

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 Section 257:
Application for the Diversion of an Unrecorded Footpath,
Church Lane, Wistaston

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert the Unrecorded Footpath off Church Lane in the Parish of Wistaston. 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 Gladman Developments Ltd of Gladman House, Alexandria Way, Congleton Business Park, Congleton, CW12 1LB with the consent of the landowners; Mrs M J Taylor, Mr W T Witter and Mrs A M Oulton- Parker. The application has been made as a consequence of planning approval granted for:

Planning Application 14/3024N

Outline application for a proposed residential development of up to 300 dwellings, site access, public open space, landscaping and associated infrastructure.

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 on land off Church Lane, Wistaston as illustrated on Plan No. TCPA/038 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 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 as illustrated on Plan No. TCPA/038 to allow for the construction of 300 houses and associated infrastructure. The footpath would be directly affected by the proposed housing and the road network.
- 3.3 Informal consultations have elicited two objections, one in support and eight individual comments/ potential objections to the proposal. Furthermore there are 135 signatories objecting to part of 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 Wards Affected

- 4.1 Wistaston

5.0 Local Ward Members

- 5.1 Councillors Margaret Simon and Jacqueline Weatherill

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") 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 Gladman Developments Ltd. (the Applicant), with the consent of the Landowners, requesting that the Council make an Order under section 257 of the Town and Country Planning Act 1990 to divert the Unrecorded Footpath on land off Church Lane, Wistaston, locally known as 'Witter's Field'.
- 9.2 This footpath commences at its junction with Wistaston FP no. 2 at OS grid reference SJ 7674 6169 and runs in a generally north westerly and westerly direction crossing Wistaston FP 1 at O.S. grid reference SJ 6822 5438 and continuing south westerly and southerly then easterly following a generally circular alignment, re-crossing Wistaston FP 1 at O.S. grid reference SJ 6825 5406 and continuing easterly then north easterly to re-join Wistaston FP 1 at O.S. grid reference SJ 6843 5420. The path to be diverted is shown by a solid black line on Plan No. TCPA/038 running between points A-B-C-D-E-F. The proposed diversion is illustrated with a black dashed line on the same plan, running between points G-H-I-J and K-E-L.
- 9.3 The footpath is not currently recorded on the Definitive Map but is the subject of a Definitive Map Modification Order (DMMO) application which was submitted in July 2015 by Mr F.P Alcock, application reference CN/7/30. The application is based on user evidence from 10 individuals claiming use for a period spanning more than twenty years and an overall average of 25 years. The route appears to be very frequently used by local people to walk their dogs, walks for recreation and exercise, for children getting to school and to access the area of public open space known as Joey the Swan as well as for other reasons. The application has not yet been investigated but had fallen due because of the approval for the proposed development on the site. The Applicants were aware of an informal circular route in existence on the site, prior to the application for the DMMO being submitted, and provision was made within the master planning for this to be incorporated into the scheme and formalised. This is shown on the Footpaths and Cycleways Plan which is an approved drawing and which Condition 16, of the planning permission, requires implementation to substantially accord with. A route along the west and north of the proposed site was also included in the approved Landscape

Proposals and the locations of the two existing public rights of way on the site, Wistaston FP 1 & 2, were retained. However the sections of the unrecorded path along the southern boundary of the site were shown incorporated within the footways of the estate road.

- 9.4 Following the granting of planning permission, a meeting was held with the applicant to discuss the DMMO application and how they proposed to respond to it. As the development also intended the provision of a circular route the landowners had decided not to object to the DMMO application and agreed to accept in principle the likely existence of the claimed public rights. It was agreed to provide a green corridor between the houses and estate road along the southern boundary to accommodate this section of the unrecorded path to better comply with Defra guidelines that state:

“any alternative alignment [of a Public Right of Way] should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic” (Defra Rights of Way Circular (1/09), Guidance for Local Authorities, Version 2, October 2009, para 7.8).’

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.

- 9.5 The proposed diversion is necessary to accommodate the layout of the housing development and infrastructure which will directly affect the footpath. In order to accommodate pedestrian use, the developer is to provide a new path running around the site along a similar but slightly altered alignment to the one claimed. This will retain the nature of the claimed path as a circular route with the northern and western lengths still running through an undeveloped green zone although the southern alignment will be more urban in character. The proposed site layout for the area affected by the footpath is shown on the attached Footpath and Cycleways Plan. The new route between points G- H-I on plan TCPA/038 will be a 2 metre wide timber edged path with a compacted stone surface. The new route between points I - J and K – L will be a 3 metre wide tarmacked footpath set within a 6 metre wide green corridor and running between houses to the south and the estate road to the north. Private drives will be accessed across this route at intervals. This route is also designed to accommodate cycle use in line with the approved Footpaths and Cycleways Plan.

- 9.6 Councillors Margaret Simon and Jacqueline Weatherill have been consulted as the Ward Councillors. Councillor Simon has commented that the proposed alignment between K-E- L could be placed along a wildlife corridor to the rear of the properties on Church Lane to help mitigate these existing properties being overlooked by the new houses. Following a meeting with PROW officers, Councillor Simon has further commented that after speaking with a representative of local residents on Church Lane, the indications are that they do not want houses on the new development to back onto their properties and would like

consideration to be given to having the footpath run between them. They would also like to see the planting of trees along the path for increased privacy. They do not consider this to be a greater security issue than has existed with the houses backing onto an open field.

- 9.7 Wistaston Parish Council has been consulted and responded that they would wish to see the proposed route G-H-I as a 3 metre tarmacked path within a 6 metre green zone the same as the sections I-J and K-E-L.
- 9.8 Mrs L Wainwright has commented that she feels let down by the Council to be losing 'Witter's Field' and has concerns about the safety of schoolchildren using the route I-J and K-E-L with driveways crossing the path and vehicles reversing when they currently have a traffic free environment in which to walk. She also expressed concern about the potential loss of wildlife, nesting birds etc. on the site.
- 9.9 Mr D Lucas, who completed one of the User Evidence forms that supported the DMMO application, commented that the proposal falls short of what was expected. The current path being a relaxing, peaceful walk around an open field will no longer be the case if these proposals are adopted. He suggests that a green space with screening could instead be placed to the rear of the houses on Church Lane and that the new houses could front onto this, with the path brought nearer to the existing houses, creating a path clear of obstructions such as parked cars and wheelie bins and a safer path for children. This could also be applied to the section J – I with the path nearer to the boundary. The section from G to the north of the site should run along the current route i.e. A to B and continue to H.
- 9.10 Mr L Cooper has written in seeking clarification on the policies and processes for dealing with the DMMO application and expressing concern that the proposal appeared to be a 'fait accompli' with little opportunity for public consultation when there is strong local opposition to the proposals made by Gladman. In a further communication he requested information about the meetings held between PROW and Gladman and the diversion consultation process and queried why there were 'constraints' on the site due to the layout as there has only been outline permission approved. He queried why the creation of a path to the rear of houses would not be desirable as had been stated in a response to Mr Lucas.
- 9.11 Mr F P Alcock, the applicant for the DMMO, responded to say that he objected to the proposal. He commented that the section L through to I will be nothing other than a walk along pavements on a housing estate crossing driveways and believes this to be 'not in the spirit of the establishment of public rights of way as embodied in such statute as the Countryside and Rights of Way Act 2000 and the Natural Environment & Rural Communities Act 2006'. It is suggested that the path be moved closer to the rear of the properties on Church Lane to create a green corridor between these and the new houses and that

the estate road be built immediately inside this green corridor to provide security to existing and new residents. The route L-I would then be nearer to the existing boundary. The route I –H is said to be at times impassable due to boggy ground and that the path would have to be raised to the level of the current route C-D and drained into the existing pools; he therefore does not agree with this proposal. He also believes the section running from H – G should follow as closely as possible to the existing route.

- 9.12 Mrs H Gould writing as the Organiser for Wistaston Walkers group would like to see a continuous grassed area of footpath on the development site that is suitable for walkers, local wildlife, new residents and dog walkers. She states that a wonderful facility is being lost and it is vital the needs of the whole community are considered.
- 9.13 Mrs A Flynn has written in to say that she would like to see all the paths within this field remain designated green areas and not just incorporated into roadways. It is stated that these paths are important to the families of Wistaston for children going to school, dog walking, beneficial for mental and physical health. She has been walking these paths for over 60 years.
- 9.14 Mrs E Yates has commented that she would like the circular walk in Witter's field kept with green verges. She states that the walk is used by many single and elderly people for social purposes and provides a wonderful free facility that can assist with mental and physical health issues.
- 9.15 Mr G Worrall has objected to the proposal. He would like to see the existing experience and character of using the recorded footpaths and the unrecorded footpath, maintained as a semi rural path unimpeded by traffic. This is particularly in regard to the existing FP 1 which runs through the middle of the estate He would also like to see the path between I – K and J-I run within a green corridor with tree planting to provide privacy to the rear of the houses on Church Lane with the proposed new properties facing onto the path.
- 9.16 Mr L Lawson who lives on Church Lane has commented that he would not like to see a footpath corridor at the rear of the houses on Church Lane as this might pose a security risk and a possible opportunity for fly tipping in the future. He would prefer to see the alignment of the path stay as proposed.
- 9.17 Two petitions have been received, one with 107 signatories and the other with 28. These letters express opposition to the diversion proposal and were gathered over a 4 day period by the Hands off Wistaston Group (HOW). It is suggested that a substantially greater number could have been collected over a longer period. The bases of the objections are that the proposed route between L and I, will become nothing more than a walk along pavements on a housing estate crossing driveways. The signatories would like to see a green

corridor with the footpath within it running to the rear of the houses on Church Lane and also closer to the boundary along the section J – I. This would ensure the retention of the circular path around the field perimeter continuing the recreational benefits to the local community that Witter's Field currently provides and unhindered by the new development.

- 9.18 In responding to some of the comments made above, Gladman Developments have offered the view that the outline application that has been approved establishes a number of design principles. The detailed designs (to be approved at reserved matters stage) will need to be substantially in accordance with drawings upon which the application was approved. These are referred to in two conditions of the approval one of which is Condition 16 in Appendix B to the Decision Letter and relates to the Footpaths and Cycleways Plan. These drawings show the new dwellings with rear gardens along the southern boundary of the site and were subject to consultation, design comments by officers and revisions during the consideration of the application. They were the plans upon which the Secretary of State found the schemes acceptable in planning terms and required accordance with through the conditions.
- 9.19 The user groups have been consulted. No comments have been received.
- 9.20 The Council's Nature Conservation Officer has been consulted. No comments have been received.
- 9.21 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 324D/532