

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. 32 (part), Parish of Nether Alderley

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 32 in the Parish of Nether Alderley. 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. 32 in the Parish of Nether Alderley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/131 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 5.6 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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. Diverting the footpath would move the footpath out of the applicants' paddocks, improving their privacy and security considerably. 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. 32 in the Parish of Nether Alderley.
- 5.2. Public Footpath No. 32 Nether Alderley commences at its junction with Welsh Row at O.S. grid reference SJ 8379 7678 and runs in a generally south, south easterly direction for approximately 409 metres and then runs in a southerly direction for approximately 70 metres. The section of path to be diverted is shown by a solid black line on Plan No. HA/131 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 diversion runs jointly belongs to a group of landowners. This land was jointly purchased and written permission has been provided by each landowner.
- 5.4. The section of Public Footpath No. 32 Nether Alderley to be diverted commences at O.S. grid reference SJ 8388 7667, point A on Plan No. HA/131, and runs in a generally south, south easterly direction for approximately 253 metres to point B on Plan No. HA/131. This is a crossfield footpath which currently runs through the boundaries of a number of paddocks, there is one pedestrian gate to pass through with the rest of the paddock having gaps in there boundaries to keep the definitive line clear.
- 5.5. The proposed diversion will follow a current permissive route between points A-C-B, as shown on Plan No. HA/131. It will commence at point A and continue across the field to point C for approximately 200 metres, at this point the landowners have installed a kissing gate on the paddock boundaries. The proposed diversion will then follow an enclosed section to point B, this has a width of 4 metres and is approximately 67 metres in length. It is enclosed by a wire fence and mixed hawthorn hedge on both sides. The total length of the proposed diversion is 267 metres which is an increase of 12 metres.
- 5.6. The proposal is in the interests of the applicants due to reasons of privacy, security and land management. By diverting the definitive line out of the paddocks it will allow them to be secured and become private and lead to better land and livestock management.

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. Chelford Ward: Councillor George Walton has been consulted and no response was received

8. Consultation & Engagement

- 8.1. Nether Alderley Parish Council has been consulted and the following response was received:

The Parish Council understand that this application has raised many issues for local residents but we have been asked to comment on the re-routing of the Public Right of Way, which as a Parish Council we support in principle. We do not believe that the proposed change will be detrimental to anyone using the footpath in the future.

- 8.2. The user groups have been consulted and a response was received from the East Cheshire Ramblers:

We note that the definitive line of FP32 remains available to walk but that the proposed diversion has some modifications that bring the proposed diversion up to modern standards (kissing gate and renewed footbridge). The change in route involves little extra distance and no loss of enjoyment of the path. Overall, we do not wish to make any objection to the proposal but suggest consideration is given as part of the approval to the ongoing maintenance of the new section B-C.

The East Cheshire Ramblers also highlighted concerns with the ongoing maintenance of the enclosed section of footpath due to possible vehicular access and overgrowing hedges. When Officers visited the site in January there was no sign of mud on the new route, If maintenance does become an issue the Council will raise it with the landowners at the time.

- 8.3. The local residents have been consulted due to concerns raised by the applicants of potential objections. Four responses have been received from local residents with the following main points being raised:

- Issues with the fact that the landowners purchased the land with the intent to build paddocks at the back of their properties knowing a public right of way crossed it. And that if these landowners were allowed a diversion it could set a precedent for all farmers and landowners to have diversions on their land.
- Questions as to whether the application would make a material change to the applicant's privacy or security.
- The potential for mud and overgrowth between points C-B on the proposed diversion due to possible use of tractors and livestock.

- Questions about whether the definitive line has been kept open and available.
- Concerns with the future use of the paddocks and flouting of planning laws once the public footpath has been diverted.
- Concerns with private rights of access and landownership.

A response was sent to each that explained the PROW laws and how the Highway Act 1980 allows for diversions as long as they follow the legal process. Also highlighted was that if any maintenance issues arose after the proposed diversion was confirmed it would be raised with the landowners and that the Council would not want to take on a PROW that would cause future maintenance issues. Any issues with the planning and change of use of the paddocks, alongside the rights of access between points B and Sand Lane is an issue for the Planning department and private solicitors and should not affect the assessment of the diversion in terms of highways legislation.

The applicant's consulted with the Council after initially constructing the paddocks and they were advised on how to keep the definitive line clear of obstructions. All comments were taken on board at the time and no further issue's appeared to arise.

The landownership of the section between points A-C-B on the plan has been confirmed with Land Registry records and confirmed as being in the landownership of the applicant.

- 8.4. 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.
- 8.5. The Council's Nature Conservation Officer has been consulted, no comments have been received.

9. Access to Information

- 9.1. The background papers of file No. 220D/561 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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