

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 13th June 2016
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. 9 (part),
Parish of Arclid

1.0 Purpose of Report

The report outlines the investigation to divert part of Public Footpath No. 9 in the Parish of Arclid. 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 a planning application. The application has been submitted by Mr D Robinson of Archibald Bathgate Silica Sand Ltd., Arclid Quarry, Congleton Road, Sandbach, Cheshire, CW11 4SN to apply for a 'Southern eastern extension to existing silica sand workings at south Arclid, Arclid Quarry' (Planning reference: 09/2291W). 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.

2.0 Recommendations

- 2.1 That after 4th July 2016 when a long term temporary diversion of the definitive route for Public Footpath No 9 Arclid will expire, an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 9 Arclid, as illustrated on Plan No TCPA/030 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place. That this Order be confirmed and made operable on condition that planning permission is granted.
- 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 as amended by Section 12 of the Growth and Infrastructure Act 2013:

“(1A) Subject to section 259, a competent authority may by order authorise the stopping up or diversion in England of any footpath, bridleway or restricted byway if they are satisfied that—

- (a) an application for planning permission in respect of development has been made under Part 3, and
- (b) if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.”

Thus 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 before that permission is granted, providing that the application has been formally registered with the Council.

3.2 It is considered that it is necessary to divert part of Footpath No. 9 Arclid as illustrated on Plan No. TCPA/030 to allow for the excavation of sand beneath land that lays south easterly to the existing silica sand workings at Arclid Quarry, as detailed within planning reference: 09/2291W.

3.3 Consultations have not elicited 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 Brereton Rural

5.0 Local Ward Members

5.1 Councillor J Wray

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

9.1 An application has been received from Mr R Bright (agent) of Bright & Associates on behalf of Bathgate Silica Sand Ltd. (applicant), c/o Langtons,

The Plaza, 100, Old Hall Street, Liverpool, L3 9QJ 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. 9 in the Parish of Arclid.

- 9.2 As shown on the attached plan entitled 'Parish of Arclid, Proposed stopping up and diversion of footpath No 9', part of Public Footpath No. 9 Arclid is temporarily aligned on a different route to its definitive alignment since it was diverted 30 years ago in 1986 under the Town and Country Planning Act, Sections 257 & 261, to enable sand extraction beneath its definitive alignment.

Consequently, the full length of Public Footpath No. 9 Arclid currently commences at its junction with Congleton Road at O.S. grid reference SJ 7835 6187 and runs in a generally south, south easterly direction, the majority of which is along Hemmingshaw Lane (approximately 1000 metres) except at the southern end when it runs across pasture land (290 metres) to terminate at its junction with Public Footpath No. 7 Arclid and Public Footpath No. 10 Smallwood, at O.S. grid reference SJ 7895 6077.

The definitive alignment of this footpath also commences at its junction with Congleton Road at O.S. grid reference SJ 7835 6187 and runs in a generally south easterly direction for a shorter distance along Hemmingshaw Lane (approximately 313 metres) before bearing in a generally southerly direction through the quarry site, to terminate at its junction with Public Bridleway No's 10 and 11, and Public Footpath No. 7, Arclid, at O.S. grid reference SJ 7864 6072.

The 30 year temporary diversion of this Public Footpath No. 9 Arclid will end on 4th July 2016. Thereafter, the legal right of way for the public will revert to the definitive alignment which is currently unavailable. On that date, it will be formally closed via a temporary 6 month closure, to protect the public from dangers posed by ongoing quarry operations, on condition that an alternative route will be provided for the public by Archibald Bathgate so that a walkable route is available at all times whilst the definitive route is closed. It is understood that this will initially comprise Hemmingshaw Lane until the route of the proposed diversion has been made available on the ground which may then be used on a permissive basis until the legal process has been completed.

Given the expiry date of the 30 year temporary diversion, should an Order be made, it will be made after the expiry date and detail the diversion of the definitive alignment, not the 30 year temporary alignment. Consequently, the remainder of this report will discuss the proposed diversion and the definitive alignment with occasional reference to the 30 year temporary diversion route that is currently in place.

The section of the definitive alignment of Public Footpath No. 9 Arclid required to be diverted by Archibald Bathgate Silica Sand Ltd, is shown by a solid black line on Plan No. TCPA/030 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-F-G-H.

- 9.3 The land over which the current route runs and over which the proposed route would run is part owned by Archibald Bathgate Silica Sand Ltd. and partly owned by Mrs E Beresford of Arclid Hall Farm. Mrs Beresford has consented to the diversion going ahead across the parts of land in her ownership.
- 9.4 Planning permission for the sand excavation was granted to Mr D Robinson of Archibald Bathgate Silica Sand Ltd., on 20th February 2013. The application is cited as Planning Permission Ref: 09/2291W. The details of the application are for the continued excavation of sand beneath land to the south east of the existing silica sand workings at Arclid Quarry and include a full restoration plan for the site once excavations complete.
- 9.5 The land over which runs the existing alignment of the footpath section proposed for diversion by Archibald Bathgate Silica Sand Ltd. would be re-developed on completion of the sand excavations to recreate and re-landscape the excavated area accommodating the proposed diversion route for Arclid FP9.
- 9.6 Referring again to plan No. TCPA/030, the proposed new route would follow a generally southerly direction along Hemmingshaw Lane in a generally south easterly direction (points A-C) after which it would bear in a generally southerly direction to descend into a landscaped area to follow alongside a lake (points C-D). It would then ascend in a generally south easterly direction and then run in a generally easterly direction to a hedge boundary (points D-E-F). It would then bear in generally south westerly and southerly directions along hedge boundaries to terminate at its junction with Public Footpath No. 7 Arclid and Public Footpath No.10 Smallwood (points F-G-H). This proposed new route is shown on the plan by a dashed bold black line between points A-C-D-E-F-G-H.

The new route would have a width of 4 metres throughout and would have a stoned surface. It would be accommodated in part, within a landscaped area that will include views across lakes and undulating rural countryside that should blend within the surrounding landscapes of the area.

- 9.7 Given that the temporary diversion route for Public Footpath No. 9 Arclid has been used by the public for almost 30 years, the proposed diversion route was initially consulted on against this temporary diversion route. However, because after 4th July 2016, this route will no longer exist as the right of way for the public, consultees have also had the opportunity to consider the proposed diversion route against the original definitive route.
- 9.8 The local Councillor has been consulted about the proposal and has registered his support.
- 9.9 Arclid Parish Council has been consulted about the proposal and any comments will be reported verbally.
- 9.10 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.

- 9.11 The user groups have been consulted. Following a site visit with representatives for Archibald Bathgate Silica Ltd. to discuss the proposed diversion route, representatives from the Congleton Group of the Ramblers Association and the Peak and Northern Footpath Society registered that they do not object to the proposal, the former believing it to be the best solution achievable under the circumstances. Separately, the Sandbach Footpath Society registered that they also have no objection to the diversion. No other comments were received.
- 9.12 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 9.13 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would not be significantly less convenient to use than the current route.

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 016D/509