

Public Rights of Way Committee

Date of Meeting: 10 September 2018

Report Title: Town & Country Planning Act 1990 Section 333(7), Application for Variation of Town and Country Planning Act 1990 Section 257 Cheshire East Borough Council (Restricted Byway No.1 (pt), Parish of Eaton) Public Path Diversion Order 2017

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to vary part of the Town and Country Planning Act 1990 Section 257 Cheshire East Borough Council (Restricted Byway No.1 (pt), Parish of Eaton) Public Path Diversion Order 2017. This includes a discussion of the previous consultations carried out in respect of the diversion Orders and the legal tests to be considered for the variation of the diversion Order to be made. The proposal has been put forward by the Public Rights of Way Team as an application has been submitted by Mr Fyles of Tarmac Trading Ltd. Tunstead House, Wormhill, Buxton, as a consequence of a site inspection of the proposed diversion and the variations between the Diversion Order and the route provided on the ground.
- 1.2 The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not a Variation Order should be made to the 2017 Diversion Order of the section of Restricted Byway concerned.
- 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 (Variation) Order be made under section 333(7) of the Town and Country Planning Act 1990 to vary the Cheshire East Borough Council (Restricted Byway No.1 (pt), Parish of Eaton) Public Path Diversion Order

2017 to reflect the alignment of the route set out and available on the ground.

- 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 Section 333(7) of the Act provides the Council with the authority to make a Public Path (Variation) Order provided the same procedures are carried out under which the Order was originally made.
- 3.4 The Variation Order is required following discrepancies between the maps used by contractors to lay out the route on site and the plan attached to the Diversion Order.

4. Other Options Considered

- 4.1. A Public Path Variation Order as opposed to a further Diversion Order is considered to be the most appropriate course of action.

5. Background

- 5.1. On the 5th December 2016 a report was presented to the Public Rights of Way Committee, following an informal consultation, for the diversion of part of

Restricted Byway No. 1, following the application for planning permission, since approved of: ***Planning Application: 16/3298W Application to extend Eaton Hall Quarry to the North and South of the existing permitted extraction area to the North of School lane AND Planning Application: 16/3282W Application to vary planning permission 5/APP/2004/0012 under section 73 of the Town and Country Planning Act 1990 (as amended) to develop land without compliance to conditions.***

- 5.2. The Committee resolved to make a Diversion Order to the Restricted Byway which was directly affected by the sand quarry. This Order was made, signed and sealed on 12th January 2017. An objection was subsequently received from an adjacent landowner concerning the proximity of part of the new route to the trajectory of clays from his shooting range. Consequently a second Order was made altering the section of route affected, between points M-N-D on Plan No. TCPA/052, on the 6th July 2017 (Appendix 1 attached to this report). No objections were received to this Order and over the following months, the construction of the path was commenced. There were serious flooding and drainage issues that arose due to the very wet weather through the winter which has delayed works being finalised. The site has very recently been inspected and the anomalies between the alignment of the route on the ground and that constructed have become apparent.
- 5.3. The line of the diversion route is shown on plan TCPA/052 by a broken black line between points E-F-G-H-I-J-K-L-M-N-D. The sections of route on the ground that differ from the Diversion Order are shown in red on the attached plan TCPA/052. The route on the ground has been put in to a 4 metre width with a double post and wire fenceline to the south and east where it hugs the field boundary and to both sides elsewhere.
- 5.4. A Variation Order is now required to reflect the changes identified by the recent site visit and thereby alter the legal alignment of the route in the second Diversion Order of 2017. The proposed Order will not significantly change the nature, widths, surface or general direction of the alternative route of Restricted Byway No.1 but will change the specific alignment of three separate short sections of the route on the 2017 Diversion Plan and amend the descriptions of those sections contained in Schedule 2 of the 2017 Diversion Order.
- 5.5. The sections that require amendment are between points G and H, H and I and M-N. The section between G and H as it stands, runs across a section of open field which is currently used for livestock by the neighbouring Jack Fields farm. To avoid sterilising this part of the field, the route has been constructed following the boundary of the ponds and field edge. This is indicated by G1-G2- H1- H2 on Plan No. TCPA/052. From point G1 the path would run in a

north north westerly direction for approximately 26 metres to point G2 then turn to run in a generally westerly direction for approximately 75 metres to point H1 then turn south south easterly for approximately 25 metres to point H2 and its junction with the current diversion route. This section creates an additional length of 72 metres.

- 5.6. Similarly a shorter section of the route between H and I is shown cutting a corner on the second Diversion Order plan but has been constructed to follow the pond and field boundary. This is indicated by points H-I1-I on Plan No. TCPA/052. From Point H the path would run in a generally north north westerly direction for approximately 20 metres to point I1 then turn to run in a generally westerly direction for approximately 30 metres to Point I and its junction with the current diversion route. This creates an additional length of approximately 10 metres.
- 5.7. The section between M and N has been constructed approximately 30 metres further south, south easterly along the field boundary adjacent to Congleton Road to point M1 on Plan No. TCPA/052. It then runs generally north easterly at a more oblique angle for approximately 110 metres to point N, keeping closer to the northern boundary of the rectangle of woodland that is outlined on the plan. It may be the case that the variation of this section would not be required if on consultation with the adjacent landowner it transpires that this alignment is still too close to the clay shoot. In this case the route will be altered to reflect the route on the second 2017 Diversion Order. This is currently the subject of discussion between the applicant and this landowner. If this section does require variation it will add approximately 32 metres to the overall length of the diversion.
- 5.8. The overall change in length to the route on the amended second Diversion Order would be 114 metres making the diverted route approximately 1709 metres rather than 1595 metres as it is in the current Diversion Order. The width of the route will be 4 metres and it will have a grass surface, these are unchanged from the current Order.

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 There are no direct equality implications.

6.5 Human Resources Implications

- 6.5.1 There are no 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 Councillor L Smetham was originally consulted as part of the first Committee report and had no comments to make.

8 Consultation & Engagement

- 8.1 Eaton Parish Council, User Groups, Statutory Undertakers and the Council's Nature Conservation Officer were also previously consulted and raised no objections.

9 Access to Information

- 9.1 The background papers relating to this report and the 2017 Diversion Orders 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:

Name: Clare Hibbert

Job Title: Definitive Map Officer

Email: clare.hibbert@cheshireeast.gov.uk