

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 12th 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's 3 (part)
and 4 (parts) in the Parish of Worleston and Public Footpath
No 4 (parts) in the Parish of Henhull

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No 3 and parts of Public Footpath No 4 in the Parish of Worleston and parts of Public Footpath No 4 in the Parish of Henhull. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for the diversion orders to be made. The proposal has been put forward by the Public Rights of Way Unit as a response to an application following outline planning approval granted to the North West Nantwich Consortium (consisting of Taylor Wimpey (North West), Redrow Homes and David Wilson Homes (North West)) for the residential development of up to 1,100 dwellings, 1.82ha of land for business use, a potential primary school, community facilities and local centre, allotments, recreational open space and associated landscaping, highways, access roads, cycleways, footways and drainage infrastructure (Planning reference: 13/2471N). The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not Orders should be made to divert the sections of footpath concerned.

2.0 Recommendation

That three Orders be made under Section 257 of the Town and Country Planning Act 1990 to divert the following footpath sections as illustrated on Plan No TCPA/045:

- i) Two parts of Public Footpath No 4 in the Parish of Henhull
- ii) Part of Public Footpath No 3 in the Parish of Worleston
- iii) Two parts of Public Footpath No 4 in the Parish of Worleston

The recommendation is made on the grounds that the Borough Council is satisfied that it is necessary to do so to allow the development to take place.

- 2.2 Public Notice of the making of the Orders be given and in the event of there being no objections within the period specified, the Orders 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 Orders 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 part of Public Footpath No 3 and parts of Public Footpath No 4 in the Parish of Worleston and parts of Public Footpath No 4 in the Parish of Henhull as illustrated on Plan No TCPA/045, to allow for residential development. Planning consent was granted on the 20th January 2016 by Cheshire East Council; reference number 13/2471N.

- 3.3 It is considered that the legal tests for the making and confirming of three Diversion Orders under section 257 of the Town and Country Planning Act 1990 are satisfied.

4.0 Ward Affected

- 4.1 Bunbury

5.0 Local Ward Members

- 5.1 This ward is currently electing a new Councillor. At the time of consultation, the ward was without a local ward member.

6.0 Financial Implications

- 6.1 Not applicable

7.0 Legal Implications

- 7.1 Objections received to the proposed orders, 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

- 9.1 An application has been received from Mr Kevin Coyne of Taylor Wimpey (North West Ltd), Washington House, Birchwood Park, Warrington, WA3 6GR on behalf of a consortium of housing developers (Taylor Wimpey

(North West) Ltd, Redrow Homes Ltd and David Wilson Homes Ltd.), requesting that the Council make three Orders under section 257 of the Town and County Planning Act 1990 to divert part of Public Footpath No 3 and parts of Public Footpath No 4 in the Parish of Worleston and, part of Public Footpath No 4 in the Parish of Henhull.

- 9.2 Public Footpath no. 3, Parish of Worleston commences at its junction with Millstone Lane (A51) at O.S. grid reference SJ 6483 5370 and runs across pastureland in a generally southerly direction for a distance of approximately 357 metres to its junction at the parish boundary with Public Footpath No 4, Parish of Henhull and Public FP No. 4, Parish of Worleston at O.S. grid reference SJ 6487 5335.

Public Footpath no. 4, Parish of Worleston commences at its junction with Reaseheath Roundabout at O.S. grid reference SJ 6502 5357 and runs in a generally south westerly direction for a distance of approximately 265 metres across pastureland to its at the parish boundary at its junction with Footpath No 4, Parish of Henhull and Public FP No. 3, Parish of Worleston at O.S. grid reference SJ 6487 5335.

Public Footpath No 4, Parish of Henhull commences at the parish boundary where it joins Public Footpath No's 3 and 4, Parish of Worleston at O.S. grid reference SJ 6487 5335 and runs across pasture land in generally south, south westerly, then south, south easterly, then south, south westerly directions for total distance of approximately 572 metres to terminate at its junction with Public Footpath No. 4 Parish of Nantwich at O.S. grid reference SJ 6474 5285.

- 9.3 The existing alignment of the footpaths would be directly affected by the construction of the residential development. The consortium of developers (Taylor Wimpey (North West), Redrow Homes and David Wilson Homes (North West)), own the land over which both the current footpaths and proposed diversion routes run and all have given written permission for the diversions as proposed.
- 9.4 Planning permission was granted to the applicant on 20th January 2016. The application is cited as Planning Permission Ref: 13/2471N. The details of the decision notice are for a residential development to be known as Kingsley Fields on land between Waterlode and Mill Lane, Nantwich and comprising of 1,100 houses with associated business and community assets.
- 9.5 Referring to Plan No. TCPA/045, the footpath sections to be diverted are colour coded:

Public Footpath No 3 in the Parish of Worleston

Two sections of Public Footpath No 3 in the Parish of Worleston proposed for diversion are shown by solid **orange** lines on Plan No. TCPA/045 running between points F-G and J-C. The proposed diversions of these

sections are illustrated with **orange** dashed lines on the same plan, running between points H-I-G and J-K-E-C.

First section – points F-G

The construction of the ascribed new road would result in the need for users of the first section to cross this road in order to follow the footpath's current definitive alignment. Diverting the footpath to run along the southern side of the road would take users to a safer crossing point at Reaseheath roundabout.

Consequently, it is proposed that the start point of the new route for this section should be relocated to the south side of the new road (point H) from where it would then run in a generally south westerly direction to point I and then in a generally west, south westerly direction to terminate on rejoining the current footpath at point G.

Second section – points J-C

The second section would benefit from being diverted to run across higher ground above ponds that will serve as a sustainable urban drainage system (SUD) to manage excess surface water on the land.

The new route for this section would start at point J and run in a generally south westerly direction to point K from where it would follow a generally south, south westerly direction to terminate at its junction with Henhull FP4 at the parish boundary (point C).

Public Footpath No 4 in the Parish of Worleston

The section of Public Footpath No 4 in the Parish of Worleston proposed for diversion is shown by a solid **purple** line on Plan No. TCPA/045 running between points A-B-C. The proposed diversion is illustrated with a **purple** dashed line on the same plan, running between points A-D-E.

This section would be obstructed by a new road so to take users of this footpath safely to the other side of this new road, it is proposed that this section be diverted to enter and exit beneath a planned underpass. Note that the underpass would be lit.

The new diversion route would start at point A but would then run in a generally south, south westerly direction to reach the underpass (point D) beneath which it would pass in a generally south, south easterly direction exiting to continue in this direction to terminate at its junction with the proposed diversion route of Public Footpath No 4 in the Parish of Worleston (point E).

Public Footpath No 4 in the Parish of Henhull

The sections of Public Footpath No 4 in the Parish of Henhull proposed for diversion are shown by solid **blue** lines on Plan No. TCPA/045 running between points C-L and O-P. The proposed diversions of these sections

are illustrated with **blue** dashed lines on the same plan, running between points C-M-N-L and O-Q-P.

First section – points C-L

This section would be obstructed by residential houses so it is necessary that be diverted to preserve the right of way for the public.

The new route would start at its junction with Public Footpath No's 3 and 4 in the Parish of Worleston and would run in a generally south westerly direction for a short distance to point M and then in a generally south easterly direction to point N and then in a generally west, south westerly direction to terminate on rejoining the current footpath at point L.

Second section – points O-P

A second part of Public Footpath No 4 in the Parish of Henhull would run partly along an estate road before veering onto adjacent open space. The developers have proposed a diversion that would re-align this section of footpath onto a tarmac route to be constructed as part of the planned landscaping within the development.

The new route would start at point O and run in a generally south, south westerly direction and then south, south easterly direction to terminate on re-joining the current footpath at point P.

Except for the new section of Henhull FP4 running between points C-M-N-L, all the new routes would have a surface of compacted stone with timber edging and be no less than 2 metres. The section of Henhull FP4 would form part of a new walkway/cycleway that would have a tarmac surface and width of 3 metres.

In summary, the new diversion routes would reduce the need for users to cross or walk along roads and maintain the footpath network such that a public right of way would still be available between Waterlode and, Reaseheath roundabout and Mill Lane (at its junction with Worleston FP3) albeit the nature of the routes would alter due to the change in use of the land for residential development.

- 9.7 Consultation on the proposed diversion of part of Public Footpath No 3 and parts of Public Footpath No 4 in the Parish of Worleston and, part of Public Footpath No 4 in the Parish of Henhull, 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.
- 9.8 Given that the local ward of Bunbury does not have a Councillor at present (elections ongoing), consultation with the local ward Councillor has not been possible.
- 9.9 Worleston and District Parish Council and Acton, Edleston & Henhull Parish Council have been consulted about the proposal. No comments have been received.

- 9.10 The statutory undertakers have also been consulted. United Utilities and Cadent Gas registered no objection. No other comments have been received.
- 9.11 The user groups have been consulted. No objections have been registered.
- 9.12 The Council's Nature Conservation Officer has been consulted and has not raised objection to the proposals.
- 9.13 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 diversions would be an improvement on the current routes since they would all have a better walking surface for less abled users.

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:

330D/551 – Diversion of Worleston FP3 (part)

330D/352 – Diversion of Worleston FP4 (parts)

154D/553 – Diversion of Henhull F4 (parts)