

**TOWN AND COUNTRY PLANNING ACT 1990
S257**

Path number CHL 9

Parish Leckhampton within the Borough of Cheltenham

Case Officer: Martine Tyler

This is an application to make an Order under S257 of the Town and Country Planning Act 1990 to stop up a 285 metre length of footpath, number CHL 9, 168 metres of which is within the boundary of the proposed school site, as shown on the Definitive Map of Public Rights of Way. This path starts at its junction with Farm Lane and continues in a generally easterly direction to public footpath CHL 10.

A planning application has been submitted for the provision of a new secondary school on this site, planning reference 19/0058/CHR3MJ.

This application is to stop up the whole length of path CHL 9. Stopping up just the length within the boundaries of the new school site would create a cul-de-sac path extending from path CHL 10 to the school boundary. There are no feasible options to divert the footpath within the boundaries of the school site due to its compact nature. Diverting the footpath offsite on to adjacent land would require the consent of this landowner, which has not been given. There is an alternative parallel path, CHL 8, 170 metres south of footpath CHL 9.

Stopping up plan, appendix 1.

Planning consultant plan with footpath CHL 9, appendix 2.

Location plan, appendix 3.

Legal Framework

Section 257 of the Town and Country Planning Act 1990 – Footpaths, bridleways and restricted byways affected by development.

(1A) Subject to section 259, a competent authority may by order authorise the stopping up or diversion in England any footpath, bridleway or restricted byway if they are satisfied that –

- a) An application for planning permission in respect of development has been made under Part 3, and
- b) If the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.

Additional legal considerations:

The granting of planning permission does not entitle the developers to obstruct a public right of way. It cannot be assumed that because planning permission has been granted that an order under section 257 of the 1990 Act, for the extinguishment of the right of way, will invariably be made or confirmed.

The planning authority should not question the merits of the planning permission when considering whether to make or confirm an order. Having granted planning permission for a development affecting a right of way 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 of the way to members of the public generally or to persons whose properties adjoin or are near the existing right of way should be weighed against the advantages of the proposed order.

Additional considerations:

It is the intention to upgrade public footpath CHL 13 to a cycle track to provide an off road link to the school from Leckhampton and the surrounding area.

Recommendations

It is recommended that an order under Section 257 of the Town and Country Planning Act 1990 should be made to extinguish the 285 metre length of public footpath from Farm Lane to its junction with footpath CHL 9.