

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. 11 (part),
Parish of Basford

1.0 Purpose of Report

The report outlines the investigation to divert part of Public Footpath No. 11 in the Parish of Basford. 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 a response to a planning application. The application has been submitted by Mr Paul Heslop of Goodman Real Estates (UK) Ltd, Nelson House, Blythe Valley Park, Shirley, Solihull, West Midlands, B90 8BG to apply for permission to construct a commercial development for general industry, storage and distribution (Planning reference: 14/0378N). 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.

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 Chair of the Public Rights of Way Committee, consider the proposal together with all consultee comments received during the consultation following its completion on Tuesday 10th April 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 of 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 as amended by Section 12 of the Growth and Infrastructure Act 2013:

“(1A) Subject to section 259, a competent authority may by order authorise the stopping up or diversion in England of any footpath, bridleway or restricted byway if they are satisfied that—

- (a) an application for planning permission in respect of development has been made under Part 3, and
- (b) if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.”

Thus the Council, as the Local 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 before that permission is granted, providing that the application has been formally registered with the Council.

3.2 It is considered that it is necessary to divert part of Public Footpath No. 11 in the Parish of Basford as illustrated on Plan No. TCPA/047 to allow for the construction of a commercial development for industrial, storage and distribution business as detailed within planning reference:14/0378N.

3.3 Consultation is currently ongoing to consider the proposal against the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990. The consultation is due to be completed on Tuesday 10th April 2018.

It is recognised that completion of the consultation process after the committee has considered the proposal is not normal process. However, in this case, it is critical that the diversion is undertaken quickly and in line with the Planning process, in order to allow consideration of this matter in the round and address the impacts on local business and jobs. Consequently, the Council is seeking to secure final decision on the proposal at the earliest opportunity without compromising the full process, such that the diversion process does not create any undue delays (see section 9,7 for further details).

4.0 Ward Affected

4.1 Shavington and Haslington wards

5.0 Local Ward Members

5.1 Councillor S Edgar, Councillor D Marren and Councillor J Hammond

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

- 9.1 An application has been received from Mr C Hadjivassiliou of THDA Consulting Engineers (agent) on behalf of Mr P Heslop of Goodman Real Estates (UK) Ltd, Nelson House, Blythe Valley Park, Shirley, Solihull, West Midlands, B90 8BG requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert part of Public Footpath No. 11 in the Parish of Basford.

- 9.2 Public Footpath No. 11 in the Parish of Basford commences at its junction with Jack Mills Way at O.S. grid reference SJ 7106 5322 and runs in a generally easterly direction for a short distance and then runs in a south easterly direction to its junction with Weston Lane (C504) at OS grid reference SJ 7161 5221.

The section of this footpath that is proposed for diversion by Goodman Real Estate (UK) Ltd, is shown by a solid black line on Plan No. TCPA/047 running between points A-B-C-D. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-E-F-G-H-D.

- 9.3 The land over which the current route runs and over which the proposed route would run is owned by Goodman Real Estates (UK) Ltd.
- 9.4 Planning permission for the commercial development was granted to Mr P Heslop of Goodman Real Estate (UK) Ltd, on 18th July 2014. The application is cited as Planning Permission Ref: 14/0378N. The details of the application are for the construction of a commercial development for general industry, storage and distribution business. Of relevant reserved matters relating to landscaping application 17/3374N was approved on 3rd January 2018. Applications, 18/0377N and 18/0475N, are currently being progressed. with expectation that permission for each will have been granted by end April 2018 (as estimated).
- 9.5 The land over which runs the existing alignment of the footpath section proposed for diversion by Goodman Real Estate (UK) Ltd. would obstruct the current alignment of Public Footpath 11. Therefore, diversion is required to preserve the right of way for the public between Jack Mills Way and Weston Road.
- 9.6 The proposed new route would take users through a landscaped area that will be developed outside the western and southern perimeters of the site.

Although this would provide a longer route by approximately 365 metres, it is considered that this would be more scenic and easier to negotiate than any alternative that weaved between the buildings of the new commercial development and demanded users negotiate the new commercial estate roads and associated traffic.

Referring again to plan No. TCPA/047, The new route as proposed would start at the eastern end of a tarmac 'Y' shaped area (point A) and would run in a generally south, south easterly direction along a grass track to a roundabout providing entry to the new commercial development. It would cross the entry road in the same direction to point E and then immediately turn in a westerly direction for approximately 25 metres before returning in a generally south, south easterly direction to reach the south western corner of the development (point G). It would then arc around the eastern perimeter of a pond to point H that would leave it close to the A500. It would then follow a generally easterly direction to the north of the A500, to terminate on rejoining the current alignment of Basford FP11 at point D. This proposed new route is shown on the plan by a dashed bold black line between points A-E-F-G-H-D.

The new route would be 2 metres wide, free of footpath furniture and would have a grass surface. It would run through a landscaped corridor between trees and ponds.

Noise impact from the A500 has been considered by the applicant and specific mitigation against this is not deemed necessary since the footpath would be a minimum of 20 metres from the edge of the carriageway, be lower than the carriageway (1.5 metres minimum, 4 metres maximum), lie within trees, ponds and other vegetation and there is an existing small bund approximately 0.5 metres high between the highway and the site boundary. A further bund is proposed on the other side of the footpath to screen the footpath from the commercial development. This would be 2-3 metres high with a 1:3 side slope.

- 9.7 For economic reasons to secure locally based business and jobs already committed to the commercial development, it is necessary to enable the commercial development to go ahead urgently. Consequently the proposal is being presented to the Committee prior to completion of the informal consultation period which will run for a further four weeks following the meeting, completing on Tuesday 10th April 2018.

Comments received prior to the Committee meeting will be verbally reported at that meeting for consideration together with the diversion proposal. Thereafter, with Committee approval, later comments will be considered at the end of the consultation period to enable final decision to be taken. In line with the recommendation, this would be taken by the Head of Rural & Cultural Economy (or his delegated deputy the Public Rights of Way Manager) following consultation with the Chairman of the Public Rights of Way Committee (or the Vice Chairman in their absence) under the scheme of delegation.

Progressing the diversion in this way would enable the diversion proposal to be considered by the Committee at the earliest opportunity. This would avoid

waiting for the consultation period has completed which would result in a delay until the June Committee meeting. However, it still allows for consultation to be properly undertaken and for comments to be considered in undertaking the final decision regarding the making of an Order.

- 9.8 The local Councillors have been consulted about the proposal.
- 9.9 Weston and Basford and, Shavington-cum-Gresty, Parish Councils have been consulted.
- 9.10 The statutory undertakers have also been consulted. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 9.11 The user groups have been consulted.
- 9.12 The Council's Nature Conservation Officer has been consulted.
- 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 although longer than the current route, the proposed diversion would not be significantly less convenient to use than this route and is considered to be the best achievable 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 file 042D/557