose of Report**

1. To:
  - (i) Report on an objection received by the County Council in respect of a Public Path Diversion Order made under Section 257 of the Town and Country Planning Act 1990 to divert that part of Footpath 4 Whiteparish, as shown on the plan attached at **Appendix A**.
  - (ii) Seek approval to refer the Order to the Secretary of State for decision, with the recommendation that the order be confirmed.

**Background**

2. The Local Plans and Development Control Section of the County Council received a planning application dated 9<sup>th</sup> August 2004, from Southern Water, to provide reed beds for the tertiary treatment of waste water on land adjacent to Whiteparish Wastewater Treatment Works, as shown on the location plan attached at **Appendix B**.
3. The reed bed development is proposed as part of a larger scheme for the improvement of the Treatment Works. The need for the scheme is to meet the requirements for a new discharge consent from the Environment Agency which imposes reduced limits on the level of suspended solids which can be allowed within the discharged effluent. A tertiary waste water treatment system is therefore required.
4. Footpath 4 Whiteparish (part) crosses the proposed site and is affected by the development. Southern Water made an application to the County Council, dated 19<sup>th</sup> August 2004, to divert that part of Footpath 4 Whiteparish as it crosses the proposed development site, as shown on the plan at **Appendix A**. It is proposed to divert the path under Section 257 of the Town and Country Planning Act 1990 which deals with footpaths and bridleways affected by development.
5. It falls to the County Council as both the Planning Authority and the Surveying Authority to deal with the proposed diversion.
6. The County Council carried out an initial consultation regarding the proposals, dated 19<sup>th</sup> August 2004, amongst statutory undertakers, user groups and other interested parties. No objections were received. This letter and the subsequent responses are available for inspection in the **Members' Room**.

7. Planning permission for the reed beds was granted by the Local Plans and Development Control Section. A Public Path Diversion Order under Section 257 of the Town and Country Planning Act 1990 was then made, dated 11<sup>th</sup> November 2004, to divert that section of Footpath 4 Whiteparish, as shown on **Appendix A**.
8. Following circulation and advertisement of the order, one objection was received. The following grounds for objection were stated:
- The objector had used the footpath for a period of ten years.
  - When footpaths are concreted over in beautiful countryside, another part of nature is lost for thousands of years.
  - If the water treatment plant is built, how long will it be before the site is returned to the natural state in which it was found?
  - The development will be an eyesore, another place stolen from our grandchildren.
9. The criteria by which public rights of way may be diverted under Section 257 of the Town and Country Planning Act 1990 are set out at paragraph 10 below. Officers believe that the objections are not valid to the footpath diversion but are perhaps more relevant to the planning permission which has already been granted. After receiving the letter of objection, Officers endeavoured to make contact with the objector by writing to the address given in the correspondence, to explain the reasons for the planning permission being granted and for the making of a subsequent Public Path Diversion Order. This letter was later returned with the comment that the objector was not a resident at that address and had only been camping there. The camp site operator advised that the objector had been camping there for only two days and had since left, with no forwarding address or contact telephone number. The operator felt that the objector would be very difficult to trace as it was believed he was a person of no fixed abode. It has therefore not been possible to discuss the situation with the objector and the objection has to be treated as unwithdrawn. Despite the Officers' opinion that the objections do not fall within the relevant criteria, the County Council is not permitted to disregard the objection. The letter of objection and the Officers' response are available for inspection in the **Members' Room**.

### **Main Considerations for the Council**

10. Section 257 of the Town and Country Planning Act 1990, provides for the stopping up or diversion of footpaths and bridleways affected by development. The Act States:
- (1) *Subject to section 259, a competent authority 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:*
- (a) *in accordance with planning permission granted under Part III, or*
  - (b) *by a government department.*

(2) *An order under this section may, if the competent authority are satisfied that it should do so, provide-*

- (a) *for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing highway for such use;*
- (b) *for authorising or requiring works to be carried out in relation to any footpath or bridleway for whose stopping up or diversion, creation or improvement, provision is made by the order;*
- (d) *for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out such works.*

(4) *In this section 'competent authority' means-*

- (a) *in the case of development authorised by a planning permission, the local planning authority who granted the permission or, in the case of a permission granted by the Secretary of State, who would have had power to grant it..."*

11. The proposed diversion meets the legal test set out under the legislation as the development cannot continue unless the path is diverted.
12. The diversion will also take into account an anomaly on the present definitive line of Footpath 4 Whiteparish, whereby members of the public are not presently using the legal line. The path legally runs in a north-easterly direction across the second field (behind the caravan park) and there is no stile or gap in the hedge provided on the legal line to gain access to the next field. Officers believe that at times this route may have become waterlogged and in the past walkers have naturally diverted to a drier path at the field edge. The proposed diversion incorporates this field edge route which is usable all year round and utilises a stile already in place. It has not been possible to trace the objector to advise that at the present time the legal line is obstructed and that the route being used is already part of the proposed diversion route.
13. The main grounds for the objection to the Diversion Order refer to the development itself rather than the footpath diversion. Under Section 257 legislation, the planning permission must be granted before the diversion order can be made. It is therefore assumed that any objections to the development itself will be put forward during the planning consultations. No objections were received to the development and the planning permission was subsequently granted. At the stage of making a Public Path Diversion Order under this legislation, Officers are asked only to look at whether or not the path should be diverted to enable the development to continue. Issues regarding the development itself cannot be taken into account at this stage.

### **Environmental Impact of the Proposal**

14. When making a decision regarding the planning application, the Local Plans and Development Control Section have carefully considered the need for the development, and the ecological and visual impacts of the proposals. They have also taken into account the fact that the site is located within a Special Landscape Area and Development Restraint Area. Overall, they concluded that there were no overriding material planning considerations that would justify a refusal of the application.

15. The County Ecologist has been fully consulted regarding the planning proposals and has agreed with the ecological surveys submitted with the application, in determining that any ecological impacts would be minor and that adequate mitigation has been proposed to reduce these impacts to an acceptable level. The planning permission has been granted with regard to some ecological issues, as recommended by the County Ecologist.
16. There are no long term significant environmental effects arising from the scheme and the long term effects are principally beneficial. The result would be an improvement in the quality of effluent leaving the waste water treatment works. The diversion of the footpath is therefore necessary to enable the development to continue.

### **Risk Assessment**

17. There may be some disruption to footpath users during the reed bed construction period, which is estimated to be sixteen weeks. The applicants have advised that it is unlikely that the footpath will require closure during this period and appropriate signage and security will be put in place to ensure public safety.

### **Financial Implications**

18. As the making of a diversion order is a discretionary duty for the Surveying Authority rather than a statutory duty, the applicants, Southern Water, have confirmed that they will meet all reasonable costs in connection with the making of the Order, which includes advertising.

### **Options Considered**

19. If the Public Path Diversion Order made under Section 257 of the Town and Country Planning Act 1990 to divert that section of Footpath 4 Whiteparish is not continued, the legal line of the path will be retained, in which case the development outlined within the planning permission could not be carried out. Members are asked to note that the implementation of the approved development is essential to meet new Environment Agency requirements.

### **Reasons for Recommendation**

20. The development of the reed beds on land adjacent to Whiteparish Waste Water Treatment Works, cannot continue without the diversion of that part of Footpath 4 Whiteparish which crosses the development site.
21. The diversion will take into account an existing anomaly on the path whereby members of the public are not presently using the legal line across the second field (behind the caravan site), but are using a field edge route which utilises an existing stile.
22. Additionally, the objector cannot be traced to explain the Surveying Authority's duties with regard to the footpath and it has not been possible to obtain a withdrawal of the objection.

## **Recommendation**

23. That approval be given to refer the Public Path Diversion Order, Whiteparish 4 (part), to the Secretary of State for decision, with a recommendation that the Order be confirmed on the grounds that the development cannot continue without the diversion of the footpath and in the opinion of Officers a suitable alternative route is provided to the benefit of the public.

## **GEORGE BATTEN**

Director of Environmental Services

Report Author

**JANICE GREEN**

Rights of Way Officer

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## **The following unpublished documents have been relied on in the preparation of this Report:**

Application for planning permission by Southern Water dated 9<sup>th</sup> August 2004.

Application for a diversion order to be made under Section 257 of the Town and Country Planning Act 1990, dated 19<sup>th</sup> August 2004, from Southern Water.

Initial consultation by the County Council, dated 19<sup>th</sup> August 2004 and subsequent responses.