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<b>Date of Meeting:</b>	13 <sup>th</sup> September 2021
<b>Report Title:</b>	Highways Act 1980 s119 Public Path Diversion Order, Henhull Footpath No. 4 (part) Informative Report
<b>Report of:</b>	Brendan Flanagan, Head of Service, Rural and Cultural Economy
<b>Ward(s) Affected:</b>	Bunbury

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## **1. Executive Summary**

- 1.1. This report is to inform the Committee that an unopposed Order made to divert part of Henhull Public Footpath No. 4 under section 257 of the Town and Country Planning Act 1990 (TCPA 90 s257) had to be abandoned and the same diversion of this footpath is now being progressed under section 119 of the Highways Act 1980 (HA80 s119) for reasons set out in this report.
- 1.2. The work of the Public Rights of Way team contributes to the three Corporate Plan aims “We will provide strong community leadership and work transparently with our residents, businesses and partners to deliver our ambition in Cheshire East”, “We aim to reduce inequalities, promote fairness and opportunity for all and support our most vulnerable residents” and “We will lead our communities to protect and enhance our environment, tackle the climate emergency and drive sustainable development”.

## **2. Recommendation/s**

- 2.1. That the content of this report be noted and minuted. No committee decision is required.

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

- 3.1. To formally note that the unopposed Order made to divert part of Henhull Public Footpath No. 4 under TCPA 90 s257, has been abandoned and the same diversion is now being progressed under HA80 s119. The reason is that the developers breached the legal test of the diversion under TCPA 90 s257.

### **4. Other Options Considered**

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

### **5. Background**

- 5.1. In 2017, an application was received from Mr K Coyne of Taylor Wimpey (North West Ltd), Washington House, Birchwood Park, Warrington, WA3 6GR on behalf of a consortium of housing developers (the north west divisions of Taylor Wimpey, Redrow Homes Ltd and David Wilson Homes) requesting the Council make an Order under section 257 of the Town and Country Planning Act 1990 to divert parts of Public Footpath No. 4 in the Parish of Henhull.
- 5.2. The current alignments of the parts of Henhull Footpath No. 4 proposed for diversion, originally ran across grassland. This land was secured for residential development for which planning consent was granted on 20<sup>th</sup> January 2016 permitting construction of a residential development now known as Kingsbourne, on land between Waterlode and Mill Lane, Nantwich and comprising of 1,100 houses with associated business and community assets (Planning Permission reference: 13/2471N).
- 5.3. The Council progressed the diversion proposal under section 257 of the Town and Country Planning Act 1990, and the proposal was approved by the Public Rights of Way Committee on 12<sup>th</sup> March 2018.
- 5.4. The subsequent Order remained unopposed following formal advertising and the next stage of the diversion process was for the developers to install the new diversion routes.
- 5.5. In December 2020, a site visit revealed that a house, part of a garage and garden, had been built on the current alignment of one of the footpath sections proposed for diversion, and residents had moved in and were living there. This meant that development had already gone ahead before the footpath had been diverted. This situation does not meet the legal test of the TCPA 90 s257 legislation which is that it is necessary to firstly divert public right(s) of way affected by the development, so that when the planned development goes ahead, it does not cause obstruction to the public right(s)

of way. In obstructing part of Henhull Footpath No.4 by building the house and garage on the path alignment, the developers have breached the legal test and consequently voided the diversion.

5.6. Consequently, the developers abandoned the diversion of parts of Henhull Footpath No. 4 under TCPA 90 s257 and re-applied for the same diversion to be progressed under the HA80 s119. The diversion is shown on the attached plan titled 'Proposed diversion of parts of Henhull FP4'.

5.7. Currently, the pre-Order consultation stage is ongoing and once concluded, the diversion will be decided accordingly, either through this Committee or via delegated decision. Therefore, the Committee will be informed at a later date of the outcome of this current proposal under HA80 s119, either once decided by the delegated decision process or, if it needs to be presented and considered by the Committee members before they make the decision.

## **6. Consultation & Engagement**

6.1 Bunbury Ward: Councillor Sarah Pochin has been consulted as part of the ongoing pre-Order consultation.

6.2 Statutory and local user groups and statutory undertakers have been consulted as part of the ongoing pre-Order consultation.

## **7. Implications of the Recommendations**

### **7.1 Legal Implications**

7.1.1 There are no legal implications.

### **7.2 Finance Implications**

7.1.2 There are no financial implications.

### **7.3 Policy Implications**

7.3.1 There are no direct policy implications.

### **7.4 Equality Implications**

7.4.1 There are no direct equality implications.

### **7.5 Human Resources Implications**

7.5.1 There are no direct human resources implications.

### **7.6 Risk Management Implications**

7.6.1 There are no direct risk management implications.

## 7.7 Rural Communities Implications

7.7.1 There are no direct implications for rural communities.

## 7.8 Children and Young People/Cared for Children

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

## 7.9 Public Health Implications

7.9.1 There are no direct implications for public health.

## 7.10 Climate Change Implications

7.10.1 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.

7.10.2 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.

<b>Access to Information</b>	
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Appendices:	N/A
Background Papers:	The background papers relating to this report can be inspected by contacting Marianne Nixon and quoting the following file references:  File No. 154D/553 – original diversion under TCPA 90 s257  File No. 154D/595 - ongoing diversion under HA80 s119