

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 5th December 2016
Report of: Public Rights of Way Manager
Subject/Title: Town and Country Planning Act 1990 Section 257,
Highways Act 1980 Section 118:
Application for the Extinguishment of Public Footpath no.2
(part), Parish of Edleston

1.0 Purpose of Report

- 1.1 The report outlines the investigation to extinguish part of Public Footpath No. 2 in the Parish of Edleston. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for an 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 Bovis Homes of Dunston Hall, Dunston, Stafford. The application has been made following the granting of planning consent for:

Planning Application: 14/5841N

Land south of Queens Drive, Nantwich

Outline application for proposed residential development for 118 dwellings with associated works.

Planning Application: 16/0983N

Application for approval of Reserved Matters following outline approval of application 14/5841N

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 extinguish the section 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 extinguish part of Public Footpath No. 2 Edleston, between points A and B, as illustrated on Plan No TCPA/033 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 2.2 An Order be made under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No. 2 Edleston between points B and C, as illustrated on Plan No. TCPA/033 on the grounds that it is not needed for public use.

- 2.3 Public Notice of the making of the Orders be given and in the event of there being no objections within the period specified, the Orders be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.4 In the event of objections to the Orders 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 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. However in this case the planning permission has already been granted.

- 3.2 It is considered that it is necessary to extinguish part of Public Footpath No. 2 Edleston between points A and B as illustrated on Plan No. TCPA/033 to allow for the residential development as detailed within planning reference: 14/5841N and 16/0983N. It is considered that the legal tests for the making and confirming of an Extinguishment Order under section 257 of the Town and Country Planning Act 1990 are satisfied.
- 3.3 In accordance with Section 118(1) of the Highways Act 1980 it is within the Council's discretion to make an Order if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use. It is considered that Public Footpath No.2 Edleston (part) as shown between points B and C on plan TCPA/033 is not needed for public use; it is a cul-de-sac path and an alternative route is available via Public Footpath no.3 Edleston and Public Footpath no.2 Nantwich, which takes users of the path through to join Queen's Drive. As part of the development there is also proposed pedestrian access from the new estate road to join Public Footpath no.3 Edleston.
- 3.4 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering

whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.3 above, have regard to:

- The extent (if any) to which it appears to him...that the path or way would, apart from the order, be likely to be used by the public, and
- The effect which the extinguishment of the right of way would have as respects land served by the path or way, and
- The material provision of any rights of way improvement plan prepared by any local highway authority which includes land over which the order would extinguish a public right of way.

3.5 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.4 above.

3.6 Although there is currently an outstanding objection to the consultation on this proposal, there is little evidence of the public wishing to use this cul-de-sac route. The proposed development will affect the northern section between points A-B on plan TCPA/033, therefore this will leave a redundant section of footpath approximately 44 metres in length, between points B and C on plan TCPA/033. As discussed in paragraph 3.3, an alternative route is available and it is therefore considered that this section of the path is not needed for public use.

4.0 Ward Affected

4.1 Wrenbury

5.0 Local Ward Members

5.1 Councillor Stan Davies

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.
- 7.3 Likewise with an Order made under section 118 of the Highways Act it may be the subject of objections. If objections are not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.

8.0 Risk Assessment

- 8.1 Not applicable

9.0 Background and Options

- 9.1 Two applications have been received from Bovis Homes Ltd (Northern Region); the first requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to extinguish part of Public Footpath No. 2 in the Parish of Edleston as shown between points A and B on Plan No. TCPA/033. A second application has been made requesting that an Order be made under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No. 2 in the Parish of Edleston as shown between points B and C on Plan No. TCPA/033.
- 9.2 The section of Public Footpath No.2 Edleston that will be affected by the proposed residential development is shown by a solid black line on Plan No. TCPA/033 running between points A and B. The section commences at O.S. grid reference SJ 6458 5164 (point A on plan no. TCPA/033). It runs in a generally southerly direction, for a distance of approximately 93 metres to O.S. grid reference SJ 6458 5155 (Point B on plan no. TCPA/033). The line of the footpath, which currently runs along the edge of a paddock, will be obstructed by two properties and their gardens, a private driveway and it will also run over what will be an adopted highway.
- 9.3 Planning permission for the residential development has been granted. The application is cited as Planning Application Ref: 14/5841N. The application is for outline permission for a residential development for 118 dwellings with associated works. The reserved matters application has also now been granted permission; it is cited as Planning Application Ref: 16/0983N. It is considered that it is necessary to extinguish part of footpath no. 2 Edleston to allow for the residential development as detailed within the planning application.
- 9.4 If an Order is made extinguishing the section of footpath affected by the proposed development (between points A and B on plan no. TCPA/033) then this would leave a section of cul-de-sac path approximately 44 metres in length between points B and C on plan no. TCPA/033. This section of path falls outside of the development area, it is considered to serve no useful purpose to the public. Therefore Bovis Homes have made a second

application requesting that an Order be made under section 118 of the Highways Act 1980, to extinguish the section of public footpath no.2 between points B and C on plan no. TCPA/033; on the grounds that it is not needed for public use. This section currently runs through the garden of the adjacent property 'Laburnum House'; the landowner has stated he has no objection to the proposal for extinguishment. It is believed that this section of footpath no.2 has had very little use by the public as it has been a cul-de-sac path since 1958 when the continuation of the path to the north was stopped up by legal order. The owner of Laburnum House states he has witnessed very few people using the footpath.

- 9.5 As stated in paragraph 3.3 above there are alternative footpaths available. The developer is retaining and improving footpath no's 3 and 4 Edleston on their current alignments and this will form part of the open space area of the development. From point C (on plan no. TCPA/033) there is a route through to Queens Drive via footpath no.3 Edleston and footpath no.2 Nantwich; and there will also be a pedestrian access from the end of the new estate road to link with footpath no.3 Edleston.
- 9.6 The local Councillor has been consulted about the proposal. No comments have been received.
- 9.7 Edleston Parish Council has been consulted about the proposal; no comments have been received at the time of writing.
- 9.8 The statutory undertakers have also been consulted and have no objections to the proposed extinguishment.
- 9.9 The user groups have been consulted. The Ramblers Association representative has responded and has no objections to the proposal. No further comments had been received at the time of writing.
- 9.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 9.11 As stated in paragraph 9.4; above Mr Poulson of Laburnum House has responded and has no objection to the proposal.
- 9.12 Officers have received correspondence from Mr Howell of Queens Drive. He initially contacted Officers in relation to newt wildlife fencing that was blocking footpath no.2 and other footpaths on the development site. That issue has now been resolved with the developers. In an email dated 1st November 2016 Mr Howell states that he uses footpath no.2 Edleston and objects to the proposed extinguishment. He claims that footpath no.2 is not only used but is a valuable route to the stream; he goes on to describe how from the northern end of footpath no.2 he continues to use routes both east and west along the field edge. However, these routes are not shown on the Definitive Map; footpath no.2 has been a cul-de-sac route since the connecting northbound footpath was stopped up by legal order in 1958. Mr Howell also states that he believes the developer wants to make the footpath unusable before any public notice by removing the hedge, making the route less attractive and forming barriers in the way. Mr Howell claims that the

developer has placed boundary marker posts along the footpath obstructing it. Officers have been on site and are satisfied that the marker posts are adjacent to the footpath and are not causing an obstruction. Officers are in contact with the developers who are aware that footpath no.2 must remain open and available for public use.

10.0 Access to Information

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

Officer: Jennifer Tench

Tel No: 01270 686 158

Email: jennifer.tench@cheshireeast.gov.uk

Background Documents: PROW file: 121E/525