

Report to Rochdale North Township Committee



Date of Meeting	26 th July 2021
Portfolio	Leader of the Council
Report Author	Julie Simpson
Public/Private Document	Public

Permanent Diversion of Part of Definitive Restricted Byway RocDRupp12 at Stoney Heys in the Healey Ward

Executive Summary

1. The Council has a Statutory Duty to maintain and keep the definitive map under continuous review, this may be carried out by many methods, diverting, closing or adding a right of way.

The property owner (the applicant) of Stoney Heys Barn has applied under Section 119 Highways Act 1980 to divert part of a legally recorded right of way running adjacent to the front of their property to allow for a development to be carried out.

Section 119 Highways Act 1980 allows the Council to consider an application if it is in the interest of the owner, occupier or lessee. As part of that order there is a consultation period, should the Council receive relevant objections to the order the Council have no option other than to refer it to the Planning Inspectorate.

The property owner has received Planning authorisation from Rochdale Council to undertake development works to their property in the location where the right of way currently runs.

The landowner of the adjacent properties and land over which the diverted route will run has provided his agreement for the footpath to be diverted from his land fronting the other properties to the proposed location.

This diversion will not alter the use of the section of the right of way to be diverted it will send the legitimate users across a field area instead of a road.

The applicant is responsible for all fees in respect of this diversion.

Recommendation

2. I recommend that the Committee review the report content and agree with the Council proceeding with an order under section 119 Highways Act 1980 to divert part of definitive footpath RocDRupp12.

The Council to confirm the order if there are no objections or to submit to the Planning Inspectorate for a decision should one or more relevant objections be received by the Council.

That following receipt of any instructions from the Head of Environmental Services, the Assistant Director (Legal, Governance & Workforce) be authorised to prepare the appropriate legal documents and execute such documents on behalf of the Council.

Reason for Recommendation

3. The Council are obligated under Statutory Duty to keep and maintain the definitive map and statement and to ensure it is under continuous review.

A method of reviewing the map and statement is by the implementation of a Highways Act order under Section 119, a Public path Diversion Order to divert part of a definitive route if it is expedient to do so in the best interest of the owner, occupier or lessee of land crossed by the path.

A property owner has applied to divert part of a right of way under Section 119 to implement a Rochdale Council authorised planning application to improve their property.

The process involves a period of public and statutory consultation during this objections to the order may be received, the Council are unable to confirm an opposed order and shall therefore submit the relevant paperwork to the Planning Inspectorate, this may result in a decision being made either by agreement with the Council or the opposition by written representations or Public inquiry.

The diverted route is over a grassed field area, the Council has received permission from the relevant landowner to run the diverted section in this location.

The diverted route is more commodious to the general public and all fees for the order is paid by the applicant.

Key Points for Consideration

4. An order carried out under Section 119 Highways Act 1980 is a Public Path Diversion Order, the legislation provides for landowners, occupiers and lessee to apply to divert a right of way if it appears to the Council that it is expedient to do so.

The proposal assists the Council to meet their statutory duty of continuously reviewing the definitive map and statement.

The full route in question is identified as a restricted byway and can be used legally by horse riders, pedal cyclist and pedestrians and currently runs over a road leading to the properties at Stoney Heys, Rochdale.

The section to be diverted runs only to the front of the 3 properties along the restricted byway. The remainder of the route will continue to run over the road leading to the properties as the land adjacent is used by the local farmer for grazing.

The legal use of the right of way will not be changed by this diversion it will continue to be used by the relevant users of a restricted byway.

4.1 Alternatives Considered

The alternative is not to make the order and maintain the current location of the restricted byway, However, the Council has provided Planning Permission for improvement works to the property, these works could not be implemented should the right of way remain running along the road to Stoney Heys.

Costs and Budget Summary

5. The applicant is responsible for all associated costs of the order, which include the Legal order and any expenses which may be incurred in bringing the site of the diverted sections to a standard agreeable to the Council (Rights of Way Officer) to ensure ease of use by the general public.

Risk and Policy Implications

6.

The risks associated with this application is the landowner may apply for compensation for losing use of his land over which the diverted section will run.

If the Committee agree with the recommendation to proceed with the order, I shall ensure that the landowner will not seek any compensation prior to the matter being submitted to the Council's Legal Service, in the event the landowner does not agree the order it will not proceed unless the applicant will agree to pay the landowner compensation.

Consultation

7. The Council are obliged to carry out a formal statutory consultation with the general public and the relevant Council list of consultees as part of the process.

An informal consultation has been carried out with the Council members of the Rights of Way Forum, many views/comments have been received however these are not a point of law and may not be considered.

The Council's Legal Service, Financial Services and Senior Management within Environmental Management have been consulted.

Background Papers	Place of Inspection
8. Julie Simpson file RocDRupp12	Environmental Management, Green Lane, Heywood, OL10 2DY

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