

## **Public Rights of Way Committee**

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**Date of Meeting:** 03 December 2018

**Report Title:** Highways Act 1980 s119 Application for the Diversion of Public Footpath No. 29 (part), Parish of Brereton

**Senior Officer:** Frank Jordan, Executive Director Place

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### **1. Report Summary**

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 29 in the Parish of Brereton. 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. Recommendations**

- 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. 29 in the Parish of Brereton by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/136 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 5.9 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 the yard and remove the interaction between users and large vehicles. 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 Ms Briggs of Fir Farm in Brereton requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 29 in the Parish of Brereton.
- 5.2. Public Footpath No. 29 Brereton commences at its junction with the A50 at Point A (Plan No. HA/136), it then continues in a generally north easterly and then easterly direction for approximately 183 metres along a shared private driveway. It then continues in a generally north easterly direction for 821 metres across open fields to its junction with Davenport Lane. The section of path to be diverted is shown by a solid black line on Plan No. HA/136 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points C-D-B.
- 5.3. The land over which the length of Public Footpath No. 29 Brereton to be diverted and the proposed diversion belongs wholly to the applicant.
- 5.4. The length of Public Footpath No. 29 Brereton to be diverted commences at its junction with the A50 at Point A on Plan No. HA/136, at O.S. grid reference SJ 7836 6290. It then continues along a sealed surface private shared driveway in a north easterly direction for approximately 67 metres and then continues in an easterly direction for approximately 129 metres. The definitive line then continues across a large storage yard to Point B on Plan No. HA/136 for approximately 196 metres. The total length is approximately 379 metres.
- 5.5. The yard through which the definitive line runs is used to store large trailers and immobile, old machinery as part of a business need. In line with Cheshire East PROW policy, if an obstruction is impractical to remove the landowner will be required to apply for a diversion rather than remove the obstruction, and also provide an alternative route. The permissive route has been in place for some time and has been accepted as an alternative route by the public. The permissive route (Point D to Point B on Plan No. HA/136) currently follows the boundary of the yard and crosses one stile before entering an open field and running along the boundary to then meet with the definitive line at point B (Plan No. HA/136).
- 5.6. The proposed diversion will run between points C-D-B (on Plan No. HA/136). It will commence at point C (on Plan No. HA/136) at a new junction with the A50 at O.S. grid reference SJ 7844 6281 which is

approximately 116 metres from Point A (on Plan No. HA/136). There is a footway between the current and proposed commencement points of the path. It will then continue in a north easterly direction to Point B (on Plan No. HA/136) for approximately 316 metres.

- 5.7. The landowners have submitted a planning application for a new access road that will run between Points C and D on Plan No. HA/136 (Planning Reference 18/2961C). The new proposed route will run along the southern side of this new access road and then continue along the permissive route from Point D to Point B. The section of the footpath from Point C to Point D will be surfaced with compacted aggregate and the section from point D to point B will remain as a natural surface.
- 5.8. There will be an enclosed section running in a north easterly direction from point D (on Plan No. HA/136) to the kissing gate, this will have a waist high post and rail fence on one side and an existing hedge on the other and will be 2.5 metres in width. An existing stile will be replaced with a kissing gate at the location marked on the Plan No. HA/136.
- 5.9. The proposal is in the interests of the applicant due to reasons of security of the yard and to allow for the efficient running of the business due to the removal of the interaction of users and large vehicles. Users will no longer need to walk on the access track to the yard and, in addition, will now be able to walk along a segregated path away from vehicular movements. The new access road will not have any local, residential traffic.

## **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. Brereton Ward: Councillor John Wray was consulted and no comments were received.

### **8. Consultation & Engagement**

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

8.2. Peak and Northern Footpaths Society was consulted and provided the following comments which the Open Spaces Society gave their support to.

*There are no connecting paths from Brereton 29 to the south, but there are two connecting paths to the north, Brereton 16 & 19. We would therefore be concerned at the exit point of the footpath being moved to point C. This would require an extra walk of 120 metres along a very busy road on a footway which is only 0.5 metre wide and adjacent to the kerb edge. We are concerned about the safety aspects of this proposal.*

A response was sent to Peak and Northern Footpaths Society and Open Spaces explaining that the benefit of removing the unsegregated interaction of users and vehicles from the definitive line was considered to outweigh the use of an existing segregated footway next to the road.

- 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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