

**Application Number: 18/10910** Right of Way / Footpath Diversion

**Site:** Land Of BUCKLAND GRANARIES, SWAY ROAD, LYMINGTON  
SO41 8NN

**Development:** Diversion of footpath

**Applicant:** Mr Wallrock

**Target Date:** 25/09/2018

**Extension Date:** 11/01/2019

**RECOMMENDATION:** The Committee exercise its discretionary power to make the Order and planning officers be authorised to follow the procedure detailed at paragraph 3.

If paragraph 3.1.9 applies, the Committee to delegate authority to the Service Manager for Planning Development Control to confirm the Order.

If objections are received following the making of the Order which are not withdrawn, officers must refer this matter back to the Committee for consideration.

**Case Officer:** **Jim Bennett**

## **1 DETERMINING APPLICATION FOR PUBLIC PATH DIVERSION ORDER**

- 1.1 This Committee has the power to determine the application received by the Council from the applicant Mr Wallrock for a footpath diversion order relating to land at Buckland Granaries, Sway Road, Lymington, SO41 8NN ("Buckland Granaries").

## **2 BACKGROUND**

- 2.1 Full planning permission was granted for development at Buckland Granaries by the Planning Committee on 25 January 2018 under reference 17/10854. The approved application entailed the demolition of existing buildings on the site and the construction of twelve houses comprised of 2 terraces of 3 houses, 1 terrace of 2 houses and 4 detached houses with associated access, landscaping and parking. The approved development involves the diversion of an existing public footpath within the site. The line of the footpath numbered 59 shown for ease of reference by the solid black line marked A - B on the attached plan ("the footpath") is impinged upon by the footprints of Plots 11 and 12 of the approved development. The report for application 17/10854 included, at 14.1.5 (iii) (d), reference to the development's impact on the footpath.
- 2.2 Due to the impingement upon the line of the footpath, a separate application relating to a Public Path Diversion Order is required pursuant to Section 257 of the Town and Country Planning Act 1990 ("S.257").

- 2.3 S.257 permits the Council to exercise its discretionary power to make such an Order for the diversion of a footpath which is necessary, in circumstances such as those relating to Buckland Granaries, to enable development to be carried out in accordance with a planning permission. The Buckland Granaries development involves the erection of two detached houses across the footpath. These houses would obstruct the footpath and therefore, the circumstances of the case necessitate the stopping up of the footpath, extinguishment of the public right of way and the creation of a replacement public footpath along the dashed line marked A - X - B on the attached plan.

### 3 PROCEDURE TO BE FOLLOWED

- 3.1 The procedure to be followed in relation to the Order is:

- 3.1.1 **Applicant's Consultation:** the applicant's public rights of way consultant undertook a pre-consultation process between 31 July 2018 and 31 August 2018, to which two substantive comments were received as follows with responses in bold:

- The occupiers of Buckland Manor Farm sought clarification over the width of the footpath, as concern was raised over access for vehicles. **It was clarified that the width of the public right of way would formally be 3.7m, but that the vehicular access within which the footpath is aligned would remain at 5.2m, so access by vehicles would not be impinged upon.**
- HCC Countryside Access expressed a view that the access track should be upgraded through a highway agreement with the Highway Authority and then the footpath that is not required can be extinguished. **It is acknowledged by the applicant that any changes to the surface will require the consent of the Highway Authority.**

- 3.1.2 **Local Planning Authority Consultation:** the Council undertook a separate consultation process from 5 July 2018, to which one objection has been received citing the following concerns, with responses to in bold:

- There is no reference to the footpath in the planning application (17/10854) and it is queried if its existence was considered when permission was granted. **Paragraph 14.1.5(iii)(d) of the planning application report confirms that the Council was aware of the existence of the footpath, and the need to divert it, when the decision to grant planning permission was made.**
- The proposed route will limit enjoyment of this path as it would be urbanised, be overlooked by houses, the bin store will restrict visibility and it will no longer be possible to safely walk dogs, let children play and bird watch in this area. **It appears that the objector considers enjoyment will be limited by the existence of the new development, the impact of which was fully considered under the associated planning application. The relatively small diversion is unlikely to have a significant impact on the public enjoyment of the route. Public footpaths are available for the public to use, to pass and repass on foot. Walkers have no right to stray from the footpath, and children's play is not an activity that footpaths are intended to**

**facilitate unless that play simply involves activities that can be undertaken whilst on the path itself. The small diversion of the route will not impact the legitimate use of the path by children, or by dogs. Similarly, users of the path will continue to be able to watch birds as they walk. It should be noted that condition no. 14 of the planning approval requires the development to be implemented in accordance with the recommendations of an ecology report to enhance biodiversity.**

- It would be better to move the path to the northern boundary of the development. **The alternative route has been chosen because it provides the most direct line through the new development and is close to the line of the existing route, whilst remaining on land owned by the applicant. The footpath's realignment to the north would compromise the ability of the applicant to implement the approved development.**

3.1.3 The objector was invited to discuss their objections with the applicant and their Rights of Way Consultant, but declined the offer.

3.1.4 None of the points raised in the objection claim that the diversion of the path is not necessary. The making of a footpath diversion order under S.257 of the Town and Country Planning Act 1990 requires one consideration; whether the diversion is necessary in order to enable the development to be carried out in accordance with the terms of the planning permission. It is, therefore, considered that the objection should not affect the Council's decision on whether or not to make the order.

3.1.5 **Make Order:** the Council should make the Order but it will not be effective until it is confirmed.

3.1.6 **Advertise Order:** upon making the Order, the Council should:

- Publish a notice in at least one local newspaper stating the general effect of the Order, that it has been made and is about to be submitted for confirmation or to be confirmed as an unopposed order; specifying a place where the Order can be inspected, free of charge and that copies of it may be obtained at a reasonable charge at all reasonable hours; and stating that any person can object to or make representations on the Order, to the Council, within a period of 28 days following the date of publication of the notice.
- Display a notice prominently at each end of that part of the Footpath that is to be diverted, accompanied by a plan showing the general effect of the Order.
- Serve a copy of the Notice and Order on relevant Consultees.
- Make the Order available for inspection as detailed above and at the District Council and Town Council offices in Lymington.

3.1.7 **Objection period:** there is a 28 day period to object to the making of the Order following the publication of the notice. If there are objections 3.1.8 below applies, if not 3.1.9 onwards below applies.

- 3.1.8 **Objections:** objections should be sent to the Council. The applicant's input into any formal response to the objector(s) will be sought. If there are unresolved objections, the Council can decide not to proceed with the Order and should notify the applicant, Consultees and objectors. If the Council decides to proceed, the Order must be referred to the Secretary of State for Environment, Food and Rural Affairs ("the SoS") for confirmation. If the objection was made by a local authority or a National Park authority, the SoS must hold a local inquiry. If the objection was made by anyone else, the SoS must hold either a local inquiry or give any objector the opportunity of being heard by an inspector appointed by him. The SoS then decides whether or not to confirm the Order, with or without modifications.
- 3.1.9 **Confirmation:** where no objections are received within the prescribed time limit (or those that are received have been withdrawn) and the Council does not wish to modify the Order, so long as the applicant carries out works to the satisfaction of the highway authority, the Order may be confirmed (signed and dated) by the Council.
- 3.1.10 **Advertise Confirmation:** as soon as possible after confirmation the Council should repeat Step 3.1.6 above stating that the Order has now been confirmed. The Council should also send a copy of the notice and confirmed Order to the applicant, Land Charges Department and Ordnance Survey.
- 3.1.11 **Expiry of Challenge Period:** a person can apply to the High Court to quash the Order within six weeks following the confirmation date if the decision-maker has acted ultra vires or not carried out the correct legal procedures in making the Order.

## 4 CONCLUSIONS

The Council should make the Order and, if there are no outstanding objections, should then confirm the Order.

## 5 FINANCIAL IMPLICATIONS

- 5.1 The applicant has agreed to meet the costs incurred by the Council in relation to the Order.
- 5.2 No compensation is payable in respect of those adversely affected by the Order.

## 6 ENVIRONMENTAL IMPLICATIONS

None

## 7 CRIME & DISORDER IMPLICATIONS

None

## 8 EQUALITY & DIVERSITY IMPLICATIONS

None

## **9 RECOMMENDATIONS**

- 9.1 The Committee exercise its discretionary power to make the Order and planning officers be authorised to follow the procedure detailed at paragraph 3.
- 9.2 If paragraph 3.1.9 applies, the Committee to delegate authority to the Service Manager for Planning Development Control to confirm the Order.
- 9.3 If objections are received following the making of the Order which are not withdrawn, officers must refer this matter back to this Committee for consideration.

## **15. RECOMMENDATION**

### **Further Information:**

Jim Bennett

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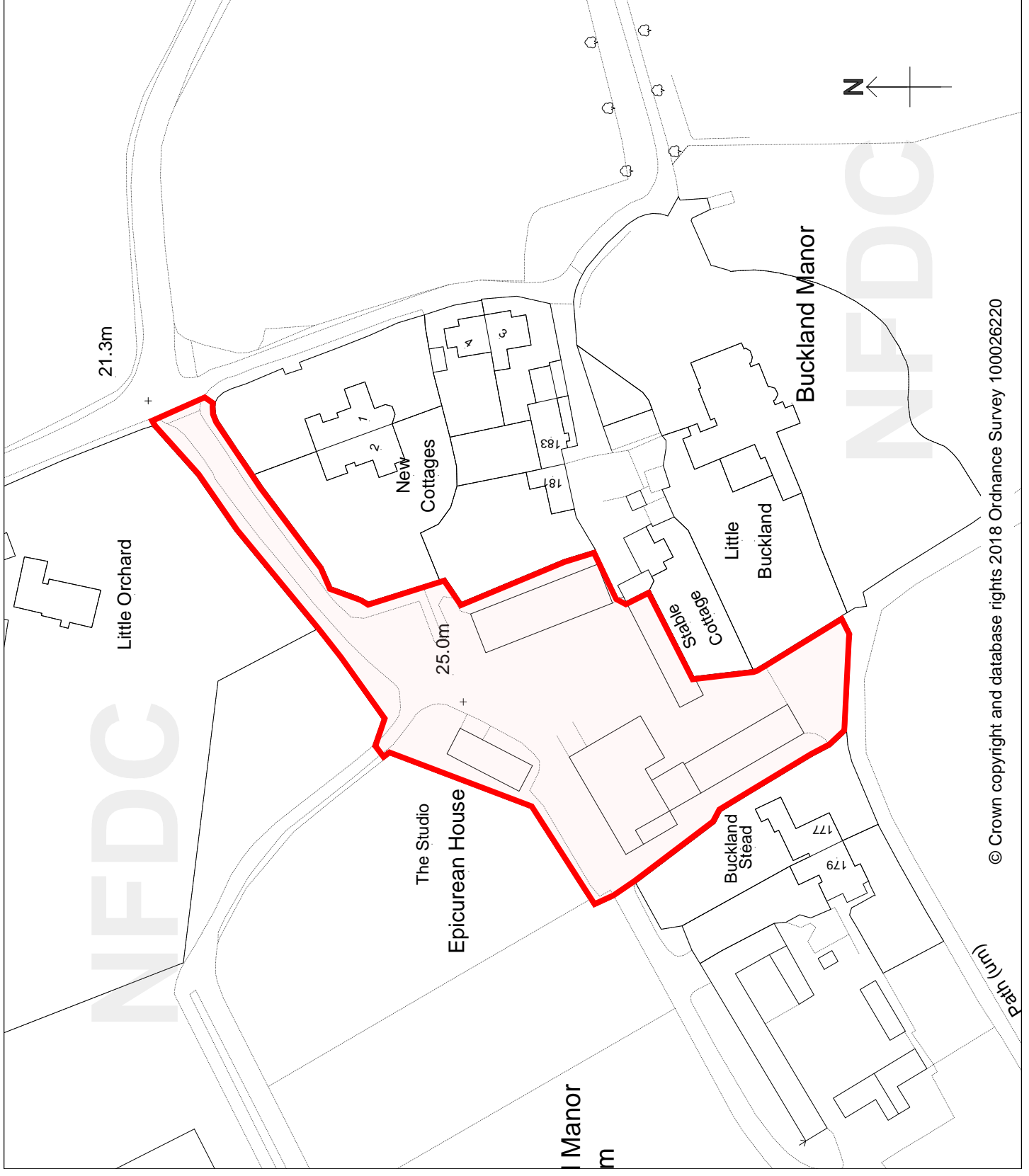
**Planning Development  
Control Committee**  
**November 2018**

**Item No: 3b**

Land of Buckland Granaries  
Sway Road  
Lymington  
18/10910

Scale 1:1250

N.B. If printing this plan from  
the internet, it will not be to  
scale.





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DISTRICT COUNCIL

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**Proposed  
Footpath Diversion under  
Town and Country Planning  
Act 1990**

Proposed diversion  
of part of public footpath 59  
(Lymington and Pennington)  
at Buckland Granaries  
Sway Road  
Lymington  
SO41 8NN

18/10910

Scale 1:500

— Line of path to be diverted

- - - Line of alternative path

