

CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

Date of meeting: 12th June 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(2) 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(2) 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 no objections, two in support and three individual comments on the proposal. 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 Members will recall that a previous application to divert this unrecorded footpath was considered at the last Public Rights of Way Committee on the 13th March 2017. A decision was deferred due to the high number of objections to and comments on the proposal and for further advice to be sought on the meaning of 'substantially in accordance with'. This phrase was used in the outline approval given for the site by an Independent Planning Inspector with reference to how the reserved matters layout should accord with the plans approved at outline.
- 9.1 As a consequence, a second 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 County Planning Act 1990 to divert the Unrecorded Footpath on land off Church Lane, Wistaston, locally known as 'Witter's Field'.
- 9.2 The unrecorded footpath commences at its junction with Wistaston FP no. 2 at OS grid reference SJ 6829 5437 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(2) 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-K-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 amended proposal has been incorporated into a revised layout of the site and is shown on the Illustrative Footpath Plan attached.

- 9.4 Following the considerable opposition to the first proposal, the applicant had a meeting after the last Committee with one of the Ward Councillors and a representative from the local residents. This has resulted in the second application which has amended the proposed diversion so that the section of footpath running easterly from Footpath no.1 to points E and F will now run behind the houses on Church Lane, J-K-L on plan TCPA/038(2) and within a green corridor which will be made up of a 3 metre wide tarmacked path within a 6 metre green zone with private drives to the north and the connecting properties facing southerly onto the drives and the footpath. In total between the rear boundaries of the existing houses and the front of the new properties there will be approximately 12-16 metres. This amendment is addressing those concerns raised by local residents about providing a 'buffer' zone containing the footpath at the rear of adjacent properties.
- 9.5 The remaining part of the proposed diversion will remain the same as the previous application. The intent of which is to 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 Illustrative Footpath Plan. The new route between points G- H-I on plan TCPA/038(2) will be a 2 metre wide timber edged path with a compacted stone surface. The new route between points I - J 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 and the amended section J-K-L are also designed to accommodate cycle use in line with the approved plans from the outline permission. 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.
- 9.6 Councillors Margaret Simon and Jacqueline Weatherill have been consulted as the Ward Councillors. Councillor Weatherill responded that as the amendment has taken account of residents' wishes, she thinks that it is acceptable. Councillor Simon has commented that she finds this an acceptable outcome and has been in contact with some local residents' representatives and they are content with the proposals.

- 9.7 Wistaston Parish Council has been consulted but no response has been received.
- 9.8 Daniel Evans, Principal Planning Officer for Cheshire East Council, was consulted as the officer involved with the planning process for this site. He considers that on balance this proposal meets the requirements of the planning condition. This relates to Condition 16, of the planning permission, which requires that a scheme of pedestrian and cycle provision through the site shall be substantially in accordance with the Footpaths and Cycleways plan approved by the Planning Inspector. This addresses the issue that was part of the reason for deferment at the last Committee. However he believes that the revised layout offers a number of disadvantages to the existing residents of Church Lane, namely; that they will have dwellings facing onto their rear boundaries rather than backing on; that there will be vehicular movements along the private drives to the rear of their houses and that the footpath to the rear would allow users to walk along the rear boundaries of their properties.
- 9.9 Mr S Griffiths, a resident of one of the properties on Church Lane, has raised several queries regarding the details of the proposed development such as the height of the new houses and proposals for fencing, as he is concerned about privacy and security. Kevin Waters from Gladman Developments responded to him directly to say that these would be elements forming part of the application at the reserved matters stage which may be within a few months time. He would expect neighbouring residents to be consulted at this time.
- 9.10 Mr F P Alcock, the applicant for the DMMO, has responded to say that as the amended plan is very similar to the route that was put forward in his application and he assumes that as the opportunity to comment on details such as levels, planting, surface finish and enclosures will be available at the reserved matters stage of this planning process; he therefore has no objection to the amended proposal.
- 9.11 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(2nd Application)