

## **Public Rights of Way Committee**

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**Date of Meeting:** 09 September 2019

**Report Title:** Highways Act 1980 s119 Application for the Diversion of Public Footpath Nos. 12, 13, 24 and 26 (parts), Parish of Barthomley

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

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### **1. Report Summary**

- 1.1. The report outlines the investigation to divert parts of Public Footpath Nos. 12, 13, 24 and 26 in the Parish of Barthomley. 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 parts of Public Footpath Nos. 12, 13, 24 and 26 in the Parish of Barthomley by creating new sections of Public Footpath and extinguishing the current paths as illustrated on Plan No. HA/143 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 landowner for the reasons set out in section 5 below.
- 3.2. Section 119 of the Act also stipulates that a public path diversion order shall not alter the point of termination of the path if that point is not on a highway, or, where it is on a highway, otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
- 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 this section of the report.
- 3.4. 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.
- 3.5. In considering whether or not to confirm the Order, in addition to the matters discussed at paragraphs 3.1 and 3.2 above, the Secretary of State where the Order is opposed, or the Council where the Order is unopposed, must be satisfied that the path or way is not substantially less convenient as a consequence of the diversion having regard to the effect:
- The diversion would have on the public enjoyment of the path 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.
- 3.6. In confirming an Order the Secretary of State where the Order is opposed, or the Council where the Order is unopposed, will also have regard to any

material provision of the Rights of Way improvement Plan prepared by the local highway authority and the effect of the path or way on the needs of agriculture, forestry and biodiversity.

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

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

#### **5. Background**

- 5.1. An application has been received from the Duchy of Lancaster requesting that the Council make an Order under Section 119 of the Highways Act 1980 to divert parts of Public Footpath Nos. 12, 13, 24 and 26 in the Parish of Barthomley on the land at Flash House Farm.
- 5.2. The land over which the lengths of Public Footpath Nos. 12, 13, 24 and 26 Barthomley to be diverted and the proposed diversions belongs wholly to the applicants. There is currently a tenant farmer at this property and the proposed diversions have also been agreed with them.
- 5.3. This report sets out the proposed diversions in parts that relate to the coloured sections on Plan No. HA/143. The overall, trajectory, context and enjoyment of the whole of Public Footpath Nos. 12, 13, 24 and 26 in the Parish of Barthomley will not change.
- 5.4. The section in red to be diverted as shown on Plan No. HA/143 comprises parts of Public Footpath Nos. 13 and 12. The section of path to be diverted is shown by a solid red line between points A-B-C and the proposed diversion is illustrated with a red dashed line between points A-D.
- 5.5. The current definitive lines of Public Footpath Nos. 13 and 12 Barthomley to be diverted runs between points A-B-C for approximately 369 metres. Public Footpath No. 13 Barthomley runs between points A-B in a generally north westerly direction for approximately 190 metres and Barthomley Public Footpath No. 12 runs between points B-C in a generally north north easterly direction for approximately 180 metres. This is a cross field path that was left running through the middle of the field after the M6 Side Roads Order was made in 1960.
- 5.6. The proposed diversion of Public Footpath Nos. 13 and 12 will run from points A-D in a generally northerly direction for approximately 278 metres along the boundary of the field and will be at least 2 metres wide; it will become part of Barthomley Public Footpath No. 13 and Barthomley Public Footpath No. 12 will commence at point C and run in a north easterly direction. A 2 in 1 field/pedestrian gate will be installed at point D. The width of the proposed diversion will be 2 metres and the surfacing will be the same

as current which is across field. The diversion will enable the landowner to be able to manage the land more efficiently and will be more convenient for users due to its length and better alignment.

- 5.7. The second section to be diverted is shown in green on Plan No. HA/143 and comprises part of Public Footpath No. 26 Barthomley. The section of path to be diverted is shown by a solid green line between points E-F and the proposed diversion is illustrated with a green dashed line between points J-H-F.
- 5.8. The current definitive line of Public Footpath No. 26 Barthomley runs between points E-F in a generally northerly direction for approximately 104 metres. It runs along a private driveway for Scotts Green Cottage, and then through a gate before crossing a field and then a stream.
- 5.9. The proposed diversion of Public Footpath No. 26 runs between points J-H-F in a generally north westerly direction for approximately 116 metres and will connect, at point J, to the proposed diversion of Barthomley Public Footpath No. 12 shown in blue. It will cross the stream at the location of the current footbridge, which has previously been off the definitive line, and which has a stile at both ends. The width of the proposed diversion will be 2 metres apart from the section over the bridge. The diversion will increase the privacy and security for the residents of Scotts Green Cottage as it will remove the footpath from their driveway.
- 5.10. The third section to be diverted is shown in blue on Plan No. HA/143 and comprises part of Public Footpath No. 12 Barthomley. The section of path to be diverted is shown by a solid blue line between points G-I and the proposed diversion is illustrated with a blue dashed line between points G-J-K.
- 5.11. The current definitive line of Public Footpath No. 12 Barthomley runs between points G-I in a generally easterly direction for approximately 267 metres. The definitive line is currently obstructed by two farm buildings and a permissive route is currently in place. In line with the Cheshire East PROW policy, if an obstruction is substantial or impractical to remove the landowner will be required to apply for a diversion rather than remove the obstruction, and also provide an alternative route.
- 5.12. The proposed diversion of Public Footpath No. 12 Barthomley will run between points G-J-K and follows the current permissive route. This will run from point G, where a new 2 in 1 pedestrian/field gate will be installed, in a generally north easterly direction for approximately 7 metres to point J. It will then run in a north easterly direction and follow the field boundary until it reaches a footbridge where a new kissing gate will be installed. The

proposed diversion will then run through a wooded area for approximately 32 metres and will have a width of 1.5 metres, at the end of the wooded area a kissing gate will be installed. The diversion will then follow the route of the stream and pass through a new 2 in 1 pedestrian/field gate at a field boundary and then will terminate at point K where it will meet the proposed diversion of Barthomley Public Footpath No. 24. The total length of the proposed diversion is 307 metres.

- 5.13. The final section to be diverted is shown in orange on Plan No. HA/143 and is for the diversion of part of Public Footpath No. 24 Barthomley. The section of path to be diverted is shown by a solid orange line between points N-M-L and the proposed diversion is illustrated with an orange dashed line between points N-I-M-K-L.
- 5.14. The current definitive line of the Public Footpath No. 24 Barthomley runs between points N-M-L in a generally north westerly direction for approximately 373 metres. The definitive line is currently obstructed for a distance of about 28 metres near its junction with Barthomley Footpath No. 12, the proposed diversion will follow the permissive route and also the route that is currently walked by most users.
- 5.15. The proposed diversion of Public Footpath No. 24 Barthomley will run between points N-I-M-K-L in a generally north westerly direction for a distance of approximately 307 metres. From point N to point I, the proposed diversion will run along the opposite side of the field boundary from the definitive line in order to provide better land management for the landowner. It will then follow the permissive route alongside the obstructed section and will have a width of 2 metres, the diversion will then follow an enclosed section with a width of 2.5 metres between point M and point K; at point K a new kissing gate will be installed. The proposed diversion will then run to point L along an existing track, with a width of 2 metres.
- 5.16. The proposal is in the interests of the applicants due to reasons of land management and privacy and security. It will also ensure that none of the footpaths are obstructed by long term, substantial obstructions while also improving access for users by removing cross field paths, diverting onto the walked routes and installing more accessible furniture.

## **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.

## **6.10 Climate Change Implications**

6.10.1 There are no direct implications for climate change.

## **7. Ward Members Affected**

7.1. Haslington Ward: Councillor Mary Addison and Councillor Steven Edgar were consulted and no comments were received.

## 8. Consultation & Engagement

- 8.1. Barthomley Parish Council, the user groups, statutory undertakers and the Council's Nature Conservation Officer have been consulted. No comments were received apart from the following:
- 8.2. Peak and Northern Footpath Society (PNFS) was consulted and provided in depth comments regarding the diversion. These comments have been summarised as following:
  - 8.2.1. They have no objections to the diversion of the red section (as shown on Plan No. HA/143).
  - 8.2.2. Regarding the green section (as shown on Plan No. HA/143) of the diversion PNFS raised comments regarding electric fences in the field and the overgrowth near to the footbridge. It was confirmed that all electric fences will be removed and these will not obstruct the proposed diversion and a plan for managing the overgrowth will be put in place following further discussion with the Public Rights of Way Network Management and Enforcement Officer.
  - 8.2.3. Regarding the blue section of the diversion (shown on Plan No. HA/143) PNFS raised issues with the proposed furniture, the current overgrowth and the proposed width. This issue is outstanding until a discussion can be had with the Public Rights of Way Network Management and Enforcement Officer for the area and the results will be reported verbally to the Committee.
  - 8.2.4. Regarding the orange section of the diversion, PNFS have no objections to the section running from M-L but have raised objections to the section running from M-N. They state that *"The current legal line that runs along the field boundary between I and N is pleasant to use, affords good views, is convenient etc. The proposed route is substantially less convenient- the ground is lower than the current legal line by about 10 feet, it is muddy for a width of about 3 metres away from the field boundary having been churned up by cattle , it is likely to be unusable in winter due to water run off from the field above, the views are restricted. it is not an acceptable alternative route"* Further discussion is due to be had with PNFS and this will be reported verbally to the Committee.
- 8.3. 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. 040D/579 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 Allenet

Job Title: Public Path Orders Officer

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