

## **Public Rights of Way Committee**

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**Date of Meeting:** 11 March 2019

**Report Title:** Highways Act 1980 s119 Application for the Diversion of Public Footpath No. 4 (part), Parish of Poole

**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. 4 in the Parish of Poole. 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. 4 in the Parish of Poole by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/139 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 public for the reasons set out in section 5 below.
- 3.2. 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.
- 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 this section of the report.
- 3.4. 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.
- 3.5. In considering whether or not to confirm the Order, in addition to the matters discussed at paragraphs 3.1 and 3.2 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.
- 3.6. 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.

#### **4. Other Options Considered**

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

#### **5. Background**

- 5.1. An application has been received from Mr and Mrs Oglesby of Poole Hall in Nantwich requesting that the Council make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 4 in the Parish of Poole.
- 5.2. Public Footpath No. 4 Poole commences at its junction with Poole Old Hall Lane and then continues in a generally southerly direction for approximately 800 metres to its junction with Cinder Lane. The section of path to be diverted is shown by a solid black line on Plan No. HA/139 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C-B.
- 5.3. The land over which the length of Public Footpath No. 4 Poole to be diverted and the proposed diversion belongs wholly to the applicants.
- 5.4. The length of Public Footpath No. 4 Poole to be diverted commences at Point A on Plan No. HA/139 and continues across a field that is used as beef cattle grazing for approximately 314 metres to Point B on Plan No. HA/139. At Point A there is a stile to enter the field and field surface is long grass which is grazed by cattle.
- 5.5. The applicants are applying for the diversion so that the interaction of users and cattle can be controlled. Currently the applicants find that users do not like walking through a field of cattle and tend to walk up the private driveway, close to the front of the house, and continue along an estate track to meet point A. The applicants have installed clear signage at the southern end of the footpath and have challenged users using this route multiple times but still find it happens.
- 5.6. The proposed diversion will run between Points A-C-B on Plan No. HA/139. It will commence at Point A where a new kissing gate will be installed and then continue in a generally south south westerly direction for approximately 308 metres to Point C (on Plan No. HA/139). It will then continue in a generally east south easterly direction for approximately 146 metres to Point B (on Plan No. HA/139) The total length of the diversion will be 454 metres and the full length will be enclosed with Cheshire railings at

a width of 2.5 metres; where there are any large trees, the width of 2.5 metres will be maintained.

- 5.7. By enclosing the diversion route it will eliminate any interaction between cattle and users in this field, and will hopefully reduce any trespassing on the applicants' land. The applicants are also hoping it will reduce any stress to the cattle that users might inadvertently currently cause. The proposed diversion route from Points C-B takes users along the top of the valley bank and gives improved views of the listed bridge and the countryside, and despite the diversion being further from Poole Hall, views of the property are still maintained.
- 5.8. The proposal is in the interests of the applicants due to reasons of land management and privacy and security of the property. Users will no longer have to interact with cattle in the field and will be encouraged to walk along the public right of way instead of trespassing on the grounds of Poole Hall.

## **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. Worleston & District 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. The Open Spaces Society was consulted and provided the following comments:

*We are concerned about the connection from the end of the recorded footpath, south along Cinder Lane to Wettenhall Road. So far as we can tell, none of Cinder Lane is on the list of streets, and even if part of it is, where is the limit of public maintenance — does it include the junction with footpath 4? If it does not, then we are unable to accept any diversion which fails to address this definitive map anomaly.*

The Public Rights of Way team responded to this point and informed the Open Spaces Society that this connection is currently on our anomalies list for investigation in the future. The terminus of the path is not within the scope of the current diversion application and this matter is outside the control of the applicants.

*Secondly, why is it necessary to maintain the artificial route from C, east to B, then descending to the bridge over the brook? Why not a more natural route from C direct to the bridge?*

In response, it was explained that the footpath is not being diverted from the bridge to Point C as the landowners use the land for keeping livestock and this would compromise another of their fields and potentially increase the chance of users mixing with the livestock. That alignment would also involve numerous rabbit holes and burrows therefore making it an unpleasant route and potentially less safe for walkers. Walking this way would also be across a slope rather than straight up it and walking between B and C is a much more pleasant route with further-reaching views. The Open Spaces society responded to this comment with the following:

*The bank is not steeper, it is the same height over a very much longer length, it is therefore much shallower. There are no rabbit holes or burrows on the already extant path! If the Applicant wants to engage in an adult dialogue based on the facts please let us know.*

The final point that the Open Spaces Society made is:

*Finally the intention to fence off with 'Cheshire railings' suggests that it will be impossible to maintain the path except with hand tools — and this will become yet another right of way which the council must maintain, and will fail to maintain for want of adequate resources. How long before it becomes impenetrable?*

The applicants were approached to clarify how this area will be maintained and said that “*The maintenance of the path will match the rest of the private estate walk which is currently mown using a ride on mower/brushcutter. It won't be crown green standard, but is certainly a pleasant, easy walking surface. Better than the undulation caused by the grazing beef cattle in winter months.*”

The Open Spaces Society replied with the following:

*How does the Applicant expect to access the enclosed path with his ride on mower/brush cutter? Can he turn the machine in the path's width? If the current application is allowed to succeed cattle placing their heads over the fence will obstruct the path and walkers will not be able to detour as they can in an open field.*

The Council are happy that the footpath will be maintained to an acceptable standard. The issue raised with cows placing their heads over the fence is not a valid objection as this is not a permanent obstruction. We also ask for a width of 2.5 metres on an enclosed path in order to allow for overgrowth; there will be plenty of space for users to pass if a cow decided to place its head over the fence.

- 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. 243D/575 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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