

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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<b>Date of Meeting:</b>	15 <sup>th</sup> September 2014
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath no. 11, Parish of Shavington cum Gresty and Public Footpath no. 21 (part), Parish of Wybunbury

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### 1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath no. 11 in the Parish of Shavington cum Gresty and Public Footpath no. 21 (part) in the Parish of Wybunbury. 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 outline planning approval granted to Mactaggard and Mickel Homes Ltd. for the construction of a residential development on land south of Newcastle Road, Shavington and Wybunbury (Planning reference: 12/3114N). 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 sections 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. 11, Parish of Shavington cum Gresty and Public Footpath no. 21 (part), Parish of Wybunbury, as illustrated on Plan No. TCPA/020, 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 Recommendation

- 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 Footpath no. 11, Parish of Shavington cum Gresty and part of Public Footpath no. 21, Parish of Wybunbury, as illustrated on Plan No. TCPA/020, to allow for residential development. Planning consent was granted on the 23<sup>rd</sup> January 2014 by Cheshire East Council; reference number 12/3114N.

3.3 Although consultations have elicited some objections to the proposal, 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 Shavington  
Wrenbury

#### **5.0 Local Ward Members**

5.1 Councillor D Brickhill  
Councillor J Clowes

#### **6.0 Financial Implications**

6.1 Not applicable

#### **7.0 Legal Implications**

7.1 Objections received to the proposed order, if not withdrawn, could lead to a public inquiry or hearing with attendant legal involvement and use of resources.

#### **8.0 Risk Assessment**

8.1 Not applicable

#### **9.0 Background and Options**

6.1 An application has been received from Ms. Miranda Steadman (agent) of Colliers International on behalf of Mactaggart & Mickel, 1 Atlantic Quay, 1 Robertson Street, Glasgow, G2 8JB requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert Public Footpath no. 11, Parish of Shavington cum Gresty and part of Public Footpath no. 21, Parish of Wybunbury.

6.2 Public Footpath No. 11, Parish of Shavington cum Gresty commences at its junction with Public Footpath No. 21, Parish of Wybunbury at O.S. grid reference SJ 6976 5122 and follows a generally northerly direction for approximately 112 meters to terminate at its junction with Newcastle Road at O.S. grid reference SJ 6976 5133.

Public Footpath no. 21, Parish of Wybunbury commences at its junction with Stock Lane at O.S. grid reference SJ 6986 5090 and runs in a

generally north westerly direction passing through a grassland field between houses before exiting onto arable farmland. After approximately 170 meters, it bears in a generally northerly direction for approximately 370 metres to terminate at its junction with Public Footpath No. 11, Parish of Shavington cum Gresty at O.S. grid reference SJ 6976 5122

The section of path required to be diverted is shown by a solid black line on Plan No. TCPA/020 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.

- 6.3 The existing alignment of the footpaths would be directly affected by the construction of the residential development. The land is owned by Graham Ward Farms Ltd, Netherset Hey Farm, Netherset Lane, Madeley, Crewe, Cheshire, CW3 9PE and written consent has been given to permit the diversion on this land by Mr Graham Ward.
- 6.4 Planning permission was granted to the applicant on 23<sup>rd</sup> January 2014. The application is cited as Planning Permission Ref: 12/3114N. The details of the decision notice are for a residential development on land south of Newcastle Road at Shavington and Wybunbury.
- 6.5 The current line of Public Footpath No. 11, Parish of Shavington cum Gresty and part of the current line of Public Footpath no. 21, Parish of Wybunbury would be obstructed by the planned residential development. Therefore, the footpath diversion is required to preserve public right of way between Stock Lane and Newcastle Road.

Referring to Plan No. TCPA/020, the public right of way formed by Public Footpath No. 11, Shavington cum Gresty and part of Public Footpath No. 21, Parish of Wybunbury, follows a generally northerly direction from point A across arable fields to terminate at its junction with Newcastle Road at point B.

The proposed new route would start at point A and be aligned through a landscaped corridor that would run through the development between residential homes (see plan entitled 'Proposed diversion of Shavington cum Gresty FP11 and Wybunbury FP21 overlaid with Developer's Plan').

- 6.6 The proposed new route for the footpath (A-C-D-E) is approximately 430 meters long, 50 metres longer than the current route. From point A, it would follow a generally west, north westerly direction to point C and then a generally north easterly direction to point D before bearing in a northerly direction to its junction with Newcastle Road at point E.

The start point for the new route would be the same as that for the current route but the end point would be approximately 74 metres east (point E) from the point at which the current route joins Newcastle Road (point B). It is not considered that this would significantly affect users connecting to Public Footpath No. 9, Parish of Shavington cum Gresty on the opposite side of Newcastle Road.

The new route would have a width of 2 metres throughout and have a hard surface suitable for use by all user types. Users would be protected from vehicles upon approach to Newcastle Road by a form of path furniture such as a gate or barriers. Furthermore, a tarmac area at the roadside would provide a safe visible place from which to assess traffic before crossing the road.

6.7 The local Councillors have been consulted about the proposal.

Councillor Brickhill registered an objection based on the following concerns that the new route would:

- Run behind the back of houses, the footpath would be hidden from view especially at night) providing a perfect location for drug sales and drug taking.
- Become foul from dog faeces
- Provide a place for youths to gather and disturb the residents of the nearby houses.
- It is longer than the previous route
- It emerges onto Newcastle Rd 50 metres away from the continuation of the footpath on the other side of the road

He felt that there was no reason why the diversion should be any more than from points A to C and then follow the new road along its previous course to Newcastle Rd and come out opposite the footpath on the other side of Newcastle road (shown on the plan entitled 'Proposed diversion of Shavington cum Gresty FP11 and Wybunbury FP21 overlaid with Developer's Plan'). He felt that this would also provide a pedestrian access from the new estate to Newcastle Road and to the older village of Shavington

Whilst acknowledging the preferred option to route the path predominantly along the estate roads, the Council has a presumption against this practice as it affects a net loss to the network of countryside paths.

Whilst the path would no longer run across open fields it would be located in an open landscaped area, providing a more pleasant and rural experience compared to walking along estate roads and both the developers and the council would put detailed planning measures in place to mitigate against the speculative problems relating to drug use/sales, dog fouling and residential disturbance. Furthermore, a measure of natural surveillance to mitigate against anti-social behaviour will be present since the majority of houses face onto the proposed path (as shown on plan No. TCPA/020 overlaid with the developer's plan), and the path would run through an open landscaped conservation area.

Whilst the proposed diversion is longer than the current route, it is only marginally so (50 metres) and does not add significantly to journey times. Furthermore a footway is to be installed on the south side of Newcastle Road which will provide a safe connection to the current termination point of the footpath and a pedestrian crossing is going to be installed to allow both

path users and residents of the new development to cross the road to the older village of Shavington.

After consideration of the comments from the Council, Councillor Brickhill sustained his objection to the diversion proposal.

Councillor Clowes did not object to the proposal but expressed concerns about its relationship with the various Planning Applications now underway that stem from the approved outline plan:

- Councillor Clowes explained that the diversion is dependent on the approval of application 14/3039N. This in turn is dependent on the approval of applications 14/1160N AND 14/1161N. This is correct and the diversion will only be undertaken if all relevant planning applications are granted to enable the development to go ahead. Without these permissions, the development will not go ahead and there is no need to move the existing path.

For clarity, it was explained that the only legal test that must be met for a diversion to be progressed under Section 257 of the Town and Country Planning Act is that diversion is required to enable lawful development to go ahead. Any objections or challenges to this legal test must prove that the development can go ahead without unlawfully and permanently obstructing existing public footpaths. In this case, the planning application shows that if permitted (approved), this development will obstruct parts of two public footpaths and the developer must seek to move it elsewhere to preserve public right of passage. This will be conditional within the planning permission.

- In pragmatic terms, Councillor Clowes then stated that the proposed diversion route is probably the best option in terms of its adherence to the planned public open space areas through the proposed park, green ecology corridor and proximity to the play area. In this context she does not believe that there are any material reasons upon which she can oppose this proposal. However, she felt it to be important that certain conditions be attached to the application for the diversion proposal. Further to this, she felt that the diversion must be definitively associated with planning application 14/3039N only and if application 14/3039N is not approved, the diversion proposal must be abandoned.

The legal processes for planning applications and diversion applications that will enable planned developments are completely separate and completely independent of each other. This means that comments made on one cannot be applied to the other and vice versa. Consequently, the conditions (below) mentioned by Councillor Clowes cannot be attached to the diversion application. They are planning conditions. This said, for the planned development to go ahead, these conditions must be met and until they are met, development cannot go ahead and by default, diversion will not be required (and vice versa).

- If application 14/3039N is approved, she would ask that the Public Path Orders Officer works collaboratively with the Planning Officer to ensure that the Public Open Space (POS) design associated with this diversion

is not altered. If the applicants for the diversion (McTaggart & Mickel) or Persimmon Homes (14/3039N applicant) seek to alter the POS design, then this diversion must be reviewed and a fresh consultation organised.

With regard to these concerns raised about the issue of public open space; this would have to remain a matter for the officer dealing with the POS. It would be inappropriate for Public Rights of Way Officers to be involved with the nature of the land over which the proposed path passes under the provisions of the Town and Country Planning Act 1990 so long as the surface of the proposed path and width are adequate. However, these officers can and will work with the planners and developers to achieve the best fit possible for the diversion in relation to the path alignment and POS but under the legislation that this proposal is being undertaken, any perceived shortcomings in that POS area cannot be considered in relation to the diversion.

- If applications 14/1160N and/or 14/1161N are refused, this Diversion Application becomes null and void.

(These applications refer to conditions 48-51 and condition 30 respectively of the approved outline application 12/3114N to which 14/3039N is the first reserved matters application).

This is correct since the developer must meet these conditions in order to be able to undertake the development and the path can only be moved once the development can be undertaken.

- The final comment was to make clear that it is important to note that if the original application 12/3114N with its conditions is eventually adhered to, the PROW diversion will need to take a somewhat different route.

- 6.8 Shavington cum Gresty and Wybunbury Parish Councils have been consulted about the proposal. No comments have been received from Shavington cum Gresty Parish Council. However, Wybunbury Parish Council registered their support of comments made by Councillor Clowes (detailed in section 6.7) and registered strong objection to the proposal. They added a further comment that even if planning approval is granted, the current paths must still be diverted before any building is undertaken on the existing alignments so that public right of passage is always available.

Discussions are still underway with this Parish Council and the outcome of any further communications will be reported verbally.

- 6.9 The statutory undertakers have also been consulted. One objection was received from National Grid and discussions are underway to resolve this since if a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected. No other comments were received. The outcome of the discussions with National Grid will be reported verbally.
- 6.10 The user groups have been consulted. No objections were registered although the Peak and Northern Footpath Society registered a conditional

acceptance stating once it was confirmed that access between points C-D-E as shown on Plan No. TCPA/020 would be non-vehicular.

- 6.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 6.12 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 convenient to use than the current route and in some respects provide a better walking surface for the less able as it will have a tarmacadam surface.

#### **10.00 Access to Information**

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

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**Background Documents:** PROW file 264D+333D/494