

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 11th September 2017
Report of: Public Rights of Way Manager
Subject/Title: Highways Act 1980 Section 119
Application for the Diversion of Public Footpath No. 12 (part),
Parish of Pott Shrigley

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 12 in the Parish of Pott Shrigley. 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 Unit in the interests of the public. 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.

2.0 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. 12 in the Parish of Pott Shrigley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan no. HA/116 on the grounds that it is expedient in the interests of the public.
- 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.

3.0 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 public for the reasons set out in paragraph 10.6 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 proposed new path and its exit point are 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 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will provide a safer exit point for the public onto Shrigley Road. 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.

4.0 Wards Affected

4.1 Poynton East and Pott Shrigley.

5.0 Local Ward Members

5.1 Councillor Howard Murrery and Councillor Jos Saunders.

6.0 Policy Implications

6.1 Not applicable

7.0 Financial Implications

7.1 Advertising costs to be covered by the ROWIP Revenue budget for 2017/18.

8.0 Legal Implications

8.1 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.

9.0 Risk Management

9.1 Not applicable

10.0 Background and Options

- 10.1 During the consultation for the Cheshire East Rights of Way Improvement Plan (ROWIP) in 2010, Pott Shrigley Parish Council contacted the Public Rights of Way (PROW) Unit with a suggestion to divert part of Public Footpath Pott Shrigley No. 12. The suggestion was logged (ROWIP Ref. W48) and prioritised but did not make it into the ROWIP implementation plan. In 2012 the landowner of the path, Mrs Veronica Shelly, contacted the PROW Unit to confirm her support for the proposed diversion and the proposal was added to the waiting list for Highways Act diversions. It has now reached the top of the list and has been initiated in the interests of the public.
- 10.2 Public Footpath No. 12 Pott Shrigley commences at its junction with Public Footpath No. 11 Pott Shrigley at O.S. Grid Reference SJ 9492 8157 and runs in a generally north westerly and then south westerly direction across pasture to its junction with Shrigley Road (C403). The section of path to be diverted is shown by a solid black line on Plan no. HA/116 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C.
- 10.3 The land over which the section of the current path to be diverted and the proposed diversion run belongs to Mr and Mrs Shelley. Mrs Shelley has provided written consent and support for the proposed diversion.
- 10.4 The section of Public Footpath No. 12 Pott Shrigley to be diverted commences at O.S. Grid Reference SJ 9486 8161 (point A on plan no. HA/116) and runs in a generally north westerly and then generally south westerly direction across pasture for approximately 19 metres to Shrigley Road (C403) at O.S. Grid Reference SJ 9484 8160 (point B on plan No. HA/116). It exits through a squeeze stile directly onto Shrigley Road which is a narrow, busy and fast road and this causes concerns on the grounds of public safety. Pott Shrigley FP12 is a popular well used route throughout the year.
- 10.5 The proposed route has been in place as a permissive route for a number of years. Travelling in a northerly direction, it has a 2 metre width with a 1.2 metre compacted stoned surface. It passes through a small wooded area before exiting through a kissing gate onto a layby on Shrigley Road which provides parking and where a parish council notice board is located. The length of the proposed route is approximately 59 metres.

- 10.6 The proposed diversion would provide a safer exit point onto Shrigley Road, thereby improving public safety. In addition it also provides an improved surface. The diversion is therefore in the interests of the public.
- 10.7 The Ward Councillors were consulted about the proposal. No comments were received.
- 10.8 Pott Shrigley Parish Council has been consulted and has responded to state that they fully support the proposal and are 'delighted with the new route'.
- 10.9 The statutory undertakers have also 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.
- 10.10 The user groups have been consulted. The Peak and Northern Footpaths Society has responded to state that they have no objection to the proposal. The East Cheshire Ramblers also responded to state that they are in favour of the diversion which allows 'a much safer exit/entry onto Shrigley Road'.
- 10.12 The Council's Nature Conservation Officer has been consulted, no comments have been received.
- 10.13 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current route.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Hannah Duncan
Designation: Definitive Map Officer
Tel No: 01270 686062
Email: hannah.duncan@cheshireeast.gov.uk
File No: 244D/536