

<p>LONDON BOROUGH OF BRENT</p> <p>General Purposes Committee 12 July 2005</p> <p>Report from the Director of Environment</p>	
For Action	Wards Affected Northwick Park

Report Title: Northwick Park Foot Path Diversion Order

1. Summary

This report seeks the approval of the Committee to the making of a public path diversion order in respect of Public Right of Way 37 at Northwick Park Watford Road Harrow Middlesex (PROW 37) and more particularly referred to in this report.

2. Recommendations

- 2.1 The Committee hereby resolves to make Orders (the Orders) for the diversion of so much of PROW 37 by way of the creation of a new footpath and the extinguishment of the former length of the relevant section of PROW 37 pursuant to Section 119 of the Highways Act 1980 detailed on the plan attached to this report (“the Plan”)
- 2.2 The Committee hereby resolve to confirm the Orders made pursuant to paragraph 2.1 above on completion of the requisite statutory and consultation process.
- 2.3 That the Director of Transportation Services be authorised to enter into discussions with parties affected by the Orders.
- 2.4 That the availability of compensation to persons affected by the closure of accesses pursuant to the Orders be noted.

That the Director Transportation Services in consultation with the Borough Solicitor be authorised to take all necessary steps for the

promotion of the Orders including publishing the requisite notices, considering any objections and representations received and reporting back to members if they think appropriate, otherwise he is authorised to take all necessary steps in order to confirm the Orders, instruct Counsel and experts to provide evidence and prepare the case for the Orders, for any inquiry whenever required into the making of the Orders including the arrangements for any such inquiry

- 2.5 Upon the confirmation of the Orders the Director of Transportation be authorized to take all necessary steps to implement the Orders made.

3. Detail

- 3.1 The Council is the owner of land at Northwick Park Watford Road Harrow Middlesex (the site). The site consists of Metropolitan Open Land/Public Open Space.

- 3.2 By an Agreement for Lease dated 18th April 2002 and made between the Council of the one part and PlayGolf (Northwick Park) Limited of the other part, PlayGolf agreed to redevelop the site by constructing a golf driving range 6 hole golf course and ancillary leisure buildings and facilities.

- 3.3 Planning Issues: Under the Conditions to the Planning Permission for the golf facility dated 14.05.2001, application no.99/2397, the Local Planning Authority requires / required certain details of the design of public footpaths/Right of Way before any work is commenced (Condition 4). Also, there is a condition that all internal paths (including any Public Rights of Way mentioned in Condition 4) are operational before the golf course and driving range come into use (Condition 5). Two sections of Public Rights of Way lie within the golf facility area. These are PROW 36 and PROW 37 (as numbered on the definitive local map maintained by Transportation on behalf of the Highway Authority).

- 3.4 Public Right of Way 36 is located west-east across the northern edge of the golf facility, i.e. parallel to the southern edge of the grounds of Northwick Park Hospital. Public Right of Way 36 also coincides with the Capital Ring, a round-London footpath route, primarily through the green spaces of London. The Capital Ring is promoted by Transport for London, the London Walking Forum and has wide community support. The Capital Ring is the subject of several leaflets and books. The Capital Ring is effectively also a tourist attraction, is promoted in various 'walking for health' initiatives and indications are that use of the route will continue to increase. Transport for London undertook some further investment in the route in the spring of 2004, including improved way marking across the Borough.

- 3.5 The Council has concluded that the closure of Public Right of Way 36 is unnecessary and that the development of the golf facility can proceed without closing Public Right of Way 36. A diversion order would be inappropriate and the Council will not implement one in respect of Public Right of Way 36.
- 3.6 PROW37 is on an approximately north-south route across Northwick Park, and then continues across the golf facility shown by a red broken line on the Plan. PlayGolf have indicated that an existing section of PROW 37 would run across the main driving range of the completed golf facility.
- 3.7 Therefore a permanent diversion order has to be considered.
- 3.8 Having investigated and considered the matter, officers have informed PlayGolf that the Council is willing to consider a permanent diversion of the PROW37 footpath section subject to the alternative route being agreed with PlayGolf over the golf facility.
- 3.9 Following discussions and consultation, Brent Council Parks Service, PlayGolf, and other interested parties are of the opinion that the permanent diversion of the relevant section of PROW 37 should follow the route shown by the purple broken line on the Plan. At the southern edge of the golf facility the route runs approximately north-east then north-west and then detours from the route of the original PROW 37 by running north-east around the eastern edge of the proposed driving range before reconnecting with PROW 36 near to the boundary with Northwick Park Hospital.
- 3.10 Officers are of the opinion that it is expedient and in the interest of the public for the footpath to be diverted along the route shown by the purple broken line on the Plan and which is requisite for effecting the diversion and that the line referred to along the existing section of PROW 37 should be extinguished for that purpose. The existing commencement point of PROW 37 will be unaltered following the diversion. Thereafter the line of the “new” PROW 37 will follow the diverted route to the line termination point, which will also be unaltered.
- 3.11 The Council considers that it is expedient in the interests of the safe operation of the proposed golf facility and the safeguarding and preservation of the public interest for the Orders to be made and in respect of the route proposed on the plan and in the light of the factors referred to in clause 5.7 of the Legal implications below.
- 3.12 The diverted public right of way will not be substantially less convenient to the public in consequence of the diversion. At the southern edge of the golf facility the route commences approximately 20 metres to the east of PROW 36 enters the golf facility through a gate and then runs approximately north-east and then north-west around the eastern edge

of the proposed driving range before reconnecting with PROW 36 near to the boundary with Northwick Park Hospital. It is expedient to make the Orders in order to facilitate the commissioning and safe operation of the golf facility with the minimum of interference to PROW 37 the public interest in enjoying those rights and the land serving the same and on the balance of convenience where for the reasons outlined in clause 5.7 below the re-routing or creation of a new footpath and closure of the whole of the present PROW 37 would not be expedient, feasible, or legally practicable.

4. Financial Implications

- 4.1 London Borough of Brent (the Council) will be liable to pay compensation to those affected by the Orders. However it is not reasonably anticipated that the diversion arrangements resulting from the Orders will result in a or any claim for compensation.
- 4.2 The cost of work undertaken by the Council's Legal, Highway and Parks Service to date in connection with the proposed diversion of PROW 37 totals £10,000 and in the event that the matter went to Inquiry a further £9,000 in costs would necessarily be incurred.
- 4.3 These further or prospective costs would arise because the Council would be obliged to pay for the costs of the Inspector appointed to any such Inquiry that may be convened and also the costs of the Council itself preparing and making its case for the Orders.
- 4.4 The Director of Environment has confirmed that both the present and prospective level of costs referred to above in 4.2 can be accommodated within current budgetary constraints and parameters and that it is content to meet the total level of such costs in order to secure the commissioning of this important leisure facility and development which the Council has for many years sought to create.
- 4.5 The Council will be seeking a contribution towards its costs in respect of the diversion orders from PlayGolf and to the reasonable satisfaction of the Director of the Environment. Discussions with PlayGolf on the structure and operation of such contribution have not been finally determined or resolved at the present juncture however PlayGolf have indicated that they would be prepared to make a capped contribution for their part towards the total of the Council's costs in this respect and to be fixed once these costs are finally ascertained either on confirmation of the diversion order unopposed or when confirmed or otherwise by the Secretary of State following any Inquiry. The capped contribution payable by PlayGolf to the Council's costs when eventually calculated will be subject to the reasonable approval of the Director of Environment. PlayGolf accept that such costs are reasonably integral or at least incidental to their overall redevelopment of the site and have

confirmed that they will pay such costs once the total and the capped contribution have been established.

5. Legal Implications

- 5.1 The Council will need to comply with the procedure for making the proposed Orders, principally set out in Section 119 and Schedule 6 of the Highways Act 1980. The Council must also be mindful at all times of its role as order making authority despite it being interested in the development as a land owner.
- 5.2 The procedure is subject to independent review if an inquiry is called, as the appointed inspector will be from the Planning Inspectorate. Further independent scrutiny is provided by the Secretary of State for the Environment in the process.
- 5.3 The proposals for the orders must be notified to relevant persons and publicised. Any person may object to the proposal. If an objection is made and not withdrawn, a public local inquiry will be held by the Secretary of State. Any public Inquiry will be conducted by an Inspector appointed by the Secretary of State' who will hear evidence from any persons objecting to the orders and from the Council as promoter.
- 5.4 The Inspector would then submit a report on the Public Inquiry and his/her recommendations to the Secretary of State who would then decide whether or not to confirm the orders.
- 5.5 The orders may only be made on the basis of grounds specified in the relevant sections of the Acts.
- 5.6 Members must bear the implications of the Human Rights Act 1998 in mind when making their decision. The Act came into force on 2 October 2000. The Act effectively incorporates the European Convention on Human Rights into UK law and requires all public authorities to have regard to Convention Rights. In making decisions Members need to have regard to the Convention. The rights which are of most relevance to local authorities making orders it itself proposes is Article 6 – the right to a fair hearing. The Inspector appointed to any Inquiry will be independent of the Council. The decision of the Inspector and the Secretary of State can be scrutinised by the Court.
- 5.7 The Council must consider that it is expedient in the interest of the landowner lessee or occupier or in the interest of the public that the line of path should be diverted on to another part of the land before making the Orders. The replacement line of way will not be substantially less convenient to the public in consequence of the diversion given the configuration and route and as shown on the Plan. It is expedient to make the Orders so that public enjoyment of PROW 37 as a whole is preserved and to facilitate the proposed development referred to

without detriment to the Council's interest as landowner and protecting by all reasonable means the safety and convenience of walkers along PROW 37. The diversion or re-routing of PROW 37 in its entirety could only be secured by the creation of a new footpath and the closure or stopping up of the whole length of PROW 37. It would not be expedient for the Council to consider such a course of action in view of the lengthy and expensive procedure this would entail and the resulting and total extinguishment of an established public right of way. The proposed and limited replacement /diversion will not cross the driving range of the new facility. The diversion will cross one of the fairways. However this is a not uncommon arrangement where public rights of way intersect golfing links and courses and provided reasonable signage and warning notices are erected the risk of injury to persons using the path is considered to be remote

6. Diversity Implications

This report has been screened by officers for diversity implications and it is believed there are none.

7. Staffing Implications

- 7.1 The order making authority for the orders to be made is the Council itself. It is anticipated that the Council's legal services will advise the Council on the Order making process Officers from Transportation and Park Services will perform many of the functions required to promote and confirm the Orders.

8. Background Information

- 8.1 Files of papers of the Director of Transportation

- 8.2 Contact Officer:

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