

Public Rights of Way Committee

Date of Meeting: 10th June 2019

Report Title: Highways Act 1980 s.119: Proposal for the Diversion of Public Footpath No. 6 (part) in the Parish of Stoke

Senior Officer: Frank Jordan, Executive Director Place

1 Report Summary

- 1.1 This report outlines the proposal to divert part of Public Footpath No. 6 in the Parish of Stoke. 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 as an application has been made by Mr PH Bourne and Partners of Stoke Hall Farm. 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

- 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. 6 in the Parish of Stoke, by creating a new section of Public Footpath and extinguishing the current path as illustrated on Plan No. HA/141A on the ground that it is expedient in the interests of the owners of the land crossed by the path.
- 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 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. The proposed diversion is in the interests of the landowner for the reasons set out in paragraph 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.

- 3.7 The proposed route will not be ‘substantially less convenient’ than the existing route and will in fact resolve the long standing obstruction of the footpath by an industrial slurry tank. The proposed diversion will not be substantially less convenient than the Definitive path and the enjoyment of the path as a whole would be significantly improved. The section of path that runs through the farm yard can be difficult to walk due to the daily operations of the farm. Following a full discussion of the costs and procedure, Officers agreed to progress the application for a diversion of the footpath under the Highways Act 1980 s119. It is considered that this is the best way forward to resolve the problems currently affecting the route and to fully re-instate a safe and useable path for the public.
- 3.8 It is considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion Order are satisfied.

4 Other Options Considered

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

5 Background

- 5.1 The application has been submitted by the landowner directly affected by the public right of way requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.6 in the Parish of Stoke on the grounds of privacy, security, agricultural purposes and improved land management.
- 5.2 The land over which the section of path proposed to be diverted, and the proposed diversion runs, belongs to the applicants; under section 119 of the Highways Act 1980 the Council may accede to the applicants’ request, if it considers it expedient in the interests of the landowners to make an Order to divert the footpath.
- 5.3 The section of Public Footpath No.6 in the Parish of Stoke affected by the application commences on the unclassified road also known as Stoke Hall Lane (UY1413) at OS grid reference SJ 6230 5685, point A on Plan No. HA/141A. The path then runs in a generally easterly direction through a large field gate, through the farm yard and within close proximity to a residential property for a distance of approximately 183 metres to the slurry tank at OS grid reference SJ 6248 5685. The path then passes through another field gate and continues for a distance of approximately 39 metres to OS grid reference SJ 6252 5685. The path from that point then runs in a generally easterly direction for a distance of approximately 101 metres to OS grid reference SJ 6262 5682, point B on the plan. A total distance of approximately 324 metres. The remaining unaffected section of the path then continues in the same easterly direction to the Parish boundary and its junction with Public Footpath No.13 in the Parish of

Cholmondeston. The footpath is surfaced where it passes through the farm yard and has a surface of grass and earth where it passes through the agricultural land.

- 5.4 Part of the path proposed to be diverted is obstructed by an industrial slurry tank thought to have been installed at sometime during the 1970s. To avoid the obstruction walkers are able to use a short permissive path that goes around the tank as shown by the blue dashed line on the accompanying Plan No. HA/141A. It is not considered practical or cost effective to reinstate the line of the footpath currently affected by the slurry tank. The Council's policy with regards to long standing obstructions on the public rights of way network states;

“Where the obstruction is substantial and it would be costly and impractical to remove it, the owner will be requested to apply for the diversion of the path rather than remove the obstruction. The Council will expect the owner to make an alternative route available whilst the diversion process is completed.”

- 5.5 The landowner has provided an alternative route and applied for this application. The proposal would resolve the obstruction caused by the slurry tank and would also divert walkers completely out of the farm yard and away from the dangers associated with accessing a working dairy farm.
- 5.6 The section of path proposed to be diverted is shown on Plan No. HA/141A accompanying this report by a solid black line between points A-B. The proposed diversion is shown on the same Plan and is depicted by a bold black dashed line running between points A-C-D-B.
- 5.7 The proposed new path would commence at the same point as the existing right of way on Stoke Hall Lane at OS grid reference SJ 6230 5685, point A on Plan HA/141A. The path would then run in a generally east south easterly direction for a distance of approximately 141 metres to OS grid reference SJ 6244 5680, point C on the Plan. The path would then turn slightly to continue in a generally easterly direction for a distance of approximately 102 metres to OS grid reference SJ 6254 568, point D on the Plan. The path would then continue in the same generally easterly direction for a distance of approximately 82 metres to OS grid reference SJ 6262 5682 to reconnect with the unaffected section of Stoke Footpath No. 6 at point B on the Plan. The proposed path would be 2 metres wide with a natural grass and earth surface; it would require the installation of a kissing gate on the field boundary at point C on Plan No. HA/141A and the installation of a further kissing gate and sleeper bridge on the field boundary at point D on the Plan. The proposed new path would have a total distance of approximately 329 metres.

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 Equality Implications

6.3.1 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 more accessible than the current route.

6.4 Human Resources Implications

6.4.1 There are no direct Human Resource implications.

6.5 Risk Management Implications

6.5.1 There are no direct Risk Management implications.

6.6 Rural Communities Implications

6.6.1 There are no direct implications for rural communities.

6.7 Implications for Children & Young People

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

6.8 Public Health Implications

6.8.1 There are no direct implications for public health, other than an improved and more accessible Footpath would encourage active travel and leisure activities.

7 Ward Members Affected

7.1 Bunbury Ward Member Councillor Green has been consulted and no comments have been received. Councillor Pochin, Ward Member post May

2019 elections, has been sent a copy of this report. Any comments received will be reported verbally to the Committee.

8 Consultation & Engagement

- 8.1 Stoke and Hurleston Parish Council, the User Groups and the Council's Nature Conservation Officer have been consulted. The deadline for comments is 30th May 2019. Any comments received by that deadline will be reported to the Public Rights of Way Committee verbally.
- 8.2 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.

9 Access to Information

- 9.1 Plan No. HA/141A is attached.
- 9.2 Further information may be obtained from the Officer named below and file reference No. 218D/576.

10 Contact Information

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

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