

Cheshire West and Chester Council

Delegated report

Application Number **SD/039/FP7 Norley**

Description **An application has been received requesting that the council make a public path diversion order under section 119 of the Highways Act 1980**

Site address **Public Footpath No 7 (part) Norley**

Applicant Name **Mr and Mrs Sellers, The Home Farm, Norley WA6 8NL**

Ward **Kingsley Ward**

Ward Members **Councillor Ralph Oultram**

Case Officer **Adele Mayer, Public Rights of Way Officer
or tel: 01606 271822**

Date **1 June 2016**

Recommendation

- (1) That an Order be made under Section 119 of Highways Act 1980, diverting Footpath No.7 (part) in the parish of Norley as shown on Plan No SD/039 by a black broken line on the grounds that it is expedient to do so in the interests of the owner and occupiers of the land concerned.

- (2) That the Area Place Manager be authorised to take any action considered necessary in respect of the confirmation of the Order hereby authorised to be made.

1. Site Description

- 1.1 Footpath No 7 Norley runs from the School Bank (UV2877) in a north westerly direction to FP9 Norley south of the Wob (UV2590). The section of path affected by the proposal runs from OS grid reference SJ 5702 7287 in a north westerly direction OSGR SJ 5682 7296.

2. Background

- 2.1 An application has been submitted by the owners of Home Farm, Norley, requesting that the council make an order to divert part of Footpath No 7. The section of paths proposed to be diverted is shown on the attached plan as a solid black line between A and B on plan SD/039 ("the Plan"). The length of the field section of Footpath 1 proposed to be stopped up is approximately 226 metres (A to B on the plan).
- 2.2 The landowner owns the land over which the current path runs and over which the diversion will run. The application has been made in the interests of the landowners.
- 2.3 The applicant states the purpose of diverting the footpath away from the busy working farm yard will increase safety of the footpath user. Stock are moved around in the yard and housed in the barns close to the footpath, where there may be conflict with dogs and public walking around.
- 2.4 The affected section of Footpath 7 runs through the farm yard and barn and is partly concreted surface. There are no recorded limitations. The length of the new route is approximately 288 metres (A to C to D to B on the plan). The diversion is shown on the Plan by a broken black line between points A to C to D to B (OSGR SJ 5702 7287 to OSGR SJ 5698 7282 to OSGR SJ 5682 7296 to OSGR SJ 5682 7296).

- 2.5 The surface of the diverted sections of footpath will be pasture grass throughout. Work will be needed to level the route of the path between points D and C, which would take place in the autumn ploughing time.
- 2.6 Where furniture is needed the landowner has agreed to install gates. The gates will meet council standards and be installed under license. The locations of the proposed gates are indicated on the report plan.

3. Consultation

- 3.1 The Parish Council has been consulted and has confirmed there is no objection with the works as stated at 2.5 and 2.6 gates installed and not stiles where needed for stock control.
- 3.2 The Ward Councillor has been consulted and agrees to the proposal.
- 3.3 Statutory undertakers have been consulted and no objections have been received. 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.
- 3.4 User groups have been consulted. A representative from the Mid-Cheshire Footpath Society accepts the proposal with implementation of works as described at 2.5 and 2.6: gates not stiles where path furniture is required.

4. Relevant Legislation

- 4.1 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 owners and occupiers of the land concerned for the reasons set out in paragraphs 6.1 and 6.2 below and thus that the test for the making of an order has been satisfied.

4.2 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, the following factors must be taken into account in addition to those matters referred to in paragraph 4.1 above.

4.2.1 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:

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

4.2.3 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

4.2.4 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.

4.3 In addition to the matters contained in S119 of the Highways Act 1980, the Council in preparing this report and recommendation, has had regard to a number of other considerations required by law including:-

4.3.1 the needs of agriculture and forestry and the desirability of conserving biodiversity, flora, fauna and geological and physiological features,

4.3.2 requirements in relation to disability discrimination, equality, and the prevention of crime and disorder, and

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

4.4 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.

5. Relevant policies and documents

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

- 5.1 Rights of Way Improvement Plan 2011-16
Statement of Action E05 “we will follow the Equalities Act 2010 to comply with standards for mobility and visually impaired users where appropriate and reasonable”
- 5.2 “Structures on rights of Way” 29 July 2009 Committee report and
“Authorising Structures (gaps, gates and stiles) on rights of way” October 2012 Defra guidance
- 5.2 Application File SD 039/Norley

6. Assessment and issues

- 6.1 The purpose of the diversion is to alter the definitive line of the footpath to enable the landowners to safely conduct equestrian and stock management in the farm yard. It is in the interest of the landowner and in this respect it is considered that the proposal satisfies the tests set out in paragraph 4.1 above.
- 6.2 The length of the diversion has been considered both with regard to the comparative length of the current and new route and with consideration of the total length of the footpath. The new route is longer in length by 62 metres than the length of footpath to be stopped up. The path has a rural setting and the path serves a recreational use rather than functional, as such it is considered that the diversion provides a satisfactory alternative to the current path and could be considered as convenient as the current route.
- 6.3 There are no significant differences in the views enjoyed from the current routes in comparison with the proposed alternatives, the property holds no notable architectural or historical value that would be obscured by the diversion and the diversion runs in the direction of the wider landscape.
- 6.4 In respect of the expediency of confirming the order taking into account the matters mentioned in paragraphs 4.2.3 and 4.2.4 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 affect the expediency of confirming the proposed order.

- 6.5 In respect of the matters mentioned in paragraph 4.3, regard has been given to accessibility and the policy of the ROWIP and the needs of agriculture by supporting the expansion of the farm buildings with the proposal to divert the footpath.

7. Conclusion

- 7.1 The proposal to divert has been consulted upon and the responses received have been either neutral or in support of the diversions and comments have been taken into account regarding works required to bring the new route up to a satisfactory condition.
- 7.2 After careful consideration of the application and the relevant law and policies it is considered that it is expedient to divert part of Footpath No 7, Norley as illustrated on The Plan.