

Public Rights of Way Committee

Date of Meeting: 09 September 2019

Report Title: Highways Act 1980 s119 Application for the Diversion of Public Footpath No. 13 (part), Parish of Pott Shrigley

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 13 in the Parish of Pott Shrigley. 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. 13 in the Parish of Pott Shrigley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/144 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 Mr Bourne of Red Acre Hall Farm in Pott Shrigley requesting that the Council make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 13 in the Parish of Pott Shrigley.
- 5.2. Public Footpath No. 13 Pott Shrigley commences at its junction with Shrigley Road and then continues in a generally northerly direction for approximately 1,245 metres to another junction with Shrigley Road. The section of path to be diverted is shown by a solid black line on Plan No. HA/144 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 length of Public Footpath No. 13 Pott Shrigley to be diverted and the proposed diversion belongs wholly to the applicants.
- 5.4. The length of Public Footpath No. 13 Pott Shrigley to be diverted runs in a generally southerly direction between points A and B on Plan No. HA/144 for approximately 163 metres. It commences at point A and runs along the edge of a pasture field for approximately 62 metres and then continues through a kissing gate to then run through a yard which is used to manage the movement of livestock. After a distance of approximately 46 metres Public Footpath No. 13 Pott Shrigley then continues through a large farm gate and into an enclosed courtyard which is often used for livestock control and also contains the entrance to the private accommodation. Public Footpath No. 13 Pott Shrigley runs through the courtyard for approximately 33 metres and exits through another gate, it then continues along the driveway to point B. Throughout the yard and the courtyard the footpath has a concrete surface.
- 5.5. The proposed diversion would follow the route A-C-B on Plan No. HA/144; this route is already well used by the public as a permissive route around the farm. It runs from point A, where a signpost currently points along the permissive path, and continues in generally south easterly direction alongside a row of trees across a pasture field for approximately 105 metres to point C. At point C a new pedestrian gate will be installed which

will conform to the Cheshire East Council standards for path furniture, the diversion will then continue in a south westerly direction for approximately 209 metres along a stoned track to point B. The diversion will have a width of 2 metres throughout and have a total length of 314 metres.

- 5.6. The landowner has had a permissive footpath in place at the farm for the past 30 years and many of the walking guides in the area describe the permissive footpath instead of the definitive line. If users walk the definitive line they walk very close to the front door and windows of the dwelling which comprises the living area of the farm, so by diverting the footpath permanently on to the permissive route the landowner will have increased privacy and will also be able to use the inner courtyard to manage livestock in a more efficient way. Moving users out of the farm yard may also increase their safety, with many users preferring to avoid such areas in which livestock are held.

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. Poynton East and Pott Shrigley Ward: Councillor Jos Saunders and Councillor Nicky Wylie were consulted and no comments were received.

8. Consultation & Engagement

- 8.1. Pott Shrigley 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. The East Cheshire Ramblers agreed that the proposed diversion has been used as a permissive route for many years and that they are happy to accept it becomes the definitive line in the future.
- 8.3. Peak and Northern Footpath Society (PNFS) commented that the proposed route between Points A and C suffers deep ruts caused to the surface by cattle. Discussions are ongoing with the applicant as to any mitigation required and will be reported verbally to the Committee.
- 8.4. Both East Cheshire Ramblers and PNFS made comments about signage on the proposed diversion if the Order is confirmed. The route will be well signed if the Order is confirmed to ensure users are aware of the new definitive line.
- 8.5. 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. 244D/580 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