

Cheshire West and Chester Council

Delegated Report

Application Number SD/038/RB41

Description Proposed footpath diversion order under section 257 of the Town and Country Planning Act 1990

Site address Restricted Byway No 41 Winsford

Applicant Name David Wilson Homes NW, Warrington WA3 6XE

Ward Winsford Swanlow and Dene

Ward Members Councillor David Armstrong and Councillor Stephen Burns

Case Officers Adele Mayer, Public Rights of Way Officer
tel: 01606 271822

Date 8th April 2016

Recommendation:

- 1) That an order be made under section 257 of the Town and Country Planning Act 1990 diverting a section of Restricted Byway No 41 in Winsford on the grounds that it is necessary to do so in order to enable development to be carried out pursuant to Planning Permission No 13/02760/OUT and 15/02678/DIS
- 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.

1. Site Description

1.1 Restricted Byway (RB) 41 Winsford commences on Gladstone Street (C652) at OS grid reference SJ 658 654 and runs in a south easterly direction to Hill Farm then runs in a south westerly direction to its termination point on Swanlow Lane at OS grid reference SJ 646 650. That part of the RB affected by the application is the section running between OS grid reference SJ 648 653 and OS grid reference SJ 649 652 at the junction with RB 40 Winsford and shown by a solid black line between the points A and B on plan SD/038 ("The Plan").

1.2 The surface of the section of way affected is currently pasture throughout.

1.3 The RB was originally recorded on the DM as a "Road Used as a Public Path" and its status had not been reviewed before legislation imposed the status of RB. There is no recorded width.

2. Proposal/application detail

2.1 Planning Permission has been granted by Cheshire West and Chester Council under application number 13/02760/OUT and 15/02678/DIS. Housing is to be built with associated infrastructure. In order to accommodate the required width of the way within the layout it is necessary to divert the way, largely parallel with and close to its existing alignment, although it is also proposed to divert the RB out of the farm yard into the adjacent open space. A plan showing the proposed diversion has been submitted with the discharge planning application (REF: Public Rights of Way on 15/02678/DIS) (shown on the plan between points A and C).

2.2 The developer has proposed to divert approximately 215 metres of the RB which is affected by the development. The new route will be approximately 222 metres in length. The Council has requested that the developer provide a reasonable width for a RB based on the width guidance that is laid out in Schedule 12A para1 to the Highways Act 1980, which is a minimum width of 3 metres and a maximum of 5

metres. The width of the new route will be 3 metres surfaced and 5 metres throughout.

2.3 The applicant has included the diversion within the planning application and the landowners have been consulted and have made no objections.

2.5 The details of the surface of the alternative route have been agreed and form part of the discharge of conditions for the planning permission. The central surfacing will be self-binding gravel with soft landscaping either side. At points D and E the way crosses new estate roads and the surfacing will change to charcoal tegular paving.

2.6 There will be no limitations.

3. Consultation

3.1 Winsford Town Council has no objection to the proposed diversion.

3.2 Councillor David Armstrong has asked that any limitations are accessible, however, no limitations will be required.

3.2 The Peak and Northern Footpath Society has no objection to the proposal. The representative for the Ramblers has no objection but has requested surfacing that is not tarmac and retains some rural aspect.

4. Relevant Legislation

4.1 In accordance with section 257 of the Town and Country Planning Act 1990 (the “1990 Act”) the Council may make an order diverting a restricted byway 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.

4.2 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.

5. Relevant Policies

5.1 The following policies and protocols are relevant to this application.

5.1.1 Rights of Way Improvement Plan 2011-16

Statement of Action BS1 “we will seek to address safety concerns highlighted whilst using the network during consultation”

5.1.2 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”

6. Assessment and Issues

6.1 The purpose of the diversion is to alter the definitive line of the path so that it enables development to take place.

6.3 There is no significant difference in length between the current line and the proposed line for the diversion. The surface and length are as commodious between the current line and proposed diversion route.

6.4 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. However, as stated above, if objections are received the order would be referred to the Secretary of State.

7. Conclusion

7.1 After careful consideration of the application and the relevant law and policies it is considered that it is necessary to divert part of Restricted Byway 41 Winsford as

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

8. Associated documents

File: SD/038/Winsford. Planning Application 13/02760/OUT and
15/02678/DIS