

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	16 th June 2014
Report of:	Public Rights of Way Manager
Subject/Title:	Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No. 3 (Part) Parish Of Alsager

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 3 in the Parish of Alsager. 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 an application has been made by Seddon Homes Limited, in response to planning approval granted for '*Erection of 30 Dwellings (Including 9 Affordable Dwellings), Vehicular Access and Associated Landscaping*', planning application No. 12/1670C. 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.
- 1.2 Members are required to consider the issues set out in this report and to make a decision as to whether the proposed footpath diversion is necessary to enable development to take place in accordance with section 257 of the Town and Country Planning Act 1990 (as detailed in paragraph 3.1 below).

2.0 Recommendations

- 2.1 An Order is made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 3 Alsager as illustrated on Plan No. TCPA/018 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 Local Planning Authority, can make an Order diverting a public 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 applied for.

3.2 It is considered that it is necessary to divert part of Footpath No. 3 Alsager as illustrated on Plan No. TCPA/018 to allow for the '*Erection of 30 Dwellings (Including 9 Affordable Dwellings), Vehicular Access and Associated Landscaping*'.

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 Wards Affected

4.1 Alsager.

5.0 Local Ward Members

5.1 Councillors Shirley Jones, Derek Hough and Rod Fletcher.

6.0 Financial Implications

6.1.1 Not applicable.

7.0 Legal Implications

7.1 Section 257 of the Town and Country Planning Act 1990 ("TCPA") allows the council to make and confirm orders authorising the 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 applied for. 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 or may not be confirmed by the Secretary of State.

7.2 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.

8.0 Risk Assessment

8.1 Not applicable

9.0 Background and Options

9.1 An application has been received from Seddon Homes Limited ('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. 3 in the Parish of Alsager. Written consent from the landowners, Mr John R Foster and Mr H Heler, has been provided.

- 9.2 Public Footpath No. 3 Alsager commences on Hassall Road at OS grid reference SJ 7863 5640 and runs in a generally south westerly direction to Dunnocksfold Road at OS grid reference SJ 7794 5583. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/018 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, again running between points A-B.
- 9.3 The proposed diversion, as illustrated on enclosed plan no. TCPA/018, is necessary to accommodate the housing development. The current line of the footpath will be obstructed by a number of properties and their gardens. The proposed route runs along the northern boundary of the site in a westerly direction from Hassall Road for approximately 175 metres. This section of the diversion will have a width of 2.5 metres where it is enclosed and 2 metres where it is unenclosed. This is indicated in yellow on the developers plan, Drawing No. HAS-PFP-00. It will have a stone surface with timber edging. It is proposed to install a chicane barrier at the eastern end of Public Footpath Alsager No. 3 (which is not affected by the proposed diversion), where it meets Hassall Road. This will help to improve safety at the junction for pedestrians and impede motor bike / cycle access on the footpath.
- 9.4 The proposed route then turns to run in a south westerly direction in the adjacent field for approximately 82 metres to rejoin with the existing line of the Alsager FP3. This section requires diverting to ensure continuation of the route. The adjacent landowner, Mr Heler, has provided written support and consent for this. A kissing gate will be installed at the field boundary which will improve accessibility for walkers on the route, who are currently required to navigate a stile on the existing line of the footpath. It will have a width of 2 metres and a grass/natural earth surface.
- 9.6 The local Councillors have been consulted about the proposal. No comments have been received.
- 9.7 Alsager Town Council have been consulted about the proposal. No comments have been received.
- 9.8 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.
- 9.9 The user groups have been consulted. No comments have been received.
- 9.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 9.11 An assessment in relation to Equality Act 2010 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 existing route.

10.0 Access to Information

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

For further information:

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Background Documents: *PROW file 011D/452*