

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. 5 (part),
Parish of Moston (formerly Tetton)

1.0 Report Summary

- 1.1 This report outlines the investigation to divert part of Public Footpath No.5 in the Parish of Moston (formerly Tetton). 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.5 Moston (formerly Tetton) by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/029 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 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 and public 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 and public, particularly in terms of safety from the subsiding barn and enjoyment. 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 Congleton Rural ward

5.0 Local Ward Members

5.1 Councillor L Gilbert, Councillor A Kolker and Councillor J Wray

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 Mrs Maureen Keeble, 1 Colleys Lane, Willaston, Nantwich, CW5 6NS requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 5 in the Parish of Moston (formerly Tetton).
- 10.2 Public Footpath No. 5, Moston (formerly Tetton), commences at its junction with Dragons Lane at OS grid reference SJ 7192 6236 and runs in a generally northerly direction to the farmyard where it turns to follow a westerly direction between two lakes before following a northerly and then north easterly direction to OS grid reference 7142 6304. The section of path to be diverted is shown by a solid black line on Plan No. HA/029 running between points A-B-C. The proposed diversion is illustrated on the same plan between points D-C.
- 10.3 Mrs M Keeble 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 The section of Public Footpath No. 5, Moston (formerly Tetton) to be diverted runs along a farm drive and through a working farm yard where there is a barn suffering from subsidence. This poses safety issues to passing walkers and a temporary closure is already in place to divert the path along the proposed diversion route.
- 10.5 The proposed new route would leave the road at point D which is west of point A (the start of the current path). It would enter a pasture field (part of a SSSI) to follow a northerly direction along the west side of a fishing lake before joining the current path at point C. The new path would have a recorded width of 2 metres throughout and would have two gates; a kissing gate at the road and a pedestrian gate at a field boundary marked on the plan HA/029. It forms a more direct route for the public, as it disposes of the current "dog leg" through the farmyard. It disposes of the possible conflict between walkers and vehicular traffic on the driveway. It also forms a more pleasant walk for the public in terms of its proximity to the wildlife on the lake and views of the same. From the landowner's point of view, the diversion is advantageous by moving the path further from the property, affording greater privacy and

security and overall enjoyment of the property. It also removes the possibility of danger to the public from the subsiding barn, which, although temporary in nature, requires substantial work to resolve in the long-term.

- 10.6 Ward Councillors have been consulted about the proposal and Councillor Les Gilbert responded to state he foresaw no issues with the diversion although isn't aware of the area so would forward any comments he received. No other comments were received.
- 10.7 Moston (formerly Tetton) Parish Council has been consulted and have raised no objections to the proposed diversion.
- 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. Mr Alan Hooley of the Peak and Northern Footpath Society and Mr Alan Soper of the Ramblers Association responded to register member support for the proposed diversion.
- 10.10 Mr Keiran Preston of Natural England responded to express support providing Natural England agreement is sought to ensure that the gate installations will not adversely affect the land which is a SSSI.
- 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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