

## **CHESHIRE WEST AND CHESTER COUNCIL**

### **DELEGATED REPORT**

<b>Application Number</b>	<b>SD/055/FP1 Wychough</b>
<b>Description</b>	<b>Proposed public path diversion Order under Section 119 of the Highways Act 1980</b>
<b>Site address</b>	<b>Public Footpath No 1 Wychough</b>
<b>Applicant Name</b>	<b>Lord Daresbury Estate, Wychough</b>
<b>Ward</b>	<b>Malpas Ward</b>
<b>Ward Members</b>	<b>Councillor Chris Whitehurst</b>
<b>Case Officers</b>	<b>Adele Mayer, PROW asset management Officer</b> <a href="mailto:PublicRightOfWayWest@cheshirewestandchester.gov.uk">PublicRightOfWayWest@cheshirewestandchester.gov.uk</a>
<b>Date</b>	<b>7 September 2018</b>

### **Recommendation**

- (1) That an Order be made under Section 119 of Highways Act 1980, diverting Footpath No.1 (part) in Wychough as shown on Plan No SD/055A 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 Highways Commissioner be authorised to take any action considered necessary in respect of the confirmation of the Order hereby authorised to be made.
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## **1. Site Description**

- 1.1 The current footpath starts on Mastiff Lane (C824) at OSGR SJ 4860 4610 and runs in a southerly direction through the grounds of Wychough House to re-join Mastiff Lane south of the Manor House, Wychough at OSGR SJ4849 4583. The section affected by this proposal is the commencement of the path on Mastiff Lane, through the garden of Wychough House and a field, in a southerly direction to terminate at the field boundary at OSGR SJ 4856 4596.

## **2. Background**

- 2.1 An application has been submitted by the agent for the Lord Daresbury Estate requesting that the council make an order to divert part of Footpath No 1 to increase the privacy and security of the dwelling of Wychough House. The section of paths proposed to be diverted as described in para 1.1 is an approximate length of 149 metres and is shown on the attached plan as a solid black line between A-B on plan SD/055A ("the Plan").
- 2.2 The Lord Daresbury Estate 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 landowner of the existing route and proposed diversion.
- 2.5 The diversion is proposed to commence approximately 58 metres west of the current point of starting at OS grid reference SJ 4855 4608 and will run in a generally southerly direction to the field boundary at OS grid reference SJ 4856 4596 for an approximate distance of 117 metres. The diversion is shown on the Plan by a broken black line between points C to B.
- 2.6 There are no recorded widths or limitations for this part of FP1 Wychough, however there are existing stiles on the current route at the boundary with Mastiff Lane and at the garden boundary and at the field boundary. The surfacing is currently gravel drive and then grass lawn and gravel path, passes through a gap in the garden hedge and stile before crossing a field to the boundary point referred to above. The proposed diversion will run over pasture grass. The landowner will have the right to install a pedestrian gate to the current council standards, at the field boundary as indicated on the plan

by “g”. A pedestrian gate will also be installed at the boundary with Mastiff Lane

- 2.7 The length of path to be diverted is approximately 149 metres and the proposed is 117 metres (not including the 58 metres between the carriage road current start point and proposed point).

### **3. Consultation**

- 3.1 The Ward councillor has been consulted. The observations and comments include comments from Malpas Parish Council. One observation is that the footpath is being diverted along Mastiff lane and concern was raised with regard to any future increase in vehicle movements. Planning permission has been granted to nearby Stockton Hall Farm under planning reference 15/05109/WAS, for an anaerobic digester and concern is expressed that the increase in vehicles on the country road would be detrimental to pedestrian use. The planning officer's report includes the highway officer comments on the application “No objection. The facility is small in scale and will generate only limited vehicle movements. The use of laneways by agricultural vehicles in this area is appropriate.” A condition on the planning approval is that there would be no associated vehicle movements between the hours of 7pm and 7am. The indication is that the site traffic has been assessed and considered to be acceptable in a rural area. Mastiff Lane does have grass verges and the width does allow refuge for pedestrians off the carriageway.
- 3.2 Other matters that were commented on by the Ward Councillor included the preference for stiles to be replaced with gates. Gates are discussed at para 2.6. Also concern is raised over the waterlogged nature of the ground. The path does in part already run over the same type of land and is accessible. The location is close to the Wych Brook but is not within a flood risk zone. The footpath does run over clay which is a poorly draining soil but there are no reported serious surface problems with the existing path that runs over the same land. It is considered the current surface is as satisfactory for the diverted path.

- 3.4 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.
- 3.5 User groups have been consulted. The Peak and Northern Footpath Society has no objection to the proposed diversion but would require any furniture to reach the BS 5709:2018.

#### **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 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 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**

The following policies and protocols are relevant to this application.

### *5.1.1 Rights of Way Improvement Plan 2011-16*

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"*

5.1.2 *"Structures on rights of Way"* 29<sup>th</sup> July 2009 Committee report and *"Authorising Structures (gaps, gates and stiles) on rights of way"* October 2012 Defra guidance (working towards an updated document inclusive of the BS 5709:2018)

## **6. Assessment and Issues**

- 6.1 The purpose of the diversion is to alter the definitive line of the footpath to increase the privacy and security of the property. It is in the interests 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 lengths of the diversion have been considered both with regard to the comparative length of the diversion and also with comparison to the footpath as a whole. The section of Footpath 1 proposed to be stopped up is comparable in length to the alternative route and within the property boundary will run over pasture grass, therefore it is considered that the alternative route is similar and substantially as convenient as the current route and satisfies the terms of the legislation. The footpath lies within easy distance of three other footpaths leading off Mastiff Lane. The diversion commencement on the lane draws the footpath closer to Footpath 7 Malpas and away from Footpath 6 Malpas. Both footpaths 6 and 7 meet at the same point in Malpas (just south of Welsh View). It is considered that there is no substantial inconvenience.
- 6.3 There are no significant differences in the views enjoyed from the current routes in comparison with the proposed alternatives. Wychough House is not listed as a property with historic conservation value. Between the current point of termination on Mastiff Lane at point A on the plan to the proposed new point of termination at point C on the plan it is a distance of 58 metres. This is a two lane carriageway with grass verge providing pedestrian refuge.
- 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 4.3.1 and 4.3.2, regard has been made to the needs of agriculture with the installation of a pedestrian gate at the field boundary and the applicants' requirement to increase security.

- 6.6 In respect of the matter mentioned in paragraph 4.3.3, due regard has been had to the Statement of Action E05 to follow equality legislation.

## **7. Conclusion**

- 7.1 The proposal to divert has been consulted upon and the responses received have been in support of the diversions.
- 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 No1, Wychough as illustrated on the Plan.

## **10. Associated documents**

Application File SD 055/Wychough  
Plan SD055A

## Appendix A



Junction with Mastiff Lane



Current line of Footpath through Wychough House







Entrance into Wychough House from adjacent field.



Current line of Path to Point B on plan



Mastiff lane between points A and C on the plan



Current Stile at Point C



Proposed route across adjacent field





Point B on the Plan and joining current line of Footpath