

CHESHIRE WEST AND CHESTER COUNCIL

DELEGATED REPORT

Application Number	SD/057/FP10 Aldersey
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 10 Aldersey
Applicant Name	R & J Jones, Crooke Farm, Aldersey
Ward	Farndon Ward
Ward Members	Cllr Howard Greenwood
Case Officers	Adele Mayer, Prow asset management Officer PublicRightsOfWayWest@cheshirewestandchester.gov.uk
Date	13 September 2018

Recommendation

- (1) It is recommended that an Order be made under Section 119 of Highways Act 1980, diverting Footpath No.10 (part) in the Parish of Aldersey as shown on Plan No SD/057 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.

1. Site Description

- 1.1 Footpath No 10, Aldersey commences on Aldersey Lane at OS grid reference SJ 4563 5533 and runs in a northerly direction to the junction with Footpath No 2 Aldersey at a field boundary at OS grid reference SJ 4560 5569. The section of path affected by the proposal is from the commencement on Aldersey Lane for approximately 336 metres to OS grid reference SJ 4559 5567 next to the field boundary and is shown by a broken black line between points A and B on Plan No SD/057 ("the plan").

2. Background

- 2.1 The applicant has proposed a diversion of part of the footpath under planning application reference number 18/01842/FUL. The purpose of diverting the footpath was in order to enable the construction of a new farm building. The existing path is also partly obstructed by the construction of a slurry tank. The proposal under the planning application was to divert the path to commence 36 metres north on Aldersey Lane then running in a north westerly direction along the existing farm track and then run in a north easterly direction to the slurry tank then running around the slurry tank to re join the existing footpath.
- 2.2 A second proposal was considered and the responses support the second option to divert the footpath away from the farm buildings and structures. The diversion under the second proposal would divert the path outside of the area of the planning application although it means the proposal would need to be pursued under the Highways Act 1980 s119 rather than planning legislation. The proposed alternative route would divert the commencement of the path on Aldersey Lane to a point approximately 94 metres further north on Aldersey Road to OS grid reference SJ 4571 5540 and from that point running in a generally north westerly direction for approximately 296 metres to re join the existing footpath at OS grid reference SJ 4559 5567 shown on the plan by a broken black line between points C and B.

- 2.3 The proposed new route would remain in land within the same ownership as the existing footpath. The diversion is in the interests of the landowner for the reasons given in paragraph 2.1 above.
- 2.4 The proposal would divert a section of the footpath commencing on the same highway as the existing point of commencement. It would divert the path away from the farm buildings and from the carriageway would run across the pasture field to re connect with the existing footpath on the other side of the field.
- 2.5 The surfacing of the current route is part farm surfaced farm yard and pasture field. The diversion would run over pasture field.
- 2.6 There are no recorded limitations on the current path; however there are two stiles one at point A on the plan at the junction with Aldersey Lane and a small paddock, and the second stile is sited at the fence leading out of the small paddock. A pedestrian gate would be required at the junction with Aldersey lane for stock control purposes.
- 2.7 The length of the section of path to be stopped up is approximately 339 metres (A to B on the Plan) and the length of the diversion is approximately 296 metres (C to B on the plan). The overall distance between the commencement point A for the footpath along Aldersey Lane and then running across the field is approximately 390 metres (A-C-D on the Plan).

3. Consultation

- 3.1 The Coddington and District Parish Council has confirmed in writing that they have no objections to the proposal.
- 3.2 The Ward Councillor has been consulted. There have been no comments received.
- 3.3 Statutory Undertakers have been consulted and no objections received. If a Public Path 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 FPS has said the society supports the proposal. The representative of the Peak and Northern FPS has said they will support the diversion away from the farm buildings but request a kissing gate at the roadside entrance. The representative of the Cestrian group of the Ramblers also supports the diversion away from the farm buildings and with a gate on Aldersey Lane.

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 both the owners and occupiers of the land concerned for the reasons set out in paragraphs 6.1 and 6.2 below and the proposal is considered to meet each of the "tests" as evidenced below.
- 4.2 It is 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.

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, it will fall to the Secretary of State to confirm the Order. 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

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

5.1.1 Rights of Way Improvement Plan 2011-16 (ROWIP)

Statement of Action BS1 *"we will seek to address safety concerns highlighted whilst using the network during consultation."*

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."*

5.1.2 “*Structures on rights of Way*” 29th 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 enable the construction of an agricultural building and to improve access for users away from the farm buildings. 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 length of the diversion has been considered both with regard to the comparative length of the diversion and also with comparison to the path network. There is an overall difference of an extra 51 metres between the length of path to be stopped up and the length of the diversion from point A-C-D, taking into account the section of lane to be walked. This is not considered to be sufficient to suggest that the public will be substantially inconvenienced between the two points. The diversion has a benefit, taking the network of paths into account, of creating a more convenient route avoiding the farm buildings.
- 6.3 There are no noticeable changes in surfacing between current and diversion routes and both routes have similar gradients. There are no significant differences in the views enjoyed from the current route in comparison with the proposed alternative. The footpath is outside of the Coddington conservation area.
- 6.4 In respect of the matters mentioned in paragraph 4.3.1 and 5.1.1, particular regard has been given to the needs of agriculture by the promotion of an Order to divert away from traffic in and around the farm buildings and yard.

6.5 In respect of the matters mentioned in paragraphs 4.3.2 and 5.1, due regard has been given to the equality legislation by ensuring gaps replace limitations at points along the diversion route.

6.6 There are no environmental and crime and disorder implications to this report.

7. Conclusion

7.1 The proposal to divert Public Footpath No 10 Aldersey has been consulted upon and the responses received have been in support of the diversion.

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 10 Aldersey as illustrated on the Plan.

8. Associated documents

Application File SD 057/FP10 Aldersey
Plan SD/057

Site visit 24 July 2018.

Commence at Aldersey Lane (point A on the plan)



Small paddock below location for new farm building





Above, location of slurry tank. Below, cross field line of current footpath



Aldersey Lane



Gap in hedge commencement for diversion





Cross field diversion route.