



Sandbach Footpath Group

Aiming to protect, improve, extend and make accessible the network of footpaths in and around Sandbach.

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Interim Director of Governance and
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Date: 14 May 2019

Attn. Interim Director of Governance and Compliance Services, PRow Unit, CEC.

Your ref: PUBLIC PATH STOPPING UP ORDER 2019 (Sandbach Footpath 14), dated 11 April 2019

I refer to the above Stopping up or Extinguishment Order for Sandbach Footpath 14.

I write as chairman of Sandbach Footpath Group (SFG), which is a very active group with the aims of regularly walking all local footpaths, whilst improving, protecting and enhancing the paths. SFG objects in the strongest possible terms to the extinguishment of Sandbach Footpath 14 (FP14).

Summary

All objections to the extinguishment of FP14, including two from the Cheshire East Public Rights of Way Unit, have been ignored by the Cheshire East Planning department and no reason given. The developers have ignored the existence of FP14 and even built foundations on or adjacent to it before any agreement on an extinguishment. FP14 has always been there, but it seems that for commercial gain and convenience it has been ignored. When permission to extinguish FP14 was finally sought it was beyond the last minute, possibly in the hope that all concerned would say "it is too late to stop it now" and thereby to allow the development to proceed unhindered. Something has gone seriously wrong with the due diligence and correct time sequencing of the planning process. The late application for extinguishment creates a precedent that other developers and planning departments could follow with the inevitable loss of valuable footpaths. The development should be stopped until a satisfactory arrangement can be agreed by all interested parties.

Below is a diary of events regarding FP14, followed by the reasons for our objection:

1. In Nov 2013, Planning Application 12/4874C was agreed subject to item 10, which stated:
10. The reserved matters application shall incorporate a route for the public right of way Sandbach Footpath No.14.
Reason: To keep the public right of way open and available for members of the public and to maintain accessibility to / from the site by modes other than the private car, having regard to policies GR9, GR10, GR15 and GR16 of the Congleton Borough Local Plan First Review 2005, and the National Planning Policy Framework.

2. The Decision Notice from CEC Development Management for application 13/5239C dated 10th July 2015 stated:

“INFORMATIVE

The applicants attention is brought to the following:

A section of the existing public footpath (Footpath 14 Sandbach) would need to be closed on a temporary basis when works on site begin, but the developer must first provide an alternative temporary diversion / path (to be agreed with the Council). The section of the existing public footpath (Footpath 14 Sandbach) that crosses through the site will require an Extinguishment Order. The process of applying for the Extinguishment Order can be started now but the developer must NOT build on or otherwise permanently obstruct the footpath until the extinguishment is confirmed. Once the estate road is adopted the Extinguishment Order can come into operation. It should be noted that there is no guarantee that an Extinguishment Order will be successful, if the Council receive objections to the proposed extinguishment then the Order will be sent to The Planning Inspectorate for determination.”

I have underlined two parts, the first stating that that the developer must not build over the Footpath and the second stating that there is no guarantee that an extinguishment will be successful. Much the same is stated in the DEFRA Guidelines Circular 1/09, clause 7.11.

All this seems to say, very clearly, that the developer has acted in an illegal manner, or at least in an unprofessional manner. Please note the date of the Decision Notice is several years old. The developers have done nothing for this long and now appear to expect to push through the Footpath extinguishment at a late stage, apparently stating “it is too late to do anything else”.

This method of very late application for extinguishment seems to create a precedent for any developer if something like a footpath hinders a site design.

For this reason alone, the development should be stopped and redesigned, as it should have been done in the first place, to accommodate FP14 in a proper way.

3. On 28 January 2019 interested parties were informed of the proposed Stopping Up Order for Sandbach Footpath 14 (ref. PROW/MN/262E/574). This was the first we had been informed of the Order. The final decision for the planning application for the relevant development in Sandbach Heath was in July 2015. It does not seem reasonable that the developers have waited over 3 years before requesting the Stopping Up Order. It could have been done years before and there would have been ample time to find an amicable solution to suit all parties. It almost seems that the developers have applied for the Stopping Up Order belatedly so as to wrong-foot the interest groups and local Councillors.
4. By 10 February 2019, well before any permission had been granted, foundations had been installed very close to or on the line of FP14. This pre-empted the conclusion of any public consultation. This creates another precedent, encouraging other developers to do likewise.
5. At a Public Rights of Way Committee meeting, 11 March 2019, the extinguishment of FP14 was discussed, ref item 48. The minutes recorded were as follows:

“The objections and comments from the Ward Councillor S Corcoran, Sandbach Town Council and the Open Spaces Society were set out in the report, along with the PROW Officer’s response. The objections and comments from Sandbach Footpath Group were circulated at the meeting.

It was reported that the concrete foundations set in place on the line of Public Footpath No.14 had been investigated by the Public Rights of Way team and were found not to be an

obstruction - as long as the building was not built upwards it was not considered as an obstruction.

Whilst it was noted that the impact on the footpath by the development, and any mitigation action taken to include the footpath within the development, could not be considered against the current proposal to extinguish the section of footpath to enable the development to go ahead as these matters had been for resolution when the planning application was determined, the Committee was sympathetic to the views of the Sandbach Footpath Group and were disappointed that the developer had not provided a more satisfactory solution to the matter earlier on.

The Committee concluded that it was necessary to extinguish part of Public Footpath No.14 Sandbach to allow for the residential development, as detailed within planning references: 12/4874C and 13/5239C. It was considered that the legal test for the making and confirming of an Extinguishment Order under section 257 of the Town and Country Planning Act 1990 were satisfied.”

I have underlined some of the minutes of the meeting. The Committee were of the same mind as Sandbach Footpath Group that the developer could have done more earlier on to alleviate this unsatisfactory situation.

The second underlined section of text is stating the obvious, but if the design of the development site had been slightly different, FP14 could have been accommodated in a proper way.

It surely cannot be the case that the developers left the application for extinguishment deliberately late, in the hope that The Committee would conclude the second underlined section of text.

The final sentence above, in italics, mentions “legal test”. It is questionable whether such a documented test formally exists, and it might be a made-up statement to look official and give weight to a weak statement.

SFG believes that the development should now be stopped, and a path made through to preserve FP14.

6. FP14 is one of the favourite walks for SFG and for local residents, both present and future in the new build; it leads onto Church Lane and then into a network of footpaths beyond. Its preservation is most important.
7. Sandbach has remaining only 20 rights of way footpaths, open at both ends for safe walking, and FP14 is one of them. The Town cannot afford to lose a footpath, especially one like FP14 that leads on to nice walks in open country.
8. The permanence of Rights of Way is enshrined in Law and any alteration, diversion or extinguishment must go through the proper legal processes in the correct time sequence. It would appear that this due process according to the law and the correct time sequence is not being applied in this case.
The development should therefore be stopped until the proper processes have been followed through.
9. Government guidance notes in DEFRA Guidance Circular 1/09, for example clauses 7.4, 7.5, 7.6 and 7.7, clearly state that any application or alteration must be done in good time, otherwise significant delays could ensue. It would appear that the application for extinguishment in this case has been left to the very last minute without proper consultation.
The proper consultation should now be done, and the development should be stopped until matters are resolved satisfactorily.

10. The plans show that the line of FP14 would go through private gardens. This appears to have been done deliberately. The developers must have had full knowledge of the line of the footpath at the time of drawing plans but have apparently ignored it. The development should be stopped, and the plans should be redrawn to accommodate a proper footpath.
11. Furthermore, it appears that concrete foundations to buildings have already been set in place, on or very close to the line of FP14. This has clearly been done before the application for extinguishment has been considered, much less granted. This may well be illegal. The development should be stopped until the legal aspects have been properly examined.
12. The Right of Way, FP14, has been there for a long time, possibly hundreds of years, and it must not be extinguished without due regard for proper procedures in the correct time sequence. The developers must have known of the existence of FP14 when the plans were originated, and due consideration could have been given at that stage to landscaping the Footpath into and within the plans according to the Government DEFRA Guidance.
SFG ask that the DEFRA Guidance is followed, and in the meantime the development stopped.
13. The developers are clearly aware of the benefits to local people of walking outdoors on suitable footpaths because various pleasant walks have been drawn on the plans for this development from Daisybank Drive and in the vicinity of the attenuation pond. If these footpaths are completed as drawn, they will benefit the residents, but the new paths do not lead out to open country, so FP14 remains the only and essential link to open country.
SFG state again that FP14 should be retained.
14. Planning permission may be given irrespective of Rights of Way. If any footpaths are threatened in a planning application, they have to be dealt with subsequently or separately. It appears that because planning permission has been granted, the developers may have wrongly assumed that the Footpath can be extinguished. This is clearly not the case and the developers should have applied for altering the Footpath when planning permission was granted several years ago.
SFG ask that the process be re-run in a proper manner in the correct time sequence.
15. Government DEFRA guidance (Circular 1/09 clause 7.11) states that merely having planning permission granted for a site does not infer that any application for Footpath Extinguishment is any more likely to be agreed. The proper procedures for Footpath Extinguishment must still be followed even if planning permission has been agreed. "*Development in so far as it affects the Right of Way should not be started...*" (as quoted from 1/09, clause 7.11).
Yet again, SFG ask that the proper procedures be followed, and the development stopped in the meantime.

16. As stated in the two preceding items above, any application for extinguishment needs to be in good time, but in this case the application appears to be retrospective in that concrete foundations, on or very close to the line of FP14, were built in February 2019. The developers are well-established builders and they must be aware of the proper procedures to follow. Building on or close to the Footpath may well be illegal and so a suitable footpath should be re-instated.
SFG ask that the development be stopped, and semi-legal workarounds abandoned, until legal and professional procedures for the public good are followed.
17. Government DEFRA guidance (such as Circular 1/09, clause 7.8) states that footpaths must not be replaced by pavements at the roadside (i.e. estate roads). The plans show that most of FP14 would be pavement by the roadside and, as in item 11 above, that may be illegal or at least not approved working practice, whether part of FP14 is extinguished or not.
SFG again ask that the Government procedures be followed, even if that means the development is meanwhile stopped.
18. Cheshire East Public Rights of Way (CEC PRow) have already objected to the applications 12/4874C (objection dated 8 January 2013), 13/5239C and 13/5242C (objection for both planning applications dated 19th June 2014). As far as we know, no action has been taken on the objections either by CEC Planning or by the developer. It therefore appears that the Planning Dept at Cheshire East appear to have entirely ignored the advice from their own PRow Unit.
Surely, it cannot be good working practice to ignore objections made by professionals working for the Council PRow unit.
As far as we can tell, no reason(s), valid or otherwise, has been given for ignoring the objections.
The development should be stopped until a review of the legal procedures has been done to establish the planning department is working to correct procedures.
19. It appears that the developer would be acting illegally by building on, diverting or extinguishing FP14 without first applying for the appropriate authorisation.
I know this is repetitive, but the development should be stopped until proper authorisation with proper consultation has been followed through.
20. Furthermore, it would appear that CEC Planning Dept. may have been deficient in not warning the developer of the possible consequences of failing to apply for a diversion or extinguishment order in a timely manner.
The development should be stopped until a review of the legal procedures has been done to establish that the Planning Dept is not working in a deficient manner.
21. Cheshire East has a Rights of Way Improvement Plan (RoWIP) 2011-2026, Implementation Plan 2015-2019. Extinguishing a footpath surely cannot be part of that Improvement Plan. Cheshire East should stop the development and safeguard FP14, with a view to improving footpaths, not extinguishing them.
22. The developers have got this far without an apology for ignoring FP14, or even saying it was an unfortunate oversight. If all else fails, then the least they could do now is to make a generous donation to the above RoWIP to improve local footpaths (a figure of £150,000 comes to mind).
SFG can provide a list of suggested improvements.

23. The Government Planning Inspectorate has published a guide titled: Guidance on procedures for considering objections to DEFINITIVE MAP and PUBLIC PATH ORDERS in England.

It is available on the internet at the following address, otherwise an internet search for the title name should find it.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774702/Row Booklet revised Jan 2019 Privity stat room Nos PDF.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774702/Row_Booklet_revised_Jan_2019_Privity_stat_room_Nos_PDF.pdf)

This publication states that this application for extinguishment should follow clear procedures, many of which do not appear have been followed in this case. The application for extinguishment should therefore go to The Planning Inspectorate for an inquiry and a proper determination based on all evidence and correspondence.

Please consider all these objections and ensure that The Planning Inspectorate takes appropriate action to preserve Sandbach Footpath 14.

Thank you for your consideration.

Trevor Boxer

Chairman, Sandbach Footpath Group