

Report To:	SPEAKERS PANEL (PLANNING)
Date:	21 July 2021
Reporting Officer:	Emma Varnam – Assistant Director, Operations and Neighbourhoods
Subject:	HIGHWAYS ACT 1980 – APPLICATION TO DIVERT A LENGTH OF DEFINITIVE FOOTPATH MOSSLEY 169
Report Summary:	An application has been received from a local resident to make an Order to divert a length of Footpath Mossley 169. If approved, the path will be diverted and the changes will be reflected on the definitive map and statement for Tameside.
Recommendations:	It is recommended that the Panel accepts this application on the basis that it is expedient in the interests of the applicant and the public to divert Footpath 169 in Mossley as indicated on the plan appended to this report. It is further recommended that the Borough Solicitor be authorised to make and advertise a public path diversion order and either confirm it as an unopposed order or, should there be any objections to the order, submit it to the Secretary of State for confirmation.
Links to Community Strategy:	It is considered that the proposal could contribute towards the aspirations of the Corporate Plan for Tameside & Glossop and more specifically in the promotion of Living and Aging Well by benefiting the priorities of Infrastructure & Environment as well as Longer & Healthier Lives.
Policy Implications:	It is considered that the proposal could contribute towards the aspirations of the Corporate Plan for Tameside & Glossop and more specifically in the promotion of Living and Aging Well by benefiting the priorities of Infrastructure & Environment as well as Longer & Healthier Lives.
Financial Implications: (Authorised by the Borough Treasurer)	<p>The full costs of the diversion process and route will be borne by the applicant. The financial commitment via the Council will be the provision of gate kits at an estimated cost of £820.</p> <p>The £820 cost will be financed via the Sustainable Travel Capital scheme which is funded by a 2020/21 Highway Maintenance Grant of £40,000 that has been carried forward to 2021/22. Existing commitments on this scheme are £26,500 with the aforementioned new expenditure of £820. A balance of £12,680 will remain against this grant allocation.</p>
Legal Implications: (Authorised by the Borough Solicitor)	The Highways Act 1980 details a statutory procedure for the making, publication and confirmation/non-confirmation of orders to divert public footpaths. The Council will adhere to this process in the making of this Order if authorised by the Panel and all costs incurred in doing so will be reimbursed by the applicant. If there are unresolved objections to the Order then the decision as to whether the Order is confirmed or not will rest with a Planning Inspector. The Council will also have the ultimate decision as to whether or not to proceed with the Order if objections are received.

Risk Management:

If the order is made and attracts objections then considerable officer time will be required to deal with the appeal, diverting resources away from other projects. The Applicant will meet these costs.

A further risk is that the new paths are not properly constructed by the applicant resulting in a repair bill to the council and/or personal injury claims. To mitigate this risk the Council will ensure that construction is supervised and that the new paths are not brought into use until the Council is satisfied that they have been properly constructed.

Access to Information:

The background papers relating to this report can be inspected by contacting Michael Hughes, Sustainable Travel Officer:



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1. INTRODUCTION

- 1.1 An application has been received from a local resident to make a Public Path Diversion Order under section 119 of the Highways Act 1980 (the Act) by diverting a length of Footpath Mossley 169.
- 1.2 The applicant has requested the order based on the grounds that it is expedient in the interests of the landowners involved as well as the public enjoyment of the path as a whole.
- 1.3 The applicant has agreed to bear the legal costs associated with the application. The applicant will also cover any expenses incurred in bringing the new path into a fit condition for use by the public.
- 1.4 The applicant does not own the land onto which Footpath 169 would be diverted, however a written agreement and verbal confirmation of the permission to divert the path onto the adjacent land has been provided by the landowner.
- 1.5 This application is made to the Council, as highway authority, under Schedule 6 of the Act. The application seeks a decision on whether the diversion meets the criteria as set out in Section 3 below and whether it will make the route more commodious for users and will therefore be expedient. Under the Council's Constitution, these matters are for determination by the Speakers Panel (Planning).
- 1.6 If the application is rejected, the applicants have no right of appeal. If the application is accepted and the diversion order is made, the order will be advertised. If anyone objects to the order then it cannot be confirmed by the Council. The only way it can be confirmed is if it is referred to the Secretary of State who will decide the matter following a public inquiry or hearing.

2. DESCRIPTION OF THE CURRENT AND PROPOSED ROUTES

- 2.1 Footpath MOS/169 starts on Midge Hill, Mossley and runs through the garden area of property number 11 before entering an agricultural field and then running roughly parallel to, and terminating at Stockport Road, Mossley. The current alignment of the footpath runs for a distance of 271 metres (**see Appendix 1**).
- 2.2 The proposed diverted alignment will leave Midge Hill approximately 30m higher up the lane (to the west) before directly entering the agricultural field and running towards Stockport Road and then turning to the south to run adjacent to the road (at the back of the retaining wall). The proposed alignment for the footpath runs for a distance of approximately 252m (**see Appendix 1**).
- 2.3 The diverted route will run on a natural surface throughout with a width of 1.5 metres. The current stile access to and from the agricultural fields will be changed to gated access as part of the proposal.

3. CRITERIA FOR DIVERSION

- 3.1 Section 119 of the Highways Act 1980 gives the Council power to make a diversion order if it is satisfied that "... in the interests of the owner, lessee or occupier of land crossed by the path or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted...". Even if the Council is satisfied that it is expedient, the Council has discretion whether or not to make the order.

- 3.2 The order cannot be confirmed unless the Council considers that the diversion will not make the path 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.

4. CONSULTATION OVER THE PROPOSED DIVERSION

- 4.1 An informal consultation exercise was carried out with the local councillors for Mossley as well as with Mossley Town Council.
- 4.2 The Mossley Town Council responded to this consultation on a provisional basis with *“The Town Council acknowledges that the proposed diversion route will provide a more satisfactory surface for footpath users and offers no objection to the diversion proposed on the plan accompanying the consultation.”*
- 4.3 No comments were received from the local councillors during this period.
- 4.4 If the Speakers Panel (Planning) believe that there is merit in proceeding with the proposed diversion then an order to that effect will be made and advertised for formal consultation for a minimum 28-day period in line with the statutory process. Objections to this order would be submitted to the Secretary of State for confirmation/non-confirmation of the proposed diversion order following a hearing held on behalf of the Secretary of State.

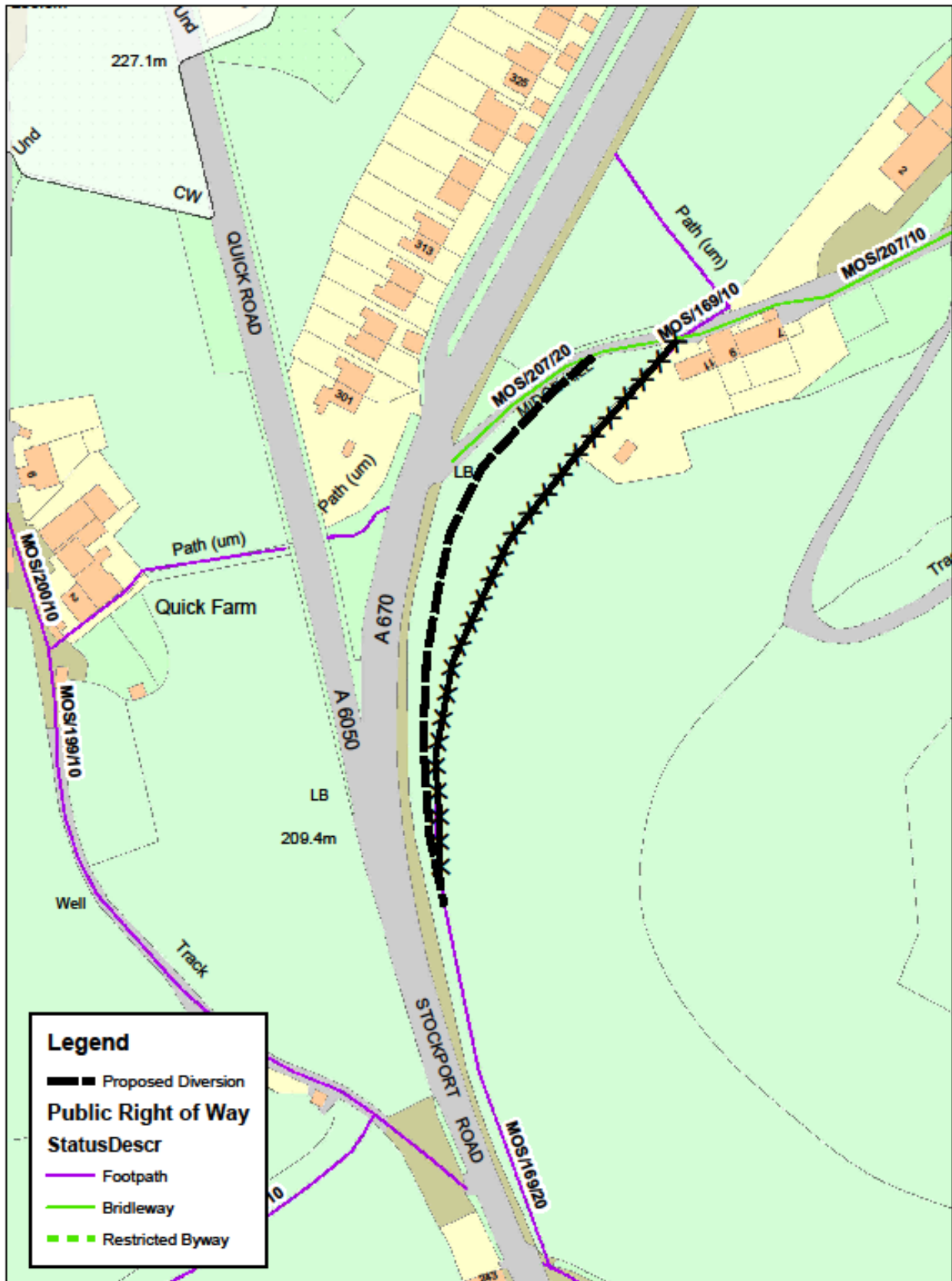
5. COMMENTS OF THE DIRECTOR OF OPERATIONS AND NEIGHBOURHOODS

- 5.1 The applicant has stated that the diversion request is made for their own interests as one of the landowners, but also provides benefit to the general public. A document submitted in support of the application makes the case that the diverted alignment would provide a route which is flatter, drier and more accessible for walkers with better views. The applicant also asserts that users would no longer have to deal with as steep a climb up the hillside or as significant a cross-slope which can pose problems when the footpath is wet and slippery.
- 5.2 Officers agree with these comments in general and accept that the diversion alignment is of advantage to the applicant / landowner as well as providing some benefits to the walking public.
- 5.3 It is noted that the proposed diversion is slightly more direct meaning that the footpath journey will be approximately 20m shorter to get from Midge Hill to the termination point at Stockport Road.
- 5.4 Officers also consider that the proposed change of access arrangements from stiles to British Standard compliant gates is of benefit to users of Footpath 169.
- 5.5 The applicant identifies that the suggested alignment for the footpath is already the route that many walkers choose to follow and so the diversion will in effect formalise a desire line set out by local users.
- 5.6 Based on the above, it would appear that the criteria as set out in Section 3 to this report are met by the diversion application.

6. RECOMMENDATION

6.1 As set out at the front of the report.

APPENDIX 1



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