

Highway and Transport Committee

19th September 2024

Highways Act 1980 Section 119

Extension to Proposed Diversion of Public Footpath No. 35 (parts) in the Parish of Nantwich (formerly Public Footpath No. 4 in the Parish of Henhull)

Report of: Peter Skates, Acting Executive Director of Place

Report Reference No: HTC/35/24-25

Ward(s) Affected: Bunbury

Purpose of Report

- 1 The report outlines an extension to the current diversion of Public Footpath No. 35 in the Parish of Nantwich.
- 2 The report makes a recommendation for a quasi-judicial decision by Members as to whether or not a diversion Order should be made to include this extension of public footpath.
- 3 The work of the Public Rights of Way team contributes to the Corporate Plan aim of “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 an extension to the diversion of Public Footpath No. 35 in the Parish of Nantwich. It was not considered necessary to undertake further consultation on the diversion as the extension does not technically change the walked experience or significantly alter the alignment.
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 parts of Public Footpath

No.35 in the Parish of Nantwich by creating new sections of public footpath and extinguishing the current path as illustrated on Plan No. HA/154 on the grounds that it is expedient in the interests of the landowner.

RECOMMENDATIONS

The Highways & 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 parts of Public Footpath No.35 in the Parish of Nantwich by creating new sections of public footpath and extinguishing the current path as illustrated on Plan No. HA/154 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. On 12th March 2018, committee approval was granted to make a diversion Order to divert parts of Public Footpath No.35 in the Parish of Nantwich to enable construction of the Kingsborne residential development to go ahead. As approved, the diversion was progressed under section 257 of the Town and Country Planning Act 1990 but the building of a house on the current route of the footpath meant that this diversion was then void as development had already gone ahead. Consequently, diversion under this legislation could no longer be used and the diversion was progressed under section 119 of the Highways Act 1980. Committee were informed of this change on 13th September 2021, and committee approval to make a diversion Order was granted on 6th December 2021.
7. The developers had constructed the new diversion route by the time the Order was ready so this was surveyed to ensure the path on the ground mirrored the alignment in the Order. It was noted that one section had been slightly realigned and another section which was supposed to follow the definitive alignment of the current route, had been installed a few meters to the west of it. The realigned and extended sections are shown on the Order plan (Plan No. HA/154) by bold dashed black lines running between points I-J and J-K respectively.

8. The changes to the Order do not constitute a technical change to the original diversion detailed within the committee report and minutes of 6th December 2021. They simply realign a short section and place the current footpath on the alignment of the path on the ground, so that the definitive records will reflect the physical circumstances of the path on the ground.

Consultation and Engagement

9. Given that the alignment changes detailed in the 'Executive Summary', are not technically different and do not significantly alter the walking experience for the public compared to the diverted footpath were these alignment changes not made, then informal consultation is not considered necessary, especially as this diversion has not attracted any objections (as detailed in the report presented to committee on 6th December 2021).

Reasons for Recommendations

10. 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 both the landowner and the public.
11. 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.
12. In considering whether or not to confirm the Order, in addition to the matters discussed at paragraphs 6 to 9 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.
13. 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.
 14. 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

15. If the authority was to do nothing the development would obstruct the Public Right of Way.

Implications and Comments

Monitoring Officer/Legal

16. 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

17. 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

18. The work of the Public Rights of Way team contributes to the Vision of the Corporate Plan of a greener Cheshire East, with the aim of “a thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

Vision - An open, fairer, greener Cheshire East

Aim - 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 2027

Equality, Diversity and Inclusion

19. 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

20. There are no direct implications for Human Resources.

Risk Management

21. There are no direct implications for risk management.

Rural Communities

22. 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)

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

Public Health

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

Climate Change

25. 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:	Marianne Nixon Marianne.nixon@cheshireeast.gov.uk
Appendices:	Appendix 1 Plan No. HA/154
Background Papers:	The background papers (including committee reports and minutes) relating to this report can be inspected by contacting Marianne Nixon and quoting the following file references: File No. 154D/553 – original diversion under TCPA 90 s257 File No. 154D/595 - ongoing diversion under HA80 s119