

CHESHIRE WEST AND CHESTER BOROUGH COUNCIL

OFFICER DELEGATED REPORT

Application Number	SD075/FP11 Rushton
Description	Proposed Public Footpath Diversion Order under Section 257 of the Town and Country Planning Act 1990
Site address	Public Footpath No 11 (part) Rushton
Ward	Tarporley
Ward Member	Councillor Eveleigh Moore Dutton
Case Officer	Adele Mayer, Public Rights of Way Officer (e mail publicrightofway@cheshirewestandchester.gov.uk)
Date	16 July 2021

Recommendation:

- 1) That an Order be made under Section 257 of the Town and Country Planning Act 1990 ("the 1990 Act") diverting a part of Footpath No 11 ("FP 11") in the Parish of Rushton and shown on Plan SD075 ("the Plan") on the grounds that it is necessary to do so to enable development to be carried out in accordance with Planning Permission granted under reference 21/00475/FUL ("the Permission").
- 2) That if no objections are received the Highway 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. FPP 11 commences on Winterford Lane (UX848) at OS grid reference SJ 5763 6324 and runs in a south westerly then westerly direction to the junction with Footpath No 8 Rushton. Part of the FP11 is proposed to be diverted to enable the construction of an agricultural building. The section of FP11 affected commences at OS grid reference SJ 57514 63061 (point A on the plan) running in a southerly direction to OS grid reference SJ 57503 63029 (points B on the Plan) and then running in a south westerly direction to OS grid reference SJ 57379 62945 (point

C on the Plan) for a total length of approximately 182 metres and shown on the Plan by a solid black line between points A-B-C.

2. The current surface of FP11 through the development area is pasture grass.

Proposal/application detail

3. The Planning Permission has been granted for construction of a new agricultural storage building which for convenience and security purposes is to be built adjacent to the existing yard buildings. The proposed diversion of FP11 is shown on the approved plan submitted with the planning application (an extract of this plan is found at Appendix B of this report). The plan shows that part of FP11 crosses the area of construction and accordingly a diversion is required if the development is to proceed to the approved plan.
4. The proposed diversion commences at point A on the Plan and crosses the existing track to an existing entry to the field at OS grid reference SJ 57506 63060 (point D on the Plan) and will run directly in a south-westerly direction to the existing line of the footpath at point C on the Plan and is shown by a broken black line between points A to D to C on the Plan. The length is approximately 183 metres and will run over pasture grass with a width of 2 metres. Images of the current and diversion route can be found at Appendix A of this report.
5. The surface will remain the same and an existing kissing gate will be re-set to the new field entry.

Relevant Legislation

6. In accordance with 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 the development to be carried out in accordance with Planning Permission.
7. 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. However if objections are received the Order would be referred to the Secretary of State for Environment, Food and Rural Affairs who will decide whether or not to confirm the Order with or without modifications.

Relevant Policies

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

8.1 Rights of Way Improvement Plan 2011-16

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

8.3 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

- 9 The purpose of the diversion is to alter the definitive line of FP11 to enable the development granted under the Planning Permission 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 the diversion would have on the amenity and convenience of FP11.
- 10 The planning application initially proposed two possible diversions. Consultation with local user groups was carried out to help choose the preference for one of the two proposals. One proposal was longer and would take the route over ground that was poorly drained. The second proposal is the preferred route as identified at Clause 4,. Although it is closer to the agricultural buildings it will run over better drained land. There are no differences in views or surfacing of the existing or the proposed diversion.
- 11 The merits of the planning application are not under consideration in assessing this application. It is possible that if the planning application has itself received objections, then a subsequent application to divert a footpath may also receive objections to seek to delay the process of development. However, as stated above, if objections are received the Order would be referred to the Secretary of State for consideration.

Conclusion

12 After careful consideration of the application and the relevant law and policies it is considered that it is necessary to divert part of FP11 as illustrated on the Plan to enable the development to proceed in accordance with a planning permission which has been granted.

Associated documents

File: SD075/FP11Rushton

Planning Application 21/00475/FUL

Appendix A Site Photographs
2.7.2021



track, facing north,
existing gate on left.

Below: facing south, from kissing gate in field running close to agricultural building





Facing south-west,
cross field route
Below: new route, from corner of field facing south-west.





New route across the pasture grass to a point on the existing footpath south west end of the field.



Appendix B

Extract from Planning Application 21/00475/FUL

