

Public Rights of Way Committee

Date of Meeting: 10 September 2018

Report Title: Town and Country Planning Act 1990 s257 Application for the Diversion of Public Footpath No. 4 (part), Parish of Peover Superior

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 4 in the Parish of Peover Superior. 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 team as a response to a planning application. The diversion application has been submitted by Mr B Kettle (agent) of Wharfe Rural Planning on behalf of Mr D Cox (applicant) of Paradise House, Holmes Chapel Road, Over Peover, to apply for permission to construct an agricultural barn (Planning reference: 16/2659M).
- 1.2. 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.
- 1.3. A diversion of part of the above footpath has been requested since the current path alignment has been obstructed by the development of an agricultural barn that has not been built in the location granted within the planning permission. Consequently the Council's Planning Enforcement team stopped the applicant from further developing the barn until the applicant sought to divert the footpath or to relocate the partly built barn which is not substantially complete.
- 1.4. The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer", and the

policies and objectives of the Council's statutory Rights of Way Improvement Plan.

2. 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. 4 in the Parish of Peover Superior, as illustrated on Plan No TCPA/050 on the grounds that the 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 Act.
- 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. Reasons for Recommendation/s

- 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

- 3.2 Thus the Council, as the Local 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 before that permission is granted. It can also take this action in response to a non-compliance with a planning permission that results in a development being incorrectly positioned such that its footprint then lies on a footpath, providing that the development is not substantially complete.
- 3.3 In this case, the permission as granted positioned the agricultural barn on a footprint that would not affect Public Footpath No. 4 in the Parish of Peover Superior. However, the barn has been partially constructed in a position where it does affect this footpath such that on completion, the barn would obstruct the footpath. In response, the Council, as the Local Planning

Authority, took enforcement action to prevent any further construction of the barn until either the barn was moved to the correct location or until the footpath was diverted. The decision was taken by the applicant to divert the footpath.

- 3.4 It is considered necessary, to divert part of Public Footpath No. 4 in the Parish of Peover Superior as illustrated on Plan No. TCPA/050 to enable the construction of an agricultural barn to be completed as detailed within planning reference: 16/2659M but in its as-built location.
- 3.5 The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

4. Other Options Considered

- 4.1. Not applicable – this is a non-executive matter.

5. Background

- 5.1. An application has been received from Mr B Kettle (agent) of Wharfe Rural Planning on behalf of Mr D Cox (applicant) of Paradise House, Holmes Chapel Road, Over Peover, requesting that the Council make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 4 in the Parish of Peover Superior.
- 5.2. Public Footpath No. 4 Peover Superior commences at its junction with Holmes Chapel Road (A50/DB/10) at O.S. grid reference SJ 7592 7310 and runs in a generally north westerly direction to the yard of Paradise House through which it passes to exit into pastureland across which it continues in a generally west, south westerly and then westerly directions to terminate at its junction with Free Green Lane at O.S. grid reference SJ 7558 7317. In total, the footpath covers a distance of approximately 387 metres.
- 5.3. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/050 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points A-D-C. The lengths of these path sections differ by approximately 3 metres.
- 5.4. The land over which both the section of path to be diverted and the diversion route run are owned by the applicant.
- 5.5. Planning permission for the construction of the agricultural barn was granted to Mr D Cox on 28th June 2016. The application is cited as Planning

Permission Ref: 16/2659M. The details of the application are for the construction of an agricultural barn.

- 5.6. The existing alignment of Public Footpath No. 4 Peover Superior would be obstructed by the agricultural barn should it be completed since the barn has been placed incorrectly such that its footprint is on the footpath (see section 3.1). A diversion is required to preserve the right of way for the public between Holmes Chapel Road and Free Green Lane.
- 5.7. Referring again to Plan No. TCPA/050, the part of Peover Superior FP4 proposed for diversion passes through the yard of the applicant's property, across the footprint of the partly built barn, in a generally west, north westerly direction (points A-B) and then exits into a pasture field to then follow a generally west, south westerly direction to terminate within the field (point C).
- 5.8. The proposed diversion route would move the footpath such that it runs to the south of the barn. The new route would start at point A and run in a generally west, north westerly direction to exit the yard of the applicant's property (point D) into the pasture field where it would then follow a generally westerly direction to terminate on rejoining the current route in the pasture field (point C).
- 5.9. The new route would be 2 metres wide throughout and have a surface consisting in part a semi-surfaced track, and part grass.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1 Once an Order is made 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.

6.2. Finance Implications

- 6.2.1 If objections to the Order lead to a subsequent hearing/inquiry, this legal process would have financial implications for the Council.

6.3. Policy Implications

- 6.3.1 There are no direct policy implications.

6.4. Equality Implications

- 6.4.1 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current one.

6.5. Human Resources Implications

- 6.5.1 There are no direct implications for human resources.

6.6. Risk Management Implications

- 6.6.1 There are no direct implications for risk management.

6.7. Rural Communities Implications

- 6.7.1 There are no direct implications for rural communities.

6.8. Implications for Children & Young People

- 6.8.1 There are no direct implications for children and young people.

6.9. Public Health Implications

- 6.9.1 There are no direct implications for public health.

7. Ward Members Affected

- 7.1 Chelford Ward: Councillor George Walton has been consulted and responded to register support for the response from Peover Superior Parish Council.

8. Consultation & Engagement

- 8.1. Consultation is currently ongoing to consider the proposal against the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990. The consultation is due to be completed on Friday 7th September 2018. A verbal update will be presented to the Committee.
- 8.2. Peover Superior Parish Council has been consulted and, at the time of writing, no comments have been received directly.
- 8.3. The user groups have been consulted and, at the time of writing, no objections have been registered. The Peak and Northern Footpath Society registered support for the proposal and the North and Mid Cheshire Ramblers requested that adequate signage be installed.

- 8.4. The North Cheshire Riders Group proposed that the footpath be upgraded to a bridleway to enable riders to more safely access Public Bridleway No. 9 in the Parish of Peover Superior. Currently, from Free Green Lane, riders must use the A50 to connect to this bridleway. The Council responded that this upgrade could not be considered as part of this diversion application as it is outside the scope of the diversion process. However, even if it were possible to do so, this could not be achieved unless all landowners over whose land the footpath crossed, were in agreement.
- 8.5. The statutory undertakers have been consulted and, at the time of writing, have raised 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
- 8.6. The Council's Nature Conservation Officer has been consulted, at the time of writing no comments have been received.

9. Access to Information

- 9.1. The background papers of file No. 239D/566 relating to this report can be inspected by contacting the report writer.

10. Contact Information

- 10.1. Any questions relating to this report should be directed to the following officer:

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