

Highways Act 1980, Section 119
Proposed Diversion of Public Footpath, Stafford No. 65 (part)
off Ash Flats Lane, Stafford

Recommendation:

That the Deputy Chief Executive and Director for Families and Communities be authorised to:

- a) make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No 65 off Ash Flats Lane, Stafford as shown on the Plan attached to this report;
- b) that if no objections are duly lodged, or if objections are duly lodged and are subsequently withdrawn, the above Order be confirmed; or,
- c) If objections are duly lodged, and not subsequently withdrawn, the Order be referred to the Secretary of State for determination.

Report of Deputy Chief Executive and Director for Families and Communities

PART A

Why is it coming here - what decision(s) is (are) required?

- 1 Consideration of applications to divert, extinguish or create public rights of way under the Highways Act 1980, falls within the responsibility of the Countryside and Rights of Way Panel of the County Council's Planning Committee, although some such decisions are delegated to Officers.
- 2 The proposal considered within this report seeks to extinguish the section of footpath Stafford No. 65 shown by a solid black line (A-B) and create a new route along the alignment shown by a broken black line (B-C). The proposed new footpath will have a width of 1.2 metres and is located 0.8 metre from the base of the boundary hedge. A short flight of steps will be provided at Point C. The proposed new route will be a highway maintainable at public expense.

Reasons for recommendations:

3. Applications to divert public rights of way may be made under Section 119 of the Highways Act 1980, providing that certain criteria are met. In this case, it is considered that this application is capable of meeting the legislative criteria, and that it would be expedient to make the requested Order. It is therefore, recommended that the Order be made.

PART B

Background:

- 4 Staffordshire County Council is the Highway & Surveying Authority for the area within which Public Footpath, Stafford No 65 runs.
- 5 The consideration of applications for Public Path Orders is a discretionary power of the authority, rather than a statutory duty.
- 6 The decision whether or not to make a Public Path Order is “quasi-judicial” in nature. This means that the decision must be made having taken into account all of the available and relevant evidence, along with consideration of any submissions made by any party with an interest in the matter.
- 7 In order to progress applications to divert, extinguish or create public rights of way without any undue impact on the Authority’s statutory (non-discretionary) duties, the County Council has instructed consultants (Robin Carr Associates) to process this application on its behalf.
- 8 The section of Public Footpath, Stafford No 65 that is the subject of the application (A-B on the Plan) runs up the embankment of Ash Flats Lane, via a flight of steps, adjacent to the road bridge which passes over the M6 motorway.
- 9 On 3rd May 2018 Kier, on behalf of Highways England, applied to Staffordshire County Council to divert the footpath (A-B on the Plan) onto the alignment shown by a broken black line (B-C on the Plan). The application has been made to allow for the installation of safety barriers along the side of Ash Flats Lane on the approach to the road bridge over the M6 motorway. The purpose of the barriers is to prevent a vehicle leaving Ash Flats Lane and running down the embankment onto the motorway.
- 10 This report seeks to advise the County Council of the outcome of statutory and non-statutory consultations, and an assessment against the relevant legislative criteria, thus enabling the Council to consider whether or not to promote the Order requested.

Summary of Legislative Criteria:

- 11 Section 119 of the Highways Act 1980 gives local authorities the powers to make orders to divert footpaths, bridleways or restricted byways where it is considered expedient to do so in the interests of either the owner/lessee/occupier of the land and/or the public.
- 12 Such an Order must not alter the termination point of a path or way if that point is not on a highway; or (where it is on a highway) otherwise to another point on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
- 13 An Order made under Section 119 of the 1980 Act shall not be confirmed unless the Authority (or where appropriate, the Secretary of State) is satisfied

that it is expedient, as described above, and that the path will not be substantially less convenient as a consequence of the diversion. The Authority (or the Secretary of State) must also have regard to the effect to which:

- The diversion would have on public enjoyment of the path as a whole
- The effect on other land served by the path
- Any provisions for compensation
- Any material provision within the Rights of Way Improvement Plan
- The needs of agriculture and forestry; biodiversity; and disability discrimination/inclusivity legislation

Consultations:

- 14 As part of the application process, the proposal has been subject to informal consultation including user interest groups and the posting of consultation notices on site. Stafford Borough Council and local County Councillor(s) have also been consulted. One objection to the proposal has been received and remains outstanding.
- 15 The adjoining land/property owner has objected to the proposals on the grounds that it will adversely affect his privacy, but also indicated that he considered that his concerns could be mitigated by some additional hedge planting. He also raised concerns over the construction of the proposed new footpath, the site works having been completed in advance of the diversion application being determined.
- 16 The applicants have sought to engage with the objector to address his concerns but have not received any response. Robin Carr Associates, on behalf of the County Council, have also written to him, but again have not received any response. As a result, it is considered expedient to treat the objection as still being outstanding.
- 17 It should be noted that the objections relating to privacy of adjoining property do not fall within the parameters of the specific matters that are to be considered in the making or confirmation of a Public Path Diversion Order. As a result, whilst the adjoining property owner's concerns are undoubtedly genuine, they are not necessarily matters that can be taken into account when considering the diversion application.
- 18 Furthermore, the objections relating to the construction of the new path are not matters that can be taken into consideration either. The new footpath will have to be provided to a standard that is satisfactory to Staffordshire County Council, as Highway Authority. There is however no requirement for the new path to be provided until such a time as a confirmed Order is in place. Any concerns over the condition of the current path are not therefore relevant to the determination of the application.
- 19 Notwithstanding the above, it should be noted that if the objector reaffirms his objections following the making of a Public Path Diversion Order, the County Council does not have the powers to confirm the Order. Instead it would be necessary to refer the Order to the Secretary of State (via the Planning

Inspectorate) for determination. This may be by way of written representations, a hearing or local public inquiry.

Consideration of the Proposal Against the Legislative Criteria:

Landowner/Occupier or Public Interest

- 20 The land forming the embankment of Ash Flats Lane on the approach to the bridge over the M6 motorway is in the ownership of “Highways England”. The safety barrier scheme on Ash Flats Lane has been undertaken to mitigate the risk of a vehicle leaving Ash Flats Lane and running down the embankment onto the motorway. The diversion may therefore be considered to be in the interests of the landowner because it facilitates their safety scheme. It may also be considered to be in the public interest, again because of the safety benefits.

Termination Points

- 21 The diversion proposals will result in the location of the junction of the footpath with Ash Flats Lane changing from Point A to Point C on the plan. As a result, the legislation requires that the new termination point is as convenient as the existing junction with the road.
- 22 Both Points A and C exit onto the footway of Ash Flats Lane therefore it may be reasonable to conclude that Point C is as convenient as Point A.

Whether the diversion will result in the path being substantially less convenient

- 23 When considering the convenience of a proposal, a variety of matters may be taken into consideration including, but not necessarily restricted to, distance, gradient, ground conditions and the existence of path furniture.
- 24 In this case, path users heading north eastwards along Ash Flats Lane into Stafford will not have any real increase in distance; and will also benefit from a significant reduction in the number of steps to negotiate. However, those planning to head south westerly along Ash Flats Lane over the M6 Motorway will have approximately 100 metres further to walk, although again, they will benefit from a significant reduction in the number of steps to negotiate.
- 25 The issue of the convenience of the proposed new route is therefore finely balanced. For some users it may be considered more convenient, and for others, it will be less convenient, although perhaps not substantially so.

Effect on Enjoyment of the Path as a Whole

- 26 The proposed diversion offers a minimal change to the rights of way network, which is not considered to have any negative impact on the enjoyment of the path as a whole.

The effect on other land served by the path

- 27 No reliance is placed on the existence of the public footpaths for the purposes of access to land or property.

Any provisions for compensation

- 28 The land crossed by both existing and proposed routes is all in the same ownership, and the applicants (the landowners) have agreed to defray any compensation that may become payable.

Any material provision within the Rights of Way Improvement Plan

- 29 There are no provisions within the Rights of Way Improvement Plan that would have a negative impact on the consideration of these proposals.

Consideration of the needs of agriculture and forestry; biodiversity; and disability discrimination/inclusivity legislation

- 30 There are no matters arising from these proposals that have any negative impact on agriculture, forestry or biodiversity. However, the proposals will have a positive impact on accessibility as the new route will have fewer steps to negotiate.

Equalities implications:

- 31 A site inspection of the existing and proposed route has been undertaken. The proposals are not considered to have an adverse impact on accessibility.

Legal implications:

- 32 The effect of the Diversion Order, if confirmed, will be to permanently alter the alignment of Public Footpath No 65 (pt) off Ash Flats Lane, Stafford. As part of the legal order process, the Definitive Map and Statement for the area will also be updated.
- 33 Section 119 and Schedule 6 of the Highways Act 1980 provides the County Council with the powers to divert public footpaths using a legal order known as a Public Path Order. Section 53 and Schedule 15 of the Wildlife and Countryside Act 1981 provide the necessary powers to modify the Definitive Map and Statement using a legal Order known as a Definitive Map Modification Order. The legislation allows for both types of Order to be combined into a single legal order, which both changes the path on the ground and modifies the Definitive Map and Statement at the same time.

Resource and Value for Money implications:

- 34 The cost of making and advertising Public Path Orders, along with the cost of any works on the ground to establish the new path to an acceptable standard, will be met fully by the applicants.

Risk implications:

- 35 As with any recreational pursuit, there are risks to users accessing the countryside. The proposals under consideration are not considered to increase such risks.
- 36 Any person who is aggrieved by the proposal, has a statutory right to object, and if the County Council decide to still proceed with the Order, the matter will be referred to the Planning Inspectorate for determination.
- 37 In addition, any person with an interest in the land crossed by the existing or proposed route, has a right to seek compensation as a result of any loss suffered by the coming into effect of the Order. The applicants have agreed to underwrite any such claims should they be made.

Available Options:

- 38 If the County Council is minded to make the requested Order, it is recommended that they resolve to:
- a) make an Order under Section 119 of the Highways Act 1980 to divert Public Footpath No 65 (pt) off Ash Flats Lane in Stafford as shown on Plan 1 attached to this report;
 - b) that if no objections are duly lodged, or if objections are duly lodged and are subsequently withdrawn, the above Order be confirmed; or,
 - c) If objections are duly lodged, and not subsequently withdrawn, the Order be referred to the Secretary of State for determination.
- 39 Alternatively, if the County Council is minded to refuse the application for the Order, they should advise the applicant of the grounds upon which the application has been refused, and that there is no right of appeal.

Recommendation:

- 40 Whilst the decision to make a Public Path Order rests solely with the County Council, it is recommended that they resolve to:
- a) make an Order under Section 119 of the Highways Act 1980 to divert Public Footpath No 65 (pt) off Ash Flats Lane in Stafford as shown on Plan 1 attached to this report;
 - b) that if no objections are duly lodged, or if objections are duly lodged and are subsequently withdrawn, the above Order be confirmed; or,
 - c) If objections are duly lodged, and not subsequently withdrawn, the Order be referred to the Secretary of State for determination.

Report author:

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List of background papers:

Application form and accompanying documents.
Consultation responses.
Objection and associated correspondence