

## **Public Rights of Way Committee**

---

**Date of Meeting:** 10 September 2018

**Report Title:** Town & Country Planning Act 1990 Section 333(7), Application for Variation of Town and Country Planning Act 1990 Section 257 Cheshire East Borough Council (unrecorded Footpath Church Lane, Parish of Wistaston) Public Path Diversion Order 2017.

**Senior Officer:** Frank Jordan, Executive Director Place

---

### **1. Report Summary**

1.1. The report outlines the investigation to vary part of the Town and Country Planning Act 1990 Section 257 Cheshire East Borough Council (unrecorded Footpath Church Lane, Parish of Wistaston) Public Path Diversion Order 2017. This includes a discussion of the consultations carried out in respect of the proposal and the legal tests to be considered for the variation of the diversion Order to be made. The proposal has been put forward by the Public Rights of Way Team as an application has been submitted by Mr Clarke of Bloor Homes North West, 2-4 Whiteside Business Park, Station Road, Holmes Chapel, Cheshire, CW4 8AA in response to the following reserved matters application being granted:-

**Planning Application 17/6042N** - *'Application for the approval of details of the appearance, landscaping, layout and scale being matters reserved under approval APP/R0660/W/15/3136524 (14/3024N).'*

- 1.2 The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not a Variation Order should be made to the 2017 Diversion Order of the section of footpath concerned.
- 1.3 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. Recommendation**

- 2.1. A Public Path (Variation) Order be made under section 333(7) of the Town and Country Planning Act 1990 to vary the Cheshire East Borough Council (unrecorded Footpath Church Lane, Parish of Wistaston) Public Path Diversion Order 2017 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 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 being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

## **3. Reasons for Recommendation**

- 3.1 In accordance with Section 257 of the Town and Country Planning Act 1990 ("TCPA") 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 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, providing that the application has been formally registered with the Council.
- 3.3 Section 333(7) of the Act provides the Council with the authority to make a Public Path (Variation) Order provided the same procedures and consultations are carried out under which the Order was originally made.
- 3.4 The Variation Order is required following changes made to the layout of the site by the developer in their approved reserved matters planning application.

#### **4. Other Options Considered**

- 4.1. A Public Path Variation Order as opposed to a further Diversion Order is considered to be the most appropriate course of action.

#### **5. Background**

- 5.1. On 12th June 2017 the Public Rights of Way Committee, following an informal consultation, resolved to make a Diversion Order (attached as Appendix 1 to this report) to the previously unrecorded footpath now known as Wistaston Footpath No.17. The Order was duly made, signed and sealed on 22<sup>nd</sup> June 2017 and confirmed on the 24<sup>th</sup> August 2017. The original line of the unrecorded footpath rights are shown on plan TCPA/048 by a solid black line between points A-B-C-D-E-F. The rights were acknowledged by a former developer (Gladman Development Ltd) and diverted under the TCPA to the new alignment to accommodate the layout of a proposed housing development and infrastructure that would have directly impacted upon the unrecorded footpath rights.
- 5.2. The diverted alignment of Footpath No. 17 Wistaston commences at its junction with Public Footpath No.2 shown as point G on plan TCPA/048 and extends in a generally westerly and south westerly direction for a distance of approximately 220 metres to point H (plan TCPA/048) before turning to run in a generally southerly direction for approximately 235 metres (point I on plan TCPA/048). It then continues in a generally easterly direction to its junction with Public Footpath No.1 Wistaston shown at point J on plan TCPA/048 and running to the rear of the houses on Church Lane (K on plan TCPA/048) for a distance of approximately 214 metres to point L on the same plan at its junction with Public Footpath No. 2. Footpath No.17 is shown by a bold black dashed line between points G -H-I-J-K-L (on plan TCPA/048).
- 5.3. A Variation Order is now required to reflect the slight changes identified in the practical alignment of Public Footpath No.17 in the 2017 Order, as the development proposals now consented by the reserved matters application have altered slightly from those originally proposed (by Gladman Development Ltd) at the outline stage.
- 5.4. The proposed variation of the diverted path is shown by a bold blue dashed line between points M-N-H-I on plan TCPA/048. The proposed Variation Order will not significantly change the nature, widths, surface or general orientation of Wistaston Footpath No.17 as detailed by the 2017 Diversion Order but will instead alter the practical alignment of several sections of the footpath shown on the 2017 Diversion Plan and amend the description contained in Schedule 2 of the 2017 Diversion Order to reflect those changes.

- 5.5. The Variation Order, therefore, would amend the diversion alignment on the 2017 Order Plan, firstly along the western most extents of the path (as shown by the black dashed line between points I-H on plan TCPA/048) and associated with the reserved matters conditions that were approved in July of this year. As it stands the existing line of the path at this point conflicts with several small bodies of water that require a minimum 8 metre undeveloped buffer zone, deemed necessary to mitigate the impact of the development upon protected species and the biodiversity of the area. The proposed Variation would therefore move the alignment of the path between those points approximately 8 metres to the east of its current alignment and the ponds as shown by the bold blue dashed line also between points I-H on plan TCPA/048. Part 2 of the 2017 Order Schedule describing this section of the path would also be amended to reflect the slight change in distance between points I-H (on plan TCPA/048). In line with the 2017 Diversion Order this section of the path will continue to be 2 metres wide and have a surface of self binding gravel with timber edging.
- 5.6. The second proposed variation to the 2017 Order would be to slightly amend the Order Plan between points H-N (shown by the bold black dashed line on plan TCPA/048). This variation would align the path to what was agreed in the approved reserved matters application as shown by the blue dashed line between points H-N (on plan No. TCPA/048). Part 2 of the Order schedule describing this section of the path would also be amended to reflect the variation. The general orientation, width and surface of the path would remain the same as previously described by the 2017 Diversion Order.
- 5.7. The third proposed variation would amend the northern alignment of the path as shown by the bold black dashed line between points N-G on plan TCPA/048 to the line shown by the bold blue dashed line on the same plan between points N-M. The amendment would reposition the path in line with the approved changes to the reserved matters application. The effect of this variation would be to move that section of the path approximately 8 metres to the south of its current alignment. Both the 2017 Diversion Order Plan and the description in Part 2 of the Order Schedule would be amended to reflect this variation. Again the general orientation, width and surface of this section of the footpath would remain the same as that previously described by the 2017 Diversion Order.

## **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 or Public 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 or 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 There are no direct equality implications.

## **6.5 Human Resources Implications**

- 6.5.1 There are no human resource implications.

## **6.6 Risk Management Implications**

- 6.6.1 There are no direct risk management implications.

## **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 Councillors Margaret Simon and Jacqueline Weatherill have been consulted about this application and no comments have been received.

## **8 Consultation & Engagement**

- 8.1 The User Groups, Statutory Undertakers, local residents and the Council's Nature Conservation Officer have been consulted and have raised no objections.

## **9 Access to Information**

- 9.1** The background papers relating to this report and the 2017 Diversion Order 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:

Name: Sarah Fraser

Job Title: Public Path Orders Officer

Email: [sarah.fraser@cheshireeast.gov.uk](mailto:sarah.fraser@cheshireeast.gov.uk)