

## **Public Rights of Way Committee**

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**Date of Meeting:** 11 June 2018

**Report Title:** Highways Act 1980 s119 Application for the Proposed Diversion of Public Footpath No.16 (part) in the Parish of Wilmslow

**Senior Officer:** Frank Jordan, Executive Director - Place

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### **1. Report Summary**

- 1.1. The report outlines the investigation to divert part of public footpath No. 16 in the parish of Wilmslow. 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. A Public Right of Way may only be diverted by a legal Order. This proposal has been put forward by the Public Rights of Way team in the interests of the landowners and makes a recommendation based on that information, for a quasi-judicial decision by Members as to whether or not an Order should be made or not 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.16 in the Parish of Wilmslow by creating a new section of public footpath and extinguishing the current path as illustrated on plan number HA/128 on the grounds that it is expedient in the interests of the owners of the land crossed by the right of way.

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 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 landowners for the reasons set out in paragraph 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. The proposed diversion will not be 'substantially less convenient' than the existing Public Right of Way. Diverting the footpath would improve the landowners' agricultural and land management responsibilities. It is considered that the proposed footpath 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.

- 3.5. 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.

#### **4. Other Options Considered**

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

#### **5. Background**

- 5.1. An application has been submitted by The National Trust, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public footpath No.16 in the Parish of Wilmslow.
- 5.2. Public Footpath No.16 commences at the junction between Restricted Byways No.18 and No.22 also known as Quarry Bank Road, O.S. Grid Reference 3579 3167 (point A on plan HA/128). It then continues up a slight embankment to a narrow gap between a well established Oak tree and stone wall, the path then continues in a generally north easterly direction for approximately 95 metres passing diagonally through the corner of an agricultural field before taking a more northerly direction towards and through a pedestrian gate shown at point B on plan HA/128. At this point the path continues in the same northerly direction for approximately 150 metres before continuing for approximately a further 88 metres in a generally north, north westerly direction, turning to a generally westerly direction for approximately 63 metres toward Northcliffe Church at O.S. Grid Reference SJ 3469 3441. The section of this path to be diverted is shown by a solid black line on Plan No. HA/128 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points B-C.
- 5.3. The land over which the section of path to be diverted, and the proposed diversion run, both belong to the applicant: under section 119 of the Highways Act 1980 the Council may accede to an applicant’s request if it considers it to be expedient in the interests of the landowner to make an Order to divert the footpath.
- 5.4. It is the section of path that takes walkers from the junction between Restricted Byways No’s 18 and 22 shown as point A on plan HA/128 up the slight embankment, through the narrow gap between the oak tree and

stone wall and across the corner of the agricultural field to the gate shown at point B on the attached plan HA/128 to which this application relates.

- 5.5. The proposed diversion would move the path out of the field and to the west of its current alignment onto a permissive path commencing at point C on plan HA/128, OS grid reference SJ 3613 3176 and which is already in use by members of the public. The permissive path runs parallel to the agricultural field boundary and reconnects with the definitive line of the path at the point shown as B on the attached plan HA/128, OS grid reference 3600 3260. The proposed path is 2.5 metres wide and has a hard, level, well drained surface throughout. The path is enclosed with a wooden panelled fence and planted hedges to the west and a small wooden post and rail fence to the east giving the path an open aspect.
- 5.6. The diversion would be made in the interests of the landowner as it will divert walkers out of the agricultural field which would greatly improve their land management. The applicant also believes that the diversion would not be substantially less convenient than the existing path as it would prove more beneficial to members of the public as the diverted path would be more accessible than the existing public right of way.

## **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 Public 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. The proposed route will not be 'substantially less convenient' than the existing route.

## **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.

## **7. Ward Members Affected**

7.1. Ward Councillor Don Stockton was consulted about this application and no comments have been received.

## **8. Consultation & Engagement**

8.1. The user groups have been consulted. The East Cheshire Ramblers Footpaths Committee responded to the consultation on 28<sup>th</sup> April 2018 by stating that they have no objections to the diversion which they understand is already in operation.

8.2. Peak and Northern Footpaths Society responded to the consultation on 8<sup>th</sup> May 2018 and commented that the diversion appears to be a “fait accompli”, a retrospective application and that “no evidence exists of the original path”. The Society state that the original path ran across the field to the right of the gate and exited on to Restricted Byway No. 22 beside the tree. The new path now exits to the visitor centre. The applicant has confirmed that the definitive line of the public footpath is available for use.

8.3. The Statement accompanying the Definitive Map describes the original line of the footpath as exiting onto the junction between Restricted Byways No.18 and No.22. The proposed path which is currently already in use exits on to Restricted Byway No.18 approximately 35 metres to the east of the original alignment. The Footpaths Society also states that “the new path satisfies all of the requirements with the only qualification being that it no longer visibly links to footpath No.21”. Commenting further that there is “no signage” between Restricted Byway No. 22 and Footpath No.21 “which is

waymarked alongside the new carpark and that therefore, there is a dogleg from footpath No.16” to Restricted Byway No.22 and Footpath No. 21. Cheshire East Council will ensure that the proposed path has adequate signage should an Order be made.

- 8.4. Peak and Northern Footpath Society then emailed again on 14<sup>th</sup> May to state that they have no objections to the proposed diversion.
- 8.5. 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.
- 8.6. The council’s Nature Conservation Officer has been consulted, no comments have been received.
- 8.7. An assessment in relation to the Equality Act 2010 has been carried out by the Public Rights of Way 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.

## **9. Access to Information**

- 9.1. The background papers 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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