

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 15th September 2014
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. 11 (part),
Parish of Knutsford

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 11 in the Parish of Knutsford. 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 application that is currently under consideration by the Council's Planning Department. The application has been submitted by Mr Henry Brooks of The Tatton Estate, Peover Estate Office, Nr Knutsford, Cheshire, WA16 9HW for erection of a high quality residential development with associated woodland buffer, ecological mitigation and enhancements, and open spaces (Planning reference: 13/2935M). 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 On condition that approval is granted for Planning Application 13/2935M, an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 11 Knutsford, as illustrated on Plan No. TCPA/021 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. 11 Knutsford as illustrated on Plan No. TCPA/021, to allow for the erection of a residential development with associated woodland buffer, ecological mitigation and enhancements, and open spaces. Planning consent is yet to be granted by Cheshire East Council; reference number 13/2935M. The target decision date at present is 11th October 2014.

3.3 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.

4.0 Ward Affected

4.1 Knutsford

5.0 Local Ward Members

5.1 Councillor O Hunter, Councillor S Gardiner and Councillor P Raynes

6.0 Financial Implications

6.1 Not applicable

7.0 Legal Implications

7.1 Objections received to the proposed order, if not withdrawn, could lead to a public inquiry or hearing with attendant legal involvement and use of resources.

8.0 Risk Assessment

8.1 Not applicable

9.0 Background and Options

6.1 An application has been received from Mr Steve Bowers (agent) of CBOTransport Ltd. on behalf of Mr Henry Brooks (applicant) of The Tatton Estate, Peover Estate Office, Nr Knutsford, Cheshire, WA16 9HW, 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 Knutsford.

6.2 Public Footpath No. 11 Knutsford commences at O.S. grid reference SJ 7623 7966 and runs in a generally north easterly direction to terminate at O.S. grid reference SJ 7680 8026. It passes over pastureland through a series of temporary paddocks grazed by horses to then enter further pastureland. Within this, it skirts two small lakes before terminating immediately as the path descends to a footbridge that leads to a stile enabling passage into a neighbouring field. The section of path required to be diverted is shown by a solid black line on Plan No. TCPA/021 running

between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C-D-E-F-G-H-I-B.

- 6.3 The existing alignment of the footpath would be directly affected by the construction of the planned residential development. The land is entirely owned by same owners as The Tatton Estate.
- 6.4 Planning permission has not yet been granted although a target decision date of 11th October 2014 has been set. The application is cited as Planning Permission Ref: 13/2935M. The details of the decision notice are for the erection of a high quality residential development with associated woodland buffer, ecological mitigation and enhancements, and open spaces.
- 6.5 Part of the current line of Public Footpath No.11 Knutsford would be obstructed by the buildings of the planned residential development. Therefore, it is necessary to realign the path via diversion to preserve right of passage for the public between points A and B (as shown on Plan No. TCPA/021).
- 6.6 Referring to Plan No. TCPA/021, the proposed new route would follow a north, north westerly direction to meet the Parish boundary (point C). It would then follow the Parish boundary in a north easterly direction to a point where it joins the boundary fencing of Tatton Park (point D), before running along the Tatton Park fence line in a generally north easterly, then east, north easterly, then south easterly and then north easterly directions (points E-F-G) to rejoin the current route at point G for approximately 87 metres after which it would leave (point H) to continue following the fence line in generally northerly and then easterly directions (H-I-B) to terminate upon rejoining the current route at point B. The proposed new route is shown on the plan by a dashed bold black line

The new route would have a width of 2.5 metres with a 1.2 metre wide timber lined surface (type to be confirmed) running along its centre. It would run through a landscaped area and would have grass to either side.

The proposed diversion would be in the interests of the landowner (the developer) to enable development to lawfully go ahead.

- 6.7 The local Councillors have been consulted about the proposal. Councillor Hunter registered that there was no reason to refuse the proposal, Councillor Gardiner registered that he had no objection and Councillor Raynes accepted the proposal on the basis that the diversion would extend the length of the current path but probably be a more interesting leisure route as it would run along the boundary of mature woodland. It was also confirmed to Councillor Raynes that the path would be a hard surface and should any path furniture be required, to comply with the Equality Act 2010, only pedestrian gates or kissing gates would be installed.

As the diversion route is close to the Parish of Mobberley, the ward councillor for this Parish, Councillor Macrae was consulted and did not register any comments.

- 6.8 Knutsford Town Council and Mobberley Town Council have been consulted about the proposal and no comments have been received.
- 6.9 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.
- 6.10 The user groups have been consulted. The CTC representative questioned the possibility that the 2.5 meter proposed route may be suitable as a cycle route, if upgraded so enabling it to be joined to either Broadoak Lane or the B5085, which offers an alternative back road into Mobberley village. In response, the Council explained that only part of the footpath is being diverted. The remainder of the path crosses pasture land and belongs to another landowner and there is no intention to seek an upgrade to the route.

No other comments have been received.

- 6.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 6.12 An assessment in relation to Disability Discrimination 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 convenient to use than the current route. The nature of the proposed surface treatment would make the diverted section of the path easier to use for less able members of the public than the current path.

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 173D/495