

# **Proof of Evidence of**

## **Kate Beswick**

**Town and Country Planning Act – Section 78**

**Town and Country Planning (Development Management Procedure) (England)  
Order 2015**

**Town and Country Planning (Hearing and Inquiries Procedure) (England) Rules  
2013**

**APPEAL BY WATES DEVELOPMENTS LIMITED**

**Land between Woodchurch Road and Appledore Road, Tenterden, Kent, TN30  
7AY**

## **CONTENTS**

- 1.0 Introduction
- 2.0 Relevant Legislation
- 3.0 Background
- 4.0 Description of the Route
- 5.0 Potential Impact on the Planning Application
- 6.0 Local Policy Context
- 7.0 NPPF July 2021
- 8.0 Proposed Condition
- 9.0 Summary and Conclusion

## **Introduction and Background**

### **1. Introduction**

- 1.1 My name is Kate Beswick and I am Rights of Way Improvement Plan Officer for Kent County Council. It is my role to view all Planning Applications of a size over 100 dwellings, and all other strategic Applications in the Borough of Ashford (among other Districts, see below), with regard to the protection, and improvement of the Public Rights of Way network. The Rights of Way Improvement Plan 2018-28 has an objective to provide a high-quality, well maintained network that is well used and enjoyed. The network asset supports Kent's economy, encourages active lifestyles and sustainable travel choices that support health and wellbeing.
- 1.2 I have over 2 years' experience in this role gained in the PROW and Access Service. Previously, I worked as part of the PROW Definition Team. This experience has encompassed being the KCC PROW and Access Service consultee for all Planning Applications in East Kent primarily and also county wide for sites over 100 dwellings, any Strategic Highway Network applications, NSIPS, Local Authority Local Plans and Transport Planning, Parish Council Neighbourhood Plans; I lead on projects ranging from Central Government Active Travel initiatives, the implementation of the England Coast Path in Kent in partnership with Natural England, the promotion of the Rights of Way Improvement Plan building good working relationships with partners at all levels, with particular regard to protecting and enhancing the PROW network asset in ways mutually beneficial to development of all scales and the Kent County Council as the Highway Authority.
- 1.3 I am familiar with both the route of the existing Public Footpath AB12 and the claimed route of AB70 due to my involvement as the Kent County Council consultee on behalf of the PROW and Access Service as detailed above. I have made site visits to ensure knowledge "on the ground". As part of my role I also have knowledge of the relevant policies of the Ashford Borough Council Local Plan and therefore all other current Planning Applications in the area.
- 1.4 I confirm that the evidence set out in this proof is true to the best of my knowledge. The opinions expressed are my own and are formed from professional judgement based on my knowledge and good practice.

- 1.5 Ashford Borough Council's Decision notice sets out Reason for Refusal 8 as follows:
- 8. An Order has been made to record a new footpath AB70 within site that is subject a forthcoming Planning Inquiry. The proposals fail to show the impact of the scheme on the AB70 footpath within the site or any acceptable diversion to it, if is approved by the Secretary of State. The AB70 footpath would clearly have a significant impact on the spatial layout of the development that is proposed and change the dynamic of the footpath experience itself by passing through a built up residential area rather than a series of fields as at present. The proposals are therefore contrary to policies SP1 and TRA5 of adopted Ashford Local Plan 2030 and National Planning Policy Framework Guidance advice. The proposal fails to consider or acceptably incorporate the AB70 footpath within the scheme. It therefore does not demonstrate how safe and accessible pedestrian access and movement routes will be delivered and connect to the wider movement network and proactively, looks to connect with and enhance public rights of way whenever possible, encouraging journeys by foot;***

## **2. RELEVANT LEGISLATION**

- 2.1 Wildlife and Countryside Act 1981, PART III, Ascertainment of public rights of way Section 53; The Local Authority, here KCC, has a **duty to keep definitive map and statement under continuous review**.
- 2.2 Highways Act 1980, Part III, Section 31 - **Dedication of way as highway presumed after public use for 20 years.**

## **3. BACKGROUND**

- 3.1 A Definitive Map Modification Order was made on 4 December 2020 ("the Order"), **Appendix 1**, to record a Public Footpath numbered AB70, running from Public Footpath AB12 near Woodchurch Road, to another point on Public Footpath AB12 (a circular route) at the appeal site. The DMMO is required following discovery of evidence by the Authority which shows that a right of way which is not shown on the Definitive Map or Statement subsists or is reasonably alleged to subsist over land in the area to which the Map relates. KCC has consulted with every authority whose area

includes the land (development site). Investigations have been carried out in accordance with procedures and proper legal tests have been applied to the evidence gathered, the result of which is that a public right of way is alleged or reasonably alleged to exist. Ref. CD46 DMMO Order and Statement to Accompany

- 3.2 On publication of the Order, 1 objection was received from DAC Beachcroft LLP on behalf of its client, Wates Development, and Carol Daniel and Shaoul Birshan, the owners of the land. As an objection was received to this Order, the Order, objection and all other relevant documents were submitted to the Secretary of State in accordance with the Wildlife and Countryside Act 1981. It has been decided by the Planning Inspectorate that a Public Inquiry will be held to determine whether the Order should be confirmed.
- 3.3 The Public Inquiry will start at 10am on 6 April 2022 and end on 7 April 2022 at The Assembly Rooms, Tenterden Town Hall, 24 High Street, Tenterden, Kent, TN30 6AN.
- 3.4 Brief Chronology:
- |                               |  |
|-------------------------------|--|
| 7 <sup>th</sup> January 2020  | Outline planning application consultation received   |
| 27 <sup>th</sup> January 2020 | PROW comments on above submitted to ABC  |
| 27 <sup>th</sup> January 2020 | Emailed ABC claimants plan of route AB70 which formed part of the claim application  |
| 9 <sup>th</sup> March 2020    | Site visit with applicant and Case Officer from Definitive Map Team dealing with claim   |
| 7 <sup>th</sup> May 2020      | PROW comments to ABC reflected AB12 discussions from site visit  |
| 13 <sup>th</sup> Aug 2020     | PROW comments to ABC re Access matters as part of outline Application, only refers to AB12   |
| 6 <sup>th</sup> June 2021     | PROW comments re 21/07890 amended application, recent claim investigation of AB70 explained, in that it was sent to Secretary of State for determination and if confirmed would be “major impact” and “require diversion under TCPA” |
| 29 <sup>th</sup> June 2021    | Wates email advising they would leave AB70 until Reserved Matters<br>Email from ABC to me saying no  |
| 30 <sup>th</sup> June 2021    | PROW reply to ABC agreeing “no” to leave until RM and that the route should appear on all plans regarding the application  |

1 <sup>st</sup> July 2021 cont.	various emails as correspondence between Wates and KCC PROW / ABC regarding including AB70 on Masterplan
13 October 2021	email from ABC informing KCC PROW of appeal
November 2021	various emails from ABC re Appeal and R for Refusal#8

#### **4. DESCRIPTION OF THE ROUTE**

- 4.1 The field over which the Order route runs is bisected by public footpath AB12 which runs roughly in a north-south direction. The Order route commences on public footpath AB12, approximately 13 metres south of its connection with Woodchurch Road. It runs generally around the perimeter of the field, crossing public footpath AB12 at the south end of the field, and reconnects with public footpath AB12 approximately 114 metres south of its connection with Woodchurch Road.

#### **5. POTENTIAL IMPACT ON PLANNING APPLICATION**

- 5.1 My proof will explain the impact that the making of the Order will have on the Application and therefore why the KCC objected to the Application.
- 5.2 If the Order is confirmed, this will have a major impact on the proposed development. If so determined, this route must be incorporated into the development both through the Country Park to the East and the housing to the West.
- 5.3 KCC, as the highway authority, has a legal duty under section 130(1) of the Highway Act 1980 (“the HA”) to assert and protect the rights of the public to use a highway and to prevent their obstruction. Further, under section 130A of the HA, any member of the public can serve notice on the relevant highway authority to remove obstructions from a highway in certain situations. If the Order is confirmed, the route cannot be obstructed.
- 5.4 The eastern route of new Public Footpath AB70 would appear to run the route of the proposed application paths which would easily align with the Order route with minimal amendment. The route of AB70 through the housing on the western side would have a major impact on the proposed development. If determined, this route must be

incorporated into the development both through the Country Park to the East and the housing to the West. The eastern route of new Public Footpath AB70 would appear to run the route of the proposed paths which would easily align with the Order route with minimal amendment. The route of AB70 through the housing on the western side would require diversion under The Town and Country Planning Act. Ref CD 4.6a/1

- 5.5 In May 2021, the Appellant did not accept my request (Ref. CD4.6a/1) to show the route of AB70 on any plans at that stage of consultation and stated they wished to leave doing that until the Reserved Matters stage. KCC PROW was not able to accept this as the route on the Western side of the site runs through the residential development area will have significant impact on both public user safety as well as design and layout. There needs to be mitigation against loss of public enjoyment and consider user safety. Part of the route also appears to be on an estate footway which KCC PROW do not accept in any application as it effectively extinguishes that section of the PROW, due to the footway being likely adopted by KCC Highways at a later date.
- 5.6 It would also further affect other elements of the site proposals as it runs through housing/garden plots, parking areas, and involves crossing roads multiple times. All of this would not lead to our approval of the application
- 5.7 The applicant also suggested that the above could be dealt with by way of a condition Ref CD 4.19/b and again KCC PROW would not accept this in circumstances where no plan exists or assessment provided to demonstrate the impacts of any layout that purports to accommodate the DMMO route or with any diverted route. I advised the Appellant to address the route and its potentially significant impacts on the design of the development now, rather than hope the Order will not be confirmed. All this was done with the benefit of discussion with Ashford Borough Council's ("the Council") Planning Officer.
- 5.8 In response, the Appellant offered to show the route on a plan which would only be sent to KCC PROW and not appear on the Council's planning portal. However, route AB70 is not shown on the Masterplan, nor has it been acknowledged as a matter to be resolved by the Appellant at this stage. The Masterplan is not an irrelevant document as suggested by the Appellant on 28 July 2021, Ref CD4.19 and to leave the potential incorporation until Reserved Matters is too late in the process. See my

email ref CD 4.6/b The Applicant has failed to acknowledge the need to address the issue (until 20 December 2021 which I discuss below).

- 5.9 KCC were not of the view, nor suggesting, that the alignment and specification of the route were required to be determined during the consultation process, as suggested in the letter dated 28 July 2021 from the Applicant's solicitor, but that KCC require the route be shown on the Masterplan (indicative plans) as a matter to take forward in the event of any permission being granted, and for all options to be clarified through the public consultation and application process, in other words, including a proposed diversion route in the event that the Order for AB70 is confirmed.
- 5.10 In the event that a diversion of AB70 is required due to the Order being confirmed and the effect of the development, (*TCPA section 257, to enable development to be carried out*) a proposed alternative route would have to be provided by the Appellant. It should also be borne in mind that a footpath may be diverted but guidance from the Rights of Way Circular 1/09 – published by DEFRA - contains the following advice to planning authorities: “The local planning authority should not question the merits of the planning permission when considering whether to make or confirm an order, but nor should they make an order purely on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order”.
- 5.11 This advice forms part of KCC PROW usual practice, in that if the new route would be substantially less convenient to the public than the existing one, account would also need to be taken of the effect the diversion would have on public enjoyment of the path as a whole. Further to this, any new route would need to be safe and attractive for public use. There would also be spatial implications on the development as other elements ie. Plot layouts, drainage, parking facilities, green space would likely need to be moved. This is our reasoning for the matter to be acknowledged and discussed between the Appellant and ourselves as soon as possible in the application process in

order for the potential route to be positively incorporated as to leave the potential incorporation until Reserved Matters is too late in the process

## **6 LOCAL POLICY CONTEXT: ASHFORD LOCAL PLAN 2030**

- 6.1 I refer to the policies referred to in the Councils Reason for Refusal 8 Decision Notice dated 27 September 2021 SP1 points a) b) d) e) and f) and TRA5 of the adopted Ashford Local Plan 2030. Further evidence of these policies will be given by Lindsay Goodyear.
- 6.2 In relation to policy TRA5 - Planning for Pedestrians - this requires that development proposals demonstrate how safe and accessible pedestrian access and movement routes will be delivered and how they will connect to the wider movement network. As previously highlighted, the Applicant has not acknowledged the need to address now or prepared for the Order being made which means they are not able to consider policy TRA5 appropriately.

## **7 NPPF JULY 2021**

- 7.1 Paragraph 104 of the NPPF highlights that transport issues should be considered at the earliest stages of development proposals so that, amongst other reasons, the impact of the development of the transport networks can be addressed, opportunities to promote walking can be identified and pursued as these are integral to the design to the scheme. In conflict with this, as noted above, the existence of the route has not been acknowledged by the Applicant in the planning application material in order to demonstrate whether the route or any diverted route can be accommodated satisfactorily within a delivered scheme and the consequential effects both on the proposed development and the function and amenity of public rights of way.

## **8 PROPOSED CONDITION**

- 8.1 On 20 December 2021, the Applicant provided (for the first time) two new plans, without prejudice to their position regarding the AB70 Public footpath order Inquiry or the current S78 appeal, stating these were for the purpose of demonstrating that they could accommodate 145 dwellings together with the PROW route in the event the

Order is confirmed. However, the proposed reroute is unclear on the plans provided, 0002 and 0003. The route shown on 0003 would appear to be the applicant's proposal for a TCPA diversion, however this proposed route would not be approved by KCC PROW and Access as it would not mitigate against loss of public enjoyment and does not consider user safety. Part of the route also appears to be on an estate footway which KCC PROW do not accept as it effectively extinguishes that section of the PROW, due to the footway being adopted by Highways at a later date. Thus, there is no demonstration of deliverability of the scheme to accommodate the PROW

- 8.2 A Public Right of Way should be incorporated positively, in attractive, safe, open green corridors. The route of AB70 shown on the new plan passes between houses, across parking spaces and on development footways/pavements. It was realised that the Eastern side would run along the side of the car park, and this was discussed previously with the Applicant and being aware of it at this stage, enables the route to be considered ensuring safety for all. The evidence of David Withycombe, Landscape Architect, considers the visual impact on the Order route, and visual and landscape impact is a criteria for KCC PROW when approving PROW diversions, i.e. the effect on both the public's rights and enjoyment of the highway.
- 8.3 Further, in the same correspondence they proposed a condition:

***"Notwithstanding the details provided on Plan XXXX, should the Secretary of State confirm Footpath AB70 on the current proposed alignment, revised plans showing how the footpath can be accommodated shall be submitted to and approved in writing by the LPA (in consultation with Kent County Council). The development shall be carried out and maintained in accordance with the approved details"***

Currently, the condition is proposed without a proposed diversion and it being an amendment to the application i.e. appear on the portal so open to full consultation.

- 8.4 At 7.5.85 of the Appellant's statement of case they proposed the following condition:  
***'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'***

- 8.5 This condition is not acceptable as the Reserved Matters stage is a stage where technical approval for a new path is given by KCC PROW regarding, for example, surface details, position of signage and crossing details. In order to ensure the timely diversion of the PRoW alignment and enable the consented development to lawfully and satisfactorily progress the route requires consideration at outline stage.

## **9 SUMMARY AND CONCLUSIONS**

- 9.1 In Summary, KCC PROW and Access Service maintain our objection to the application  
*Reason: To ensure the timely diversion / extinguishment of the PRoW and enable any consented development to lawfully and satisfactorily progress.*  
*Reason: To ensure the timely provision of the new route in the interests of the amenity of the public and to avoid the blighting of properties*
- 9.2 To conclude, KCC expects to see an acceptable alternative route for a TCPA diversion as the one provided at a late stage, not part of the application documents, is not acceptable. KCC PROW would not accept the route as it is shown on the latest plan detailed above. Public Rights of Way should be incorporated positively, in attractive, safe, open green corridors but the route of AB70 is now shown passing between houses, across parking spaces and on development footways and pavements, raising safety issues. I understand that other elements of the development will need to be redesigned in order to incorporate a diversion route.
- 9.3 Further, the conditions previously proposed do not deal with the claimed route of AB70 and intend to leave it for the later application stage of Reserved Matters. As the evidence investigated through the claim process shows, a public right of way is alleged or reasonably alleged to exist and should therefore be considered at this outline stage, in order to support the principle of the proposed development and ensure that the PROW can be accommodated if confirmed.

## **APPENDIX 2**