

**Cheshire West and Chester Borough Council**  
**Officer Delegated Report**

Application Number	SD/050/14/02130
Description	Proposed Public Footpath diversion order under section 257 of the Town and Country Planning Act 1990
Site address	Footpaths 9, 10 and 11 Davenham
Applicant Name	Company Secretary Bellway Homes Ltd, Seaton Burn House, Dudley Lane, Seaton Burn NE13 6BE
Ward	Davenham and Moulton
Ward Members	Councillors James Pearson, Gaynor Sinar and Helen Weltman
Case Officers	Adele Mayer, Public Rights of Way Officer tel: 01606 271822
Date	28 April 2017

**Recommendation That:**

- 1) An order be made under Section 257 of the Town and Country Planning Act 1990 diverting part of Public Footpath No 9, 10 and 11 Davenham on the grounds that it is necessary to do so in order to enable development to be carried out pursuant to Planning Permission No's 14/02130/OUT and 16/05554/REM
- 2) That the Place Area Manager be authorised to take any action considered necessary in respect of the confirmation of the Order duly authorised to be made.

**Site Description**

1. Footpath 9 commences near Dairy Farm, Moulton and runs in a north easterly direction to the junction of Footpaths 10 and 11 Davenham. The part of the footpath affected by the application is the terminal 6 metres at the northern end of the footpath at point C (OS grid reference SJ 65870 70473) and shown by a solid black line on plan SD050 ("The Plan").
2. Footpath 10 commences at the junction with Footpath 9 and 10 Davenham and runs in a north westerly direction to join Mount Peasant Road (UW3359). The part of the footpath affected by the application runs from the junction with Footpaths 10 and 11 Davenham for 246 metres to the junction with Mount Pleasant Road as shown by a solid black line between points C (OS grid reference SJ 65870 70473) and D (OS grid reference SJ 65734 70638) on the Plan.
3. Footpath 11 commences at the junction with London Road, Davenham and runs in a south westerly then north westerly direction to the south end of Fountain Road at the junction with Footpath 9 and 10 Davenham at point B (OS grid reference SJ 65884 70482). The part of the footpath affected by the application runs from point A (OS grid reference SJ 66016 70323) in a north westerly direction for 207 metres to point B as shown on the Plan by a solid black line between points A and B.
4. The surface of the footpaths affected is grass pasture throughout. There are no recorded widths or limitations on the Definitive Statement. Photographs of the existing footpaths can be found at Appendix A.

### **Proposal/application detail**

5. Planning Permission had been applied for from Cheshire West and Chester Council under application number 14/02130/OUT proposing a residential development of up to 64 homes and public open space and other related infrastructure over land associated with Fountain Lane Farm, Davenham. Planning permission was refused but following an appeal to the Secretary of State for Communities and Local Government, the Planning Inspectorate permitted the development (see Appeal ref: APP/A0665/A/14/2226994). The public footpaths in part cross the areas of

construction and other than the footpaths being diverted would be obstructed by new structures.

6. Plans showing the detail of the site layout can be found under planning reference 16/05554/REM on the Planning Portal website (<https://www.planningportal.co.uk/>). A copy layout plan can be found at Appendix B of this report to show how the diversions will fit into the scheme layout.
7. The Applicant has proposed to divert parts of the three footpaths where the new development will be constructed. The new routes are shown on the Plan accompanying the report.
8. The proposed diversion of Footpath 9 is a distance of approximately 12 metres and runs from OS grid reference SJ 65873 70465 in a westerly then northerly direction to rejoin the southern end of Fountain Lane at OS grid reference 65870 70473 as shown by a broken black line between points F and C on the Plan.
9. The proposed diversion of Footpath 10 will commence from the junction with Footpath 11 at OS grid reference SJ 65986 70349 and run in a north westerly direction for approximately 430 metres in a meandering line which crosses the existing line of Footpath 9 and terminates on the footway of Mount Pleasant Road at OS grid reference SJ 65734 70638 as shown by a broken black line between points G and D on the Plan.
10. The proposed diversion of Footpath 11 will commence on the existing footpath at point A (OS grid reference SJ 66016 70323) and run in a south westerly direction to point H (OS grid reference SJ 66011 70320) then north westerly and northerly direction for approximately 62 metres to join the proposed adopted highway at OSGR SJ 65994 70366 as shown by a broken black line between points A to H to I on the Plan.

11. The surface of the new paths will be gravel with timber edging as indicated by the planning application hard surfacing layout plans (BH/NW/FL/HS-01 dated 06.12.16). There will be no gates or other limitations.
  
12. The routes throughout will be recorded with a width of 2 metres.

### **Relevant Legislation**

13. 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 to enable development to be carried out in accordance with planning permission granted.
  
14. Schedule 14 to the 1990 Act applies to Orders made under section 257 of the 1990 Act and requires the Council to give notice of the making of the diversion order. If there are no objections or any objections are withdrawn the Council may proceed to confirm the order. Otherwise the order can only be confirmed by the Secretary of State.

### **Relevant Policies**

15. The following policies and protocols are relevant to this application.
  - 15.1. Rights of Way Improvement Plan 2011-16
    - 15.1.1. Statement of Action BS1 "we will seek to address safety concerns highlighted whilst using the network during consultation"
  
    - 15.1.2. 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"

## **Assessment and Issues**

16. The purpose of the diversion is to alter the definitive line of the footpaths so that it enables development to take place.
17. The current footpaths cross the site in open fields. The fields will be developed; however, the design of the layout allows the footpaths to mainly stay within public open space. The current use of the footpaths is mainly for recreation and as such, the diversions have retained a satisfactory level of length within green space.
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 for a decision on whether to confirm or not confirm the Order.

## **Conclusion**

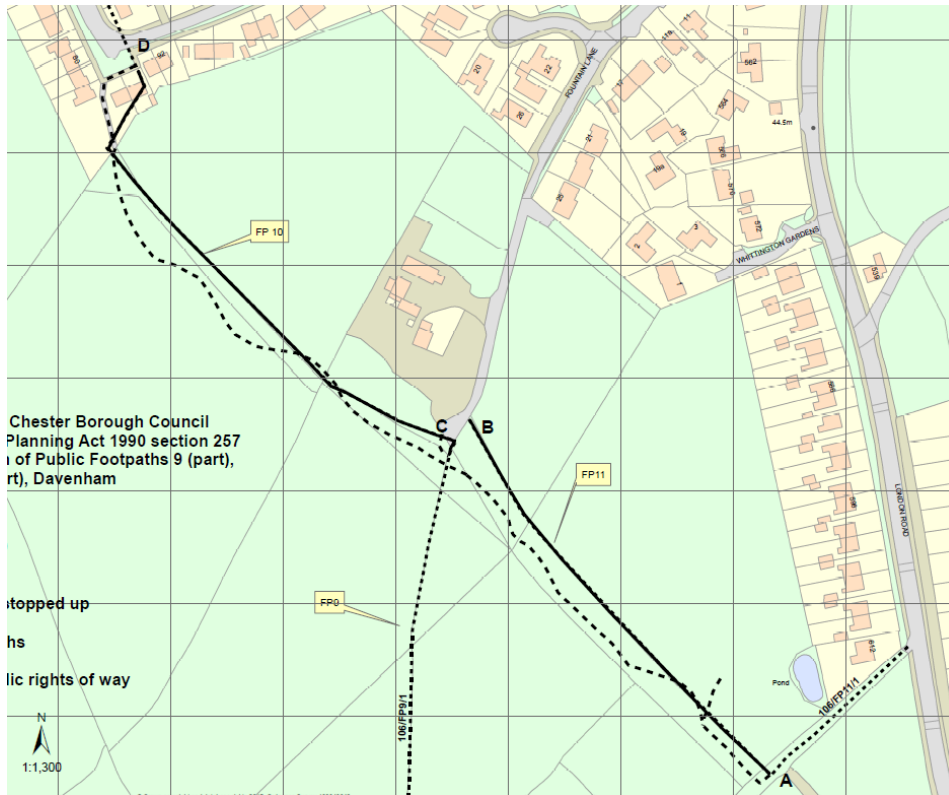
19. After careful consideration of the application and the relevant law and policies it is considered that it is necessary to divert part of Public Footpaths 9, 10 and 11 Davenham as illustrated on the Plan to enable development to be carried out in accordance with a planning permission which has been granted.
20. It is considered that the legal tests for the making and confirming an Order are satisfied.

## **Associated documents**

File: SD050/14/02130  
Planning Application 14/02130/OUT and 16/05554/REM  
Plan SD/050

## Appendix A

Site Photographs, commencing at Mount Pleasant Drive to Fountain Lane and then towards London Road



To Mount Pleasant Drive



Link path from Mount Pleasant Drive





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Junction of Footpaths  
Gate to fountain Lane



Fountain lane

Footpath 9





FP11





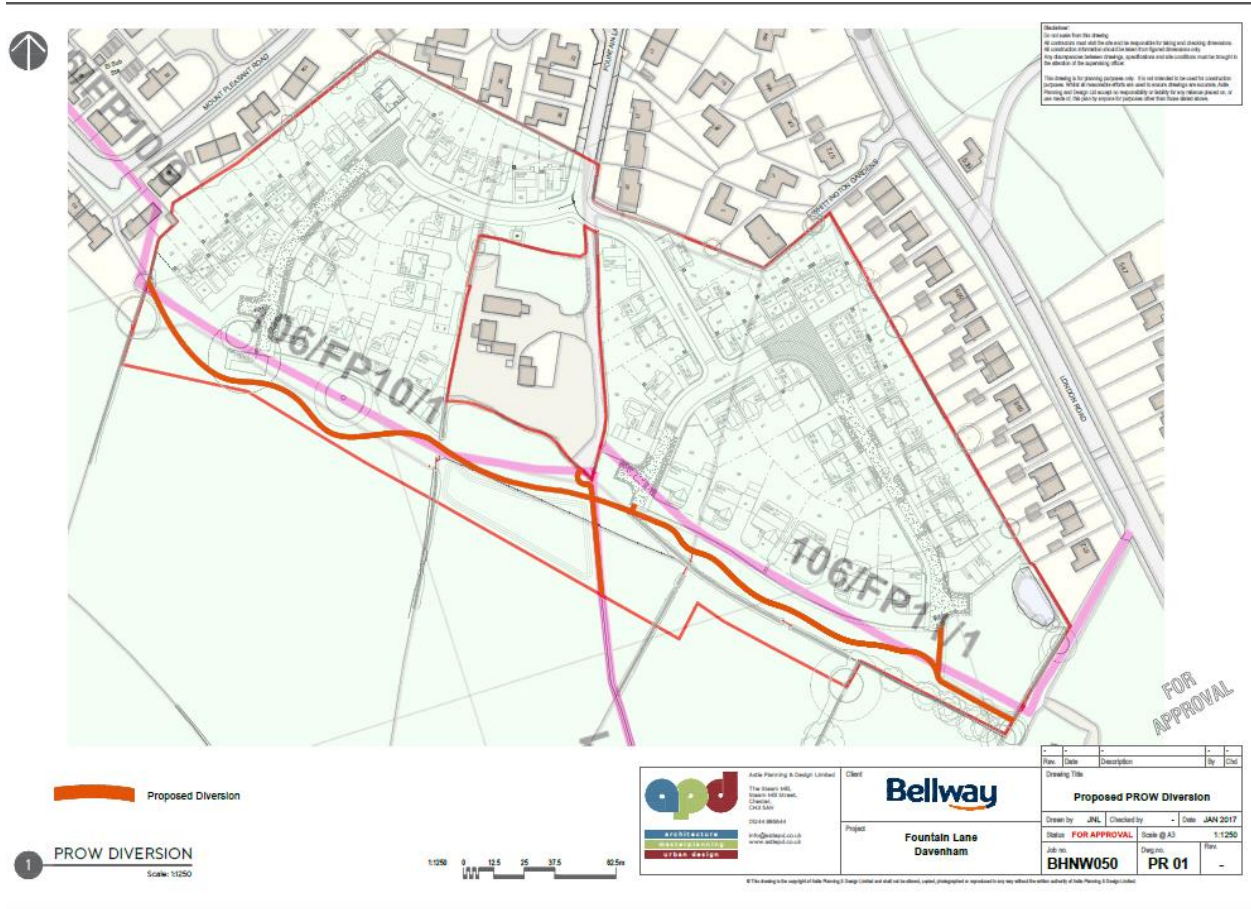
FP11

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08.03.2017 16:08

# Appendix B Site layout 2017



**Disclaimer:**  
 We are not liable for the drawing.  
 All contractors must read the drawing and be responsible for taking and checking dimensions.  
 Any discrepancy between drawing, quantities and site conditions is the contractor's responsibility.  
 This drawing is for planning purposes only. It is not intended to be used for construction purposes. While all reasonable efforts are made to ensure that the drawing is accurate, any drawing and design are subject to availability or change in any planning document or, at the discretion of the planning authority.

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