

PUBLIC PATH DIVERSION ORDER FOR THE LOFTS, LOWER PENNINGTON LANE, PENNINGTON, LYMINGTON, SO41 8AL.

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 Barlow for a footpath diversion order relating to The Lofts, Lower Pennington, Lane, Pennington, Lymington, SO41 8AL ("The Lofts").

2. BACKGROUND.

- 2.1 Full planning permission was granted for development at The Lofts by the Planning Development Control Committee on 9 April 2014. The approved application entailed the demolition of the existing two outbuildings on the site and the construction of three new buildings comprising two blocks of stables and a car port with workshop. The application also involved the diversion of an existing public footpath within the site.
- 2.2 The April Committee Report confirmed at paragraph 14.13 that a separate application relating to a Public Path Diversion Order would be 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 The Lofts, to enable development to be carried out in accordance with a planning permission. This development involves the erection of a car port across the existing public footpath numbered 82 shown for ease of reference marked A - B on the attached plan ("the Footpath"). This would obstruct the Footpath and therefore necessitates the stopping up of the Footpath, extinguishment of the public right of way and the creation of a replacement public footpath along the line marked C - I on the attached plan.
- 2.4 It is therefore proposed that, in response to the application received from the applicant, the Committee exercises its power to make the attached Public Path Diversion Order ("the Order") in relation to The Lofts and to follow the procedure detailed below.

3. PROCEDURE TO BE FOLLOWED

- 3.1 The procedure to be followed in relation to the Order is:
- 3.1.1 **Consultation:** the applicant's public rights of way consultant began a pre-consultation process with a draft Order in July 2014. The Council continued and concluded that process on 22 June 2015 and no objections have been received.
- 3.1.2 **Make Order:** the Council should make the Order but it will not be effective until it is confirmed.
- 3.1.3 **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 the Footpath, 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.
- 3.1.4 **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 3.1.5 below applies, if not 3.1.6 onwards below applies.
- 3.1.5 **Objections:** objections should be sent to the Council. These are copied to the applicant and it is the applicant's responsibility to try to resolve them. 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 afford any objector a hearing before an inspector appointed by him. The SoS then decides whether or not to confirm the order with or without modifications.
- 3.1.6 **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.
- 3.1.7 **Advertise Confirmation:** as soon as possible after confirmation the Council should repeat Step 3.1.3 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.
- 3.1.8 **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

- 4.1 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

- 6.1 None

7. CRIME & DISORDER IMPLICATIONS

- 7.1 None

8. EQUALITY & DIVERSITY IMPLICATIONS

- 8.1 Disabled access points.

9. RECOMMENDATIONS

- 9.1 The Committee exercise its discretionary power to make the Order and follow the procedure detailed at paragraph 3 above and, if paragraph 3.1.6 applies, to [delegate authority to officers] to confirm the Order.
- 9.2 If objections are received following the making of the Order which are not withdrawn, officers must refer this matter back to Committee.

Further Information:

Major Team
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**Planning Development
Control Committee**
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Item No: 4
Lofts
Lower Pennington Lane
Pennington Lymington
15/10328
SZ3193

Scale 1:1250

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

