

# 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's 4 and 5  
(parts), Parish of Haslington

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### 1.0 Purpose of Report

The report outlines the investigation to divert parts of Public Footpath No's 4 and 5 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 a response to a planning application. The application has been submitted by Mrs Olivia Starkey of Wright Marshall (agent) on behalf of the Cheshire Farm Service of Cheshire East Borough Council, HQ First Floor, 58, Nicholas Street, CH1 2NP, for conversion of existing traditional farm buildings at Hall O' the Heath Farm into three residential units (Planning reference: 16/5835N). 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 parts of Public Footpath No's 4 and 5 Haslington, as illustrated on Plan No TCPA/040 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 parts of Public Footpath No's 4 and 5 Haslington as illustrated on Plan No. TCPA/040 to allow for the conversion of the farm buildings as detailed within planning reference: 16/5835N.
- 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 Haslington

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

- 5.1 Councillor J Hammond  
Councillor D Marren

#### **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 Mrs Olivia Starkey of Wright Marshall (agent) on behalf of the Cheshire Farm Service of Cheshire East Borough Council, HQ First Floor, 58, Nicholas Street, CH1 2NP requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert parts of Public Footpath No's 4 and 5 in the Parish of Haslington.
- 6.2.1 Public Footpath No 4 Haslington commences at its junction with Public Footpath No's 1 and 3 Haslington at O.S. grid reference SJ 7460 5567 and runs in generally south easterly direction for a distance of approximately 662 metres crossing pastureland and then passing between buildings of Hall o' the Heath Farm to its junction with Public Footpath No 5 Haslington. Thereafter, it follows a generally south,

south easterly direction along tracks and pasture land for a distance of approximately 835 metres to terminate at its junction with Butterson Lane (B5077) at O.S. grid reference SJ 7537 5450.

The section of this footpath required to be diverted by the Cheshire Farm Service is shown by a solid black line on Plan No. TCPA/040 running between points A-B-C. It commences at a kissing gate in a field boundary (point A) and runs in a generally south, south easterly direction to pass between farm buildings to its junction with Public Footpath No 5 Haslington (point B). It then runs in a generally south, south westerly direction to exit the farm along an access track which it follows to its termination point at its junction with Haslington FP 35 (point C).

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

- 6.1.2 Public Footpath No. 5 Haslington commences at its junction with Holmshaw Lane at O.S. grid reference SJ 7530 5560 and runs in generally south, south westerly direction for a distance of approximately 447 metres across pastureland and then between buildings of Hall o' the Heath Farm terminating at its junction with Public Footpath No 4 Haslington at O.S. grid reference SJ 7508 5523.

The section of this path required to be diverted by Cheshire East Council is shown by a solid black line on Plan No. TCPA/040 running between points E-B. It commences on the farm access track (point E) and then enters the farm to run through the farm yard between the farm buildings in generally south, south westerly, then south, south easterly, then southerly and then south westerly directions to its junction with Public Footpath No 4 Haslington (point B).

The section of this path required to be diverted by Cheshire East Council is shown by a solid black line on Plan No. TCPA/040 running between points E-B.

The proposed diversion of this path is illustrated with a black dashed line on the same plan, running between points E-F-A.

- 6.3 The existing alignments of the footpath sections proposed for diversion by the Cheshire Farm Service of Cheshire East Borough Council would be directly affected by the development of the residential property.

The land over which the current routes run and over which the proposed routes would run is entirely owned by Cheshire East Borough Council.

- 6.4 Planning permission was granted to the Cheshire East Borough Council on 24<sup>th</sup> March 2017. The application is cited as Planning Permission Ref: 16/5835N. The details of the application are for the conversion of Hall 'o the Heath Farm to form three new residential units.

6.5 With regard to the development sought by Cheshire Farm Service, the use of the land over which the ascribed sections of footpath run will change from farm operations to residential usage of communal areas and gardens. Therefore, it is necessary to realign the footpaths via diversion such that the residential development can go ahead.

6.6 The proposed diversion route would be composed of new sections of Public Footpaths 4 and 5 Haslington and would skirt the western perimeter of the development boundary as follows:

The new route for the section of Haslington FP5 would start at point E along the current farm access track and would run along the outside of the development boundary in a generally westerly direction to point F and then in a generally south westerly direction crossing two field boundaries via kissing gates to terminate immediately after the second kissing gate at its junction with Haslington FP4 (point A).

The new route for the section of Haslington FP4 would start at its junction with the new route of Haslington FP5 at point A and would continue to follow the development boundary in a generally south, south westerly direction to the south western corner of the development boundary where it would enter a final field via a kissing gate (point D) to cross the field in a generally south easterly direction to terminate immediately after a kissing gate where it would join the current route of Haslington FP5 at its junction with Public Footpath No 35 Haslington (point C).

The new route would have a width of 2 metre and would have a grass surface.

6.9 The local Councillors have been consulted about the proposal. Councillor Marren commented that if the diversion is to prevent the footpath going through a farm yard, it seems very sensible. No other comments have been received.

6.10 Haslington 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 comments have been received.

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 convenience 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 146D/533