

## **Cheshire West and Chester Borough Council**

### **Officer Delegated report**

<b>Application Number</b>	SD/051/4&5Beeston
<b>Description</b>	Proposal that the council make a public path diversion order under section 119 of the Highways Act 1980
<b>Site address</b>	Public Footpaths No 4 (part) and 5 (part) Beeston
<b>Ward</b>	Tattenhall Ward
<b>Ward Members</b>	Councillor Mike Jones
<b>Case Officer</b>	Adele Mayer, PROW Asset Management Officer or tel: 01606 271822
<b>Date</b>	5 January 2018

### **Recommendation**

- (1) That an Order be made under Section 119 Highways Act 1980, diverting Footpath No.4 (part) and Footpath No.5 (part) in the Parish of Beeston as shown on Plan No SD/051 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 No 4 runs from Lower Rock Farm on Tattenhall Lane (C810) to Bates Mill Lane (C811). The part that is affected by the proposal runs from the boundary of a field at OS grid reference SJ 5337 5983 and runs in a north easterly direction for approximately 138 metres to the termination point on Bates Mill Lane at OS grid reference SJ 5348 5991 as shown by a bold black line between A and B on plan SD/051 ("The Plan").

2. Footpath No 5 runs from a point on Chapel Lane (UX1142) to its termination on Bates Mill Lane. The part affected by the proposal commences at the field boundary at OSGR SJ 5349 5987 and runs in a northerly direction for approximately 37 metres to OS grid reference SJ 5348 5991 as shown by a bold black line between points C and B on the Plan.

## **Background**

3. The diversion is proposed in the interests of the owners and occupiers of Nos 1 and 3 Bates Mill Lane, Beeston, CW6 9UD. The diversion will provide an alternate route to the current routes which are obstructed by the houses No 1 and 3 Bates Mill Lane.
4. The houses were built by the former Chester City Council in 1943. The 1951 parish survey for the Definitive Map of Public Rights of Way for Footpath No 5 records that the footpaths ran between Rock Farm (now Lower Rock farm) and “continuing to near the Sidings and practically where the new council houses now stand.” There is no further explanation of why the footpaths may have been built over or any evidence that the footpaths had been successfully diverted at that time. The diversion is being pursued now 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 footpaths to the south of the two houses and through unused waste land which is not in agricultural use.
6. An existing alternative path has been made available which runs from the western field boundary in an easterly direction to south of the waste land to a stile that has been installed on the field boundary with Bates Mill Lane. The date of creation and the status of this alternative route is unknown and whether it may be a route that has accrued public rights or has only been provided by permission is uncertain. The effect on the land of this alternative route is that a length of agricultural land is

cropped to provide public passage. The proposed diversion route aims to significantly reduce the impact of the definitive and alternative footpaths on agricultural use of the land.

7. The proposed diversion of Footpath No 4 will commence from the field boundary at point A on the Plan then running in an easterly direction for approximately 126 metres to join the existing Footpath No 5 on a field boundary at OSGR SJ 5349 5987 as shown by a broken black line between points A and C on the Plan.
8. The proposed diversion of Footpath No 5 will commence on the field boundary at point C on the Plan and run in a north easterly direction through waste land for approximately 25 metres to join the verge of Bates Mill Lane at OSGR SJ 5350 5990 as shown by a broken black line between points C and D on the plan.
9. The affected part of Footpath No 4 runs over land held by the Rt Hon Lord Tollemache estate. The length of the current line of the footpath running through the field is approximately 113 metres and the length of the part of the diversion running through the field is approximately 126 metres. The waste land is unregistered land and notice of the proposal to divert 25 metres of the footpath over this land was advertised on site from 10 March 2017 to 21 April 2017. No documentary evidence of ownership has been submitted although there has been a verbal claim by an agent representing the Rt Hon Lord Tollemache estate. No documentary evidence, however, has been provided to date to support the alleged ownership of this piece of land.
10. The nature of the surface of the diversions will be part agricultural and part waste land.
11. It is proposed that where furniture may be required at the boundary with the verge and with the agricultural field, pedestrian gates will be installed which will meet council standards. The locations of the proposed gates are indicated on the Plan.

## **Consultation**

12. The Parish Council has been consulted and has made no comments.
13. The Ward Councillor has been consulted and given verbal support to the proposal.
14. 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.
15. User groups have been consulted. A representative for the Cestrian Group of the Ramblers remarked that the section of the proposed diversion through the waste land was overgrown. That is the case and work by the council will be needed to clear the route and make it available for users if an order is confirmed. The Peak and Northern Footpaths Society has no objections.
16. An agent for Strutt and Parker representing the Rt Hon Lord Tollemache estate has been in contact with the council by telephone and laid claim for the estates ownership of the waste land although no written confirmation has yet been received. An objection was raised to the proposal, although no written statement providing details of the nature of the objection has been received. There have been sufficient opportunity for the agents to present evidence to question the proposed alternate routes but they have not done so.

### **Relevant Legislation**

17. 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 1 and 3 Bates Mill Lane 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.
18. 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.

18.1. 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:-

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

18.1.2. 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

18.1.3. 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.

19. In addition to the matters contained in Section 119 H A80, the Council in preparing this report and recommendation, has had regard to a number of other considerations required by law including:-

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

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

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

20. 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**

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

- 21.1. Rights of Way Improvement Plan 2011-16
  - 21.1.1. 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”
  - 21.1.2. “Interim adoption of and amendments to the public rights of way enforcement protocol” 29 April 2009 Rights of Way Committee
- 21.2. “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
- 21.3. Application File SD 051/4,5 Beeston

## **Assessment and Issues**

- 22. The purpose of the diversions is to alter the definitive line of the footpaths to resolve an historical issue whereby the existing footpaths have been partially obstructed by residential properties. The diversions are considered to be in interests of the owners and occupiers of Nos 1 and 3 Bates Mill Lane. In this respect it is considered that the proposal satisfies the tests set out in paragraph 17 above.
- 23. 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 footpaths. The new route for Footpath No 4 is shorter in length by 12 metres than the length of footpath to be stopped up. The new route for Footpath No 5 is also shorter in length by 12 metres than the footpath to be stopped up. The path has a rural setting and the path serves a recreational use rather than functional purpose. The routes have similar gradients, 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.
- 24. There are no significant differences in the views enjoyed from the current routes in comparison with the proposed alternatives, the properties hold no notable architectural or historical value that would be visually inaccessible by the diversion
- 25. In respect of the expediency of confirming the order taking into account the matters mentioned in paragraphs 17 and 18 above, it is considered that there are no material

impacts on land currently served by the paths or to be crossed by the new paths which affect the expediency of confirming the proposed order.

26. In respect of the matters mentioned in paragraph 19, regard has been given to accessibility and the policies of the ROWIP and the needs of agriculture.

## **Conclusion**

27. The proposal to divert the footpaths has been consulted upon and the responses received have been either neutral or in support of the diversions. It would be beneficial to have a written response from the Rt Hon Lord Tollemache estate to clarify any support or grounds for objection for the proposal. The process of making and advertising of the order will, however, provide for any comments the Rt Hon Lord Tollemache estate may wish to make regarding the proposal.

28. After consideration of the application and the relevant law and policies it is concluded that it is expedient to divert parts of Footpaths No 4 and No 5, Beeston as illustrated on the plan.

## **Associated documents**

File: SD/051

Plan SD/051

## Appendix A

### Site photographs





















