

Public Rights of Way Committee

Date of Meeting: 03 December 2018

Report Title: Town and Country Planning Act 1990 Section 257 Proposed Diversion of Public Footpath No.4 (part) in the Parish of Cholmondeston

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to divert Public Footpath No. 4 (part) in the Parish of Cholmondeston. 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, an application has been submitted by Mrs McDonald of The Byre, Daisy Bank Farm Cholmondeston in response to the following reserved matters application being granted:-

Planning Application: 18/1947N – *Approved Single storey side extension, garage conversion and internal alterations*

- 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 Mrs McDonald 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 4 in the Parish of Cholmondeston.

- 5.2. Public Footpath No. 4 Cholmondeston commences at its junction with a stone surfaced driveway and continues in a southerly direction for approximately 70 metres and then continues in a westerly direction and runs through the back gardens of the properties. The footpath then enters the neighbouring field and continues eastward before it continues in a generally southerly direction for approximately 609 metres across fields until it meets the railway line where it then continues in an easterly direction for approximately 112 metres to its junction with Winsford Road. The section of path to be diverted is shown by a bold solid black line on Plan No. TCPA/053 between points A-B-C-D. The proposed diversion is illustrated on the same plan with a black dashed line between points A-E-D.
- 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 extension and associated parking arrangements. Therefore the diversion is required to preserve the public right of way.
- 5.4. The length of Public Footpath No. 4 Cholmondeston to be diverted commences at its junction with a stone surfaced driveway (Point A on Plan No. TCPA/053) at O.S. grid reference SJ 6297 5835 and continues in a generally southerly direction for approximately 73 metres to Point B (on Plan No. TCPA/053). The definitive line then runs through the back gardens of the properties and enters the neighbouring field and runs in a generally easterly direction for approximately 81 metres to Point C (on Plan No. TCPA/053) at O.S. grid reference SJ 6304 5828. It then continues in a generally southerly direction across the field for approximately 170 metres to Point D (on Plan No. TCPA/053) at O.S. grid reference SJ 6306 5812. The total length of the line to be diverted is 324 metres.
- 5.5. The definitive line is currently obstructed by a number of substantial garden fences, a pergola and established hedges and shrubs between Point B and Point C. In line with the Cheshire East PROW policy if an obstruction is substantial and impractical to remove the landowner will be required to apply for a diversion rather than remove the obstruction, and also provide an alternative route. There is currently a permissive route on site which has been used and accepted by the public and which continues alongside the gardens of the property and enters the field between points C and E as shown on Plan No. TCPA/053.
- 5.6. The proposed diversion would commence at Point A (on Plan No. TCPA/053) and run in a generally south south westerly direction for approximately 105 metres to Point E (Plan No. TCPA/053). After approximately 65 metres from Point A (Plan No. TCPA/053) it will cross into

a neighbouring field through a pedestrian gate and then continue along the field boundary. The proposed diversion will then continue from Point E (Plan No. TCPA/053) in a generally south easterly direction for approximately 179 metres to Point D (Plan No. TCPA/053), a new pedestrian gate will be installed at Point E (Plan No. TCPA/053). This will allow users of the footpath to walk directly across the adjacent field instead of taking the definitive line which is a less direct route. The proposed diversion will have a length of 291 metres and will be a grassed surface.

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. Cholmondeston & Wettenhall Parish Council, the user groups, statutory undertakers, and the Council's Nature Conservation Officer have been consulted and no comments have been received.

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

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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