

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 13 December 2010
Report of: Greenspaces Manager
Subject/Title: Highways Act 1980 – Section 119:
Application for the Diversion of Public Footpath no. 20
(part), Parish of Dodcott cum Wilkesley

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.20 in the Parish of Dodcott cum Wilkesley. 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 part of Public Footpath No.20 Dodcott cum Wilkesley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/033 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 10.4 & 10.5 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 privacy and security and for the purposes of selling the 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 Cholmondeley Ward

5.0 Local Ward Members

5.1 Councillor S Davies, Councillor R Bailey and Councillor M Hollins

6.0 Policy Implications including - Climate change - 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 by Mr & Mrs Jackson of Lilac Cottage, Whitchurch Road, Audlem CW3 0EL ('the Applicants') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 20 in the Parish of Dodcott cum Wilkesley.
- 10.2 Public Footpath No. 20, Dodcott, commences at its junction with Lightwood Green Avenue (UY 1430) at OS grid reference SJ 6325 4275 and runs in a generally easterly direction across pasture fields to its junction with Public Footpath no. 21, Dodcott. The section of path to be diverted is shown by a solid black line on Plan No. HA/033 running between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points A-B.
- 10.3 Mr & Mrs Jackson own the land over which the current path runs. The proposed path runs over land owned by Mr Bailey, who has given his signed agreement to the diversion. 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.
- 10.4 The section of Public Footpath No. 20, Dodcott cum Wilkesley to be diverted is a very short section of about 22 metres length that currently runs through the garden of Lilac Cottage between the house and an outbuilding in close proximity to the rear entrance to the house. This section of footpath has been unavailable for many years and an unofficial diversion exists which avoids the property. This seems to have been used by the public as no complaints about the path being obstructed have been received in the past decade. Lilac Cottage is currently on the housing market and a recent search revealed the existence of the footpath. The sale was nearing completion but subsequently fell through as the buyer's mortgage company would not proceed with the footpath affecting the property. This caused significant concern to the landowner and in order to be sure that a future sale wouldn't be similarly undermined, he is seeking this diversion. The diversion would also be in the interests of the privacy and security of any future occupier.
- 10.5 The proposed new route (A-B) would follow the boundary fence from the west around the south of Lilac Cottage continuing in the pasture field it currently runs

through and rejoining the current alignment to the east of the property. The path would have a recorded width of 2 metres throughout and is approximately 7 metres longer than the current route but with no requirement for gates or other path furniture.

- 10.6 Ward Councillors have been consulted about the proposal and Councillor Rachel Bailey responded to state that she had no objection but also to highlight her involvement as her husband is the landowner of the field where the diversion is to run. No other comments were received.
- 10.7 Dodcott cum Wilkesley Parish Council has been consulted.
- 10.8 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.
- 10.9 The user groups have been consulted and no objections have been received.
- 10.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.11 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion is an improvement on 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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