

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 14th March 2016
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. 24 (part),
Parish of Prestbury

1.0 Purpose of Report

The report outlines the investigation to divert part of Public Footpath No. 24 in the Parish of Prestbury. 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. The application has been submitted by Mr J Hinds (agent) of Savills UK Ltd on behalf of The Foundation of Sir John Percyvale in Macclesfield of 1502, re-founded by King Edward VI in 1952, (hereafter referred to as 'Kings School') of Cumberland Street, Macclesfield, SK10 1DA for 'Construction of a new school comprising classrooms, libraries and supporting facilities together with additional playing fields and various associated outbuildings, infrastructure, car parking and access' (Planning reference: **15/4286M**). 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 That an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 24 Prestbury, as illustrated on Plan No TCPA/028 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place. That this Order be confirmed and made operable on condition that planning permission is granted.
- 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 as amended by Section 12 of the Growth and Infrastructure Act 2013:

“(1A) Subject to section 259, a competent authority may by order authorise the stopping up or diversion in England of any footpath, bridleway or restricted byway if they are satisfied that—

- (a) an application for planning permission in respect of development has been made under Part 3, and
- (b) if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.”

Thus 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 before that permission is granted, providing that the application has been formally registered with the Council.

- 3.2 It is considered that it is necessary to divert part of Footpath No. 24 Prestbury as illustrated on Plan No. TCPA/028 to allow for the development of the school by Kings School as detailed within planning reference: 15/4286M.
- 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 Prestbury

5.0 Local Ward Members

- 5.1 Councillor JP Findlow

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

- 9.1 An application has been received from J Hinds (agent) of Savills UK Ltd on behalf of Kings School, Cumberland Street, Macclesfield, SK10 1DA 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. 24 in the Parish of Prestbury.

- 9.2 Public Footpath No. 24 Prestbury has two separate sections that are connected by Public Footpath No. 18 Prestbury. The section that is affected by the proposed school development commences at its junction with public Footpath No. 25 at O.S. grid reference SJ 8920 7549 and runs in generally northerly and then north, north westerly directions, firstly along a semi-surfaced track and then across pastureland for a total distance of approximately 299 metres to its junction with Public Footpath No. 18 Prestbury at O.S. grid reference SJ 8913 7577 immediately before it enters onto Prestbury Golf course via a kissing gate.

The section of path required to be diverted by Kings School, is shown by a solid black line on Plan No. TCPA/028 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C-B.

- 9.3 The existing alignment of the footpath section proposed for diversion by Kings School would be directly affected by development of the school as shown by the solid black line on Plan No. TCPA/028 running between points A-B.

The land over which the current route runs and over which the proposed route would run is partly owned by Kings School although a large proportion of the land is owned by Mrs Penelope Guinness who has consented to the diversion going ahead on condition that the planning application is granted, at which time, it is intended that Kings School will acquire the land from Mrs Guinness.

- 9.4 Planning permission for the school has yet to be granted to Kings School. The application is cited as Planning Permission Ref: 15/4286M. The details of the application are for the development of a school with associated buildings, playing/sports fields and a car park.

- 9.5 With regard to the development sought by Kings School, part of the current line of Public Footpath No.24 Prestbury would be obstructed by the school building. Therefore, the footpath diversion is required to preserve public access around the school.

The length of footpath proposed for diversion (points A-B) is approximately 210 metres of which 60 metres (points (1)-(2)) would be directly affected by the development.

Referring to Plan No. TCPA/026, the proposed diversion route would start from a point (point A) on the current route shortly after it entered the school grounds. From this point, it would run in a generally north, north easterly direction first crossing the access road for the school and then alongside woodland to the north western corner of the school grounds behind a pond (point C). It would then turn to follow a generally westerly direction along the northern school boundary to re-join the current route immediately before the kissing gate leading onto the golf course (point B).

The proposed new route would be 3 metres wide with a 1.2 metre wide stone surface with timber edging, laid within the 3 metre width. Either side of the stoned surface would be grass.

A 'post and three rail sawn timber' fence with sheep netting would be installed to the west of the footpath (blue line on Plan No. TCPA/026) to prevent interaction between school pupils/school personnel, and path users such that security and privacy for both would be enabled. Agricultural gates would be installed within the fence for use by school staff to access the footpath and surrounding land for maintenance and other operational requirements.

- 9.9 The local Councillors have been consulted about the proposal. No comments have been received.
- 9.10 Prestbury Parish Council has been consulted about the proposal and members have registered objection on the basis that it is not justifiable at this time. However, after discussion to explain that the path will need to be diverted if the development is granted permission to go ahead and diversion must be considered at this time, they will reconsider the proposal again on 9th March and further comments will be reported verbally.
- 9.11 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.
- 9.12 The user groups have been consulted. The East Cheshire Group of the Ramblers Association registered that they will not object to the diversion if the planning application for the school is granted. No other comments were received.
- 9.13 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 9.14 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 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:

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Background Documents: PROW file 284D/513