

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	13 December 2010
Report of:	Greenspaces Manager
Subject/Title:	Town & Country Planning Act 1990 – Section 257 Application for the Stopping up of Public Footpath No.7(part), Parish of High Legh

1.0 Report Summary

- 1.1 The report outlines the investigation to extinguish part of Public Footpath No.7 (part) in the Parish of High Legh. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for an extinguishment order to be made. The application has been made by SP Energy Networks Ltd based on planning permission granted by the Secretary of State for the Department of Energy and Climate Change on the 4 January 2010. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to extinguish the short section of footpath affected.

2.0 Recommendation

- 2.1 An Order be made under Section 257 of the Town & Country Planning Act 1990 to stop up part of Public Footpath No.7 High Legh as illustrated on Plan No. TCPA/005 on the grounds that the Borough Council is satisfied that it is necessary in order to enable development to take place.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 In accordance with Section 257 of the Town & Country Planning Act 1990, the Borough Council, as Planning Authority, can make an Order stopping up a footpath or part of a footpath if it is satisfied that it is necessary to do so to enable development to be carried out in accordance with a planning permission that has been granted. It is considered that the proposed extinguishment is necessary in order to enable the development: namely the installation of a new electricity pole and stays as part of a much larger scheme installing and renewing an overhead electricity line between Carrington and

Lostock sub stations. The planning application was originally submitted to Macclesfield Borough Council, reference number 03/1772P and has since been granted permission by the Secretary of State for Energy in January 2010.

- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.
- 3.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.
- 3.4 Informal consultations have elicited an objection from High Legh Parish Council to the proposal. The objection relates to their belief that the erection of the electricity pole and stays will effectively obstruct the footpath and also that the landscape value will be diminished by the poles. This is discussed further in paragraph 10.6 below and it is demonstrated that a continuous route will remain. It is considered that this objection is not relevant to the criteria under which this order would be made; that the part closure is necessary to enable the installation of a pole and support stays and that the legal tests for the making and confirming of an extinguishment order are satisfied.

4.0 Wards Affected

- 4.1 Bucklow Ward

5.0 Local Ward Members

- 5.1 Councillor A.Knowles, Councillor J Macrae and Councillor G Walton

6.0 Policy Implications including - Climate change - Health

- 6.1 Not applicable

7.0 Financial Implications

- 7.1 Not applicable

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 Under section 257 of the Town & Country Planning Act 1990, a planning authority has the power to make and confirm orders authorising the stopping up or diversion of a footpath if they are satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission that has been granted. Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local planning authority to confirm the order itself, and may lead to a hearing/an inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.

- 8.3 The procedure for making an order is detailed in Schedule 14 to the Town & Country Planning Act 1990 and the Public Path Orders Regulations 1993.

9.0 Risk Management

- 9.1 Not applicable

10.0 Background and Options

- 10.1 An application has been received by SP Energy Networks of SP Power Systems Ltd, 1 Atlantic Quay, Glasgow. G2 8SP, requesting that the Council make an Order under section 257 of the Town & Country Planning Act 1990 to extinguish part of Public Footpath no.7 in the Parish of High Legh.
- 10.2 Public Footpath No. 7, High Legh, commences at its junction with Moss Lane (UW 2110) at OS grid reference SJ 6787 8358 and runs in a generally southerly direction for approximately 380 metres before turning east south easterly for approximately 320 metres to rejoin Moss lane near its junction with Golborne Lane. The section of path to be closed is shown as a shaded quadrilateral on Plan No. TCPA/005 at point A. It encompasses an area of approximately 8 metres length by 4 metres wide.
- 10.3 Mr J B Taylor owns the land over which the footpath runs and has given his written consent for the closure. Under section 257 of the Town & Country Planning Act 1990 the Council may by order authorise the stopping up of a footpath if they are satisfied that it is necessary to do so in order to enable development.
- 10.4 The section of footpath to be closed is within a wide belt of grass and scrub. Due to the location of an electricity pole on the edge of this area, the support stays for the pole would run at an angle across half of the width of this belt of land. This is shown on the enclosed plan submitted by SP Energy. From consideration of historical ordnance survey maps and internal records it is clear that the full width of this area has been available for use as the footpath, therefore the closure of a 4 metre width to accommodate the stays will leave a further 4 metres for the footpath to continue to the side. The full width is available before and after this slight constriction. On average footpaths are required to be 2 metres in width if altered by a legal order. Any bracken/ scrub that requires clearing to enable easy access will be undertaken prior to any order being confirmed.
- 10.5 Ward Councillors have been consulted about the proposal and no comments were received
- 10.6 High Legh Parish Council were consulted and after a site visit by one of the members stated that they objected to the proposal on the grounds that the path would be effectively blocked by the pole stays. They are also concerned about the severe visual impact the poles would have on an otherwise uncluttered landscape. A site meeting was held with a representative of the

Parish Council and a Senior Planner from SP Energy to discuss the extent of the footpath that requires extinguishment and to demonstrate how part of the width of the path will remain open so that a through route will continue to exist. Work on site to accommodate the new poles had commenced in the form of scrub and tree clearance which is also a cause of concern to the Parish Council. Following the meeting the Parish Council further considered the matter at their next meeting and subsequently decided to maintain their objection to the part closure. Their objection states that they believe the pole stays will 'effectively block' the footpath, however the purpose of this application is to formally close that part of the path where the stays will be, leaving a 4 metre width unobstructed for the rest of the path to remain open and useable. Therefore the rights of the public are retained.

- 10.8 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.9 The user groups have been consulted and no objections have been received.
- 10.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Clare Hibbert
Designation: Definitive Map Officer
Tel No: 01606 271823
Email: clare.hibbert@cheshireeast.gov.uk
PROW File: 109D/401