

Public Rights of Way Committee

Date of Meeting: 11 June 2018

Report Title: Highways Act 1980 s119 Application for the Proposed Diversion of Public Footpath No.12 (part) in the Parish of Bunbury

Senior Officer: Frank Jordan, Executive Director - Place

1. Report Summary

- 1.1. The report outlines the investigation to divert part of public footpath No. 12 in the Parish of Bunbury. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion Order to be made. This proposal has been put forward by the Public Rights of Way team in the interests of the landowners and makes a recommendation based on that information, for a quasi-judicial decision by Members as to whether or not an Order should be made or not to divert the section of footpath concerned.
- 1.2. The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

2. Recommendation/s

- 2.1. An 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.12 in the Parish of Bunbury by creating a new section of public footpath and extinguishing the current path as illustrated on plan number HA/127 on the grounds that it is expedient in the interests of the owners of the land crossed by the right of way.
- 2.2. 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.

- 2.3. In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

3. Reasons for Recommendation/s

3.1. 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 landowners for the reasons set out in paragraph 5 below.

3.2. Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

- Whether the path is substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

- The effect that the diversion would have on the enjoyment of the path or way 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.

3.3. 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 paragraph 3.2 above.

3.4. The proposed diversion will not be 'substantially less convenient' than the existing Public Right of Way. Diverting the footpath would preserve the landowners' privacy and security. It is considered that the proposed footpath will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion Order are satisfied.

- 3.5. The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

4. Other Options Considered

- 4.1. Not applicable this is a non-executive matter.

5. Background

- 5.1. An application has been submitted requesting the Council make an Order under section 119 of the Highways Act 1980 to divert part of public footpath No.12 in the Parish of Bunbury.
- 5.2. The land over which the section of the current path to be diverted, and the proposed diversion run, belongs to the applicant: under section 119 of the Highways Act 1980 the Council may accede to an applicant’s request if it considers it to be expedient in the interests of the landowner to make an Order to divert the footpath.
- 5.3. Public footpath No.12 commences on School Lane (C523/05) at O.S. Grid Reference SJ 6031 8154 the path at this point is enclosed on both sides by panel fencing and runs in a generally south westerly direction for approximately 57 metres to a pedestrian gate where the path then goes diagonally in the same south westerly direction through the applicants’ garden and orchard as shown from point A on plan HA/127. The path then continues for approximately 22 metres in a westerly direction to exit out of the garden via a kissing gate shown at point B on plan HA/127. The path then continues for approximately 95 metres in a north westerly direction prior to turning in a south westerly direction for approximately a further 12 metres. At this point the path continues generally in a west north westerly direction for approximately 43 metres to meet with the A49 at O.S. Grid Reference SJ 5830 8182.
- 5.4. The section of path to be diverted is shown by a solid black line on Plan No. HA/127 between points A-B, O.S. Grid Reference SJ 6007 8137 to O.S. Grid Reference SJ 5960 8127. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C-B, O.S. grid reference SJ 6007 8137 to SJ 5986 5810 to SJ 5960 8127.
- 5.5. The proposal is to divert approximately 48 metres of the public footpath that goes through the middle of the applicants’ garden closer to the property boundary as shown on Plan HA/127. The proposed path would run in a generally south to south westerly direction for approximately 40 metres before turning to a westerly direction for approximately 7 meters. It would

then continue in a generally north westerly direction for approximately 36 metres before reconnecting with the remaining unaffected section of the Public Right of Way at the kissing gate located at point B on plan HA/127, O.S. Grid Reference 5960 8127.

- 5.6. The proposed new path would divert walkers closer to the property boundary which would be separated from the garden area by a planted hedge similar to the existing one of a height that would be no more than 6 foot high. The proposed path would then run parallel to the hedge and would continue to run across level, well drained and dry land throughout. Although the proposed path would be longer in length than the existing route it would retain its well maintained, open aspect and would have a recorded width of 2.5 metres wide which will run through an open area of approximately 15.5 metres at its widest point and 4.5 metres at its narrowest point.
- 5.7. The diversion would be made in the interests of the landowner as it will divert walkers away from the middle of the garden and thus considerably improving the privacy and security of the domestic property. The applicants believe the alternative path would not be substantially less convenient than the existing path and that enjoyment of the path as a whole would be improved as it will reduce a likely sense of intrusion and awkwardness when walking through the residential garden of a young family's home.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. 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.

6.2. Finance Implications

- 6.2.1. If objections to the Order lead to a subsequent hearing or inquiry, this legal process would have financial implications for the Council.

6.3. Policy Implications

- 6.3.1. There are no direct policy implications.

6.4. Equality Implications

6.4.1. The proposed route will not be 'substantially less convenient' than the existing route.

6.5. Human Resources Implications

6.5.1. There are no direct implications for Human Resources.

6.6. Risk Management Implications

6.6.1. There are no direct implications for risk management.

6.7. Rural Communities Implications

6.7.1. There are no direct implications for rural communities

6.8. Implications for Children & Young People

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

6.9. Public Health Implications

6.9.1. There are no direct implications for public health.

7. Ward Members Affected

7.1. Ward Councillor Chris Green was consulted about this application and no comments have been received.

8. Consultation & Engagement

8.1. The user groups have been consulted. The Open Spaces Society emailed the Cheshire East Rights of Way team on 12th April 2018 requesting details with regard to the height of the hedge that will separate the garden from the proposed path.

8.2. Peak and Northern Footpath Society stated in an email dated 23rd April 2018 that they have no objection to the proposal.

8.3. The statutory undertakers have been consulted and have 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.

8.4. The Council's Nature Conservation Officer has been consulted, no comments have been received.

8.5. 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.

9. Access to Information

- 9.1. The background papers relating to this report can be inspected by contacting the report writer.

10. Contact Information

- 10.1. Any questions relating to this report should be directed to the following officer:

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