

## **Public Rights of Way Committee**

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**Date of Meeting:** 11 June 2018

**Report Title:** Highways Act 1980 s119 Application for the Diversion of Public Footpath No. 12 (part), Parish of Adlington

**Senior Officer:** Frank Jordan, Executive Director Place

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### **1. Report Summary**

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 12 in the Parish of Adlington. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way team in the interests of the landowners. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.
- 1.2. The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

### **2. Recommendations**

- 2.1. An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No. 12 in the Parish of Adlington by creating a new section of public footpath and extinguishing the current path as illustrated on Plan no. HA/125 on the grounds that it is expedient in the interests of the landowners.
- 2.2. Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.

- 2.3. In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

### **3. Reasons for Recommendation**

- 3.1. In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowners for the reasons set out in paragraph 5.7 below.

- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

- Whether the proposed new path and its exit point are substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

- The effect that the diversion would have on the enjoyment of the path or way as a whole.
- The effect that the coming into operation of the Order would have as respects other land served by the existing public right of way.
- The effect that any new public right of way created by the Order would have as respects the land over which the rights are so created and any land held with it.

- 3.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.

- 3.4 The proposed route will not be 'substantially less convenient' than the existing route. Diverting the footpath would move the footpath away from the applicants' home, improving their privacy and security considerably. It will also provide a safer exit point onto Pedley Hill for walkers, improved views and an easier route with no stiles and a reduced gradient. It is considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.

- 3.5 The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

#### **4. Other Options Considered**

- 4.1. Not applicable.

#### **5. Background**

- 5.1. An application has been received from Mr and Mrs Wildblood of Lower Pedley Hill Farm, Pedley Hill, Adlington, SK10 4LB requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 12 in the parish of Adlington.
- 5.2. Public Footpath No. 12 Adlington commences on Pedley Hill (UW2515) at O.S. grid reference SJ 9274 8118 and runs in a generally northerly direction for approximately 710 metres to Skellorn Green Lane (C416) at O.S. grid reference SJ 9269 8184. The section of path to be diverted is shown by a solid black line on Plan No. HA/125 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points C-B.
- 5.3. The land over which the diversion runs belongs to the applicants’ adjacent landowner. Written permission for the proposal has been provided by the adjacent landowner.
- 5.4. The legal definitive line of Adlington Footpath No. 12 was partially obstructed and offline for decades. When the current owners purchased the property in 2012 they opened up the definitive line and requested to be placed on the diversion application waiting list. The application, under the Highways Act, has been made in the interests of the privacy and security of the applicant.
- 5.5. The section of Public Footpath No. 12 Adlington to be diverted commences at O.S. grid reference SJ 9274 8118 (point A on plan No. HA/125) and runs in a northerly direction, in very close proximity to the applicants home (Lower Pedley Hill Farm). In addition, it is at an elevated level close to two bedroom windows, facilitating a clear view directly into the house. There is a stile and seven steps for users to negotiate up a short steep slope with a gradient of 1:3. It then runs beneath an established low tree and bush canopy. Due to the existing vegetation and overhanging trees, this affords little natural daylight for walkers. As the path leaves the canopy it enters into a small paddock used for horses, with a second stile for walkers to negotiate at the northern end of the field. There is then a short (36 metres)

enclosed section of path before it reaches the field boundary at O.S. grid reference SJ 9272 8134 (point B on plan No. HA/125).

- 5.6. The proposed route follows the boundary of the field directly to the east of the property and rejoins with the existing line of the footpath at the northern end of the field. Written permission for the diversion has been obtained from the adjacent landowner. It leaves Pedley Hill approximately 20 meters to the east of the current route at a slightly wider section of the road, which provides improved visibility for walkers, drivers and horse riders using the road in both an easterly and westerly direction. Thus providing a safety benefit for all. A kissing gate would be installed as the path leaves Pedley Hill, with one step between the road and the gate. There is then a short slope with a gradient of 1:4 which provides a slightly easier walking route. At the top of the slope the route offers open views of the surrounding countryside. The proposed diverted route would be unenclosed with a width of two metres and a grass surface. The length of the proposed route is approximately 167 metres.
- 5.7. Diverting the footpath will improve the applicants' privacy and security considerably. It will also provide a safer exit point onto Pedley Hill for walkers, improved views and an easier route with no stiles and a reduced gradient.

## **6. Implications of the Recommendations**

### **6.1. Legal Implications**

- 6.1.1. Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.

### **6.2. Finance Implications**

- 6.2.1. If objections to the Order lead to a subsequent hearing/inquiry, this legal process would have financial implications for the Council.

### **6.3. Policy Implications**

- 6.3.1. There are no direct policy implications.

### **6.4. Human Resources Implications**

- 6.4.1. There are no direct implications for human resources.

## **6.5. Risk Management Implications**

6.5.1. There are no direct implications for risk management.

## **6.6. Rural Communities Implications**

6.6.1. There are no direct implications for rural communities.

## **6.7. Implications for Children & Young People**

6.7.1. There are no direct implications for children and young people.

## **6.8. Public Health Implications**

6.8.1. There are no direct implications for public health.

## **7. Ward Members Affected**

7.1. Poynton West and Adlington Ward: Councillor Beanland has responded to state that he is not aware of any objection to the application. No comments have been received from Councillor Sewart.

## **8. Consultation & Engagement**

8.1. Adlington Parish Council has been consulted and have responded to state that they raise no objection to the diversion.

8.2. The user groups have been consulted. The Peak and Northern Footpaths Society responded to state that they have no objection to the proposal. The East Cheshire Ramblers have also responded to confirm their non objection.

8.3. The statutory undertakers have been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

8.4. The Council's Nature Conservation Officer has been consulted, no comments have been received.

## **9. Access to Information**

9.1. The background papers of file No. 003D/556 relating to this report can be inspected by contacting the report writer.

## **10. Contact Information**

10.1. Any questions relating to this report should be directed to the following officer:

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