

January 2022

LAND BETWEEN APPLEDORE AND WOODCHURCH ROADS, TENTERDEN

PUBLIC RIGHTS OF WAY STATEMENT OF COMMON GROUND

PINS Ref: APP/E2205/W/21/3284479

AGREED MATTERS

1. The parties agree that the only objection of Ashford Borough Council relates to the Public Right of Way ('PROW') footpath Order AB70 made by Kent County Council. The KCC ROWIP Officer is appearing as evidence witness for Ashford Borough Council.
2. This PROW Order is subject to a separate inquiry in April 2022.
3. The parties agree that if the PROW Order is not confirmed Kent County Council has no objection to the grant of consent on this ground. However, a decision as to whether the PROW Order is confirmed or not is highly unlikely to be made before the decision on this appeal.
4. The route of the proposed PROW AB70 is circular and only connects to existing PROW Footpath AB12.
5. The parties agree that there is no objection to the route of the footpath on the eastern side of the development (i.e. east of footpath AB12).
6. Therefore, the parties agree that the only concern of the Council relates to the residential element of the scheme that is provided in outline format.
7. In accordance with legislation, the parties agree that detailed matters relating to layout of the residential element of the scheme are not subject of determination at this Inquiry. The parties agree that the definition of 'layout' can be found in the Town and Country Planning (Development Management Procedure) (England) Order 2015 which states ""layout" means the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development". The Council question whether an acceptable layout can be delivered.
8. The parties further agree that the obstruction of a footpath is an offence. The Appellant's position is that at present the footpath does not exist as it has not been confirmed. As such, and as the residential element of the scheme is in outline there can be no obstruction to the footpath. The Appellant does not believe that the proposed development would obstruct a footpath. The Council's position is that the route of AB70 is known and the Order made by KCC as considered reasonably alleged to exist and the implications on the alleged footpath and diversion must be taken into account at the outline stage as it is critical to the delivery of an acceptable scheme.

Area of Disagreement between the Parties

9. The Appellant considers that given that it is unknown at this stage whether footpath AB70 will be confirmed, this matter is not relevant to the determination of this Appeal. The Council's position is that as KCC considers that public rights do exist following their investigation of the Claim, this matter is relevant.
10. Notwithstanding this, the Appellant is confident that if the footpath is confirmed, reserved matters can be developed that would accommodate the footpath either on its proposed alignment or on any alignment that would be acceptable to Kent County Council.
11. The Council considers that, whilst the footpath has yet to be confirmed, and notwithstanding this element is in outline only, appropriate plans should be provided showing whether and how the diverted footpath can be accommodated now and not left to the Reserved Matters stage.

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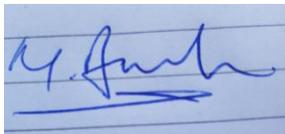
12. The Council considers that proposed development would, as shown on the current plans, obstruct proposed footpath AB70 which would be an offence, were the footpath Order confirmed. The Appellant disputes this ascertain and has seen no evidence to support the Council's claim.
13. The Council's view is that confirmation of the footpath Order would be the recording of pre-existing rights of long-user on the definitive map. KCC has already made the Order and therefore is of the view that there is sufficient evidence that there is a reasonable allegation that the rights subsist (the test under s. 53(3)(c)(i) of the Highways Act 1981). Therefore, there is a real prospect that these rights already exist. KCC consider that since there is a sufficient evidence that there is a reasonable allegation that the rights subsist, the implications on the alleged footpath and diversion must be taken into account at the outline stage as it is critical to the delivery of an acceptable scheme. The Appellant disagrees with the above statement and has evidence to support its case that such rights do not exist. In any case, the Appellant considers that the above statement is relevant to the PROW Inquiry not this planning inquiry.
14. The Council's position is that the Appellant has not provided any acceptable plan to show how the footpath could be diverted, should that become necessary. The Appellant's position is that this is not needed at this stage of the planning process as the status of the footpath has not been confirmed and the relevant part of the appeal scheme is in outline and that in any case, such plans can be provided at detailed matters stage.

Agreed by

Asher Ross

Asher Ross

(for Wates Developments Ltd)



Kate Beswick – Kent County Council

(for Ashford Borough Council)