

|  |  |
|--|--|
| <b>Report To:</b>  | <b>SPEAKERS PANEL (PLANNING)</b>   |
| <b>Date:</b>   | 20 October 2021  |
| <b>Cabinet Deputy/Reporting Officer:</b>                                 | Emma Varnam – Assistant Director, Operations and Neighbourhoods  |
| <b>Subject:</b>  | <b>HIGHWAYS ACT 1980 – APPLICATION TO DIVERT A LENGTH OF DEFINITIVE FOOTPATH STALYBRIDGE 95</b>  |
| <b>Report Summary:</b>   | An application has been received from a local resident to make an Order to divert a length of Footpath Stalybridge 95. If approved, the path will be diverted and the changes will be reflected on the definitive map and statement for Tameside.  |
| <b>Recommendations:</b>  | It is recommended that the Panel accepts this application on the basis that it is expedient in the interests of the owner / occupier of the land and is substantially as convenient to the public to divert Footpath 95 in Stalybridge 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.                                       |
| <b>Links to Community Strategy:</b>                                      | 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.   |
| <b>Policy Implications:</b>  | 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.   |
| <b>Financial Implications:<br/>(Authorised by the Borough Treasurer)</b> | If authorised by the Panel, all costs incurred, including associated legal fees and any expenses incurred in bringing the new path into a fit condition for use by the public will be met by the applicant.  |
| <b>Legal Implications:<br/>(Authorised by the Borough Solicitor)</b>     | 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 so doing 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 to proceed with the Order if objections are received. |
| <b>Risk Management:</b>  | 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, Operations and Neighbourhoods:



Telephone: 0161 342 3704



e-mail: [michael.hughes@tameside.gov.uk](mailto:michael.hughes@tameside.gov.uk)

## 1.0 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 Stalybridge 95.
- 1.2 The applicant has requested the order based on the grounds that it is expedient in the interests of the landowners and occupiers involved. It is suggested that the diversion is as substantially convenient to the public as the current definitive alignment of the footpath.
- 1.3 The applicant does not own the land onto which Footpath 95 would be diverted, however they have confirmed that they have gained permission from the landowner to divert the path onto this adjacent land.
- 1.4 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 be as substantially convenient for users and is therefore expedient in the interests of the owner, lessee, occupier of the land or the public. Under the Council's Constitution, these matters are for determination by the Speakers Panel (Planning).
- 1.5 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.

## 2.0 DESCRIPTION OF THE CURRENT AND PROPOSED ROUTES

- 2.1 Footpath Stalybridge 95 starts at Mottram Old Road, Stalybridge and runs in a generally easterly direction along a private access track, before passing through the garden area of 'The Barn' at Sidebottom Fold and then continuing to the east through an agricultural field before terminating at its junction with Bridleway Stalybridge 68. The current alignment of the footpath runs for a distance of 900 metres (**see Appendix 1**).
- 2.2 The proposed diverted alignment will enter Sidebottom Fold but instead of passing through the garden area of 'The Barn' will instead turn to the north following the alignment of Footpath Stalybridge 88 for approximately 50 metres before entering the agricultural field and then turning back to the south to re-join Footpath 95 on the east side of Sidebottom Fold. The proposed alignment for the footpath runs for a distance of approximately 989 metres (**see Appendix 1**).
- 2.3 The newly created section of footpath will run on a natural surface throughout with a width of 2.5 metres.
- 2.4 Access to and from the agricultural fields will be granted by means of a British Standards compliant gate.
- 2.5 A short slope on the proposed diverted alignment of the footpath will introduce a small number of additional steps.

## 3.0 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.

#### **4.0 CONSULTATION OVER THE PROPOSED DIVERSION**

4.1 An informal consultation exercise was carried out with the local councillors for Stalybridge South as well as with the local public rights of way organisations.

4.2 Councillors Dickinson and Patrick responded to this consultation stating that they have no objection to the proposed diversion. Councillor Patrick did add that this based was on the proviso that the costs for any physical works involved with bringing the diversion route into a fit condition for use are covered by the applicant.

4.3 Comments received on behalf of the Peak and Northern Footpath Society were:

"My view is that the proposed diversion is acceptable in principle on the basis that it will not be substantially less convenient to the public than the current route through the garden and that it will not adversely affect public enjoyment of the path as a whole, as referred to in the Highways Act s119(6). However, that is subject to the important caveat that the width of the path should be a minimum of 2.5 metres rather than 2 metres where it runs along the boundary of the field at the back of the gardens of the adjacent houses. That is in line with PNFS policy on responding to footpath diversion proposals and arises because of the possibility that this section of the path will at some future time be fenced off from the field - in which case that section might become difficult to pass along due to mud or vegetation if the area fenced off were to be narrower than 2.5 metres. (The wording of order itself will of course need to specify an exact width rather than a "minimum" width, given the legal uncertainty created by the latter wording)."

4.4 As a result of the above comment, the applicant agreed that if approved, the diversion route would be 2.5 metres in width. This alteration lead to the following comment from the representatives of the Peak and Northern Footpath Society:

"Peak & Northern Footpaths Society has no objection to the proposed diversion, assuming the order when made does not have any technical flaws. We would add that we welcome the increase in width to 2.5 metres as we had suggested in our previous comments. Assuming the Speakers Panel approve the diversion the Society looks forward to receiving the order in due course."

4.5 Comments received on behalf of the Ramblers referred to the proposed diversion in the following manner:

"In terms of STA/95, this looks ludicrous. I think it should be rejected."

- 4.6 Clarification over this statement has been sought from the representative from the Ramblers, but no response has been received.
- 4.7 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.

## **5.0 COSTS**

- 5.1 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.

## **6.0 COMMENTS OF THE DIRECTOR OF OPERATIONS AND NEIGHBOURHOODS**

- 6.1 The applicant has stated that the diversion request is made for their own interests as one of the landowners involved.
- 6.2 During discussions on site, it was suggested by the applicant that the proposed diversion would not be substantially less convenient to the public. It was further argued that, dependant on the direction of travel, the proposed diversion could actually be more convenient for some.
- 6.3 Officers agree with these comments in general and accept that the diversion alignment is of advantage to the applicant / landowner as well as not being substantially less convenient to the public.
- 6.4 It is noted that the proposed diversion does add approximately 89 metres to the length of the footpath but given that this is less than 10% of the current path length, it is not considered to have a significant impact on the public enjoyment of the path as a whole.
- 6.5 A small number of steps will be needed to make provision for the proposed diverted footpath up a short slope. It is acknowledged that the steps may make access slightly more difficult for users with mobility problems, however the continuation of the route through the field is a strenuous walk and so, again, this is not considered to have a significant impact on the public enjoyment of the path.
- 6.6 The applicant identified that the suggested alignment for the footpath is a route that many walkers choose to follow already and so the diversion will in effect formalise a desire line set out by local users.
- 6.7 Whilst one objection to the proposed diversion has been received from the Ramblers (Paragraph 4.5), it is unclear on what grounds the objection is made. No clarification on the matter has been received. If the decision is reached by the Speakers Panel to proceed with the proposed diversion, then an order will be advertised granting a minimum 28-day formal consultation period where further comment can be submitted if desired.
- 6.8 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.

## **7.0 RECOMMENDATION**

- 7.1 As stated on the front of the report.

# APPENDIX 1

