

Public Rights of Way Committee

Date of Meeting: 08 June 2020

Report Title: Town and Country Planning Act 1990 Section 257 Proposed Diversion of Public Footpath Aston Juxtra Mondrum No. 5 (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. 5 in the Parish of Aston Juxtra Mondrum. 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 MJ and MC Thomasson, as a response to a planning application that has been approved by the Council's Planning Department, for a **Milking Parlour (Planning Application No. 18/4485N)**.
- 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. 5 in the Parish of Aston Juxtra Mondrum 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. 5 in the Parish of Aston Juxtra Mondrum as illustrated on Plan No. TCPA/063, to allow for the Milking Parlour as detailed within planning reference: 18/4485N.

4. Other Options Considered

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

5. Background

- 5.1. An application has been received from MJ and MC Thomasson 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. 5 in the Parish of Aston Juxtra Mondrum to enable a new Milking Parlour to be built.
- 5.2 The land over which the current route runs and over which the proposed route would run is owned by MJ and MC Thomasson.

- 5.3 Planning permission was granted, subject to conditions, on 13 December 2018. The application is cited as 'Milking Parlour' at Aston Lower Hall, Dairy Lane, Aston Juxtra Mondrum, CW5 6DS (Application No. 18/4485N).
- 5.4 Public Footpath No. 5 Aston Juxtra Mondrum commences at its junction with Dairy Lane at O.S. grid reference SJ 6396 5633 and runs in a generally north westerly and then generally westerly direction to O.S. grid reference SJ 6341 5649 for a distance of approximately 603 metres. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/063 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 C-B.
- 5.5 The existing alignment of the footpath will be directly affected by the Milking Parlour as illustrated on 'Sheet 1', a plan from the consented planning application. It is proposed to divert approximately 450 metres of the route.
- 5.6 The diverted footpath will be approximately 426 metres and unenclosed. It will have a grass surface, comparable to the existing route, and a two metre width. It will begin at a location on Dairy Lane approximately 97 metres south of the current path, connecting with Aston Juxtra Mondrum Footpath No. 1. There is a layby at this location on Dairy Lane which provides a safer exit point for walkers than the current definitive line, which exits directly onto the road. There is also a stile at this location which will be replaced with a kissing gate, thereby improving accessibility for users.

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 Sarah Pochin from the Bunbury Ward has been consulted. No comments have been received.

7. Consultation & Engagement

- 7.1. Worleston and District Parish Council have been consulted, no comments have been received.
- 7.2. The user groups have been consulted. No comments have been received.

- 7.3. Statutory Undertakers have been consulted. United Utilities and National Grid have no objection to the proposal.

8. Access to Information

- 8.1. The Background papers and file 021D/589 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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