

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of meeting: 5th December 2016

Report of: Public Rights of Way Manager

Title: Town and Country Planning Act 1990 S257
Application for the Diversion of Restricted Byway No.1 (Part)
Parish of Eaton

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Restricted Byway No.1 in the Parish of Eaton. 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 an application has been made by the agents Wardell Armstrong LLP on behalf of Tarmac Trading Ltd. of Tunstead House, Wormhill, Buxton, Derbyshire. SK17 8TG. The application has been made as a consequence of planning permission having been applied for:

Planning Application: 16/3298W

Application to extend Eaton Hall Quarry to the North and South of the existing permitted extraction area to the North of School lane.

Planning Application: 16/3282W

Application to vary planning permission 5/APP/2004/0012 under section 73 of the Town and Country Planning Act 1990 (as amended) to develop land without compliance to conditions.

These applications are currently due to be decided by Planning Committee on the 25th January 2017.

The Growth and Infrastructure Act 2013 came into force on the 26th June 2013. This enables authorities to make an order to divert/extinguish footpaths/bridleways/restricted byways if an application for planning permission has been made, but not yet granted, and it is necessary in order to enable the development to be carried out. An order cannot be confirmed until permission is granted.

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 Restricted Byway concerned.

Members are required to consider the issues set out in this report and make a decision as to whether the proposed Restricted Byway diversion is necessary to enable development to take place in accordance with section 257 of the Town and Country Planning Act 1990 (as detailed in paragraph 3.1 below).

2.0 Recommendations

- 2.1 An Order is made under Section 257 of the Town and Country Planning Act 1990 to divert part of Restricted Byway No.1, Eaton as illustrated on Plan No. TCPA/034 on the grounds that the Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.
- 2.2 Public Notice of the making of the Order is 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 Recommendations

- 3.1 In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as Local Planning Authority, can make an Order diverting a public right of way if it is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with a planning permission that has been applied for or granted.
- 3.2 It is considered that it is necessary to divert part of Restricted Byway No. 1 Eaton as illustrated on Plan No. TCPA/034 to allow for the expansion of the existing sand quarry to access significant deposits of silica sand over a twenty five year period. The restricted byway directly crosses the area of land to be worked.
- 3.3 No comments have been received during the informal consultation process 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 Wards Affected

- 4.1 Gawsworth.

5.0 Local Ward Members

- 5.1 Councillor Lesley Smetham

6.0 Financial Implications

- 6.1.1 Not applicable

7.0 Legal Implications

- 7.1 Section 257 of the Town and Country Planning Act 1990 ("TCPA") (as amended by s.12 of the Growth and Infrastructure Act 2013) allows the council to make and confirm orders authorising the stopping up or diversion of

a public right of way if they are satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission applied for. There are requirements of public notice and if objections are received to the proposed order and not withdrawn, the order must be submitted to the Secretary of State for confirmation, who must either call for a local inquiry or give the objectors an opportunity of being heard before making his decision. This would require attendant legal involvement and use of resources. It follows that the Committee decision may or may not be confirmed by the Secretary of State.

- 7.2 The procedure in making an order is detailed in Schedule 14 to the TCPA and the Town and Country Planning (Public Path Orders) Regulations 1993, which are made under the TCPA.

8.0 Risk Assessment

- 8.1 Not applicable

9.0 Background and Options

- 9.1 An application has been received from Wardell Armstrong LLP acting as Agent for Tarmac Trading Ltd. ('the Applicant'), requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert part of Restricted Byway no.1 in the Parish of Eaton.
- 9.2 Restricted Byway No. 1, Eaton commences on Sandy Lane (UY 1300) at OS grid reference SJ 8632 6665 and runs in a generally west south westerly direction to its junction with the Congleton Road (A34) at O.S. grid reference SJ 8559 6599. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/034 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points C-D-E-B.
- 9.3 A large section of the current alignment of Eaton RB 1 is the result of a Town and Country Planning Act Order made under s. 247 by the Secretary of State for Transport in 2008. This was undertaken in order to quarry this area under a planning permission granted in 2005. This route extends across the proposed northern extension of Eaton Hall Quarry which is a proven deposit of nationally significant silica sand. The current alignment of Eaton RB1 therefore constrains the extension of the site and, in the instance that Eaton RB1 is not diverted, will effectively sterilise a substantial amount of nationally significant reserves. The diversion of Eaton RB1 will facilitate the northern extension to Eaton Hall Quarry, thereby protecting the health, safety and amenity of users of this Public Right of Way and providing a mineral of national significance in accordance with the National Planning Policy Framework. The planning applications are to extend the scope and timescale for extraction to cover a 25 year period.
- 9.4 The diversion will redirect the Restricted Byway from a point on Sandy lane to the north of its current location along the northern boundary of the site, avoiding the area of ponds to the north of Jack Fields Farm, to its north westerly corner, adjacent but not connecting to the Congleton Road then running southerly inside the westerly boundary then cutting across the south westerly corner of this field to

re-join the unaffected length of Restricted Byway at Point B (on plan no. TCPA/034). The Restoration Layout plan with the proposed diversion and current alignment depicted is attached. The proposed route will be 4 metres wide throughout and run parallel with the field boundary at approximately 4 metres distance to allow for retaining existing hedgerow and new planting. There will be no gates or other restrictions along the route and it will be enclosed by hedging/fencing with a rolled sand/earth mix which will be seeded to provide a permanent grass surface. The surface and the hedges/fences will be the responsibility of the landowner to maintain in perpetuity.

- 9.5 Consideration was given to the possibility of undertaking a temporary diversion of the route under s. 261 of the TCPA; however it was felt that the permanent diversion proposal offered a better prospect of an improved route in the short and long term. If the route was to be restored on its original alignment there would be issues of gradient due to the main quarry area to the south of the route being restored as a large body of water. The diversion will be approximately 560 metres longer than the original, 1545m as opposed to 985 m, however as this route is one of very few Restricted Byways in the Borough and appears to be more likely to be used for recreational purposes (it not forming part of a functional network) it was felt that this could actually be a benefit to users.
- 9.6 Councillor L Smetham has been consulted as the Ward Councillor and responded that she had no comments to make.
- 9.7 Eaton Parish Council has been consulted, no response has been received.
- 9.8 The user groups have been consulted. No responses have been received.
- 9.9 The Council's Nature Conservation Officer has been consulted. No response has been received.
- 9.10 An assessment in relation to Equality Act 2010 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 existing route.

10.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer.

For further information:

Officer: Clare Hibbert

Tel No: 01270 686063

Email: clare.hibbert@cheshireeast.gov.uk

Background Documents: PROW file 117D/523