

Highways and Transport Committee

20th June 2024

Highways Act 1980 Section 119

Proposed Diversion of Public Footpath No. 3 (part) in the Parish of Smallwood

**Report of: Peter Skates, Acting Executive Director – Place and
Director of Growth & Enterprise**

Report Reference No: HTC/26/24-25

Ward(s) Affected: Smallwood

Purpose of Report

- 1 The report outlines the investigation to divert part of Public Footpath No. 3 in the Parish of Smallwood 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. 3 in the Parish of Smallwood. 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.3 in the Parish of Smallwood by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/153D 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.3 in the Parish of Smallwood as illustrated on plan number HA/153D 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 Act.
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 Stephanie Hurstfield, Overton Green Farm, School Lane, Smallwood, CW11 2UP requesting that the Council make an order under the Highways Act 1980, section 119, to divert part of Public Footpath no. 3 in the Parish of Smallwood as it is deemed necessary to improve security and privacy for the applicant and enable improved field management.
7. Public Footpath No.3 in the Parish of Smallwood, commences at its junction with School Lane (UY1131/A) and continues in a generally south-south-easterly direction for approximately 834 metres to Church Lane (C609/F/03). The section of path to be diverted is shown by a solid black line on Plan No. HA/153D between points A-G.
8. The land which both the length of Public Footpath No. 3 Smallwood to be diverted and the proposed diversion route is owned by the applicant of the proposed diversion and the adjacent landowner.
9. Public Footpath No. 3 in the Parish of Smallwood commences from the junction with School Lane (UY1131/A) steeply ascending five steps from the road surface to the first stile before crossing Overton Green House garden and approaching drive. The definitive line proceeds in a generally

south south-westerly direction for approximately 40 metres to a wooden stile that allows access into a horse paddock before continuing in a generally south south-westerly direction for approximately 40 metres and passing through a farm gate across a farming access track and second farm gate. The definitive line then continues in a generally south south-westerly direction for approximately 27 metres to an electric fence, then approximately 80 metres to a further electric fence point before reaching another electric fence and then approximately 73 metres to a wooden stile. The definitive line then leaves the applicants land and follows a generally south south-westerly direction through the field for approximately 280 metres before reaching a further stile and proceeds in a generally south south-easterly direction for approximately 291 metres before terminating at Church Lane (C609/F/03)

10. The length of Public Footpath No. 3 Smallwood to be diverted runs in a generally south south-westerly direction between points A-G for approximately 543 metres. It commences at point A and runs across Overton Green House garden and approaching drive before entering the grassed horse field. The path then continues across the field to a hedged field boundary and into the adjacent field until meeting point G.
11. The proposed diversion would follow the route H-G on Plan No. HA/153D. The proposed Diversion would commence at point H along the tarmacked slopping driveway and lawn to a kissing gate located at point I. The proposed diversion would then follow a generally south south-westerly direction following the field boundary hedge to point L where the field boundary hedge and proposed diversion route turns generally south easterly then generally south south-westerly to point M. At Point M a further kissing gate is proposed to be installed allowing access into the neighbouring grassed field. From Point M the proposed diversion travels in a generally south south-westerly direction to point G before rejoining the definitive line of Footpath No 3 in the Parish of Smallwood.
12. The owner of Overton Green Farm has observed members of the public straying from the definitive line when walking between points A- F and walking up to the yard and house. The proposed diversion will take users further from the property to a new line that follows the hedge line making it easier for users to follow and aims to increase privacy and security for the landowner.
13. The proposed new line will allow users to walk the field edge rather than a route that crosses midfield. The fields at Overton Green Farm hold horses during the year. Walking across a field that holds livestock in which animals can potentially surround you, can be intimidating for users. The owner of Overton Green believes the proposed new line that follows the hedge would be safer for both users and livestock.

14. The Proposed new route and installation of two kissing gates would remove the need to traverse the acute steps from the road at point A and the three stiles located at Point A, B and F. The kissing gates, paid for by the owner of Overton Green Farm, will contribute towards less restrictive access to Smallwood Footpath No.3.

Consultation and Engagement

15. The Ward Member, Smallwood Parish Council, the user groups, statutory undertakers, and the Council's Nature Conservation Officer have been consulted and have raised no objections.
16. The area Inspector for the Peak and Northern Footpath Society replied:

'My view is that the diversion is a positive improvement on the existing route and once the work is complete will enhance the walking experience.'

Reasons for Recommendations

17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
- 22 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.
- 23 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.
- 24 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

- 25 If the authority was to do nothing the privacy, security and land management of the landowner would not be improved.

Implications and Comments

Monitoring Officer/Legal

- 26 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the Local 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

- 27 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

- 28 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

29. An assessment in relation to the Equality Act 2010 has been carried out by the Public Rights of Way Network Management and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current one.

Human Resources

30. There are no direct implications for Human Resources.

Risk Management

31. There are no direct implications for risk management.

Rural Communities

32. 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)

33. There are no direct implications for Children and Young People

Public Health

34. The recommendations are anticipated to offer a positive overall impact on the health and wellbeing of Cheshire East residents.

Climate Change

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

Access to Information

| | |
|--------------------|---|
| Contact Officer: | Richard Chamberlain– Public Path Orders Officer Richard.chamberlain2@cheshireeast.gov.uk |
| Appendices: | Plan No. HA/153D |
| Background Papers: | The background papers and file relating to the report can be inspected by contacting the report writer. |