

**Cheshire West and Chester Council
Delegated Report**

Application Number	SD/061/FP36/Kingsley
Description	Proposed footpath diversion order under section 257 of the Town and Country Planning Act 1990
Site address	Footpath 36 Kingsley
Applicant Name	NJL Consulting, 8 Ashbrook Office Park, Manchester, M22 5LB
Ward	Kingsley
Ward Members	Councillor Ralph Oultram
Case Officers	Adele Mayer, Prow asset management officer PublicRightOfWay@Cheshirewestandchester.gov.uk
Date	13 February 2019

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 36 Kingsley on the grounds that it is necessary to do so in order to enable development to be carried out pursuant to Planning Permission No 18/00909/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 36 Kingsley runs from Ball Lane (UV2536) in a generally south westerly direction to Mill Lane (B5153) at Kingsley Water Mill. The part of the footpath affected by the application is a 156 metre length of footpath from a point on the existing footpath north of the mill at OSGR SJ 5638 7509 in a generally south

westerly direction to the junction with Mill Lane at OSGR SJ 5627 7500 and shown between points A and B by a solid black line on plan SD/061 (“The Plan”)

2. The surface of the footpath is generally hard surface concrete or brick. There are no recorded limitations on the Definitive Statement. Images of the route can be found at Appendix A.

Proposal/application detail

3. Planning permission has been granted by Cheshire West and Chester Council under application reference number 18/00909/FUL for the removal of outbuildings associated with Kingsley Mill and the erection of 5 new houses, a new access and car parking and landscaping.
4. Plans showing the site layout can be found via the planning portal, online at <https://pa.cheshirewestandchester.gov.uk/online-applications/applicationDetails.do?activeTab=externalDocuments&keyVal=P57R1GTE0L400>
The Public Footpath runs between buildings through the mill yard and has been obstructed by an agricultural building on the north side of the property. The footpath would remain obstructed by buildings and be further obstructed by the new layout of car parking and landscaping so a diversion was requested. A proposal to divert the path so that the development would not obstruct the public rights was submitted under reference CPP A3-P “supplementary information”. A copy plan can be found at Appendix B.
5. It is proposed to divert the path so that the public footpath will run to the mill pond (point C on the plan OSGR SJ 5634 7508) then run along the bank of the mill pond before running over a path between the mill pond bank and mill building and from the mill pond (point D at OSGR SJ 56307502) the path will run between the mill bank and mill building and continue to terminate at the same point on Mill Lane as the current line of the footpath. The diversion route is shown on the plan by a broken black line between points A to C to D to B

6. The new route will be approximately 158 metres in length. The surface will be grass and partly paved along the mill bank. There will be no gates or other limitations. The new footpath will be a width of 2 metres except for a length approximately 9 metres long which runs alongside a car park area and a mill building where the width will be restricted to 1.5 metres wide.
7. Works will be required to ensure there are no trip hazards along the diversion route adjacent to the pond. There are no recorded limitations on the current line of the footpath but there are existing stiles at the northern indication of the diversion. Stiles will need to be replaced with a gap or a gate in accordance with the Council policies for furniture.

Relevant Legislation

8. 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.
9. 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. Otherwise the Order can only be confirmed by the Secretary of State.

Relevant Policies

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

11. Cheshire West and Chester Rights of Way Committee 29 July 2009: "Structures on public rights of way".

Assessment and Issues

12. The purpose of the diversion is to alter the definitive line of the path so that it enables development to take place.
13. The current footpath runs through a working mill yard and is also obstructed by an agricultural building. An existing alternative permissive route for the public footpath had been made available on site which ran alongside the mill pond. The proposed diversion does not intend to use the whole length of the permissive route and will avoid a narrow section of path by diverting along the rear of a mill building.
14. The mill pond and its setting is attractive and the balance of the length of path to be stopped up and the new route is almost equivalent. Access will be increased with replacement of a stile with a gap.
15. 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.

Conclusion

16. 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 36 Kingsley as illustrated on the Plan to enable development to be carried out in accordance with a planning permission which has been granted.

Associated documents

File: SD/061/FP36 Kingsley
Planning Application 18/00909/FUL

APPENDIX A

Aerial
Photograph



Mill Lane
road junction





footpath
through
agricultural
buildings



Footpath runs
Left to right between
buildings



agricultural building
obstruction



Two stiles crossing
Into field



diversion
commences
from
stile



adjacent
to mill pond



13.08.2018 14:01

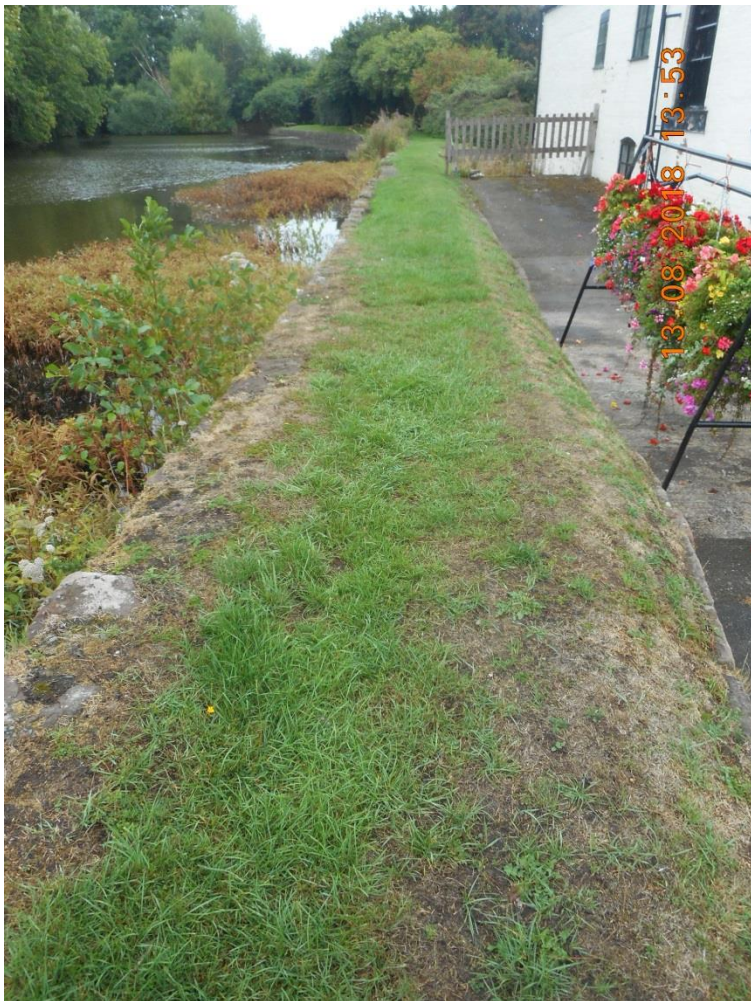


19.12.2018 15:12



route to
divert
to rear
of building

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Appendix B Planning layout

