

**CREATION OF FOOTPATH AT
ST GERMAIN WALK HUNTINGDON**
(Report by the Head of Planning and the Head of Legal and Estates)

1. INTRODUCTION

- 1.1 At its meeting on 15th November, 2004, the Development Control Panel resolved to consult with the County Council and Town Council over the possibility of making a Footpath Creation Order at St Germain Walk and also to seek specialist advice with regard to the proposal, specifically with regard to the level of compensation that might be payable in the event of an Order being made.
- 1.2 A copy of the original report is attached which sets out the planning history and the legal process for making a Public Path Creation Order under Section 26 of the Highways Act 1980.

2. RESPONSES TO CONSULTATION

- 2.1 The County Council have indicated that they would have no objection to a Footpath Creation Order, provided that any new footpath linked directly to existing public highway at both ends.
- 2.2 Huntingdon Town Council support the proposal to make St Germain Walk a public right of way and to secure removal of the gates as part of that process.

3. ADVICE FROM COUNSEL

- 3.1 Advice has been sought from Counsel with specialist knowledge of highway and related matters and this is summarised in the following paragraphs.
- 3.2 Before making any Order, the Council must be satisfied not merely that there is a *need* for a footpath, but that it is *expedient* that the path should be created having balanced the effect on the convenience and enjoyment of the public with the effect on persons interested in the land.
- 3.3 In assessing the merits for making an Order, it must be borne in mind that if there are any objections, which in this instance is extremely likely, a Public Inquiry will be held and the matter will be determined by the Secretary of State.
- 3.4 In terms of weighing up the advantage of making such an Order, it is clear that there would be some benefits to the public and particularly the disabled, in opening up the access.
- 3.5 Counsel considers, however, the history of the matter to be highly relevant. Firstly, a Stopping Up Order was made by the Secretary of State in 1999 and he must have been satisfied at that time that it was both necessary to stop up the highway and this outweighed resulting disadvantages to the public in losing a right of way. Moreover there

were no objections to the Order from the District Council, the County Council, Huntingdon Town Council or indeed any members of the public.

3.6 Secondly, as recently as 2003 the Council granted planning permission for the erection of the gates in question. At that time all the planning issues would have been considered. The interests of public access and of the disabled were clearly taken into account at that time, as objections were raised, including by Huntingdon Town Council. In response to the concerns, a new disabled car park was created at the end of Chequers Way and disabled access to the southern end of Chequers Court was improved. As a result of these changes the Town Council subsequently withdrew their objection.

3.7 The report to Development Control Panel in January 2003 specifically considered the erection of the gates and concluded that "the loss of this route is not sufficient to justify the refusal of planning permission, particularly in view of the advantages of the scheme as a whole". That recommendation was duly accepted by the Council. On this issue, Counsel advises that:-

"it is clear that, having been alerted to the effect of the erection and closure of the gate to public access, particularly for the disabled, the Council nonetheless determined that the development, which included the gates, was acceptable, as did the Town Council which withdrew their objection."

3.8 In addition, the Council has adopted for consultation the draft Urban Design Framework for Land at Chequers Court dated April 2004 in which the closure of this access is acknowledged. At paragraph 5.2, for example, it is noted that the route has been closed "in order to secure the safety of passers-by and direct pedestrian movement through Chequers Court".

3.9 In the light of the above Counsel concludes that:-

"in my view, any proposal by the Council to recreate the footpath would be wholly contrary to their stance taken previously. I am not aware of any material change in circumstances since the grant of planning permission which the Council were unaware of when making that decision. At that time, the erection and closure of the gate were acceptable. That is inconsistent with any contention that it would be expedient to recreate the footpath taking the public and private interests into account. On any view, those past circumstances would significantly limit the weight the ultimate decision maker would be likely to give to the public interest in recreating the path".

3.10 It is also necessary to balance the public interest with the land owners and occupiers interest, taking into account entitlement to compensation. Counsel considers that "it is highly significant that the land on which the footpath would be created falls within the curtilage of retail development, which has planning permission for that

purpose" and "...that an Order would have serious effects on the future use of the parcel of land as well as on the existing retail development..." There would be safety implications in view of the potential conflict between pedestrians and vehicular traffic and possibly security implications, given that the gate is described as a "security gate" in the planning application. There would also be commercial harm, as the developer clearly intended to encourage pedestrian movement past the refurbished shops in Chequers Court and moreover any new footpath would preclude extended or other retail development along any part of the new path and restrict development adjacent to it, as account would have to be taken of those rights of way.

- 3.11 Counsel considers that the effect of any footpath creation on the land owner and occupiers would be particularly severe, and in contrast to the normal situation for newly created footpaths, which tend to be in rural areas around the edges of agricultural fields. Counsel concludes that whilst ultimately it is a matter for the Council and thereafter the Secretary of State, it is her view that "it would be very difficult in those circumstances to justify the expediency of such an Order if the appropriate balancing exercise is undertaken....".
- 3.12 In the light of those comments Counsel also states that "...for the above reasons the Council would have no reasonable prospects of success at the inevitable Inquiry that would ensue of having the Order confirmed by the Secretary of State".
- 3.13 There are two further issues to be considered in connection with the holding of a public inquiry. Firstly, the Council would incur the cost of being involved in a Public Inquiry that is likely to last at least a couple of days and possibly longer. These costs are likely to be up to £10,000.00. Secondly, we are likely to be 18 months further on by the time an Order has been made, advertised, the Public inquiry held and a decision issued, by which time it is anticipated that proposals for further redevelopment of the area in accordance with the Council's Urban Design Framework will be well advanced and hopefully underway.

4. COMPENSATION

- 4.1 If, however, the Order was confirmed, Section 28 of the Highways Act 1980 would then apply, which provides for the payment of compensation. Thus the Council would be responsible for paying compensation to the land owner and occupier of that land to the extent that they had suffered damage either to the value of their interest in the land or to their enjoyment of it.
- 4.2 Ultimately the amount of compensation payable would have to be assessed by an expert commercial land valuer and determined by the Lands Tribunal if disputed. In terms of general principles on which it would be assessed, the land owner and any occupier of the land over which the footpath is created would be entitled to be compensated for all loss and damage resulting from the creation of the footpath and its subsequent use, which damage is not too remote. In addition, the

land owner would be entitled to compensation of the same losses in relation to any adjacent land he owns which would include all the retail land owned by Churchmanor in the immediate vicinity.

- 4.3 There would undoubtedly be a significant commercial loss to the land owner for which he would be entitled to be compensated. Any loss of profits from the reduced pedestrian movements through Chequers Court, together with any reduced rentals that would be likely to ensue. Account would also have to be taken any covenants which the land owner was accordingly in breach of with any tenants. There is also a loss of opportunity for further development over the area of the footpath for which again the owner would be entitled to compensation.
- 4.4 The amount of compensation would also depend upon the actual route and extent of the proposed footpath. Counsel further concludes "nonetheless, from the principles to be applied, it is apparent that which ever option is pursued the commercial losses would be extremely serious" and could result in the Council facing a payment of very substantial compensation.
- 4.5 Counsel is not aware of any other powers available to the Council to secure the opening of the gates in the absence of the land owner's consent and consequently advises that:-

"it seems to me that a negotiated way forward as part of future development proposals by the developer would be the preferable way for the Council to seek to improve the pedestrian access position, without embarking on a potential lengthy process for a Public Path Creation Order with very limited prospects of success and which, even if successful, would result in excessive amounts of compensation being payable."

5 ACCESS FOR PEOPLE WITH DISABILITIES

- 5.1 As stated above, as part of the 2003 planning permission an additional car park for the exclusive use of people with disabilities was provided by the applicant. From that new car park the pavement was re surfaced and the ramp into Chequers Court by Kon's Café was re-modelled to an appropriate gradient in order to provide an appropriate route to the south entrance of Chequers Court.
- 5.2 In response to suggestions by representatives of disability groups, in association with the debate over the 'gate', a dropped kerb has been provided at the north end of Chequers Way, by the owners of Chequers Court. At the same time studs were inserted into the slope opposite Wilkinsons, indicating the area of appropriate gradient for people with disabilities.
- 5.3 The County Council has been consulted, in their role as Highway Authority, for permission to mark out and resurface part of the carriageway along Chequers Way for use by pedestrians including wheelchair users. This would provide a more direct route from the

new car park to St Germain Walk. Any response will be reported verbally to the Panel.

- 5.4 In due course it is anticipated that facilities for people with disabilities will be further improved in association with the redevelopment of Chequers Court. This is planned to include a multi-storey car park, part of which could be reserved spaces for people with disabilities and be the location of a shopmobility scheme. Following approval of the Urban Design Framework, a planning application for this important redevelopment scheme is expected to be submitted. In the meantime as permission and construction is likely to take about three years, progress is being made towards the provision of a shopmobility scheme in the interim by the Council, in association with the Hunts Forum for Voluntary Organisations. It is hoped, subject to funding, that this can be achieved this year.
- 5.5 Notwithstanding the position of the 'gate' the subject of this report, access facilities for people with disabilities have already been improved and plans are in place to improve them further. It is our view, in the light of the above, that any available resources would be more effectively targeted at turning those plans into reality.

6 RECOMMENDATION

- 6.1 In light of the specialist advice on the expediency of making an Order under Section 26 of the Highways Act 1980, the very limited prospects of success at a Public Inquiry and of the significant compensation likely to be payable in the event of such an Order being confirmed it is recommended that a Footpath Creation Order be not made; and that
- 6.2 That pending a long term solution as part of the comprehensive redevelopment of the area, officers be requested to investigate, as a matter of urgency, alternative measures to assist access for the disabled, including the possibility of introducing a Shop Mobility Scheme.

BACKGROUND PAPERS

The Stopping Up of Highways (County of Cambridgeshire) (No.1) Order 1999
Huntingdon Town Centre – A Vision & Strategy for Growth and Quality – 2000
Urban Design Framework Chequers Court – 2004
Huntingdon Town Centre Retail Study – 2001
Application 02/01699/FUL relating to extension and alteration to shop units, provision of parking for the disabled and security gate.
Planning permission LPA reference 97/1246
Report to Development Control Panel 15 November 2004

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