

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 13 December 2010
Report of: Greenspaces Manager
Subject/Title: Highway Act 1980 – Section 119
Application for the Diversion of Public Footpath No.34
(part), Parish of Sutton

1.0 Report Summary

- 1.1 The report outlines the investigation of an application to divert part of Public Footpath No. 34 in the Parish of Sutton. This includes a discussion of consultations carried out in respect of the application and the legal tests for a diversion order to be made. The 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 footpath.

2.0 Recommendations

- 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. 34 as illustrated on Plan No. HA/028 on the grounds that it is expedient in the interests of the owner of the land crossed by the path and of the public.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections to the Order 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 landowners and of the public, for the reasons set out in paragraphs 11.5 and 11.6 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 at informal consultation stage. It is considered that the proposed footpath will be more enjoyable than the existing route. The new route is not 'substantially less convenient' than the existing route and diverting the footpath will be of benefit to the landowners, particularly in terms of security and privacy. It is therefore considered that the proposed route will be as satisfactory as the current route and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Macclesfield Forest

5.0 Local Ward Members

5.1 Councillor M Asquith, Councillor H Gaddum, Councillor L Smetham

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, which 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 Stanley of Foxbank Farm, Sutton ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.34 in the Parish of Sutton.
- 10.2 Public Footpath No. 34 Sutton commences at its junction with Hollins Lane at O.S. grid reference SJ 9384 6972 (point A on plan HA/028) and runs in a generally westerly direction along the northern side of a field boundary up a steep wooded slope for approximately 64m to O.S. grid reference SJ 9377 6973 where it joins the surfaced driveway to Foxbank Farm. This first section of the path is not available on the ground and may represent a mapping anomaly on the definitive map. The public use a permissive path along the southern side of the field boundary instead, through pasture.
- 10.3 The definitive line of Public Footpath No.34 Sutton then continues along the surfaced farm drive, which is steep and narrow. It continues to the end of the surfaced drive and passes the farm house to a field gate at O.S. grid reference SJ 9370 6967 (point B on plan HA/028). This section is available to the public, but most choose to continue along the permissive path on the southern side of the boundary, along the edge of the pasture field, rejoining the definitive line at the aforementioned field gate. The definitive line of the path continues through the field gate and proceeds west and then south for a further 2.5km, along the Hill of Rossencloves. The route forms part of the promoted Gritstone Trail.
- 10.4 The Applicant owns the land over which the current path and the proposed alternative routes 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 applicant and/or the public to make an order diverting the footpath.
- 10.5 The proposed new route for the path (C-B on plan HA/028) follows the aforementioned permissive alternative to the definitive line, along the northern edge of the pasture field, already much used by the public. It has a natural grass surface, which the applicant will improve with stone flags or gritstone (to the Council's specification) where it is narrow; although the path is completely

unenclosed, it is along the edge of a steep slope and some work will be required to provide a level 1m width in front of the farm buildings. The route affords spectacular views to the south across the valley, which are not available from most of the definitive route, as there is a tall hedge and wall separating it from the field. The current stile onto Hollins Lane at point C is to be replaced with a timber kissing gate; there are to be no other barriers or structures on the new route.

- 10.6 The proposal will formalise the situation on the ground by making the route currently used by the public the legal line of the route. This will benefit the landowner in terms of moving the legal line of the path away from the farm buildings, thereby increasing security and privacy at the farm, an issue which is increasingly of concern to the applicant. It will also reduce the potential for conflict between the public and farm vehicles (often large) using the steep, narrow farm driveway, which becomes slippery in wet weather. It will also create a more enjoyable route for the public, as the uninterrupted views of the valley to the south are not available from the definitive line. It will also resolve the issue of the possible mapping anomaly of the section of definitive route along the steep wooded slope up from Hollins Lane, which would be costly and problematic to install on the ground.
- 10.7 The local Councillors have been consulted about the proposal, no objections have been received.
- 10.8 Sutton Parish Council have been consulted and no objection has been received.
- 10.9 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.
- 10.10 The user groups have been consulted. The Peak and Northern Footpaths Society has responded to state that it supports the proposal. The East Cheshire Ramblers' Association has no objection to the proposal and has asked to have the opportunity to inspect the new route with the Council prior to the signing of the Article 2 certificate for the Order.
- 10.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.12 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:

Name: Amy Rushton

Designation: Public Rights of Way Manager

Tel No: 01606 271827

Email: amy.rushton@cheshireeast.gov.uk

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