

**OPEN**

**Highways and Transport Committee**

**23 November 2023**

**Highways Act 1980 Section 119 Proposed  
Diversion of Public Footpath No. 6 (part) and  
Public Bridleway No. 1 (part) in the Town of  
Congleton**

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

**Report Reference No: HTC/37/23-24**

**Ward(s) Affected: Congleton West**

**Purpose of Report**

- 1 The report outlines the investigation to divert part of Public Footpath No. 6 and part of Public Bridleway No. 1 in the Town of Congleton 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 these sections of public footpath and bridleway.
- 3 The work of the Public Rights of Way team contributes to the Green aim of the Corporate Plan, the “thriving and sustainable place” priority 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. 6 and part of Public Bridleway No. 1 in the Town of Congleton. 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. 6 and part of Public Bridleway No. 1 in the Town of Congleton by creating new sections of public footpath and bridleway, and extinguishing the current sections as illustrated on Plan No. HA/149 on the grounds that it is expedient in the interests of the landowner.

## RECOMMENDATIONS

The Highways and Transport 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. 6 and part of Public Bridleway No. 1 in the Town of Congleton by creating a new section of public footpath and bridleway and extinguishing the current sections of footpath and bridleway as illustrated on Plan No. HA/149, on the grounds that it is expedient in the interests of the landowner.
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 Mr Paul Chadwick and Mrs Jacqueline Chadwick of Moreton Meadows Farm, Waggs Road, Congleton, Cheshire, CW12 4DA, requesting that the Council make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 6 and part of Public Bridleway No. 1 in the Town of Congleton.
- 7 The applicant owns the land over which run the sections of Congleton Public Footpath No. 6 and Public Bridleway No. 1 proposed for diversion and the diversion routes.
- 8 To provide privacy and security to the applicant's property, the proposed diversion route for Congleton Footpath No. 6 would take path users away from the applicant's garden, and the proposed diversion route for Congleton Bridleway No.1 would rectify a mapping anomaly by moving the recorded bridleway section several metres to the north along a similar alignment so that it is recorded as the same alignment currently used by the public.

## Diversion of Congleton Footpath No. 6

- 9 Congleton Footpath No. 6 Congleton commences at its junction with Waggs Lane (UY1059) and runs in a generally southerly and then south westerly direction along Stoney Lane (unadopted) to the junction with Congleton Bridleway No. 1 which it continues in a south westerly direction across uncultivated land to its junction with Newbold Astbury Public Footpath No. 13 at the parish boundary. A section of approximately 170 metres of this 663 metre footpath is proposed for diversion as shown by a **solid black line** on Plan No. HA/149 between points A-B-C-D.

- 10 The section of Congleton Footpath No. 6 proposed for diversion starts at its junction Congleton Bridleway No. 1 at point A and follows a south westerly direction over an unmade path to the garden of Moreton Meadows Farm which it then enters and exits via pedestrian gates at points B and C. From point C, it bears in a south, south westerly direction over a pasture field to terminate immediately before a field boundary (point D).
- 11 The proposed new route of Congleton Footpath No. 6 would also start at point A but would then run in a southerly direction to point E before bearing in a west, south westerly direction to point F and then in a south, south westerly direction to point G and then in a west, south westerly direction to terminate at point D immediately before a kissing gate. This route is shown by a **dashed black line** on Plan No. HA/149.
- 12 The footpath section would be 3 metres wide and free of path furniture. A 1.2 metre wide compacted stoned surface would be installed along the diversion route between points A-E-F. Thereafter, the surface will be a grass between points F-G-D.
- 13 The applicant may install a hedge to the north of the footpath between points A-E-F and to fence the field to the north between points F-G-D. It is for this reason that the footpath will be 3 metres throughout, to meet best practice for width when enclosed as in future, the path may be enclosed between hedge/fence to the north, and the ditch/established hedge to the south.
- 14 In summary, the proposed new footpath route would follow a line that would:
  - be considered to be more enjoyable for users as it would pass through more open landscape and avoid the need to walk through a private garden. Diverting public rights of way out of gardens is a recognised desire within the recent government guidance issued by DEFRA in August this year entitled 'Government guidance on diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises.
  - Would be easier to navigate and walk as there will be a laid hard surface to follow for part of the route.
  - Be free of footpath furniture whereas the current route has two pedestrian gates.
  - Would afford improved privacy and security for the applicant.

### **Diversion of Congleton Bridleway No.1**

- 15 Congleton Public Bridleway No. 1 commences at its junction with Fol Hollow (UY774) and runs in a generally easterly direction along Lamberts Lane (unadopted) to its junction with Astbury Lane Ends (UY621/A). A section of approximately 68 metres of this 2055 metre bridleway is proposed for diversion and is shown by a **solid purple line** on Plan No. HA/149 between points A-H.
- 16 From its junction with Congleton Footpath No. 6 at point A, the section of Congleton Bridleway No. 1 proposed for diversion runs in a generally westerly direction to terminate at point H.
- 17 The proposed new route would also start at point A and would also run in a westerly direction but would be aligned to the north of the current route, and generally parallel to it such that it would align along the route used by walkers

and riders today, and would run between points A-H-I-J as shown by a **dashed purple line** on Plan No. Ha/149.

- 18 The diverted section of bridleway would be enclosed to a width of 3 metres and run along a semi-surfaced track, as currently used.
- 19 The diversion of the footpath and bridleway would be made in the interests of the landowner and it is also in the interests of the public to divert the bridleway in that it resolves a long standing alignment anomaly.

### **Consultation and Engagement**

- 20 Consultation was undertaken with former ward councillor, Councillor Suzie Akers-Smith, Congleton Parish Council, user groups, the Council's Nature Conservation Officer and statutory undertakers.
- 21 Congleton Town Council members registered their support for the diversion stating that the diversion was considered an improvement.
- 22 The statutory undertakers 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.
- 23 A number of concerns were received from a number of consultees and members of the public, including Councillor Suzie Akers Smith, Astbury Parish Council and Peak and Northern Footpath Society.
- 24 All reported concerns were distilled and identified and are listed as follows (in italics) together with the Council's responses.

### **Objections and concerns**

- 25 ***The diversion is so close to the location of the current legal public right of way, that it isn't necessary.***

A number of comments were made that demonstrated a misreading of the consultation plan. These were discussed and rectified.

- 26 ***Is there intention to develop houses***

The Council are not aware of any intention to develop the land over which runs the section of the current route proposed for diversion, and over which the diversion route would run. The diversion of the footpath is intended to move that section out of the applicant's garden to afford them greater privacy and security. Of benefit to the public, users of the footpath will no longer need to walk through the applicant's property which can feel intimidating and intrusive, and they will not have path furniture to negotiate in terms of gates.

The Council has been made aware that it is the intention of the applicant to rebuild an existing building near to the exit of the applicant's property, into a residential property but that will not affect the current footpath. The proposed alignment of the footpath is designed to take the footpath away from the residential property, to afford increased privacy and security to that property.

- 27 ***Concerns about flooding of the diversion route given its proximity to the stream.***

## Council's initial correspondence

- 28 The diversion route would be a raised, stoned surfaced path which would be similar in height to a permissive route that the public use at the moment. The raised nature of the diversion route and the hard surface would make it more usable year-round compared to the permissive route currently used .
- 29 It is accepted that part of the proposed diversion route runs through an area which is deemed to be at high risk of flooding by the Environment Agency (the permissive route also appears to pass through this high risk area in part). Despite this, no reports about flooding in this area that make footpaths impassable, have been received by the Council, and no evidence or photos of flooding in this area have been submitted from those objecting to this proposal to date. Recent unprecedented heavy rains have not caused it to flood. The only flood event reported which again, did not leave the paths impassable in the area, was caused by a burst water main in 2012.
- 30 Concerns were also raised regarding the water that used to run down the field to the north of Lamberts Lane and then into the ditch. This no longer occurs as leaking lead pipes feeding the applicant's property from Meadow Avenue were stopped up at the connection in Meadow Avenue, and a new connection was made to the water mains running beneath the bridle path (Lamberts Lane) adjacent to the applicant's property. Also, any water now running in a similar direction from the field that is natural runoff from rain events, is channelled into the ditch away from the area of land over which the diversion route would run.
- 31 In response to the above, further comments were received from consultees who were still concerned about flood risk.
- 32 The Council discussed the flooding concerns further with the applicant who agreed to revise the proposal for the footpath and to realign the diversion route further away from the ditch between point E-F on Plan No. HA/149.
- 33 A substantial land drain/ditch would be put in at the bottom of Stony Lane at the intersection of the paths and bridleways to catch and direct water coming from land to the north, **via a cross drain/culvert from the low area directly to the ditch directly to the south**, relieving most of the land near to Congleton Footpath No. 6. The drain would run to the east of the new revised diversion route between points A-E (see Plan No. HA/149).
- 34 ***Reducing water by closing the natural spring in the area has resulted in a reduction of frogs and toads in the local gardens and probably other less evident amphibians***

Within the legislation of section 119 of the Highways Act 1980, only comments on the land over which the section of footpath proposed for diversion, and the proposed diversion route run, can be considered. Any comments about land over which they do not run, cannot be taken into account. Consequently, the area of land that was affected by water from the natural spring cannot be considered as neither the current route or the proposed diversion route, run across this land.

The consultation included consulting with the Council's Nature Conservation Officer, and no comments were received.

35 ***Installation and funding of the proposed diversion***

36 The proposed diversion, should it become the legal right of way for the public, will be installed and all costs borne by the applicant.

37 The specification of the route has been agreed with Council Officers who are experienced in advising on the best solutions with consideration also given to the future maintenance of the footpath by the Council. Consequently, it is best to lay a solid stoned route rather than create a boardwalk which is more costly to maintain and less robust, and attracts higher liabilities.

38 The kissing gate initially proposed at point G is not required and will not form part of the proposals going forward.

39 ***Loss of the medieval history of the route being a footpath for priests to walk from Astbury Church to St Peter's Church in Congleton***

Within the legislation of section 119 of the Highways Act 1980, the legal tests that must be met by the diversion are convenience and enjoyment. Whilst the history of the area is appreciated, no evidence has been provided in relation to any historic physical feature of this particular section of footpath. The diversion of public pedestrian rights does not necessarily have any effect on any physical underlying archaeological remains.

**Reasons for Recommendation**

40 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.

41 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.

42 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.

43 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.

44 In considering whether or not to confirm the Order, in addition to the matters discussed at paragraphs 6 to 19 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.

45 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.

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

### **Other Options Considered**

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

### **Implications and Comments**

#### *Monitoring Officer/Legal*

48 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*

49 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*

50 The work of the Public Rights of Way team contributes to the Green aim of the Corporate Plan, the “thriving and sustainable place” priority 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*

- 51 An assessment in relation to the Equality Act 2010 has been carried out by a Public Rights of Way 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*

- 52 There are no direct human resource implications.

## *Risk Management*

- 53 There are no direct risk management implications.

## *Rural Communities*

- 54 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)*

- 55 There are no direct implications for children and young people.

## *Public Health*

- 56 There are no direct implications for public health.

## *Climate Change*

- 57 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.

- 58 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:	Marianne Nixon – Public Path Orders Officer <a href="mailto:Marianne.nixon@cheshireeast.gov.uk">Marianne.nixon@cheshireeast.gov.uk</a> 01270 686077
Appendices:	Plan No. HA/149
Background Papers:	The background papers and file relating to the report can be inspected by contacting the report writer.