

Public Rights of Way Committee

Date of Meeting: 09 September 2019

Report Title: Highways Act 1980 s119 Application for the Diversion of Public Footpath No. 45 (part), Parish of Mobberley

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 45 in the Parish of Mobberley. 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. 45 in the Parish of Mobberley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/142 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 Dr Jonathan Eaton of Newton Farm, Graveyard Lane in Mobberley requesting that the Council make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 45 in the Parish of Mobberley
- 5.2. Public Footpath No. 45 Mobberley commences at its junction with Graveyard Lane and then continues in a generally north easterly direction for approximately 1,390 metres to its junction with Public Footpath No. 52 Mobberley. The section of path to be diverted is shown by a solid black line on Plan No. HA/142 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. 45 Mobberley to be diverted and the proposed diversion belongs wholly to the applicants.
- 5.4. The length of Public Footpath no. 45 Mobberley to be diverted commences at Point A on Plan No. HA/142 and continues in a generally north north easterly direction to Point B along the private driveway for the farm. The first 25 metres are unenclosed and run along a stoned track, and then the footpath continues through a kissing gate and along an enclosed section with a width of 2 metres for approximately 63 metres alongside the driveway and parking area for the property. This section is surfaced with a mixture of hardcore and grass.
- 5.5. The proposed diversion would follow a permissive route that is already in place at the farm and will follow A-C-B on the attached plan. The proposed diversion will begin at point A at a junction to the private driveway, and then continue in a generally north easterly direction to point B for approximately 116 metres. At point C, the diversion curves around a small group of trees and hedges. The diversion has a mixture of hardcore and grass surfacing and will be at least 2.5 metres wide, with the section between A-C being 3 metres.
- 5.6. The proposed diversion will take users away from the private buildings and driveway at Newton Farm, therefore increasing the privacy and security of the property. This would also allow for animals to be kept in this area

securely and away from users of the footpath. The proposed diversion will also be more pleasant for users as it provides views over the neighbouring fields while also being firmer and more even under foot, it also removes the need for any gates.

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.

6.10. Climate Change Implications

6.10.1 There are no direct implications for climate change.+

7. Ward Members Affected

7.1. Mobberley Ward: Councillor Charlotte Leach was consulted and no comments were received.

8. Consultation & Engagement

8.1. Mobberley 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 Footpath Society responded saying: *We are satisfied that the proposed route is as convenient as the current definitive route, with no loss of views or features of interest. The section between A-C is nice and wide, and the hardcore ensures a decent dry surface. At the time of my visit the grass part of the permissive path had been cut and the path looks well maintained.*

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. 210D/581 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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