

**Cheshire West and Chester Council  
Delegated Report**

<b>Application Number</b>	SD/062/FP3/Kingsley
<b>Description</b>	Proposed footpath diversion order under section 257 of the Town and Country Planning Act 1990
<b>Site address</b>	Footpath 3 Kingsley
<b>Applicant Name</b>	Mr and Mrs Spruce, Kingsley
<b>Ward</b>	Sandstone
<b>Ward Member</b>	Councillor Hugo Deynem
<b>Case Officer</b>	Adele Mayer, Prow Asset Management Officer PublicRightOfWay@Cheshirewestandchester.gov.uk
<b>Date</b>	6 December 2012

**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 3 Kingsley on the grounds that it is necessary to do so in order to enable development to be carried out pursuant to Planning Permission No 19/02743/FUL
- 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. FP3 Kingsley currently runs between Depmore Lane (OSGR SJ5421 7465) and Hollow Lane (B5153)(OSGR SJ 5145 7497) Kingsley. The part of the footpath affected by the application is a 256 metre length of footpath from a point on the existing footpath at the rear of housing on Depmore Lane at OSGR SJ 5416 7478 (point A on plan) in a generally northerly, then easterly then northerly direction to the junction with Hollow

Lane at OSGR SJ 5145 7497 (Point B on Plan) and shown between points A and B by a solid black line on plan SD/062 (“The Plan”)

2. The surface of the footpath is generally grass pasture. There are no recorded limitations on the Definitive Statement but there are 2 stiles on this section of the footpath. Images of the route can be found at Appendix A.

3. The applicant owns the land over which the part of the length of path affected runs and will be diverted, and has provided written agreement to the diversion from the adjacent landowner who owns land over which part of the length of the current and proposed diversion path runs.

### **Proposal/application detail**

4. Planning permission is under consideration by Cheshire West and Chester Council under application reference number 19/02743/FUL which application proposes the extension of an existing stable block.

5. Plans showing the site layout can be found via the planning portal, online at <https://pa.cheshirewestandchester.gov.uk/online-applications/applicationDetails.do?activeTab=details&keyVal=PV3003TEJIG00>

The Public Footpath runs between the rear of the existing stable block and a hedge. The extension of the stable block as proposed would have restricted the width available for the footpath, and encroached on the legal width. Design options were considered but could not be satisfactorily accommodated. A proposal to divert the footpath so that the development would not affect the public rights was submitted with the application to divert.

6. It is proposed to divert the path so that the public footpath will run from OSGR SJ 5416 7478 (point A on plan) for approximately 64 metres in a north westerly field on the planning application at OSGR SJ 5411 7481 and continue for approximately 110 metres along the inside of the boundary hedge to a point on Middle Lane (UV2529) at OSGR SJ 5405 7419 (Point C on plan) The diversion route is shown on the plan by a broken black line between points A to C.

7. The new route will be approximately 174 metres in length. The surface will be pasture grass. For reasons of stock control there will need to be 2 gates. There will be a small section of the hedge removed at the junction with Middle Lane but the second gate between the two fields has an existing gap and fencing. The new footpath will be a width of 2 metres.

8. There has been a short consultation for this application with the Ward Councillor, parish council and local user groups. The response from the consultation was in support with concern over the termination point onto Middle Lane. For this reason, the applicant has been asked to provide a recessed gate at Point C on Middle Lane. The Middle Lane footway commences on the opposite side of the road at the location of the proposed termination point. The road speed drops from 30 to 20 mph along the lane, however, pedestrians would need some space to ensure that they can cross safely.

### **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 a planning application to develop on land.

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 if notice of planning permission has been issued. 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.

- i. Rights of Way Improvement Plan 2011-16
- ii. Statement of Action BS1 "we will seek to address safety concerns highlighted whilst using the network during consultation"
- iii. 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"

14. Cheshire West and Chester Rights of Way Committee 29 July 2009: "Structures on public rights of way".

### **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.

16. The current footpath runs along the eastern boundary of a field which is currently used for horses and runs to the rear of a stable block and crosses a second field before terminating on Hollow Lane. The diversion will move the path to the western side of the first field. The footpath will terminate on Middle lane which is connected to Hollow Lane on which the footpath currently terminates.

17. There is little difference in the surfacing or views of the current path and the proposed diversion.

18. In comparison, there is 82 metres difference in the length of path to be stopped up and the new path, however this does not take into account the distance between the two termination points. There is approximately 119 metres of footway between the two points. The 37 metres difference in distance between A-B and A-C for the current and proposed diversion is considered to be acceptable. The footway of Middle Lane is on the opposite side to the proposed termination point but there will be provision of a recessed gate as a waiting and crossing space for pedestrians from the new termination point.

19. There will be two pedestrian gates provided for stock control purposes. The Planning Act regulations for Orders does not provide for authorising gates so these will subsequently be licensed under Highways Act 1980 section 147. A small part of the hedge adjacent to Middle Lane will need to be removed to accommodate access. This will be balanced by the removal of the existing stile and re-growth of hedge. The point of termination is where the hedge is thinner and the impact on biodiversity will be least.

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 3 Kingsley as illustrated on the Plan to enable development to be carried out in accordance with a an application for planning permission under reference 19/02743/FUL.

## Associated documents

File: SD/062/FP3 Kingsley  
Planning Application 19/02743/FUL

## APPENDIX A

### Site Photographs



Running south from Point B, existing stable building and footpath between hedge and building





Field adjacent to Hollow Lane



Continuation of footpath south of stable and through gate and into field



Stile between first field and second field



Below: from stile looking towards point B





From Point A looking north west along location of proposed diversion



From point A to gate and gap into first field







Road footway on Hollow Lane at Point B at point of existing commencement of footpath



Middle Lane hedge line and, below, point of termination at Point C

