

Public Rights of Way Committee

Date of Meeting: 09 March 2020

Report Title: Town and Country Planning Act 1990 s 257 Application for the Extinguishment of Public Footpath No. 20, Parish of Congleton

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to extinguish Public Footpath No. 20 in the Parish of Congleton. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for an extinguishment order to be made. The proposal has been put forward by the Public Rights of Way team as an application has been submitted by Miller Homes, Hawthorn House, Woodlands Park, Ashton Road, Newton le Willows, WA12 0HF. The application has been made following the granting of planning consent for:

Outline Planning Application: 16/0514C

Land at Back Lane, Congleton

'Outline application for demolition of some existing building and the development of a residential scheme composing up to 140 dwellings, open space, landscape, access and associated infrastructure'

Permission granted: 21st December 2017

Reserved Matters Application: 18/4888C

'Reserved matters application for appearance, landscaping, layout & scale following outline approval applications 16/0514C for demolition of some existing buildings and the development of up to 140 dwellings'

Permission granted: 13th September 2019

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 extinguish the footpath concerned.

- 1.2. 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/s

- 2.1. That an Order be made under Section 257 of the Town and Country Planning Act 1990 to extinguish Public Footpath No. 20 Congleton, between points A and B, as illustrated on Plan No. TCPA/061 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 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 Acts.
- 2.3. In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3. Reasons for Recommendation/s

- 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:

"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 it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted under Part 3 "- 3.2 It is considered that it is necessary to extinguish Public Footpath No. 20 in the Parish of Congleton between points A and B as illustrated on Plan No. TCPA/061 to allow for the residential development as detailed within planning references: 16/0514C and 18/4888C. It is considered that the legal test for making and confirming of an Extinguishment Order under section 257 of the Town and Country Planning Act 1990 is satisfied.
- 3.3 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.
- 3.4 Where there are no outstanding objections, it is for the Council to confirm the Order.
- 3.5 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 Miller Homes, requesting the Council make an order under section 257 of the Town and Country Planning Act 1990 to extinguish Public Footpath No.20 in the Parish of Congleton as shown between points A and B on Plan No. TCPA/061.
- 5.2. Public Footpath No.20 Congleton that will be affected by the proposed residential development is shown by a solid black line on Plan No. TCPA/061 running between points A and B. The section commences at O.S. grid reference SJ 8397 6413 (point A on plan No. TCPA/061) and runs in a generally north westerly direction for a distance of approximately 159 metres to O.S. grid reference SJ 8387 6426 (point B on plan No. TCPA/061). The line of the footpath, which ran through pasture fields, will be obstructed by a house and run across gardens and parking spaces.
- 5.3. The planning permissions for the residential development have been granted (section 1.1). It is considered necessary to extinguish Public Footpath No. 20 Congleton to enable the residential development that would otherwise obstruct the footpath, to go ahead as detailed within these planning applications.

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/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/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 paths within the consented development would be no less convenient to use than the current footpath.

6.5. Human Resources Implications

6.5.1. There are no direct implications for human resources.

6.6. Risk Management Implications

6.6.1. There are no direct implications for risk management.

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.

6.10. Climate Change Implications

6.9.1 The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.

6.9.2 The diversion of the Public Footpath would enable better access to the public rights of way network by members of the public on foot with the potential for the improvement and promotion of active healthy lifestyles and wellbeing.

7. Ward Members Affected

7.1 Congleton West Councillors S Akers Smith, S Holland and G Hayes, were consulted.

- 7.2 Councillor Akers Smith informed that she would speak with the local walking group for their views and questioned whether the developer was offering any contribution to cycle lanes, pathways or public open spaces in mitigation of allowing this public right of way to be extinguished. In response, it was explained that the consented planning layout includes linkages for pedestrians and cyclists into and within the housing area. These links enable connections to the shared use footway/cycleway alongside Back Lane, to the shared use footway/cycleway alongside the Link Road and to the adjacent development site. Public open space is also included in the layout for the site which been granted planning consent.

Whilst these various links are included within the development design, they cannot be considered against the legislation under which this proposal is being made. The legal test that has to be met is that the footpath must be extinguished to enable the development to go ahead, irrespective of other considerations ongoing within the development.

- 7.3 No comments were received from Councillors Holland and Hayes.

8. Consultation & Engagement

- 8.1 Congleton Town Council has been consulted. Congleton Town Council has been consulted and commented that access will be improved through the development and that given this, they are content with the closure of the footpath.
- 8.2 The user groups have been consulted. The local correspondent of the Open Spaces Society commented that Public Rights of Way Officer, Clare Hibbert, had undertaken an excellent piece of work although did not further elaborate. No comments were received from any other user group.
- 8.3 The statutory undertakers have been consulted and have raised no objections to the proposed extinguishment. United Utilities, Cadent Gas and Openreach registered that they have no objections. If an extinguishment order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 8.4 The Council's Nature Conservation Officer has been consulted, no comments have been received.

9. Access to Information

- 9.1. The background papers of file No. 090E/588 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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