

Cheshire West and Chester Council Delegated Report

Application Number	SD/060/FP2/Helsby
Description	Proposed footpath diversion order under section 257 of the Town and Country Planning Act 1990
Site address	Footpath 2 Helsby
Applicant Name	Go Develop (Chester Road) Ltd
Ward	Helsby
Ward Members	Councillor Alan McKie
Case Officers	Adele Mayer, Prow asset management officer PublicRightOfWay@Cheshirewestandchester.gov.uk
Date	5 December 2018

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 2 Helsby on the grounds that it is necessary to do so in order to enable development to be carried out pursuant to Planning Permission No 16/03313/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. Footpath 2 Helsby runs from Chester Road (A56) in a north westerly direction to Plovers Lane (UV2333). The part of the footpath affected by the application is a 61 metre length of footpath from the commencement from Chester Road shown between points A (OS grid reference SJ 4934 7592) and B (OS grid reference SJ 4930 7596) by a solid black line on plan SD/060 ("the Plan").

2. The surface of the footpath is generally hard surface concrete or brick. There are no recorded limitations on the Definitive Statement. Images of the route can be found at Appendix A.

Proposal/application detail

3. Planning permission had been granted by Cheshire West and Chester Council under application reference number 16/03313/FUL proposing removal of a disused public house (Horse and Jockey) and replacement residential development of up to 15 homes with some public open space and other related infrastructure.
4. Plans showing the site layout can be found via the planning portal, online at [:https://pa.cheshirewestandchester.gov.uk/online-applications/applicationDetails.do?activeTab=externalDocuments&keyVal=OB363VTELMF00](https://pa.cheshirewestandchester.gov.uk/online-applications/applicationDetails.do?activeTab=externalDocuments&keyVal=OB363VTELMF00) The Public Footpath crosses the mid point of the site and a proposal to divert the path so that the development would not obstruct the public rights was submitted under reference 14-153-P02-D “amended site layout plan”. A copy plan can be found at Appendix B.
5. It is proposed to amend the proposed diversion route so that the public footpath will run along the adoptable footway, between points B and C (OS grid reference SJ 4935 7592) as shown on the Plan by a broken black line. The footpath will also run over a demarcated pedestrian routes in front of where there will be car parking for three houses. It should be noted that it is proposed that the development will be served by a new access road which will in due course become adopted highway pursuant to an Agreement under section 38 of the Highways Act 1980. The footpath will then be subsumed into that adopted highway. However, there is at present no adopted highway and the current footpath diversion is an interim measure to preserve the public right of way pending that future adoption.

6. The new route will be approximately 69 metres in length. The surface will be asphalt and be partly contained within the adoptable highway. There will be no gates or other limitations. The route will be a width of 2 metres throughout.

Relevant Legislation

7. 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.
8. 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.

Relevant Policies

9. 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”

Assessment and Issues

10. The purpose of the diversion is to alter the definitive line of the path so that it enables development to take place.
11. The current footpath runs across a former car park for the public house and had a surface that was concrete or similar. The new route will also run close to where cars are parked, however the route will be contained within the demarcated pedestrian routes and where visibility will be sufficient for walkers and drivers.
12. 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

13. 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 2 Helsby 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/060/FP2/Helsby
Planning Application 16/03313/FUL

Appendix A Site images

Aerial photograph of site





view from Chester Road



Junction with Plovers Lane



Appendix B

Amended site layout showing proposed line of the footpath.

