

Cheshire West and Chester Borough Council
Delegated Report

Application Number	SD/055/Moulton
Description	Proposed footpath diversion order under section 119 of the Highways Act 1980
Site address	Public Footpath No 7 Moulton
Applicant Name	C Leighton, Agent, Miller Homes, Newton Le Willows
Ward	Davenham and Moulton
Ward Members	Councillors James Pearson, Gaynor Sinar and Helen Weltman
Case Officer	Adele Mayer, Public Rights of Way Officer PublicRightOfWay@cheshirewestandchester.gov.uk
Date	6 April 2018

Recommendation:

- (1) That an Order be made (subject to the limitation of a pedestrian council standard gate at each end of the diverted path) under Section 119 Highways Act 1980, diverting Footpath No.7 (part) in the parish of Moulton as shown on Plan No SD/055 by a black broken line on the grounds that it is expedient to do so in the interests of the landowners and occupiers of the land concerned.
- (2) That the Highways Commissioner be authorised to take any action considered necessary in respect of the confirmation of the Order hereby authorised to be made

Site Description

1. Footpath 7 Moulton commences on Jack Lane (UY24777) and runs in a north westerly direction partly over an access track to the rear of housing on Niddries Lane, Moulton (UY1690). The part of the footpath affected by the application runs between OS grid reference SJ 6610 6936 (point A on the plan) in a west north westerly direction for approximately 112 metres to OS grid reference SJ 6600 6939

(point B on the plan) as shown by a solid black line between points A and B on plan SD/055 (“the plan”).

2. The surface of the footpath affected was pasture throughout. The surface is now metalled. Pedestrian gates were located at the junction with Jack Lane and the junction with the vehicular access track to the rear of properties on Niddries Lane. Photographs of the footpath can be found at Appendix A.

Proposal/application detail

3. The background event is that outline planning permission had been granted by Cheshire West and Chester under reference number 14/00499/OUT for development over land between Niddries Lane and Jack Lane, Moulton. The subsequent detail layout under planning reference 16/01338/DIS indicated a change of design and the alignment of the legal line of the footpath and its surfacing which was not taken account of during that stage of the planning consultation. The development has proceeded to the point of full construction and it is now apparent that a diversion of the footpath was required. The omission in dealing with this situation before development took place means the proposal is made under the Highways Act 1980 (“HA80”) section 119 and not under the planning act.
4. The proposal to divert the alignment between points C and D on the plan takes into account safety reasons so that the footpath is accommodated within the new adoptable footway. The proposed diversion between B and D includes a change of less than 0.35 metres in the ground level of the footpath and re-configuration accommodating a driveway to two of the new houses. The length of the proposed diversion between the same two points is 115 metres. The width of the path between B and D will be 1.75 metres and between A and D will be a width of 2 metres. as shown by a black dashed line between points A and C and D and B on the plan.
5. The surface of the new footpath will be maintained by the management company for the residential estate. Gates will be installed for reasons of safety at the point near B where residents on Niddries Lane have vehicular access to the rear of properties and at point A where Jack lane has no verge or footway at the termination of the path and the crossing of the Lane.

Consultation

6. The parish council have not responded
7. Councillor Helen Weltman has commented that the change is small and is satisfied that the future maintenance will be funded.
8. Statutory undertakers have been consulted and have no objections. . If a diversion order is made, existing rights of way access for the statutory undertakers to their equipment and apparatus are, in any case, protected
9. User groups have been consulted. The Peak and Northern FPS have no objection, but have suggested soft landscaping would improve the amenity of the path. On the south side of the path between points B and D there is a row of low hedge planting. The Ramblers local group have commented to acknowledge the development has placed the path within housing and there is no objection and they accept the safety gates.

Relevant Legislation

10. 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 owners and occupiers of Holst Gardens and for the developer, Miller Homes for the reasons set out in paragraphs 3 and 4 above and thus that the test for the making of an order has been satisfied.
11. The installation of non lockable pedestrian gates as to facilitate safety measures is permitted under s 119(4) which provides for the Council to make the Order subject to limitations or conditions as may be specified in the Order. The justification for requiring gates at either end of the diversion lies in the concern raised for vulnerable users who might otherwise egress the diverted route onto vehicular traffic. The installation of gates will require users to stop before egressing giving them time to properly view for oncoming traffic.
12. It is also necessary to consider whether the tests for confirming the order are likely to be satisfied so as not to make an order that is manifestly incapable of confirmation. At the confirmation stage, Section 119(6) HA80 inclusive of the following factors must be taken into account in addition to those matters referred to in paragraph 19 below.

12.1. Whether the path is substantially less convenient to the public as a consequence of the diversion and whether it is expedient to confirm the Order considering:-

12.1.1. The effect that the diversion would have on the enjoyment of the path or way as a whole,

12.1.2. The effect that the coming into operation of the order would have as respects other land served by the existing public right of way, and

12.1.3. 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.

13. In addition to the matters contained in Section 119 HA80, the Council in preparing this report and recommendation, has had regard to a number of other considerations required by law including:-

13.1. the needs of agriculture and forestry and the desirability of conserving biodiversity, flora, fauna and geological and physiological features and requirements in relation to disability discrimination, equality, and the prevention of crime and disorder,

13.2. and all material provisions of the Council's Rights of Way Improvement Plan.

14. Where objections to an order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. Where there are no outstanding objections to an Order, it is for the Council to determine whether the Order should be confirmed.

Relevant Policies

15. The following policies and protocols are relevant to this application.

15.1. Rights of Way Improvement Plan 2011-16

15.1.1. Statement of Action E05 "we will follow the Equality Act 2010 to comply with standards for mobility and visually impaired users where appropriate and reasonable"

15.1.2. Statement of Action BS3; "Working with colleagues within the authority we will seek to improve accommodation for vulnerable road users where the greenspace links with the adopted Highway network"

15.2. Application File SD055 Moulton

Assessment and Issues

16. The purpose of the diversion is to alter the definitive line of the footpath so that it resolves an issue arising after the construction of a footpath which does not accommodate the legal line of the legal line of the public footpath (with planning consent reference 14/00499/OUT). The diversion is considered to be in the interest of the owners and occupiers of the land. In this respect it is considered that the proposal satisfies the tests set out in paragraph 10 above.
17. The length of the diversion has been considered both with regard to the comparative length of the current and new route and consideration of the total length of the footpath. The path had a rural setting and the path now serves as a functional path for access to Jack Lane or from the new houses to village services. The route has a similar gradient as before and as such it is considered that the diversion provides a satisfactory alternative to the footpath and could be considered as convenient.
18. In respect of the expediency of confirming the order taking into account the matters mentioned in paragraphs 11 and 12 above, it is considered that there are no material impacts on land currently served by the path or to be crossed by the new path which would affect the expediency of confirming the proposed order.
19. In respect of the matters mentioned in paragraph 13 and 15, regard has been given to accessibility and the policies of the ROWIP and the needs of agriculture.

Conclusion

20. After consideration of the application and the relevant law and policies it is considered that it is necessary to divert part of Public Footpath 7 Moulton as illustrated on the plan in the interests of the owners and occupiers.

.Associated documents

File: SD/055/Moulton

Plan SD/055

Planning Application 14/00499/OUT

Appendix A

Jack Lane commencement of path into field (below) prior to development





Path near to Point B on the plan







route partial construction





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