

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of meeting: 7th December 2015
Report of: Public Rights of Way Manager
Title: Town and Country Planning Act 1990 S257
Application for the Diversion of Public Footpath No.11 (part)
Parish of Sandbach

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 11 in the Parish of Sandbach. 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 the agents Weightmans LLP on behalf of Barratt Homes Manchester of 4 Brindley Road, City Park, Manchester. M16 9HQ. The application has been made as a consequence of planning approval granted for:

Planning Application: 12/3948C:

Outline application with all matters reserved for commercial development comprising of family pub/restaurant, 63 bedroom hotel, Drive through cafe, Eat in cafe and office and light industrial commercial units with an adjacent residential development of up to 250 dwellings. The proposal also includes associated infrastructure and access.

Planning Application: 15/3531C

Reserved matters application for proposed erection of 246 no. dwellings including roads, sewers, boundary treatments and garages and associated works. This application is to be decided by Planning Committee on the 16th December 2015.

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.

Members are required to consider the issues set out in this report and 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. 11 Sandbach as illustrated on Plan No. TCPA/024 on the grounds that the Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.

- 2.2 Public Notice of the making of the Order is 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 in order to enable development to be carried out in accordance with a planning permission that has been applied for or granted.
- 3.2 It is considered that it is necessary to divert part of Footpath No. 11 Sandbach as illustrated on Plan No. TCPA/024 to allow for the construction of 246 houses and associated infrastructure. The footpath would be directly affected by housing and the road network.
- 3.3 Informal consultations have elicited four objections to the proposal however 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 Sandbach Heath and East.

5.0 Local Ward Members

- 5.1 Councillor Sam Corcoran.

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 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 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 Weightmans LLP acting as Agent for Barratt Homes ('the Applicant'), 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. 11 in the Parish of Sandbach.
- 9.2 Public Footpath No. 11, Sandbach commences on Congleton Road (A534) at OS grid reference SJ 7674 6169 and runs in a generally south westerly direction to Well Bank at OS grid reference SJ 7621 6100. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/024 running between points F-E. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-E.
- 9.3 The proposed diversion is necessary to accommodate the layout of the housing development which will directly affect the footpath. As far as is possible the diversion is designed to take the public footpath along estate paths, separate from the highway infrastructure. The site layout for the area affected by the footpath is shown on the attached Development Plan. The Section A to B as shown on Plan no. TCPA/024 will be a 2 metre wide tarmacked path within a green corridor separated from the A534 by an existing hedge line and approximately 6 metres of highway verge on the roadside and 3 metres on the development side. Section B to C will be along a footway and across an estate road to link with a woodland edge path from point C to point D. This section will mostly be 2 metre tarmacked surface becoming a timber edged 'hoggin' surfaced path for the last 20 metres with a width of 1.5 metres. The path then re-joins the existing public footpath no.11 crossing the estate road and following a 2 metre wide tarmacked path to its junction with Old Mill Road.
- 9.4 When the Reserved Matters stage of this development was first applied for in August this year the proposal for accommodating the footpath was to divert it along the footways of the highway network within the site. This department objected to the application on the basis that this was contrary to Defra guidance and part of our response stated:

'It should be noted that "any alternative alignment [of a Public Right of Way] should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic" (Defra Rights of Way Circular (1/09), Guidance for Local Authorities, Version 2, October 2009, para 7.8).'

A meeting with representatives from the developers and their agents was subsequently held and the current proposal was agreed upon as the best

achievable outcome within the limits of the development layout and substantially reduced the extent of the diversion corresponding with the highway network.

- 9.5 Councillor S Corcoran has been consulted as the Ward Councillor. He has initially stated his objection to the proposal because the new route takes the path closer to the A534 and takes it along a less natural route. Following further correspondence providing more detail of the specifics of the proposed path, its background and the criteria for a diversion under the Town and Country Planning Act; Councillor Corcoran responded that he welcomed the additional onsite informal woodland paths that were to be included as part of the site development (see 'Woodland Paths Plan') but wished to see these paths taken on and managed by Cheshire East and without that assurance he would maintain his objection. These paths do not form part of the diversion application to be decided.
- 9.6 Sandbach Town Council has been consulted and responded with an objection to the proposal on the basis that the information provided was inadequate and that moving the path closer to the A534 would be detrimental to the quality of the walk. They also stated that the proposed path appears to be a walkway along the new access road rather than a separate public footpath. A response was sent explaining more detail of the alignment of the proposed new path and the criteria for a diversion under the Town and Country Planning Act. Unfortunately the next meeting at which the Town Council were due to consider the additional information was cancelled however it is hoped that a further response, following a meeting on the 26th November, will be available to be reported verbally at Committee.
- 9.7 The user groups have been consulted. The Rambler's Association Representative has objected to this proposal as they felt the diversion would fail for not complying with Defra guidelines and that the information at their disposal was rather poor. There was some confusion regarding the proposed diversion route because the Council's Planning website was still showing the original diversion running entirely along estate roads and hadn't been updated. This position was clarified and further information provided about the position of the proposed path and its proximity to the A534. Further comments from the Rambler's Association are awaited.
- 9.9 Sandbach Footpath Group was also consulted and objected to the proposal on the grounds of it becoming 'negated' as a field or country path; running directly adjacent to the A534 as merely a 'pavement' and elsewhere as an 'estate road footway' and there being no access to the continuation of the path that runs through the estate to the west of Old Mill Road. In addition to these objections the comments also included a desire to see enhancements to the proposal by linking into new paths that could be included through Offley Wood, on the southerly fringes of the site, and also linking across the larger expanse of the 'Capricorn' development to join Sandbach FP 14 to the south-west. It was the whole 'Capricorn' site that was the subject of the outline approval given under planning application no. 12/3948C. The matters of the specifics of the footpath diversion were addressed with assistance from the developers and their agent. The offsite road improvement works will include a traffic island opposite to the point where the footpath joins Old Mill Road (A534) which will assist people crossing the road to link with the footpath continuation to the west. Barratt Homes however are not involved in the whole

of the Capricorn development and do not have control over interlinking land between this site and the land where Footpath 14 runs. There are also proposals within the site to accommodate informal woodland paths as mentioned above in paragraph 9.5 (see 'Woodland Paths Plan'). On receipt of this information The Footpath Group welcomed the woodland paths planned within the development and said they would withdraw their objection provided these are taken on and managed by Cheshire East Council.

- 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 convenient 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 262D/509