

Public Rights of Way Committee

Date of Meeting: 02 December 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 landowner. 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/146 on the grounds that it is expedient in the interests of the landowner.
- 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 landowner 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 T Cummins of Saltersley Hall Farm, Wilmslow requesting 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 proposed to be diverted is shown by a solid black line on Plan No. HA/146 between points A-B and has a total length of approximately 137 metres. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C-D-E and has a total length of approximately 154 metres.
- 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 applicant.
- 5.4. The section of path proposed to be diverted commences approximately 17 metres from the driveway leading to Saltersley Hall Farm. The path then continues for a distance of approximately 137 metres in a generally easterly direction along the driveway close to various out buildings and the farmhouse to its junction with Mobberley Public Footpath No. 52. The footpath has an undefined width, has a rough surface of stone and earth and is not enclosed.
- 5.5. The proposed diversion would commence at point A and would run in a generally south easterly direction along the field edge for a distance of approximately 115 metres. The path would then turn at point C to take a more southerly direction for a distance of approximately 14 metres before curving at point D to take an easterly direction for a distance of approximately 20 metres to connect at a junction on Public Footpath No. 52.
- 5.6. The proposed path would be 4 metres wide, surfaced with stone chippings and sand dusting and would run across well drained land throughout. There is also an intention to enclose the path between points A-C-D by a wooden

railed fence. There are currently two stiles on the definitive footpath located at points A-B on Plan No. HA/146; they would be replaced by the landowner as part of the diversion process with 1.5 metre kissing gates.

- 5.7. The proposed diversion will take users away from the private driveway, the out buildings and the farmhouse, therefore increasing the privacy and security of the property. The proposed diversion will also be more pleasant for users as it would be firmer and more even under foot.

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 or 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 or 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 The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.

6.10.2 The diversion of the Public Footpath would enable better access to the public rights of way network by members of the public on foot with the potential for the improvement and promotion of active healthy lifestyles and wellbeing.

7. Ward Members Affected

7.1.1 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. The following comments were received:

8.2. The Open Spaces Society verbally commented on the proposal saying;

- a. The proposed path would be much longer than the existing route and is therefore less convenient.
- b. The proposal does not meet the test for privacy and security as the path is a reasonable distance from the buildings.
- c. The Open Spaces Society also questioned the landowner's intentions with regards to fencing the footpaths and their intentions concerning the land over which the footpath runs.

8.3. The North and Mid Cheshire Ramblers also commented on the proposal with regards to privacy and security, a "dog leg" proposed during the initial informal consultation stage (subsequently amended) and the width of the path.

- 8.4. Following the landowner's response (referred to below) and the amendment to the consultation plan to that shown in Plan No. HA/146, the Ramblers stated that they were "very pleased" and they would have no objections to the proposed diversion.
- 8.5. The Peak and Northern Footpath Society responded saying;
- a. *"It is difficult to see how the current path affects privacy or security or how the diversion will improve it."*
 - b. *"It was difficult to assess whether the proposed route affords better views due to the heavy machinery (earth moving diggers/ mounds of earth etc) that sit alongside the proposed route."*
 - c. *"The path would also be fenced on its eastern side between points A-C-D and on its western side between E-B.' No reason is given for this. Overall it is difficult to see the need for this diversion at the current time"*
- 8.6. In response to the comments the landowner has stated that the existing route of Footpath No. 45 runs along the main access to the farmhouse which does not benefit from any street lighting and so poses an issue of privacy and security around the property.
- 8.7. The landowner has agreed that the initial proposed diversion would have created a "dog leg" and has amended the line of the proposed path to that shown on Plan No. HA/146. The proposed path would be approximately 20 metres longer than the existing footpath.
- 8.8. The landowner wishes to enclose the proposed diversion and a section of Footpath No. 52 to enable his future plans to restore and improve the land for agricultural purposes. The landowner has also agreed to increase the width of the proposed diversion to 4 metres, from that initially proposed, to ensure the path can be suitably maintained in the future.
- 8.9. The plant machinery and mounds of earth currently obscuring the views along the proposed path are due to some of the improvement works the landowner is currently undertaking.
- 8.10. The Peak and Northern Footpath Society responded to say they are satisfied with the response and have confirmed they will not object to the Order being made.

8.11 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/584 relating to this report can be inspected by contacting the report writer.

10. Contact Information

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

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