

Report To:	SPEAKERS PANEL (PLANNING)
Date:	26 April 2017
Reporting Officer:	Ian Saxon, Assistant Executive Director, Environmental Services
Subject:	SECTION 119 HIGHWAYS ACT 1980 – DIVERSION OF FOOTPATH ASHTON-UNDER-LYNE 139
Report Summary:	The report seeks authority to make an order under Section 119 Highways Act 1980 to divert a public right of way to make it more commodious for the users. Under the Council's constitution, the Speakers Panel (Planning) is responsible for decisions that affect the definitive rights of way network.
Recommendations:	It is recommended that an order be made to divert the footpath known as Footpath Ashton-under-Lyne 139 as indicated on the plan attached at Appendix A and that the Borough Solicitor be authorised to take the necessary steps to implement this decision.
Links to Community Strategy:	Provides a safer and secure Environment for the people of Tameside.
Policy Implications:	None arising from the report.
Financial Implications: (Authorised by the Section 151 officer)	The Council will use existing budgets from Public Rights of Way to meet the full costs involved in the diversion procedure as well as the costs incurred in bringing the new path into a fit condition for use by the public.
Legal Implications: (Authorised by the Borough Solicitor)	DEFRA Circular 109 on Rights of Way advises at 5.32 that Section 119(6) of the 1980 Act provides - with direct reference to section 119(1) - that in deciding whether or not to confirm a diversion order, the Secretary of State (or the order making authority if the order is unopposed) must be satisfied that, in the interests of the owner, lessee or occupier or the public, it is expedient to divert the way. At 5.33 it advises In deciding whether or not it is expedient to confirm a diversion order under section 119 of the 1981 Act the Secretary of State, or the order making authority if there are no outstanding objections, must have regard to the effect that: <ul style="list-style-type: none"> • the diversion would have on the public enjoyment of the path as a whole; • the coming into operation of the order would have as respects other land served by the existing right of way; and • any new public right of way created by the order would have with respect to any land held with it.
Risk Management:	There is a possibility that the order may not be confirmed if there are substantial objections. Some informal discussions have been taking place with rights of way groups to enable early consideration of any issues arising if the diversion is taken forward to minimise the risk of objections.

Access to Information:

Appendix A – Location plan showing the proposed diversion

All documentation can be viewed by contacting Michael Hughes,
Sustainable travel Officer



Telephone:0161 342 3704



e-mail: michael.hughes@tameside.gov.uk

1. BACKGROUND

- 1.1 Public Footpath Ashton-under-Lyne 139 (ASH/139) runs from Mill Brow in the Park Bridge area to Fields Farm on Lees Road in Ashton-under-Lyne.
- 1.2 The footpath in part runs through the Rocher Vale site which is managed by the Council's Operations and Greenspace Section. The footpath forms part of the Tameside Trail promoted route.

2. REASONS FOR THE DIVERSION

- 2.1. One section of Footpath ASH/139 as it passes through Rocher Vale runs alongside a natural watercourse. In periods of very wet weather, this watercourse drains a large area of farm land and the resulting flow of water is eroding the embankment upon which Footpath ASH/139 runs.
- 2.2 The erosion of the embankment has led to the public footpath now running in part on an overhanging piece of land. Officers from the Operations and Greenspace service reported this issue as potentially dangerous for the users and as a result, the footpath is currently subject to a temporary closure.
- 2.3 It is considered that in order to re-open this footpath and to address the potential danger, the most effective solution is to divert part of Footpath ASH/139 to a parallel alignment that is further from the eroding path edge.

3. PROPOSED DIVERSION

- 3.1. The proposed diversion would run from point A to point B as shown by a bold, broken line in **Appendix A**. The exiting footpath to be closed is shown between point A and point B by a bold, continuous line
- 3.2. The proposed diversion route would move the footpath to a parallel alignment approximately 12 metres away.
- 3.3 The existing footpath follows a path that was constructed by the Council's Countryside Service through a woodland area. The relevant section of path through the woodland has a flight of steps on it and a timber constructed stile. The path then exits the woodland and enters agricultural land with a natural surface. The footpath has a width of approximately 1 metre.
- 3.4 The proposed diversion will be 1.5 metres wide with one flight of steps and a kissing gate barrier. The diverted path will have a compacted stone surface in the woodland area and will revert to a natural surface on the agricultural land.
- 3.5 The landowner and tenant farmer for the agricultural land have been contacted and they are both in agreement with the proposed diversion. The conditions requested by the tenant farmer is that all new fencing works and barriers are installed to a high standard and at the expense of the Council.
- 3.6 The Council will use existing budgets from Public Rights of Way to meet the full costs involved in the diversion procedure as well as the costs incurred in bringing the new path into a fit condition for use by the public.

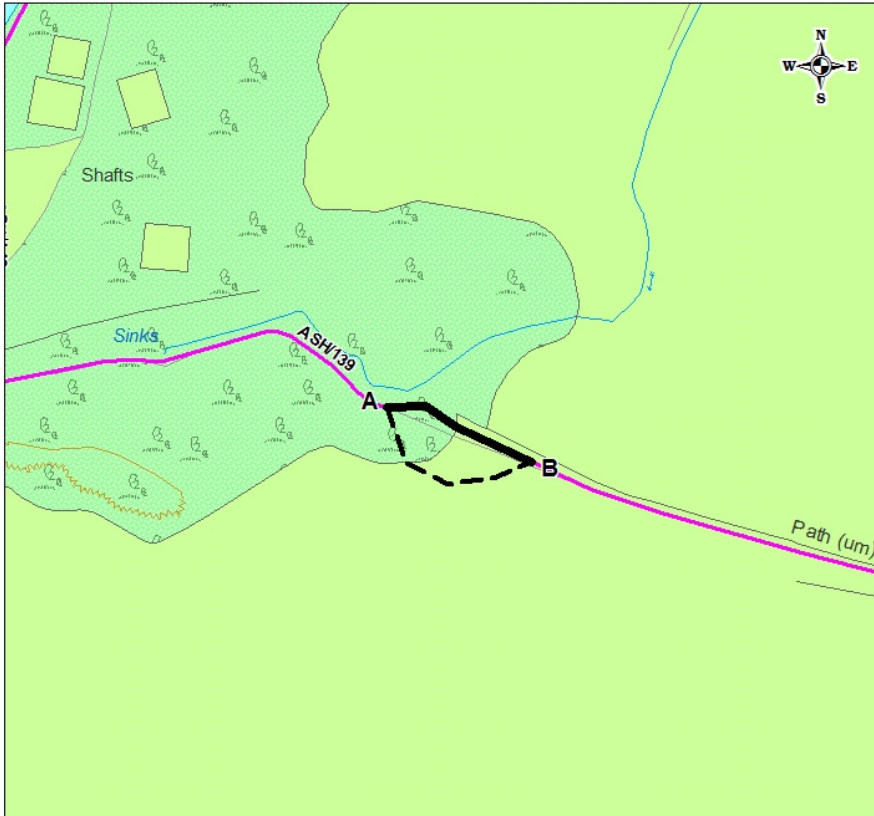
4. COMMENTS OF THE EXECUTIVE DIRECTOR OF PLACE

- 4.1 It is not felt that the proposed diversion route will be less commodious for the users in terms of alignment, surface construction and length as all these factors remain to all extents and purposes the same.
- 4.2 The diverted section of the footpath will be wider than the existing path and so this will be to the benefit of the public that use Footpath ASH/139.
- 4.3 The public rights of way organisations that operate in the Tameside area have been given the opportunity to comment on the proposed diversion. No objections were received from them during this period.
- 4.4 If approval is granted to proceed with the diversion of Footpath 139 then the order will be advertised for consultation with the public in accordance with the statutory process.

5. RECOMMENDATION

- 5.1 It is recommended that the order be made to divert Footpath Ashton-under-Lyne 139 as indicated on the plan attached at **Appendix A** and that the Borough Solicitor be authorised to take the necessary steps to implement this decision.

APPENDIX A



Robin Monk
Executive Director of Place
Council Offices
Wellington Road
Ashton-under-Lyne
OL6 6DL

ASH/139 Proposed diversion

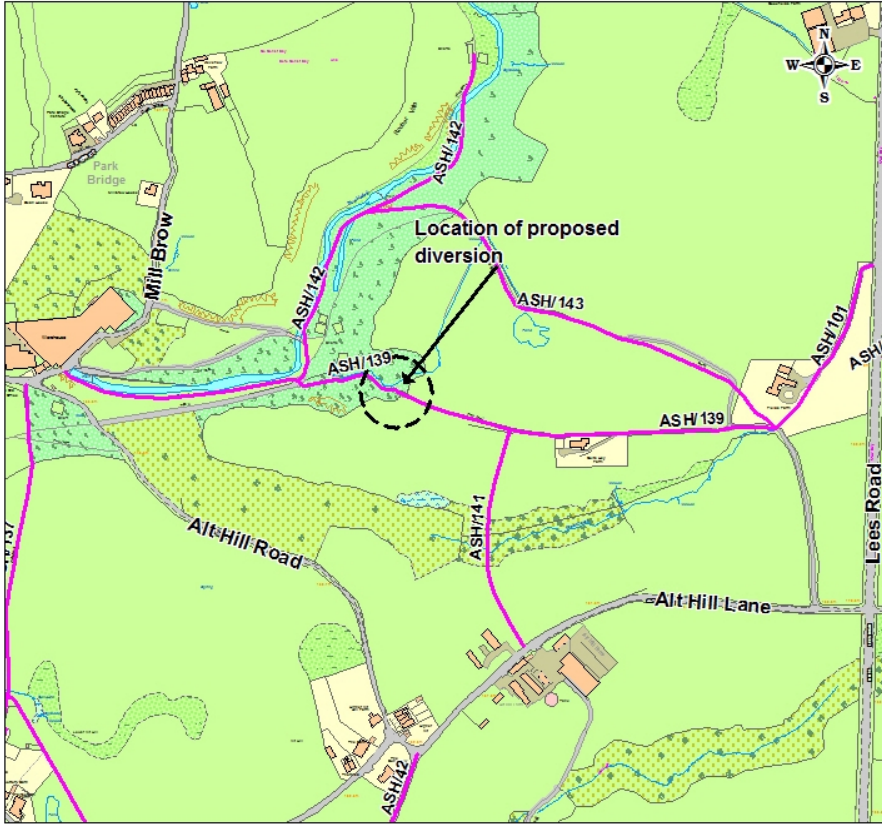
Scale 1:1000

Compiled by MH on 4 April 2017

This plan is not a copy of the definitive map. This plan is produced from the council's computer based geographical information system. The plan shows the approximate route of public rights of way recorded on the definitive map, but it does not attempt to show the precise route or width of the right of way. For further information you need to inspect the definitive map and statement. You should also remember that not all public rights of way or highways are recorded on the definitive map. Tameside Metropolitan Borough Council does not accept responsibility for any error or inaccuracy in this plan or from any reliance placed on it

Reproduced from an Ordnance Survey map with the permission of the Controller of HMSO © Crown Copyright. License number LA100022697

Additional information:
Engineering Service
Tel : 0161 342 3704



Robin Monk
 Executive Director of Place
 Council Offices
 Wellington Road
 Ashton-under-Lyne
 OL6 6DL

**ASH/139
 Proposed diversion**

Scale 1:5000

Compiled by MH on 4 April 2017

This plan is not a copy of the definitive map. This plan is produced from the council's computer based geographical information system. The plan shows the approximate route of public rights of way recorded on the definitive map, but it does not attempt to show the precise route or width of the right of way. For further information you need to inspect the definitive map and statement. You should also remember that not all public rights of way or highways are recorded on the definitive map. Tameside Metropolitan Borough Council does not accept responsibility for any error or inaccuracy in this plan or from any reliance placed on it

Reproduced from an Ordnance Survey map with the permission of the Controller of HMSO © Crown Copyright. License number LA100022697

Additional information:
 Engineering Service
 Tel : 0161 342 3704