

**Highways Act 1980, Section 119
Proposed Diversion of Public Footpaths,
Quarnford No. 29 (part) & No. 34 (part)
at Glead Tail, Quarnford**

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 Footpaths No 29 (pt) & No 34 (pt) at Glead Tail in the Parish of Quarnford 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- b) that if no objections are duly lodged, or if objections are duly lodged and are subsequently withdrawn, the above Order be confirmed; or,
- c) If objections are duly lodged, and not subsequently withdrawn, the Order be referred to the Secretary of State for determination.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 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 divert the section of footpath Quarnford No. 29 shown by a solid black line (A-B-D) onto the alignment shown by a broken black line (A-E-D) and also divert the section of footpath Quarnford No. 34 also shown by a solid black line (C-B) onto the alignment shown by a broken black line (C-F-D). The proposed new footpaths will have a width of 1.8 meters and will be highways 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 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 Footpaths Quarnford No. 29 and No. 34 run.
- 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 Sections of Public Footpaths, Quarnford No 29 & 34 (A-B-C on Plan 1) run across the front of the property known as Glead Tail. The footpaths then continue out into what may be described as open country/moorland with steep gradients and rugged terrain
- 9 On 18th June 2020 the owners of Glead Tail applied to Staffordshire County Council to divert the footpaths away from the residential property and garden onto the alignment shown by a broken black line A-E-D and C-F-D on Plan 1. The applicants consider that this will increase their privacy and enjoyment of the outside areas of the property and also reduce the feeling of intrusiveness for members of the public using the footpaths.
- 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.
- 13 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.
- 14 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:

- 15 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. Quarnford Parish Council, Staffordshire Moorlands District Council, the Peak district National Park Authority and local County Councillor(s) have also been consulted.
- 16 The Peak and Northern Footpaths Society has objected to the diversion of Public Footpath, Quarnford No 29 on the grounds that the diversion results in a loss of view. This is discussed further below.

Consideration of the Proposal Against the Legislative Criteria:

Landowner/Occupier or Public Interest

- 17 The applicants consider that the diversion will increase their privacy and enjoyment of the outside areas of their property; and also reduce the feeling of intrusiveness for members of the public using the footpaths.
- 18 The footpaths do run in very close proximity to the property and it is considered that moving the footpaths will certainly allow the applicants greater freedom and enjoyment of the outside areas of their property. There will also be a notable improvement to the perceptions of privacy. The applicants will still be able to see, and be seen by, users of the public footpath, but such walkers will not have to walk through the residential curtilage.
- 19 Having considered the above factors, it would be reasonable to conclude that the diversion of the footpaths is in the interests of the owners of the land.

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

- 20 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.
- 21 The topography of the surrounding area through which the paths run is hilly upland, with a climb/ decent of approximately 70m from the valley floor to the ridge path above Glead Tail. Parts of the route can be undulating, uneven and

difficult. The surrounding area is treated as open access with a number of informal paths criss-crossing and providing routes between the legal paths.

- 22 Given the surrounding terrain the issue of distance may not be considered to be as important as cases in less remote locations. Any increase in distance may be considered negligible, especially when considered in the context of the location of the proposals, the gradients involved, and that path users have to walk quite a distance before reaching the diverted sections of footpath.
- 23 With regard to path furniture, the proposed diversion will facilitate the removal of 3 existing stiles. Between Points F and C (on Plan 1) the proposed new route will zig-zag down the steep slope to provide more acceptable gradients.

Effect on Enjoyment of the Path as a Whole

- 24 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. On the contrary, moving the path out of the residential curtilage of the property is likely to have a positive impact on enjoyment as many walkers feel it is intrusive to walk through the front garden of a private house.
- 25 The Peak and Northern Footpaths Society have however objected on the grounds of a loss of views from the path. There are spectacular views of the surrounding countryside from both existing and proposed paths, and indeed from any point in the surrounding area. It is not considered that the diversion is detrimental to or has a negative impact upon the use of the footpath as a whole.

The effect on other land served by the path

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

Any provisions for compensation

- 27 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

- 28 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

- 29 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 routes will have fewer stiles.

Equalities implications:

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

Legal implications:

- 31 The effect of the Diversion Order, if confirmed, will be to permanently alter the alignment of Public Footpaths No 29 (pt) & No 34 (pt) at Glead Tail, Quarnford. As part of the legal order process, the Definitive Map and Statement for the area will also be updated.
- 32 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:

- 33 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:

- 34 As with any recreational pursuit, there are risks to users accessing the countryside. The proposals under consideration are not considered to increase such risks.
- 35 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.
- 36 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:

37 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 part of Public Footpaths No 29 (pt) & No 34 (pt) at Glead Tail in the Parish of Quarnford 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.

38 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:

37 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 part of Public Footpaths No 29 (pt) & No 34 (pt) at Glead Tail in the Parish of Quarnford as shown on Plan 1 attached to this report;
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- c) If objections are duly lodged, and not subsequently withdrawn, the Order be referred to the Secretary of State for determination.

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List of background papers:

Application form and accompanying documents.
Consultation responses.