

Public Rights of Way Committee

Date of Meeting: 10 June 2019

Report Title: Highways Act 1980 s118 Application for the Extinguishment of Public Footpath No. 20 Parish of Bunbury

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to extinguish Public Footpath No. 20 in the Parish of Bunbury. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for an extinguishment Order to be made. The proposal has been put forward by the Public Rights of Way team following an application from the landowner. 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 extinguish the footpath concerned.
- 1.2. The proposal contributes to the Corporate Plan Outcomes 2 – Cheshire East has a strong and resilient economy and 6 – A Responsible, Effective and Efficient Organisation 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 118 of the Highways Act 1980 to extinguish Public Footpath No. 20 in the Parish of Bunbury as illustrated on Plan No. HA/140 on the basis that it is expedient to do so on the ground it is not needed for public use.
- 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 Act.

- 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 118(1) of the Highways Act 1980 it is within the Council's discretion to make an Order if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use. It is considered that Public Footpath No. 20 in the Parish of Bunbury is not needed for public use, as adequate alternative public footpaths exist within close proximity to the footpath as indicated on Plan No. HA/140.
- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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:
- The extent (if any) to which it appears to him...that the path or way would, apart from the Order, be likely to be used by the public, and
 - The effect which the extinguishment of the right of way would have as respects land served by the path or way, and
 - The material provision of any rights of way improvement plan prepared by any local highway authority which includes land over which the Order would extinguish a public right of way.
- 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 There are currently twelve letters in support of the proposal, one objection and one representation from members of the public following the informal consultation. In addition and as discussed in paragraph 3.1, alternative routes are available within the immediate vicinity of Bunbury Footpath No. 20; it is therefore considered that the path is not needed for public use.
- 3.5 The proposal contributes to the Corporate Plan Outcomes 2 – Cheshire East has a strong and resilient economy and 6 – A Responsible, Effective and Efficient Organisation 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. The application to extinguish Public Footpath No. 20 in the Parish of Bunbury has been made by one of the landowners directly affected by the right of way on the basis that it is not needed for public use and on the ground that other alternative footpaths exist within the vicinity of Footpath No. 20.
- 5.2. Prior to accepting this application, the possibility of diverting the footpath was considered by the Public Rights of Way team. Although infrequently used, Bunbury Footpath No. 20 has had an effect on the privacy and security of the applicant's property where the path crosses the garden very close to the house and along the driveway access. Walkers have full view into the rear of the property when accessing the path which also 'sterilises' a large part of the garden. The security of the property has also been compromised with the applicant having experienced an incident of trespass and one of threatening behaviour in which the police had been involved.
- 5.3. Given the nature and extent of the rights of way network within the vicinity of the footpath and with reference to plan HA/140 accompanying this report, it can be seen that there is no practical solution with regards to permanently diverting Footpath No. 20 (shown by a solid black line between points A-B) to remove it from the curtilage of the residential property under section 119 of the Highways Act 1980 on the basis of privacy and security concerns.
- 5.4. Consideration has therefore been given to the extent to which the path is used, is likely to be used, the availability of adequate alternative routes, and the effect an extinguishment would have on the land served by the footpath and the affect this would have on the rights of way network in the area.
- 5.5. Public Footpath No. 20 in the Parish of Bunbury commences on Wyche Lane (UX778) at O.S. grid reference SJ 5688 5750 and runs in a generally south south easterly direction along the applicant's driveway for a distance of approximately 69 metres to O.S. grid reference SJ 5688 5743. The path then turns slightly to take a more south easterly direction where it passes within very close proximity to the applicant's house before passing diagonally through the garden and small cultivation field for a distance of approximately 107 metres to O.S. grid reference SJ 5694 5734, where it then connects at a junction with Bunbury Public Footpath No. 17, as shown between points A-B on Plan No. HA/140 accompanying this report.
- 5.6. Bunbury Footpath No. 19 runs in a southerly direction from Wyche Lane to the west of Footpath No. 20 with Footpath No. 21 running from Wyche Lane along the same trajectory to the east. It is unlikely that walkers would

use Footpath No. 20 when approaching the network from the east along Wyche Lane as Footpath No. 21 is a closer alternative footpath that leads to the same destination point on Footpath No. 17 to the south of Footpath No. 20. It is also very likely that most walkers would use Footpath No. 19 when approaching the network from the west along Wyche Lane for the same reason. Furthermore, a visit to the footpath by Officers of the Public Rights of Way team revealed no evidence on the ground that indicated the path had been used on a regular basis or used recently as compared to the alternative public footpaths in the area.

- 5.7. Public Footpath Nos. 19 and 21 both run within the vicinity of Footpath No. 20: for example Footpath No 19 lies approximately 55 metres to the west of Footpath No. 20 at its mid point where the path runs close to the south west corner of the property, with Footpath No. 21 being located approximately 75 metres to the east of Footpath No. 20. Both Footpath Nos. 19 and 21 connect at junctions along Footpath No. 17 close to the junction with Footpath No. 20. For those reasons both Footpath No. 19 and No. 21 can be regarded as adequate convenient alternative routes to Bunbury Footpath No. 20.
- 5.8. Bunbury Footpath No. 20 is a relatively short, infrequently used path that cuts through a residential garden and small cultivation field, the effect of its extinguishment on the rights of way network would be minimal resulting in an extra 120 metres walking distance between Footpath No. 19 and Footpath No. 21 when approaching from the west. The same would also be the case when approaching Footpath No. 19 from the east along Footpath No. 17. With regards to the extra distance the extinguishment would necessitate; this can be viewed as a positive factor on a recreational walk such as this.
- 5.9. The extinguishment of Footpath No. 20 would also benefit the land over which the path runs as it would enable improved management and enjoyment of both the residential garden and the small cultivation field through which it runs.
- 5.10. The majority of the land over which the proposed extinguishment runs belongs to the applicant. A smaller section of the path runs over land belonging to the owners of Wyche House, who have provided written agreement to this proposal. An adjoining landowner has also provided written support of this application.
- 5.11. In light of the above it is considered expedient to make an Order to extinguish Bunbury Footpath No. 20 on the ground it is not needed for public use as adequate alternative routes are available.

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. Human Resources Implications

6.4.1. There are no direct implications for human resources.

6.5. Risk Management Implications

6.5.1. There are no direct implications for risk management.

6.6. Rural Communities Implications

6.6.1. There are no direct implications for rural communities.

6.7. Implications for Children & Young People

6.7.1. There are no direct implications for children and young people.

6.8. Public Health Implications

6.8.1. There are no direct implications for public health.

7. Ward Members Affected

7.1. Bunbury: Councillor Chris Green was consulted and no comments were received. Councillor Pochin, Ward Member post May 2019, has been sent a copy of this report. Any comments received will be reported verbally to the Committee.

8. Consultation & Engagement

8.1. Bunbury Parish Council has been consulted and have responded by email to state the following;

“Bunbury Parish Council has no objection. The Parish Council is very supportive of the public footpath network but would agree with the officer's comments and views this as an exceptional case.”

- 8.2. The statutory undertakers have been consulted and have raised no objections to the proposed extinguishment. If an extinguishment Order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 8.3. The Council's Nature Conservation Officer has been consulted, no comments have been received.
- 8.4. The user groups have been consulted.
- 8.5. Peak and Northern Footpaths Society (PNFS) initially objected to the proposal and made the following comments;
 - a. *“...there is a lack of evidence provided by Cheshire East in relation to the number of users, there is therefore no evidence to support it is under used... PNFS is of the view that this is needed for public use and would object to the extinguishment of this path.”*

In this case the landowner is in the best position to provide evidence of use given that the footpath is a short path that runs directly through the middle of his residential garden. The landowner has ensured that the path is available for use by the public at all times and has not stated that the path is not used, but has instead indicated that it is infrequently used. Public Rights of Way Officers also carried out a visit of the site and saw no evidence that the path had been recently used or used on a regular basis as compared to the alternative footpaths within the area. Furthermore, a number of representations have been received from members of the public regarding the proposed extinguishment. A common theme within those representations is that local members of the public have 'chosen' not to walk along Footpath No. 20 and have instead chosen to use the alternative footpaths that are immediately available to them.

- b. *“PNFS will support the views of local people who use this path. The Society will object to the Order unless it is shown factual evidence that very few people wish to use it. If there is factual evidence that very few people wish to use it and this evidence outweighs any factual evidence to the contrary, then at that point PNFS will withdraw its objections”.*

In terms of factual evidence, a number of local residents were included in the informal consultation. Two residents responded negatively to the consultation. One resident simply stated that they object to the closure and

made no reference to use of the path or the wider network. The second resident stated that they use the rights of way network in the area and have “chosen” to use Bunbury Footpath No. 20 *“as little as possible”*. Neither representation has demonstrated a “need” for the path or provided evidence of frequent use.

Adjacent property owners were also included in the consultation. Two of those property owners have responded to the consultation by saying that they support the application. One owner has stated that they use the network on a daily basis for dog walking and have never seen anyone use Footpath No. 20. They go on to state that they also choose not to walk the Footpath through the garden as *“there are other far better alternatives within a small distance which are nicer footpaths that I can use”*.

In all twelve letters have been received from members of the public supporting the application. Eleven state that they use the network in the area either regularly or on a daily basis. Ten state that there are better alternative paths close to Footpath No. 20 and as such they have ‘chosen’ not to use Footpath No. 20.

Eight state that the extinguishment of the path would not affect their enjoyment of the footpath network. Five state that they have “never” seen anyone use Footpath No. 20. Two state that the extinguishment of the path would be of no detriment to the community.

Under section 118 of the Highways Act 1980 a Council may make an Order to extinguish a footpath where it appears expedient to do so on the ground that it is not needed for public use. In light of the statements both supporting and opposing the proposal it would appear that the local community have not demonstrated a need for the footpath and have in fact chosen to use other footpaths within the vicinity of Footpath No. 20.

In response to the reply referring to those representations, Peak and Northern Footpaths Society stated :

- c. *“As the numbers of those who support it exceeds those that oppose it, and in view of the comments in my email to you, PNFS are unlikely to object to this Order if made”.*

8.6. The South Cheshire Ramblers have been consulted and responded to say that they have no objection to the path being extinguished.

8.7. No other comments have been received from any other user groups.

9. Access to Information

- 9.1. The background papers of file No. 055E/577 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: Sarah Fraser

Job Title: Public Path Orders Officer

Email: sarah.fraser@cheshireeast.gov.uk