

## CHESHIRE WEST AND CHESTER COUNCIL

### DELEGATED REPORT

<b>Application Number</b>	N/a
<b>Description</b>	The Council proposes to make an order under Section 26 of the Highways Act 1980 to create a footpath
<b>Site address</b>	Rivacre Country Park, Chester Road, Ellesmere Port
<b>Ward</b>	Netherpool and St Paul's Wards
<b>Ward Members</b>	Cllrs Robert Bisset and Angela Claydon (St Paul's) and Cllr Diane Roberts (Netherpool)
<b>Case Officers</b>	Adele Mayer Prow asset management Officer <a href="mailto:PublicRightOfWayWest@cheshirewestandchester.gov.uk">PublicRightOfWayWest@cheshirewestandchester.gov.uk</a>
<b>Date</b>	23.08.2018

#### **Recommendation:-**

(1) That a Public Path Creation Order be made under Section 26 of the Highways Act 1980, creating a footpath shown as a broken black line between points A and B on plan SD C35A, on the grounds that the Council considers that it is needed

(2) That in the event of there being no objections outstanding upon expiry of the notice period (or such longer period that may be attributed by officers to resolve any objections received), the Order be confirmed by the Council; or

(3) In the event that there are objections to the Order outstanding at the expiry of the notice period (or such longer period that may be afforded by officers to resolve any objections received), then officers be authorised to determine whether to submit the order to the Secretary of State for confirmation

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#### **1. Site Description**

- 1.1 It is proposed to create a public footpath that would connect new housing built on a site on land off Hooton Lane (UV3426) at OSGR SJ 3719 7781, then running in a generally south westerly direction for a distance of approximately 273 metres to join Public Footpath 17 Ellesmere Port at OSGR SJ 3702 7763 and shown by a broken black line between points A and B on Plan SD C35A ("the plan").
- 1.2 The footpath would run over land in the ownership of the Council and which is currently within the boundary of Rivacre Country Park. The country park is managed by the Council.
- 1.3 The termination of the new public path would be a cul de sac except for those with permissive access over land which is under development for housing and those permitted to access the sport provisions on the same site who would be able to utilise the continued 'pathway' through the development/to access the sports provision.

## **2. Background**

- 2.1 It is proposed to create a public footpath that would connect new housing built on a site on land off Hooton Lane (UV3426). The footpath will be created over land in the ownership of the Council to connect from the existing public right of way network to a new housing development. The detailed reasons for creating a new footpath is described under planning application reference 16/02082/FUL and the associated legal agreement (S106).The proposed creation is shown on the plan by a broken black line between points A to B.
- 2.2 The route will have no limitations. The length of footpath to be created is approximately 281.7 metres. The surface will be wood edge boards, lined with terram and infilled with a rolled and compacted stone. The width will be 2 metres throughout.

## **3. Consultation**

- 3.1 There is no local council for the area

- 3.2 The planning application proposing the housing development inclusive of a new footpath was discussed and approved at a meeting of the Councils Planning Committee dated 5 May 2016. The need for a footpath is identified in the planning documents under Late Information. The location of the development site, however, as noted by the highways consultation reply to the planning application referenced at para 2.1 did not provide suitable sustainable travel options. A travel plan was a condition of planning approval and physical works were required to enable travel on foot and by cycle. The proposed footpath link was one of these works and was identified on plan to connect the site to the south of Rivacre Country park where there are local shops, service facilities and a school
- 3.3 The location of the new footpath will lie within Rivacre Country Park, which is part of the community forest and has a local listing as a Site of Biological Interest. Consultation has been undertaken with the park management service. The area of land identified that could be used for the footpath is already partly trodden, is wooded, with some dead wood and undulating terrain. There are wild native bluebells in the vicinity. The route will follow already trodden areas where possible and avoid existing mature trees. Prior to the construction of the path a works agreement will drawn up made between the contractor and the public rights of way network officer. The works agreement will item the mitigating actions of the effects on the ecology, such as requirement to keep soil movements within the site so that naturalised flora within the soil will be allowed to re grow in the area; no removal of mature and healthy trees; provision made for existing drainage, this list not to be exclusive to any other measures thought necessary to include.
- 3.4 The Mersey Forest Team who oversee the “Mersey Forest”, comment “the footpath in a community woodland should ensure that the trees are really well back from the paths to create good sight lines so that people feel safe”. The path would run between the existing path network in the park and is

close to the golf course it is thought that the path will be created to look part of the existing park footpath network to ameliorate any feel that the path is isolated from the park.

- 3.5 The Golf Club management company have made comments on the options of the route and have expressed an objection to any route if it were proposed to run adjacent to the golf course. The reasons given were concern of the safety for walkers who may use the path. The proposed route runs within the woodland and does not run adjacent to the golf course.
- 3.6 If the order is successfully made it will form part of the Council's PROW network and it will be the Council's responsibility to maintain the route to the standard laid out and suitable for the expected use of this new path.

#### **4. Relevant Legislation**

- 4.1 In accordance with Section 26(1) of the Highways Act 1980 it is within the Council's discretion to make an Order if it appears to the Council there is a need for a footpath and they are satisfied that it is expedient that the path should be created, having regard to:-

4.1.1 the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area and

4.1.2 the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions of compensation contained in Section 28 of the Act.

- 4.2 It is also necessary to consider whether the test for confirming the order are likely to be satisfied so as not to make an order that is manifestly incapable of confirmation. At the confirmation stage, the following factors must be taken into account in addition to those matters referred to in paragraph 4.1 above.

4.2.1 All material provisions of the Council's Rights of Way Improvement Plan.

4.3 In addition to the matters contained in S119 of the Highways Act 1980, the Council in preparing this report and recommendation, has regarded a number of other considerations required by law including:-

4.3.1 the needs of agriculture and forestry and the desirability of biodiversity, flora, fauna and geological and physiographical features

4.3.2 requirements in relation to disability discrimination, equality and the prevention of crime and disorder

4.4 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.

## **5. Relevant Policies and Protocols**

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

5.1.1 *Rights of Way Improvement Plan 2011-2016* Statement of Action “we will follow the Equality Act 2010 to comply with standards for mobility and visually impaired users where appropriate and reasonable”; (EO5 and BS4).

5.1.2 Statement of Action “working with colleagues within the authority we will seek to improve accommodation for vulnerable roads users where the greenspace networks links with the adopted highway network.” (BS3)

5.1.3 “*Countryside maintenance and improvement procedures and conservation (natural and historic environment)*”, 20 April 2007 Public Right of Way Committee report.

## **6. Assessment and Issues**

6.1 The development will provide a new sports pavilion and other sports provision with 36 dwellings and 20 apartment's which are predominantly

affordable housing. As part of the Planning Permission the Planning Committee imposed a condition that the applicant would fund the creation of a public footpath to connect the housing site with the existing public right of way network south of the site. The purpose of this inclusion was to provide more sustainable forms of transport; facilitating safer pedestrian for residents of the development as well as residents of the wider area and visitors, access, to shops, services and a school.

- 6.2 It is considered that that there is a need for this public footpath link which would add greatly both to the convenience and enjoyment of a substantial section of the public and to the convenience of persons resident in the area. This clearly satisfies S26(1)(a) of the Highways Act 1980.
- 6.3 The land that will be subject to the newly created path is in the Council's ownership and there are no objections to the creation of the footpath. In consideration of S26(1)(b) and the rights of persons interested in the land as to compensation it is considered negligible, given the ownership status and absence of objections to date.
- 6.4 The site is ecologically sensitive and this will have an important effect on the time period for implementing any works. Consideration will be taken of existing wildlife protection policies and works will be carried out in strict accordance with relevant legislation in respect of designated sites and protected species and habitat, in consultation with the Council's biodiversity team. A works agreement to be in place prior to construction.
- 6.5 In respect of the expediency of ultimately confirming the order taking into account the matters identified in paragraph 4.2.1 above, it is considered that the creation of the footpath is supported by statement of action in the Rights of Way Improvement Plan.

## **7. Conclusion**

- 7.1 After careful consideration of the application and the relevant law and policies it is considered that there is a need to make an Order in order to create a footpath over land in Ellesmere Port as illustrated on the Plan. It is also considered that the tests for confirming an order are also satisfied.
- 7.2 It is noted that none of the consultees have objected to the making of an order, however there are matters which will need to be taken into consideration regarding the ground works of constructing the proposed footpath, in particular recognition of legally designated site and protection of native flora. It will be required that a works agreement is put in place prior to making an Order.

**8. Associated documents**

Case File Cuddington C35/Ellesmere Port

Plan SD C35A





#### Appendix A Site Visits

Point "A" on the plan above and Rivacre country park constructed path not currently public right of way joins with existing public footpath s 16 and 17







End of Rivacre Country Park constructed path and junction with un constructed trodden path which will also form part of the new public footpath.







unconstructed path near to the corner of the boundary ditch







trodden path through woodland





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Point "B" on the plan