

## CHESHIRE WEST AND CHESTER BOROUGH COUNCIL

### DELEGATED REPORT

<b>Application Number</b>	SD072/FP14 Malpas
<b>Description</b>	Proposed Public Footpath Diversion Order under Section 257 of the Town and Country Planning Act 1990
<b>Site address</b>	Public Footpath No 14 Malpas
<b>Ward Member</b>	Councillor Rachel Williams
<b>Ward</b>	Malpas Ward
<b>Case Officer</b>	Adele Mayer, PROW Asset Management Officer (e mail <a href="mailto:adele.mayer@cheshirewestandchester.gov.uk">adele.mayer@cheshirewestandchester.gov.uk</a> )
<b>Date</b>	11.05.2021

#### Recommendation:

- 1) That an Order be made under section 257 of the Town and Country Planning Act 1990 diverting part of Public Footpath No 14 in the Parish of Malpas on the grounds that it is necessary to do so to enable development to be carried out in accordance with Planning Permissions under 17/04664/OUT and application pending under reference 21/00355/DIS
- 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.

#### 1. Site Description

2. Public Footpath 14 Malpas ("FP14") commences at OSGR SJ 4855 4760 on Tilston Road (C819) and runs in a north easterly direction at OSGR SJ 4884 4777 on Chester Road (B5069). The section of the length of FP14 affected by the application crosses an agricultural field, commencing at OSGR SJ 4866 4767 (Point A on Plan SD072 ("the Plan")) and running in a generally north easterly direction for approximately 170 metres to OSGR SJ 4876 4780 (Point B) shown by a solid black line between points A to B on the Plan. This will be diverted to a new line commencing at OSGR SJ 4866 4767 (Point A) then running in a north easterly direction to OSGR SJ 4873 4770 (Point C) then running in a north

easterly then northerly direction in an arc to follow the revised planning application layout drawing to OSGR SJ 4876 4780 (Point B) for a total length of approximately 197 metres. Shown by a broken black line between points A – C – B on the plan.

3. The current surface of FP14 is agricultural field, ploughed or cropped.

#### **4. Proposal/application detail**

5. Outline planning permission is approved by the Council under planning reference 17/04664/OUT for development of the site for housing and associated infrastructure. An application for approval of reserved matters is with the Council under planning reference 21/00355/DIS. This will include a revised site layout showing the scheme for the diversion of the FP14 (plan reference CRP/PL/001, extract of this plan at Appendix B of the report). The revised site layout plan shows that part of FP14 crossing the area of development where, if the footpath is not diverted it would be obstructed by the new development. Accordingly, a diversion is required if the development permitted is to proceed
6. The developer has proposed to divert approximately 170 metres of FP14 between points A and B on the Plan which is affected by the development as shown on planning application reference CRP/PL/001. Images of the original line of FP14 can be found at Appendix A of the report. The new route between points A to C to B will run over a pedestrian footway shown on the site layout plans, for approximately 197 metres in length.
7. FP14 will be set in green space which complies with the comments from the parish council expressing a desire to retain the character of a rural public footpath.
8. There is no recorded width for FP14 but the width of the section of diverted public footpath will be 2 metres throughout. The surface will be a bound surface as shown on the landscape plans. There will be no limitations on the new route.

#### **9. Consultation**

10. During the consultation on the outline planning application and for approval of reserved matters, no objections or representations appear to have been received regarding the proposed diversion of the public footpath.

## **11. Relevant Legislation**

12. 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.
13. 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.
14. Under the Growth and Infrastructure Act 2013 the Council has been given the power to make an Order prior to the grant of planning permission but cannot confirm an uncontested Order until required planning permission has been given.
15. Crime and Disorder Act 1998 required the Council to consider the impact of changes on the local risk. This application has been considered and the diversion is required to be diverted open space and within observation from nearby properties where possible.

## **16. Relevant Policies**

17. The following policies and protocols are relevant to this application.
  - 17.1. Rights of Way Improvement Plan 2011-16
  - 17.2. Statement of Action BS1 "we will seek to address safety concerns highlighted whilst using the network during consultation"
  - 17.3. 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"

## **18. Assessment and Issues**

19. The purpose of the diversion is to alter the definitive line of FP14 to enable 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.
  
20. The existing footpath is a rural link between two busy roads. The diverted FP14 will be set within green space, retaining some of the rural character of the current FP14. The termination points of FP14 are unaffected by the development and currently run through a green corridor. The new FP14 will have a surfaced footpath which will be functional and fit with the new infrastructure.
  
21. There is an acceptable, small difference in length between the current line of the existing FP14 and the new line. The surface and length of the proposed diversion are as commodious as the current line.
  
22. The merits of the planning application are not under consideration in assessing this application. It is possible that if the planning application has received objections then a subsequent application to divert a public 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.

### **23. Conclusion**

24. After careful consideration of the application and the relevant law and policies it is considered that it is necessary to divert part of FP14 as illustrated on the Plan to enable the development to proceed in accordance with a planning permission which has been granted and condition expected to be approved.

### **Associated documents**

File: SD072/FP14 Malpas and Plan SD072

Planning Application : 17/04664/OUT and 21/00355/DIS

**Appendix A**  
Site Photographs



Approach to Point A, stile to field



Facing north east cross field.



Point B on Plan, facing north west



Stile on Chester Road and approach to point B



**Appendix B**  
 Extract from layout plan CRP/PL/001

