

Public Rights of Way Committee

Date of Meeting: 03 December 2018

Report Title: Highways Act 1980 s119 Application for the Diversion of Public Footpath No. 2 (part), Parish of Arclid

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 2 in the Parish of Arclid. 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. 2 in the Parish of Arclid by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/133 on the grounds that it is expedient in the interests of the landowner.
- 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 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 resolve long-standing problems, providing a legal, usable route on the ground where none has existed for many years. It would separate walkers from the garage forecourt, providing a benefit to the landowner in terms of security and privacy for the business. Moving walkers away from the heavy plant and machinery will also benefit users in terms of health and safety. 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 – this is a non-executive matter.

5. Background

- 5.1. An application has been received from Mr N Forster and Mr R Pace of Crane Hire Direct Ltd, Old Smithy Garage, Newcastle Road, Arclid, CW11 2UE requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 2 in the parish of Arclid.
- 5.2. Public Footpath No. 2 in the parish of Arclid commences on Congleton Road (A534) at O.S. grid reference SJ 7841 6191 and runs in a generally easterly direction for approximately 439 metres to Newcastle Road (A50) at O.S. grid reference SJ 7882 6193. The section of path to be diverted is shown by a solid black line on Plan No. HA/133 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C-D.
- 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. Public Footpath No. 2 in the parish of Arclid runs across the curtilage of the garage forecourt at Pace’s Garage/Crane Hire Direct. It is partly obstructed by a large garage and has been for several decades, possibly since the 1960s. The remainder of the route runs across the garage forecourt which is used by heavy crane and other machinery. The current landowner (Mr R Pace) of Pace’s Garage/Crane Hire Direct is in the process of selling the land and business. The proposed new landowner (Mr N Foster) has made an application, with the current landowner’s agreement and permission, under the Highways Act 1980 to divert the footpath and try to resolve this long standing issue. The application, under the Highways Act, has been made in the interests of the privacy and security of the landowner.

- 5.5. The section of Public Footpath No. 2 in the parish of Arclid to be diverted commences at O.S. grid reference SJ 7841 6191 (point A on Plan No. HA/133) and runs in a generally north easterly direction until it reaches Newcastle Road (A50) at O.S. grid reference SJ 7882 6193. The section of the footpath to be diverted is approximately 63 metres.
- 5.6. The proposed diversion (points A-C-D on Plan No. HA/133) would run in a south easterly direction to the rear of the garage for approximately 23 metres and then turn to run in a north easterly direction for approximately 58 metres to Newcastle Road. Other than the short section of path which runs behind the garage which is 1.2-1.5 metres wide due to existing constraints, the path would be enclosed by a post and rail fence on the southern side of the route and security fencing on the northern side of the route, with a width of 2 metres. The surface is mainly tarmac/compacted hardcore with a short section of natural earth where the path travels behind the garage. The total length for the diversion is approximately 81 metres
- 5.7. Separating walkers from the garage forecourt will provide a benefit to the landowner in terms of security and privacy for the business. Moving walkers away from the heavy plant and machinery will also benefit users in terms of health and safety. There will be a clear view of the majority of the length of path from Newcastle Road to offer natural surveillance of the path. The diversion has been sought by the Council to resolve long-standing problems with the footpath. It is the policy of the Council, in the instance of a long standing obstruction which is substantial and costly and impractical to remove, for a diversion application to be required. In such circumstances the Council expects an alternative route to be available, which is the case in this instance via a permissive path. It will provide a legal, usable route on the ground where none has existed for many years.

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. Brereton Rural Ward: Councillor Wray was consulted and no comments were received.

8. Consultation & Engagement

8.1. Arclid 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. Peak and Northern Footpaths Society have replied to state that they have no objection to the proposal.

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. 016D/567 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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