

## **Public Rights of Way Committee**

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**Date of Meeting:** 11 June 2018

**Report Title:** Highways Act 1980 s119 Application for the Diversion of Public Footpath No. 8 (part), Parish of Brindley

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

### **1. Report Summary**

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 8 in the Parish of Brindley. 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. 8 in the Parish of Brindley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/130 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 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 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 remove the footpath from the applicant's farmyard, 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. 8 in the Parish of Brindley.
- 5.2. Public Footpath No. 8 Brindley commences at its junction with Public Footpath No. 11 Brindley at O.S. grid reference SJ 5842 5430 and continues in a generally southerly direction for approximately 821 metres to its junction at the parish boundary with Faddiley at O.S. grid reference SJ 5854 5351. The section of path to be diverted is shown by a solid black line on Plan No. HA/130 between points A – B. The proposed diversion is illustrated on the same plan with a black dashed line between points C-D-B.
- 5.3. The land over which the section of Public Footpath No. 8 Brindley to be diverted and the proposed diversion belongs wholly to the applicant.
- 5.4. The section of Public Footpath No. 8 Brindley to be diverted commences at Point A and runs in a south, south westerly for approximately 246 metres to point B (on Plan No. HA/130). Part of the definitive line is currently obstructed by a large building and the public currently follow a permissive route that crosses a stile between points A and C and then continues round a pond to meet the definitive line. The application is consistent with the Public Rights of Way team's protocol for dealing with longstanding obstructions.
- 5.5. The proposed diversion will run between points C-D-B on Plan No. HA/130. It will commence at a new junction with Public Footpath No. 11 Brindley at point C (on Plan No. HA/130), approximately 80 metres west of point B, and a kissing gate will be installed at this point. It will then continue in a south westerly direction alongside a field boundary for approximately 118 metres, to point D at O.S. grid reference SJ 5827 5422. At the field boundary a kissing gate will be installed and the proposed diversion will continue in a south easterly direction for approximately 186 metres where it will meet the current definitive line at point B. This will be a cross field path that is very similar in surface to the current definitive line.
- 5.6. The proposal is in the interest of the applicant due to reasons of privacy and security. By diverting the footpath it will remove it from a farm area and

also resolve the issue of the farm building obstructing the definitive line. By moving the path from the farm yard it also removes any risk from the interaction of walkers and vehicles.

## **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. Wrenbury Ward: Councillor Stan Davies has been consulted and no response was received.

## **8. Consultation & Engagement**

- 8.1. Brindley & Faddiley Parish Council has been consulted and no response has been received.
- 8.2. The user groups have been consulted and no comments have been received.
- 8.3. 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.
- 8.4. 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. 048D/563 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:

Name: Laura Brown

Job Title: Public Path Orders Officer

Email: [laura.brown@cheshireeast.gov.uk](mailto:laura.brown@cheshireeast.gov.uk)