

# CHESHIRE EAST COUNCIL

## PUBLIC RIGHTS OF WAY COMMITTEE

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**Date of Meeting:** 12<sup>th</sup> June 2017  
**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. 20 (part),  
Parish of Macclesfield

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### 1.0 Purpose of Report

The report outlines the investigation to divert part of Public Footpath No. 20 in the Parish of Macclesfield. 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 Simon Chandler of Chandler Harris LLP on behalf of Belong Ltd, Pepper House, Market Street, Nantwich, Cheshire, CW5 5DQ, to provide a new 30 space surfaced car park (Planning reference: 15/5536M). 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 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 20 Macclesfield, as illustrated on Plan No TCPA/041 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 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, 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 that has been granted.

3.2 It is considered that it is necessary to divert part of Footpath No. 20 Macclesfield as illustrated on Plan No. TCPA/041 to allow for the provision of a 30 space surfaced car park as detailed within planning reference: 15/5536M.

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 Broken Cross and Upton Ward

#### 5.0 **Local Ward Members**

5.1 Councillor S Hardy  
Councillor L Durham

#### 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**

6.1 An application has been received from Mr Simon Chandler of Chandler Harris LLP (agent) on behalf of Belong Ltd, Pepper House, Market Street, Nantwich, Cheshire, CW5 5DQ 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. 20 in the Parish of Macclesfield.

6.2 Public Footpath No. 20 Macclesfield is an urban route with a length of 540 metres. It commences at its junction with Becks Lane at O.S. grid reference SJ 8979 7461 from where it runs in generally south easterly direction across public open space to join Kennedy Avenue. It then runs along Kennedy Avenue in a generally north easterly direction, then Brampton Avenue in a generally east, south easterly direction before joining a footway which continues in a generally east, south easterly direction before bearing in a generally north, north easterly direction between houses to terminate at its junction with Prestbury Road at O.S. grid reference SJ 9022 7458.

The section of path required to be diverted by Belong Ltd. is shown by a solid black line on Plan No. TCPA/041 running between points A-B-C. The

proposed diversion is illustrated with a black dashed line on the same plan, running between points A-D.

- 6.3 The existing alignment of the footpath section proposed for diversion by Belong Ltd. would be directly affected by development of the car park as shown by the solid black line on Plan No. TCPA/041 running between points A-B-C.

The land over which the current route runs and over which the proposed route would run is entirely owned by Cheshire East Council and written agreement for the diversion proposal has been secured from the Council.

- 6.4 Planning permission was granted to Mr Nigel Franklin, Belong Construction Ltd on 19<sup>th</sup> August 2016. The application is cited as Planning Permission Ref: 15/5536M. The details of the application are 'To provide a new 30 space surface car park'.

- 6.5 With regard to the development sought by Belong Ltd., the use of the land over which the ascribed sections of footpath run will change from public open space to a car park. Therefore, it is necessary to realign the footpaths via diversion such that the car park can be constructed and a satisfactory right of way for the public, preserved.

- 6.6 Referring to Plan No TCPA/041, the proposed new route would start at within the public open space (point A) and would then follow a direct line along the western perimeter of the car park in a generally south, south easterly direction to terminate at its junction with Kennedy Avenue (point D).

The new route would have a width of 2 metres and would have a grass surface. It would be approximately 4 metres shorter than the current route.

- 6.9 The local Councillors have been consulted about the proposal. Councillor Durham welcomed the proposal. No other comments have been received.

- 6.10 Macclesfield Parish Council has been consulted about the proposal. No comments have been received.

- 6.11 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.

- 6.12 The user groups have been consulted. No objections have been received. The Peak and Northern Footpath Society registered that they do not object to the proposal.

- 6.13 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.

- 6.14 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 than the current route.

#### **10.00 Access to Information**

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

Officer: Marianne Nixon

Tel No: 01270 686 077

Email: [marianne.nixon@cheshireeast.gov.uk](mailto:marianne.nixon@cheshireeast.gov.uk)

Background Documents: PROW file 207D/506