

## CHESHIRE WEST AND CHESTER COUNCIL

### DELEGATED REPORT

<b>Application Number</b>	SD/028/FP1 Kingsley
<b>Description</b>	An application has been received that the Council to make a public path diversion order under section 257 of the Town and Country Planning Act 1990
<b>Site address</b>	Public Footpath No 1 Kingsley
<b>Applicant Name</b>	Mr Riley, Rose Cottage, Kingsley WA6 6UG
<b>Ward</b>	Councillor Ralph Oultram
<b>Ward Members</b>	Kingsley Ward
<b>Case Officers</b>	Adele Mayer, Public Rights of Way Officer (e mail <a href="mailto:adele.mayer@cheshirewestandchester.gov.uk">adele.mayer@cheshirewestandchester.gov.uk</a> ) or tel: 01606 271822
<b>Date</b>	22 <sup>nd</sup> September 2014

#### Recommendation:

- 1) That an order be made under section 257 of the Town and Country Planning Act 1990 diverting a section of Footpath No 1 in the Parish of 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 11/05340/FUL
- 2) That the Development Planning Manager be authorised to take any action considered necessary in respect of the confirmation of the Order duly authorised to be made.

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#### 1. Site Description

**1.1** Footpath No 1 Kingsley commences on Waterloo Lane and runs in an easterly direction, running along the southern boundary of the development land to Norley Road. That part of the Footpath affected by the application is the section running between OS grid Reference SJ 5416 7423 and OS grid reference SJ 5419

7427 and shown by a solid black line between the points A and B on plan SD/028 ("The Plan").

**1.2** The current route is rough gravel/metalling at the junction with Norley Road and leads into a grassy track.

## **2. Proposal/application detail**

**2.1** Planning permission granted on appeal by a Planning Inspector on 11<sup>th</sup> February 2014 (ref APP/A0665/A/13/2207646) against a Notice of refusal on planning application 11/05340/FUL for demolition of an existing cottage and provision of a replacement dwelling. A new garage and access are to be built and in order to complete that part of the development there would be an obstruction of the line of the public footpath. This obstruction would constitute an unlawful obstruction of the public right of way. Accordingly, a diversion is required if the development permitted is to proceed. The planning application included plans that show the current line of the footpath and the proposed diversion.

**2.2** The developer has proposed to divert approximately 49 metres of the footpath which is affected by the development. The termination point on Norley Road (point B on the Plan) will be moved to a point on Norley Road approximately 26 metres north west (point C on the Plan). The new route will be approximately 49 metres in length. The width of the new route will be 3 metres throughout.

**2.3** There is no footway on Norley Road that connects with the termination point of the current route on Norley Road, although there is a footway running alongside the opposite side of the carriageway. The crossing point for pedestrians from the footway to the start of the footpath is hazardous because the visibility of traffic is poor, being restricted by hedged boundaries and speed of the traffic on the road is set at the national speed limit. The diversion will run over a new highway access and the conditions attached to the planning permission require the new highway access should be served with an approved visibility splay, kerbing and for the first 5 metres from Norley Road will be surfaced with a bound material for a distance of at least 5 metres. The remainder of the new route will be a grassed path.

**2.4** There will be no limitations on the new route.

## **3. Consultation on the planning application**

**3.1** During the consultation on the planning application, there were no objections made to the planning application by the Parish Council.

**3.2** Local representation raised an objection to affecting the character of the track over which the public footpath runs. It is understood that the land over which the

track runs is the landowners and the private easements that exist over the track have been considered by the Planning Inspector. Private rights and public rights co-exist and it is the public rights that are being attended to by this application.

**3.3** Representation was made that the right of way runs over an “historic trackway”. The “Tithe Map” was referred to as an indication of historic relevance although the Tithe Award indicates that the “track” was not a thoroughfare but formed part of the “homestead and garden” of the occupant Samuel Hughes. The historic attributes for this development site were not sufficient for the Inspector to refuse the appeal. It is not therefore something that should be taken into consideration when making a decision on this application to divert the public footpath.

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

**4.1** In accordance with section 257 of the Town and Country Planning Act 1990 (the “1990 Act”) the Council may make an order 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.

**4.2** 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.

#### **5. Relevant Policies**

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

*5.1.1 Rights of Way Improvement Plan 2011-16*

*Statement of Action BS1 “we will seek to address safety concerns highlighted whilst using the network during consultation”*

*5.1.2 Statement of Action E05 “we will follow the Equalities Act 2010 to comply with standards for mobility and visually impaired users where appropriate and reasonable”*

#### **6. Assessment and Issues**

**6.1** The purpose of the diversion is to alter the definitive line of the path so that it enables development to take place. Whilst this is sufficient to satisfy section 257 of

the 1990 Act such that an Order may be made, consideration has also been given to the impact that the diversion would have on the amenity and convenience of the path.

**6.2** The current route terminates on Norley Road with a crossing point that is hazardous because of the poor visibility for traffic and the legal speed limit for traffic increases the risk of crossing the road. The diversion route will terminate at a crossing point that is made less hazardous by improving visibility and will incorporate a refuge space for pedestrians. This should be an improvement.

**6.3** There is no difference in length between the current line and the proposed line for the diversion. The surface and length are as commodious between the current line and proposed diversion route.

**6.4** 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. However, as stated above, if objections are received the order would be referred to the Secretary of State.

## **7. Conclusion**

**7.1** After careful consideration of the application and the relevant law and policies it is considered that it is necessary to divert part of Footpath No 1 Kingsley as illustrated on the Plan to accommodate development granted consent.

## **8. Associated documents**

File: SD/028/FP1 Kingsley. Planning Application 11/05340/FUL.