

Public Rights of Way Sub Committee

Date of Meeting:	1 st August 2022
Report Title:	Town and Country Planning Act 1990 Section 257 Proposed Diversion of Public Footpath No. 3 in the Parish of Henhull
Report of:	Jayne Traverse, Executive Director Place
Report Reference No:	<i>To be confirmed by Democratic Services</i>
Ward(s) Affected:	Bunbury

1. Purpose of Report

- 1.1.** The report outlines the investigation to divert part of Public Footpath No. 3 in the Parish of Henhull following receipt of an application from a developer.
- 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 work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

2. Executive Summary

- 2.1.** This report outlines the investigation to divert part of Public Footpath No. 3 in the Parish of Henhull. 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 Town and Country Planning Act 1990.

- 2.2.** The recommendation will be that a Public Path Diversion Order be made under Section 257 of the Town and Country Planning Act 1990 on the grounds that Cheshire East Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.

3. Recommendations

- 3.1.** A Public Path Diversion Order be made under Section 257 of the Town and Country Planning Act 1990 on the grounds that Cheshire East Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.
- 3.2.** 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.
- 3.3.** In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

4. Reasons for Recommendations

- 4.1.** 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.”

- 4.2.** 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.
- 4.3.** It is considered that it is necessary to divert part of Footpath No. 3 in the Parish of Henhull as illustrated on Plan No. TCPA/074, to allow for the replacement of an existing 3 rail timber fence, as detailed within planning application reference 21/4557N.

5. Other Options Considered

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

6. Background

- 6.1.** An application has been received from Malbank School and Sixth Form College requesting that the Council make an Order under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 3 in the Parish of Henhull as it is deemed necessary to allow for the replacement of an existing timber fence with 2.4m steel fencing, as detailed within planning application reference 21/4557N.
- 6.2.** Public Footpath No. 3 in the Parish of Henhull commences at its junction with Welshmans Lane (C518/A) and runs for approximately 440 metres in a generally south easterly direction to its junction with the parish boundary of Nantwich.
- 6.3.** The existing alignment of Public Footpath No. 3 in the Parish of Henhull will be directly affected by the construction of a new steel fence, therefore the diversion is required to preserve the public right of way. The associated planning application, 21/4557N, has been approved.
- 6.4.** The length of Public Footpath No. 3 in the Parish of Henhull to be diverted is shown as a bold black line on Plan No. TCPA/74 between points A-B. It commences at point A and continues in a generally south easterly direction for approximately 200 metres across the grass playing fields of Malbank School to Point B. The definitive line is currently obstructed by the sports field and has one stile where the highway verge meets the current boundary fence. Although the definitive line is currently obstructed, users can walk the proposed diversion route.
- 6.5.** The proposed diversion of Public Footpath No. 3 in the Parish of Henhull is shown as a dashed black line between points A-C-D. It commences at point A where the proposed diversion will now run alongside the sports field in a southerly direction for approximately 180 metres to point C. It will be enclosed at a width of approximately 8 metres with the footpath being 2.5 metres wide, this section will have a grass surface. The diversion will then run from point C to Point D in a generally easterly then north easterly direction for approximately 108 metres, the path will run over a grassed area before making use of an existing tarmac track.
- 6.6.** The proposed diversion now meets the highway verge of Waterlode (B5341/D/01) at a new location at point D. The current definitive line of Public

Footpath No. 3 in the Parish of Henhull predates the construction of Waterlode and as such is recorded as crossing the road, and is therefore proposed to be stopped up as part of this diversion. Users will still have the right to cross the road here as it is an adopted highway so no rights are lost. Safe crossing points can be accessed by walking north east or south west depending on the direction of onward travel. The Cheshire East Highways team have also agreed that the current barrier that runs north east of point D is no longer needed and they will either install a gap to make the crossing point more accessible or remove the barrier.

7. Consultation and Engagement

- 7.1. The Ward Member for Bunbury, Acton, Edleston and Henhull Parish Council, the user groups, statutory undertakers, and the Council's Nature Conservation Officer have been consulted and at the date of the writing of this report have raised no objections. Any comments received subsequently will be reported verbally to the Committee.

8. Implications

8.1. Legal

- 8.1.1. 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.

8.2. Finance

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

8.3. Policy

- 8.3.1. There are no direct policy implications.

8.4. Equality

- 8.4.1. 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.

8.5. Human Resources

- 8.5.1. There are no direct human resource implications.

8.6. Risk Management

8.6.1. There are no direct risk management implications.

8.7. Rural Communities

8.7.1. There are no direct implications for rural communities.

8.8. Children and Young People/Cared for Children

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

8.9. Public Health

8.9.1. There are no direct implications for public health.

8.10. Climate Change

8.10.1. 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.

8.10.2. The diversion of the Public Footpath would enable better access to the public rights of way network by members of the public on foot with the potential for the improvement and promotion of active healthy lifestyles and wellbeing.

Access to Information	
Contact Officer:	Laura Allenet – Public Path Orders Officer Laura.allenet@cheshireeast.gov.uk 01270 686053
Appendices:	Plan No. TCPA/074 and developers plan
Background Papers:	The background papers and file relating to the report can be inspected by contacting the report writer.