

## **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<br>Proposed Diversion of Public Footpath Moston 7Y (Part) |
| <b>Report of:</b>        | Jayne Traverse, Executive Director Place   |
| <b>Ward(s) Affected:</b> | Brereton Rural   |

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

- 1.1. This report outlines the investigation to divert part of Public Footpath No. 7Y in the Parish of Moston 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. 7Y in the Parish of Moston. 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 Taylor Wimpey, as a response to a planning application that has been approved by the Council’s Planning Department. Consent was granted to Taylor Wimpey to redevelop land off Booth Lane, Moston, on which Albion

Inorganic Chemicals was previously located, and to construct up to 375 residential homes together with commercial, industrial and retail businesses and other associated infrastructure, and public open space.

### **3. Recommendations**

- 3.1. 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. 7Y in the Parish of Moston 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.
- 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 as a consequence of the granting of planning consent, 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—

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.”

- 4.2. 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.
- 4.3. It is considered necessary to divert part of Public Footpath No. 7Y in the Parish of Moston as illustrated on Plan No. TCPA/072, to enable the development of residential homes and businesses with associated infrastructure and public open space as detailed within planning references 09/2083C, 14/4218C and 14/4212C.

## **5. Other Options Considered**

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

## **6. Background**

- 6.1. An application has been received from Taylor Wimpey 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. 7Y in the Parish of Moston, to enable the residential development detailed within the decision notices granting consent for the initial and subsequently revised outline plan, and the reserved matters.
- 6.2. The initial outline planning consent (planning reference 09/2083C) for development of the land on which Albion Inorganic Chemicals was previously located, was granted on 14<sup>th</sup> May 2014 to Bluefield (Sandbach) Ltd, a company that undertakes development of building projects. Thereafter, following purchase of this land, on 27<sup>th</sup> February 2015, Taylor Wimpey was granted consent for a revision of the outline plan (planning reference 14/4218C) and associated reserved matters (planning reference 14/4212C).
- 6.3. Taylor Wimpey were also granted consent for the change of use of an area within the land, under the name of 'Yew Tree Farm complex', for residential and non-residential development in the future.
- 6.4. Public Footpath No. 7Y Moston commences at its junction with Booth Lane at O.S. grid reference SJ 7314 6274 and runs in a generally north, north easterly direction to O.S. grid reference SJ 7326 6288. It then bears in generally south, south easterly, then east, north easterly and then north westerly, directions before returning, at O.S. grid reference SJ 7328 6290, to the generally north, north easterly direction to continue over the railway to its termination point at the parish boundary of Moston and Bradwall at O.S. grid reference SJ 7334 6303. Moston Footpath No. 7Y runs for a total distance of approximately 437 metres.
- 6.5. The section of path to be diverted lies to the south of the railway within the development and is shown by an orange line on Plan No. TCPA/072 running between points A-B-C-D-E-F. The proposed diversion is illustrated with a blue dashed line on the same plan, running between points A-G-H-I-J-F.
- 6.6. Referring to Plan No. TCPA/072, the rear gardens of residential homes situated between points D-E-F will obstruct the current footpath. It is therefore considered necessary to realign the footpath via the diversion proposal such

that it passes outside the gardens and preserves the right of passage for the public.

6.7. Furthermore, the consented road layout will run across parts of the current footpath (see points a-b and c-C on Plan No. TCPA/072). The diversion will take users away from the road network within the development, reducing interaction with vehicular traffic and preserving the footpath rights separate from those of the roads, so the rights will then exist independently of each other, and one will not be subsumed into the other.

6.8. The diversion will by default, resolve an obstruction issue caused by the placement of an electricity sub-station on the current footpath alignment between points C-D on Plan No. TCPA/072.

6.9. Within the development is an area shown edged in green on the plan for which Taylor Wimpey has outline planning consent to redevelop. However, the company did not include it within the reserved matters planning application and as such the area comprising Yew Tree Farm, a listed property, will not be developed under the current reserved matters planning consent. However, it is the future intention of the developer that the building and land will be redeveloped. Plans for this are currently under consideration but until reserved matters planning consent has been applied for and consented for this area specifically, then any intentions in this area cannot be considered as part of this current diversion proposal. Despite this, the diversion route has been aligned to pass through the Yew Tree Farm area in the most direct way. A further application in future may be required to realign the path through this area in response to future proposed development.

6.10. Starting at its junction with Booth Lane (point A), the proposed new route would follow a generally east, north easterly direction, crossing an estate road at a designated pedestrian crossing point (point G), to continue in the same direction to the western perimeter boundary of Yew Tree Farm (point H). It would then enter the Yew Tree Farm area and continue in a generally north easterly direction through the area to exit through the eastern boundary (point I). It would then continue in a generally north easterly direction to pass between the southern boundary of housing plot no. 78, and an electricity substation to point J. It would then bear in a generally north westerly direction passing between gardens and the hedged boundary of the railway embankment, to terminate as it re-joined the current footpath at point F.

6.11. Ecogrid would be laid on the grass surfaces between Booth Lane and Yew Tree Farm, and the grassed section between the house and substation and the section running to the rear of the houses to the point where the footpath

will re-join the current route at point F. Through the Yew Tree Farm area, a harder surface would be laid. The specification for this has yet to be confirmed, though it is likely to be a compacted stoned surface. Throughout its length, the new route would have a width of 2 metres, be unenclosed and free of path furniture. The land over which the current route runs and over which the proposed route would run is owned by Taylor Wimpey and the company have set up a maintenance agreement with a management company for the development which includes the extent of which Moston Footpath No.7Y will run.

## **7. Consultation and Engagement**

- 7.1. Brereton Rural Ward: Councillor John Wray has been consulted and registered no objection to the proposal.
- 7.2. Moston Parish Council have been consulted and did not comment.
- 7.3. The user groups have been consulted. No objections have been received. Peak and Northern Footpath Society registered no objection to the proposal.
- 7.4. Statutory Undertakers have been consulted and no objections to the proposal were registered.
- 7.5. Network Rail was consulted given the proximity of the development to the railway. An objection was received based on the expected increased use, and the change in the nature and profile of users of the level crossing that carries Moston Public Footpath No. 7Y over the railway, and that this is a direct result of the new development which has brought an increased number of people to the area.
- 7.6. Whilst it is acknowledged that there are more people in the area, the numbers reaching the rail crossing point will not change as a consequence of the proposed diversion because diverting the footpath, or leaving it in its current position, will only affect the route to the railway, not the numbers or user types, that choose to use it.
- 7.7. Further, the section of the footpath that crosses over the railway is not included in the diversion proposals so any issues relating to it, fall outside the scope of the legal tests of the diversion process.
- 7.8. As part of their objection Network Rail have submitted detailed information relating to various earlier planning applications at other locations involving developments adjacent to railways and involving the diversion of public rights of way. In these cases the planning process had not been exhausted and they

succeeded in changing a diversion proposal to make crossing a railway safer. However, in this case, the planning applications for this development were concluded in 2015 and since that time no appeals were registered within the time limit for doing so, and planning matters cannot be considered in relation to this diversion proposal.

7.9. Network Rail did not object to the Outline Plan but they did register an objection at the reserved matters stage of the planning process based on increased footfall over the current level crossing. However, no provision was made for this within the final planning decisions and a Grampian condition which may have been used to temporarily limit the development until the safety of the crossing point had been determined and any necessary action taken to meet safety requirements, was not included in the planning consent. This matter would have been part of the planning process, which is now closed and cannot be reopened. Whether or not to make a diversion Order must be based on the relevant legal tests of this case and is separate to the merits or otherwise of the planning permission.

7.9 For information, should Network Rail record data and make the case to confirm that there is a safety risk at this level crossing that could be mitigated by relocating it to a safer location, then Network Rail would need to submit a diversion proposal under section 119A of the Highways Act 1980 that is specifically designed to deal with rail crossing diversions. Such a diversion cannot be included within the current proposal being pursued by Taylor Wimpey under section 257 of the Town and Country Planning Act 1990, as the legislation and legal tests are completely different. Consequently, to affect a diversion of the crossing point, the current diversion would need to be concluded such that the new alignment of Moston Public Footpath No. 7Y through the development could then be diverted accordingly to the new crossing point should a rail crossing diversion be successful.

## **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 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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| Contact Officer:             | Marianne Nixon, Public Path Orders Office<br><a href="mailto:Marianne.nixon@cheshireeast.gov.uk">Marianne.nixon@cheshireeast.gov.uk</a><br>01270 686077 |
| Appendices:                  | Plan No. TCPA/072   |

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| Background Papers: | The Background papers and file 214D/593 relating to this report can be inspected by contacting the report writer. |
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