

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 24th September 2012
Report of: Greenspaces Manager
Subject/Title: Town and Country Planning Act 1990 Section 257:
Application for the Diversion of Public Footpath No. 5 (part),
Parish of Odd Rode

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 5 in the Parish of Odd Rode. 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 Geoffrey Harvey for the construction of a detached residential dwelling at Higher Bank Farm, 54, Scholar Bank, Scholar Green, ST7 3LB (Planning reference: 11/4517C). Furthermore, 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. 5 Odd Rode, as illustrated on Plan No. TCPA/010 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 Recommendation

- 3.1 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.

3.2 It is considered that it is necessary to divert part of Footpath No. 5 Odd Rode as illustrated on Plan No. TCPA/010, to allow for the construction of a new detached residential dwelling. Planning consent was granted on the 12th February 2012 by Cheshire East Council; reference number 11/4517C.

3.3 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.

4.0 Ward Affected

4.1 Odd Rode

5.0 Local Ward Members

5.1 Councillor Rhoda Bailey

6.0 Financial Implications

6.1 Not applicable

7.1 Legal Implications

7.1 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.

8.0 Risk Assessment

8.1 Not applicable

9.0 Background and Options

9.1 An application has been received from Mr Geoffrey Harvey of 14, Salop Place, Kidsgrove, Stoke-on-Trent, ST7 4BZ 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. 5 in the Parish of Odd Rode.

9.2 Public Footpath No. 5 Odd Rode commences on at its junction with Spring Bank (class C road) at O.S. grid reference SJ 8427 5729 and runs in a generally south, south easterly direction through the grounds of Higher Bank Farm to its junction with Public Footpath No. 12, Odd Rode. It then follows a generally south, south westerly direction across farmland to terminate at its junction with Public Footpath No. 23, Odd Rode at O.S. grid reference SJ 8405 5675. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/010 running between points A-B-C. The proposed diversion is illustrated with a black dashed line on the same plan, running between points D-E-F-G-C.

- 9.3 The existing alignment of the footpath would be directly affected by the construction of the new detached residential dwelling. The land is entirely owned by Mr Geoffrey Harvey.
- 9.4 Planning permission was granted to the applicant on 2nd February 2012. The application is cited as Planning Permission Ref: 11/4517C. The details of the decision notice are for the development of a detached dwelling at Higher Bank Farm.
- 9.5 Part of the current line of Public Footpath No.5 Odd Rode is unavailable at several points due to demolition remains and an obstructing building. Furthermore, planned development of the residential dwelling would result in the path being further obstructed. Therefore, the footpath diversion is required to resolve these issues by providing a public access between the building to be developed and around the building that obstructs the current alignment. The length of footpath proposed to be diverted is approximately 68 metres.
- 9.6 The proposed route for the footpath is approximately 93 metres long and would start at the junction of the current route with the road, 'Spring Bank' (point D), from where it would follow a south, south westerly direction along the macadam access road that leads to Lower Bank Farm. After approximately 27 metres (point E), it would bear in an east, south easterly direction to pass between the two planned dwellings to point F before bearing in a south, south westerly and then easterly direction to circumvent the south west corner of a building to terminate at point C.
- The new route would have a width of 2 metres and would not be enclosed except where it would pass between the new dwellings (points E-F) which would have a width of 2.5 metres.
- 9.7 The local Councillors have been consulted about the proposal. No comments have been received.
- 9.8 Odd Rode Parish Council have been consulted about the proposal and comments received will be reported verbally.
- 9.9 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.
- 9.10 The user groups have been consulted. The Congleton group Ramblers Association and the Peak and Northern Footpath Society registered no objection to the proposal. No other responses have been received.
- 9.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 9.12 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 convenient to use than the current route were it available for use.

10.00 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 231D/460