

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 12th September 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. 14 (part),
and Extinguishment of an unrecorded footpath between
Public Footpath no.14 and 15, Parish of Bunbury

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 14 and extinguish an unrecorded footpath, between public footpath no.14 and 15, in the Parish of Bunbury. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion and extinguishment order to be made. The proposal has been put forward by the Public Rights of Way Unit as an application has been submitted by Crabtree Homes of Godscroft House, Godscroft Lane, Frodsham, WA6 6XU on behalf the current landowners Mr and Mrs Goodyer. The application has been made alongside an application for planning consent for:

Planning Application: 16/2010N

Land off Oak Gardens, Bunbury

Outline application for proposed residential development for 15 dwellings with associated works.

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 and extinguish the sections of footpath concerned.

2.0 Recommendations

- 2.1 That an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 14 Bunbury, and extinguish an unrecorded footpath between points H and D, as illustrated on Plan No TCPA/031 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 and extinguishing 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. 14 Bunbury and extinguish an unrecorded footpath as illustrated on Plan No. TCPA/031 to allow for the residential development as detailed within planning reference: 16/2010N.
- 3.3 It is considered that the legal tests for the making and confirming of a Diversion and Extinguishment Order under section 257 of the Town and Country Planning Act 1990 are satisfied.

4.0 Ward Affected

- 4.1 Bunbury

5.0 Local Ward Members

- 5.1 Councillor Michael Jones

6.0 Financial Implications

- 6.1 Not applicable

7.0 Legal Implications

- 7.1 Section 257 of the Town and Country Planning Act 1990 (“TCPA”) (as amended by section 12 of the Growth and Infrastructure Act 2013) 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 Crabtree Homes Ltd on behalf of Mr. and Mrs. Goodyer 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. 14 in the Parish of Bunbury; and also to extinguish an unrecorded footpath which runs between footpath no.14 and 15 in the Parish of Bunbury.
- 9.2 The section of Public Footpath No.14 Bunbury that would be affected by the proposed residential development is shown by a solid black line on Plan No. TCPA/031 running between points A-B-C. The section commences approximately 44 metres from its northern end off Bunbury Lane; at O.S. grid reference SJ 5630 5754 (point A on plan no. TCPA/031). It runs in a generally south westerly direction, for a distance of approximately 70 metres to O.S. grid reference SJ 5624 5750 (Point B on plan no. TCPA/031) then in a generally southerly direction for approximately 34 metres to the junction with Public Footpath No. 15 Bunbury at O.S. grid reference SJ 5624 5747 (Point C on plan no. TCPA/031). A total distance of approximately 104 metres of footpath no.14 Bunbury would be directly affected by the development.
- 9.3 The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-E-F-G-C. The proposed route of the diversion is from point A in a generally south westerly direction for approximately 16 metres to point E, then in a generally south south easterly direction along the eastern boundary of plot 1, it then crosses the access road to point F; it then turns in a south westerly direction and runs adjacent to the access road for a distance of approximately 50 metres to point G, it will then turn in a south south westerly direction adjacent to plot no.15 for approximately 27 metres to point C (on plan no. TCPA/031) where it will join the remainder of footpath no. 14 and footpath no.15 Bunbury. The proposed diversion will have a width of 2.5 metres. The proposed surface would need to be discussed with the developer.

- 9.4 In addition to the diversion there is also an application for the extinguishment of an unrecorded footpath. This path is shown in blue on Plan no. TCPA/031 between points H and D. This footpath is not currently shown on the Definitive Map; there is however a Definitive Map Modification Order Application registered with Cheshire East Council (application no. CN/7/25) for the addition of this route as a public footpath. The modification order application was made in August 2006 by Bunbury Parish Council and based on user evidence. The application has not yet been investigated; it is currently on a waiting list of outstanding applications. However as the claimed footpath cuts through a number of plots within the proposed development the applicants are applying to extinguish this footpath. The total length of footpath proposed to be extinguished between points H and D is approximately 164 metres. With the proposed diversion of footpath no.14 and the retention of the existing route of footpath no. 15 Bunbury, there will remain to be a suitable footpath link around the site.
- 9.5 The land over which the current routes run and over which the proposed route would run is currently owned by Mr and Mrs Goodyer who have consented to the diversion and extinguishment going ahead, on condition that the planning application is granted, at which time, it is intended that Crabtree Homes will acquire the land from Mr and Mrs Goodyer.
- 9.6 Planning permission for the residential development has yet to be granted to Crabtree Homes. The application is cited as Planning Application Ref: 16/2010N. The application is for outline permission for a residential development for 15 dwellings with associated works. It is considered that it is necessary to divert part of footpath no. 14 Bunbury and extinguish the unrecorded footpath to allow for the residential development as detailed within the planning application.
- 9.7 The local Councillor has been consulted about the proposal. No comments have been received.
- 9.8 Bunbury Parish Council has been consulted about the proposal and members have registered an objection on the basis that it will not be required if the development is refused. Officers have explained that current legislation allows for developers to apply for public path diversion/extinguishment Orders prior to the granting of planning permission. If planning permission is refused and the Order is not required then the Order would not be confirmed. If that was the case then their application to modify the Definitive Map would then remain on the waiting list to be determined. Any further comments received from Bunbury Parish Council will be reported verbally.
- 9.9 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.
- 9.10 The user groups have been consulted. No comments had been received at the time of writing.
- 9.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.

- 9.12 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 be no less convenient to use than the current route.

10.0 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: 055D/055E/521