

**Cheshire West and Chester Council**  
**Delegated Report of the Senior Manager Asset and Network**

<b>Application Number</b>	SD081/FP22 Barrow
<b>Description</b>	Proposed Footpath diversion order under section 257 of the Town and Country Planning Act 1990
<b>Site address</b>	Public Footpath 22 (part) Barrow
<b>Ward</b>	Gowy Rural Ward
<b>Ward Member</b>	Councillor Margaret Parker
<b>Case Officer</b>	Adele Mayer, Prow Asset Management Officer PublicRightOfWayWest@Cheshirewestandchester.gov.uk
<b>Date</b>	21 June 2023

**Recommendation that:**

- 1) An Order be made under section 257 of the Town and Country Planning Act 1990 diverting a section of Public Footpath 22 Barrow (“FP22”) on the grounds that the Council is satisfied that it is necessary to do so to enable development to be carried out in accordance with Planning Permission under reference 22/03526/FUL as shown between on plan SD/081 (“the plan”)
- 2) The Senior Manager Asset and Network be authorised to take any action considered necessary in respect of the confirmation of the Order duly authorised to be made.

**Site Description**

1. FP22 Barrow runs from Public Footpath 21 Barrow (“FP21”) in a south easterly direction to the parish boundary with continuation of the footpath along Public Footpath 1 Tarvin. The section of footpath affected by the proposal is shown by a solid black line on the Plan between points A (OSGR SJ 48211 68427) and B (OSGR SJ 48294 68337) and is 129.6 metres in length.
2. The affected section of footpath currently runs over a part gravelled area and continues over mainly grassy surface. There is an existing stile at the junction between FP21, although not recorded as a limitation on the Definitive Statement. Images of the route can be found at Appendix A.

## **Proposal/application detail**

3. An application for planning permission has been granted permission under reference 22/03526/FUL. The application includes a plan of the proposed diversion reference “existing and proposed site plan” and an image can be found at Appendix B. The proposed development is a replacement garage which will have the effect of obstructing the public footpath other than it is diverted.

4. Plans showing the layout can be found under the relevant planning reference at the planning portal:

<https://www.cheshirewestandchester.gov.uk/residents/planning-and-building-control>

5. The proposed diversion will commence from the junction with FP21 at OSGR SJ 48211 68423 (Point C) which is 3.5 metres south of the current junction with FP21. The stile will be replaced with a kissing gate at the land boundary. The footpath will follow a fence line, to be constructed, directing pedestrians in a north easterly direction towards a gap in the fence at OSGR SJ 48218 68424 (Point D) running northerly through a gap in the fence, to OSGR SJ 48218 68426 (Point E) to the eastern boundary of the garden area at OSGR SJ 48229 68429 (Point F) then running in a south easterly direction along the boundary of the property to OSGR SJ 48265 6394 (Point G) then in a south westerly direction to OSGR SJ 48294 68337 (Point B). The total length of the diversion is approximately 144.7metres.

6 The new route will require works to create a satisfactory surface between points C to F where it has been used as a vegetable garden. Crown lifting of the trees at the section of path between G and H will also be required. The works will be established by agreement between the landowner and the public rights of way area officer. There will be no additional limitations.

## **Relevant Legislation**

7. In accordance with section 257 of the Town and Country Planning Act 1990 (the “1990 Act”) the Council may make an Order diverting a public footpath if it is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted.

8. Schedule 14 to the 1990 Act requires the Council to give notice of the making of the Diversion Order. If there are no subsisting objections the Council may proceed to confirm the Order. An Order with outstanding objections can only be confirmed by the Secretary of State.

9. Section 40 of the Natural Environment and Rural Communities Act 2006 requires the authority to have regard for conserving biodiversity. There is no additional impact from the diversion on the landscape.

10. Section 17 of the Crime and Disorder Act 1998 requires the authority to have due regard to the impact of the proposal and prevention of crime and disorder. The diversion runs within the boundary of the property. Security measures are in place and the public do not pass directly adjacent to any doors or windows.

### **Relevant Policies**

11. The following policies and protocols are relevant to this application.

11.1. Rights of Way Improvement Plan 2011-16

11.1.1. Statement of Action BS1 “we will seek to address safety concerns highlighted whilst using the network during consultation”

11.1.2. Statement of Action E05 “we will follow the Equality Act 2010 to comply with standards for mobility and visually impaired users where appropriate and reasonable”

### **Assessment and Issues**

12. The purpose of the diversion is to alter the definitive line of the path so that it enables development to take place. The current footpath runs through garden area and the land is to be developed with a new garage. Permission has been granted for construction of the new garage with condition for the application for the diversion of the footpath to enable the development. It is considered the test for making the order has been passed.

13. The proposal will divert the footpath away from the development and to the boundary of the garden. This would enable the development to proceed and will also have the effect of increasing the privacy of the garden area.

14. The new route will increase the length of the footpath by approximately 15 metres. The route appears to be used for recreational use rather than as a functional route and it is considered that the increased length is not an inconvenient distance for walkers. The new route commences and terminates on the same footpath and there are no other considerations of connectivity.

15. There is little difference in the surfacing or views of the current path and the proposed diversion. The current route runs over part hard and soft surfacing and the new route runs over similar, so for the purpose of accessibility the new route will be as accessible as currently, with increased accessibility by replacement of the stile.

16. The merits of the planning application are not under consideration in looking at this application. It is possible that if an application has itself received objections then a subsequent Order to divert a public right of way may draw objections in order to delay the process of development. If objections to an Order are received the matter would be referred to the Secretary of State.

## **Conclusion**

17. After careful consideration of the application and the relevant law and policies it is considered that it is necessary to divert part of Public Footpath 22 Barrow as illustrated on the Plan to enable development to be carried out in accordance with a planning permission.

## **Associated documents**

File: SD081/FP22 Barrow

Planning Application 22/03526/FUL

## Appendix A Site images

Current line of footpath, commencing from the south,



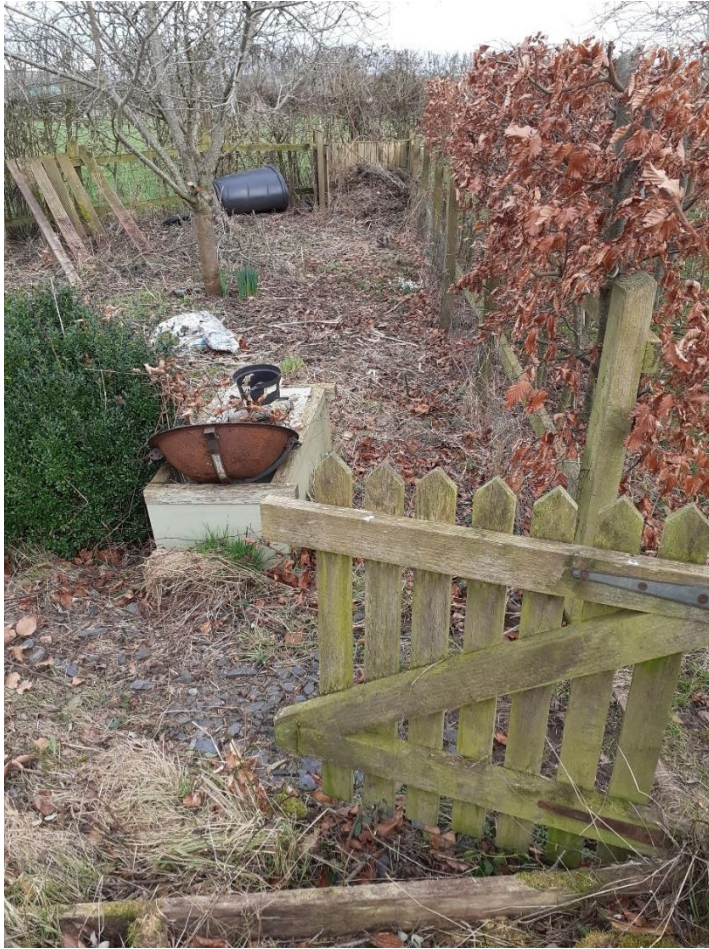
Cross garden facing north





Above – current stile at junction with FP21 Barrow, plant garden  
Below – direction of commencement of diversion facing north-east





Proposed continuation of diversion facing south, boundary of garden to left









Trees at south eastern area of proposed new route



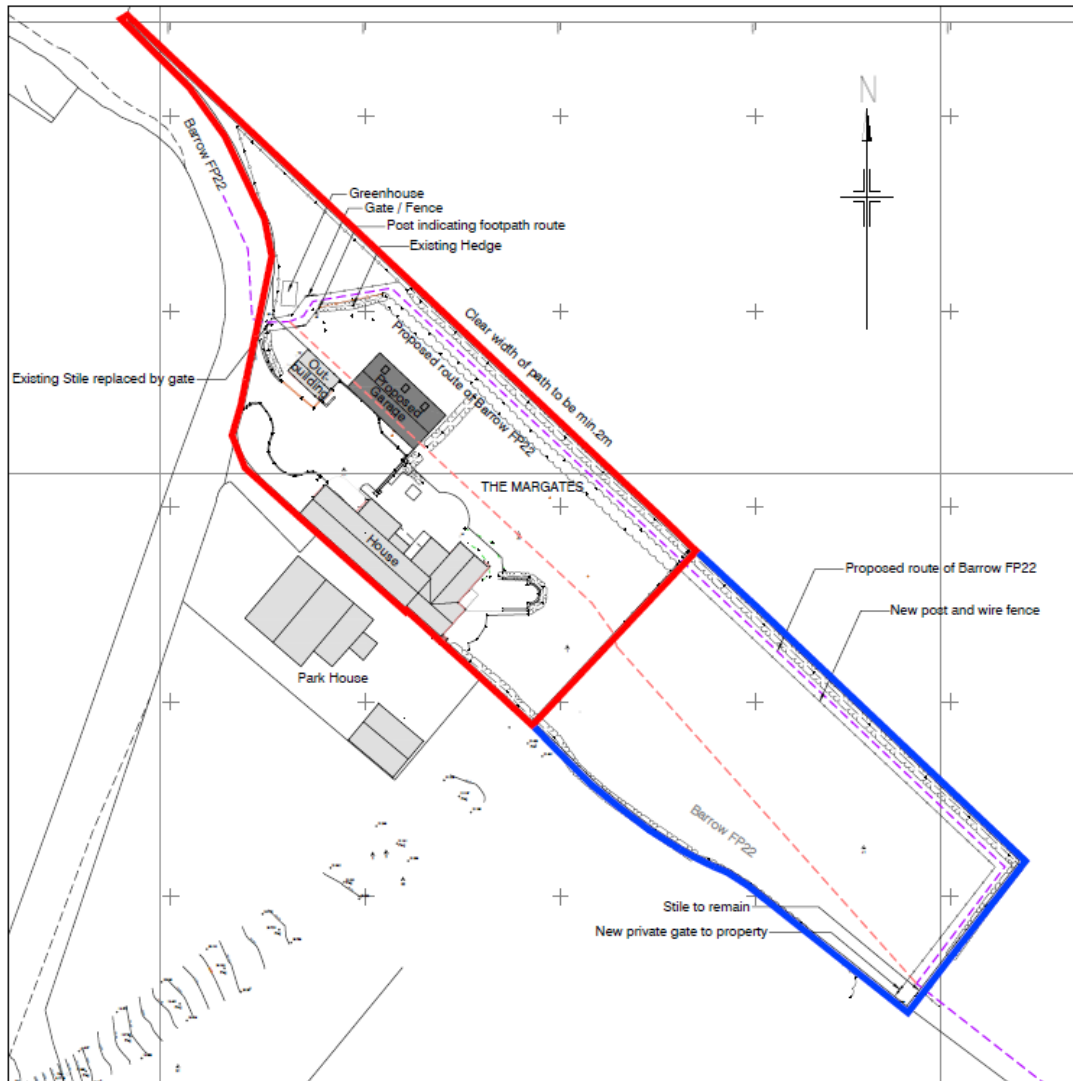


Towards termination of proposed diversion facing south west, garden boundary. On left





# Appendix B



PROPOSED SITE PLAN. 1 : 500