

Cheshire West and Chester Borough Council

Officer Delegated report

Application Number	SD063/FP32 Ellesmere Port
Description	Proposal that the Council make a Public Path Diversion Order under section 119 of the Highways Act 1980
Site address	Public Footpath 32 Neston
Ward	Willaston and Thornton
Ward Member	Councillor Myles Hogg
Case Officer	Adele Mayer, PROW Asset Management Officer publicrightofwaywest@cheshirewestandchester.gov.uk
Date	DATE

Recommendation

(1) That an Order be made under Section 119 Highways Act 1980, diverting Footpath No.32 (part) in Neston as shown on Plan No SD063 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 32 Neston runs from Chester Road (A540) in a generally north easterly direction to Hadlow Road (B5151). The footpath connects with the Wirral Way Country Park. The part that is affected by the proposal runs from OSGR SJ 3288 7751 (Point A on Plan SD063 ("the plan")) and runs for 51 metres in a north easterly direction to OSGR SJ 3290 7755 (Point B on the plan) as shown by a solid black line between points A and B on the plan.

2. The landowner of the current and the proposed route includes the applicant.

Background

3. The diversion is proposed in the interests of the owners and occupiers of Nos 2 and 4 Buckley Court, Willaston. The diversion will provide an alternate route to the current route which is obstructed by the houses at No 4 Buckley Court and part of the garden at No 2.
4. The background to this proposal is that Public Footpath 32 was proposed to be diverted under the Town and Country Planning Act 1990 when planning permission was granted by the former Ellesmere Port and Neston Council under planning reference P/2004/914. An aerial image pre-construction can be found at Appendix A of this report. The Council has no record that a relevant diversion order was made by the former Ellesmere Port and Neston Borough Council. As a consequence, the footpath is now obstructed by one of the houses at Buckley Court and the path also runs over part of the garden to another house. The development under that planning permission is now complete and planning legislation which permits the diversion of a footpath to allow development to be carried out cannot be used retrospectively. The diversion, therefore, is proposed under section 119 of the Highways Act 1980 in order to resolve the matter.
5. The proposal is made in the interests of the owners and occupiers under the Council's policy, adopted in 2009, of a "right to apply" to divert in order to prevent enforcement action against historical obstructions. The diversion is intended to divert the footpath along the private access drive that runs between the houses
6. The access drive is not an adopted highway but is constructed as carriageway with adjacent footway onto which the footpath can be diverted. The line of the diversion would run along the existing farm track to the commencement of the constructed carriageway and footway and continue north to the junction with the line of the existing footpath.
7. The proposed diversion will commence from a point along a farm track south of the buildings at point A on the plan then will run in an easterly direction for approximately 29 metres to Point C (OSGR SJ 3290 7752) then runs in a northerly direction for approximately 30 metres to join the existing Footpath 32 on the unadopted highway named Buckley Court at Point B as shown by a broken black line between points A and C and B on the plan and a total distance of 59 metres. Images of the route can be found at Appendix A of this report.
8. The current surface is part trodden earth/garden and compacted hard infill, the surface for the diversion is part compact earth track and tarmac.

9. The point of termination of the diversion will be on the same highway and there are no limitations proposed.

Consultation

10. Neston Town Council has confirmed that they have no representations against the application.

11. The Ward Councillor has been consulted and has made no adverse comments.

12. 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.

13. User groups have been consulted and no objections received.

14. The second landowner has confirmed in writing they support the making of an Order.

Relevant Legislation

15. 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 Nos 2 and 4 Buckley Court and 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.

16. 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.

17. At the confirmation stage, Section 119(6) requires that, in addition to those matters referred to in paragraph 15 above, the path be not substantially less convenient to the public as a consequence of the diversion and that it is expedient to confirm the Order having regard to the effect which:-

17.1. the diversion would have on the enjoyment of the path or way as a whole,

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

17.3. 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.

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

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

18.2. requirements in relation to equality, and the prevention of crime and disorder, and

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

19. 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 and Documents

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

20.1. Rights of Way Improvement Plan 2011-16

20.1.1. 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"

20.2. "Interim adoption of and amendments to the public rights of way enforcement protocol" 29 April 2009 Rights of Way Committee

Assessment and Issues

21. The purpose of the diversion is to alter the definitive line of the footpath to resolve an historical issue whereby the existing footpaths have been partially obstructed by residential properties. The diversion is considered to be in the interest of the owners and occupiers of Nos 2 and 4 Buckley Court. In this respect it is considered that the proposal satisfies the tests set out in paragraph 15 above.

22. 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 new route for Footpath No 32 is longer in length, by 8 metres, than the length of footpath to be stopped up. The path has a semi-rural setting and the path serves a recreational use rather than functional purpose. The footpath connects with Wirral Way Country Park providing a circular route for anyone walking between the village centre. The current and diversion paths have similar gradients, and connect with the existing public footpath. It is considered that the diversion provides a satisfactory alternative to the current path and can be considered as convenient as the current route.

23. There are no significant differences in the views enjoyed from the current routes in comparison with the proposed alternative; the properties hold no notable architectural or historical value that would be visually inaccessible by the diversion. The diversion is therefore considered to be as enjoyable as the current path.

24. In respect of the expediency of confirming the order taking into account the matters mentioned in paragraphs 17 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.

25. In respect of the matters mentioned in paragraph 18, regard has been given to accessibility and the policies of the ROWIP and the needs of agriculture.

Conclusion

26. The proposal to divert the footpath has been consulted upon and the responses received have been either neutral or in support of the diversions.

27. After consideration of the application and the relevant law and policies it is concluded that it is expedient to divert part of Footpath No 32 Neston as illustrated on the plan.

Associated documents

File: SD063/FP32 Ellesmere Port

Plan SD063

Appendix A

Site photographs

Google Aerial image (c2019)





Pre-construction aerial image (c2010)

From Point A looking north to 4 Buckley Court





Access track east (point A to point C)
Point C commencement of Buckley Court tarmac carriageway and footway





Point B and continuation of existing footpath