

Public Rights of Way Committee

Date of Meeting: 11 June 2018

Report Title: Highways Act 1980 s119 Application for the Diversion of Public Footpath No. 5 (part), Parish of Bosley

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 5 in the Parish of Bosley. 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. 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. 5 in the Parish of Bosley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/129 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 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 5.8 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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. Diverting the footpath would remove the footpath from the applicant's driveway, improving their privacy and security. 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.

- 3.5 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 received requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 5 in the Parish of Bosley.
- 5.2. Public Footpath No. 5 Bosley commences at its junction with Smithy Lane at O.S. grid reference SJ 9254 6510 and runs in a generally easterly direction for approximately 1,206 metres until it reaches its junction with Public Footpath No. 6 in the Parish of Bosley at O.S grid reference SJ 9363 6498. It then continues in a generally easterly direction for approximately 69 metres to its junction with the parish boundary of Wincle at O.S. grid reference SJ 9369 6497. The section of path to be diverted is shown by a solid black line on Plan No. HA/129 between points A – B. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C-B.
- 5.3. The land over which the section of Public Footpath No. 5 Bosley to be diverted and the proposed diversion belongs wholly to the applicant.
- 5.4. The section of Public Footpath No. 5 Bosley to be diverted commences at Point A, on Plan No. HA/129, at O.S. grid reference SJ 9285 6495 and continues to Point B (on Plan No. HA/129) in a generally east north easterly direction for approximately 73 metres. The footpath commences next to an outbuilding and runs along a tarmacked private driveway and passes directly in front of a residential property.
- 5.5. The proposed diversion will run between points A-C-B (on Plan No. HA/129). It will commence at point A (on Plan No. HA/129) at O.S. grid reference SJ 9285 6495 and run in a generally north easterly direction to point C. It will then run from point C (on Plan No. HA/129) at O.S. grid reference SJ 9287 6497 to point B (on Plan No. HA/129) alongside an existing farm building. The total distance of the proposed diversion is approximately 83 metres.
- 5.6. The proposed diversion will have a minimum width of 2 metres and the area will be cleared of any trees and shrubbery that are currently in place. The path will also be surfaced with a material that is of equal quality to the tarmacked drive. Where the proposed diversion will run alongside the farm

building there is currently a large drop on the northern side, to ensure the safety of walkers this section will be enclosed with a post and rail fence at a length of 13 metres.

- 5.7. Stiles Meadow Farm was once used as a large commercial farm and has subsequently been sold as individual smallhold properties. Other diversion routes have been explored by the applicant but permission from other landowners has not been given.
- 5.8. The proposal is in the interest of the applicant due to reasons of privacy and security. There have been issues with privacy and security at Stiles Meadow Farm mainly due to the remote location and lack of secure gates. There have been numerous occasions when vehicles have trespassed and a number of attempted thefts. Navigation systems also direct traffic to the wrong location meaning vehicles use the farm courtyard as a turning space.
- 5.9. Livestock is also kept at the landowner's property and these are at risk when being moved due to the fact a lockable gate cannot be put across the driveway. Future plans include the purchasing of more livestock and the diversion of the footpath will ensure the best land management. The proposed diversion will allow the applicants to install a security gate across their driveway.

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/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/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.

7. Ward Members Affected

7.1. Gawsworth Ward: Councillor Lesley Smetham was consulted and no comments were received.

8. Consultation & Engagement

8.1. Bosley Parish Council, the user groups, statutory undertakers and the Council's Nature Conservation Officer have been consulted. The consultation period ended on 30th May 2018. At the time of writing the report no comments had been received. A verbal report will be presented to the Committee should any comments be received between the time of writing and the end of the consultation period.

8.2. 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. 0290D/562 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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