

**Cheshire West and Chester Council
Delegated Report**

Application Number	SD/078/Utkinton
Description	Proposed Footpath Diversion Order under section 257 of the Town and Country Planning Act 1990
Site address	Public Footpaths 20 and 21 in the parish of Utkinton
Ward	Tarporley Ward
Ward Member	Councillor Eveleigh Moore-Dutton
Case Officer	Adele Mayer, Prow Asset Management Officer PublicRightOfWayWest@Cheshirewestandchester.gov.uk
Date	08.02.2022

Recommendation:

- 1) That an Order be made under section 257 of the Town and Country Planning Act 1990 diverting sections of Public Footpaths 20 and 21 Utkinton on the grounds that it is necessary to do so in order to enable development to be carried out pursuant to Planning Permission No 21/02432/FUL as shown on plan SD078 ("The plan").
- 2) That the Highways and Environment Services Manager be authorised to take any action considered necessary in respect of the confirmation of the Order duly authorised to be made.

Site Description

1. The site of proposal is located at Hollins House, off Hollins Hill, Utkinton. Public Footpath 21 runs from Hollins Hill at OSGR SJ 563 658 in a southerly direction to the junction with Public Footpath 3 and 4 at OSGR SJ 5562 656. The part of the footpath affected by the application runs between point A on the plan at OSGR SJ 56237 65710 along a track to the property for approximately 30 metres to point B on the plan at OSGR SJ 56223 65683. Public Footpath 20 commences from the junction with Public Footpath 14 Utkinton at OSGR SJ 558 658 and runs in an easterly direction running alongside the property to the junction with Public Footpath 21 at point B on the plan at OSGR SJ 56223 65683. The part of the footpath affected by the development runs between point C on the plan at OSGR SJ 56163 65707 then running in an easterly direction for approximately 65.6 metres to point B on the plan.

2. The current surface of the affected parts of FP 21 is made up of an unsealed gravel track and FP20 is mainly trodden earth. There is a stile adjacent to point C on the plan and on the boundary with the neighbouring property at point B on the plan. Images of the route can be found at Appendix A.
3. The applicant owns the land over which the parts of the footpath currently run and over which they are proposed to be diverted.

Proposal/application detail

4. An application for planning permission has been approved under reference number 21/02432/FUL for construction of entrance walls and gates and diversion of a public footpath.
5. Plans showing the layout can be found under the relevant planning reference at the planning portal: <https://pa.cheshirewestandchester.gov.uk/online-applications/>
The entrance wall and gate are new constructions and the footpath is proposed to be diverted outside of the boundary of the property. The diversion will allow the owners to increase privacy and security.
6. The diversion route of FP20 will necessitate work to level adjustment at the western end. The ground level will be raised to reduce the incline of the path to the level on the north side of the property. The new route will divert north of a guy cable of a telegraph pole, and from there will continue to run approximately straight in an easterly direction. The ground over which the FP20 will run is grassed but will require some initial gravel surfacing because the ground is “soft” and the gravel will create a surface for the footpath.
7. The ground of the diversion route of FP21 will necessitate levelling of ground adjacent to the east boundary hedge. Two trees will need to be removed or relocated to accommodate the width of the footpath and the ground will require levelling. FP21 will not require any new surfacing but will run over the existing drive and at the southern end, will be over compacted earth and grass.
8. The new route for FP20 will run from point C on the plan in a generally north easterly direction for approximately 9 metres to point E on the plan at OSGR SJ 56168 65713 and then in a generally easterly direction for approximately 54 metres to point F on the plan at OSGR SJ 56221 65704 and then in a generally south westerly direction, in front of the proposed new gates, for approximately 15 metres to point G on the plan at OSGR SJ 56234 65697, a total distance of approximately 78 metres
9. The new route for FP21 will run from point A on the plan in a southerly direction for approximately 10.5 metres to the corner of the proposed new walling at point D on the plan at OSGR SJ 56236 65699 and continue in a south westerly

direction for approximately 21 metres to point B on the plan, a total distance of approximately 31.5 metres.

Relevant Legislation

10. 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.
11. 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.
12. Section 40 of the Natural Environment and Rural Communities Act 2006 requires the authority to have regard to conserving biodiversity
13. Section 17 of the Crime and Disorder Act 1998 requires the authority to have due regard to the impact of the proposal and the prevention of crime and disorder.

Relevant Policies

14. The following policies and protocols are relevant to this application.
 - 14.1. Rights of Way Advice Note 9 (Department for Environment)
 - 14.2. Rights of Way Improvement Plan 2011-16
 - 14.2.1. Statement of Action BS1 “we will seek to address safety concerns highlighted whilst using the network during consultation”
 - 14.2.2. 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

15. The purpose of the diversion is to alter the definitive line of the path so that it enables development to take place. The development includes the construction of walling and gates would obstruct the line of the public footpath if it was not diverted. Diverting to the north side of the wall and gates will improve privacy and security at the property. It is considered that the test for making an Order has been met.
16. The new route will divert to the north of Point A on the plan. There is a difference in levels between the existing footpath and the diversion route. Groundworks will be required to raise the lower level to the upper level and reduce the slope. The slope will be at 1:11 gradient or less. The upper level is grass so in order to

create an initial surface for walkers a layer of gravel 1.8 metres wide will be laid. The new line of FP21 will require groundworks between Point G and Point B on the plan to remove 2 trees and a kerb and level the surface off the ground and remove the trip hazards.

17. The footpaths are part of a recreational route rather than a functional route. The length of FP20 to be diverted is 65.6 metres and the new route will be 78m, an increase in length with the current route of 12.4 metres. The route of FP21 to be diverted is in total 30 m and the diversion route is 31.5 metres an increase in length of 1.5 metres. It is considered the increase in length is not inconvenient for walkers using these footpaths.
18. The new route commences and terminates on the same footpaths and there are no other considerations of connectivity.
19. There is little difference in the surfacing or views of the current path and the proposed diversions. The current route of FP20 runs over hard surfacing and will divert onto a mixed surface of grass and hard surfacing. FP21 runs over hard surfacing and the new route will be the same surface.
20. The diversion is considered together with the consultation on the planning application. Under the planning consultation there have been no objections to the diversion proposed.
21. 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

22. After careful consideration of the application and the relevant law and policies it is considered that it is necessary to divert parts of Public Footpath 20 and Public Footpath 21 Utkinton 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/078
Planning Application 21/02432/FUL
Appendix A Site images

Appendix A

Images of the footpaths and proposed diversions



FP21 Track leading to the property

FP21 facing south



Diversion line of FP21 relocation of 2 trees, groundworks levelling



Line of FP20 adjacent to property





Line of FP20 and the

proposed diversion route on left of image

Level Difference between current and proposed. Groundworks to decrease current slope incline. Telegraph poles and guy cable mid image.





Proposed route of FP20 diversion avoiding guy cable.
Levelling and gravel surfacing for FP20 diversion to connect with FP21 at line of trees in image.

