

CHESHIRE EAST COUNCIL

Public Rights Of Way Committee

Date of Meeting: 19 September 2011
Report of: Greenspaces Manager
Subject/Title: Town and Country Planning Act 1990 Section 257
Application for the Diversion of Public Footpath No. 8
(Part) Parish of Alpraham

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 8 in the Parish of Alpraham. 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 Unit as a response to planning approval granted to Mr David Symms for the construction of a slurry lagoon at Rookery Farm, Alpraham. 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.

2.0 Recommendations

- 2.1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 8, Alpraham as illustrated on Plan No. TCPA/058 on the grounds that the Borough 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 Acts.
- 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 Wards Affected

- 3.1 Bunbury

4.0 Local Ward Members

- 4.1 Councillor Michael Jones

5.0 Financial Implications

- 5.1 Not applicable

6.0 Legal Implications

- 6.1 Objections received to the proposed order, if not withdrawn, could lead to a public inquiry or hearing with attendant legal involvement and use of resources.

7.0 Risk Assessment

- 7.1 Not applicable

8.0 Background and Options

- 8.1 An application has been received from P&L Agriconsulting (“agent”) on behalf of Mr David Symms (‘the Applicant’) requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert part of Public Footpath No. 8 in the Parish of Alraham.
- 8.2 Public Footpath No. 8 Alraham commences at its junction with Brains Lane at OS grid reference SJ 5757 6069 and runs across field land in a generally south easterly direction and then south, south easterly direction around the north and east of Rookery Farm, before bearing south, south westerly to terminate at its junction with Alraham FP14 and Alraham BR7 at OS grid reference SJ 5773 6034. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/058 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C-D-B.
- 8.3 The existing alignment of the footpath would be directly affected by the development of the slurry lagoon which is required by Mr David Symms to enable compliance with Nitrate Vulnerable Zone Regulations that regulate environmental nitrate concentrations. The land is entirely owned by Mr David Symms.
- 8.4 Planning permission was granted to the applicant on 22 June 2011. The application is cited as Planning Permission Ref: 11/1061N. The details of the decision notice are for the development of the slurry lagoon to store slurry and dirty water from Rookery Farm.
- 8.5 Part of the current line of Public Footpath No.8 Alraham (points 1-2 on plan no. TCPA/058) lies directly on the site designated for development of the slurry lagoon as shown on the plan submitted by the applicant’s agent (entitled ‘Proposed diversion of Alraham FP8’). This part of the existing footpath, FP8 Alraham, would be obstructed by the lagoon. Therefore, the footpath diversion is required to provide public access around the new lagoon. The length of footpath proposed to be diverted is approximately 79 metres.
- 8.6 The proposed route for the footpath is approximately 133 metres long and would move the footpath from point A to follow a south easterly direction to point C, then a southerly direction to point D and then a westerly direction to join the current route of Alraham Footpath Number 8 at point B on Plan No. TCPA/058.

- 8.7 Local councillor, Councillor Mike Jones, has been consulted about the proposal and did not register any objection.
- 8.8 Alpraham Parish Council have been consulted about the proposal and registered no objection to the diversion
- 8.9 The statutory undertakers have also been consulted and have 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.
- 8.10 The user groups have been consulted. No responses have been received to date. Responses received before committee will be verbally reported.
- 8.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 8.13 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be no less easy to use than the current route.

9.0 Reasons for Recommendation

- 9.1 In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as 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 in accordance with a planning permission that has been granted.
- 9.2 It is considered that it is necessary to divert part of Footpath No. 8 Alpraham as illustrated on Plan No. TCPA/058, to enable the development of a slurry lagoon that will store slurry and dirty water from Rookery Farm. Planning consent was granted on the 22nd June 2011 by Cheshire East Council; reference number 11/1061N.
- 9.3 Consultations have not elicited objections to the proposal and it is considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 are satisfied.

10.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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Background Documents: PROW file 010D/437