

Public Rights of Way Committee

Date of Meeting: 09 March 2020

Report Title: Town and Country Planning Act 1990 Section 257 Proposed Diversion of Public Footpath Hatherton No. 8 (Part)

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. This report outlines the investigation to divert part of Public Footpath No. 8 in the Parish of Hatherton. This includes a discussion of the consultations carried out in respect of the proposal and the legal tests to be considered for a diversion Order to be made under the Town and Country Planning Act 1990. The proposal has been put forward by the Public Rights of Way team on behalf of Joseph Heler Farms, as a response to a planning application that has recently been approved by the Council's Planning Department, for a **Cold Store Extension (Planning Application No. 19/2086N)**.
- 1.2. The report makes a recommendation based on that information, for a quasi-judicial decision by Members as to whether or not a diversion Order should be made for that section of public footpath.
- 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/s

- 2.1. A public path diversion Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 8 in the Parish of Hatherton on grounds that the Cheshire East 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, and in the event that

planning consent has been granted, 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/s

- 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 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 public footpath if it is satisfied that it is necessary to do so to enable development to be carried out, provided a planning application has been formally registered with the Council.

- 3.3 It is considered that it is necessary to divert part of Footpath No. 8 in the Parish of Hatherton, as illustrated on Plan No. TCPA/059, to allow for the extension to the Cold Store as detailed within planning reference: 19/2086N.

4. Other Options Considered

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

5. Background

- 5.1. An application has been received from Joseph Heler Farms requesting that the Council make an Order under section 257 of the Town and Country Planning Act 1990 to divert a section of Public Footpath No. 8 in the Parish of Hatherton to enable a cold store extension.
- 5.2 The land over which the current route runs and over which the proposed route would run is owned by Joseph Heler Farms.

- 5.3 Planning permission was granted, subject to conditions, on 11 September 2019. The application is cited as Proposed Cold Store Extension at Laurels Farm, Crewe Road, Hatherton, CW5 7PE (Application No. 19/2086N).
- 5.4 Public Footpath No. 8 Hatherton commences at its junction with Crewe Road (B5071) at O.S. grid reference SJ 6866 4735 and runs in a generally easterly and then generally southerly direction to its junction with Public Footpath No. 9 Hatherton at O.S. grid reference SJ 6966 4666 for a distance of approximately 1316 metres. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/059 running between points A-B. It has a grass surface with no path furniture. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-B.
- 5.5 The existing alignment of the footpath will be directly affected by the Cold store extension as illustrated on Drawing No. 5412.05 Rev D. It is proposed to divert approximately 136 metres of the route.
- 5.6 The proposed line for the footpath is a short diversion curving round in a south easterly direction, following the boundary of the cold store extension for approximately 151 metres (points A-B on Plan No. TCPA/059). It will be unenclosed with a grass surface, no path furniture and a width of two metres. The path will have 2.5 metre 'grass strips' on either side and there will be a 2.5 metre native shrub mix border along the full length of the eastern boundary and the majority of the western boundary, as indicated on Drawing No. 5412.05 Rev D.

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 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 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.

6.10. Climate Change Implications

- 6.10.1 The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.
- 6.10.2 The work of the Public Rights of Way team encourages a reduction in carbon emissions and increased environmental sustainability by reducing energy consumption and promoting healthy lifestyles through active travel

Ward Members Affected

- 6.11. Councillor Janet Clowes from the Wynbunbury ward has been consulted. No comments have been received.

7. Consultation & Engagement

- 7.1. Hatherton Parish Council have been consulted, no comments have been received.

- 7.2. The user groups have been consulted. The Peak and Northern Footpaths Society have responded to state that they do 'not have any concerns about the proposed diversion' and 'will not object to this Order if made'.
- 7.3. The Open Spaces Society object to the proposed width of two metres for the diverted route. Two metres is the Cheshire East Council's Public Rights of Way team standard width for unenclosed diverted footpaths. This has been the policy, and accepted by user groups, utility companies and landowners/applicants, for many years. A two metre footpath is an appropriate width for a public footpath in this environment, providing adequate width for two users to pass. The Open Spaces Society also object on the basis that one of the stays for the pylon adjacent to the path at its northern end will encroach onto it. Drawing No. 5412.05 Rev D illustrates that the stay is 2 metres from the centre of the path and does not encroach onto its width.
- 7.4. Statutory Undertakers have been consulted. Cadent and National Grid have no objection to the proposal.

8. Access to Information

- 8.1. The Background papers and file 148D/582 relating to this report can be inspected by contacting the report writer.

9. Contact Information

- 9.1. Any questions relating to this report should be directed to the following

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