

Cheshire West and Chester Borough Council
Officer Delegated Report

Application Number	SD/053/17/04573
Description	Proposed Public Footpath diversion order under section 257 of the Town and Country Planning Act 1990
Site address	Footpath 9 Hampton
Applicant Name	O Starkey, Wright Marshal, 63 High Street, Tarporley, CW6 0DR agent for Mrs S Lunt
Ward	Malpas
Ward Members	Councillor Whitehurst
Case Officers	Adele Mayer, PROW asset management Officer tel: 01606 271822
Date	6 April 2018

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 Hampton on the grounds that it is necessary to do so in order to enable development to be carried out pursuant to Planning consent under reference 17/04573/FUL.
- 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. Footpath 9 commences on the Old Coach Road at OSGR SJ 5134 4867 and runs in an easterly then south easterly direction to join the Chester Road at No Mans Heath, passing through Robber Hill farm buildings, and also connecting with public footpaths to the east in Bickley parish. The section of path affected by the proposal

runs between OSGR SJ 51529 48593 at the entrance field gate to the property, then the path runs through the yard and paddock in a generally south easterly direction for a distance of approximately 157 metres to the junction with FP6 Bickley at OSGR SJ 51615 48464 as shown on plan SD/053A (“the Plan”) by a solid black line between points A and B.

2. The surface of the footpaths affected is grass pasture except through the farm yard which is a mix of metaling and concrete. There are no recorded widths or limitations on the Definitive Statement. Photographs of the existing footpaths can be found at Appendix B.

Proposal/application detail

3. Planning Permission has been consented by Cheshire West and Chester Council under application number 17/04573/FUL proposing a residential conversion of the farm buildings. The planning permission approves the paving of the courtyard and fencing which necessitates the diversion of the footpath in order to enable that element of the development to be constructed.
4. Plans showing the detail of the site layout can be found under planning reference 17/04573/FUL on the Planning Portal website (<https://www.planningportal.co.uk/>). A copy layout plan can be found at Appendix A of this report to show the diversion with the scheme layout.
5. The Applicant has proposed to divert a part of the footpath where the new development will be constructed. The new route is shown on the Plan accompanying the report.
6. The proposed diversion of is a total distance of approximately 185 metres and will commence from the farm entrance field gate at OSGR SJ 51529 48593 and run in a generally south westerly direction for approximately 24 metres to OSGR SJ 51508 48580 at the corner of a field boundary and then run in a generally south easterly direction following the boundary of a paddock for approximately 118 metres to OSGR 51570 48484 the path will then run in a generally east south east direction for

approximately 43 metres to the continuation of the same footpath and junction with FP6 Bickley at OSGR 51615 48464 and shown on the plan between points A and C and D and B by a broken black line.

7. The surface of the new path will be pasture grass throughout as indicated by the planning application. Removal of water troughs and feeding station and some surfacing works will be needed at the commencement of the diversion where there has been ground puddling. Surfacing at the first gate will also need addressing whereby stock currently gather for shelter. A new shelter will be sited away from the converted buildings.
8. There are no recorded limitations on the Definitive Statement. There are, however, recorded limitations on the schedule of the 1950's parish record, including three field gates and one wicket gate through the farm and a barbed wire fence at the boundary to the paddock. It is intended that where the proposed diversion crosses boundaries there will be inserted pedestrian gates to the current council standards at points shown on the plan as "gate" and located at OSGR SJ 51511 48572 and OSGR SJ 51529 48540.
9. The Council will take the opportunity presented by the diversion order to record a width of 2 metres along the length of the footpath.

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 to enable development to be carried out in accordance with planning permission granted.
11. Schedule 14 to the 1990 Act sets out the legal procedure and timescales that apply 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

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 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 Public Rights of Way Committee report 29 July 2009 “Structures on PROWs”.

Assessment and Issues

13. The purpose of the diversion is to alter the definitive line of the footpaths so that it enables development to be carried out pursuant to planning permission.

14. The current footpath crosses the site through an enclosed farm yard at an elevated height sloping down in a southerly direction to join the footpath network into the adjacent parish of Bickley. The diversion into fields on the south west side of the building permits the views from the elevated height to be retained.

15. The current use of the footpaths appears to be mainly recreational and as such, the diversion has retained a satisfactory level of space and enjoyment of views.

16. Concern was raised during the consultation that the surface of the proposed diversion is not currently satisfactory for walkers to use. The fields are used for grazing livestock and water troughs and feeding stations placed fairly close to the farm buildings and across the proposed new route have created a very boggy surface. The council has received confirmation that the feeder stations and water troughs will be moved away from the buildings so that they do not affect the new residential development and surfacing works will be carried out to make the surface acceptable for walkers. The order is made under the planning act and the new route will not be operational until it has been certified as acceptable by the council.

17. 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. There is a risk that the Secretary of State will hold a Public Inquiry if the level of objection/public interest is something that requires an opportunity for investigation before confirming any order.

Conclusion

18. 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 9 Hampton as illustrated on the Plan to enable development to be carried out in accordance with a planning permission which has been granted.

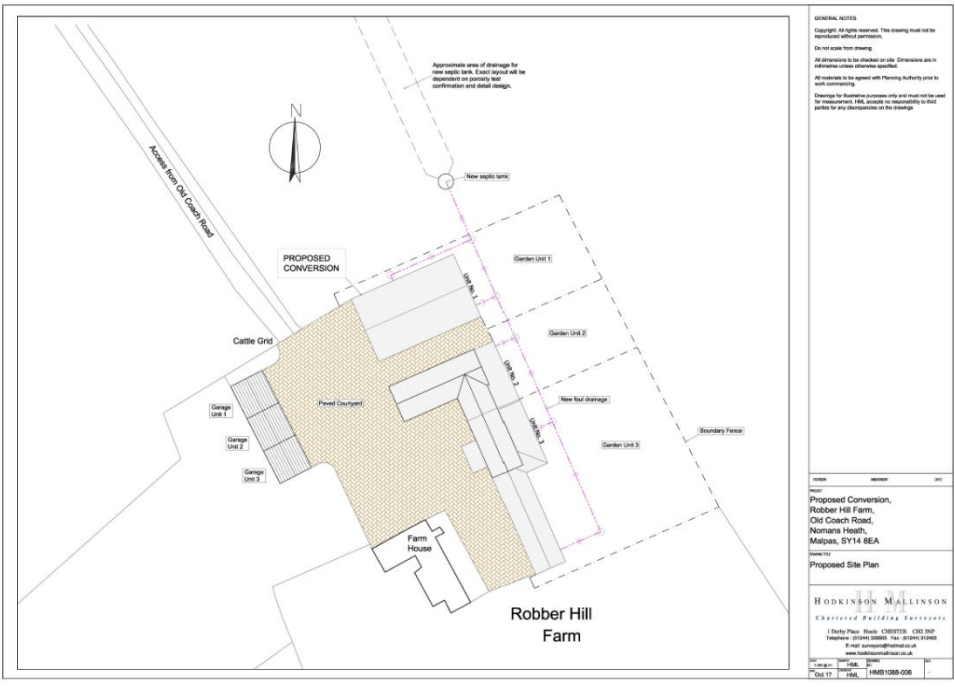
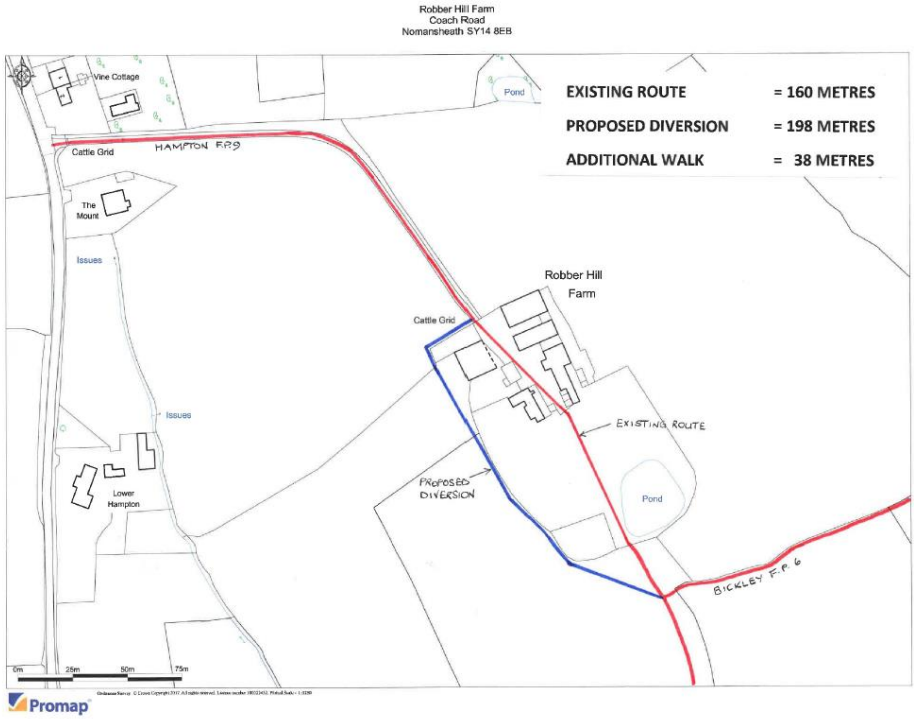
19. It is considered that the legal tests for the making and confirming an Order are satisfied.

Associated documents

File: SD/053/17/04573
Planning Application 17/04573/FUL
Plan SD/053

Appendix A

Location Plan of Robber Hill Farm showing the proposed diversion and the detail plan of the proposed conversion



Appendix B Site photographs



Access Drive following footpath
east and south





Footpath
through farm
yard







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Proposed new route, commencement from access drive to field boudary





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Termination of new route with continuation of existing footpath