

## **Public Rights of Way Committee**

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**Date of Meeting:** 9th September 2019

**Report Title:** Wildlife & Countryside Act 1981 – Part III, Section 53.  
Application No. CN/7/30: Application to claim public footpath rights forming a circular route at 'Witters Field' linking Public Footpath. No. 2 Wistaston at two separate points.

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

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### **1. Report Summary**

- 1.1. The report outlines an application made by Mr F. P. Alcock to amend the Definitive Map and Statement by the addition of a Public Footpath. The footpath which is the subject of this application forms a circular route around a field that was the subject of a planning application that has since received planning consent for development. As it was deemed necessary to divert the footpath to enable the development to be carried out, an Order was made under section 257 of the Town and Country Planning Act 1990 (T.C.P.A 1990). After the Reserved Matters application was approved it was clear that the original diversion proposal could not be accommodated so a Variation Order, under s.333 of the T.C.P.A 1990 was made to slightly vary the alignment. This Order has now been confirmed and certified and consequently the footpath now legally exists if on a different alignment to that which was claimed. The application for the Definitive Map Modification Order, however, must still be determined by the Committee.
- 1.2. The recommendation is consistent with 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. The application to modify the Definitive Map and Statement to record public footpath rights between points A-B-C-D-E-F as shown on plan number

WCA/019 be refused on the grounds that the footpath has been legally recorded through a Diversion and Variation Order process.

### **3. Reasons for Recommendation/s**

- 3.1. The footpath which is the subject of the application has been diverted by a legal Order made under The Town and Country Planning Act 1990 section 257 and s.333. As public pedestrian rights have been acknowledged and recorded through this process, the premise of the claim has been achieved. It is therefore recommended that the application is refused.
- 3.2. The recommendation is consistent with 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. In July 2015 Mr Alcock made an application under section 53 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of a Public Footpath. The route applied for began at a point on Footpath No.2 Wistaston to the north west of Church Lane and ran in a generally westerly direction crossing Footpath No. 1, then in a northerly direction and finally in a generally easterly direction re-crossing Footpath No.1 to reconnect with Public Footpath No. 2, approximately 207 metres to the north west of the starting point of the path, forming a circular route around the field. The total length of the route was approximately 836 metres. The route is shown between points A-B-C-D-E-F on Plan No. WCA/019. The application was supported by 10 user evidence forms.
- 5.2. Due to a backlog of Definitive Map Modification Order (DMMO) applications, the application was not investigated straight away but was registered and placed on a waiting list of outstanding applications. However in September 2016 an Appeal was granted by the Secretary of State following the refusal of planning application ref No. 14/3024N by the Council. This brought this item to the top of the list as it is the policy of the Public Rights of Way team to deal with applications that are threatened by development as a priority.
- 5.3. Following meetings and discussions between Officers and the developers an application to divert the claimed path was submitted in January 2017 under the Town and Country Planning Act 1990 section 257. The application was required as the approved outline development proposal would directly affect

the claimed route. The proposal sought to move the path further to the perimeter of the field. There were a significant number of objections to the proposal relating to the wish to see the footpath run to the rear of the existing properties on Church Lane thereby forming a buffer with the new development. The item was deferred by the Public Rights of Way Committee on the 13<sup>th</sup> March 2017 and an amended proposal was consulted on and approved by Committee on the 12<sup>th</sup> June 2017.

- 5.4. A Public Path Diversion Order was made under s.257 of the T.C.P.A. 1990 on the 22<sup>nd</sup> June 2017 and subsequently received one objection which was later withdrawn allowing the Order to be confirmed on the 24<sup>th</sup> August 2017. The footpath was recorded as Wistaston Public Footpath No. 17.
- 5.5. However when the reserved matters application for the site was made, the route of the diverted path was found to require some slight amendments in alignment along the western and northern edges of the site to fit with the required layout of the site. Consequently a Variation Order under s. 333 of the T.C.P.A. 1990 was consulted on and made on the 29<sup>th</sup> November 2018. This Order varied some of the alignment and detail of the confirmed public path diversion order.
- 5.6. Throughout the diversion order and variation order processes the applicant, Mr Alcock, was consulted and is therefore aware that the premise of the claim has been achieved, if by other legal means.
- 5.7. The route as set out in the Variation Order has since been constructed on the ground and therefore this Order was certified and confirmed on the 21<sup>st</sup> February 2019. Footpath No. 17 is now legally recorded on the Definitive Map and Statement.

## **6. Implications of the Recommendations**

### **6.1. Legal Implications**

- 6.1.1. Under section 53 of the Wildlife & Countryside Act 1981 (WCA 1981), the Council has a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53 (3) (c) allows for an authority to act on the discovery of evidence that suggests that the Definitive Map needs to be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a Definitive Map Modification Order or not.
- 6.1.2. Upon determination of this application, the authority must serve notice on the applicant to inform them of the decision. Under Schedule 14 of the WCA 1981, if the authority decides not to make an order, the applicant may, at any time within 28 days after service of the notice, appeal against the decision to

the Secretary of State. The Secretary of State will then consider the application to determine whether an order should be made and may give the authority directions in relation to the same.

## **6.2. Finance Implications**

6.2.1. There are no direct financial implications.

## **6.3. Policy Implications**

6.3.1. There are no direct policy implications.

## **6.4. Equality Implications**

6.4.1. The legal tests under section 53 of the Wildlife and Countryside Act 1981 do not include an assessment of the effects under the Equality Act 2010.

## **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.

## **6.10. Climate Change Implications**

6.10.1 There are no direct implications for climate change.

## **7. Ward Members Affected**

7.1. Councillors M Simon and J Weatherill, Wistaston Ward, have been consulted, no comments have been received.

## **8. Consultation & Engagement**

8.1. Wistaston Parish Council have been consulted and no comments have been received.

**9. Access to Information**

- 9.1. The background papers relating to this report can be inspected by contacting the Officer below.

**10. Contact Information**

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

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