

**Cheshire West and Chester Council  
Delegated Report**

<b>Application Number</b>	SD071/FP2/Willington
<b>Description</b>	Proposed footpath diversion order under section 257 of the Town and Country Planning Act 1990
<b>Site address</b>	Footpath 2 (Part) Parish of Willington
<b>Applicant Name</b>	Agent for Tirley Garth Lodge, Willington
<b>Ward</b>	Tarvin and Kelsall
<b>Ward Member</b>	Councillors John Leather and Harry Tonge
<b>Case Officer</b>	Adele Mayer, Prow Asset Management Officer PublicRightOfWayWest@Cheshirewestandchester.gov.uk
<b>Date</b>	23.08.2021

**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 Willington on the grounds that it is necessary to do so in order to enable development to be carried out pursuant to Planning Permission No 21/01819/FUL as shown on plan SD071 ("the plan") a copy of which is annexed hereto.
- 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.

**1. Site Description**

2. Public Footpath No 2 Willington runs between John Street (C620) at OS grid reference SJ 5448 6591 and runs in a north easterly then easterly direction to Tirley Lane (UX1654) at OS grid reference SJ 5499 6605. The part of the footpath affected by the application commences at John Street and runs in a north easterly direction, crossing one field then along the north side of the hedge of an arable field for approximately 202 metres to a point on the unaffected public footpath at OS grid reference SJ 5465 6598 and is shown on Plan SD071 ("the plan") as a solid black between points A and Point B.

3. The surface of the footpath commences with an earth and rubble track and continues over grass and agricultural land. There is a field gate at the junction of the track with John Street, and there are two stiles on this section of the footpath. Images of the route can be found annexed at Appendix A.

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

5. An application for planning permission has been applied for under planning reference 21/01819/FUL for a forestry storage building. The documents show the proposed diversion on the application drawing. The application drawing is annexed at Appendix B.
6. Plans showing the layout can be found under planning reference 21/01819/FUL at the planning portal: <https://pa.cheshirewestandchester.gov.uk/online-applications/>
7. The proposed diversion will commence on John Street, 100 metres south of the current commencement point. The new route will follow a hedge line running in a northerly direction for approximately 142 metres to the junction with the west-east hedge line at OS grid reference SJ 5456 6598 (point D on the plan). From this point the footpath will run on the south side of the west-east hedge, running in the easterly direction for approximately 97 metres to join the unaffected length of footpath at point B on the plan. The diversion route is shown on the plan by a broken black line between points C to D to B.
8. The total length of the diversion is approximately 239 metres with one gate proposed between 2 fields (point D on the plan) which will be under license.

#### **9. Relevant Legislation**

10. 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, or for which an application has been made.

11. 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 (and provided that by then the associated planning permission has been granted) the Council may proceed to confirm the Order. Otherwise the Order can only be confirmed by the Secretary of State.
12. Section 40 of the Natural Environment and Rural Communities Act 2006 requires the authority to have regard for conserving biodiversity
13. 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.

#### **14. Relevant Policies**

15. The following policies and protocols are relevant to this application.
  - 15.1. Rights of Way Improvement Plan 2011-16
  - 15.2. Statement of Action BS1 “we will seek to address safety concerns highlighted whilst using the network during consultation”
  - 15.3. 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”
  - 15.4. Cheshire West and Chester Rights of Way Committee 29 July 2009: “Structures on public rights of way”

#### **16. Assessment and Issues**

17. The purpose of the diversion is to alter the definitive line of the path so that it enables development to take place. The current footpath runs along a track to the rear of Tirley Lodge and the two are separated by a fence. The planning proposal is to construct a garage at the rear of Tirley Lodge which requires the diversion of the footpath to enable the development to proceed. From this track the footpath crosses into a field which is currently under meadow, and then into a second field which is currently arable.
18. The junction of the footpath on John Street has poor visibility because it is on a narrow bend. The road is mostly single track carriageway and there is a general safety issue for vulnerable road users. The new point of commencement on John Street has increased visibility of the road and takes into account the policy addressing safety concerns.

19. The new route will follow a new agricultural track alongside a grass/meadow field. The footpath will connect with the same hedge line running west-east followed by the line of the current footpath on the south side of this hedge. The width of the new footpath will be 2 metres. Part of the current route runs over relatively solid and flat surfacing but continues along a grassy and arable field. For the purpose of accessibility, the new route will have similar surfacing as the remainder of the current path and remove the 2 stile limitations
  
20. The proposed route is longer than the existing length. The new commencement makes the footpath junction closer to the village of Utkinton. The new start of the footpath will be further away from the start of Bridleway 8 Willington. It is not considered to be inconvenient for walkers.
  
21. The new route commences and terminates on the same road and there are no other considerations of connectivity.
  
22. There is currently a view of the rear elevation of Tirley Lodge. Tirley Lodge is grade II listed, built c1910, the registered description indicates the main interest is at the front of the building facing away from the footpath running along the rear. This may add to the interest of the walk, however the elements that can be viewed are not of such significant interest it would be a loss to the enjoyment of the walk.
  
23. 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 to delay the process of development. If objections to an Order are received the matter would be referred to the Secretary of State.

## **24. Conclusion**

25. 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 Willington to enable development to be carried out in accordance with planning permission granted or pending.

## **26. Associated documents**

**APPENDIX A**

Site Photographs



Junction of footpath at John Street. View

west and east.





Rear of Tirley Lodge in image above, first stile of two into the first field





First field above, leading to second stile below



Above image stile into the adjacent field

Image below looking back to the stile, current route on right of hedge in arable field



Image of the boundary hedge facing east (current route on left side)



The new route will start on John Street and run alongside the field boundary  
In the image below, the field in which the sign sits.  
Visibility either side.





New agricultural track to be created along field boundary on right side of image  
In images below, facing south along the hedge shown in image above



# Appendix B

## Proposed diversion under 21/01819/FUL

