

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	16 th September 2013
Report of:	Public Rights of Way Manager
Subject/Title:	Town and Country Planning Act 1990 Section 257: Application for the Diversion 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. 2 Rope 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 a response to planning approval granted following appeal, to Wainhomes North West Ltd., Cedarwood 2, Kelvin Close, Birchwood, Warrington, Cheshire, WA3 7PB for residential development (Planning references: 11/4549N). 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. 2 Rope, as illustrated on Plan No. TCPA/015 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. 2 Rope as illustrated on Plan No. TCPA/015, to allow for the development of 80 residential dwellings. Planning consent was granted by the Secretary of State following appeal on 28th November 2012; reference number 11/4549N.
- 3.3 Initial 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.
- 3.4 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. Under section 259 of the Town and Country Planning Act 1990, the Secretary of State shall not confirm any such Order unless satisfied that the matters discussed at paragraph 3.1 are satisfied.
- 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 3.4.

4.0 Ward Affected

- 4.1 Shavington

5.0 Local Ward Members

- 5.1 Councillor D Brickhill

6.0 Financial Implications

- 6.1 Not applicable

7.0 Legal Implications

- 7.1 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 or an inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.

8.0 Risk Assessment

- 8.1 Not applicable

9.0 Background and Options

- 9.1 An application has been received from Mr Peter Barlow of Wainhomes (North West) Ltd., Cedarwood 2, Kelvin Close, Birchwood, Warrington, WA3 7PB 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 Rope.

- 9.2 Public Footpath No. 2 Rope commences at its junction with Rope Lane at O.S. grid reference SJ 6988 5213 and runs in a generally north westerly direction across a pasture field and then through a kissing gate to terminate immediately afterwards at its junction with Public Footpath No. 7 Shavington cum Gresty at O.S. grid reference SJ 6998 5222. The section of path required to be diverted is shown by a solid black line on Plan No. T CPA/015 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-H-C.
- 9.3 The existing alignment of the footpath would be directly affected by the residential dwellings once built. The land is not currently owned by Wainhomes although a contract is in place for the company to purchase the land from the current landowner. Furthermore, the landowner has given written consent for the diversion to proceed.
- 9.4 Planning permission was granted (following appeal) to the applicant on 28th November 2012. The application is cited as Planning Permission Ref: 11/4549N. The details of the decision notice are for the development of 80 residential dwellings.
- 9.5 Part of the current line of Public Footpath No.2 Rope would be obstructed by the residential buildings. Therefore, the footpath diversion is required to preserve public right of access from Rope Lane to Public Footpath No. 7 Shavington cum Gresty.
- 9.6 The proposed route for the footpath (D-E-F-G-H) is approximately 161 metres long (8% longer than the current route which is approximately 149 metres long). It would take users through the new development allowing them passage between Rope Lane and Public Footpath No.7 Shavington cum Gresty. The route would be 2 metres wide throughout and would be tarmaced. It would link to a new footpath fronting Rope Lane and would also pass through a park/play area at its northern end.
- 9.7 The local Ward Member has been consulted about the proposal. Comments were received from Councillor Brickhill in relation to concerns associated with difficulties caused by antisocial activities on the current path requesting that consideration be given to the path being closed/extinguished.

In response, it was explained that:

- effecting closure of the path would be difficult since once the new houses were built, the path would be incorporated into the communication structure of the development so would be needed for that purpose and it is also most likely that the change in the area from open field to developed housing would affect the current use so displacing any anti social activities.
- the only legal criterion for extinguishing the path would be that it is not needed for public use. Given the location of the path, it is most unlikely that this could be demonstrated.

- 9.8 Shavington cum Gresty Parish Council have been consulted about the proposal and comments 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. No comments 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 the Equality Act 2010 has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be more convenient to use than the current route since it would have a tarmac surface where as the current route has a grassed surface.

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 353D/480