

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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**Date of Meeting:** 12 December 2011  
**Report of:** Greenspaces Manager  
**Subject/Title:** Highways Act 1980 - Section 119:  
Application for the Diversion of Public Footpath No. 20,  
Parish of Newbold Astbury

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### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert Public Footpath No. 20 in the Parish of Newbold Astbury. 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 put forward by the Public Rights of Way Unit as an application has been made by the landowner concerned. 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 the section of footpath concerned.

### 2.0 Recommendation

- 2.1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert Public Footpath No.20 Newbold Astbury by creating a new public footpath and extinguishing the current path as illustrated on Plan No. HA/062 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order 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 Order being received, 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. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 10.5 & 10.6 below.
- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.

3.4 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, particularly in terms of current stock management within a busy livery and improved privacy and security to the applicant's adjacent property. 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 order are satisfied.

#### **4.0 Wards Affected**

4.1 Odd Rode

#### **5.0 Local Ward Members**

5.1 Councillor R Bailey and Councillor A Barratt

#### **6.0 Policy Implications including – Carbon Reduction – Health**

6.1 Not applicable

#### **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 highway 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 Mr & Mrs N Plant of Peel Farm, Peel Lane, Astbury, Cheshire, CW12 4RJ, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert Public Footpath No. 20 in the Parish of Newbold Astbury.
- 10.2 Public Footpath No. 20, Newbold Astbury, runs in a generally south south westerly direction from Peel Lane to Dodd's Lane. Commencing at its junction with Peel Lane (C 319) at OS grid reference SJ 8547 6129, it passes through the garden of Peel House skirting to the west and then south of a small lake to exit the south eastern corner of the garden. It then bears across a concrete yard and then a car park area (also concrete) before entering a pasture field where it follows the eastern field boundary to terminate on Dodd's Lane at OS grid reference SJ 8534 6102.
- 10.3 The path to be diverted is shown by a solid black line on Plan No. HA/062 running between points A-B-C. The proposed diversion is illustrated on the same plan by a black dashed line running between points D-E-F-G-H.
- 10.4 Mr & Mrs Plant own the land over which the current path and the proposed diversion run. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request, if it considers it expedient in the interests of the landowner to make an order to divert the footpath.
- 10.5 The section of Public Footpath No. 20, Newbold Astbury currently runs through the applicant's garden leading to privacy and security issues. Furthermore, it then runs through their busy livery yard creating a hazardous environment for walkers to pass through as the walker is in close confinement with large livestock.
- 10.6 The proposed new route (D-E-F-G-H on plan HA/062) would start at the entrance to Peel Farm (point D), immediately entering a field and then skirting the western boundary of the livery yard to a field boundary (point E). It would then enter another field to continue skirting the livery yard boundary until reaching a field corner (point F). Here, it would move away from the livery yard following a south westerly direction along the eastern field boundary to reach the south east field corner (point G) and exit into a 'corridor' section that

would run in an easterly direction along the south of fields until opposite the drive of Bank Farm. At this point it would exit the 'corridor' to terminate on Dodd's Road (point H).

- 10.7 The path would be fenced and have a recorded width of 2.5 metres throughout and would have three kissing gates as marked on the plan HA/062.
- 10.8 The new route would take users out of the applicants' garden and busy livery yard and would be easier to navigate with more open and scenic views and reduced interaction with livestock.
- 10.9 Ward Councillors have been consulted about the proposal. No comments were received.
- 10.10 Newbold Astbury Parish Council has been consulted and members have registered no objection to the diversion.
- 10.11 The statutory undertakers have also been consulted and have raised 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.
- 10.12 The user groups have been consulted and no objections have been received. The Congleton Ramblers Association registered their support for this diversion stating that it would be an improvement, especially with the replacement of four stiles and a gate with three kissing gates.
- 10.13 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.14 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 is not substantially less convenient than the old route.

## **11.0 Access to Information**

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

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