

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

---

<b>Date of Meeting:</b>	16 <sup>th</sup> September 2013
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No.91 (part), Parish of Wilmslow

---

### 1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 91 in the Parish of Wilmslow. 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 P Nicosia of Greystone (UK) Ltd., 25, Heather Hills, Stockton Brook, Stoke-on-Trent, ST9 9PS for the development of a continuing care retirement community comprising of a care home and residential dwellings (Planning reference: 12/1578M). 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. 91 Wilmslow, as illustrated on Plan No. T CPA/016 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. 91 Wilmslow as illustrated on Plan No. TCPA/016, to allow for the development of a continuing care retirement community comprising of a care home and residential dwellings. Planning consent was granted on the 30<sup>th</sup> May 2013 by the Secretary of State following appeal: reference number 12/1578M.
- 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 Handforth

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

- 5.1 Councillor B Burkhill and Councillor D Mahon.

#### **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 David Short (agent) of The Emerson Group on behalf of Greystone UK Limited (applicants) represented by Mr P Nicoisia of 25 Heather Hills, Stockton Brook, Stoke-on-Trent, ST9 9PS 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. 91 in the

Parish of Wilmslow.

- 9.2 Public Footpath No. 91 Wilmslow commences from a footpath at the southern end of Earl Road at O.S. grid reference SJ 8642 8379. It runs along the footpath in an easterly direction onto Kiln Croft Lane which it then follows in a southerly direction onto Coppice Way. It runs along Coppice Way firstly in a southerly direction and then east, south easterly direction to a footway at O.S. grid reference SJ 8639 8341. It then leaves Coppice Way to run along this footway in a south, south easterly direction to terminate on Hall Road at O.S. grid reference SJ 8642 8328. The section of path required to be diverted is shown by a solid black line on Plan No. TCPA/016 running between points A-B-C-D. The proposed diversion is illustrated with a black dashed line on the same plan, running between points E-F-D.
- 9.3 The existing alignment of the footpath would be directly affected by the development of residential dwellings that will form part of a care community with the wider development of a Care Community Village. The land is currently owned by the RK Wadsworth Will Trust and written permission to divert the path on their land as proposed has been submitted by Mr T Rickard (agent) on behalf of the trustees.
- 9.4 Planning permission was granted to the applicant on 30<sup>th</sup> May 2013 by the Secretary of State following appeal. The application is cited as Planning Permission Ref: 12/1578M. The details of the decision notice are for the development of a care home village comprising of a gated community of residential dwellings and a care home.
- 9.5 Part of the current line of Public Footpath No.91 Wilmslow would be obstructed by construction of the planned residential dwellings. Therefore, the footpath diversion is required to preserve public right of way between Coppice Way and Hall Lane by diverting it around the western perimeter of the care community.
- 9.6 Referring to Plan No. TCPA/016, the proposed route for the footpath (E-F-D) is approximately 118 metres long.

The proposed new route would start on Hall Road at point E to the west of the current start point. It would then follow a north, north westerly direction to point F and then bear in an east, north easterly direction to terminate at point D.

The new route would have a width of 3 metres, a metalled surface and fence/hedge on its eastern side that would provide security and privacy for the older residents of the care retirement community. To the west of the new route would be a landscaped amenity area.

It is intended that, should the proposed diversion succeed that the new route then be considered for upgrade to a shared cycle way.

- 9.7 The local Councillor has been consulted about the proposal. No comments have been received.

- 9.8 Handforth Parish Council has been consulted about the proposal. Members questioned the need for the diversion given that the development plans include a through road between the care home and the care community.

The care community will house elderly and vulnerable people (some with dementia) and there is a need to protect these people by gating all access points into this residential area that lies to the east of this road. The current footpath runs within this area so has to be moved out because not only will the gating prevent access to it but also, houses will be built over it. Therefore the diversion is absolutely necessary to allow the development to go ahead.

Members felt that if the diversion is to go ahead that the following parameters be given consideration:

- Low level lighting as the area is dark at night.
- Surface water drainage.

To succeed the diversion proposal has only to be at least similar to the current path. Considerations such as low level lighting cannot be taken into account at this stage and will be something that can be considered by the planning authority in consultation with the developer. The design of the path will need to accommodate surface water drainage.

Furthermore, given that the intention is to upgrade the new route to a cycleway should it be successful, request were made for:

- Physical barriers to segregate walkers from cyclists.
- Restricted access and prevention of motorcyclists and also shopping trolleys from the nearby shops (particularly M&S and TESCO).

The new route will be considered for upgrading to a shared cycle track if the diversion is successful. At present, the proposed diversion detailed in this report refers only to the diversion of the Public Footpath and a decision must be made on that alone in accordance with the legislation under section 257 of the Town and Country Planning Act. That said, the comments on the intended cycleway will be taken into account in due course as appropriate and considered for incorporation into the design of the cycle track if the public footpath diversion succeeds.

- 9.9 The statutory undertakers have also been consulted. An objection received from Electricity North West on the basis that the new route would be in the vicinity of apparatus was later withdrawn following further assurance that the footpath should not affect this apparatus and that the developer would be in full consultation with the company regarding the wider impact of the care village development on other apparatus in the area. No other comments were received.

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 South and East Cheshire Ramblers Association registered that members do not object to the proposed

diversion. They requested confirmation that the landscaped amenity area to the west of the new route would be open to the public (confirmed) and they questioned whether the intended cycle track will link Hall Lane to Coppice Way (confirmed).

Cycle Wilmslow registered no objection and welcomed improved access for cycling to Handforth Dean and of the concept of an upgrade of Wilmslow FP91 to allow cycling. However, they made the following comments for consideration:

- The proposed diversion is longer
- The existing path is 'straighter' with good sight lines
- Moving the path would disturb the natural environment near Handforth Hall - an upgrade of the existing path would be appropriate.
- The proposed path is 'L' shaped with two 90 degree bends -this should be made a more 'relaxed' bend to improve sight lines through the bend
- We feel the new path should be more of a 'greenway' with minimum of 1.5 metres grass (with no trees) on each side of the path. Thus the total width would be a minimum of 6 metres. This is to stop the path becoming a long alley once the fence is put up on one side of the old people's home.
- Measures should be in place to deter motorised traffic cutting through - but not so as to prevent cycles from using the path easily (inc. bike trailers etc)

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 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 no less convenient to use than the current route.

## **10.00 Access to Information**

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

Officer: Marianne Nixon  
Tel No: 01270 686 077  
Email: [marianne.nixon@cheshireeast.gov.uk](mailto:marianne.nixon@cheshireeast.gov.uk)

**Background Documents:** PROW file 654D/479