

# **Chesterfield East West Walking and Cycle Route Formal Complaint to Derbyshire County Council**

26 October 2021

## **Introduction.**

1. This is a formal complaint about the conduct of the County Council in its treatment of the proposals for the Chesterfield East-West Walking and Cycling Route.
2. I am directly affected as a resident- with vehicle access; as a pedestrian who walks to local services; the park; the bowling club; to friends and a relative on Somersall Lane; and because of the erosion of a very attractive place that will be caused by the Cycle Superhighway. As a consequence of this scheme, which includes the loss of the median (central reservation), I anticipate having to widen the vehicle access to my house.
3. As the previous chairman of the Chesterfield Civic Society, I contributed to representations by my successor, Philip Riden, and to articles in its Newsletter. I am a former planning officer and until the pandemic, the RTPI representative and chairman of a District Council's Conservation Area Forum. Consequently, I have also taken a wider view. For the avoidance of doubt, I strongly support well designed, sustainable integrated transportation that does not harm the character of the area. It is with some regret that I have to make this complaint.

## **Avoiding early public engagement:**

4. The Council's submission to the DfT in October 2020 indicates previous stakeholder consultation on the scheme. Yet it is quite remarkable how the proposals were kept out of the public domain until March 2021. I came across them by accident via a Freedom of Information site when I had complained about pedestrian safety at the Somersall Lane/Chatsworth Road junction. Then there was no certainty of implementation of the proposals and published plans and the Council's actions implied there would be no change.
5. The 2017 plans for the cycle network in Chesterfield are still displayed on the Derbyshire County Council's website and until very recently a joint website with other authorities and cycle interests. Those plans did not show the cycle superhighway, there is no weblink to the latest proposals. Also, a planned extension of the Hipper Valley Trail to Holymoorside has been part implemented through the construction of a bridge over the River Hipper, a road crossing over Somersall Lane and a shared pedestrian cycleway up to the public footpath which is the intended route to Holymoorside. It is also consistent with meeting the Council's obligation to provide a safe route direct to the primary school which was relocated from its intended site in Walton to Holymoorside. Therefore, a member of the public could have easily been misled into believing that this was the Council's intention until March 2021.
6. Moreover, as the proposal represents a radical departure from the published plan for the Chesterfield cycle network and is predictably locally controversial, the Council should have engaged with the public at an early stage before plans were fixed. Similar concerns apply to the Brimington end of the route.

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## Unfair Consultation:

7. Because of the covid 19 pandemic, the Council chose to notify directly 4000 households in the vicinity of the extensions to the Hipper Valley Trail and at Brimington. That directed people to a website which invited the completion of a survey. There was also a link to the detailed plans for the whole route. There was some coverage in the local newspaper but no site notices along the route. Normal practice would be to use the newspaper article as a catchall but not to the extent it would cover a significant failure of the consultation process. And it did fail badly, with significant and geographically distinct groups of households directly and adversely affected to varying degrees not being notified-at least 18 streets out of 117. At the western end of the consultation zone, these were: Chatsworth Road and side streets, Somersall Lane and a side street. At the eastern end, parts of Brimington did not receive the consultation.
8. The Council was alerted to this consultation failure on several occasions, by myself in a telephone call to your traffic consultants in March 2021 near the end of the consultation period; the Civic Society; and even by the then county ward member who discovered many residents who had not been consulted. I believe there were other complaints too. Your Council chose not to correct the error. The directly affected households were unfairly disadvantaged.
9. For those households who received it, which did not include myself, the householder notification directed people to the project's webpage. It invited them to engage in a survey, and although there was space for public comment, the questions were biased to garner support for the project. Consequently, by excluding households which were directly affected, the Council was more likely to receive a positive response. The lack of neutrality is bad practice.
10. Admission to the webpage for the proposal enabled a link to the detailed plans but magnified on a computer screen the text was not easy to read. It would be important for any interested party to be aware of the proposal as there are elements which many would consider controversial and harmful.
11. In essence, the Council acted in bad faith. It shows a poor regard for public consultation and implies predetermination. Case law strongly endorses my concerns.
12. *R (Plantagenet Alliance Ltd.) v Secretary of State for Justice* describes four situations where a council should consult. The fourth is where, "in exceptional cases, a failure to consult would lead to conspicuous unfairness" and by extension, being made aware of the failure to consult the distinct and significant groups who are the ones directly affected by the proposal, the Council should have corrected this error rather than ignored complaints. **There was conspicuous unfairness.**
13. In the case of *R (Article 39) v Secretary of State for Education*, granted some flexibility in the way that consultations may be carried out in the context of the coronavirus pandemic, but reinforced the fundamental principles of good consultation practice that must be complied

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with. It emphasised the fundamental principle that if a public body chooses to consult, whether or not it is under a duty to do so, it must consult properly and fairly. In this case, the court held, DfE had conducted the consultation on an entirely one-sided basis and excluded those most directly affected by the changes. There are strong parallels here. The consultation became a more one-sided process tantamount to excluding those most directly affected by the changes. **It is difficult not to conclude that the Council caused injustice to many households as they have missed the opportunity to see and comment proposals affecting them or comment on the same.**

14. Further case law supporting this complaint comes from *Porter v Magill, (House of Lords)*. The test for 'apparent bias' was laid down as: "what the fair-minded and informed observer would have thought, and whether his conclusion would have been that there was real possibility of bias." **In this case there was apparent bias by effective exclusion** of the distinct groups who are the most affected by the proposal (even when the problem was drawn to the Council's attention), **and obvious bias in the survey questions.**
15. As this scheme is a departure from approved plans, a reasonable public body would have avoided bias in the survey questions, provided good quality presentation drawings and graphics, and ensured the consultation process was clearly fair and resilient. On discovery of the consultation error, it would have readvertised and reconsulted. That did not occur. There is the impression that public consultation was deemed unimportant and perhaps manipulated to gain support for the project despite the conspicuous unfairness to those geographically significant groups of households directly affected.

## The Committee Report and Decision 14 October 2021:

16. There are several areas of concern - possible leaking of recommendation before publication; a lack of reasonable justification of the need to build a superhighway; treating walking secondary to cycling; addressing concerns raised by local residents who became aware of the proposals, including myself; and reliance of questionable survey information. All of this led to a recommendation that implied predetermination for approval with a lack of scrutiny.
17. Governance: People whose representations on the survey had been acknowledged were notified of the 14 October Council meeting. There was a spate of cycling along Chatsworth Road which started in March 2021 when the scheme was made public. Remarkably it ceased around 2 weeks around the end of September 2021. Lobbying for a cause is understandable, but perhaps the cycle interests and other stakeholders knew of the recommendation before the report was made public. If so, then the Council did not show good governance as the public had only 1 week to comment on the published report. In response, the Chairman of the Chesterfield Civic Society promptly delivered letters to most who were not consulted. Some will have responded direct to the Cabinet member for Highways Assets and Transport, but the timescale was short, and the report had been written.
18. The committee report has a standard format. Whilst it is accepted that polices do not have to be described in detail, where issues of substance arise, to enable public scrutiny it is

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appropriate that they are tested by informed reasoned argument against assumptions, prevailing national and local policies. Although some concerns are listed in the report, the challenges raised on the western end of the route are not properly addressed, quite possibly because many local people did not comment as they were not aware of the scheme.

19. Superhighway: The need for the superhighway is for “everyday cycling “as part of a network with “access to workplaces, schools, Chesterfield College, the station, recreational facilities and the hospital for work etc.”. It is designed for competent cyclists from the age of 12. However, everyday cycle traffic generation to and from Holymoorside, a linear green belt village with a primary school shared with the Chesterfield suburb of Walton, was never really justified even in the Council’s submission to DfT which implied the school was important factor or set against the disadvantages to other interests. As it is a departure from the approved network plan it should have been justified both in the original form to DfT and as modified.
20. Furthermore, the cycle superhighway and walking route do not comply with the intent of national advice in LTN 1/20 for it is not a high quality and inclusive walking and cycling infrastructure that meets the five governing principles well. The superhighway is short and incoherent and in places creates problems for walking; overall the East -West route is not direct, it is unattractive in places, it needlessly incorporates steep gradients, and relies very heavily on shared use facilities rather than as a last resort. Even allowing for inevitable compromises, the scheme falls short of what may have been expected and is being provided elsewhere. The report should have covered this aspect especially as the incremental effect of too many compromises increases the probability of failure.
21. Walking: Although promoted as a cycle route, “Walking”, was added to the title of the report, but overall, the subject has been treated as a secondary and ancillary to the cycle route. However, it helps the claim that the narrower north side footway on Chatsworth Road is the walking route even though it dependent at times on the more popular direct south side for capacity. Assumptions and concerns about walking do not appear to have fully been considered.
22. The Council was aware of complaints about pedestrian safety at the Somersall Lane junction with Chatsworth Road, which has blind corners. Previously it had acknowledged in writing by your Council (28-02-2019) that the junction is problematic for pedestrians. Traffic movements ought to have been monitored here as it was at the Storrs Road junction to inform decisions. Yet provocatively part of this scheme just adds a cycling spur along the only and narrow path along Somersall Lane which leads to the junction with Chatsworth Road. A similar arrangement at the original end of the Hipper Valley Trail is problematic. That path now spreads up to 2m, but half of this is mud in winter. There is no leeway at the end of Somersall Lane and visibility is restricted. It is well-used by pedestrians, often with young children or dogs, and occasionally with walking aids. This contravenes the intent of LTN 1/20. The report should have addressed the existing and potential safety issues.

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23. The original scheme had the Toucan lights at the Holymoore Road junction. That helped access to a popular public footpath network, to houses opposite, and helped vehicular traffic. Instead, it is relocated further east and the footway is to be shared with cycles to the disadvantage of pedestrians.
24. There is no reason why a cycle route and footpath should follow the same route to a destination. The public footpath that connects Somersall to Greendale Avenue Holymoorside near to the school is well used but muddy in winter. It is also the route of the planned extension of the Hipper Valley Trail. If walking were to be given serious weight as expected by the government, the Council can readily upgrade it to an all-weather unilluminated path. The footpath is shorter, more commodious and would help meet the Council's earlier obligations to upgrade the link between Walton and the relocated primary school in Holymoorside. It is also a daylight option for Brookfield School students. That opportunity was not considered as the focus is on cycling and earlier negotiations for a cycling route had met with an impasse.
25. Wider local impact on Brookside: Notwithstanding adopted policies in the DCC Local Transport Plan 3 2011-2026, there is no evidence that wider concerns of safety actual and perceived, parking, access, loss of amenity were properly addressed. Details were given in my representation to Cllr Kewal Atwal. The report should have explained how this busy section of highway in relation to through traffic and the local community functions and the consequences of the intended change; why these and other concerns were discounted and justified the superhighway in the local context. A holistic, environmentally sensitive approach is what ought to be expected from the DCC Directorate of Place.
26. Biased survey: In contrast to examining local issues, the committee report included considerable analysis of the public response, but it did so without acknowledging concerns of bias. In fact, doubly biased -by the nature of the questionnaire and by the lack of comments from those households directly affected. This is quite unfair as their views should have been a material consideration in the decision-making process.
27. It is considered that the committee report is unbalanced and failure to defer in light of reasonable complaints over consultation and reconsider suggests a predisposition to avoid obstacles that might work against approval. I am advised that at the cabinet meeting there was virtually no discussion and a simple dismissal of claims that the consultation was inadequate. Had it been random then there may well be a case for dismissal for logistical errors can occur. However, **the failure to consult was not random**, those who were not consulted were the ones which were obviously most likely to be affected. To some it would appear this was a convenient error or even deliberate. **It is maladministration.**

## Conclusion:

28. **The very process of democratic decision making, weighing and balancing relevant factors and taking account of any other viewpoints, which may justify a different balance, was evaded.**

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- 29. The Council showed bias and acted in bad faith, quite possibly engineering the process to deliver the scheme it wanted whilst seemingly unaware of wider implications. The consultation has disadvantaged affected households to the extent that it was so unreasonable that no reasonable person acting reasonably could have made it.**
- 30. Securing trust and integrity are essential for local governance and in this instance your council has underperformed because enabling the project matters more than the public interest it is supposed to serve. Case law endorses these concerns.**

## **Ways Forward:**

- 31. The Council should apologise and not proceed with this proposal until it has reconsulted and giving proper weight to public comment which, may mean on merit, it chooses to abandon the superhighway section and refine other elements.**
- 32. In the alternative and without prejudice to any further action elsewhere including the courts, if the Council is to proceed then so far as the superhighway section, I suggest the following mitigations for the Chatsworth Road section:**
  1. Recognise the general preference and local need to walk along the south side of Chatsworth Road and along Somersall Lane. Improve pedestrian safety at that junction and prevent cycling along the narrow footway.
  2. Undertake measures to enhance the sense of place at the Storrs Road/ Chatsworth Road junction, including tree planting and more attractive surfaces.
  3. Set aside a contingency fund for any necessary widening of vehicular accesses onto Chatsworth Road as a result of the loss of the median.
  4. As necessary, erect bollards on the south side of Chatsworth Road west of Somersall Lane to prevent overrunning of the footway but not occasional parking.
  5. Ensure that the stone kerbs are retained at the modified junctions and protected trees are physically, protected from verge parking.
  6. Accept that there is a need for smaller vehicles to affect a safe U turn along Chatsworth Road without great inconvenience.

I look forward to your considered reply.

Bryan Thompson