

# CHESHIRE WEST AND CHESTER COUNCIL

## DELEGATED DECISION REPORT

### Application Number

**Description** Proposed Public Path (Part) Extinguishment Order under section 118 of the Highways Act 1980

**Site address** Public Footpath No 6 Weaverham

**Ward** Weaverham and Cuddington Ward

**Ward Members** Councillors Paul Williams, Gillian Edwards, Charles Fifield

**Case Officer** Adele Mayer, PROW asset management Officer (e mail [PublicRightOfWay@cheshirewestandchester.gov.uk](mailto:PublicRightOfWay@cheshirewestandchester.gov.uk))

**Date** \*\*\*\* 2021-12 March 2021

### Recommendation

- (1) That an Order be made under Section 118 of Highways Act 1980, extinguishing part of Public Footpath 6 in Weaverham as shown on Plan No SD068A by a solid black line on the grounds that it is not needed for public use.
- (2) That the Highways Commissioner be authorised to take any action considered necessary in respect of the confirmation of the Order hereby authorised to be made.

### 1. Site Description

2. Public Footpath 6 Weaverham commences on Well Lane (UW3236) at OS grid reference SJ 6125 7449 and runs in a generally southerly then south easterly direction along Leigh Way (UW2817) to a point at Number 12 Leigh Way OS grid reference SJ 6131 7431 then running in a generally southerly direction to Longacre (UW2813) and running in a generally south westerly direction to High Street (B5153) at OS grid reference SJ 6125 7419
3. The part affected by this proposal is the section that runs between Leigh Way OS grid reference SJ 6131 7431 and Longacre at OS grid reference SJ 6128 7425, a length of 78 metres and shown on Plan SD068A ("the Plan") between A and B by a solid black line. Photographs of the route can be found at Appendix A.

4. The background to this proposal lies with a proposed housing development in the 1970's and a diversion Order "The Stopping Up of Highways (County of Chester) (No 7) Order 1960" made by the Ministry of Transport (copy at Appendix B). An administrative "omnibus" legal event order, made in 2000 by the former Cheshire County Council, modified the Definitive Map and Statement of Public Rights of Way (the "DM") with the addition of the 1960 Order. The legal event order administers legal events which had already been through a public notification process, so that there is no statutory requirement to publish notice of the order a second time. The process was correctly carried out, however other documents show that the 1960 Order for whatever reason, was not incorporated into the construction site layout.
5. Images of the 1973 site layout plans for the development have been provided. The construction plans show an intention to divert the public footpath onto Longacre "existing footpath to be diverted into proposed development". This is contrary to the 1960 Order, which was by this date more than 10 years old, and the site plan notations suggest that the Order plan was not utilised. The site layout plan shows that there was no intention to create a footpath between Longacre and Leigh Way as intended by the 1960 Order. The development was approved by the Vale Royal Borough Council planning department, without it seems resolving the difference between the 1960 Order and the site layout.
6. An aerial photograph dated c 1970, shows the unconstructed line for Longacre, and completion of the houses on Leigh Way. The detail is not clear enough to state if provision for a footpath had been made available.
7. The former County Council abandoned a 1980 review of the DM as required by the National Parks and Access to the Countryside Act 1949 because in 1981 new legislation (The Wildlife and Countryside Act 1981) changed the statutory duty for a full review of the DM, to a "rolling review" of the DM (and the application of legal events by an administrative modification order as described above). The 1980 review would have applied all legal order changes to the DM, and for FP6, the 1960 Order was cited with the effect of the changing the route as described: "Route to Well Lane now via Long Acre and Valley Road". The review statement therefore would have effected a diversion of the footpath as built. The review statement is further contemporary evidence that there was no footpath constructed between Longacre and Leigh Way as shown on the 1960 Order.
8. The current proposal recognises that when the development was laid out, there was an intention to divert the footpath, but it did not replicate the diversion of FP6 as shown on the 1960 Order, nor is there evidence of a second diversion Order. A footpath was not constructed between Longacre and Leigh Way and there has

been no intentional obstruction of an existing footpath, although the line of the footpath is obstructed by walling, fences and boundaries and furniture.

9. The Council is satisfied, after investigation, that this part of FP6 is an historical anomaly, and that it is expedient to make an extinguishment Order.
10. The test for the making of the Order is set out at paragraph 20, namely whether the length of footpath is needed for public use. Use has been made of online mapping and walking the area, to identify local routes to schools, shops, community centres and public facilities (Appendix C). There may be journeys of which we are unaware, however, it provides a good basis for considering whether the footpath between Leigh Way and Longacre would likely, other than for the existence of an Order, to be used by the public. The mapping indicates that there are no facilities to the south of Leigh Way, for example on High Street, that are not as convenient to reach using the existing footpaths, or facilities on the north side of Longacre which are not as convenient to reach by existing footways and paths.
11. Consideration has been given to the tests, set out at paragraphs 22 – 23 for confirming an Order, what potential use of the path would be made but for the Order, and if there is any impact on land served by the path.
12. As discussed below, the footpath would not be a more functional route than the existing highway network. In conclusion it is considered that the footpath is not likely to be needed because there is satisfactory access available with Longacre and the unaffected length of FP6 to High Street, and Leigh Way which also connects with Smith Lane to High Street via another public footpath.
13. The remaining parts of the path connect with highways and no land is reliant on the affected length of the path for access.

#### **14. Consultation**

15. The Weaverham Parish Council have made an objection. The observations include a comment that the legal record shows the effect of the 1960 Order, and the state on the ground; a belief that stones forming the wall of 12 Leigh Way are steps to a footpath; a suggestion that the footpath was connected with the Weaverham Well; that complaint was made in c2012 by a Councillor that the path was not available; allegation that the housing developer would have been aware of the diversion of the footpath; the route where the footpath runs on the map could be reinstated and that the footpaths should be preserved.

16. The Officer for the Council has responded to the objections and the objection has not been withdrawn. The results of the investigation are laid out at paragraphs 4 – 8 above, such that an Order had been made in 1960, which was forgotten, or a variation Order could have been, but was not, made to reflect the diversion shown on the development site layout. As a consequence, part of the footpath was not created within the development. The 1960 Order diverted the footpath and the opportunity to object to the loss of an historic link was at the making of the 1960 Order. The Council records show that enquiries were made in 2003 and 2006 regarding the depiction of the footpath on the DM. No further action appears to have been taken, other than enquires were said to have been made by the public rights of way officer of the district council, Vale Royal Borough Council. The Cheshire West and Chester Council has taken the view that anomalies on the DM should be addressed when the resources permit (ROWIP, para 25).
17. Statutory undertakers have been consulted and no objections have been received. If an Extinguishment Order is made, existing rights of access for the statutory undertakers to their equipment and apparatus are, in any case, protected.
18. User groups have been consulted. There were no comments received.

## **19. Relevant Legislation**

20. Section 118 of the Highways Act 1980 empowers an appropriate Authority to make a Public Path Extinguishment Order if it is satisfied that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use. Also, subsection (6) of Section 118 applies, whereby any temporary circumstances preventing or diminishing the use of the path or way by the public shall be disregarded.
21. If an extinguishment order is made and is objected to and the objections are not withdrawn, the order will be submitted to the Secretary of State. Section 118(2) provides that the Secretary of State shall not confirm the Order unless he “is satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him [...] that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way”
22. Officers in preparing this report and recommendation have had regard to a number of other considerations required by law including:-

- 22.1. the needs of agriculture and forestry and the desirability of conserving biodiversity, flora, fauna and geological and physiological features,
- 22.2. requirements in relation to equality, and the prevention of crime and disorder, and
- 22.3. all material provisions of the Council's Rights of Way Improvement Plan.

23. Where objections to an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. Where there are no outstanding objections to an Order, it is for the Council to determine whether the Order should be confirmed.

#### **24. Relevant Policies**

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

- 25.1. Rights of Way Improvement Plan 2011-16
  - 25.1.1. Statement of Action AM6 "We will assess, develop and deliver solutions to Definitive Map anomalies such as culs de sac, boundary changes and permanent building obstructions, using the prioritisation system used for DMMOs"
  - 25.1.2. 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"

#### **26. Assessment and Issues**

27. The purpose of the extinguishment order is to remove part of Public Footpath 6 from the DM. Investigation concluded that a 1960 Order, without explanation, had not been fully implemented. Assessment of the likely use by the public if the route were available, concluded that there are sufficient alternative routes in the highway network that this path was not needed and on balance it was expedient to make an Order to extinguish this part of the footpath.

28. In respect of the expediency of confirming the Order taking into account the matters mentioned in paragraph 21 above, it is considered that land crossed by the path has alternative forms of highway connection and an Order would have no impact on the land crossed by the footpath.

29. In respect of the matters mentioned in paragraph 22, regard has been given to the Council's aim to resolve DM anomalies.

### **30. Conclusion**

31. The proposal to extinguish has been consulted upon. The Parish Council has objected to the proposal but consideration of the objections, with the test for expediency has on balance weighed in the favour of an extinguishment of this part of the footpath.

### **32. Associated documents**

33. Application File SD068A /WeaverhamFP6

34. Plan SD068A

# Appendix A

## Photographs



High Street



High Street  
Entrance  
To FP6





Junction of FP6 with south and north of Longacre

Point  
B on



planLongacre



Photo needed of longacre 17

Google aerial

image

Leigh Way



Longacre  
provision  
for  
footpath





Point A on plan, 12 Leigh Way





Typical  
estate  
road,  
Leigh  
Road



# Appendix B 1960 Order

FP 6  
WEAVERHAM

*This Order becomes operative on the date on which notice that it has been made is first published in accordance with paragraph 6 of the Sixth Schedule to the Town and Country Planning Act, 1947.*

STATUTORY INSTRUMENTS

1960 No. 748

RIGHTS OF WAY

**The Stopping up of Highways (County of Chester) (No. 7) Order, 1960**

Made . . . . . 11th April, 1960

Whereas the Minister of Transport (hereinafter referred to as "the Minister") is satisfied that it is necessary in order to enable development to be carried out in accordance with planning permission granted under Part III of the Town and Country Planning Act, 1947(a), to authorise the stopping up of the highway referred to in Article 1 of this Order:

Now, therefore, the Minister in exercise of his powers under section 49 of the said Act and of all other powers him enabling in that behalf hereby makes the following Order:—

1. The stopping up of the highway consisting of the length of footpath within the Parish of Weaverham in the Rural District of Northwich in the County of Chester which is specified in Part I of the Schedule to this Order (hereinafter referred to as "the old highway") is hereby authorised as from the date on which the provisions of Article 2 of this Order shall have been complied with.
2. The highway consisting of the footpath which is specified in Part II of the said Schedule (hereinafter referred to as "the new highway") shall be provided in accordance with the reasonable requirements of the County Council of Chester by Lancashire and Cheshire Construction Company Limited, whose registered office is at York Chambers, 27, Brackenrose Street, Manchester, 2.
3. The new highway shall be a highway which for the purposes of the Highways Act, 1959(b), is a highway maintainable at the public expense and the said County Council shall be the highway authority therefor.
4. The cost of providing the new highway shall be paid by the said Lancashire and Cheshire Construction Company Limited.
5. Where there is immediately before the date on which the old highway is stopped up under this Order any apparatus on, under or over that highway belonging to any statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall thereafter without prejudice to the provisions of subsection (3) of section 32 of the Mineral Workings Act, 1951(c), have all such rights of continuing and maintaining the apparatus as they then had.

(a) 10 & 11 Geo. 6. c. 51. (b) 7 & 8 Eliz. 2. c. 25. (c) 14 & 15 Geo. 6. c. 60.

6. The Interpretation Act, 1889(a), shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

7. This Order may be cited as "The Stopping up of Highways (County of Chester) (No. 7) Order, 1960".

Given under the Official Seal of the Minister of Transport this eleventh day of April, 1960.

(L.S.)

*J. V. Pugh,*  
An Under Secretary  
of the Ministry of Transport.

THE SCHEDULE

PART I

*Highway to be Stopped up*

That length of the footpath leading from Well Lane to High Street which extends from its junction with Well Lane in a south-westerly direction for a distance of approximately 188 yards and thence in a south-easterly direction for a distance of approximately 98 yards, more particularly delineated and coloured red on the plan numbered S148/S-22 and marked "Highway at Weaverham in the County of Chester" and sealed with the Official Seal of the Minister and deposited at the offices of the Ministry of Transport, Berkeley Square House, London, W.1, a certified copy of which has been deposited at the offices of the Rural District Council of Northwich, Whitehall, Hartford, Northwich, Cheshire.

PART II

*The New Highway*

A footpath extending from the south-eastern end of the length of footpath described in Part I of this Schedule in a north-easterly direction for a distance of approximately 40 yards, thence in a north-westerly direction for a distance of approximately 133 yards and thence in a north-easterly direction for a distance of approximately 136 yards to join Well Lane, more particularly delineated and coloured blue on the plan aforesaid.

(a) 52 & 53 Vict. c. 63.

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MINISTRY OF TRANSPORT

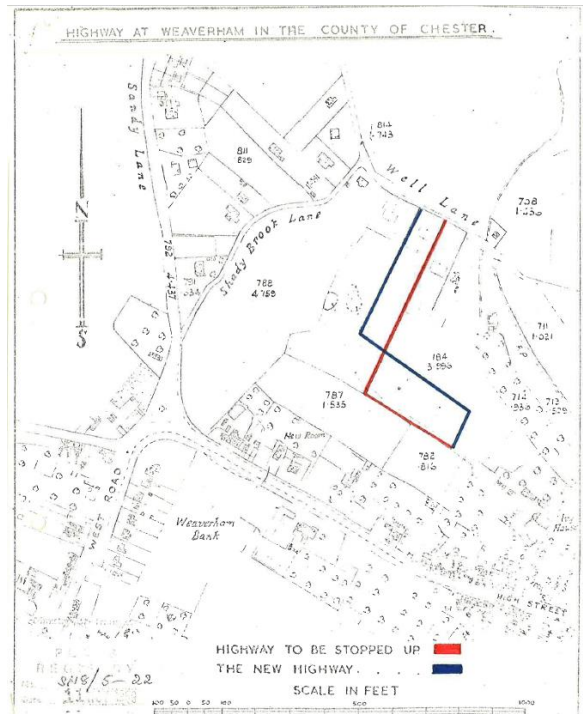
TOWN AND COUNTRY PLANNING ACT, 1947

THE MINISTER OF TRANSPORT HEREBY GIVES NOTICE THAT HE HAS MADE AN ORDER UNDER 8.49 OF THE ABOVE ACT ENTITLED "THE STOPPING UP OF HIGHWAYS (COUNTY OF CHESTER) (NO. 7) ORDER, 1960" AUTHORIZING THE STOPPING UP OF A LENGTH OF FOOTPATH AT WELL LANE, WEAVERHAM, CHESHIRE, AND REQUIRING THE PROVISION OF A NEW FOOTPATH.

COPIES OF THE ORDER MAY BE OBTAINED FROM H.M. STATIONERY OFFICE, YORK HOUSE, KINGSWAY, LONDON, W.C.2; 39/41 KING STREET, MANCHESTER, 2, OR THROUGH ANY BOOKSELLER, PRICE 3D. COPIES MAY BE INSPECTED IN ROOM 44.3, MINISTRY OF TRANSPORT, 24/37, HERFORD ROAD, LONDON, W.2, (REF. HL 23/5/6110) AND AT THE NORTHWICH R.D.C. OFFICES, WHITEHALL, HARTFORD, NORTHWICH, CHESHIRE, FREE OF CHARGE, AT ALL REASONABLE HOURS.

ANY PERSON AGGRIEVED BY THE ORDER AND DESIRING TO QUESTION THE VALIDITY THEREOF, OR OF ANY PROVISION CONTAINED THEREIN, ON THE GROUND THAT IT IS NOT WITHIN THE POWERS OF THE ABOVE ACT OR THAT ANY REQUIREMENT OF THAT ACT OR OF ANY REGULATION MADE THEREUNDER HAS NOT BEEN COMPLIED WITH IN RELATION TO THE ORDER, MAY, WITHIN 6 WEEKS OF THE 6th MAY, 1960, APPLY TO THE HIGH COURT FOR THE SUSPENSION OR QUASHING OF THE ORDER OR OF ANY PROVISION CONTAINED THEREIN.

J. W. L. IVINY  
AN ASSISTANT SECRETARY.



## Appendix C

