

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of meeting: 13th March 2017

Report of: Public Rights of Way Manager

Title: Town and Country Planning Act 1990 S257
Application for the Diversion of Unrecorded Footpath,
Birtles Road, Macclesfield

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert an unrecorded footpath in the Town of Macclesfield. 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 developers Bartholomew Homes Ltd, of 18A Victoria Road, Hale, Altrincham, Cheshire WA15 9AD. The application has been made as a consequence of planning approval granted for: **15/5838M - Construction of 18 no. semi-detached dwellings on land to 70 Birtles Road, Macclesfield SK10 3JQ**

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.

Members are required to consider the issues set out in this report and make a decision as to whether the proposed footpath 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 the unrecorded Footpath off Birtles Road, Macclesfield as illustrated on Plan No. TCPA/037 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.

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 footpath 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 the unrecorded Footpath off Birtles Road, Macclesfield as illustrated on Plan No. TCPA/037 to allow for the construction of 18 semi-detached houses and associated infrastructure. The footpath would be directly affected by housing and the internal road layout.
- 3.3 Informal consultations have been undertaken and no objections have been raised to the proposal therefore 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 Broken Cross and Upton.

5.0 Local Ward Members

- 5.1 Councillors M. Hardy and L Durham.

6.0 Financial Implications

- 6.1 Not applicable

7.0 Legal Implications

- 7.1 Section 257 of the Town and Country Planning Act 1990 ("TCPA") allows the council to make and confirm orders authorising the stopping up or diversion of a footpath 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 Bartholomew Homes Ltd. ('the Applicant'), requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert the unrecorded Footpath off Birtles Road, Macclesfield.
- 9.2 This footpath commences on Birtles Road (UW 1235) at OS grid reference SJ 8897 7424 and runs in a generally easterly then east north easterly direction to Drummond Way (UW 3782) at OS grid reference SJ 8902 7429. The path to be diverted is shown by a solid black line on Plan No. TCPA/037 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.
- 9.3 The footpath is not currently recorded on the Definitive Map but is the subject of a Definitive Map Modification Order application which was submitted in 2008 by the Birtles Conservation Forum, application reference MA/5/243. The application is based on user evidence from 16 individuals claiming use for a period spanning more than twenty years. The route appears to be frequently used to access the Leisure Centre and Fallibroome School as well as for other reasons. The application has not yet been investigated but had fallen due because of the proposed development on the site. The developers agreed at an early stage to accommodate a route through to Drummond Way thereby accepting in principle the likely existence of the claimed public rights. The diversion process will extinguish any rights that may have existed over the claimed route and create a legal and recorded right of way over the new route.
- 9.4 The proposed diversion is necessary to accommodate the layout of the housing development which will directly affect the footpath. Within the limited scope of the site the diversion will be partly along the footway of the estate road with the rest forming a pedestrian link path through to Drummond Way. The whole of the path will be made up to adoptable standards and be 2 metres wide, surfaced and lit. On completion the full route will be adopted and maintained by the Highway Authority. The site layout for the area affected by the footpath is shown on the attached Development Plan.
- 9.5 Councillors Martin Hardy and Liz Durham have been consulted as the Ward Councillors. Cllr Durham has responded with no objections; no further comments have been received.
- 9.6 Macclesfield Town Council has been consulted; no response has been received. The user groups have been consulted.
- 9.7 The Rambler's Association Representative has responded with no objections but requested that if possible a route through the site is retained during construction works. This request has been passed on to the applicant who has responded to say- *'We would echo the local Rambler's Association comment & will use all reasonable endeavours, as far as possible, to maintain access to the footpath during the course of the development'*

9.8 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 more 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:

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Background Documents: PROW file 343D/528