

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 Diversion of Public Footpath No. 7
(part), Parish of Warmingham

1.0 Purpose Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 7 in the Parish of Warmingham. 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 Mr D S Varey for a 'Change of former worm bed area to storage for caravans and other leisure vehicles' at The Old Hough, Warmingham. 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 section of footpath concerned.

2.0 Recommendations

- 2.1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 7 Warmingham as illustrated on Plan No. TCPA/003 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. 7 Warmingham as illustrated on Plan No. TCPA/003 to allow for the change of use of the former worm bed area to storage for caravans and other leisure vehicles. Planning consent was granted on the 20 August 2010 by Cheshire East Council; reference number 10/2370N.

3.3 Informal consultations have elicited no objections to the proposal and 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.

4.0 Ward Affected

4.1 Cholmondeley.

5.0 Local Ward Members

5.1 Councillor R Bailey, Councillor S Davies and Councillor M Hollins.

6.0 Policy Implications including – Climate Change Health

7.0 Financial Implications

7.1 Not applicable

8.0 Legal Implications

8.1 Section 257 of the Town and Country Planning Act 1990 ("TCPA") allows the council 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 granted. There are requirements of public notice and if objections are received to the proposed order and not withdrawn, the order must be submitted to the Secretary of State for confirmation, who must either call for a local inquiry or give the objectors an opportunity of being heard before making his decision. This would require attendant legal involvement and use of resources. It follows that the Committee decision may be confirmed or not confirmed.

8.2 The procedure in making an order is detailed in Schedule 14 to the TCPA and the Town and Country Planning (Public Path Orders) Regulations 1993, which are made under the TCPA.

9.0 Risk Assessment

9.1 Not applicable

10.0 Background and Options

- 10.1 An application has been received from Mr D S Varey ('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. 7 in the Parish of Warmingham.
- 10.2 Public Footpath No. 7 Warmingham commences on Forge Mill Lane at OS grid reference SJ 6985 6251 and runs in a generally southerly direction to Drury Lane (UY1446) at OS grid reference SJ 7065 5966. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/003 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-B.
- 10.3 The existing alignment of the footpath will be obstructed by the stored caravans and other leisure vehicles. It will also be obstructed by a fence. Security for the site is of paramount importance and a fence is required around the perimeter, keeping the footpath on its current line would make this impossible. The land is entirely owned by Mr D S Varey.
- 10.4 Planning permission was granted to the applicant on 20 August 2010. The application is cited as Planning Permission Ref: 10/2370N 'Change of Use of Former Worm Bed Area to Storage for Caravans and other Leisure Vehicles'. The consent was granted subject to various conditions, one of which was that Public Footpath Warmingham No. 7 should be diverted under a formal diversion order.
- 10.5 The length of the proposed route for the footpath is approximately 342 metres, this is very similar to the present route which is 345 metres. The footpath would be moved to the east of the current route down an existing track, providing an improved surface for walkers, and then through the yard to connect with the existing line of the footpath, south of The Old Hough. No path furniture would be required on the proposed route which would also provide a more accessible route for walkers who have to negotiate three stiles on the present route.
- 10.6 The local Councillors have been consulted about the proposal. No comments have been received.
- 10.7 Warmingham Parish Council have been consulted about the proposal and have responded to state that they agree with the proposal.
- 10.8 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.
- 10.9 The user groups have been consulted. The Peak and Northern Footpaths Society have responded to state that they have no objection to the proposal.

10.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.

10.11 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 easier to use as it requires no path furniture.

11.0 Access to Information

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

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