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| <b>Date of Meeting:</b>  | 6 <sup>th</sup> December 2021   |
| <b>Report Title:</b>     | Town and Country Planning Act 1990 s257<br>Application for the Diversion of Public Footpath No's 43<br>and 46 (parts), Parish of Poynton with Worth |
| <b>Report of:</b>        | Jayne Traverse, Executive Director Place  |
| <b>Ward(s) Affected:</b> | Poynton West and Adlington  |

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## 1. Executive Summary

- 1.1. The report outlines the investigation to divert part of Public Footpath No's 43 and 46 in the Parish of Poynton with Worth. 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 team as an application has been received by a developer following a planning consent. This application was originally submitted by Persimmon Homes to apply for permission to build 133 residential properties on land off Hazelbadge Road with associated access improvements, landscaping and public open spaces (Planning reference: 17/6471M). The permission was inherited by Elan Homes on purchase of the land from Persimmon Homes.
- 1.2. 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 divert the section of footpath concerned.
- 1.3. Diversion of parts of the above footpaths has been requested since their current alignment would otherwise be obstructed by several of the residential properties within the development.
- 1.4. 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 an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No’s 43 and 46 in the Parish of Poynton with Worth, as illustrated on Plan No TCPA/067 on the grounds that the 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 Act.
- 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. Reasons for Recommendation/s**

- 3.1. In accordance with Section 257 of the Town and Country Planning Act 1990 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 in England of any footpath, bridleway or restricted byway if they are satisfied that—

an application for planning permission in respect of development has been made under Part 3, and 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. Thus the Council, as the Local 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, providing that the application has been formally registered with the Council.
- 3.3. It is considered necessary to divert part of Public Footpath No’s 43 and 46 in the Parish of Poynton with Worth as illustrated on Plan No. TCPA/067 to enable the residential development to go ahead as detailed within Planning Application: 17/6471M.
- 3.4. The proposal contributes to the Corporate Plan aims ‘Open’, ‘Fair’ and ‘Green’, 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. An application has been received from Elan Homes, requesting that the Council make an Order under section 257 of the Town and Country Planning Act 1990 to divert parts of Public Footpath No's 43 and 46 in the Parish of Poynton with Worth.

5.2. Public Footpath No. 43 Poynton with Worth commences at its junction with Public Footpath No. 46 Poynton with Worth at O.S. grid reference SJ 9136 8396 and meanders in a generally north easterly direction, initially enclosed between fencing and then, on passing through a kissing gate, unenclosed across pastureland to terminate at its junction with Restricted Byway No. 39 in the Parish of Poynton with Worth, at O.S. grid reference SJ 9149 8421. In total, the footpath covers a distance of approximately 347 metres.

5.3. Public Footpath No. 46 Poynton-with-Worth commences on Hazelbadge Road at O.S. grid reference SJ 9116 8417 and runs in a generally northerly direction along the road to enter an enclosed fenced footpath. At its junction with Public Footpath No. 43 Poynton-with-Worth, it forks left in a generally north westerly direction and on passing through a kissing gate, then runs unenclosed, across the same pastureland to terminate at its junction with Restricted Byway No. 39 in the Parish of Poynton-with-Worth at O.S. grid reference SJ 9137 8378. In total, the footpath covers a distance of approximately 467 metres.

5.4. The land over which run both the sections of footpath to be diverted and the diversion routes, are owned by the applicant.

5.5. Persimmon Homes bought the land off Hazelbadge Road for development and were granted planning permission on 2<sup>nd</sup> November 2020 for 133 residential properties on land off Hazelbadge Road with associated access improvements, landscaping and public open spaces (Planning reference: 17/6471M).

5.6. In August 2021, Elan Homes purchased the land from Persimmon Homes and inherited the planning permission (Planning reference: 17/6471M) accordingly.

5.7. The existing alignments of the footpath sections proposed for diversion by Elan Homes will be directly obstructed by several residential properties within their

development. Referring to Plan No. TCPA/067, the footpath sections to be diverted are colour coded.

### **Diversion of part of Public Footpath No 43 in the Parish of Poynton-with-Worth**

- 5.8. The section of this footpath to be diverted is shown by a solid **red** line on Plan No. TCPA/067 running between points A-B-C-D. The proposed diversion of this footpath is illustrated with a **red** dashed line on the same plan, running between points A-E-F.
- 5.9. The section of Public Footpath No 43 in the Parish of Poynton-with-Worth to be diverted starts just before a kissing gate into a pasture field to the north (point A). From this point, it runs between fencing in a generally southerly direction to point B, and then a westerly direction to point C, and then in a southerly direction to terminate at its junction with Public Footpath No 46 in the Parish of Poynton-with-Worth (point D).
- 5.10. It is proposed that this footpath section be diverted to align mainly through landscaped areas where it would be unenclosed. Starting at point A and running in a generally southerly direction to point E and then in a generally westerly direction adjacent to Hazelbadge Road, to terminate at its junction with Hazelbadge Road at point F.

### **Diversion of part of Public Footpath No.46 in the Parish of Poynton-with-Worth**

- 5.11. The section of this footpath to be diverted is shown by a solid **purple** line on Plan No. TCPA/067 running between points G-D-H. The proposed diversion of this footpath is illustrated with a **purple** dashed line on the same plan, running between points G-I-J.
- 5.12. The section of Public Footpath No 46 in the Parish of Poynton-with-Worth to be diverted starts just before a kissing gate into a pasture field to the north (point G). From this point, it runs between fencing in a generally south easterly direction to point D, and then in a southerly direction to terminate on Hazelbadge Road at point H.
- 5.13. It is proposed that this footpath section also be diverted to align mainly through landscaped areas where it would be unenclosed. Starting at point G and running in a generally easterly direction to point I and then in a generally south easterly direction to terminate at its junction with the proposed route for Public Footpath No 43 in the Parish of Poynton-with-Worth at point J.
- 5.14. Both new routes would have a surface of buff coloured, self binding gravel that will be timber edged to a width of 2.0 metres.

## 6. Consultation & Engagement

- 6.1. Poynton West and Adlington Ward: Councillor Michael Beanland and Councillor Mike Stuart have been consulted. No comments have been received.
- 6.2. Poynton Town Council has been consulted and registered that members have no objection to the diversion proposals.
- 6.3. Relevant to the proposal, the town council members requested that suitable provision should be made during construction of the new footpaths to ensure that members of the public can continue to access them safely. It was explained that the developer would need to formally close the current public footpaths for a period of time whilst the development was constructed, including the new diversion routes, but an alternative route for the public would be provided by the developer whilst the public footpaths through the development site were formally closed.
- 6.4. The town council members also requested that the two kissing gates on the northern boundary of the site on Public Footpath No's 43 and 46, should be of sufficient dimensions that it is possible to get a bicycle through them easily as both of these paths lead ultimately to the A555 bypass and may be used by people for cycling. It was explained that it is illegal to cycle along a public footpath and as such, kissing gates to enable passage for cyclists would be inappropriate.
- 6.5. The user groups have been consulted.
- 6.6. The East Cheshire Ramblers registered no objection to the diversion proposals and noted that the proposed route is 'off-road', and passes through attractive green areas of the site. Concern was expressed regarding possible impact on the diversion route for Poynton-with-Worth Footpath No 43 if Poynton Brook were to flood or to erode the river bank. It is considered by the developer that there is sufficient distance between the proposed new route and the riverbank not to be of concern, and site investigations support this.
- 6.7. Further inspection of the riverbank will be undertaken during the winter months by the developer and should any areas of erosion be identified, the developer will seek to enter into discussions with the Lead Local Flood Authority (LLFA) to agree suitable erosion mitigation measures.
- 6.8. No other comments were received.
- 6.9. An Environmental Protection Officer from the council registered no objection with the diversion proposal although may need to look at the proposed

surfacing and perhaps request some soil sampling in that area to satisfy any concerns relating to a claim that the land may be contaminated.

- 6.10. The Peak and Northern Footpath Society (PNFS) submitted a number of queries relating to the proposed diversion.
- 6.11. Similarly, to the East Cheshire Ramblers, members of the PNFS raised concerns about flood risks and potential erosion of the riverbank, and possible future problems that could affect the diversion route (points A – E on plan no. TCPA/067) for Poynton-with-Worth FP43. The height of the new route above the brook was also questioned. A similar response was given to that for the East Cheshire Ramblers.
- 6.12. It was also confirmed to PNFS that there is no intention to connect Poynton-with-Worth Footpath No 43 with Poynton-with-Worth Footpath No 88 at present.
- 6.13. This is the correspondence to date with the PNFS. Any further comments received will be reported verbally at the committee meeting. At the time of writing, the Society had not registered any objection to the proposed diversion.
- 6.14. The statutory undertakers have been consulted have raised 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.
- 6.15. The Council's Nature Conservation Officer has been consulted, and no comments have been received.

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

### **7.1 Legal Implications**

7.1.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the 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.

### **7.2 Finance Implications**

7.1.2 If objections to the Order lead to a subsequent hearing or inquiry, this legal process would have financial implications for the Council.

### **7.3 Policy Implications**

7.3.1 There are no direct policy implications.

#### **7.4 Equality Implications**

7.4.1 An assessment in relation to the Equality Act 2010 has been carried out and it is considered that the proposed diversion would be no less convenient to use than the current one.

#### **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.

**Access to Information**

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| Contact Officer:   | Marianne Nixon, Public Path Orders<br><a href="mailto:marianne.nixon@cheshireeast.gov.uk">marianne.nixon@cheshireeast.gov.uk</a><br>01270 686 077              |
| Appendices:        | Plan No. TCPA/067  |
| Background Papers: | The background papers relating to this report can be inspected by contacting Marianne Nixon and quoting the following file reference:<br><br>File No. 247D/596 |