

Public Rights of Way Committee

Date of Meeting: 3rd December 2018

Report Title: Highways Act 1980 s.119: Proposal for the Diversion of Public Footpath No. 10 (part) in the Parish of Alsager

Senior Officer: Frank Jordan, Executive Director Place

1 Report Summary

- 1.1 The report outlines the proposal to divert part of Public Footpath No. 10 in the Parish of Alsager. 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 public. 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 By proposing an improved accessible path through open space to connect residential areas with the town centre, 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. 10 in the Parish of Alsager by creating a new section of Public Footpath and extinguishing the current path as illustrated on Plan No. HA/126 on the grounds that it is expedient in the interests of the public.
- 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 Recommendations

- 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 public for the reasons set out in paragraph 5 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 path is 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 and diverting the Footpath will in fact enable investment in the surface of the Footpath to make it more accessible. 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.

4 Other Options Considered

- 4.3 Not applicable – this is a non-executive matter.

5 Background

- 5.1 The section of Alsager Footpath No.10 proposed to be diverted commences at a junction on the footway extending from the houses to the rear of Swettenham Close at OS grid reference SJ 7917 5502 and runs in a generally south westerly direction for approximately 195 metres where it connects with an un-adopted section of Hall Drive at OS grid reference SJ 7931 5513 before continuing southwards towards Alsager Footpath No.8. At present that section of the footpath extends within very close proximity to the brook, it is narrow with a mud and in some places a compacted stone surface.
- 5.2 The diversion is proposed in the interests of the public because the legal line of the footpath has been cut across by the meanders of Valley Brook in places and in other stretches runs very close to the banks of the brook. The proposed diversion would move the path approximately 5-6 metres away from the banks of the brook which would enable the protection of the public footpath from further erosion caused by the river. It would also offer a route away from potential hazards arising from the proximity of the brook, and would enable the surface of the footpath to be improved to increase its accessibility. The improved surface would mean that the footpath can be used year-round by pedestrians and people with pushchairs and wheelchairs, as a leisure route and a route between residential areas and the town centre.
- 5.3 The route to be closed is shown on Plan No. HA/126, as a bold black line running between points A-B-C. The proposed new route is shown as a dashed black line running between points A-D-C. The new route between points A-D-C would be 2 metres wide and have a recycled self-binding aggregate surface.

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 S106 developer contributions have been secured (ref. 15/3410C) to fund the proposed improvement works on the proposed diverted alignment of the Footpath.
- 6.2.2 If objections to the Order lead to a subsequent hearing/inquiry, this legal process would have financial implications for the Council.

6.3 Equality Implications

- 6.3.1 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion would be more accessible than the current route.

6.4 Human Resources Implications

- 6.4.1 There are no direct Human Resource implications.

6.5 Risk Management Implications

- 6.5.1 There are no direct Risk Management implications.

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, other than an improved and more accessible Footpath would encourage active travel and leisure activities.

7 Ward Members Affected

- 7.1 Alsager Ward Members Councillor Deakin, Councillor Fletcher and Councillor Hough have been consulted and no comments have been received.

8 Consultation & Engagement

- 8.1 Alsager Town Council has been consulted and have no objection to the proposed diversion.
- 8.2 The statutory undertakers have also 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.

- 8.3 The user groups have been consulted and no comments have been received objecting to the proposed diversion.
- 8.4 The Council's Nature Conservation Officer has been consulted; no comments have been received.
- 8.5 Officers from ansa, which manages the Public Open Space through which the Footpath runs, have responded to the consultation in an email dated 17th October 2018 and suggest that the walked line of the footpath be "made good" following the diversion of the path. A quote has since been obtained for this which will be funded from s106 developer contributions. ansa also suggest that the path be flush to the ground to enable the mower to mow both sides of the path. The path is currently and will continue to be maintained by ansa.
- 8.6 Officers from the Council's Assets team, as the current and proposed diversion alignments of the Footpath run across Cheshire East Council land, have been consulted and no objections have been received.

9 Access to Information

- 9.1 Plan No. HA/126 is attached.
- 9.2 Further information may be obtained from the Officer named below and file reference No. 011D/558.

10 Contact Information

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

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