

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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**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. 2 (part),  
Parish of Newhall

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### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.2 in the Parish of Newhall. 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.2 Newhall by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/031 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 Objections have been received through the informal consultation process particularly in relation to increased path length and user safety on a road section that would be used by walkers accessing the new route from the village to the south. Although not all consultees agree, the path length is not onerous or time consuming in relation to the wider network and the road section already exists for any walkers travelling north from the west end of the existing route.

On balance, the proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will be of benefit to the landowner, especially in terms of privacy, security and the need to remove conflict between the landowner and public over misuse of the garden area traversed by the current route. 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 R Bailey, Councillor S Davies 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 and Mrs Hutchins, Newhall Cross House, Wrenbury Road, Aston, Nantwich, CW5 8DQ, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 2 in the Parish of Newhall.

10.2 Public Footpath No. 2, Newhall, commences at its junction with Wrenbury Road at OS grid reference SJ 6090 4713 (point A) and runs through the grounds of Newhall Cross House and then across farmland in a generally easterly and then northerly direction to OS grid reference SJ 6135 4792 . The section of path to be diverted is shown by a solid black line on Plan No. HA/031 running between points A-B. The proposed diversion is illustrated on the same plan between points D-C-B.

10.3 Mr and Mrs Hutchins 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.

10.4 The section of Public Footpath No. 2, Newhall to be diverted runs in a generally easterly direction across the garden of the property to the west of a hedge that is broken only by the property drive. The garden to the east of this hedge is landscaped and furnished for use by the owner whereas to the west, it is open mown grass. The impact of this layout is that some users misuse of the open area and others stray from the definitive route to exit the garden via following the drive onto Woodcott Hill Lane. The relative closeness of the current path to the property of the owner also creates privacy and security concerns.

10.5 The proposed new route (points D - C - B) would enter the garden of Newhall Cross House through a gap/gate in the wall off Woodcote Hill Lane (point D) to run around the garden boundary in an easterly direction, turning right at a hedge (point C) to continue south to point (point B). The new route would be fenced along the

southern and western edges of the footpath leaving a recorded width of 2.5m between the existing fence/hedge and the proposed new fence.

- 10.6 Ward Councillors have been consulted about the proposal and Councillor Rachel Bailey responded to register that she had no concerns. No other comments were received.
- 10.7 Newhall Parish Council has been consulted. Objection was expressed regarding the danger of negotiating the bend on Wrenbury Road when walking the section north from the current start point to reach the start point of the proposed new route on Woodcott Hill Lane. There is no footway on Wrenbury Road north of point A.

In response, the Parish Council were informed that the speed limit at this point (30mph) and the nature of the bend forces drivers to slow down and no injury accidents have been recorded to date along this stretch of road. Furthermore, the bend already exists for any walkers travelling north from the west end of the existing route and is a relatively short stretch (approximately 35m).

For users of the new route whose onward direction of travel is south towards the village, the time it would take to walk from the end of Woodcote Hill Lane (point D) to the start of the footway (at point A) is roughly 30 seconds and visibility for users is better in this direction than travelling north.

- 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 objections were received from the Peak and Northern Footpath Society, South Cheshire Ramblers and Mid-Cheshire Footpath Society. The objections related to additional path length and user safety on the Wrenbury Road.

Following discussions about these issues, in particular the fact that the bend already exists for any walkers travelling north from the west end of the existing route (see 10.7) and that the additional length is not onerous in the context of the overall path length and wider network, the Mid-Cheshire Footpath Society stated that they would not object to the proposal.

- 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.

## **12.0 Access to Information**

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

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PROW File: 384D/413