

DAC BEACHCROFT

Our Ref: WAT596-1473560 – KRNH – Karen Howe

Your Ref:

28 July 2021

Kate Beswick
Rights of Way Improvement Plan Officer
Public Rights of Way and Access Service
Kent County Council
Invicta House
MAIDSTONE
Me14 1XX

Dear Kate

Land between Woodchurch Road and Appledore Road, Tenterden
Hybrid Application for Outline Planning Permission for Development of up to 145 Residential Dwellings and Associated Development and full Planning Permission for Change of Use from Agricultural Land to Country Park and Formal Sports Pitches with Associated Development
Ref: 21/00790/AS

I have been instructed by Wates Developments Limited to write to you following your consultation response to Ashford Borough Council in respect of the above application and your subsequent discussions with Judith Ashton.

As you are aware, the DMMO to add footpath AB70 to the Definitive Map and Statement of Public Rights of Way has been objected to strongly by the landowners and has therefore been referred to the Secretary of State for determination. Accordingly, there is currently no legally confirmed use of AB70 as a public footpath and the landowners and my client regard any use of the land, other than the use of footpath AB12, as a trespass upon the land

The above application is a hybrid application. Therefore, although it is prudent to show how the route of claimed footpath AB70 could be accommodated within the development on the eastern side of the site subject to the full application, such an approach is unnecessary on the western side which is the subject of an application for outline planning permission where layout is a reserved matter to be determined at a future date.

My client is fully aware that, if the DMMO is confirmed, it will be legally required to accommodate footpath AB70 within the development, either on its existing route or on a realigned route following the making and confirmation of a diversion order. However there is no requirement at outline stage to show how a route could be accommodated within the development. The masterplan being submitted in support of the application is indicative only at this stage. Therefore, in terms of showing how the western route of AB70 could be accommodated, it is of no relevance to the determination of this application.

This would be the situation whether the footpath was already shown on the DMS or, as here, is the subject of a DMMO application and objection. How the western section of AB70 might be accommodated within the development cannot be resolved until the layout details are prepared and submitted as part of a reserved matters application. Until that point it is not possible to ascertain

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whether or not a diversion order might be required. Clearly, if the DMMO has not been determined by the inspector by the time a reserved matters application is submitted, then it would be prudent for my client to make provision for the route at that stage, following discussions with KCC's PROW team. To resolve the alignment and specification at the outline stage however, would be premature and unwarranted as the final layout may well be different to that shown on the illustrative masterplan submitted in support of the hybrid application. The only relevant matter is what is shown at the reserved matter stage.

As it is unlawful to obstruct a public right of way without lawful authority and KCC could bring legal action to remove any obstruction, including, if necessary, the demolition of building, it is incumbent upon any developer to ensure that all PROW (including any subject to an unresolved DMMO) are accommodated within the submitted layout details and, if necessary, to apply for a diversion order before any development takes place. To ignore this would be foolhardy given both KCC's extensive enforcement powers and the difficulties likely to be encountered in selling a plot which obstructs a PROW.

Footpaths are already well protected by the provisions of the Highways Act 1980 and other legislation. If KCC is concerned to bring to the developer's attention the need to accommodate the route of AB70, this could be done via an informative, as is usually the case where matters are already the subject of other legislative requirements. Indeed, the Planning Practice Guidance makes clear that informatives rather than conditions should be used where compliance with other regulatory regimes is required.

Whilst there is no good planning reason therefore, to impose a condition on any planning permission requiring that provision is made for the route, if KCC nevertheless considers that the protection afforded by PROW legislation, coupled with an informative on any planning permission granted, are not sufficient, a condition as follows would meet those unfounded concerns:

No development shall take place which would permanently obstruct the route of footpath AB70, as shown on the map appended to Definitive Map Modification Order made by Kent County Council on 17th December 2020 (the DMMO), until either a layout has been approved which accommodates the footpath on the line shown on the DMMO or an application has been made and confirmed to divert the footpath. This condition shall not apply if, prior to the approval of the layout forming any part of a reserved matters application, the Secretary of State determines that the DMMO shall not be confirmed

In light of the above, would you please now confirm to Ashford Borough Council that the accommodation of the western route of AB70 is no longer an issue.

Yours sincerely

Karen Howe

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