

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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<b>Date of Meeting:</b>	16 <sup>th</sup> June 2014
<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. 9 (part), Parish of Wettenhall

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### 1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 9 in the Parish of Wettenhall. 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 an application from Mr R Brooks, J Brooks & Partners, Village Farm, Winsford Road, Wettenhall, Winsford, Cheshire, CW7 4DL, submitted after Mr Brooks was granted planning approval for the installation of a silage clamp at Village Farm (Planning reference: 14/1259N 'Proposed Agricultural Silage Clamp'). 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. 9 Wettenhall, as illustrated on Plan No. TCPA/019 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. 9 Wettenhall as illustrated on Plan No. TCPA/019, to allow for the installation of the silage clamp. Planning consent was granted on the 30<sup>th</sup> April 2014 by the local authority, reference number 14/1259N.
- 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 Bunbury

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

- 5.1 Councillor Michael Jones

#### **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 S Starkey (agent) of Roston's Ltd on behalf of Mr R Brooks, J Brooks & Partners, Village Farm, Winsford Road, Wettenhall, Winsford, Cheshire, CW7 4DL 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. 9 in the Parish of Wettenhall.

- 9.2 Public Footpath No. 9 Wettenhall commences from Winsford Road at O.S. grid reference SJ 6257 6108 and runs in a generally east, north easterly direction across five fields to terminate at the parish boundary at O.S. grid reference SJ 6359 6163. Along its length, it junctions with two other footpaths, Public Footpath No. 8 Wettenhall joins it in the second field and Public Footpath No. 10 Wettenhall joins it in the final field.

The section of path required to be diverted is approximately 136 metres long and is shown by a solid black line on Plan No. TCPA/019 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points C-D.

- 9.3 The Environment Agency has ordered J Brooks & Partners to construct the new silage clamp (160ft x 40ft) to comply with Nitrate Vulnerable Zone Regulations and a Silage Slurry and Agricultural Fuel Oil (SSAFO) Regulations. The only practical location where expansion of the farm can take place to accommodate the clamp is adjacent to existing silage clamps. However, placement at this point will directly affect the alignment of the footpath. Part of the current line of Public Footpath No.9 Wettenhall would be obstructed by the south eastern corner of the footprint of the planned silage clamp.
- 9.4 Planning permission was granted to the applicant on 30<sup>th</sup> April 2014. The application is cited as Planning Permission Ref: 14/1259N. The details of the decision notice are for the installation of a silage clamp.
- 9.5 Part of the current line of Public Footpath No.9 Wettenhall would be obstructed by the south eastern corner of the footprint of the planned silage clamp. Furthermore, regulations stipulate that there must be a clearance zone around the silage clamp. Therefore, to enable better management of both land and farm operations in relation to use of the silage clamp, it is proposed that the current route be diverted to cross the same field in a parallel alignment further south.
- 9.6 The land on which both the current and proposed paths would run is a field owned by Mr Brooks.
- 9.7 Referring to Plan No. TCPA/019, the proposed route for the footpath (C-D) is approximately 135 metres long.

The proposed new route would run in a generally east, north easterly direction across a pasture field from Winsford Road (point C) to reach the eastern hedged field boundary which it would then cross via a kissing gate before terminating at its junction with Wettenhall FP8 (point D).

Note that a ditch immediately before the kissing gate would be filled in as appropriate to make it 'fit for purpose' for walkers.

The route would be 2 metres wide throughout.

The proposed route as described has been designed to:

- eliminate the need for users to pass through the field gate (point B) where the ground is often uneven and difficult under foot due to heavy and concentrated use by cattle passing between fields
- take users safely away from farm operations at the silage clamp
- avoid wet areas to the north of the tree within the field

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

9.8 Cholmondeston & Wettenhall Parish Council has been consulted about the proposal and comments will be reported verbally.

9.9 The statutory undertakers have also been consulted. No 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.

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 an improvement to the current route as it will have two kissing gates as opposed to a stile and will eliminate the need for users to negotiate wet and muddy conditions underfoot that can exist at the field gate on the current route.

## **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 311D/491