

Highway and Transport Committee

23rd January 2025

Town and Country Planning Act 1990 Section 257 Proposed Diversion of Public Footpath No. 12 (Part) in the Parish of Nether Alderley

Report of: Phil Creswell, Executive Director of Place

Report Reference No: HTC/45/24-25

Ward(s) Affected: Chelford

For Decision or Scrutiny: Decision

Purpose of Report

1. The report outlines the investigation to divert part of Public Footpath No. 12 in the Parish of Nether Alderley following receipt of an application from a local resident in relation to a planning application.
2. The work of the Public Rights of Way team contributes to the Corporate Plan aim of “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

Executive Summary

3. This report outlines the investigation to divert part of Public Footpath No. 12 in the Parish of Nether Alderley and includes a discussion of the consultations carried out in respect to the proposals and the legal tests to be considered for a diversion order to be made under the Town and Country Planning Act 1990.
4. The recommendation is that a public path diversion order be made under section 257 of the Town and Country Planning Act 1990 on the grounds that Cheshire East Council is satisfied that it is necessary to do so to enable development to be carried out.

RECOMMENDATIONS

The Highways & Transport Committee is recommended to:

1. Decide that a public path diversion order be made under section 257 of the Town and Country Planning Act 1990 for part of Public Footpath No. 12 in the Parish of Nether Alderley as shown on Plan No. TCPA/080 on the grounds that Cheshire East Borough Council is satisfied that it is necessary to do so to enable development to be carried out.
2. Decide that public notice of the making of the Order be given and in the event of there being no objections within the period specified, and in the event that planning consent has been granted, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
3. Note that in the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

Background

5. An application has been received from the residents of Beacon Lodge, Nether Alderley requesting that the Council make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 12 in the Parish of Nether Alderley as it appears necessary to allow for the construction of a home office with art studio, within the grounds of Beacon Lodge under Planning Application Ref: 24/2978M
6. Public Footpath No. 12 in the Parish of Nether Alderley commences at Nether Alderley Footpath No. 13 close to Macclesfield Road SK10 4UB then runs in a generally north easterly direction, for 495 meters, to the junctions of Nether Alderley Footpath No. 45; Nether Alderley Footpath No. 14 and Over Alderley Footpath No. 26.
7. The section of the current definitive line of Nether Alderley FP12 affected by the proposal is shown as a bold black line on plan TCPA/080 between points B – A. This section of the path is to be stopped up. Beginning at point B at its junction with Nether Alderley FP13, it runs in a generally north easterly direction, in part, across the garden of Beacon Lodge for approximately 178 metres to point A at its junction with Nether Alderley FP45.
8. The proposed diversion is shown on the attached plan no. TCPA/080 as a dashed black line running between points C - A. From point C at the junction with Nether Alderley Footpath No. 13 it runs in a generally

northerly direction for approximately 146 metres to point A, at the junction with Nether Alderley FP12 and Nether Alderley FP 45. It is unenclosed, with a stone surface 1.5 metres wide, edged with wooden sides. It is 32 metres shorter than the existing path. It has a gradient very similar to the existing path.

9. The proposed diversion route currently exists on the ground on land belonging to the National Trust. Written permission has been obtained by the applicant from the senior countryside manager of the National Trust giving agreement to having the proposed diversion route on the land. No change is proposed to the surface or width of the diversion route. The diversion route is surfaced with stone and wooden edging with a varying width no less than 2 metres along its length. It is unenclosed in a woodland.
10. The proposed diversion would be an improvement to the public rights of way network, in accordance with the Cheshire East Local Transport Plan and Rights of Way Improvement Plan, specifically: *Policy H3: Public rights of way and green infrastructure - Protect and enhance our public rights of way and green infrastructure and endeavour to create new links were beneficial for health, safety or access to green spaces.* The proposed diversion has a better surface than the current section of path, as it has a firm, stone/gravel surface and is unenclosed in a woodland environment. The current section of Nether Alderley Footpath No. 12 is grass/lawn surface and in a private garden.

Consultation and Engagement

10. The Ward Member for Chelford, Nether Alderley Parish Council, the user groups, statutory undertakers, and the Council's Nature Conservation Officer have been consulted.
11. The Cheshire East Ramblers responded commenting, "East Cheshire Ramblers have no objection to the diversion of Nether Alderley FP12."
12. The Peak & Northern Footpath Society, after their inspector conducted a site visit, responded commenting, "Our inspector noted that many people were using the proposed diversion route on the day of their visit. In view of the fact that the proposed diversion route has been available as a permissive path for many years and is clearly well used, there are no objections to this proposed diversion. It will be helpful to have this formally recorded as the definitive route."
13. One objection was received from the Open Spaces Society, who's representative commented, "We write to object to the proposed diversion, as it is far in excess of that required to allow the development to proceed."

In fact, it could reasonably be argued that the development could proceed without any diversion at all, as walkers could easily negotiate the proposed hard standing.”

14. Two further submissions were received from Scottish Power and Cadent Gas respectively, each stating that they had no objection.

Reasons for Recommendations

- a. In accordance with section 257 of the Town and Country Planning Act 1990 (“TCPS”) as amended by section 12 of the Growth and Infrastructure Act 2013:
- b. “(1A) Subject to the section 259, a competent authority may by Order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that-
- c. An application for planning permission and respected development have been made under Part 3, and
- d. if the application were granted it would be necessary to authorise the stopping up or diversion to enable the development to be carried out.
- e. The Council, as the Local 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, providing that the planning application has been formally registered with the Council.
- f. It appears necessary subject to planning permission to divert part of Public Footpath No. 12 in the Parish of Nether Alderley as illustrated on Plan No. TCPA/080, to allow the construction of a home office and art studio as detailed within the planning reference 24/2978M.
- g. The work of the Public Rights of Way team contributes to the Green aim for the Corporate Plan, the “thriving and sustainable place” priority and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

Other Options Considered

15. If the authority was to do nothing the development would obstruct the Public Right of Way.

Implications and Comments

Monitoring Officer/Legal

16. Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the Local Authority to confirm the Order itself and may lead to a hearing or Public Inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.

Section 151 Officer/Finance

17. If objections to an Order lead to a subsequent hearing/inquiry, the Council would be responsible for any costs involved in the preparation and conducting of such. The maintenance of the Public Right of Way would continue to be the responsibility of the landowner and Council in line with legislation. The associated costs would be borne within existing Public Rights of Way revenue and capital budgets.
18. See point 18 above.

Policy

19. The work of the Public Rights of Way team contributes to the Vision of the Corporate Plan of a greener Cheshire East, with the aim of “a thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

Vision - An open, fairer, greener Cheshire East

Aim - A thriving and sustainable place

- A great place for people to live, work and visit
- Welcoming, safe and clean neighbourhoods
- Reduce impact on the environment
- A transport network that is safe and promotes active travel
- Thriving urban and rural economies with opportunities for all
- Be a carbon neutral council by 2027

Equality, Diversity and Inclusion

20. An assessment in relation to the Equality Act 2010 has been carried out by the Public Rights of Way Network Management and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current one.

Human Resources

- a. There are no direct implications for Human Resources.

Risk Management

- b. There are no direct implications for risk management.

Rural Communities

- c. There are no direct implications for Rural Communities.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

- d. There are no direct implications for Children and Young People

Public Health

- e. The recommendations are anticipated to offer a positive overall impact on the health and wellbeing of Cheshire East residents.

Climate Change

- f. The recommendations will help the Council to reduce its carbon footprint and achieve environmental sustainability by reducing energy consumption and promoting healthy lifestyles.

Access to Information	
Contact Officer:	Mark Greenhough. Public path orders officer mark.greenhough@cheshireeast.gov.uk
Appendices:	Consultation for the diversion of Public Footpath No.12 (part) in the parish of Nether Alderley. Plan No: TCPA/080
Background Papers:	The background papers and files relating to this report can be inspected by contacting the report writer.