

# CHESHIRE EAST COUNCIL

## Public Rights Of Way Committee

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<b>Date of Meeting:</b>	<b>13 December 2010</b>
<b>Report of:</b>	<b>Greenspaces Manager</b>
<b>Subject/Title:</b>	<b>Town &amp; Country Planning Act 1990 – Section 257 Application for the Diversion of Public Footpath No.55 (part), Parish of Mobberley</b>

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### **1.0 Report Summary**

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 55 in the Parish of Mobberley. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as a response to planning approval granted to Ollerton Leisure for the construction of a new practice range at Mobberley Golf Course. 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 divert the section of footpath concerned.

### **2.0 Recommendation**

- 2.1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 55, Mobberley as illustrated on Plan No. TCPA/004 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow 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 and not resolved, 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 and Country Planning Act 1990, the Borough Council, as Planning Authority, can make an Order diverting 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.
- 3.2 It is considered that it is necessary to divert part of Footpath No. 55 Mobberley as illustrated on Plan No. TCPA/004, to allow for the construction of a new

practice range for the members of Mobberley Golf Club. Planning consent was granted on the 24<sup>th</sup> June 2010 by Cheshire East Council; reference number 09/2857M.

3.3 Informal consultations have elicited objections to the proposal, although it is considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 are satisfied.

3.4 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 3.1 above.

#### **4.0 Wards Affected**

4.1 Bucklow

#### **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 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local highway authority to confirm the order itself, which 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.

#### **9.0 Risk Management**

9.1 Not applicable.

#### **10.0 Background and Options**

10.1 An application has been received from Drivers Jonas Deloitte ("agent") on behalf of Ollerton Leisure LLP ('the Applicant') requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert part of Public Footpath No. 55 in the Parish of Mobberley.

- 10.2 Public Footpath No. 55 Mobberley commences on a track near Oak Bank Farm at OS grid reference SJ 8116 8005 and runs in a generally northerly direction past Coppack House Farm to Hollingee Farm where it bears westerly to pass through Mobberley Golf Course to its junction with Burleyhurst Lane (C106) at OS grid reference SJ 8084 8083. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/004 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C-D-E-B.
- 10.3 The existing alignment of the footpath would be directly affected by the construction of the new practice range which is required in the interests of members of Mobberley Golf Club. The land is entirely owned by Ollerton Leisure LLP.
- 10.4 Planning permission was granted to the applicant on 24 June 2010. The application is cited as Planning Permission Ref: 09/2857M. The details of the decision notice are for the expansion and improvement of the existing 9 hole golf course and facilities including the installation of the new practice range.
- 10.5 Part of the current line of Public Footpath No.55 Mobberley (A-B) lies directly on the site of the construction of part of the new practice range as shown on the plan submitted by the applicant's agent (P2701 910). This will be enclosed by a 10m high wire netted fence. Part of the existing footpath, FP55 Mobberley, would be obstructed by this fence. Therefore, the footpath diversion is required to provide public access around the new practice range. The length of footpath proposed to be diverted is approximately 50 metres.
- 10.6 The proposed route for the footpath is approximately 171 metres long and would move the footpath from point A to follow the boundary of the practice range taking it in a northerly, then westerly and then southerly direction back to the current route at point B on Plan No. TCPA/004.
- 10.7 The local Councillors have been consulted about the proposal. Councillor George Walton responded that he would support any response submitted by Mobberley Parish Council.
- 10.8 Mobberley Parish Council have been consulted about the proposal and responded to state that they object to the diversion on the following grounds: -
- “1) This proposed diversion was not included originally as the indicative or proposed route in the above planning application, and as such is a material departure/conflict from the proposed diversion at that time. The Parish Council are of the opinion that, had this diversion been included originally, there would have been more objections to the application in accordance with the Ramblers Association guidelines<sup>1</sup> and the proposal's conflict with holes 1 and 18 at the golf club.

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<sup>1</sup> This refers to the Ramblers Association guidance note on golf course developments and public rights of way

2) The safety of walkers will be brought into jeopardy and tension caused between them and the golfers.

3) The proposed diversion is rambling and puts walkers and their dogs through an environment which is not conducive to them.

4) We believe that connecting footpath routes and rural issues have not been fully considered, and furthermore when this whole matter was reported to the Northern Area Planning Committee there was misrepresentation at that time of some of the points.”

10.9 Although the current proposal does replace a previous diversion proposal considered during the original planning application process, it is not a requirement to have a finalised diversion proposal in place at the time a planning application is determined by the Council. Indeed, often there has been no discussion about the details of a proposed new route at that point. Furthermore, it is not for the Planning Committee to determine the merits of a diversion proposal; this is a function of the Council's Rights of Way Committee.

10.10 A diversion proposal may change any number of times between the granting of planning permission for a development and a final diversion proposal being agreed between the applicant and the Council. Opportunity for the public to comment on and object to a diversion proposal relating to a development is offered in accordance with the legal process for diverting footpaths under the Town and Country Planning Act (TCPA), a transparent process separate from the legalities of the planning process. Objections to such a diversion order which are received and not withdrawn will lead to the order being submitted to the Planning Inspectorate for determination, sometimes by way of a Public Inquiry.

10.11 Considerations of enjoyment and user suitability of the proposed diversion route are not considered under the TCPA. The only test to be met is that the footpath diversion is necessary to enable development to be carried out.

10.12 The issues raised relating to safety across holes 1 and 18 are outside the scope of this proposal and cannot be considered.

10.13 The statutory undertakers have also been consulted and have 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.

10.14 The user groups have been consulted. No responses have been received.

10.15 The adjacent landowners have been consulted.

10.16 Mrs Barker of Hollingee Farm registered an objection based on the safety of users walking along the southerly stretch of the proposed diversion between points E-B adjacent to Tee No. 1 to the east. However it is considered that there is minimal risk to walkers from Tee 1, since the distances between the

specifics of this Tee and the proposed route are longer than those quoted as being safe in the Ramblers' Association guidance<sup>2</sup>. Various measures are also proposed to ensure that golfers are made aware of their responsibilities, including the posting of information at the club, information on the score cards, and the erection of warning signage aimed at both golfers and walkers.

- 10.17 Mr and Mrs Nixon of Coppack House Farm have registered objections which are similar to those of the Mobberley Parish Council (see section 11.8). The Council's response to those objections is therefore as at 11.9, above.
- 10.18 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.19 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be no less easy to use than the current route.

## **11.0 Access to Information**

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

Name: Marianne Nixon  
Designation: Public Path Order Officer  
Tel: 01606 271843  
Email: [Marianne.nixon@cheshireeast.gov.uk](mailto:Marianne.nixon@cheshireeast.gov.uk)  
PROW File: 210D/414

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<sup>2</sup> This guidance has not been adopted as policy by the PROW Team, but the PROW Team refers to its principles in responding to golf course planning applications.