

Public Rights of Way Committee

Date of Meeting: 02 December 2019

Report Title: Highways Act Section 119 Proposed Diversion of Public Footpath No.34 and No.35 (parts) in the Parish of Macclesfield Forest.

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 34 and part of Public Footpath No.35 in the Parish of Macclesfield Forest. 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, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No. 34 and part of Public Footpath No.35 in the Parish of Macclesfield Forest by creating new sections of Public Footpath and extinguishing parts of the current paths as illustrated on Plan No. HA/145 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 Recommendations

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.

3.7. 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.

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 Hurley of Whitehills Farm Macclesfield Forest, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert parts of Public footpath No.34 and No.35 in the Parish of Macclesfield Forest. The application is made on grounds of privacy in respect of the residential dwellings, security of the farm and improved management of the land.

5.2. The current definitive line of footpath No.34 commences at a junction with Public Footpath No.11 in the Parish of Macclesfield Forest. The footpath runs in a generally south westerly direction for a distance of approximately 297 metres to a footbridge over a water course. It then continues in the same direction for approximately 86 metres before turning to take a more southerly direction as it passes within very close proximity to a residential property and through the middle of Whitehills Farmyard and animal holding areas for a distance of approximately 50 metres. The path then connects at its junction with Public Footpath No.35. Where the path passes through the farmyard there is an obstruction caused by a wall forming part of an animal holding area and an agricultural structure installed prior to legislation requiring planning permission. To avoid the obstructions walkers are able to use a permissive path that runs to the east of the farm as shown by a bold blue dashed line on plan No. HA/145.

5.3. The section of footpath No.34 proposed to be diverted is shown on plan No. HA/145 accompanying this report by a bold black line between points A-B and has a total distance of approximately 139 metres.

5.4. The current definitive line of Public Footpath No.35 commences at a junction on Public Footpath No.11. The path then continues in a generally north westerly direction for a distance of approximately 135 metres. At this point

the path runs in a generally north westerly direction through an old barn erected sometime in the past, close to residential dwellings and through Whitehills farmyard. The path exits the farmyard onto a farm track and curves in a generally south westerly to north westerly direction for a distance of approximately 134 metres where it connects at a junction with Public Footpath No.10. To access the section of path currently obstructed by the barn, walkers are able to use a short permissive path that runs south of the definitive line as shown by the bold blue dashed line on plan No. HA/145 attached to this report.

- 5.5. The section of footpath No.35 proposed to be diverted is shown by a solid black line between points D-A-C on plan No. HA/145 and has a total distance of approximately 310 metres.
- 5.6. In accessing, the permissive path walkers must negotiate a number of gates and stiles which are shown on the plan accompanying this report. Because the permissive paths also take walkers within close proximity to the residential dwellings and the working areas of the farm, they are not considered suitable alternative footpaths on to which to divert the footpaths.
- 5.7. The proposed diversion of footpath No.34 is shown on plan No. HA/145 by a bold black dashed line between points B-E. The proposed diversion would commence at the footbridge shown at point B on plan No. HA/145 and would run in a generally westerly direction following the natural topography of the landscape before reconnecting to the network at a junction on Public Footpath No.10. The proposed diversion would have a total distance of approximately 213 metres.
- 5.8. The proposed diversion of footpath No.35 is also shown on plan No. HA/145 attached to this report by a bold black dashed line between points F-B. The path would commence at a junction with public footpath No.11 and would extend in a generally north westerly direction for a distance of approximately 66 metres. The path would then continue in a generally west south westerly direction for a distance of approximately 113 metres before extending in a generally north westerly direction for a distance of approximately 29 metres to connect with the footbridge shown as point B on plan No. HA/145. The proposed path would have a total distance of approximately 210 metres.
- 5.9. The effect of the diversion on footpath No.34 would be to increase the length of that footpath by approximately 74 metres. The effect of the diversion on footpath No.35 would be to decrease the length of that footpath by approximately 106 metres. The total combined length of the footpaths proposed to be diverted as shown between points A-B and C-D on plan No. HA/145 is approximately 442 metres. The combined total length of the

proposed diversions shown between points E-B-F as shown on the plan would be 423 metres.

5.10. The proposed diversions would take the existing paths away from the residential properties and the working farm environment, through a safer more scenic route and would reduce the risks associated with walking through a working farm. The proposed diversions would also offer improved views of the surrounding countryside with local landmarks to include, Macclesfield Forest, Shuttlingsloe and the Shining Tor all being visible from the proposed footpaths.

5.11. With regards to the longstanding obstructions on footpaths, Council policy 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.”

In this case the landowner has agreed to divert the footpaths affected by the obstructions and has requested that the footpaths are diverted away from the residential properties and the farmyard on grounds of privacy, security and improved land management. The permissive footpaths remain available in the meantime.

6. Implications of the Recommendations

6.1. Legal Implications

6.2. 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.

6.3. Finance Implications

6.3.1. If objections to the Order lead to a subsequent hearing/inquiry, this legal process would have financial implications for the Council.

6.4. Policy Implications

6.4.1. There are no direct policy implications.

6.5. Equality Implications

6.5.1. 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.

6.6. Human Resources Implications

6.6.1. There are no direct implication for human resources.

6.7. Risk Management Implications

6.7.1. There are no direct implications for risk management.

6.8. Rural Communities Implications

6.8.1. There are no direct implications for rural communities.

6.9. Implications for Children & Young People/Cared for Children

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

6.10. Public Health Implications

6.10.1. There are no direct implications for public health.

6.11. Climate Change Implications

6.11.1 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.

The diversion of the public footpaths 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 well being.

7. Ward Members Affected

7.1. Sutton ward member Councillor Andrew Gregory has been consulted and no comments have been received.

8. Consultation & Engagement

8.1. Macclesfield Forest and Wildboardclough Parish Council, user groups, statutory undertakers and the Councils Nature Conservation Officer have been consulted. The following comments were received:

- 8.2. The East Cheshire Ramblers undertook a site visit of both the existing and the proposed diversion and reported that they were generally satisfied with the proposal and look forward to walking the path.
- 8.3. The Peak and Northern Footpath Society responded to the consultation with concerns that the proposed diversion may not meet the legal tests contained in section 119(2) and that the diversion ought to be a section 118 extinguishment and a creation Order under s25 or s26 instead.

The Peak and Northern Footpath Society also undertook to visit the site of the footpaths and the proposed diversions. They comment that the proposed diversion is *“a steeply undulating route through rough pasture... making the route potentially more difficult for walkers.”*

They also expressed concerns that at the time of their visit the section of path shown between points E-B had cattle with a bull in the field and further expressed concerns as to the safety of this for walkers if an Order was made.

The Society also requested confirmation about any limitations such as gates and stiles along the proposed diversions.

- 8.4. In response to the Peak and Northern Footpath Society’s concerns, section 119 (2) prevents the diversion of a public right of way if it does not connect to a highway and if it does end on a highway, it should be diverted on to the same highway, or a connected highway. In this case footpath No.34 currently connects to footpath No.35, if the diversion is successful the footpaths will continue to connect and footpath No.34 will also connect to footpath No.10. Footpath No.35 currently connects to footpath numbers 11, 34 and 10, again if the diversion is successful that footpath will still connect to both footpath No.34 and No.11. Therefore, both parts of the diversion satisfy the test contained within s119(2) of the Highways Act as both diversions would end on a connected highway.

The gradients of the proposed diversions are similar to the current footpaths and indeed the surrounding area.

With regards to cattle in the field section E-B the landowner has stated that there are cattle in the adjacent field to the north of the footpaths but not in the field through which the proposed diversions will run.

The landowner also confirmed that he will install kissing gates at points B and F on plan No. HA/145.

- 8.5. Peak and Northern Footpath Society responded to the councils comments saying the issue would be that for the diversions of the footpaths both

Orders would need to succeed in order to meet the legal tests in s119 and as such they would object to the diversion.

The Council confirmed that the proposed diversion of both footpaths would be on the same Order ensuring that the legal tests contained within s119 (2) would be met. The Peak and Northern Footpath Society responded to say they will not object to the Order.

8.6. No other comments have been received.

9. Access to Information

9.1.1. The background papers of file No. 194D/583 relating to this report can be inspected by contacting the report writer.

10. Contact Information

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

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