

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. 2,
Parish of Mottram St Andrew

1.0 Report Summary

- 1.1 The report outlines the investigation to divert Public Footpath No.2 in the Parish of Mottram St Andrew. 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.2 Mottram St Andrew by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/030 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 Although concerns were expressed about the proposed route during the initial consultation process, these were resolved following a site visit where agreement of the reasons for the selected route was reached and a slight amendment to the proposed new route made at the request of the landowner. The amended route did not trigger any objections during a second informal consultation exercise.

3.5 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will be of considerable benefit to the landowner in terms of enhancing the security and privacy of the property. It is 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 Prestbury and Tytherington

5.0 Local Ward Members

5.1 Councillor P Findlow, Councillor T Jackson and Councillor B Livesley

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 from Mr AM Harle, Hunters Pool Farm, Mottram St Andrew, Macclesfield, SK10 4QQ, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert Public Footpath no. 2 in the Parish of Mottram St Andrew.
- 10.2 Public Footpath No. 2, Mottram St Andrew, commences at its junction with Hunters Pool Lane at OS grid reference SJ 8822 7766 and runs in a generally easterly direction along a broken metalled track that passes through the applicant's property (formerly a farm) and through a field to OS grid reference 8842 7765 where it joins with Public Footpath No.1, Mottram St Andrew. The section of path to be diverted is shown by a solid black line on Plan No. HA/030. The proposed diversion is illustrated on the same plan with a black dashed line between points A-B-C-D.
- 10.3 Mr AM Harle owns 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 Public Footpath No. 2, Mottram St Andrew to be diverted runs through the property of the landowner giving rise to concerns relating to security and safety. The landowner also has planning permission to convert some of the outbuildings into holiday apartments, adding to the need for increased privacy and security at the property.
- 10.5 The proposed new route (A-B-C-D) would pass through a kissing gate at point A on plan HA/030 and continue along a level, surfaced path through rough ground to point B where it would climb a slope to a pedestrian gate at point C. From point C, the remaining route would cross open pasture land to terminate at point D. The new route would have a recorded width of 2m and would not be enclosed on either side. Of benefit to the public, the new route would be significantly more enjoyable as it would pass through more open and scenic

landscape and it would also provide a more direct link to Mottram St Andrew FP22.

- 10.6 Ward Councillors have been consulted about the proposal and Councillor Bill Livesley responded to register support. No other comments were received.
- 10.7 Mottram St Andrew Parish Council has been consulted and did not raise any objections.
- 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. No objections were received although concerns were received from the Ramblers Association, Alderley Edge Footpath Society and the Peak and Northern Footpath Society regarding the effect of traffic noise on the enjoyment of the new route between points C-D. These concerns were allayed after a site visit allowed representatives of these organisations to see that this section of path would provide good views and would take the path where it would naturally follow the dip in the land to and from point B. Diverting the path from D-B by any other route would involve taking the user across land of steeper gradient.

The Peak and Northern Footpath Society registered no objection to the proposal but requested that along section A-B on plan HA/030, the new surface should be of appropriate materials to make a good walking surface since the ground is very soft.

- 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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