Public Rights of Way Committee

Date of Meeting: 10 June 2019

Report Title: Town and Country Planning Act 1990 Section 257 Proposed Diversion of the Unrecorded Footpath, off St. Anne’s Lane, Nantwich

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

1.1. The report outlines the investigation to divert the Unrecorded Footpath, off St. Anne’s Lane, Nantwich. 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 Public Rights of Way Team as an application has been submitted by Vision for Nantwich Ltd. in response to the following application:-

Planning Application: 18/6313N - Proposed mixed development of 31no. apartments, hotel, restaurants, retail units and associated car parking, including the demolition of No 17 Welsh Row

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 the 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, and in the event that planning consent has been granted, 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 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 Vision for Nantwich Ltd. requesting that the Council make an Order under Section 257 of the Town and Country Planning Act 1990 to divert the unrecorded footpath, off St. Anne’s Lane Nantwich.
5.2. The footpath to be diverted is an unrecorded route running across land to the east and southeast of St. Anne’s Lane, Nantwich, as shown on Plan No. TCPA/057 between points A-B. It is currently a well used link from the Nantwich Riverside Park to Welsh Row and this diversion will allow for the retaining and recording of this pedestrian link on the Definitive Map and Statement. The diversion is necessary to allow a mixed development of the land off St. Anne’s Lane.

5.3. The current unrecorded footpath is shown as a bold black line on Plan No. TCPA/057 between points A-B. It begins at its junction with St. Anne’s Lane (UY2599) where it continues in a southerly direction for approximately 34 metres along a sealed surface path which runs alongside land used as a car park by the general public. It then continues in a generally south easterly direction for approximately 58 metres through a small wooded and grassy area along a sealed surface path. Parts of the path have been affected by tree roots making sections of it very uneven.

5.4. The proposed diversion affects the whole length of the unrecorded footpath and is shown on Plan No. TCPA/057 as a dashed line running between points C-B. The proposed diversion will commence at point C which is the end of the adopted highway on St. Anne’s Lane and will then run in a generally southerly direction for approximately 47 metres before continuing in a generally easterly direction for approximately 36 metres. The proposed diversion will be surfaced with asphalt, will be open on one side and run alongside a car park, a building and a retaining wall on the other, it will be 3 metres wide. Access for cyclists is proposed to be retained, as at present, on a permissive basis.

5.5. Alongside the diversion, a deed of dedication is proposed to create a public footpath which will link the proposed diversion to the existing Public Footpath No. 4 on Mill Island, in order that the diversion does not create a cul-de-sac path on the Definitive Map. This will run between points B-D-E and is shown by an orange dotted line on the Plan No. TCPA/057. This land is owned by Cheshire East Council. The route of the creation will follow the unadopted sealed surface path that runs across the northern end of Mill Island.

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. Nantwich North and West: Councillor Penny Butterill and Councillor Arthur Moran were consulted and no comments were received.

7.2. Nantwich South and Stapeley: Councillor Peter Groves and Councillor Andrew Martin were consulted with Councillor Peter Groves stating his support for the development. No comments were received from Councillor Andrew Martin.
8. Consultation & Engagement

8.1. Nantwich Town Council, the user groups, statutory undertakers, adjacent residents and the Council’s Nature Conservation Officer have been consulted and have raised no objections.

9. Access to Information

9.1. The background papers of file No. 219D/514 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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