

**PROOF OF EVIDENCE**

**of**

**TIMOTHY DUCKER**

**on behalf of**

**SUNDERLAND CITY COUNCIL**

**Town and Country Planning Act 1990 – Section 258  
The City of Sunderland (Chapelgarth) Public Path  
Extinguishment Order 2016**

## 1.0 Introduction

I have worked for Sunderland City Council since 2001, and am an Engineer with responsibility for the Public Rights of Way (PROW) and Cycle network. The PROW network extends to approximately 250km across the authority area. My role includes looking after the day to day maintenance, enforcement and legal records, advising internal and external partners on changes to and initiating development of the public rights of way and cycle network. I deal with all aspects of the PROW network, including complaints, reports and antisocial behaviour including illegal motor vehicle use in the area, and strategic network policy planning and development. I have a BSc (Hons) in Rural Environmental Studies, a MA in Environmental Management, and a CPE Graduate Diploma in Law, and have been a Full Member of the Institute of Public Rights of Way Managers since 2008.

## 2.0 Order Context

- 2.1 The order was made to enable site development and planning approval to be implemented, namely the staged development of this part of the strategic South Sunderland Growth Area. Publicity around the planning application for the site triggered claims for public rights of way on and adjacent to the site. The evidence for the claimed rights was principally testimonial, supplemented by corroborating aerial imagery and wear and tear evidence on the ground. The claims affecting the proposed development site were not contestable by the land owner due to a lack of refuting evidence. The land owner/developer therefore decided to accept the claimed rights, and rights on a number of other routes with similar wear and tear evidence on the ground, and thus the imperative of applying for this order to seek to enable site development. Since the application for the order was made to enable development of land appropriated by the Council for planning purposes, and for consented development to proceed, and substantial proposals for a replacement network were made, the requested order was made, resulting in the objections which are the subject of this public inquiry.
- 2.2 Due to the size of the development site and the fact of few identifiable map features within it, the Schedule Plan for the order (Drawing No. SUO4894/03) was produced to a scale of 1:5000 on A3, so that all footpaths sought to be extinguished could be represented on the same plan, along with local features such as road layout and residential areas, at a page size that could reasonably be printed without specialist printing/plotting equipment. In accordance with s.2(2) SI 1993 No.10, this was deemed the largest scale readily available. The plan sealed with the order was an A4 version of Schedule Plan (Drawing No SUO4894/03) with the scale as 1:5000@A3, however all features remain fully identifiable and legible. In addition, the commonality of the use of electronic and on-line access to view orders in 'zoom-in' PDF format reduces the issue, and received documents are commonly printed to A4 irrespective of original size. A3 plans have also been sealed and forwarded to the Inspectorate.
- 2.3 As the proposals were for a strategic development site, the land owning Council had formally acquired it for planning purposes under s.122 of the Local Government Act 1972, by Cabinet Decision on 23/03/2016. This allowed exercise of its powers under s.258 of the Town and Country planning Act 1990.

This enabled seeking to pre-emptively extinguish public rights of way on the land preparatory to the development, subject to a commitment to providing alternative routes through the development process where deemed necessary. The development includes proposals for a substantial increase in the extent and quality of non-motorised use (NMU) network on the site, thereby satisfying this requirement.

- 2.4 In the past the site has principally been used for arable agriculture. It also includes some less intensively used soft landscape areas. It lies between a predominantly residential landscape to the north/north east, employment concentration to the west, and the A19 trunk road to the south. The residential areas to the north and north east have been incrementally developed each decade since the 1960's, with a large area north of Weymouth Rd built in the 1990's. As part of this, Weymouth Road was built with 'stub ends' into the Chapelgarth site off two roundabouts which are shown proposed to be built on in the Phase 1 Infrastructure Works (s.28, p.87 of the Design Code (secondary bundle, document 6)), and are also clearly visible on the ground. They explicitly demonstrate future development intentions from its construction in the mid 1990's. The 'stub ends' are clear on the ground, and currently used for parking by people visiting the Chapelgarth area.
- 2.5 The principle of changes to the character of the landscape presented by the development proposals were dealt with through the outline planning process and are not a material consideration with respect to determining the merits/ demerits of the highway order.
- 2.6 The area, including recorded public rights of way and claimed/accepted paths, is affected by illegal motorbike activity. This is not dissimilar to many other sites across Sunderland and the north east. On the public rights of way network this is mitigated in so far as is reasonably practicable, where likely to be effective, by access control structures. This approach will continue to be used, and new routes on the development site would also include access control measures to mitigate this perennial problem where appropriate.
- 3.0 Description of the rights of way over the Site, and future needs.
- 3.1 There are no recorded public rights of way across the site. The extract of the definitive map depicts neither any public rights of way on the site, nor any of the residential areas to the north and north east of the site. The area has been subject to incremental urban expansion since the 1960's.
- 3.2 A route built in the 1990's and subsequently managed unconditionally as a bridleway follows the southern and western edges of the site. It carries the Walney to Wearside National Cycle Network Route 70 (W2W bridleway). This will be added to the definitive map and statement through the consolidation process in accordance with s.53 Wildlife and Countryside Act 1981.
- 3.3 Publicity related to the planning application for the site prompted claims for public rights, felt by their users to be threatened by the proposed development. Testimonial evidence was received from thirteen members of the public. A desk

top and site assessment of the claims identified high plausibility and good physical evidence on the ground. The process of investigating the claims to conclusion was in the event truncated by the land owner accepting the claimed rights due to having no evidence to refute 'reasonably alleged', highly plausible, wear line evidenced, claims for rights. The land owner also concluded that other well-worn use lines, whose wear and tear was indistinguishable from that of the claimed routes, were likely to be the subject of equally strong rights claims, and should be treated equally for highway order requirement purposes.

3.4 Regarding the imperative of providing alternatives for used routes subject to s.258T&CPA.1990 extinguishment, the development includes proposals for a substantial increase in both network extent and quality of public rights of way, and so this is satisfied.

3.5 The equestrian sector is an important and growing part of the economy in the rural fringes of Sunderland. To this end a separate meeting was held with horse riders, hosted by developers Siglion and Council Highways Officers, on 07/02/2017. The purpose was to identify equestrian concerns and opportunities related to the development and its surroundings. Within the Chapelgarth site an equestrian route and cross-sectional arrangements for proposed new bridleways been refined following the meeting. The additional route is depicted in plan L1515-PRP-027-Rev.11. The Chapelgarth site is part of the wider South Sunderland Growth Area, for which (for forward planning and development steering purposes) I have broadly mapped and costed a requisite strategic NMU network. To this end and to better connect the Chapelgarth site, I have been working with Highways England to promote conversion of bridge parapets over the A19 to equestrian standards to link network severance arising from its construction in the 1970's. Bridleways provide network for multiple NMU user groups. Their development is key to increasing network potential and capacity to support rural economy diversification including the equestrian sector, as well as regular and visitor use. The improved bridleway provision planned for Chapelgarth as part of this development will contribute materially to this. The order does not seek to extinguish any bridleways.

4.0 Detailed analysis of each footpath subject to the Order and the particular alternative right of way

The statement of reasons at Appendix J of the bundle includes a table setting out in tabular form the reason for extinguishment and intended alternative provision for paths affected by this order. Below I have summarised this

<b>Footpath Reference</b>	<b>Reason for Extinguishment</b>	<b>Intended Alternative Provision</b>
A – B	Crosses identified development plots.	Minimum 2m wide surfaced footpath to the west on the alignment of the north/south footpath to be retained. A local street network of all-purpose highway to the east, including; north/south links connecting to a

		wider network of all purpose highway, multi user route and circulatory footpaths.
C – B – D	Crosses identified development plots and new all-purpose highway network.	A local street network of all-purpose highway to the north and south, including; east/west links connecting to a wider network of all-purpose highway, multi user route and circulatory footpaths.
E – F – G	Crosses identified development plots and new all-purpose highway network.	A local street network of all-purpose highway to the north and south, including; east/west links connecting to a wider network of all-purpose highway, multi user route and circulatory footpaths.
H – I – D – F – J – K – L – M – N – O – P	Crosses identified development plots and new all-purpose highway network, including main access roads.	Minimum 2m wide surfaced circulatory footpath running to the north-east of section H – I – D – F – J – K, with a local street network of all-purpose highway to both sides of section K – L – M – N – O – P, including; east/west and north/south links connecting to a wider network of all-purpose highway, multi user route and circulatory footpaths.
I – G – Q – R – S	Crosses identified attenuation basin, which would form part of the developments sustainable drainage system.	Minimum 2m wide surfaced circulatory footpath running within the immediate proximity, serving broadly the same desire line.
T – Q – K – U	Crosses identified development plots and new all-purpose highway network, including local distributor road.	A local street network of all-purpose highway to the east and west, including; north/south links connecting to a wider network of all-purpose highway, multi user route and circulatory footpaths.
V – W – X – Y – M	Crosses identified development plots and new all-purpose highway network, including main access road.	A local street network of all-purpose highway to the east and west, including; north/south links connecting to a wider network of all-purpose highway, multi user route and circulatory footpaths.
K – X	Crosses identified development plots and new all-purpose highway network,	A local street network of all-purpose highway to the south, including; east/west links

	including main access road.	connecting to a wider network of all-purpose highway, multi user route and circulatory footpaths.
L – Y – Z – AA	Crosses identified development plots and new all-purpose highway network, including local distributor road.	A local street network of all-purpose highway to the north and south, including; east/west links connecting to a wider network of all-purpose highway, multi user route and circulatory footpaths.
M – BB – CC – DD – O	Crosses identified development plots and new all-purpose highway network, including local distributor road.	A local street network of all-purpose highway to the north and south, including; east/west links connecting to a wider network of all-purpose highway, multi user route and circulatory footpaths.
R – W – EE – FF	Crosses identified development plots and new all-purpose highway network, including main access road.	Minimum 2m wide surfaced circulatory footpath running to the north, with a local street network of all-purpose highway to the south, including; east/west and north/south links connecting to a wider network of all-purpose highway, multi user route and circulatory footpaths.
GG – EE – HH – AA – CC	Crosses identified development plots and new all-purpose highway network, including main access road.	A local street network of all-purpose highway to the east and west, including; north/south links connecting to a wider network of all-purpose highway, multi user route and circulatory footpaths.
GG – II – HH – DD	Crosses identified development plots and new all-purpose highway network, including main access road.	A local street network of all-purpose highway to the east and west, including; north/south links connecting to a wider network of all-purpose highway, multi user route and circulatory footpaths.
DD – HH	Crosses identified development plots.	A local street network of all-purpose highway to the north, south and west, offering links to a wider network of all-purpose highway, multi user route and circulatory footpaths.
II – JJ	Crosses identified development plots.	A local street network of all-purpose highway to the south and west, offering links to a wider network of all-purpose

		highway, multi user route and circulatory footpaths.
KK – LL – MM – NN	Crosses identified development plots and noise mitigation measures.	Minimum 2m wide surfaced circulatory footpath running within the immediate proximity, serving broadly the same desire line. As well as a local street network of all-purpose highway to the north, offering links to a wider network of all-purpose highway, multi user route and circulatory footpaths.
LL – OO	Crosses identified noise mitigation measures.	Minimum 2m wide surfaced circulatory footpath running within the immediate proximity, serving broadly the same desire line. As well as a local street network of all-purpose highway to the north, offering links to a wider network of all-purpose highway, multi user route and circulatory footpaths.
J – KK	Crosses identified development plots, new all-purpose highway network, including local distributor road and identified noise mitigation measures.	A local street network of all-purpose highway to the east and west, including; north/south links connecting to a wider network of all-purpose highway, multi user route and circulatory footpaths.
KK – U – PP – QQ – N – BB – Z	Crosses identified development plots, new all-purpose highway network, including local distributor road and identified noise mitigation measures.	A local street network of all-purpose highway to both sides, including; north/south and east/west links connecting to a wider network of all-purpose highway, multi user route and circulatory footpaths.
KK – RR – SS – TT	Crosses identified noise mitigation measures.	New 5m wide multi user route/bridleway serving broadly the same desire line, as a replacement for this footpath and a diverted route for the W2W (subject to separate S.257 TCPA 1990 Order).
RR – UU	Crosses identified noise mitigation measures.	Footpath links from point UU connecting to local street network of all-purpose highway, multi user route and circulatory footpath.

5.0 Details of how the proposals will provide improvements to the current rights of way provision, connectivity and enjoyment

5.1 Under the proposals the existing NMU access points to the site would be retained and improved. These include the W2W bridleway which connects to the site from Burdon Road on the south edge, and from Camberwell way to the north-west of the site. In addition there are entrances from Moorside Road and Weymouth Road to the north, and an unnamed former road on the east side of the site.

5.2 The network of routes planned for the site comprise recreational routes set out on Regulatory Plan 13 (original bundle appendix I 'Drawings', 944 Reg 13 Rev O *Recreational Routes*) and indicative projections of street layouts for future phases. The section of the W2W bridleway along the southern edge of the site is proposed to be added to by a parallel bridleway just to its north, which would be fully capable of supporting both for the foreseeable growth in its use with the proposed development, and in terms of the personal security for families and children, as compared to the current bridleway which is adjacent to the A19 and substantially enclosed/encroached by tall hedges. In addition, following the equestrian consultation in February 2017 improvements were made to the bridleway cross-sectional detail for new bridleway proposed in Regulatory Plan 13, and additional beneficial bridleway network has been proposed to be included in the Reserved Matters application for the 'Joes Paddock' phase of the wider site development, when that stage is advanced.

5.3 The indicative projections for street layouts include are set out in s.4.5 of the Design & Access Statement (secondary bundle, document 5). This sets the principle of shared pedestrian/cycle provision and permeability on Primary Streets, Secondary Streets, Green Streets and Lanes within the development. An indicative street layout is included in Regulatory Plan 02 (original bundle appendix I 'Drawings', 944 Reg 02 Rev A *Access, Movement and Streets*), but final detail will be the subject of applications for future phases of the development. Whilst the principles of the accessibility and permeability described above will need to be adhered to, the precise layouts will arise in conjunction with the applications.

6.0 Detailed response to each of the issues raised in the order objections.

6.1 Many of the objections to the order cover same or similar points, and in view of the number of objections responding to each in turn would repetitively verbose. The document "Comments by Sunderland City Council on Objections", contained in the Councils Statement of Case (original bundle, Appendix L) sets out responses to seventeen 'objection fields'. I was party to considering the objections and concur with the responses contained in that document. Below I will summarise my view on the objection fields.

6.1.1 **Loss of Greenspace/Countryside through building houses.** This is principally a planning matter, but from a 'character of the public rights of way network' perspective: the proposed development includes an open space strategy, recreational routes, 'suitable alternative natural greenspace', a



central and pocket parks and green links and amenity open space. The s.106 agreement includes a significant sum to implement ecological mitigation measures, many existing field boundary hedgerows are to be retained, and the development proposes an extensive access network which would retain and enhance existing routes to the surrounding countryside. The development therefore retains and provides extensive natural/semi-natural landscape areas which would maintain a high quality character for the access network. In the Design Code, Open Space strategy (secondary bundle, document 6, p.44-45) including Regulatory Plan 12 maps out significant footprints of open space comprising 'suitable alternative natural greenspace', amenity space, and equipped play space. These complement proposed recreational and other public access routes.

**6.1.2 Loss of views of surrounding countryside.** This is principally a planning matter, but the proposed development takes into account the macro-landscape views which it seeks to preserve important views of the city and out to sea. This will contribute to the character of future access routes. The approved Design & Access Statement (secondary bundle, document 5) includes recognition and a design response to maintain long views by specifying building heights (s.2.11, p.32-33). In addition the Landscape Strategy at p.42-43 of the Design Code (secondary bundle, document 6) identifies important view corridors through the proposed development.

**6.1.3 The site provides the only means of outdoor exercise close to existing homes.** The development proposals include retention of substantial areas of greenspace as well as a more extensive and higher quality, less seasonally sensitive and more equitably accessible network of off road routes, well connected to the wider countryside. As such the development would enhance opportunities for outdoor exercise for a wider spectrum of the public. The principles and standards of providing an expanded resilient and more equitably accessible network is set out in the approved Design & Access Statement (secondary bundle, document 5), the Design Code (secondary bundle, document 6). The Design Code (secondary bundle, document 6) includes clear commitments to provision of extensive high quality public access and open space. This includes proposed street layouts with extensive pedestrian and cycle access (Regulatory Plan 02), extensive open space (Regulatory Plan 12), and recreational routes proposals (Regulatory Plan 13).

**6.1.4 The paths are used all year round.** The development proposes a higher quality and more extensive network of routes as well as several paths which already exist (see above). The expanded network would have secure 'public rights' status and be more resistant to deterioration in poor weather.

In recognition of interest in the currently used network, and the proposed phased development of the site, it is intended that the network of currently routes will substantially remain available on a permissive basis until closure is required for the phase of development affecting particular paths, following which larger replacement networks would be provided. The proposed phasing

of the development of the site is set out in at s.27 p.86 of the Design Code (secondary bundle, document 6).

- 6.1.5 Extinguishing the routes would impact on the health and wellbeing of residents.** The proposed expanded network of higher quality routes, complementing several existing routes and coupled with substantial areas of public open space, would enable health-positive outdoor access opportunities to a broader spectrum of the public.
- 6.1.6 The paths/area is used regularly for dog walking.** The proposed expanded network of quality routes, complementing several existing routes and coupled with substantial areas of public open space, would enable extensive dog walking and exercising opportunities to a wider audience.
- 6.1.7 The paths have been used for several decades.** Witness evidence claiming routes, coupled with documentary aerial imagery and wear and tear evidence on the ground over and above the claimed routes, is why the land owner accepted both claimed and 'same sign' routes on the ground as public rights of way. The land owner thereby accepted the risk and requirement to apply for this order in order to be able to develop the site, with a larger network in a high quality diverse environment, through due process.
- 6.1.8 Removal of the paths is unnecessary and the development should accommodate the existing routes.** The s.258 Town and Country Planning Act process allows for existing routes to be extinguished if through proposed development they would become unnecessary or the highway authority is satisfied that alternative ways will be provided. The proposed development includes replacement and/or alternative routes for each of the paths subject to this extinguishment order, commonly on nearby alignments. The proposals include provision of a more extensive off road access network which would be in keeping with foreseeable demand, and with a presumption that public rights of way ought ideally to be fit for the purposes for which they are used. With the proposed development, predominant demand will be for 'cleaner' and 'better' paths than the current (seasonally) muddy field edges, as well as more 'rustic' routes. Sensible strategic development layouts could not reasonably be achieved if bound to avoid older informally achieved path alignments. Even where replacement route provision is proposed to be close to the same alignment of existing routes, realignment of public rights of way requires to be moved by just a couple of metres this would require an order.
- 6.1.9 The footpaths are used regularly by runners and/or cyclists.** The proposed development includes replacement and/or alternative routes for each of the paths subject to this extinguishment order, as well as extensive retained and improved natural / semi-natural open space. As such the connectivity proposed to be extinguished by this order would be more than replaced, all be it in a different landscape character in line with the approved planning principles. In addition, the proposed future network would allow a much wider cross section of the society to use the local area network.

**9.1.10 The site is used for activities by school users, including the adjoining Portland Academy.** With the development proposals including expanded route networks and retention of significant accessible open space, the interests of school outdoor activities and study will likely be well provided for. I understand that the developer Siglion actively sought the views of the school and other local related interests with a view to taking them into account.

**9.1.11 The site has been used for recreation and local sports for decades and should be considered for Village Green Application.** Village Green type 'open access' is distinct from and subject to separate legal mechanisms to the linear access which is the subject of public rights of way. However I understand that no village green application was made, and the substantial areas of proposed housing development were leased and used for arable agriculture, and so would be unlikely to have been used in a manner relevant to such an 'open access' application had it been made.

**9.1.12 Impact of loss of countryside on wildlife.** The overarching landscape changes including ecological and wildlife impact implied by the proposed development were considered through the planning process, and so are not material considerations for purposes of this highway order. Nevertheless I understand that comprehensive ecological and hydrological studies were carried out, and that approved development parameters include retention and improvement of large areas of habitat and hedgerows, coupled with a substantial s.106 contribution to cover wider ecological mitigation measures. As such, it appears to me that a good level of ecological consideration is included for the more ecologically complex parts of the site, whilst the 'crop desert' areas are proposed to host the substantial built areas.

**9.1.13 Closure of the bridleway would remove a well-used route for horse riders.** This order only seeks closure of footpaths, and not the existing W2W bridleway which is to be retained. In addition, as mentioned above and as discussed with equestrian representatives at the public meeting in February 2017, additional bridleway connections are proposed to be provided by the development. These are shown in Regulatory Plan 13 in the Design Code (secondary bundle, document 6). In addition to this, from a public rights of way perspective, we are pursuing strategic aspirations for the development of a more extensive and better connected equestrian network in the immediate surroundings to Chapelgarth and across the South Sunderland Growth Area, as well as wider Authority area. This public access provision proposals associated with development would contribute to an ongoing trajectory towards an expanded and better connected equestrian network.

**9.1.14 Closure of the bridleway would push horse riders on to the local road creating more danger for horse riders.** Please see my response to the point at 9.1.13.

**9.1.15 The site is often used by off road motorcycles and 4x4 vehicles, and extinguishment of the footpaths will limit the choice for pedestrians when trying to avoid these vehicles and therefore increase the risk to pedestrians.** Unlawful use of mechanically propelled vehicles is a problem

across the country, and Northumbria Police are aware of and endeavouring to tackle this in the area. It is a difficult and elusive problem to tackle, not least because of the imperative allow for all lawful access including large mechanically assisted wheelchairs on public rights of way. On the recorded PROW and adopted highway network we employ access control measures to alleviate the issue. We do this in conjunction with measures by a range of partner organisations and land managers, and take this problem into account in relation to development. To this end, the W2W bridleway includes access control structures. The proposed expanded replacement network and 'SANG' areas would include access control measures to alleviate this.

**9.1.16 The statement of reasons does not provide enough information on alternative routes to determine whether they will be suitable, or whether they will be public highway or permissive.** As a s.258 Town and Country Planning Act 1990 order, there is not a requirement for new/alternative routes to be provided by the order itself, so long as the Highway Authority is satisfied that suitable alternative routes 'have or will be provided' (s.258(1)) or that alternative routes are not required (s.258.(2)). The proposed development includes proposals for replacement routes, commonly on very similar alignments but moved to accommodate a sensible development layout, as well as numerous additional routes. The new routes will be public highway, either as adopted public highway or public rights of way, whether or not the latter are maintainable by a 'Management Company' due to be created for managing the open space and some access routes.

The exception to the above would be that if successful this order would extinguish the paths subject to it, and there would be a lag time for phased delivery of the new network. However as mentioned in 6.1.4 above, the land owner intends that routes will be available on a permissive basis until phase/plot development requires their closure, and following which the proposed replacement network would be available. This would provide continuity of access, coupled with the flexibility to proceed expeditiously with consented development, with new/replacement networks becoming available as phases are completed.

**6.1.17 Planning permission had not been granted when the extinguishment order was made; this pre-judged the planning application.** An s.258 Town and Country Planning Act 1990 order can be made where land "*has been acquired or appropriated for planning purposes and is...being held by a local authority for the purposes for which it was acquired or appropriated*". There is no requirement for a planning application yet to have been made, let alone approved, prior to the making of a s.258 order. The Chapelgarth development site was appropriated for planning purposes by Cabinet Decision on 23/03/2016, and so met this requirement

**7.0** Statements of Case received from Planning Inspectorate March 2018.

**7.1 Simon Weightman.** The Statement comprises two main themes. The first relates to land use planning/policy and its evolution through trends of urban expansion over the last 50-60years. In so far as this relates to the s.258 order

being considered, Danielle Pearson has/will be describing this contextual aspect. The second part relates to the need for more extensive and better connected public bridleways to provide safer off-road options for riders, and to support the valuable growth of the equestrian sector of the rural economy. In this regard, as set out above and in particular at s.3.5, the proposed development, for which this extinguishment order is part of the enabling process, provides a more extensive and higher standard equestrian network. The latter is consistent with this Council's plans for the South Sunderland Growth Area and city-wide. Parts of section 6 above also covers these matters.

- 7.2 **Jane Boyd.** The statement comprises three main and related themes. The first raises concerns about urban expansion and the loss of countryside per se. This is a planning matter which Danielle Pearson has/will respond to. The second concerns loss of wildlife, which I have briefly addressed at 6.1.12 above. Neither of these are specifically relevant to this highway order which relates to the availability of public ways, all be it that the character of the landscape through which these pass is proposed to change in consequence of the planning approval for which these aspects are specifically relevant. The third concerns loss of amenity access routes for exercise as well as enjoyment of the countryside and its wildlife, which I have addressed in section 6 above.

## 8.0 Conclusion

- 8.1 My view of this order is framed in the context of prior outline planning approval for the development of the site, in line with long standing strategic plans which Danielle Pearson has/will outline. As outlined above, I consider that the statutory requirements of s.258 Town and Country Planning Act 1990 order are met. In particular I am satisfied that alternative public rights of way are required and will be provided for each of the footpaths subject to the order. Further, I am satisfied that the replacement network of public access routes of various kinds will be of a more extensive resilient and equitably accessible. Accordingly I request that the order be confirmed by the Secretary of State with the A3 version of the plan substituting the A4 version by way of a modification to the Order.

T. Ducken ? 8/3/2018



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**Town and Country Planning Act 1990 – Section 258  
The City of Sunderland (Chapelgarth) Public Path  
Extinguishment Order 2016**

## 1.0 Introduction

I have worked for Sunderland City Council since 2001 as an Engineer with responsibility for the public rights of way (PROW) and Cycle network of c. 250km. My role includes dealing with all aspects of the networks including reports, antisocial behaviour, maintenance, construction, enforcement, legal records, internal/external advice on network changes, and strategic network policy/planning/development. I have a BSc (Hons) in Rural Environmental Studies, a MA in Environmental Management, a CPE Graduate Diploma in Law, and have been a Full Member of the Institute of PROW Managers since 2008.

## 2.0 Order Context

- 2.1 The order seeks to enable implementation of planning-approved phased development of Chapelgarth, part of the South Sunderland Growth Area (SSGA). Planning process publicity triggered PROW route claims. Testimonial evidence was supported by documentary and ground evidence. The land owner decided to accept the claimed routes and others with equal ground evidence. The land was acquired for planning purposes by Cabinet Decision on 23/03/2016, enabling owner application for a s.258 Town and Country Planning Act order ('s.258 order') to extinguish all routes intersecting with the development site. This was made on 15/12/2016 for claimed and equivalently evidenced routes on the site. Outstanding objections to the order required it be referred for determination, resulting in this inquiry.
- 2.2 Outline planning approval preceded this order. That process dealt with landscape character changes presented by the proposed development; they are not material considerations for this order.
- 2.3 The sealed order plan was an A4 version of Schedule Plan (Drawing No SUO4894/03) with s.2(2).SI.1993.No.10-compliant scale of 1:5000@A3. All features remain fully identifiable/legible, and the commonality of electronic/on-line order viewing for 'zoom-in' PDFs diminishes the practical implications. A3 plans have been sealed and forwarded to the Inspectorate.
- 2.4 1964 Ministerial approval backed acquisition of a large site including Chapelgarth for housing development. Chapelgarth remained in agriculture while other adjacent parts were developed. To the west are employment sites, south is the A19(M), and to the north are Moorside and Weymouth Roads, built to service housing to their north, with southwards roundabout road-stubbs into Chapelgarth in anticipation of future development.

## 3.0 Description: Chapelgarth PROW, and future needs.

- 3.1 No PROW are recorded on the development site. A south/western boundary bridleway built in the 1990', subsequently branded part of the 'Walney to Wearside' NCN Route 70, connects south-east to/from Burdon Road and north-west to/from Camberwell Way, unaffected by this order.



- 3.2 Investigation of the PROW claims was truncated by land owner acceptance, absent any refuting evidence, of the 'reasonably alleged', highly plausible, wear line evidenced claimed rights. The owner also concluded that other use lines, with wear and tear indistinguishable from the claimed routes, were equally likely to be PROW and should be treated equally for highway order purposes.
- 3.3 S.258 extinguishment orders require Highway Authority satisfaction that no replacement routes are required, or requisite alternative rights of way will be provided. At Chapelgarth alternative routes are required, and I am satisfied that the planning-approved 'Design and Access Statement' and Design Code will ensure their provision. Specifically, Regulatory Plans 2 and 13 (original bundle appendix I 'Drawings') project street layouts and recreational routes, and the Design Code secures accessibility and permeability principles, with layouts to be settled in future planning processes. Plan L1515-PRP-027-Rev.11 summarises proposed extinguishments alongside a projected future network.
- 3.4 The equestrian sector is important to the rural economy. Whilst the order affects only footpaths, following equestrian objections a public equestrian meeting was held 07/02/2017 to identify concerns and opportunities. This enabled adding to existing proposals for a more accessible and open aspect bridleway north/east of the W2W, with improved designs and another link through the middle of Chapelgarth (see L1515-PRP-027-Rev.11).

#### 4.0 Order footpaths analysis and alternative PROW

Reasons for extinguishment and intended alternative provision for each path is detailed in the statement of reasons (referral bundle Appendix J).

#### 5.0 How the proposals improve on current access connectivity and enjoyment

- 5.1 Existing NMU access to/from the site are retained and added to. W2W links to north-west and south-east, and north access to/from Moorside and Weymouth Roads, and east to/from a former road, would improve. See plan L1515-PRP-027-Rev.11.

#### 6.0 Response to issues raised in order objections.

- 6.1 Many order objections cover similar points. The document "Comments by Sunderland City Council on Objections" in the Councils Statement of Case (original bundle, Appendix L) responds to seventeen 'objection fields'. I summarise my view on the objection fields below.

6.1.1 **Loss of Greenspace/Countryside.** This is a planning, not highway (PnH), matter. Outline planning approval, s.106 agreement and other documents include many landscape character change mitigations.

6.1.2 **Loss of views of surrounding countryside.** This is a PnH matter. The Design & Access Statement (secondary bundle, document 5) protects long views by proposed layouts and building/street configurations.

- 6.1.3 **Provides only outdoor exercise area near existing homes.** The proposals include substantial natural/semi-natural public green space and access routes with improved accessibility.
- 6.1.4 **Paths used all year round.** Chapelgarth proposals include a larger network of weather-resistant PROW and adopted highway, alongside unaffected existing paths.
- 6.1.5 **Route extinguishing would impact health and wellbeing of residents.** The proposed extinguishment is accompanied by planning-secured proposals for a larger higher quality alternative network which would support outdoor recreation with commensurate health and well-being benefits.
- 6.1.6 **Paths/area is used for dog walking.** The proposed extinguishment is accompanied by planning-secured proposals or a larger higher quality alternative network.
- 6.1.7 **Paths have been used for several decades.** This is not disputed by the land owner, who is seeking by the due process of this order to pursue housing development alongside extensive planning-secured public access.
- 6.1.8 **Path removal unnecessary; development should retain existing routes.** As at 3.4 above, s.258 orders enable path extinguishment, with or without subsequent alternative right of way provision. For Chapelgarth alternative rights of way are necessary and planning-secured. Sensible development layouts could not fit around informally developed routes. Even small PROW realignments require an order.
- 6.1.9 **Footpaths used by runners/cyclists.** The proposed extinguishment is accompanied by planning-secured proposals or a larger alternative network.
- 6.1.10 **Site used for school activities (eg Portland Academy).** The development proposes an expanded network, and substantial areas of natural/semi-natural public open space which would support school outdoor activities/study.
- 6.1.11 **Site used for recreation/local sports for decades; should be considered for Village Green Application.** No village green application was made, and proposals include substantial areas of natural/semi-natural/public open space.
- 6.1.12 **Countryside loss; impact on wildlife.** These are PnH considerations, however the ecological and wildlife impact were considered through planning and the outline approval includes substantial protection and mitigation measures.
- 6.1.13 **Bridleway closure would remove well-used equestrian route.** This order only seeks closure of footpaths; proposed is expanded public footpath and bridleway provision.
- 6.1.14 **Bridleway closure would push horse riders onto roads increasing dangers for them.** Please see 3.4 and 9.1.13 above.

6.1.15 **Footpaths extinguishments would limit pedestrian options to avoid off road vehicles, increasing risks.** These problems are mitigated city-wide by infrastructure alongside joint working with Northumbria Police. The proposals include access control structures.

6.1.16 **Statement of reasons - not enough alternative route information to determine their adequacy or whether public highway or permissive.** See 6.1.8; 'Statement of Reasons' outlines 'reason for extinguishment', and alternative provision principles, the latter being in the planning-secure Design Code.

6.1.17 **Planning permission had not been granted when the extinguishment order was made; this pre-judged the planning application.** S.258 orders can be made prior to planning applications where land "*has been acquired or appropriated for planning purposes and is...being held by a local authority for the purposes for which it was acquired or appropriated*". Chapelgarth was so appropriated nine months before order-making (see 2.1).

## 7.0 Case Statements received from Planning Inspectorate March 2018.

7.1 **Simon Weightman.** Comprises two themes. One relates to the evolution of land use planning/policy since the 1960's, with urban expansion. Danielle Pearson has summarised this contextual perspective. The second relates to an imperative for more and better connected public bridleways, for safety and to support rural economy diversification. As at 3.4 above, bridleway network improvements to support the equestrian sector is a Council priority city wide including the SSGA.

7.2 **Jane Boyd.** Comprises three related themes. Urban expansion causing (1) loss of countryside and (2) loss of wildlife. These are PnH matters, considered by Danielle Pearson and at 6.1.1/6.1.12 above. The third concerns loss of amenity access for exercise and countryside/wildlife enjoyment; please see ss.6.1.3/6.1.4/6.1.5/6.1.6/6.1.13 above.

## 8.0 Conclusion

8.1 My view of this order is contextualised by prior outline planning approval for development of the site, following long-term strategic plans. I consider the statutory s.258 order requirements to be met. Specifically, I am satisfied that alternative PROW are required, and will be provided, for each of the footpaths subject to the order. I consider that the proposed alternative PROW network would be more extensive resilient and equitably accessible. I therefore request that the order be confirmed by the Secretary of State, with the submitted A3 version of the plan substituting the A4 version by way of a modification to the Order.

T. Ducken 28/3/2018

