

CHESHIRE EAST COUNCIL

REPORT TO: PUBLIC RIGHTS OF WAY COMMITTEE

Date of meeting: 10 June 2010
Report of: Greenspaces Manager
Title: Town and Country Planning Act 1990 Section 257
Application for the Diversion of
Public Footpath No. 24 (Part) Parish of Disley

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 24 in the Parish of Disley. 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 planning approval granted to United Utilities for the construction of a new spillway at Bollinhurst Reservoir. 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.

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. 24, Disley as illustrated on Plan No. TCPA/002 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. 24 Disley as illustrated on Plan No. TCPA/002, to allow for the construction of a new spillway to Bollinhurst Reservoir. Planning consent was granted on the 15th January 2010 by Cheshire East Council; reference number 09/3537M.
- 3.3 Informal consultations have elicited no 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 Bollington and Disley

5.0 Local Ward Members

- 5.1 Councillor Harold Davenport, Councillor Matthew Davies and Councillor Diana Thompson.

6.0 Financial Implications

- 6.1 Not applicable

7.0 Legal Implications

- 7.1 s257 of the Town and Country Planning Act 1990 ("TCPA") allows the council to make and confirm orders authorising the stopping up or diversion of a footpath 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. There are requirements of public notice and if objections are received to the proposed order and not withdrawn, the order must be submitted to the Secretary of State for confirmation, who must either call for a local inquiry or give the objectors an opportunity of being heard before making his decision. This would require attendant legal involvement and use of resources. It follows that the Committee decision may be confirmed or not confirmed.
- 7.2 The procedure in making an order is detailed in Schedule 14 to the TCPA and the Town and Country Planning (Public Path Orders) Regulations 1993, which are made under the TCPA.

8.0 Risk Assessment

- 8.1 Not applicable

9.0 Background and Options

- 9.1 An application has been received from United Utilities ('the Applicant') 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. 24 in the Parish of Disley.

- 9.2 Public Footpath No. 24 Disley commences at Cock Head Farm at OS grid reference SJ 9725 8371 and runs in a generally east south easterly direction to its junction with Mudhurst Lane (C413) at OS grid reference SJ 9821 8291. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/002 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points C-B.
- 9.3 The existing alignment of the footpath would be directly affected by the construction of the new spillway which is required in the interests of safety. The land is entirely owned by United Utilities.
- 9.4 Planning permission was granted to the applicant on 15th January 2010. The application is cited as Planning Permission Ref: 09/3537M. The details of the decision notice are for a new Reservoir Spillway, Borrow Pit area for obtaining spill material use in the embankment stability works, new permanent access road, new Fisherman's hut and temporary access from Red Lane; These works will ensure the safety of the Reservoir during times of flooding.
- 9.5 Part of the current line of Public Footpath No.24 Disley (A-B) lies directly under the site of the construction of part of the new spillway as shown on the plan submitted by the applicant. In addition due to the location of the new spillway, the access road, which is required by operatives to undertake maintenance works on the reservoir must be moved and fenced off. Part of the existing footpath, FP24 Disley, would run along this boundary and therefore within the fenced area. Therefore, the footpath diversion is required to provide public access outside the United Utilities operational area. The length of footpath proposed to be diverted is approximately 123 metres.
- 9.6 The proposed route for the footpath is approximately 118 metres long and would move the footpath to the north of its current location out of the area of construction and across the same pasture field. It would require a kissing gate where it leaves Footpath no. 22.
- 9.7 The local Councillors have been consulted about the proposal.
- 9.8 Disley Parish Council have been consulted about the proposal and responded to state that they have no objections.
- 9.9 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.
- 9.10 The user groups have been consulted.
- 9.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 9.12 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be easier to use due to the replacement of a stile with a kissing gate.

10 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 108D/440