

**Borough of Dudley (Stopping Up and Diversion of
Public Footpaths, South of Stewarts Road,
Coombeswood, Halesowen) Orders 2009.**

Statement of Case for Dudley MBC

The Orders, if confirmed, will stop up and divert paths shown on plan DC/SF/540/OP. The Council has received 51 objections which it was unable to resolve. They are:-

1 Objectors

Names & Addresses of 51 Objectors deleted to protect their identities

Three original objections were withdrawn.

There is one enclosed representation from the Dudley Borough Local Access Forum

2 Attempts to resolve objections

2.1 Following the advertising of the Orders a letter was sent out to all objectors by the Council (Appendix 1). This resulted in a very poor response, thought mainly due to the information contained in the Friends of Coombeswood web site entry for 3rd March 2010 stating that the objection letters will still stand should the meeting invitation be declined. (Appendix 2)

2.2 The Council has made attempts to engage with the "Friends of Coombeswood" to address the points raised in their objection as part of the above process but they were only willing to attend as part of a wider meeting. The developer has also tried to engage with them by written correspondence at various stages of the application, but the only meeting between themselves, the developer and the Council was that when, on 25th September 2009, the status of the paths were reviewed.

2.3 From the four site meetings that were arranged, three objections were withdrawn. Based on the misapprehensions that were highlighted in these meetings, the Council feels that if more meetings could have been arranged, very significant numbers would have withdrawn.

3 The Planning Permission

3.1 The need for the Orders stems from Planning Application P08/1373 registered by the Council on 11th September 2008 for the development of a new sports ground and social club at land off Stewarts Road ("site B"), development of a new sports field and environmental zone at Olive Hill Primary School ("site A") and residential redevelopment at land off Coombs Road and Lodgefield Road including new access off Coombs Road ("site C").

- 3.2 The planning application and the planning officer's report, containing a section on public footpaths, was considered by the Council's Development Control Committee on 16th March 2009 following a members site visit on 12th March 2009. The decision notice to grant permission with conditions was issued on 16th September 2009. The approval for the advertising of the Public Path Orders was given on 23rd November 2009 following a further report to the above Committee.

4 Characteristics of "site B" affected by the Orders

- 4.1 The land consists of open grassland with scattered bushes on the south-east side. The land is privately owned but routes recognised by the landowner contained in the Order in addition to the definitive footpath routes are used by members of the public. Site levels fall from the rear gardens of Hillwood Road on the north-east boundary towards a valley to the south-west containing the Coombeswood Industrial Estate and the Dudley Canal. Referring to plan DC/SF/540/OP, the crossing point of the existing A-B and C-D provides a viewpoint. The land is located within the Coombeswood Valley Green Wedge.
- 4.2 In order to create a level playing surface for the sports facilities a cut and fill operation on the land will be necessary.

5 Reasons why the Orders should be confirmed

- 5.1 S257 of the Town and Country Planning Act 1990 enables a Local Authority to advertise Orders to enable development authorised by planning permission to take place. It is not a mechanism to allow objections to re-open the planning considerations of the granting of planning permission.
- 5.2 The test for the confirmation of the Orders, contained in S257(1) of the Act, is that the stopping up and diversion is *necessary* to enable development.
- 5.3 I have read the objections to the Orders and can find no mention of the above necessity test. The objections only relate to issues already considered by the local authority's Development Control Committee.
- 5.4 Given the development, the proposed diversion takes the best possible advantage of the local contours producing circular walks that is in keeping with the way the public enjoy the area.

6 Necessity

- 6.1 Reasons why the local authority believes that it is necessary to stop up and divert the paths contained in the Orders:-
- 6.1.1 The development will entail fencing off land containing a cricket pitch, a pavilion, bowling green and vehicle parking. Failure to secure the premises would undoubtedly leave the premises open to crime and vandalism.
- 6.1.2 The sports ground entrance, car parking area, the pavilion and the cricket pitch playing area lie on the line of path A- B. The bowling green, the cricket

pitch playing area and the practice nets are crossed by path C-D. All these amenities are incompatible with retaining public access.

- 6.1.3 Unlike, say golf, the sport of cricket is incompatible with public access across its pitch which requires level surfaces and the throwing, delivery and hitting of hard cricket balls. Worn public paths causing an uneven playing surface would be a danger to the movement of players.
- 6.1.4 It would be impractical to stop games and practice every time a member of the public wishes to exercise their public right. Tensions would undoubtedly occur.
- 6.1.5 The Coombeswood area is widely used by dog owners. Dogs out of control would be detrimental to the facilities and heighten the risk of the transmission of disease through any faeces deposited on the playing and surrounding areas

7 The existing footpath network

- 7.1 The existing footpath network in the area including the planning permission on “site B” is a combination of paths identified on the Definitive Map of Public Rights of Way and ways that have been recognised by the Council and the landowners following evidence submitted to the Council in support of an application on 16th and 26th September 2008 by (Name Deleted), Secretary of the “Friends of Coombeswood”. The paths identified by the applicant involved considerable work by the Council to identify and bring evidence on those paths that had obtained public footpath status. As a consequence of the evidence and recognition of ways by the landowner, the site is closely bounded on three sides by recognised public paths (shown as A-D-B-C on the Order plan).
- 7.2 Although the site is close to part of the Monarch’s Way, a long distance walk here on the line of public footpath H13, the major use of the existing footpath network at Coombeswood is for local recreation and enjoyment with a significant amount of dog walking.

8 Response to the objections

8.1

- 1) (Name Deleted), Friends of Coombeswood

Sue Westbury is the lead correspondent for a community group, “Friends of Coombeswood”, concerned about the development of “site B” and which has resisted the development throughout the planning stages.

The submitted planning application for the three sites, registered by the Council on 11th September 2008, noted the existence of the definitive public footpaths H13 and H15. No definitive lines crossed “site B”. On 16th September 2008 an application was handed into the Council, based mainly on user evidence, for modifications of the definitive map that directly affected the proposed development on “site B”. On 26th September 2008 a clearer plan of the then alleged paths was further submitted. This

application meant that the authority had to consider eight interconnecting paths throughout the whole width and length of the Coombeswood Valley Green Wedge. Two of these paths crossed "site B". Considerable work was needed by the Council to test the quality of the evidence presented. Many interviews and much research were needed.

Advice was given to the Council's Development Control Committee on 16th March 2009 in the officer's report on how to take account of the evidence. A plan showing the alleged footpaths was included in the report.

At that time evidence had not been fully collated and the landowners did not recognise the existence of public rights of way crossing their application "site B".

By 23rd November 2009 a further report was presented to the Council's Development Control Committee stating the claimed paths that crossed "site B" were recognised by the developers and that the Council recommended the making of orders to allow development to take place.

The objections to the orders do not challenge in any form the necessity to close or divert the paths. This non challenge of the core ground of the orders indicates that the main aim is to re-open issues already taken into consideration when planning approval was given.

The Council recognises that the crossing point of paths A-B and C-D gives expansive views over the local area and beyond to the surrounding hills to the south and west. That is not in dispute. Her statement that it is the most significant is her subjective opinion. The diverted route gives views of at least equal quality and is supplemented by the views obtained from path B-D. No significant distant feature outside "site B" will be lost when walking the proposed network. Appendix 3 shows 3 viewpoints; from Point 1 (the crossing point of footpaths AB-CD), Point 2 (the diversion route viewpoint) and Point 3 (near B). Included are the cross sections WV and XY demonstrating the respective heights and viewpoints. The viewpoint levels of Points 1 and 2 are virtually identical. Point 3, although at a lower level offers comparable views.

The objection refers to the diversion (path C-E) being already in existence. As previously mentioned, in September 2008 the Friends of Coombeswood presented to the Council a considerable amount of user evidence by locals on paths within the wedge that they considered to have obtained public path status. The proposed line of path C-E does not follow a way on which evidence has been presented to the Council. The proposed line follows one which is quite distinct and does not fall foul of the Berstein Judgement. It is not an existing highway.

The diversion does give along its length a viewpoint that is accessible. The average gradient from the viewpoint along the diversion to point E is about 1 in 11. This is not unreasonable on this hillside. This would be the maximum gradient for any significant length anywhere in the network

The diversion and the surrounding paths to the development will be constructed to the Council's approval improving access. The only section of path that may require steps for a very short length is near point E.

The closure of AB and CD with a replacement of CE results in a net loss of about 250metres of path. With improvements to the path network, especially that of physically re-opening the path running south-west from C, it is considered that enjoyment value of the paths will not be decreased. Loops of paths for the public will still be available. This is the form of most journeys undertaken by the users of the area, especially those with dogs.

8.2

- 2) Name & Address deleted to protect identity.

For the points raised, please see 1)

- 3) Name deleted to protect identity.

The level of the viewpoint at the crossing of paths A-B and C- D and the viewpoint along the diversion are virtually identical. For other points raised in this objection, please see 1)

- 4) Name deleted to protect identity.

For the points raised, please see 1)

- 5) Name deleted to protect identity.

For the points raised, please see 1)

8.3

- 6) Name deleted to protect identity, Ramblers Association

There is no mention of necessity in this objection.

It is recognised by the Council that the distance from the access at Stewarts Road to the alternative high viewpoint would be longer but the law does not require the diversion to be of equal length or shorter. It is also considered that the route to and through the alternative viewpoint gives continuous views of at least equal merit. See Appendix 3.

8.4

- 7) Name deleted to protect identity, Halesowen Abbey Trust.

For the points raised, please see 1)

8.5

- 8) Name deleted to protect identity, Halesowen North Ward.

For the points raised, please see 1)

- 9) Name deleted to protect identity, Halesowen North Ward

For the points raised, please see 1)

10) Name deleted to protect identity, Halesowen North ward

For the points raised, please see 1)

8.6

11– 37) For names and addresses of these objectors see section 1 above

These objections are composed in a similar form clearly shown page 4 of 6 from the “Friends of Coombeswood” web site. (Appendix 2). This website sets out a campaign against the development and the orders. It will be noted that the plan on page 3 of 6 shows the diversion incorrectly. Therefore an inference must be drawn that the objectors, who have had contact with the “Friends of Coombeswood” correspondence, may have been misled and indeed may not have visited the site to closely identify the Orders’ proposals. From the alternative viewpoint Point 2, approximately midway between C and E, the proposed path turns south-west more than a right angle, very distinctly different from the “Friends of Coombeswood” line; this should have been very apparent.

There is no mention in any objection about necessity to close and divert.

For the points raised, please see 1)

8.7

11) 38) Name deleted to protect identity.

For the points raised ,please see 1

12) 39) Name deleted to protect identity.

For the points raised, please see 1)

13) 40) Name deleted to protect identity.

Letter to be read in conjunction with 15)

14) 41) Name deleted to protect identity.

For the points raised, please see 1)

15) 42) Name deleted to protect identity.

For the points raised, please see 1)

16) 43) Name deleted to protect identity.

For the points raised, please see 1)

17) 44) Name deleted to protect identity.

For the points raised, please see 1)

18) 45) Name deleted to protect identity.

For the points raised, please see 1)

19) 46) Name deleted to protect identity.

For the points raised, please see 1). Name deleted requests that “my statement of case be considered under the written representations procedure”

20) 47) Name deleted to protect identity.

For the points raised, please see 1)

21) 48) Name deleted to protect identity.

For the points raised please see 1) and section “Reasons why the Orders should be confirmed.”

22) 49) Name deleted to protect identity.

For the points raised, please see 1)

23) 50) Name deleted to protect identity.

For the points raised, please see 1)

24) 51) Name deleted to protect identity.

For the points raised, please see 1)

9 Conclusion

9.1 It can be clearly seen that the right of objection to the Orders has been used not to argue the grounds upon which S257 is based but an attempt to re-open issues that the Council’s Development Control Committee has already considered.

9.2 The Council would therefore ask that the objections should be wholly dismissed and the Orders confirmed.

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