

**Cheshire West and Chester Council  
Delegated Report**

<b>Application Number</b>	SD/067/FP68/Whitegate and Marton
<b>Description</b>	Proposed footpath diversion order under section 257 of the Town and Country Planning Act 1990
<b>Site address</b>	Footpath 68 Whitegate and Marton
<b>Applicant Name</b>	Agent for Bark House Farm, Whitegate
<b>Ward</b>	Winsford Over and Verdin
<b>Ward Member</b>	Councillors Mike Baynham, Tommy Blackmore and Gina Lewis
<b>Case Officer</b>	Adele Mayer, Prow Asset Management Officer PublicRightOfWayWest@Cheshirewestandchester.gov.uk
<b>Date</b>	19 October 2020

**Recommendation:**

- 1) That an Order be made under section 257 of the Town and Country Planning Act 1990 diverting a section of Public Footpath No 68 Whitegate and Marton on the grounds that it is necessary to do so in order to enable development to be carried out pursuant to Planning Permission No 20/02490/FUL as shown on plan SD067 ("the Plan") a copy of which is annexed hereto.
- 2) That the Highways Commissioner be authorised to take any action considered necessary in respect of the confirmation of the Order duly authorised to be made.

**Site Description**

- 1 Public Footpath 68 Whitegate and Marton runs between Mill Lane (C613) at Ordnance Survey Grid Reference (OSGR) SJ 6353 6906 and Restricted Byway (RB) 75 Whitegate and Marton at OSGR SJ 6362 6865. The section of path affected by the proposal is an approximately 451 metres length of the footpath that runs along the driveway from OSGR SJ 6353 6903 (Point A on the Plan) and through the farm yard of Bark House Farm to RB 75 at OSGR SJ 6362 6865 (Point B on the Plan) and shown on the plan by a solid black line on the Plan.
2. The surface of the public footpath is a bound surface through the farmyard north to south and is surface washed gravel and grass beyond the farmyard leading

to RB 75. There are no limitations on the footpath recorded on the Definitive Statement. Images of the route can be found annexed at Appendix A.

### **Proposal/application detail**

3. An application for planning permission has been applied for under planning reference 20/02490/FUL. The application is for a replacement agricultural building. The agricultural building is adjacent to the route of the footpath in the farmyard. Planning approval has been granted for the development and the diversion of the footpath is necessary for ensuring safety of the public and security to the development as otherwise the members of public using the footpath and passing through the development would interrupt its use. The documents show the proposed diversion on the application drawing dated 15 July 2020. The application drawing is annexed at Appendix B.

4. Plans showing the layout can be found under planning reference 20/02940/FUL at the planning portal:

<https://pa.cheshirewestandchester.gov.uk/online-applications/>

5. The proposed diversion will divert off the current driveway to the farm, through a break in the existing hedge on the south side of Bark House Farm Drive cottages at Point A (OSGR SJ 6353 6903), and then run in a southerly direction within the boundary of the field. At a natural bend on the field at Point C to E (OSGR SJ 6351 6884), the diverted path will run in a south westerly direction crossing an agricultural field to the edge of the field (OSGR SJ 6345 6883). From this point there is a meadow field which slopes down in a south westerly direction to the level of RB75. Between Points E and D the path will “zig-zag” to take account of the slope to reduce the inclination of the slope. The footpath connects with RB 75 at the shallowest point between the bank and the byway (OSGR SJ 6343 6880). The diversion route is shown on the plan by a broken black line between points A to C to E to D.

6. The new route, between points A and D will be approximately 285 metres in length. Between A and C the route will run within the field along the side of a boundary hedge to an agricultural field. A width of 2.5m from the middle of the hedge will be required for the footpath. Between points C and E the footpath will cross an agricultural field. The landowner will be required to reinstate the footpath after ploughing (and will be subject to enforcement under S137A of the Highways Act 1980). Between E and D the proposed diversion will cross a field and light woodland to connect with RB75. For the purposes of accessibility, clearance and some surfacing works will be required to establish a line of footpath between points E and D. At the junction with RB75 there is a natural gap in trees and vegetation at point D which will need to be cleared and drainage installed so that the footpath will be carried over a drainage pipe to the restricted byway. A works schedule has been drawn up between the applicant and the council with agreement on signage, route and drainage and surface.

7. There are no limitations proposed for this diversion.

8 A brief consultation was held with the user groups in the locality. All representatives carried out a site visit. The Peak and Northern Footpath Society and the Ramblers secretary for the VRK and NMC groups visited the site when the crop had been removed and access to the meadow was available. Both of these representatives support the diversion, preferring a diversion out of a farmyard and on a rural path surface. Comments they made noted that the current line of the route is an all weather path and the new path may not be, but could be avoided by using the alternative RB75. The Mid Cheshire Footpath Society raised objections, preferring the current surfaced path, and thought the diversion was less convenient than the current path in length. They also said the proposed route would also be less accessible than the current. An assessment of the convenience and accessibility is made below.

### **Relevant Legislation**

9. 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 for development to be carried out in accordance with planning permission granted.

10 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. Otherwise the Order can only be confirmed by the Secretary of State.

11 Section 40 of the Natural Environment and Rural Communities Act 2006 requires the authority to have regard for conserving biodiversity.

12. 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.

### **Relevant Policies**

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

13.1. Rights of Way Improvement Plan 2011-16

13.1.1. Statement of Action BS1 "we will seek to address safety concerns highlighted whilst using the network during consultation"

13.1.2. 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**

14. The purpose of the diversion is to alter the definitive line of the path so that it enables development to take place.

15. There is a discrepancy in length of path between the current line and the proposed diversion. The proposed route is 166 metres shorter than current line. However, the length of route between A and B compared with A to D and B is a difference in length of 92 metres whereby the proposed route is longer. The route is part of a recreational route rather than a functional route and it is considered that the difference in length is not inconvenient for walkers.

16. The new route commences and terminates on the same footpath and the connecting Restricted Byway and there are no other considerations of connectivity.

17. There is a difference in the surfacing and views of the current path and the proposed diversion. Most of the current route runs over hard surfacing. The new route will run by the side of an agricultural field and through a meadow field. The farmyard is a busy yard with large agricultural vehicles manoeuvres and a vehicle weigh plate. The buildings do not have noted architectural interest but can be viewed in part from the diversion route. It is considered that diverting the route to a route on natural surfacing and away from the working hard surfaced farmyard will be more enjoyable for users of the footpath.

18. The impact of biodiversity has been considered under the planning application. Consideration has been made to use gaps in the vegetation to create the new connections. The effect of the proposal on crime and disorder is to improve the situation whereby security around the new building can be secured against public access.

19. There is a balance of consideration for accessibility, whereby both routes, the current and proposed encounter a slope. The current route is mostly flat surfaced the new route is likely to be more irregular. The current and proposed routes both encounter a slope which may be considered to be steep depending on ability. The current route is affected by the traffic generated by the working farm and this will include the traffic associated with the new building which has a negative impact on some sensory abilities. The diversion route will run away from the working traffic other than the existing section between Mill Lane and Point A on the Plan. The concluding balance has been on one hand, the consideration of a negative physical experience over the new route, with the other consideration of negative sensory experience on the current route. It is considered that the balance weighs towards increasing the safety of users with sensory impairments.

20. 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**

21. 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 68 Whitegate and Marton as illustrated on the Plan to enable development to be carried out in accordance with a planning permission which has been granted.

## **Associated documents**

File: SD/067/FP68Wwhitegate and Marton  
Planning Application 20/02490/FUL

**APPENDIX A**  
Site Photographs

From Mill Lane



Drive to  
farm at  
Point A



Route through farm buildings (Google aerial photograph)



Track on south east side of the farmyard





Junction of FP68 with RB 75 (Point B)



From Point C looking south to Point E at the telegraph pole in front of the tree line

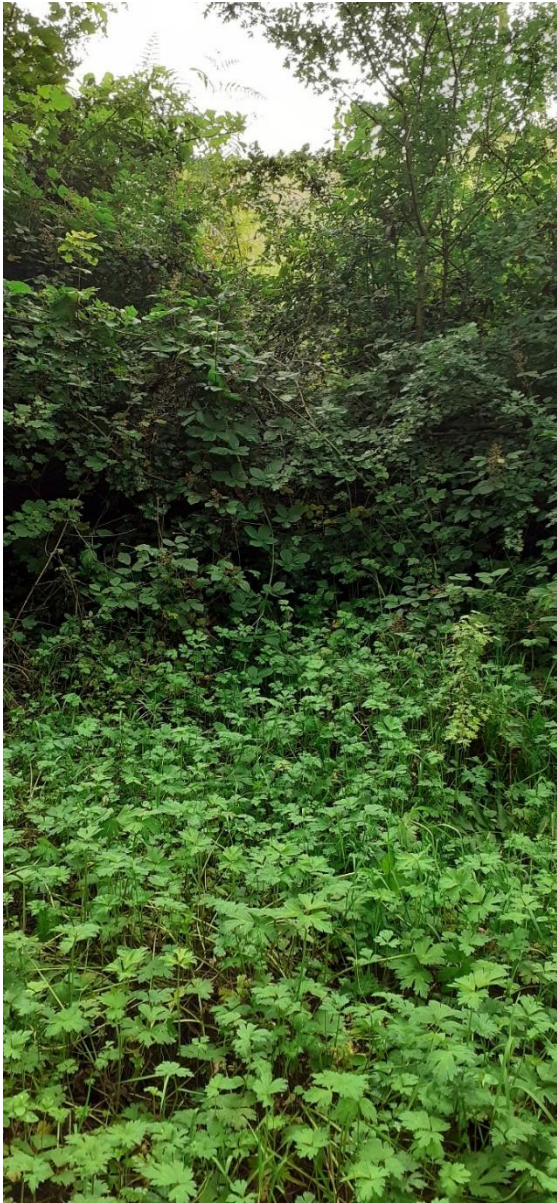




Meadow between point E and the tree line along RB75



Meadow sloping down to the gap above RB75



Gap between the meadow field and RB75

Length of RB75 from Point A towards Point D



# APPENDIX B

## Planning Application plan of the proposal

