

Public Rights of Way Committee

Date of Meeting: 10 September 2018

Report Title: Highways Act 1980 s119 Application for the Diversion of Public Footpath No. 18 (part), 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. 18 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. The proposal has been put forward by the Public Rights of Way team in the interests of the landowners. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made 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. 18 in the Parish of Bunbury by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/132 on the grounds that it is expedient in the interests of the landowners.
- 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 to the Order 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 5.8 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 proposed new path and its exit point are 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 route will not be 'substantially less convenient' than the existing route. Diverting the footpath would remove the footpath from field, improving their land management. It is considered that the proposed route 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 received from John and Helen Langley of Oaklands in Bunbury requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 18 in the Parish of Bunbury.
- 5.2. Public Footpath No. 18 Bunbury commences at the Bunbury/Spurstow Parish boundary at O.S grid reference SJ 5673 5719 and runs in a generally north westerly direction for approximately 175 metres to its junction with Public Footpath No. 17 Bunbury at O.S. grid reference SJ 5660 5731. The entire length of Public Footpath No. 18 Bunbury will be diverted and is shown by a solid black line on Plan No. HA/132 between points A – B. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C.
- 5.3. The land over which the length of Public Footpath No. 18 Bunbury to be diverted and the proposed diversion belongs wholly to the applicant.
- 5.4. The length of Public Footpath No. 18 Bunbury to be diverted commences at Point A, on Plan No. HA/132, at O.S. grid reference SJ 5673 5719 and passes through a kissing gate where it then crosses a field to reach another kissing gate on a field boundary. During the winter this section of the path can get very muddy. Public Footpath No. 18 Bunbury then continues across a second field to Point B, on Plan No. HA/132, at O.S. grid reference SJ 5660 5731 where it crosses a stile to its junction with Public Footpath No. 17 Bunbury.
- 5.5. The proposed diversion will run between points A-C (on Plan No. HA/132). It will commence at point A (on Plan No. HA/132) at O.S. grid reference SJ 5673 5718 and run in a generally northerly direction to point C (on Plan No. HA/132) at O.S. grid reference SJ 5673 5735. The total distance of the proposed diversion is approximately 171 metres. The proposed diversion will create a length of new footpath in the Parish of Spurstow of approximately 10 metres.
- 5.6. The proposed diversion will have a minimum width of 3 metres and will be enclosed along its length with a fence. There are a number of large trees that will be within the enclosed area that will create narrower points but the footpath will maintain a minimum width of 2.5 metres at these points. The footpath will run along a field edge which is of equivalent surface to the current route. The applicants have agreed to maintain the surface.. There

will be two kissing gates installed at either end of the proposed diversion as shown on Plan No. HA/132.

- 5.7. The proposal is in the interest of the applicant due to reasons of security for the fields and for better livestock and land management. The landowners keep beef cattle on their land and have encountered issues in the past with cattle contracting neosporosis which is passed to cattle in dog faeces, this led to females aborting their calves. The proposed diversion will enable users to be kept separate from any livestock, including cows, calves and bulls as the route is enclosed from the agricultural land.
- 5.8. If users walk from Public Footpath No. 16 or 17 Bunbury from the west and then wish to proceed in a southerly direction via Public Footpath No. 18, the proposed diversion does make the route longer by 115 metres, but users would have the benefit of not having to walk through a field with livestock. If walking from the east, users would have the option to continue along Public Footpath No. 19 Bunbury which runs through a field that may contain livestock or choose to walk the proposed diversion which keeps users separate from any livestock in the field.
- 5.9. The proposed diversion will also move the current definitive line away from the silage store and the feeder for the livestock. This area is well used by livestock and can be susceptible to muddy conditions in the winter. The new proposed route will not be accessible to the livestock.

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/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/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. An assessment in relation to the Equality Act 2010 has been carried out by the PROW 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.

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. Bunbury Ward: Councillor Chris Green was consulted and no comments were received.

8. Consultation & Engagement

8.1. Bunbury Parish Council, the user groups, statutory undertakers and the Council's Nature Conservation Officer have been consulted. No comments were received.

8.2. Spurstow Parish Council was consulted and provided the following comments:

The Councillors would like to make an objection to any such change. Their reasoning for their objection is twofold, firstly they feel strongly that public footpaths have a heritage value and should not be causally set aside or moved to suit the owner, and secondly they feel that there is not a strong case for the proposed and the proposed change would make the journey longer for those using the footpath.

A response was sent to Spurstow Parish Council explaining the process of diverting a footpath under Section 119 of the Highways Act 1980, along with further information explaining the reasons for the application. Whilst

the walking route from the northwest to the south of the area would be slightly longer following the proposal, the footpath is used for leisure purposes as opposed to utility journeys, and the proposal would offer a benefit to users through the provision of a footpath segregated from any livestock in the fields.

- 8.3. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

9. Access to Information

- 9.1. The background papers of file No. 055D/564 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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