

CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

Date of meeting: 12th June 2017

Report of: Public Rights of Way Manager

Title: Town and Country Planning Act 1990 Section 257:
Application for the Diversion of Public Footpath No. 48
(Part) Parish of Haslington

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 48 in the Parish of Haslington. 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 developers Stewart Milne Homes, Harrier House, 2 Lumsdale Road, Cobra Business Park, Trafford Park, Manchester M32 0UT. The application has been made as a consequence of planning approval granted for:

Planning Application: 16/4729N

Reserved Matters Application for the erection of 40 dwellings comprising of 1, 2, 3, 4 and 5 bedroom homes, open space and 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 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. 48 Haslington as illustrated on Plan No. TCPA/039 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. 48 Haslington as illustrated on Plan No. TCPA/039 to allow for the erection of 40 dwellings comprising of 1, 2, 3, 4 and 5 bedroom homes, open space and associated works. The footpath would be directly affected by the housing development as indicated on the attached Development Plan.
- 3.3 No objections have been raised at the informal consultation stage; therefore 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 Haslington

5.0 Local Ward Members

- 5.1 Councillor David Marren and Councillor John Hammond.

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 Stewart Milne Homes ('the Applicant'), 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. 48 in the Parish of Haslington.
- 9.2 Public Footpath No. 48 commences at the junction with the unnamed access road off Close Lane (UY 1476) and Haslington FP 19 at OS grid reference SJ 7771 5584 and runs in a generally south south westerly and south westerly direction to its junction with Haslington FP 20 to the south of Orchard Cottage at O.S. grid reference SJ 7744 5556. The section of this footpath to be diverted is shown by a solid black line on Plan No. TCPA/039 running between points A-B.
- 9.3 The proposed diversion is necessary to accommodate a development of 40 houses and associated infrastructure, see attached Development Plan. Due to the size and layout of the site, it was not possible to retain the footpath on its current alignment. Part of the affected footpath runs through Yew Tree Farm and has been obstructed by outbuildings for many years although there has always been a route available to use. The farm and yard will remain unaffected but the land on three sides will be developed. The diversion will take the footpath to the north western boundary of the site abutting open fields, starting at a point 36 metres further west at its junction with Haslington FP 19 (Point C on Plan TCPA/039). The path will then run in a generally south westerly direction for approximately 200 metres to Point D then turning to run in a generally south easterly direction along the north easterly edge of the proposed public open space then running in a generally southerly direction to re-join the unaffected part of Haslington FP 48 and the site boundary at Point B. A kissing gate will be installed at this point on the site boundary to replace the existing stile.
- 9.4 The proposed route will be constructed to a 2 metre width with timber edging and a compacted stone surface. There will be a 2 metre buffer zone from the base of the adjacent hedge to the north west side of the path. The hedge will be maintained to a height of 1.2 metres. The fence boundaries to the south east side of the path and to the rear and sides of

the adjacent properties will be no higher than 1.8 metres. The maintenance of the footpath and the hedge will be the responsibility of a management company.

- 9.5 Councillors J Hammond and D Marren have been consulted as Ward Councillors. Cllr Hammond has commented that he would support the views of the Parish Council.
- 9.6 Haslington Parish Council has been consulted. No comments have been received
- 9.7 The user groups have been consulted. No comments have been received.
- 9.8 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 146D/534