

## **Public Rights of Way Committee**

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**Date of Meeting:** 10 September 2018

**Report Title:** Town and Country Planning Act 1990 Section 257 Proposed Diversion of Public Footpath No.12 (part) in the Parish Wardle

**Senior Officer:** Frank Jordan, Executive Director Place

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### **1. Report Summary**

- 1.1. The report outlines the investigation to divert Public Footpath No. 12 (part) in the Parish of Wardle. This includes a discussion of the consultations carried out in respect of the proposal and the legal tests to be considered for the diversion Order to be made. The proposal has been put forward by the Rights of Way Team as an application has been submitted by Mr Philip Posnett of Haughton Hall, Tarporley, in response to the following reserved matters application being granted:-

Planning Application: 18/2028N - *The approval of reserved matters seeking approval for a new spine road and other associated infrastructure works.*

The outline permission granted for the site is 13/2035N - *Outline Planning Application Including Means of Access for Employment Development Comprising Light Industry, General Industrial and Storage and Distribution Uses (B1(C)/B2/B8 Use Classes) on Land at the Former Wardle Airfield, Cheshire.*

- 1.2 The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not a diversion Order should be made for that section of footpath.
- 1.3 The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

## **2. Recommendation**

- 2.1. A Public Path Diversion Order be made under Section 257 of the Town and Country Planning Act 1990 on grounds that Cheshire East 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 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 Act.
- 2.3. In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

## **3. Reasons for Recommendation**

- 3.1. In accordance with Section 257 of the Town and Country Planning Act 1990 (“TCPA”) 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.”

- 3.2. 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, providing that the application has been formally registered with the Council.
- 3.3. The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

## **4. Other Options Considered**

- 4.1. Not applicable – this is a non-executive matter.

## 5. Background

- 5.1. An application has been received from Mr Philip Posnett requesting that the Council make an Order under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No 12 in the Parish of Wardle.
- 5.2. Public Footpath No. 12 Wardle commences at its junction with Public Footpath No. 1 Wardle at O.S. Grid Reference SJ 6023 5770 and runs in a generally south westerly direction for approximately 261 metres to O.S. grid reference SJ 6009 5749. It then continues in a west south westerly direction for approximately 1,186 metres to the parish boundary of Haughton at O.S. grid reference SJ 5905 5694. The section of path to be diverted is shown by a bold solid black line on Plan No. TCPA/051 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points A-D-C.
- 5.3. The existing alignment of the footpath will be directly affected by the development and infrastructure within the planning consent, resulting in the partial obstruction of the footpath by a new substation and spine road. Therefore the diversion is required to preserve the public right of way.
- 5.4. The length of Public Footpath No. 12 Wardle to be diverted commences at its junction with Public Footpath No. 1 Wardle (Point A on Plan No. TCPA/051) at O.S. grid reference SJ 6023 5770 and continues in a south westerly direction for approximately 261 metres to Point B (on Plan No. TCPA/051). It then continues in a west south westerly direction for approximately 98 metres to point C (on Plan No. TCPA/051) at O.S. grid reference SJ 5999 5746. The current route runs along a field boundary and along a dirt track.
- 5.5. The proposed diversion would commence at point A (on Plan No. TCPA/051) and run in a south westerly direction for approximately 279 metres to point D (on Plan No. TCPA/051) at O.S. grid reference SJ 6007 5748. This section will run along a new stone surfaced maintenance track that will be used for access to a new foul pumping station and will be 4 metres in width. The only traffic that will have access to this track will be to service the pumping station.
- 5.6. The proposed diversion would then continue in a west south westerly direction from point D to point C (on Plan No. TCPA/051) at O.S. grid reference SJ 5999 5746. This section will be a sealed surfaced footpath of a width of 3 metres and will run around the boundary of the adjoining land before continuing in a west south westerly direction at a distance of 7

metres from the road edge. This road will remain private and will not be adopted highway.

## **6. Implications of the Recommendations**

### **6.1. Legal Implications**

6.1.1. Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the Local Highway Authority to confirm the Order itself, and may lead to a hearing or Public Inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.

### **6.2. Finance Implications**

6.2.1. If objections to the Order lead to a subsequent hearing or inquiry, this legal process would have financial implications for the Council.

### **6.3. Policy Implications**

6.3.1. There are no direct policy implications.

### **6.4. Equality Implications**

6.4.1. An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current one.

### **6.5. Human Resources Implications**

6.5.1. There are no direct human resource implications.

### **6.6. Risk Management Implications**

6.6.1. There are no direct risk management implications.

### **6.7. Rural Communities Implications**

6.7.1. There are no direct implications for rural communities.

### **6.8. Implications for Children & Young People**

6.8.1. There are no direct implications for children and young people.

### **6.9. Public Health Implications**

6.9.1. There are no direct implications for public health.

## **7. Ward Members Affected**

- 7.1. Bunbury Ward: Councillor Chris Green was consulted and no comments were received

## **8. Consultation & Engagement**

- 8.1. Wardle Parish Council, the user groups, statutory undertakers, and the Council's Nature Conservation Officer have been consulted and have raised no objections.
- 8.2. The Open Spaces Society submitted comments relating to the use of the maintenance track and objected to the route that the proposed diversion was taking alongside the road. Based on their comments the applicant agreed to a revised alignment for section D-C of the proposed diversion where it runs parallel to the road, so that it runs further away from the edge of the road at a distance of 7 metres. That proposal is shown in Plan No. TCPA/051. A detailed plan of the pumping station area was also provided to the Society's representative. The Society are happy with the layout of the pumping station but at the time of writing no comments have been received relating to section D-C.

## **9. Access to Information**

- 9.1. The background papers relating to this report can be inspected by contacting the report writer.

## **10. Contact Information**

- 10.1. Any questions relating to this report should be directed to the following Officer:

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