

CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

Date of Meeting:	16 September 2013
Report of:	Public Rights of Way Manager
Subject/Title:	Town and Country Planning Act 1990 S257: Application for the Diversion of Public Footpath No.11 (part), Parish of Basford and Extinguishment of Public Footpath No.2, Parish of Shavington cum Gresty

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 11 in the Parish of Basford and extinguish Public Footpath No. 2 in the Parish of Shavington cum Gresty. 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 an application has been made by the landowners concerned, Goodman Limited, in response to planning approval granted for *'Outline Application for Warehousing and Distribution (B8), Manufacturing (B2) and Light Industrial/Office (B1) Development, Construction of Access Roads, Footpaths and Rail Infrastructure, Import of Soil Materials, Heavy Goods Vehicle and Car Parking and Landscaping/Habitat Mitigation'* and *'Outline application for residential development (up to 370 units), Offices (B1), local centre comprising food and non-food retail (A1) and restaurant/public house (A3/A4), hotel (C1), car showroom and associated works including construction of new spine road with accesses from Crewe Road and A500, creation of footpaths, drainage including formation of SUDS, foul pumping station, substation, earthworks to form landscaped bunds, provision of public open space and landscaping'*. 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 and extinguish the sections of footpaths 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 and extinguishment are 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. 11 Basford and extinguish Public Footpath Shavington cum Gresty No. 2 ,as illustrated on Plan No. TCPA/0014, 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 and extinguishing public footpaths 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 applied for.
- 3.2 It is considered that it is necessary to divert part of Footpath No. 11 Basford and extinguish Footpath No. 2 Shavington cum Gresty as illustrated on Plan No. TCPA/014 to allow for the *'Outline Application for Warehousing and Distribution (B8), Manufacturing (B2) and Light Industrial/Office (B1) Development, Construction of Access Roads, Footpaths and Rail Infrastructure, Import of Soil Materials, Heavy Goods Vehicle and Car Parking and Landscaping/Habitat Mitigation'* and *'Outline application for residential development (up to 370 units), Offices (B1), local centre comprising food and non-food retail (A1) and restaurant/public house (A3/A4), hotel (C1), car showroom and associated works including construction of new spine road with accesses from Crewe Road and A500, creation of footpaths, drainage including formation of SUDS, foul pumping station, substation, earthworks to form landscaped bunds, provision of public open space and landscaping'*.
- 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 Wards Affected

- 4.1 Haslington and Shavington.

5.0 Local Ward Members

- 5.1 Councillor David Marren, and Councillor John Hammond.
Councillor David Brickhill

6.0 Financial Implications

- 6.1.1 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 applied for. 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 Goodman Limited ('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. 11 in the Parish of Basford and to extinguish Public Footpath No. 2 in the Parish of Shavington cum Gresty.
- 9.2 Public Footpath No. 11 Basford commences on Weston Lane (C504) at OS grid reference SJ 7161 5221 and runs in a generally north westerly direction to its junction with Public Footpath No. 2 Shavington cum Gresty at OS grid reference SJ 7108 5324. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/014 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C.
- 9.3 Public Footpath No. 2 Shavington cum Gresty commences on Crewe Road (B5071) at OS grid reference SJ 7094 5342 and runs in a generally south easterly direction to its junction with Public Footpath No. 11 Basford at OS grid reference SJ 7108 5324. The section of path to be extinguished is shown by a solid black line on Plan No. TCPA/014 running between points D-B.
- 9.4 The proposed diversion of Public Footpath No. 11 Basford is necessary to accommodate the storm water balancing ponds (as illustrated drawing no. 136). It leaves the new adopted highway and passes between two of the ponds before rejoining the existing line of Basford FP11. It will have a width of two metres and is approximately 41 metres in length.

- 9.5 The proposed extinguishment is necessary to accommodate the proposed local centre (food retail, restaurant/public house) and spine road. Public access will remain (as shown on the yellow line on drawing no. 136) alongside the new roads on pavements which will be adopted
- 9.6 The local Councillors have been consulted about the proposal. Councillor Marren has responded to state that he has no objections to the proposal.
- 9.7 Shavington cum Gresty Parish Council and Weston & Basford 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. No comments have been received.
- 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:

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Background Documents: PROW file 042D & 264E/478