

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 12 December 2011
Report of: Greenspaces Manager
Subject/Title: Highways Act 1980 – Section 119:
Proposed Diversion of Public Footpaths Nos. 23 (part) & 24 (part) and the Extinguishment of Public Footpath No. 22 (part), Parish of Disley

1.0 Report Summary

- 1.1 The report outlines the investigation to divert parts of Public Footpaths Nos. 23 & 24 and to stop up part of Footpath no. 22 (part), in the Parish of Disley. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been applied for by United Utilities following major works to Bollinhurst Reservoir and the construction of a new spillway which have altered the ground levels of an adjacent path. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert and extinguish the sections of footpath concerned.

2.0 Recommendation

- 2.1 An Order be made under Section 119 of the Highways Act 1980 to divert parts of Public Footpaths Nos. 23 & 24, Disley and a separate order be made concurrently to extinguish a residual part of Footpath no. 22, in the parish of Disley as illustrated on Plan Nos. HA/060 and HA/061 on the grounds that it is expedient in the interests of the owner of the land crossed by the path and the public and that under section 118 of the Highways Act, part of Footpath no. 22, is not needed for use.
- 2.2 Public Notice of the making of the Orders be given and in the event of there being no objections within the period specified, the Orders be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Orders being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or

occupier of the land crossed by the path. Also in accordance with Section 118(1) of the Highways Act 1980 it is within the Council's discretion to make an extinguishment Order if it appears to the Council that it is expedient that a path or way should be stopped up on the grounds that it is not needed for public use. It is considered that the proposed diversion is in the interests of the landowner and the public for the reasons set out in paragraph 10.3 below and it is also considered that the section of FP 22 shown on Plan no. HA/061 is not needed for use as it will become a cul-de-sac as a consequence of the proposed diversion as set out in paragraph 10.4 below.

3.2 Where objections to the making of a diversion Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

- Whether the path is substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

- The effect that the diversion would have on the enjoyment of the path or way as a whole.
- The effect that the coming into operation of the Order would have as respects other land served by the existing public right of way.
- The effect that any new public right of way created by the Order would have as respects the land over which the rights are so created and any land held with it.

3.3 In relation to any outstanding objections to the extinguishment order, the Secretary of State in considering whether to confirm the Order would also have regard to:

- The extent (if any) to which it appears to him...that the path or way would, apart from the order, be likely to be used by the public, and
- The effect which the extinguishment of the right of way would have as respects land served by the path or way, and
- The material provision of any rights of way improvement plan prepared by any local highway authority which includes land over which the order would extinguish a public right of way.

3.4 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Orders in accordance with the matters referred to in paragraph 3.2 & 3.3 above.

- 3.5 No objections to the proposal have been received through the informal consultation process. The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will be of benefit to the landowner in terms of land use in that they would have to undertake extensive re-profiling of the landscape and earth movement to reinstate the current line which would be expensive and unreasonable. It is in the interests of the public because the diversion of footpath 23 will allow for the removal of a sharp angle in the path network creating a more straightforward and shorter alignment. The extinguishment of a residual part of footpath no.22, that would no longer be required, would be necessary to 'tidy up' the legal process. It is therefore considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion and an extinguishment order are satisfied.

4.0 Wards Affected

- 4.1 Disley

5.0 Local Ward Members

- 5.1 Councillor H Davenport

6.0 Policy Implications including – Carbon Reduction – Health

- 6.1 The proposal supports the following policies and initiatives of the Cheshire East Rights of Way Improvement Plan 2011-2026:
- Policy H3: Public rights of way and green infrastructure: Protect and enhance our public rights of way and green infrastructure and endeavour to create new links where beneficial for health, safety or access to green spaces. Initiative: 'Leisure routes for cyclists, horse riders and walkers'
 - Policy H2: Promotion of active travel and healthy activities: Work in partnership to promote walking, cycling and horse riding as active travel options and healthy activities. Initiative 'Public information on the public rights of way network'
- 6.2 The development of new walking, cycling and horse riding routes for local residents and visitors alike is aligned with the health and wellbeing objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Health and Wellbeing Service commitment to the Change4Life initiative.

7.0 Financial Implications

- 7.1 Not applicable.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local authority to confirm the

order itself, and may lead to a hearing/an inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

9.0 Risk Management

9.1 Not applicable

10.0 Background and Options

- 10.1 An application has been received from United Utilities ('the landowners') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpaths No. 23 & 24 (parts) in the Parish of Disley.
- 10.2 Public Footpath No. 24 Disley commences at Cock Head Farm at OS grid reference SJ 9725 8371 at its junction with FP's 22 & 23 and runs in a generally east south easterly direction to its junction with Mudhurst Lane (C413) at OS grid reference SJ 9821 8291. Public Footpath No. 23 commences at the westerly end of Red Lane at OS grid reference 9669 8410 and runs in a south easterly direction to its junction with FP's 22 & 24 at Cockhead Farm at OS grid reference SJ 9725 8371. The sections of paths to be diverted are shown by a solid black line on Plan No. HA/060 between points A and B and between points D and E. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C-B for footpath no. 24 and D-E for footpath no. 23.
- 10.3 Footpath no. 24 was the subject of a diversion order under section 257 Town & Country Planning Act 1990 in 2010 when United Utilities were constructing a new spillway which would directly affect the line of part of the footpath. There was a significant amount of earth movement required in order to complete the construction and when the re-profiling was completed, the newly diverted line of the footpath was obstructed by fencing erected to surround a very steep depression/valley that had resulted from the earth workings. This proposed diversion will address that problem by moving the path slightly further to the north to achieve higher and more level ground. It will curve south, south easterly at its eastern end to regain the original line of the footpath at the stone wall field boundary where a kissing gate will be installed.
- 10.4 It is proposed to also divert a short part of footpath no. 23 that connects with footpath no. 24 at its western end. This short diversion will create a direct east west alignment to the connecting paths and avoid the necessity for walking a short sharp angle in a generally south westerly then northerly direction. United Utilities have approached the landowner, Geoff Lane, and received his permission to divert the path across a short section of his field to meet the existing line of footpath no. 23 (Point E on Plan no. HA/060). It is proposed to install a kissing gate at point D where the path crosses the access track.
- 10.5 As a result of these diversions a residual length of Public Footpath no. 22 will remain leading south from point A to point B, both shown on Plan No. HA/06.

It is proposed to extinguish this length of path as once the diversions are in effect, this section will no longer be needed for use by the public.

- 10.6 The local Councillor has been consulted about the proposal. No response has been received.
- 10.7 Disley Parish Council have been consulted and responded that they felt that the diversion will be a 'positive improvement'. United Utilities and two Rights of Way Officers attended a meeting of Disley Footpaths Society in September to discuss this proposal and they were also consulted. No written response has been received but they appeared to be happy with the proposal at the meeting.
- 10.8 The statutory undertakers have also been consulted and have no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.9 The user groups have been consulted.
- 10.10 An assessment in relation to Equality Act 2010 Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be easier to use than the existing route due to the steep slopes on the current route caused by the earth movements.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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