

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of meeting: 4 December 2017
Report of: Public Rights of Way Manager
Title: Town & Country Planning Act 1990 S257:
Application for the Diversion of Public Footpaths Nos.
4 and 6 (parts), Shavington cum Gresty

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert parts of Public Footpaths Nos. 4 and 6 in the Parish of Shavington cum Gresty. 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 Taylor Wimpey, Manchester Ltd of 1 Lumsdale Road, Stretford, Manchester, M32 0UT, with the consent of the landowner Miss T A Need. The application has been made as a consequence of planning approval granted for:

Planning Application 15/4046N

The approval of reserved matters in respect of appearance, landscaping, layout, and scale for the construction of 275 dwellings including landscaping, recreation and amenity open space on land at Crewe Road, Shavington.

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 sections of footpaths 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 parts of Public Footpaths Nos. 4 and 6 as illustrated on Plan No. TCPA/043A 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/043 to allow for the construction of 275 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. 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 Shavington

5.0 Local Ward Members

5.1 Councillor Steven Edgar

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 Taylor Wimpey, Manchester Ltd (the applicant) requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert parts of Public Footpaths nos. 4 & 6 in the Parish of Shavington cum Gresty.
- 9.2 The footpaths run over land to the east of Crewe Road in Shavington. Public Footpath no. 4 runs from Weston Lane (C504) at grid reference SJ 7049 5212 in a generally southerly and south westerly direction to its junction with Crewe Road (B5071) at grid reference SJ 7026 5148. Public Footpath no.6 runs from its junction with Footpath no. 4 at grid reference SJ 7050 5177 in a generally south easterly direction to the Hough parish boundary at grid reference SJ 7120 5119. The sections of paths to be diverted are shown by solid black lines on Plan No. TCPA/043 running between points A-B-C and B-D. The proposed diversions are illustrated with black dashed lines on the same plan, running between points A-D-E-C.
- 9.3 The proposed diversion is required to accommodate the approved development of 275 houses and associated infrastructure including landscaping, recreation and amenity open space as shown on the attached Development plan. The routes of the two footpaths will partly be subsumed by housing and partly by the internal road layout. The proposed diversion will take the footpath into the peripheral landscaped/green area of the development and will form an attractive informal recreational route. The paths will run along the south easterly and north easterly boundaries, adjacent to open fields to the south east and a wooded valley alongside Swill Brook to the northeast. Footpath no.4 will remain on its current alignment from the Crewe Road end, running alongside the new access road to the site with a green landscaped zone in between. Where it enters the development the section A-B, a distance of approximately 173 metres (on Plan no. TCPA/43) will be diverted to run along the dashed line indicated A-D, a distance of approximately 133 metres, to link with Footpath No. 6.
- 9.4 That part of footpath No.6 where it enters the site at the southern boundary, point D (on Plan no. TCPA/43), to its junction with Footpath

No.4 at point B and the connecting section of Footpath no.4 running northerly from Point B to Point C, will be diverted to the dashed line running D-E-C.(on Plan No TCPA/043). The length of the route D-B-C is approximately 273 metres and the proposed new route will be 540 metres long. Whilst this is practically twice the length of the current section of footpath this path will fulfil a recreational function in this location offering opportunities for short local walks on the rural fringe and access to longer walks via the connecting rights of way network. There will be several connecting paths linking into the adjacent cul de sacs and estate roads. The direct alignment that the current footpath provides will be served by an estate road with a footway to its eastern boundary, thus continuing the functional route northwards to Weston Lane via the unaffected section of Footpath no.4.

- 9.5 The whole of the proposed route (A-D-E-C) will be constructed to a 2 metre width with timber edging and a compacted stone surface. The path will run around the periphery of the development within a green buffer zone of varying width with adjacent housing and access drives facing onto the footpath. The maintenance of the footpath and the green areas will be the responsibility of a management company. Where the unaffected section of footpath no.4 leaves the site towards Weston Road to the north, there is currently a narrow sleeper bridge across Swill Brook. Taylor Wimpey have offered to install a new footbridge to a specification approved by the PROW department and also replace the section of boardwalk that leads to the bridge from the south. The footbridge straddles the boundary of the development site so is not entirely within the developer's control. This will be a welcome improvement to a footpath which will probably be subject to greater usage on full occupation, post completion of the development.
- 9.6 Taylor Wimpey have requested that the Order making stages for these paths be phased; in the first instance making an Order to divert Footpath no. 4(pt) section A – B onto section A – D (as shown on Plan No. TCPA/43). This area is to be the first phase of development and whilst this is undertaken it is proposed that the line D-B-C will be kept open. A second Order will then be made to divert Footpath nos. 4(pt) and 6(pt) D-B-C onto section B-E-D in preparation for the second stage of development to commence.
- 9.6 Councillor Steven Edgar has been consulted as the Ward Councillor. No comments have been received
- 9.7 Shavington cum Gresty Parish Council has been consulted. They have responded that they have no objection to the proposal but have suggested that the path remain as a countryside footpath without surface treatment. Our response to this suggestion has been that there would be a significant deterioration in the path surface caused by likely increased usage and therefore the proposed surfacing will create a more sustainable footpath for the future.

- 9.8 The user groups have been consulted. No comments have been received.
- 9.9 The Council's Nature Conservation Officer has been consulted. No comments have 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 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:

Officer: Clare Hibbert

Tel No: 01270 686063

Email: clare.hibbert@cheshireeast.gov.uk

Background Documents: PROW file 264D/539