

## **Public Rights of Way Sub Committee**

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<b>Date of Meeting:</b>	1 <sup>st</sup> August 2022
<b>Report Title:</b>	Town and Country Planning Act 1990 Section 257 Proposed Diversion of Public Footpaths No. 2 in the Parish of Leighton.
<b>Report of:</b>	Jayne Traverse, Executive Director Place
<b>Ward(s) Affected:</b>	Leighton

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### **1. Purpose of Report**

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 2 in the Parish of Leighton 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. 2 in the Parish of Leighton. 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. 2 in the Parish of Leighton as illustrated on Plan No. TCPA/071, to allow for the construction of up to 400 dwellings and associated infrastructure, as detailed within planning references 20/3210N.

## **5. Other Options Considered**

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

## **6. Background**

- 6.1.** An application has been received from Knights Plc. on behalf of Torus62 Developments 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. 2 in the Parish of Leighton as it is deemed necessary to allow for the construction of up to 400 new dwellings and the associated infrastructure.
- 6.2.** Public Footpath No. 2 in the Parish of Leighton commences at its junction with Moss Lane (UY1445/B) and runs for approximately 715 metres in a generally westerly direction to its junction with Flowers Lane (B5076).
- 6.3.** The existing alignment of Public Footpath No. 2 in the Parish of Leighton will be directly affected by the construction of a new road and associated infrastructure, therefore the diversion is required to preserve the public rights of way.
- 6.4.** The length of Public Footpath No. 2 in the Parish of Leighton to be diverted is shown as a bold black line on Plan No. TCPA/71 between points A-B. It commences at point A and continues in a generally westerly direction for approximately 285 metres across an open pasture field to point B. At point B, the definitive line is obstructed by a hedge but a permissive route is available and goes through a kissing gate in the hedge.
- 6.5.** The proposed diversion of Public Footpath No. 2 in the Parish of Leighton is shown as a dashed black line between points A-C-D-B. It commences at point A where there is an existing footbridge, and will continue in a generally north westerly direction for approximately 65 metres to point C. It will then continue in a generally westerly direction for approximately 230 metres to point B. The section of the route between points D and B is to be diverted instead of being accommodated on its current definitive line in order to allow the route to pass through the existing kissing gate and around the existing trees that will form part of the landscaping, thereby resolving the anomaly.
- 6.6.** There are two road crossings along the proposed diversion and the best efforts, within the consented planning layout, have been taken to keep the proposed diversion from running along the estate roads, with only 65 metres out of 295 metres doing so. The path will be surfaced with tarmac and runs mainly through an open green space with a width of 2 metres throughout. Dropped kerbs will be installed at the road crossing.

## **7. Consultation and Engagement**

- 7.1. The ward member for Leighton, Minshull Vernon and District Parish Council, the user groups, statutory undertakers, and the Council's Nature Conservation Officer have been consulted and have raised no objections.

## **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.

<b>Access to Information</b>	
Contact Officer:	Laura Allenet – Public Path Orders Officer <a href="mailto:Laura.allenet@cheshireeast.gov.uk">Laura.allenet@cheshireeast.gov.uk</a> 01270 686053
Appendices:	Plan No. TCPA/071
Background Papers:	The background papers and file relating to the report can be inspected by contacting the report writer.