

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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**Date of Meeting:** 12 March 2012  
**Report of:** Greenspaces Manager  
**Subject/Title:** Town and Country Planning Act 1990 - Section 257  
Application For The Diversion Of Public Footpath No. 2  
(Part) Parish Of Arclid

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### 1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 2 in the Parish of Arclid. 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 subject to the prior signing of a Section 106 agreement and a number of conditions to Rowland Homes Ltd and Messrs Pace for 'Redevelopment of Industrial/Commercial Premises and two detached garages and erection of 18 Dwellings (13 Market/5 Affordable), Provision of Public Open Space and Formation of Replacement Access for the Dwelling Fairfield' at Paces Garage and Fairfield, Newcastle Road, Arclid, CW11 2UE. 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.
- 1.2 Members are required to consider the issues set out in this report and make a decision as to whether the proposed footpath diversion is necessary to enable development to take place in accordance with section 257 of the Town and Country Planning Act 1990 (as detailed in paragraph 3.1 below).

### 2.0 Recommendations

- 2.1 An Order is made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 2 Arclid as illustrated on Plan No. TCPA/008 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.

### **3.0 Reasons for Recommendations**

- 3.1 In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as 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 in accordance with a planning permission that has been granted.
- 3.2 It is considered that it is necessary to divert part of Footpath No. 2 Arclid as illustrated on Plan No. TCPA/008 to allow for the 'Redevelopment of Industrial/Commercial Premises and two detached garages and erection of 18 Dwellings (13 Market/5 Affordable), Provision of Public Open Space and Formation of Replacement Access for the Dwelling Fairfield'. Planning consent was granted subject to the prior signing of a Section 106 agreement and a number of conditions on the 16<sup>th</sup> November 2011 by Cheshire East Council; reference number 11/2394C.
- 3.3 Informal consultations have elicited no 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.

### **4.0 Ward Affected**

- 4.1 Brereton Rural.

### **5.0 Local Ward Members**

- 5.1 Councillor John Wray.

### **6.0 Financial Implications**

- 6.1 Not applicable

### **7.0 Legal Implications**

- 7.1 Section 257 of the Town and Country Planning Act 1990 ("TCPA") allows the council to make and confirm orders authorising the stopping up or diversion of a footpath if they are satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted. There are requirements of public notice and if objections are received to the proposed order and not withdrawn, the order must be submitted to the Secretary of State for confirmation, who must either call for a local inquiry or give the objectors an opportunity of being heard before making his decision. This would require attendant legal involvement and use of

resources. It follows that the Committee decision may or may not be confirmed by the Secretary of State.

- 7.2 The procedure in making an order is detailed in Schedule 14 to the TCPA and the Town and Country Planning (Public Path Orders) Regulations 1993, which are made under the TCPA.

## **8.0 Risk Assessment**

- 8.1 Not applicable

## **9.0 Background and Options**

- 9.1 An application has been received from Rowland Homes Ltd and Messrs Pace ('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. 2 in the Parish of Arclid.
- 9.2 Public Footpath No. 2 Arclid commences on Newcastle Road (A50) at OS grid reference SJ 7882 6193 and runs in a generally westerly direction to Congleton Road (A534) at OS grid reference SJ 7841 6191. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/008 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points C-B.
- 9.3 The current definitive line of the footpath has been unavailable for several decades. It is obstructed by a large building and then runs across the forecourt of the garage site to Newcastle Road (A50) and a permissive route has been in place for many years. The section of the footpath to be diverted is approximately 63 metres.
- 9.4 Planning permission was granted to the applicant on 16<sup>th</sup> November 2011. The application is cited as Planning Permission Ref: 11/2394C 'Redevelopment of Industrial/Commercial Premises and two detached garages and erection of 18 Dwellings (13 Market/5 Affordable), Provision of Public Open Space and Formation of Replacement Access for the Dwelling Fairfield'. The consent was granted subject to the prior signing of a Section 106 agreement and a number of conditions. When the development takes place, the current definitive line of the footpath will be obstructed by two houses and run across the curtilage of a number of properties in the development.
- 9.5 The proposed route will leave Newcastle Road and run along a pavement for approximately 35 metres before turning to run in a south westerly direction across a public open space for approximately 17 metres. As it leaves the area of open space it crosses a road and then runs between houses for approximately 32 metres. It then turns to run in a south easterly direction for approximately 17 metres to rejoin with the existing line of Public Footpath Arclid No. 2 at the stile which leads into the adjacent landowner's field. The section of the footpath from Newcastle Road to the southern side of the road (before it runs between the

houses) will have a width of 2 metres. The section between the houses will have a width of 3 metres and then the final section which runs in a south easterly direction at the rear of two houses will have a width of 2.5 metres. The majority of the diverted paths surface will be tarmac, the short section through the public open space will be gravel. The length of the proposed route is approximately 102 metres.

- 9.6 The local Councillors have been consulted about the proposal. No comments have been received.
- 9.7 Arclid Parish Council have been consulted about the proposal. No comments have been received.
- 9.8 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.
- 9.9 The user groups have been consulted. The Peak and Northern Footpaths Society have responded to state that they have no objection to the proposal.
- 9.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 9.11 An assessment in relation to Equality Act 2010 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 existing route.

## **10.0 Access to Information**

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

### ***For further information:***

*Officer: Hannah Duncan*

*Tel No: 01270 686062*

*Email: [hannah.duncan@cheshireeast.gov.uk](mailto:hannah.duncan@cheshireeast.gov.uk)*

**Background Documents:** PROW file 016D/442