

Planning Committee

11<sup>th</sup> May 2017

**Report to:**  
Planning Committee

**Director Approving Submission of the report:**  
Deputy Chief Executive - Place

**Ward(s) affected: Allesley**

**Title:**  
**Highways Act 1980 Section 119**  
**Proposed Diversion of Footpath M255 Allesley– City of Coventry.**

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**Is this a key decision?**  
*No*

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**Executive Summary:**

This report seeks approval to divert part of a public footpath over land adjacent to Hawkes Mill Lane, known as public footpath Allesley M255. This is following an application from the landowner under Section 119 of the highways Act 1980.

In accordance with Coventry City Council's constitution any matters which change the public rights of way network must be considered by the Planning Committee.

The Applicant has agreed to meet all of the Council's costs in making a Public Path Diversion Order.

**Recommendations:**

That Planning Committee are recommended to:

- (1) Authorise the **Director of Finance & Corporate Services** to make and advertise a Diversion Order for Public Footpath Allesley M255, adjacent to Hawkes Mill Lane, Allesley, City of Coventry pursuant to Section 119 of the Highways Act 1980.
- (2) Confirm the Order in the event that no objections are received when advertised, or in the event of objections being received and not withdrawn, for the Order to be referred to the Secretary of State for determination.

**List of Appendices included:**

Appendix A – Plan of Proposed Order

Appendix B – Highways Act 1980 Section 119

**Other useful background papers:**

None

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

No

## **1. Context (or background)**

- 1.1 The Council has received an application from the landowner of 180 Hawkes Mill Lane, Allesley, for a permanent diversion of a public footpath that crosses through the owners land. The path is recorded on the Definitive Map and Statement held by the City of Coventry.
- 1.2 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 in the interests of the owner of the land and/or in the interests of the public.
- 1.3 The proposed diversion route has been applied for because the existing route is obstructed by the property at 180 Hawkes Mill Lane.

## **2. Options considered and recommended proposal**

- 2.1 An application for the diversion has been received from the resident of 180 Hawkes Mill Lane, as the property at this address has been built on the alignment of the footpath. The land crossed by the path to be diverted is currently owned by the applicant and the owner of Hawkes End Farm, Hawkes Mill Lane, Allesley, who has provided his consent to the diversion to the extent of the affected footpath on his land. The house was built in the 1950s and it is unclear why the path was not acknowledged when the house was built. Diverting the path as proposed will resolve the problem as well as increasing security and privacy for the resident by removing the path from his garden.
- 2.2 The extent of the path to be diverted is shown by a solid black line on the plan (Appendix 1) between points A to B and runs southwards from its commencement at a junction with footpaths M258 and M254 at point A on the plan. From there it runs across grass paddocks to where it enters the garden of 180 Hawkes Mill Lane. It passes through the garden where it is obstructed by hedges and the house to terminate on Hawkes Mill Lane at point B on the plan. It is approximately 160 metres in length.
- 2.3 The proposed diversion of Footpath M255 is shown by a bold dashed line on the plan (Appendix 1) and would run from Hawkes Mill Lane, point D on the Plan in a generally north westerly direction to meet footpath M254 at point C on the plan. Path users would use footpath M254 to complete a journey to point A on the plan. The length of the new path would be 110 metres and the total length to point A on the plan would be 180 metres.

2.4 The new route already exists on the ground and has a width of 2 metres with a stone surface. It is not registered on the Definitive Map for Coventry City Council. In terms of accessibility the new route is considered easier to use than the original. The new route is 180 metres between points D to A whilst the existing route between points A and B is 160 metres.

### Reasons

#### **Whether the diversion of the public footpath between M255 Allesley meets the legal tests.**

2.5 It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 2.1 above.

#### **The extent of the loss and inconvenience likely to arise either to members of the public generally, or to persons whose properties adjoin, or are near the existing public right of way as a result of the diversion of the footpath**

2.6 There are a number of residential properties whose gardens back on to the proposed route. As this path already exists and has been in regular use it is considered that the diversion would have no adverse impact.

2.7 The proposed diverted line will be 20 metres longer than the current line but it is not considered that the proposed diversion will cause any inconvenience to the public.

2.8 The path to be diverted has not been available to use for many years. The paths to the north and west of Allesley and Brownhill Green which M255 would access if available can all be reached by the proposed diversion in order to travel to the same destinations so it is not considered that this will cause any inconvenience.

2.9 It is considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.

### **3. Results of Consultations Undertaken**

3.1 The Council conducted a pre-Order consultation. As part of the consultation, statutory undertakers and statutory consultees were consulted. Responses to consultations were received from the Ramblers Association and the Open Spaces Society. The Ramblers Association said that they would not object to the proposal and the Open Spaces Society have registered an objection which is detailed in Section 4. Of the statutory undertakers the only response was from National Grid which reported that it had no equipment within the vicinity. No other responses were received.

### **4. Objections**

4.1 One objection was received from a representative of the Open Spaces Society they have objected on the following grounds:

- The proposed diversion line is subject to a definitive map modification order application ('DMMO').
- The DMMO application, that is also the proposed diverted route, was submitted by the Rambler's Association and contains compelling evidence that the route is recorded on the Allesley Inclosure Award.
- As the proposed diverted line is shown on the Inclosure Award as a public footpath the Council is prohibited from diverting on to the proposed line as the route is already highway.
- The Council is under a duty to investigate the DMMO before any diversion Order can be made, the objector believes the Council has no other option.

#### Response to the Objection

4.2 It is accepted that there is a DMMO application on the proposed diverted line, the applicant for the DMMO, the Ramblers Association, has been consulted about the proposal and do not object to the proposed diversion.

4.3 The evidence cited by the objector and within the DMMO application can only be regarded as indicative at this time and does not bar the Council from diverting the path. The Council has not had sight of the documents so it not clear what weight this evidence can be given.

The Council is only under a duty to investigate a DMMO application if that application is 'duly made'. This application has not been 'duly made' as it is not compliant with Schedule 14 of the Wildlife and Countryside Act 1981 as the application does not have copies of any of the supporting evidence, in this case the Allesley Inclosure Award nor is this document in the Council's possession, as required by Schedule 14.

As the DMMO applicant is happy for the Council to resolve the matter via a diversion Order and the diversion application can be determined before the DMMO is determined it is proposed to seek approval for the Diversion Order.

4.4 If the Council were to wait to determine the DMMO application there could a considerable delay in determining the diversion application due to the backlog of applications. This would leave the applicant for the diversion in a state of flux and potentially make it very difficult for them to sell the property as the Council is under a duty to declare all public rights of way affecting land subject to a sale.

4.5 In consideration of the information and background provided it is recommended that Planning Committee authorise the making of the Diversion Order.

## **5. Timetable for implementing this decision**

5.1 The Order will be made as soon as practicable. After the Order is made there will be a statutory 28 day objection period.

5.2 Should objections be received that cannot be resolved it can take more than six months before the matter is determined by the Secretary of State.

## **6. Comments from Executive Director of Resources**

### **6.1 Financial implications**

If the recommendation is approved, there will be no costs to the Council as the applicant is responsible for all costs. Should the Order not be confirmed the costs of making the Order would have to be covered by the Council this would be in the region of £1500.

### **6.2 Legal implications**

The effect of the Diversion Order, if confirmed, will be to amend the route as recorded on the Definitive Map and Statement.

## **7. Other implications**

### **7.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

N/A

### **7.2 How is risk being managed**

N/A.

### **7.3 What is the impact on the organisation?**

N/A

### **7.4 Equalities / EIA**

Consideration has been given to the City Council's Rights of Way Improvement Plan in considering this application and preparing this report. Thus the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property and transport considerations. An assessment in relation to the Equalities Act 2010 has been carried out and it is considered that the proposed diversion will be no less convenient to use than the current route.

**7.5 Implications for (or impact on) the environment**

*None*

**7.6 Implications for partner organisations?**

*None*

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## Appendices

## Appendix A

## Appendix B

Coventry City Council may make a Diversion Order under Section 119 of the Highways Act 1980

### 119 Diversion of footpaths and bridleways.

- (1) Where it appears to a council as respects a footpath or bridleway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or] of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,—
  - (a) create, as from such date as may be specified in the order, any such new footpath or bridleway as appears to the council requisite for effecting the diversion, and
  - (b) extinguish, as from such date as may be [F2specified in the order or determined] in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.

An order under this section is referred to in this Act as a “public path diversion order”.

- (2) A public path diversion order shall not alter a point of termination of the path or way—
  - (a) if that point is not on a highway, or
  - (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
- (3) Where it appears to the council that work requires to be done to bring the new site of the footpath or bridleway into a fit condition for use by the public, the council shall—
  - (a) specify a date under subsection (1)(a) above, and

- (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.]
- (4) A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.
- (5) Before determining to make a public path diversion order [F4on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him] to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—
- (a) any compensation which may become payable under section 28 above as applied by section 121(2) below, or
- (b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public, or
- (c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.
- (6) The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—
- (a) the diversion would have on public enjoyment of the path or way as a whole,
- (b) the coming into operation of the order would have as respects other land served by the existing public right of way, and
- (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,

so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above.

(6A) The considerations to which—

- (a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and
- (b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.

(7) A public path diversion order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed,—

- (a) showing the existing site of so much of the line of the path or way as is to be diverted by the order and the new site to which it is to be diverted,
- (b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a footpath or bridleway, and
- (c) where some part of the new site is already so comprised, defining that part.

(8) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path diversion orders.

(9) Section 27 above (making up of new footpaths and bridleways) applies to a footpath or bridleway created by a public path diversion order with the substitution, for references to a public path creation order, of references to a public path diversion order and, for references to section 26(2) above, of references to section 120(3) below.