
From: >
Sent: 26 August 2021 15:15
To: Planning (SMDC)
Cc: ECU Consultations (Place)
Subject: EC3210SM - SMD/2021/0549 - Kirk House, Malthouse Road, Alton - erection of 2 bed bungalow - Rights of Way

Categories:

To whom it may concern,

Rights of Way

The application documents don't recognise the existence of Public Footpath No.33 Alton which runs adjacent to the northern boundary of the proposed development site. It is not clear whether the proposed bungalow will be accessed from the footpath which runs along the track from Malthouse Road towards Smithy Bank and clarification is sought regarding this.

The attention of the developer should be drawn to the existence of the path and to the requirement that any planning permission given does not construe the right to divert, extinguish or obstruct any part of the public path. If the path does need diverting as part of these proposals the developer would need to apply to under section 257 of the Town and Country Planning Act 1990 to divert the footpath to allow the development to commence. The applicants should be reminded that the granting of planning permission does not constitute authority for interference with the right of way or its closure or diversion. For further information the applicant should be advised to read section 7 of DEFRA's Rights of Way Circular (1/09).

It is important that users of the path are still able to exercise their public rights safely and that the path is reinstated if any damage to the surface occurs as a result of the proposed development. The surface of the footpath must be kept in a state of repair such that the public right to use it can be exercised safely and at all times.

The applicant needs to be reminded that although the track to the property is private, the fact that the route is a public highway (footpath) takes precedence. The use by private vehicles is subject, and subordinate to, the public's right. In other words pedestrians have a public right and vehicles need to give way to them not the other way around.

The applicant needs to be aware that it is a criminal offence to drive a mechanically propelled vehicle on a public footpath or bridleway without lawful consent or indeed obstruct the right of way by parking a vehicle on it.

The County Council has not received any application under Section 53 of the Wildlife and Countryside Act 1981 to add or modify the Definitive Map of Public Rights of Way, which affects the land in question. It should be noted, however, that this does not preclude the possibility of the existence of a right of way at common law, or by virtue of a presumed dedication under Section 31 of the Highways Act 1980. It may, therefore, be necessary to make further local enquiries and seek legal advice in respect of any physically evident route affecting the land, or the apparent exercise of a right of way by members of the public.

Kind Regards,

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