

Highway and Transport Committee

21st November 2024

Proposed Diversion of Public Footpath No.7 (part) in the Parish of Buerton

Report of: Peter Skates, Acting Executive Director of Place

Report Reference No: HTC/38/24-25

Ward Affected: Audlem

Purpose of Report

1. The report outlines the investigation to divert part of Public Footpath No. 7 (part) in the Parish of Buerton.
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 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 the investigation to divert part of Public Footpath No. 7 (part) in the Parish of Buerton. 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 (part) in the Parish of Buerton by creating a new section of public footpath and extinguishing the current path as illustrated on plan no. HA/155 on the grounds that it is expedient in the interests of the public.

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, to divert part of Public Footpath No.7 in the Parish of Buerton as illustrated on plan no. HA/155 on the grounds that it is expedient in the interests of the public.
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. The route of Buerton Footpath No.7 runs in a generally south-easterly direction from its junction with Windmill Lane, Buerton, for approximately 458 metres, to a track where it meets Buerton Footpath No.29.
7. Referring to the attached plan no. HA/155 part of Buerton Footpath No.7, which runs through the garden of Brook Cottage alongside a stream between points A-B, has suffered erosion in recent years and the footpath no longer physically exists. This represents a loss to the overall public right of way network. Knowledge of the extent of the erosion came to the attention of Cheshire East Council as a result of a routine survey of the Public Rights of Way network by the local Ramblers Association.
8. To resolve this situation, the proposal is to divert this part of Buerton Footpath No.7 through an adjacent field, outside the boundary of the garden of Brook Cottage onto neighbouring land. The proposed diversion route would make the footpath available again for public use. This proposal was reached, by council officers from the public rights of way team, proactively engaging with Buerton parish council, local residents and the landowners of the field along the proposed diversion, to reach an agreed solution.
9. Referring to the attached plan no. HA/155 the proposed diversion would follow the route between points A-C-D for a total distance of 94 metres starting at point A, and running in a generally east, south easterly direction to point C, and then in a generally south, south easterly direction to terminate at its junction with Buerton Footpath No.29, at point D after passing through a metal kissing gate. This route is currently a permissive path, with metal kissing gates installed.

10. It is believed that the proposal is in the interests of the public as it would make the footpath available again.

Consultation and Engagement

11. The Ward Member, Buerton Parish Council, the user groups, statutory undertakers, and the Council's Nature Conservation Officer have been consulted and have raised no objections.
12. The inspector for the Peak and Northern Footpath Society, after conducting a site visit, commented, "The permissive path is well established and well used. As stated in the consultation letter, there is a metal kissing gate at point D and a direction sign pointing to it approaching point A from the north along FP7. In view of the obvious erosion of the land along the current definitive line (A-B) and that the route is impassable, coupled with the well-established permissive path forming the proposed route, there are no objections to this proposed diversion."

Reasons for Recommendations

13. 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 public.
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.
15. 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

16. If the authority was to do nothing this would result in a net loss to the Public Right of Way network, due to the already eroded section of Buerton Footpath 7 as detailed above.

Implications and Comments

Monitoring Officer/Legal

17. 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

18. 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

17. 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

18. 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

- a. There are no direct implications for Human Resources.

Risk Management

- b. There are no direct implications for risk management.

Rural Communities

- c. 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)

- d. There are no direct implications for Children and Young People

Public Health

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

Climate Change

- f. 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:	Mark Greenhough-Public Path Orders Officer mark.greenhough@cheshireeast.gov.uk
Appendices:	Plan No. HA/155
Background Papers:	N/A