

Public Rights of Way Committee

Date of Meeting: 11 March 2019

Report Title: Town and Country Planning Act 1990 s 257 Application for the Extinguishment of Public Footpath No. 14 (part), Parish of Sandbach

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to extinguish part of Public Footpath No. 14 in the Parish of Sandbach. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for an extinguishment order to be made. The proposal has been put forward by the Public Rights of Way team as an application has been submitted by Persimmon Homes (North West) Ltd., 30 – 34 Crofts Bank Road, Urmston, Manchester. The application has been made following the granting of outline planning consent and subsequent consent for reserved matters relating to the first phase of a residential development:

Outline Planning Application: 12/4874C

Land off Hawthorne Drive, Sandbach, Cheshire, CW11 4JH

'Outline application for residential development, comprising 50 homes, including 15 affordable homes to include an area of public open space and a children's play area.'

Permission granted: 20th November 2013

Reserved Matters Application (first development phase): 13/5239C

Reserved Matters following Outline Approval (12/4874C) for residential development, comprising 50 homes, including 15 affordable homes to include an area of public open space and a children's play area (accompanied by an Environmental Statement).

Permission granted: 10th July 2015.

For information, the second phase of this development is detailed within the following planning application:

Reserved Matters Application (second development phase): 13/5242C

Residential development comprising 138 dwellings, access and associated works (accompanied by an Environmental Statement).

Permission granted: 13th October 2017

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 extinguish the section of footpath concerned.

- 1.2. 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/s

- 2.1. That an Order be made under Section 257 of the Town and Country Planning Act 1990 to extinguish part of Public Footpath No. 14 Sandbach, between points A and B, as illustrated on Plan No. TCPA/055 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, 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:

“Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway 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 granted under Part 3 “

- 3.2 It is considered that it is necessary to extinguish part of Public Footpath No. 14 in the Parish of Sandbach between points A and B as illustrated on Plan No. TCPA/055 to allow for the residential development as detailed within planning references: 12/4874C and 13/5239C. It is considered that the legal test for making and confirming of an Extinguishment Order under section 257 of the Town and Country Planning Act 1990 are satisfied.
- 3.3 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.
- 3.4 Where there are no outstanding objections, it is for the Council to confirm the Order.
- 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 Persimmon Homes (North West) Ltd, requesting the Council make an order under section 257 of the Town and Country Planning Act 1990 to extinguish part of Public Footpath no.14 in the Parish of Sandbach as shown between points A and B on Plan No. TCPA/055.
- 5.2. The section of Public Footpath No.14 Sandbach that will be affected by the proposed residential development is shown by a solid black line on Plan No. TCPA/055 running between points A and B. The section commences at O.S. grid reference SJ 7668 6080 (point A on plan No. TCPA/055) and runs in a generally north easterly direction for a distance of approximately 63 metres to O.S. grid reference SJ 7672 6085 (point B on plan No. TCPA/055). The line of the footpath, which ran through pasture fields, will be obstructed by a house and run across gardens and parking spaces.
- 5.3. The Planning permissions for the residential development have been granted. The application for outline permission is cited as Planning Application Ref: 12/4874C, granted on 20th November 2013, and the application for permission of reserved matter relating to this outline application is cited as Planning Application Ref: 13/5239C, granted on 10th July 2015. Permission for both applications has been granted to Persimmon Homes (North West) Ltd, to construct a residential

development, comprising of 50 homes and including 15 affordable homes to include an area of public open space and a children's play area. This forms the first phase of the development. It is considered necessary to extinguish part of Public Footpath No. 14 Sandbach to allow for the residential development that would otherwise obstruct the footpath, to go ahead as detailed within these planning applications.

- 5.4. For information, permission for a second phase has also been granted for development of a further 138 dwellings (Planning Application Ref: 15/5242C) but this will not affect the current alignment of Public Footpath No. 14 Sandbach.
- 5.5. If an Order is made extinguishing the section of footpath affected by the proposed development (between points A and B on Plan No. TCPA/055), it is recognised that this will result in two cul-de-sac paths running between Hawthorn Drive and point A, and between point B to Mill Lane, such that the full length will no longer be legally available for public use. However, the two paths will be legally connected again in due course by a section of the new estate road, Larch Drive, once it is formally adopted by the Council.

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. Equality Implications

- 6.3.1. There are no direct policy implications.

6.4. Human Resources Implications

- 6.4.1. There are no direct implications for human resources.

6.5. Risk Management Implications

- 6.5.1. There are no direct implications for risk management.

6.6. Rural Communities Implications

6.6.1. There are no direct implications for rural communities.

6.7. Implications for Children & Young People

6.7.1. There are no direct implications for children and young people.

6.8. Public Health Implications

6.8.1. There are no direct implications for public health.

7. Ward Members Affected

Sandbach Heath and East: Councillor Sam Corcoran was consulted and opposes the application to extinguish the footpath

His objection is on the basis that this course of action is a denigration of the existing provisions and benefits provided by this footpath.

He was under the impression that when the Persimmon development was proposed, he thought that the footpath route would have to be resolved before any plans were approved. However, work has already started on the site and to date; he received several complaints from residents about restricted access on Public Footpath No14 Sandbach.

He is of the opinion that this proposal seems as if it is being treated as a fait accompli by Persimmon.

He stated that if we are to tackle climate change and have truly sustainable development then we need to have cycling and walking at the heart of development – not as an afterthought.

There is a planning condition that the developer offers an alternative route to bypass the closed path. It appears that this condition is being waived without any benefit to the community.

The developers must show some benefit to the community if the planning condition is to be waived and the footpath extinguished.

It is acknowledged that the development would result in a loss to the community of a valuable rural footpath but within the scope of the TCPA legislation for a footpath extinguishment, this aspect cannot be considered. However, eventually, a legal right of way would exist for the public between Hawthorn Drive and Mill Lane on a footway alongside a new estate road.

The impact on the footpath by the development and any mitigation action taken to include the footpath within the development cannot be considered against the current proposal to extinguish a section of this footpath to enable the development to go ahead. Such matters were for consideration at the time the planning application was being determined. The Public Rights of Way team submitted holding objections as consultees of the planning department until a proposal was made to deal with the affected section of Public Footpath No.14 Sandbach.

The requirements of the planning permission cannot be considered within the scope of the extinguishment procedure as both the planning and extinguishment procedures are legally separate and one cannot influence the other.

The Developer has applied to the Council under Section 257 of the Town and Country Planning Act 1990 for the footpath to be extinguished between points A and B.

The test within Section 257 of the Town and Country Planning Act 1990 is whether the Council is satisfied that it is necessary to authorise the stopping up or diversion of any footpath, bridleway or restricted byway to enable development to be carried out in accordance with planning permission granted.

8. Consultation & Engagement

- 8.1. The consultation period ends on Friday 8th March 2019 and any comments received once this report has been written, will be presented verbally at the Committee meeting. At the time of writing, the following comments had been received.
- 8.2. Sandbach Town Council has been consulted and registered objection stating:

'Members object to sections of footpath in Sandbach being swallowed up by the development and would prefer to see the footpath diverted. Members would agree to a diversion of the footpath'.

The decision to create a route for the section of Sandbach Footpath 14 affected by this development was a matter for resolution during the planning process. As such, the Public Rights of Way team were consulted during that process but, given the outline plan presented at that time, submitted holding objections until the developer sought to extinguish the footpath section since there was no option to divert it within the development, to a new alignment. This situation did not change and as a

result, the planning consent now demands that the developer seeks to extinguish the footpath section as detailed within this report.

It is recognised that much of the alignment of this footpath will be lost as it will be absorbed within the higher rights of the new estate road, Larch Drive, once the road is adopted as a legal Highway. As a result, despite the fact that the route from Hawthorn Drive to Mill Lane will change from a rural route to an urban footpath, eventually, a legal right of way between the two highways will be provided for the public.

8.3 The user groups have been consulted. Other than the the Open Spaces Society (OSS), no objections have been received. The OSS have registered objection on the basis that:

a) the developer failed to use the provisions within the Town and Country Planning Act to address issues relating to Public Footpath No.14 Sandbach that were raised in two separate objections placed by the Public Rights of Way team when this team were consulted on the initial planning application.

It was explained that the two objections from the Public Rights of Way team were holding objections placed against the development until a proposal was made to resolve the issues relating to the footpath that would enable the development to go ahead. The extinguishment that is proposed, resolves the issues by removing the section of footpath that would otherwise be unlawfully obstructed by the development.

b) creating two cul de sac paths must be illegal given that the route will only become legal again once the estate road is adopted.

It is not illegal to extinguish a section of footpath to leave two cul de sac paths when the reason for doing so is that it is necessary for the development to go ahead. This is not an illegal situation.

c) by superimposing the estate road onto the public footpath from point B to the boundary of the development site, fails to comply with the DEFRA guidelines.

The DEFRA guidelines relating to placing footpaths on roads, states the following:

7.8 In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose where possible and preference

should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.

Whilst the Council endeavours to comply with the best practice as set out within these guidelines they are not relevant in this instance since the footpath section between point B to the boundary of the development site is not being diverted onto a road.

8.4 The statutory undertakers have been consulted and have raised no objections to the proposed extinguishment. If an extinguishment order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

8.5 The Council's Nature Conservation Officer has been consulted, no comments have been received.

9. Access to Information

9.1. The background papers of file No. 262E/574 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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