

Cheshire West and Chester Council
Delegated Report

Application Number	SD/065/FP11/Foulk Stapleford
Description	Proposed footpath diversion order under section 257 of the Town and Country Planning Act 1990
Site address	Footpath 11 Foulk Stapleford
Applicant Name	The agent for land at Abbeydale House, Hargrave
Ward	Tattenhall
Ward Member	Councillor Mike Jones
Case Officer	Adele Mayer, Prow Asset Management Officer PublicRightOfWayWest@Cheshirewestandchester.gov.uk
Date	12 May 2020

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 11 Foulk Stapleford on the grounds that it is necessary to do so in order to enable development to be carried out pursuant to Planning Permission No 20/00286/FUL as shown on plan SD065 ("The Plan").
- 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. FP11 Foulk Stapleford runs between the western termination of the adopted length of Old Hall Lane (UX1103) (OSGR SJ 4799 6230) and the corner junction of Martin's Lane (UX1099) and Cow Lane (UX1818) (OSGR SJ 4754 6319). The section of the footpath affected by the application is a 652 metres length of footpath from a point on the existing footpath where it commences at Old Hall Lane (OSGR SJ 47997

62304, Point A on the Plan) in a generally northerly direction to a point on the existing footpath at OSGR SJ 47664 62841 (Point B on the Plan) and shown by a solid black line between points A and B on the Plan.

2. The surface of the footpath commences with a surface washed gravel and continues over grass and agricultural land (which can be ploughed). There are no recorded limitations on the Definitive Statement but there is a stile and two footbridges on this section of the footpath. Images of the route can be found at Appendix A.

Proposal/application detail

3. An application for planning permission has been applied for under reference 20/00286/FUL. The documents show the proposed diversion on the application drawing dated "06.12.2019". Image at Appendix B.
4. Plans showing the layout can be found under the relevant planning reference at the planning portal: <https://pa.cheshirewestandchester.gov.uk/online-applications/>
5. The proposed diversion will commence on Old Hall Lane (OSGR SJ 4799 6320, Point A on the Plan) and turn in a south westerly direction, running over a footbridge into a field. The footpath would run around the inside boundary of this field (indicated on the report plan to point C and D on the Plan) and then turn north, crossing Guylene brook by a foot bridge at OSGR SJ 4785 6235 (Point E on the Plan) and continue in a northerly direction along the east side of the brook. The footpath will cross a culverted section of the watercourse at the junction with the next field boundary and continue to join the unaffected length of the footpath at OSGR SJ 4766 6284 (Point B on the Plan). The diversion route is shown on the Plan by a broken black line between points A to C to D to E to B.
6. The new route will be approximately 754.6 metres in length. The surface will be grass to Point E and between Point E and B it is land subject to ploughing (it is the same field as the current line of the footpath and subject to ploughing). For reasons of stock control there will need to be 2 pedestrian gates as indicated on the plan. There are existing gaps to facilitate the new access. There will also be 2 footbridge

crossings of the watercourse as indicated on the Plan. There will be a ditch culverted to replace the need for a footbridge, as shown on the Plan.

7. The applicant has been asked to retain part of the maintenance responsibility for the footbridges and an agreement has been signed to secure that understanding.

Relevant Legislation

8. 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.
9. 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.
10. Section 40 of the Natural Environment and Rural Communities Act 2006 requires the authority to have regard for conserving biodiversity
11. 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

12. The following policies and protocols are relevant to this application.
 - 12.1. Rights of Way Improvement Plan 2011-16
 - 12.1.1. Statement of Action BS1 "we will seek to address safety concerns highlighted whilst using the network during consultation"

12.1.2. 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”

12.2. Cheshire West and Chester Rights of Way Committee 29 July 2009: “Structures on public rights of way”.

Assessment and Issues

13. The purpose of the diversion is to alter the definitive line of the path so that it enables development to take place.
14. The current footpath runs along the drive to a residential dwelling, and crosses two fields, both subject to ploughing. The new route will divert to avoid the buildings by running around the boundary of a paddock attached to the garden, and then run along a line on the north side of the field boundary demarcated by the brook. There is a difference in length between the line of path to be stopped up and the new route, of 102.6 metres. The route is part of a recreational route rather than a functional route and it is considered that the extra length is not inconvenient for walkers.
15. The new route commences and terminates on the same footpath and there are no other considerations of connectivity.
16. There is little difference in the surfacing or views of the current path and the proposed diversion. Part of the current route runs over hard surfacing, however for the purpose of accessibility the new route will have similar surfacing as the remainder of the current path, which is grass or agricultural ground.
17. There will be two pedestrian gates provided for stock control purposes. The existing stile will be replaced on the new route with pedestrian gates to improve accessibility. The Order making process does not provide for authorising gates so these will subsequently be licensed (Highways Act 1980 S147). There will be two footbridges

and it is agreed that the maintenance of these bridges will be shared with the landowner.

18. 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

19. 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 11 Foulk Stapleford 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/065/FP11 Foulk Stapleford
Planning Application 20/00286/FUL

APPENDIX A
Site Photographs



Drive way from Point A



Stile by house into field,
ploughed and cropped field





Footbridge between fields



Point B diversion looking west





Diversion along side brook and foot bridge crossing at Point e



From Point E looking west (Point D) then south along the boundary of the paddock





Southerly boundary of field leading to footbridge at edge of field close to Point A





Between the footbridge and Point A

APPENDIX B

Image of Planning Application drawing : proposed

