

# Planning Committee Report

**Committee Date:** 8<sup>th</sup> February 2022

**Application Number:** WNN/2021/0664

**Location:** Land for Car Parking, Duston Mill Lane, Northampton

**Development:** Application for the stopping up of part of existing Footpath HW5.

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**Applicant:** Cleveland Cable Company (Holdings) Ltd

**Agent:** Youngs RPS

**Case Officer:** Hannah Weston

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**Ward:** Sixfields Unitary Ward

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**Referred By:** Assistant Director of Place and Economy

**Reason for Referral:** Application under Section 257 of Town and Country Planning Act 1990

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## **EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION**

**RECOMMENDATION:** That: (i) an Order be made pursuant to Section 257 of the Town and Country Planning Act 1990 to stop up part of Public Right of Way Footpath HW5, as detailed on the submitted Section 257 application and (ii) subject to no objections being received in respect of the Stopping Up Order the Order be confirmed.

### **Proposal**

The Section 257 application has been submitted to permanently stop up part of Public Right of Way, Footpath HW5. The stopping up order is required to allow the development of the site in connection with planning application WNN/2021/0699, for the erection of an industrial unit (Class B2/B8), which is currently under consideration.

The footpath in question is not physically present on site and appears to have been extinguished historically without consent and a replacement path provided. The application is submitted to regularise this.

### **Consultations**

The following consultees have raised **no objection** or **support** the application:

- The Ramblers
- Highways
- Definitive Map Officer/Public Footpath Officer

No letters have been received from neighbouring properties.

## **Conclusion**

The application has been assessed against the relevant legislation and statutory requirements in respect of applications made under Section 257 of the Town and Country Planning Act 1990.

The report looks into the key issues in detail, and Officers recommend that an Order be made pursuant to Section 257 of the Town and Country Town and Country Planning Act 1990 to permanently stop up part of Public Right of Way, Footpath HW5, as detailed on the submitted Section 257 application and shown on the submitted plan.

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, the Officer's assessment and recommendations, and Members are advised that this summary should be read in conjunction with the detailed report.**

## **MAIN REPORT**

### **1. APPLICATION SITE AND LOCALITY**

- 1.1 The development site to which this footpath relates is an open parcel of land which it is understood is occasionally used for car parking associated with the nearby football stadium, although no planning permission has been obtained for such a use.
- 1.2 The site has hardstanding over the centre, with vegetation surrounding. The footpath would have run directly across the northern end of this site, between Duston Mill Lane and the road to the east of the site. Historically this footpath has been removed and a new surfaced footpath provided which curves around the northern end of the site. Fencing stops any access to the original footpath and there are no signs of this original footpath on site.

### **2. CONSTRAINTS**

- 2.1. None.

### **3. DESCRIPTION OF EXTINGUISHMENT**

- 3.1. A Section 257 application has been submitted to permanently stop up part of Footpath HW5. The stopping up order is required to allow the development of the site in connection with planning application WNN/2021/0699 for the erection of an industrial unit which is under consideration.
- 3.2. The footpath in question is not physically present on site and appears to have been extinguished historically without consent. The S257 application is to regularise this and seeks to stop up a length of footpath previously 72.3m in length. The new route is 101.8m in length and exists along the northern boundary of the site as a surfaced footway approximately 2.5m in width.
- 3.3. The application as originally submitted was for a diversion of this footpath to an existing footpath around the top of the site. The Council's Highways department advised that the application should be amended to a stopping up only as the new footpath already exists and you cannot divert a public footpath into adopted highway.

#### 4. RELEVANT PLANNING HISTORY

4.1 The following planning history is considered relevant to the current proposal:

Application Ref.	Proposal	Decision
WNN/2021/0699	Erection of Industrial Unit (Use Class B2/B8) along with associated means of access (Site 2A/2B)	Under consideration.

#### 5. RELEVANT PLANNING LEGISLATION

- 5.1. Section 257 of the Town and Country Planning Act 1990 allows for a competent authority, in this case the Local Planning Authority, subject to Section 259 of the act, to 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 development to be carried out in accordance with a planning permission granted under Part III of the Act, or by a government department.
- 5.2. Section 259 of the Act relates to confirmation of Orders by other authorities. In respect of unopposed orders this would be confirmed by the order making authority (the Council) or, where orders are opposed, by the Secretary of State.

#### 6. RESPONSE TO CONSULTATION

Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website.

Consultee Name	Comment
The Ramblers	No objection
Highways	Advise application is altered to an extinguishment. A diversion cannot be supported as you cannot divert one highway (the right of way) onto another (the adopted highway).
Definitive Map Officer/Public Footpath officer	Extinguishment is acceptable as the intended alternative route is already highway land.

#### 7. RESPONSE TO PUBLICITY

- 7.1. Below is a summary of the third party and neighbour responses received at the time of writing this report.
- 7.2. None received.

#### 8. APPRAISAL

- 8.1 Under Section 257(1A) of the Town and Country Planning Act orders can be made for the stopping up or diversion of a path, in advance of the actual grant of planning permission but cannot be confirmed until planning permission is granted.
- 8.2 The relevant test to be applied to applications of this type is whether it is necessary to stop up the footpath in order to enable development to be carried out. In this particular

instance, the planning application is still under assessment for this site. The proposed scheme is for a warehouse building with service yard and car parking. The proposed car parking would cover part of this historic footpath.

- 8.3 It is the case that the stopping up of the footpath would be required should planning application WNN/2021/0699 be granted. As such under section 257(1A) of the Town and Country Planning Act, the stopping up is considered necessary.
- 8.4 Consideration must also be given to the fact that the footpath in question does not physically exist on site and that historically the footpath has been removed and a replacement provided on highway land curving around the site.
- 8.5 The Council's Highway and Public Rights of Way officers have advised that a diversion cannot occur due to the new footpath already existing on highway land and that an a stopping up order would be supported in this location.
- 8.6 With no objection from the Ramblers Association, Highways and the Public Rights of Way officer advising that a stopping up order is acceptable, and no third party objections received to the proposed stopping up, and with the footpath having already been diverted on site historically and a replacement already provided, it is considered that the proposed footpath stopping up is acceptable.

## **9 FINANCIAL CONSIDERATIONS**

- 9.1 None.

## **10 PLANNING BALANCE AND CONCLUSION**

- 10.1 It has been demonstrated that the proposed development would conflict with part of Public Right of Way Footpath HW5 and accordingly it is necessary to stop up part of the public right of way to allow development to take place. It is considered that the proposed stopping up would not result in inconvenience or loss to the public in general. There would be no net loss of footpath, with a replacement already provided on highway land. Accordingly, it is considered appropriate for an stopping up order to be made under the provisions of Section 257 of the Town and Country Planning Act 1990 and provided no objections are received to the making of the order that it also in due course be confirmed.
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**West  
Northamptonshire  
Council**

**Title: Land for car parking. Duston Mill Lane**

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**Date:** 27-01-2022

**Scale:** 1:2,000 @A4

**Drawn:** M Johnson