

Report To:	SPEAKERS PANEL (PLANNING)
Date:	20 March 2019
Reporting Officer:	Ian Saxon (Director Operations and Neighbourhoods)
Subject:	HIGHWAYS ACT 1980, APPLICATION TO DIVERT DEFINITIVE FOOTPATH HYDE 32.
Report Summary:	An application has been received from Mr Philip Wager to make an Order to divert a length of Footpath Hyde 32. Under the Council's constitution, the Speakers Panel (Planning) is responsible for decisions that affect the definitive rights of way network.
Recommendation:	It is recommended that it is expedient in the interests of the applicant and the public to divert Footpath 32 in Hyde 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:	Provide a safer and secure environment for the people of Tameside
Policy Implications:	Provide a safer and secure environment for the people of Tameside
Financial Implications:	The applicant has agreed to bear the legal costs associated with the application and any expenses incurred in bringing the new footpath into a fit condition for use by the public.
(Authorised by the Section 151 Officer)	
Legal Implications:	DEFRA Circular 1/09 on Rights of Way advises at 5.33: In deciding whether or not it is expedient to confirm a diversion order under section 119 of the 1980 Act the Secretary of State, or the order making authority if there are no outstanding objections, must have regard to the effect that:
(Authorised by the Borough Solicitor)	<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:	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 some of these costs.

Access To Information:**Appendix 1 – Plan showing proposed diversion route**

All documentation can be viewed by contacting the report writer, Reece McLaughlin, Assistant Engineer:



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1 INTRODUCTION

- 1.1 An application has been received from Mr Philip Wager to make a Public Path Diversion Order under section 119 of the Highways Act 1980 (the Act) by diverting a length of Footpath Hyde 32.
- 1.2 The applicant has agreed to bear the legal costs associated with the application. The applicant will also pay any expenses incurred in bringing the new path into a fit condition for use by the public.
- 1.3 Mr Wager has confirmed that he owns the entirety of the land onto which the section of Footpath 32 would be diverted.
- 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 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).
- 1.5 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 DESCRIPTION OF THE CURRENT AND PROPOSED ROUTES

- 2.1. Footpath 32 starts at the eastern end of Ash Tree Road and then runs along the rear of the housing in a generally southerly direction for a distance of 381 metres and leads you to Lower Matley Hall where the definitive footpath ends.
- 2.2. The proposed diversion will cause the route to leave Ash Tree Road at the same point but will then run across the field to the south but parallel to Footpath 33. The eastern end of the diverted footpath will join with Footpath 33. A plan of the diversion is attached (**Appendix 1**).
- 2.3 The diverted route will run on a grass surface throughout with a width of at least 2 metres. This will also have a fence either side to protect from livestock which will be kept in the adjacent field.

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 OBJECTIONS TO THE DIVERSION

- 4.1 All of the public rights of way organisations that operate in Tameside have been approached and asked for their views on the diversion. Of the responses received, only one raises objections to the proposed diversion.
- 4.2 The objection has been received from the Voluntary Footpath Inspector from the Peak and Northern Footpaths Society. The grounds for the objection are that that the current alignment of the footpath is “quiet, and poses a much more scenic view to walk along”. The proposed diversion is described as “along a path with no views and walking in a field where livestock could pose as a risk to walkers”.

5 COMMENTS OF THE DIRECTOR OF OPERATIONS AND NEIGHBOURHOODS

- 5.1 The current footpath is in effect a cul-de-sac which only leads to Matley Hall Farm and so it is considered that the proposal would result in a better route for walkers as it will connect to other footpaths in the area.
- 5.2 The surface of the route will change from compacted stone to a natural surface. During site visits, the surface of the proposed diversion has always been firm underfoot and so it is not envisaged to be a problem. The applicant has agreed to maintain the surface in the future.
- 5.3 The intention of the applicant is for the diverted footpath to be fenced off from the rest of the field and so the concerns raised by the Peak and Northern Footpath Society about the risk from livestock should not pose a problem.
- 5.4 The current alignment of Footpath 32 runs along a farm access track with limited views due to an embankment on one side and thick woodland on the other. It is considered that the proposed diversion has views of a comparable if not better aesthetic quality than those currently available.
- 5.5 A decision is needed on whether the assembly believes that the diversion is expedient and, if they do, whether or not they wish to make the diversion order. In this case, the decision will need to consider if the diversion is unreasonable due to the assertion by the Peak and Northern Footpath Society that the current route “poses a much more scenic view to walk along”. The decision must be weighed against the fact that the path will lead walkers to connecting footpaths in the area and not to a dead end.

6 RECOMMENDATION

- 6.1 As set out at the front of the report.

APPENDIX 1

