
Date of Meeting:	6 th December 2021
Report Title:	Highways Act 1980 s119 Application for the Diversion of Public Footpath No 4 (parts), Parish of Henhull
Report of:	Jayne Traverse, Executive Director Place
Ward(s) Affected:	Bunbury

1. Executive Summary

- 1.1. The report outlines the investigation to divert parts of Public Footpath No 4 in the Parish of Henhull. 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 the landowner concerned. 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 sections of footpath concerned.
- 1.2. The work of the Public Rights of Way team contributes to the three Corporate Plan aims. “We will provide strong community leadership and work transparently with our residents, businesses and partners to deliver our ambition in Cheshire East”, “We aim to reduce inequalities, promote fairness and opportunity for all and support our most vulnerable residents” and “We will lead our communities to protect and enhance our environment, tackle the climate emergency and drive sustainable development”.

2. Recommendation/s

2.1. That an Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert parts of Public Footpath No.4 Henhull by creating a new public footpath and extinguishing the current path as illustrated on Plan No. HA/147 on the grounds that it is expedient in the interests of the owner 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 and not resolved, 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 paragraphs 5.1 – 5.5 below.

3.2. 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. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

- Whether the path is substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

- The effect that the diversion would have on the enjoyment of the path or way 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.

- 3.3. 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 paragraph 3.2 above.
- 3.4 No objections to the proposal have been received through the informal consultation process. The proposed route will not be 'substantially less convenient' than the current route and diversion of two footpath sections will be of benefit to the landowner by realigning the footpath as per the permitted development that was granted, and by resolving an obstruction issue.
- 3.5 It is considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.
- 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 proposal contributes to the Corporate Plan aims 'Open, 'Fair' and 'Green' and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

4. Other Options Considered

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

5. Background

- 5.1. An application has been received from Stone MC Ltd on behalf of a consortium of housing developers (the north west divisions of Taylor Wimpey, Redrow Homes and David Wilson Homes), requesting that the Council make an order under section 119 of the Highways Act 1980 to divert two sections of Public Footpath No. 4 in the Parish of Henhull.
- 5.2. A former application for this diversion was made in 2018 under section 257 of the Town and Country Planning Act 1990 (TCPA 90 s257) as it was considered necessary to do so to enable the Kingsbourne residential development in Nantwich, to go ahead as detailed in the outline planning application (13/2471N), and the reserved matters application, 16/4601N. Specifically, it was necessary to divert one section of Footpath No. 4 Henhull to enable the building of a house, garage and gardens whose footprints lay across the current definitive alignment of this footpath section such that they would otherwise unlawfully obstruct it.
- 5.3. The diversion proposal was progressed accordingly, and an Order was made. This remained unopposed following formal advertising and the

next stage of the process was to install the diversion route before the final administrative stages of the diversion process could be completed.

- 5.4. A site inspection revealed that before the diversion was completed, on the alignment of the current route to be diverted, a house, garage, and gardens had been constructed. This voided the diversion under TCPA 90 s257 because the legal test was no longer applicable as it was then no longer necessary to divert the footpath to enable construction of the house, garage, and gardens since they had already been constructed. Development had already gone ahead.
- 5.5. Consequently, the incomplete diversion under TCPA 90 s257 was abandoned, and the developers sought the same diversion under the legislation of section 119 of the Highways Act 1980, to rectify the situation.
- 5.6. Public Footpath No 4, Parish of Henhull commences at the parish boundary where it joins Public Footpath No's 3 and 4, Parish of Worleston at O.S. grid reference SJ 6487 5335, and runs in generally south, south westerly, then south, south easterly, then south, south westerly directions for a total distance of approximately 572 metres to terminate at its junction with Public Footpath No. 4 Parish of Nantwich at O.S. grid reference SJ 6474 5285.
- 5.7. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request if it considers it expedient in the interests of the landowner to make an order to divert the footpath.
- 5.8. The land over which run both the sections of footpath to be diverted, and the diversion routes, are owned by the applicant.
- 5.9. Referring to Plan No. HA/147, two sections of Henhull Footpath No.4 are proposed for diversion, both linked by a short section of the current footpath.

First section

- 5.10. The first section starts at its junction with Worleston Footpath No's 3 and 4 at the parish boundary (point A) and runs in a generally south, south westerly direction to terminate at point B.
- 5.11. It is on this section of footpath on which the house, garage and gardens have been built.
- 5.12. The new route would also start at its junction with Worleston Footpath No's 3 and 4 and would run in a generally south westerly direction to point E and then in a generally south easterly direction to point F and then in a

generally west, south westerly direction to terminate on the current route at point B.

Second section

- 5.13. The second part starts at point C and runs in a generally south, south easterly direction to terminate at point D.
- 5.14. Within the planned development, the developers have proposed a diversion that would re-align this section of footpath onto a tarmac footpath to be constructed as part of planned landscaping within the development.
- 5.15. The new route will start at point C and run in a generally south, south westerly direction to point G and then south, south easterly direction to point H and finally southerly to terminate on re-joining the current footpath at point D.
- 5.16. The first section of Henhull FP4 running between points A-E-F-B, would form part of a new walkway/cycleway that would have a tarmac surface and width of 3 metres. The second section running between points C-G-H-D, would have a surface of compacted stone with timber edging and be 2 metres wide.
- 5.17. In summary, the new route sections would not be significantly less enjoyable or convenient than the current sections of footpath. The proposal will reduce the need for users to cross or walk along roads and maintain the footpath network such that a public right of way will still be available between Waterlode and Worleston Footpath No's 3 and 4, albeit the nature of the route will be different due to the change in use of the land for residential development.
- 5.18. This diversion would be made in the interests of the developers.

6. Consultation & Engagement

- 6.1. Bunbury Ward: Councillor Sarah Pochin has been consulted. No comments have been received.
- 6.2. Acton, Edleston and Henhull Parish Council, and Nantwich Town Council have been consulted. No comments were received.
- 6.3. The user groups have been consulted. No comments were received.
- 6.4. 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.

6.5. The Council's Nature Conservation Officer has been consulted, and no comments have been received.

7. Implications of the Recommendations

7.1 Legal Implications

7.1.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the Authority to confirm the Order itself, and may lead to a hearing or Public Inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support.

7.2 Finance Implications

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

7.3 Policy Implications

7.3.1 There are no direct policy implications.

7.4 Equality Implications

7.4.1 An assessment in relation to the Equality Act 2010 has been carried out and it is considered that the proposed diversion would be more convenient to use than the current one as the surfacing will be improved.

7.5 Human Resources Implications

7.5.1 There are no direct human resources implications.

7.6 Risk Management Implications

7.6.1 There are no direct risk management implications.

7.7 Rural Communities Implications

7.7.1 There are no direct implications for rural communities.

7.8 Children and Young People/Cared for Children

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

7.9 Public Health Implications

7.9.1 There are no direct implications for public health.

7.10 Climate Change Implications

7.10.1 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.

7.10.2 The work of the Public Rights of Way team encourages a reduction in carbon emissions and increased environmental sustainability by reducing energy consumption and promoting healthy lifestyles through active travel.

Access to Information	
Contact Officer:	Marianne Nixon, Public Path Orders marianne.nixon@cheshireeast.gov.uk 01270 686 077
Appendices:	Plan No. HA/147
Background Papers:	The background papers relating to this report can be inspected by contacting Marianne Nixon and quoting the following file reference: File No. 154D/595