

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 15th June 2015
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. 3 (part),
Parish of Bollington

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 3 in the Parish of Bollington. 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 a planning application that is currently under consideration by the Council's Planning Department. The application has been submitted by Rowlinson Constructions Ltd, London House, London Road, Poynton, Stockport, SK12 1YP for the development of 33 new residential dwellings including 8 apartments, improvements to land levels, amenity, infrastructure and landscaping to suit (Planning reference: 14/3844M). 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 14/3844M, an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part or parts of Public Footpath No. 3 Bollington, as illustrated on Plan No's T CPA/023 and T CPA/023A respectively 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. 3 Bollington as illustrated on Plan No. TCPA/023 to allow for the development of 33 new residential dwellings. Planning consent is yet to be granted by Cheshire East Council; reference number 14/3844M.
- 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 Bollington

5.0 Local Ward Members

- 5.1 Councillor A Stott
Councillor J Weston

Please note that Councillor P Hayes and Councillor B Livesley were consulted on the proposal detailed within this report since the informal consultation was undertaken prior to the recent elections.

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 Dominic Shaw (agent) of the Bower Mattin Partnership on behalf of Rowlinson Constructions Ltd, London House, London Road, Poynton, Stockport, SK12 1YP 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. 3 in the Parish of Bollington.

Further to this, for reasons of public interest, Cheshire East Council proposes that the diversion of a further two parts of Bollington FP3 be

included within this Order providing the proposals are unopposed following informal consultation (currently ongoing).

- 6.2 Public Footpath No. 3 Bollington commences at its junction with Albert Road at O.S. grid reference SJ 9216 7770 and runs in generally north westerly, then westerly, then west, south westerly and then south, south westerly to cross pastureland in an arc shape before terminating at O.S. grid reference SJ 9182 7764 at its junction with Public Footpath No's 1 and 2 Parish of Bollington.

The section of path required to be diverted by Rowlinson Construction Ltd is shown by solid black line on Plan No. TCPA/023 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-C.

The sections of path required to be diverted by Cheshire East Council are shown by solid purple lines on Plan No. TCPA/023A running between points C-F and G-H. The proposed diversion routes are illustrated with purple dashed lines on the same plan, running between the same points.

- 6.3 The existing alignment of the footpath section proposed for diversion by Rowlinson Constructions Ltd, would be directly affected by the residential development as shown on the plan entitled 'Proposed diversion of Bollington FP3 (part) overlaid with developer's plan'.

The land over which the current route runs and over which the proposed route would run is entirely owned by Rowlinson Construction Ltd.

The existing alignment of the footpath sections proposed for diversion by Cheshire East Council, are currently obstructed by the River Dean which has over the years, changed course.

The land over which these path sections run and over which the proposed routes would run, are owned by Mr GA Waller who has given his written agreement to allow the paths to be diverted as described.

Furthermore, Rowlinson Constructions Ltd. have agreed to allow these proposals to be progressed with their diversion proposal providing that their application is not affected nor any additional costs incurred to them.

- 6.4 Planning permission has yet to be granted to Rowlinson Construction for the residential development. The application is cited as Planning Permission Ref: 14/3844M. The details of the application are for the development of 33 new residential dwellings including 8 apartments, improvements to land levels, amenity, infra-structure and landscaping to suit.
- 6.5 With regard to the residential development sought by Rowlinsons Construction Ltd, part of the current line of Public Footpath No.3 Bollington would be obstructed by buildings within the residential development. Therefore, the footpath diversion is required to preserve public access around the residential development.

The length of footpath proposed for diversion (points A-B-C) is approximately 170 metres.

With regard to the diversion of the two parts of Bollington FP3 proposed by Cheshire East Council, the current sections are inaccessible owing to the impact of the changing course of the River Dean that has resulted in two sections of the path running through the river. Therefore, diverting these sections to run along the river bank will restore a useable route for the public.

- 6.6 The proposed route for the footpath around the residential development (D-E-C) is shorter than the current route by approximately 31 metres and would take users along a route that would skirt the north and west of the residential development following the meandering River Dean to meet the current route.

Referring to Plan No. TCPA/023, the proposed new route would start at a point further along the road to the north of point A (point D) immediately before the road bridging the River Dean, where it would form a junction with Public Footpath No. 47 Bollington. From there, it would follow a generally west, north westerly direction to then curve (point E) to a generally southerly direction which it would follow to join the current route of Bollington FP3 (point B) where it would terminate. The proposed new route is shown on the plan by a dashed bold black line.

The new route would have a width of 2 metres, follow a raised bank around the development and have a grass surface.

The raised bank would be installed by the developer as a requirement to combat the risk of flooding of the River Dean. However, it should be noted that the river bank opposite that on which the development is to be built is lower than the bank on which the development will stand and over which the footpath would run so this would naturally reduce flood risks to the footpath.

Of benefit to users, a rural aspect would be retained with scenic views to the north of the river and beyond.

The connectivity to the northern network would be improved whilst other footpaths to the south would mean that no connectivity would be lost to the southern network.

This diversion would be made in the interests of the landowner.

- 6.7 The proposed routes for the sections of footpath that currently align through the River Dean, would take users along the southern river bank between points C-F and G-H as shown by dashed purple lines on the plan (TCPA/023A).

The proposed routes would be 2m wide throughout and would have a grass surface and follow alignments that are currently used by the public on an informal basis.

- 6.8 To date, informal consultation has been undertaken only on the proposal put forward by Rowlinson Constructions Ltd.
- 6.9 The local Councillors have been consulted about the proposal put forward by Rowlinsons Construction Ltd. No comments have been received.
- 6.10 Bollington Parish Council have been consulted about the proposal and no comments have been received.
- 6.11 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.
- 6.12 The user groups have been consulted. Members of The Peak and Northern Footpath Society registered no objection to the proposal. No other responses have been received.
- 6.13 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 6.14 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.
- 6.15 With respect of the two sections of Bollington FP3 proposed for diversion by Cheshire East Council, informal consultation is ongoing. Should any irresolvable objections be received, these additional proposed diversions would be abandoned in favour of the diversion required by Rowlinsons Construction Ltd.

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 028D/504