

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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<b>Date of Meeting:</b>	12 <sup>th</sup> September 2016
<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. 8 (part), Parish of Odd Rode

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### 1.0 Purpose of Report

The report outlines the investigation to divert part of Public Footpath No. 8 in the Parish of Odd Rode. 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 Mr Mark Taylor of 9, Primitive Street, Mow Cop, Stoke on Trent, ST7 3NH for erection of a new implement, produce and hay store (Planning reference: 16/3010C). 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. 8 Odd Rode, as illustrated on Plan No TCPA/032 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, 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. 8 Odd Rode as illustrated on Plan No. TCPA/032 to allow for the erection of a new implement, produce and hay store as detailed within planning reference: 16/3010C.

- 3.3 Consultations have elicited one objection to the proposal. However, 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 Odd Rode

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

- 5.1 Councillor R Bailey and Councillor L Wardlaw

#### **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 Mark Taylor of 9, Primitive Street, Mow Cop, Stoke on Trent, ST7 3NH 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. 8 in the Parish of Odd Rode.

- 6.2 Public Footpath No. 8 Odd Rode commences at its junction with Public Bridleway No 15 Odd Rode at O.S. grid reference SJ 8524 5743 and runs in a generally easterly direction across pasture fields to terminate at its junction with Birch Tree Lane at O.S. grid reference SJ 8478 5748. In total, the footpath has a length of approximately 465 metres.

The section of path required to be diverted by Mr Taylor is shown by solid black line on Plan No. TCPA/032 running between points A-B and has a length of approximately 56 metres. The proposed diversion is illustrated

with a black dashed line on the same plan, running between points A-C-B and has a length of approximately 68 metres.

- 6.3 The existing alignment of the footpath section proposed for diversion by Mr Taylor, would be directly affected by development of the store for implements, produce and hay, the footprint of which is shown as a red rectangle on Plan No. TCPA/032.

The land over which the current route runs and over which the proposed route would run is entirely owned by Mr Taylor.

- 6.4 Planning permission for the store has yet to be granted to Mr Taylor. The application is cited as Planning Permission Ref: 15/2960C. The details of the application are for the development of an implement, produce and hay store.

- 6.5 With regard to the development, part of the current line of Public Footpath No.8 Odd Rode would be obstructed by the store. Therefore, the footpath diversion is required to preserve public access through the site.

The length of footpath proposed for diversion (points A-B) is approximately 12 metres longer than the current route.

- 6.6 Referring to Plan No. TCPA/032, the section of Odd Rode FP8 proposed for diversion commences at the north eastern corner of a pasture field (point A), immediately after a kissing gate, and runs in a generally westerly direction across the field to terminate immediately before a stile within the western field boundary (point B).

The proposed new route would also start at the north eastern corner of the pasture field immediately after the kissing gate (point A) but it would then run along the northern field boundary behind the barn (points A-C) before diagonally crossing the field to terminate on joining the current route immediately before the stile (points C-B).

The new route would be approximately 68 metres in length, have a width of 2 metres and have a grass surface.

- 6.9 The local Councillors have been consulted about the proposal and comments will be reported verbally.
- 6.10 Odd Rode Parish Council has been consulted about the proposal. 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. The Peak and Northern footpath Society registered that their members have no objection to the diversion.

The Congleton Ramblers registered objection on the basis that they understand that the TCPA permits diversions only to the extent required for the development to proceed, so state that the new route should run to the eastern corner of the proposed barn and then back to its original course.

In response to this objection, discussion within the Institute of Public Rights of Way and Access concludes that there is nothing within the legislation of section 257 of the Town and Country Planning Act 1990, to state that diversions undertaken to allow development, must be the shortest possible. It is important to offer a proposal that is in the best interests of the public and not one that will be shortest if this does not serve those interests. In this case, taking the new route along a field boundary to a point passed the barn where the user can then view the stile that exits the field, is considered to be more convenient and easier to see and, the fact that it would run close to the northern field boundary for the majority of its length would be perhaps more enjoyable and easy to follow than having to walk close to the barn which would reduce the visibility.

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 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 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 231D/524