

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 12 March 2018
Report of: Public Rights of Way Manager
Subject/Title: Town and Country Planning Act 1990 Section 257:
Application for the Diversion of Public Footpath No 7 and,
Public Bridleway No's 10 and 11 (parts), Parish of Arclid

1.0 Purpose of Report

The report outlines the investigation to divert Public Footpath No 7 and, parts of Public Bridleway No's 10 and 11 in the Parish of Arclid. This includes a discussion of consultation 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 a response to a planning application. The application has been submitted by the Archibald Bathgate Group Ltd, Arclid Quarry, Sandbach, Cheshire, CW11 4SN, for permission to excavate sand from the southern eastern extension to the existing silica sand workings at South Arclid Quarry (Planning reference: 09/2291W). 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 footpath and sections of bridleway concerned.

2.0 Recommendations

- 2.1 That the decision to make the Order be delegated to the Head of Rural and Cultural Economy or his nominated delegatee who, in consultation with the Chairman of the Public Rights of Way Committee, will consider the proposal together with any comments received from members of Arclid and Betchton Parish Councils following their meetings on 15th March 2018.
- 2.2 If an Order is made, Public Notice of the making of the Order be 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 on condition that the diversion of Arclid FP9 (see Item 16 within the minutes of from the Public Rights of Way Committee, Monday 13th June, 2016) is complete.
- 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 Recommendation

- 3.1 In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as Planning Authority, can make an Order diverting a

footpath if it is satisfied that it is necessary to do so to enable development to be carried out in accordance with a planning permission that has been granted.

3.2 It is considered that it is necessary to divert Public Footpath No 7 and parts of Public Bridleway No's 10 and 11 in the Parish of Arclid as illustrated on Plan No. TCPA/046 to allow for further excavation of sand from the south eastern area of Arclid Quarry as detailed within planning reference: 09/2291W.

3.3 Consultation is still ongoing (until Friday 7th March 2018) although to date, has not elicited objections to the proposal 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 Ward Affected

4.1 Brereton Rural Ward

5.0 Local Ward Members

5.1 Councillor J Wray

6.0 Financial Implications

6.1 Not applicable

7.0 Legal Implications

7.1 Objections received to the proposed order, if not withdrawn, could lead to a public inquiry or hearing with attendant legal involvement and use of resources.

8.0 Risk Assessment

8.1 Not applicable

9.0 Background and Options

6.1 Applications have been received from Mr Rick Bright of Bright & Associates on behalf of the Archibald Bathgate Group Ltd, c/o Langtons, The Plaza, 100 Old Hall Street, Liverpool, L3 9QJ, requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990, to divert Public Footpath No 7 and parts of Public Bridleway No's 10 and 11 in the Parish of Arclid.

6.2.1 Public Footpath No 7 in the Parish of Arclid commences at its junction with Public Footpath No 9 and public Bridleway No's 10 and 11 in the Parish of Arclid at O.S. grid reference SJ 7865 6071 and runs in generally east, north easterly and then easterly directions for a total distance of approximately 316 metres crossing the airfield of the Cheshire Microlite Centre to terminate at

the parish boundary at its junction with Public Footpath No 16 in the Parish of Smallwood at O.S. grid reference SJ 7895 6077.

- 6.1.2 Public Bridleway No 10 in the Parish of Arclid commences at its junction with Public Footpath No's 7 and 9, and Public Bridleway No 11 in the Parish of Arclid at O.S. grid reference SJ 7895 6077 and runs in generally southerly direction for a distance of approximately 150 metres along a semi-surfaced track terminating at its junction with Hood Lane (adopted highway UY1128) at O.S. grid reference SJ 7866 6056.

Public Bridleway No 11 in the Parish of Arclid commences at the parish boundary where it junctions with Public Byway No 44 in the Parish of Sandbach 7 and 9, at O.S. grid reference SJ 7794 6106 and runs in generally easterly, then southerly and then easterly directions for a distance of approximately 938 metres along a semi-surfaced track terminating at its junction with Public Footpath No's 7 and 9 and Public Bridleway No 10 in the Parish of Arclid at O.S. grid reference SJ 7865 6071.

- 6.3 The existing alignments of the footpath and bridleway sections proposed for diversion by the Archibald Bathgate Group Ltd will be directly affected once the south eastern part of the quarry is excavated for sand.

The land over which the current routes run and over which the proposed routes would run is entirely owned by Archibald Bathgate Group Ltd.

- 6.4 Planning permission was granted to the Archibald Bathgate Group Ltd. on 20th February 2013. The application is cited as Planning Permission Ref: 09/2291W. The details of the application are for the extension of the southern eastern extension of South Arclid Quarry to enable further silica sand excavations and workings.

- 6.5 Further sand excavation into the south eastern extension of the South Arclid Quarry would destroy the land over which run the current alignments of Public Footpath No 7 in the Parish of Arclid and a section of bridleway consisting of parts of Public Bridleway No's 10 and 11 in the Parish of Arclid. Therefore, it is necessary to firstly divert the footpath and the bridleway sections, to ensure that these public rights of way are preserved.

- 6.6 Referring to Plan No. TCPA/046, the footpath and, the bridleway sections to be diverted are colour coded:

Diversion of Public Footpath No 7 in the Parish of Arclid

This footpath is shown by a solid **purple** line on Plan No. TCPA/046 running between points A-B-C. The proposed diversion of this footpath is illustrated with a **purple** dashed line on the same plan, running between points D-E-F-G-H-C.

The current alignment of Public Footpath No 7 in the Parish of Arclid is detailed in section 6.2.1.

It is proposed that this footpath be diverted to run around the southern and eastern perimeter of the south eastern sand excavation area and soil storage areas (points D-E-F-G-H-C) that will form once excavations begin in this area. Currently, this area of land is an airfield used by the Cheshire Microlite Centre.

The new diversion route would start within the parish of Betchton at a point along Hood Lane (point D) from which it would enter a field to run in a generally easterly direction along the southern boundaries of two fields to a pond (point E). Past the pond, it would then continue along the southern boundary of the second field in a generally south easterly direction to reach the south eastern field corner (point F). From there, it would follow the eastern field boundary in a generally north, north westerly direction, immediately passing another small pond and then passing a third pond by which it would cross the boundary between the parishes of Betchton and Arclid (point H) before reaching its termination point at the boundary between the parishes of Arclid and Smallwood (point C).

The new route would be a minimum of 2.5 metres wide and users would be protected from the quarry area by a fence. In future, it is intended that this fence would be removed as part of the land restoration project once excavation and restoration works are complete. Consequently, whilst the works were ongoing and for the purposes of considering this proposal, the footpath would be enclosed but long term, it would be unenclosed.

Diversion of Public Bridleways No's 10 and 11 (parts)

Parts of Public Bridleway No's 10 and 11 form the full extent of the section of bridleway proposed for diversion:

The part of Public Bridleway No 11 in the Parish of Arclid proposed for diversion starts at its junction with Public Footpath No 9 in the Parish of Betchton at the boundary between the Parishes of Arclid and Betchton (point J). It then runs in a generally easterly direction across a field to terminate at its junction with Public Bridleway No 10 and Public Footpath No's 7 and 9 (point A). From this point, the bridleway continues along Public Bridleway No 10 to run in a generally southerly direction terminating at its junction with the adopted unclassified lane, Hood Lane (UY1128) adjacent to the Cheshire Microlite Centre (point I).

It is proposed that the bridleway be diverted to run along the southern and western perimeter of the south eastern sand excavation area and soil storage areas along the current boundary between the parishes of Arclid and Betchton (points I-K-J).

The new diversion route for Public Bridleway No 11 in the Parish of Arclid would start at its junction with Public Footpath No 9 in the Parish of Betchton (point J) and run in a generally southerly direction along the boundary between the parishes of Arclid and Betchton to terminate at point K. The new diversion route for Public Bridleway No 10 in the Parish of Arclid would then start at this point (point K) and run in a generally east, south easterly

direction to undulate along the parish boundary to terminate at its junction with Hood Lane (point I).

The new route would have a surface of compacted loose aggregate material that would freely drain, would be 4 metres wide and enclosed by a post and rail fence.

The proposed footpath and bridleway diversion routes would be linked by the current unclassified lane, Hood Lane (UY1128) between points D-I.

It is important that, should the proposal succeed and a diversion Order be confirmed, that confirmation of this Order does not precede the completion of the diversion of Public Footpath No7 in the Parish of Arclid as doing so would leave a cul de sac footpath. The diversion of Public Footpath No 7 in the Parish of Arclid is detailed within Item 16 of the minutes from the Public Rights of Way Committee, Monday 13th June, 2016.

6.9 Consultation on the proposed diversion of Public Footpath No 7 and parts of Public Bridleway No's 10 and 11 in the Parish of Arclid, will complete on Friday 7th March 2018. Responses to date are given in the remainder of this paper and any comments received between now and the Committee meeting on 12th March will be verbally reported at that meeting.

6.9 The local ward Councillor has been consulted about the proposal.

6.10 Arclid and Betchton Parish Councils have been consulted about the proposal. Members from both Parish Council requested an extension to the consultation deadline such that they can properly consider the proposal at their meetings on 15th March 2018 (three days after the committee meeting).

6.11 The statutory undertakers have also been consulted and have no objections to the proposed diversion. Cadent and National Grid registered no objection. BT and United Utilities registered that the proposal should not affect their apparatus. No other comments have been received.

If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

6.12 The user groups have been consulted. It was confirmed to the Open Spaces Society, Congleton Ramblers and the Peak and Northern Footpath Society that the length of Hood Lane linking the new route proposed for Public Footpath No 7 in the Parish of Arclid and the new route proposed for Public Bridleway No 10 in the Parish of Arclid (points D-I on Plan No TCPA), is a public highway that is adopted and maintained by the Council as an unclassified road. The Open Spaces Society also questioned the timing of the diversion against the closure of the microlite centre and subsequent commencement of the new sand excavations. A response is being sought and will be reported verbally.

6.13 The Council's Nature Conservation Officer has been consulted and has not raised objection to the proposal.

- 6.14 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would not be significantly less convenience than the current route.

10.00 Access to Information

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

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Background Documents:

PROW files:

- 016D/548 Diversion of Public Footpath No 7 in the Parish of Arclid
- 016D/554 Diversion of Public Bridleway No's 10 and 11 in the Parish of Arclid