

## **Public Rights of Way Committee**

**03 July 2023**

### **Highways Act 1980 Section 119 Proposed Diversion of Public Footpath No. 7 in the Parish of Brindley**

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**Report of: Peter Skates, Director of Growth and Enterprise**

**Ward(s) Affected: Wrenbury**

#### **Purpose of Report**

- 1 The report outlines the investigation to divert part of Public Footpath No. 7 in the Parish of Brindley following receipt of an application from the landowner.
- 2 The report makes a recommendation based on that information, for a quasi-judicial decision by Members as to whether or not a diversion Order should be made for that section of public footpath.
- 3 The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

#### **Executive Summary**

- 4 This report outlines the investigation to divert part of Public Footpath No. 7 in the Parish of Brindley. This includes a discussion of the consultations carried out in respect of the proposal and the legal tests to be considered for a diversion Order to be made under the Highways Act 1980.
- 5 The recommendation will be that a Public Path Diversion 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. 7 in the Parish of Brindley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/150 on the grounds that it is expedient in the interests of the landowners.

## RECOMMENDATIONS

The Public Rights of Way Sub Committee is recommended to:

1. Decide that a Public Path Diversion 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. 7 in the Parish of Brindley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/150 on the grounds that it is expedient in the interests of the landowners.
2. Decide that 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.
3. Note that in the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

## Background

- 6 An application has been received from Robert Walker of Brindley House in Brindley requesting that the Council make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 7 in the Parish of Brindley.
- 7 Public Footpath No. 7 Brindley, commences at its junction with Public Footpath No. 5 Brindley and continues in a generally east south easterly direction for approximately 934 metres to Brindley Lea Lane (UX1650). The section of path to be diverted is shown by a solid black line on Plan No. HA/150 between points A-B.
- 8 The land over which both the length of Public Footpath No. 7 Brindley to be diverted and the proposed diversion runs is owned by the applicant of the proposed diversion.
- 9 The length of Public Footpath No. 7 Brindley to be diverted runs in a generally east south easterly direction between points A-B for approximately 361 metres. It commences at point A and runs through Cope's Copse, passing between Brindley House and a pond. The path then continues along the grassed verge adjacent to the stone driveway,

then enters open pasture field before joining the loose stone track. The path continues along the stone track until meeting point B.

- 10 The proposed diversion would follow the route A-C on Plan No. HA/150 through Cope's Copse. At point C it will meet Public Footpath No. 10 Brindley at a new junction. This section of path will have no path furniture on it and will be enclosed to a width of no less than three metres with a woodland floor.
- 11 The owner of Brindley House has experienced issues with members of the public straying from the definitive line of the footpath and walking along the public driveway up to the house. The proposed diversion will take users further from the property and will be a fully enclosed path making it harder for users to stray. The proposed diversion will increase the privacy of the landowner as they will be able to enjoy their private garden without intrusion.
- 12 Many users are often hesitant walking paths such as this which pass through private gardens and so close to properties, as they feel like they are intruding; the proposed diversion would enable users to walk the footpath without that concern and follow a route through a relatively natural woodland rather than agricultural field.

## **Consultation and Engagement**

- 13 Former Ward Councillor Stanley Davies, Brindley Parish Council, the user groups, the Council's Nature Conservation Officer and statutory undertakers have been consulted and no objections have been raised. If a diversion Order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

- 14 The Clerk to the Parish Council responded with the following:

*'I would support this footpath amendment and agree with the comments in the consultation letter. The new route would be more enjoyable for walkers and give more privacy to landowner. Cope's Copse is a pretty mixed species area planted by a previous owner of the property identified in application.'*

The Peak and Northern Footpaths Society (PNFS) Area Officer responded with the following:

*'I have walked the line of this proposed route and on behalf of PNFS have no objections to it.'*

## **Reasons for Recommendations**

- 15 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 landowner.
- 16 Section 119 of the Act also stipulates that a public path diversion order shall not alter the point of termination of the path if that point is not on a highway, or, where it is on a highway, otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
- 17 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 this section of the report.
- 18 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.
- 19 In considering whether or not to confirm the Order, in addition to the matters discussed at paragraphs 6 to 12 above, the Secretary of State where the Order is opposed, or the Council where the Order is unopposed, must be satisfied that the path or way is not substantially less convenient as a consequence of the diversion having regard to the effect:
- The diversion would have on the public enjoyment of the path 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.
- 20 In confirming an Order the Secretary of State where the Order is opposed, or the Council where the Order is unopposed, will also have regard to any material provision of the Rights of Way Improvement Plan prepared by the local highway authority and the effect of the path or way on the needs of agriculture, forestry and biodiversity.
- 21 The work of the Public Rights of Way team contributes to the Corporate Plan priority "A thriving and sustainable place", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

## Other Options Considered

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

## Implications and Comments

### *Monitoring Officer/Legal*

23 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 or Public Inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.

### *Section 151 Officer/Finance*

24 If objections to an Order lead to a subsequent hearing/inquiry, the Council would be responsible for any costs involved in the preparation and conducting of such. The maintenance of the Public Right of Way would continue to be the responsibility of the landowner and Council in line with legislation. The associated costs would be borne within existing Public Rights of Way revenue and capital budgets.

### *Policy*

25 The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan

#### **A thriving and sustainable place**

- A great place for people to live, work and visit
- Welcoming, safe and clean neighbourhoods
- Reduce impact on the environment
- A transport network that is safe and promotes active travel
- Thriving urban and rural economies with opportunities for all
- Be a carbon neutral council by 2025

### *Equality, Diversity and Inclusion*

26 An assessment in relation to the Equality Act 2010 has been carried out by a PROW Network Management and Enforcement Officer and it is considered that the proposed diversion would be no less convenient to use than the current one.

### *Human Resources*

27 There are no direct human resource implications.

### *Risk Management*

28 There are no direct risk management implications.

### *Rural Communities*

29 There are no direct implications for rural communities.

### *Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)*

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

### *Public Health*

31 *There are no direct implications for public health*

### *Climate Change*

32 The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.

33 The recommendations will help the Council to reduce its carbon footprint and achieve environmental sustainability by reducing energy consumption and promoting healthy lifestyles.

<b>Access to Information</b>	
Contact Officer:	Richard Chamberlain– Public Path Orders Officer <a href="mailto:Richard.chamberlain2@cheshireeast.gov.uk">Richard.chamberlain2@cheshireeast.gov.uk</a> 01270 371384
Appendices:	Plan No. HA/150
Background Papers:	The background papers and file relating to the report can be inspected by contacting the report writer.

