

# **CHESHIRE EAST COUNCIL**

## **Public Rights of Way Committee**

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**Date of Meeting:** 11 March 2013  
**Report of:** Greenspaces Manager  
**Subject/Title:** Town and Country Planning Act – Sections 257 and 261:  
Proposed Temporary Diversion of Footpath No.29 Parish of Siddington and Footpath No.23 Parish of Lower Withington

### **1.0 Report Summary**

- 1.1 The report outlines the investigation to temporarily divert Public Footpaths Nos.23, Parish of Lower Withington and 29 in the Parish of Siddington. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a temporary diversion order to be made. The proposal has been applied for by, Sibelco UK, 'the applicant'. 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 footpaths concerned.

### **2.0 Recommendation**

- 2.1 Subject to the grant of planning permission pursuant to application reference 10/3078W , an Order be made under Section 261 & 257 of the Town & Country Planning Act 1990 to divert Public Footpaths Nos. 29, Siddington and 23, Lower Withington as illustrated on Plan No. TCPA/012 on the grounds that the Borough Council is satisfied that it is necessary to do so for the purpose of enabling minerals to be worked and that the footpaths concerned can be restored, after the minerals have been worked, to a condition not substantially less convenient to the public. An Order will not be made until the planning permission has been issued.
- 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 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 In accordance with section 261 of the Town and Country Planning Act 1990, the Borough Council, as Planning Authority, can make an order to divert a footpath if it is satisfied that it is necessary to do so for the purpose of enabling minerals to be worked. The Council must also be satisfied that the footpath concerned can be restored, after the minerals have been worked, to a condition not substantially less convenient to the public.
- 3.3 It is considered that the proposed diversion is necessary in order to enable development and that the development is for the purposes of enabling minerals to be worked by surface workings for the reasons set out in paragraph 10.4 & 10.5 below. It is considered that, following restoration of the site, the condition of the paths will not be less convenient to the public. With views of the lake and nature area it is likely that the restored paths will also have a more pleasant aspect.
- 3.4 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be determined by the Secretary of State. In considering whether to confirm an Order the Secretary of State will have regard to whether the diversion of the footpaths is required for the purpose of enabling the surface working of minerals for which planning permission has been granted.
- 3.5 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.
- 3.6 No objections to the proposal have been received

#### **4.0 Wards Affected**

- 4.1 Gawsworth

#### **5.0 Local Ward Members**

- 5.1 Councillor Lesley Smetham

#### **6.0 Policy Implications including - Carbon Reduction - Health**

- 6.1 The proposal supports the following policies and initiatives of the Cheshire East Rights of Way Improvement Plan 2011-2026:
- Policy H3: Public rights of way and green infrastructure: Protect and enhance our public rights of way and green infrastructure and endeavour to create new links where beneficial for health, safety or access to green spaces. Initiative: 'Leisure routes for cyclists, horse riders and walkers'
  - Policy H2: Promotion of active travel and healthy activities: Work in partnership to promote walking, cycling and horse riding as active travel options and healthy activities. Initiative 'Public information on the public rights of way network'

- 6.2 The development of new walking, cycling and horse riding routes for local residents and visitors alike is aligned with the health and wellbeing objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Health and Wellbeing Service commitment to the Change4Life initiative.

## **7.0 Financial Implications**

- 7.1 Not applicable.

## **8.0 Legal Implications (Authorised by the Borough Solicitor)**

- 8.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local authority to confirm the order itself, and may lead to a hearing/an inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

## **9.0 Risk Management**

- 9.1 Not applicable

## **10.0 Background and Options**

- 10.1 An application has been received from Sibelco UK Ltd ('the Applicant') on the 25<sup>th</sup> January 2013 requesting that the Council make an Order under section 257 & 261 of the Town & Country Planning Act 1990 to temporarily divert Public Footpaths nos. 23, Lower Withington & 29, Siddington. The land is owned by The Trustees of NW Bromley Davenport 1962 Settlement (Capesthorne Estate) who have consented to the proposed Order. The land is quarried under licence by the Applicant.
- 10.2 These footpaths are currently the subject of a temporary diversion order made in 2007 and due to expire on the 11<sup>th</sup> March 2013. The definitive alignment of Footpath no 23, Lower Withington commences at its junction with Congleton Lane (UW4457) at OS grid reference SJ 8317 7194 (Point A on Plan No. TCPA/012) and runs in a generally west south westerly direction to the Siddington Parish boundary and its junction with Footpath no. 29 at OS grid reference SJ 8293 7178 (Point B). The length of this path to be closed is approximately 281 metres. Siddington Footpath no. 29 commences at the parish boundary (as stated above) and runs in a generally south easterly direction then curves to run generally easterly, then southerly then westerly and finally southerly to its junction with Whisterfield Lane at OS grid reference SJ 8323 7115 (Point E). The length of path to be closed is approximately 1310 metres. These are shown by a bold black line between points A-B-C-D-E on the attached plan TCPA/012.
- 10.3 The proposed temporary diversion is illustrated by a dashed black line on Plan No. TCPA/012 between points A-F-G-E. The total length of the proposed alternative is approximately 1324 metres in length and is entirely within the

Parish of Siddington. This route is currently available on the ground in accordance with the existing temporary diversion order dated 2007.

- 10.4 The definitive alignment of the footpaths runs across an area identified for sand quarrying which originally received planning permission in January 2007. It was anticipated that quarrying would cease in 2011 and final restoration of the site would be completed in January 2013. However due to the recession and economic uncertainty, this area of quarrying has not been completed in the predicted timescales and so Sibelco UK submitted a planning application (reference 10/3078W) for an extension in time for working and restoring the quarry. On 15<sup>th</sup> June 2011 the Council's Planning Committee resolved to grant permission subject to the updating of the s.106 agreement tied to the original consent in 2007. The s.106 agreement is still being negotiated and planning permission will only be issued following completion of the agreement. The proposed temporary diversion order can only be made once the planning permission has been issued. It is anticipated that the s106 will be completed, and the planning permission will be issued, within, approximately, the next few weeks. Approval to make the order is being sought now so that the order may be progressed swiftly following the grant of planning permission.
- 10.5 When the planning permission for an extension to the life of the quarrying is in place, of what are nationally important industrial sand reserves, the continued diversion of the footpaths is required in order to enable the extraction to go ahead. It is anticipated that restoration would be completed by 31<sup>st</sup> December 2018. By which time the Definitive footpaths would be available on their original alignments.
- 10.6 Following cessation of mineral extraction and restoration of the site, the paths will return to follow a route around a newly constructed lake and nature conservation area. The finally restored paths will be 2 metres wide, of a grass surface which will be maintained by the Applicant for a "management period" of 5 years, following cessation of quarrying. There will be kissing gates at two points along the restored route; these would be indicated on an order plan.
- 10.7 A permissive footpath agreement was entered into with the Capesthorne estate in 2007 during the period of the temporary diversion and following restoration, providing a link from points X to Y (shown on Plan TCPA/012). This provides a useful link onto Congleton Road and access to the footpath network to the north of the road. This permissive agreement will continue in place during and after the current extraction works.
- 10.8 Councillor Smetham and the Parish Councils of Lower Withington and Siddington have been consulted, no comments have been received.
- 10.9 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.
- 10.10 The user groups have been consulted. No comments have been received.

10.11 The temporary diversion is 3 metres wide throughout and has kissing gates along its length so it is considered for the purposes of the Equality Act 2010 that the proposed diversion is no less easy to use than the existing route.

## **11.0 Access to Information**

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

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