

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 17 March 2011
Report of: Greenspaces Manager
Subject/Title: Highways Act 1980 s.119
Proposed Diversion of Public Footpath No. 32 (part),
Parish of Wildboarclough and Public Footpath No. 23
(part), Parish of Sutton

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.32 (pt) in the Parish of Wildboarclough and Public Footpath No. 23 (pt) in the Parish of Sutton. 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 a means of remedying a long standing anomaly whereby the Definitive line has not been useable. 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 footpaths 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.32 Wildboarclough and part of Public Footpath No. 23, Sutton by creating a new sections of public footpaths and extinguishing the current paths as illustrated on Plan No. HA/034 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 public for the reasons set out in paragraph 10.4 and 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 public, particularly in terms of accessibility. 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 Macclesfield Forest Ward

5.0 Local Ward Members

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

6.0 Policy Implications including - Climate change - Health

6.1 The proposal supports the following policies and initiatives of the Cheshire East Rights of Way Improvement Plan 2011-2026:

- Policy H3: Public rights of way and green infrastructure: Protect and enhance our public rights of way and green infrastructure and endeavour to create new links where beneficial for health, safety or access to green spaces. Initiative: 'Leisure routes for cyclists, horse riders and walkers'

- Policy H2: Promotion of active travel and healthy activities: Work in partnership to promote walking, cycling and horse riding as active travel options and healthy activities. Initiative 'Public information on the public rights of way network'

- 6.2 The development of new walking, cycling and horse riding routes for local residents and visitors alike is aligned with the health and wellbeing objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Health and Wellbeing Service commitment to the Change4Life initiative.

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 The Public Rights of Way Unit has investigated the alignment of Footpath no. 32, Wildboarclough and Footpath no. 23, Sutton and in order to correct the situation on the ground is proposing that the Council make an Order under section 119 of the Highways Act 1980 to divert part of the footpath.
- 10.2 Public Footpath No. 32, Wildboarclough, commences at its junction with Greenway Road (UY 1319) at OS grid reference SJ 39629 36871 and runs in a generally northerly direction across pasture fields to its junction with Public Footpath no.23, Sutton at OS grid reference 39631 36871 just south of Oaken Clough stream. Footpath 23 continues northerly across the stream and rough ground for a short distance to OS grid reference SJ 39630 369051. The section of path to be diverted is shown by a solid black line on Plan No. HA/034 running between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points A-D-C.
- 10.3 Mr R May owns the land over which the current path and the proposed path run. He has given his agreement to this proposal. Under section 119 of the Highways

Act 1980 the Council may make a Diversion Order if it considers it expedient in the interests of the public and/or the landowner to make an order to divert the footpath.

- 10.4 The section of Public Footpath No. 32, Wildboarclough and Public Footpath No. 23, Sutton to be diverted runs across sloping terrain over several fields of upland pasture, it crosses a stone wall and a stream just to the north of the parish boundary where there appears never to have been a stile/bridge to facilitate the path. It is about 265 metres in length. This length of footpath appears never to have been available to the public and it may be that it was poorly drafted onto the Definitive Map at the time of the original surveys in the early 1950's.
- 10.5 As a consequence of the difficulty of the Definitive routes a permissive line has developed on the ground. This route is the proposed diversion and follows more level terrain along the valley. A short footbridge would be required adjacent to the landowner's vehicular crossing shown by FB on plan no. HA/034 and a wicket gate adjacent to an existing field gate at the point marked WG. A short section between points 1 and 2 will be slightly widened and have a stoned surface. A new kissing gate will be put in to replace the current stile at the roadside on Greenway Road, this is not on the diversion. For reasons of ease of use and accessibility it is felt that the proposed route would be in the interests of the public.
- 10.6 Ward Councillors have been consulted about the proposal, no comments were received.
- 10.7 Wildboarclough & Macclesfield Forest and Sutton Parish Councils have been consulted and no comments received.
- 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. East Cheshire Ramblers have commented that 'the proposed diversion is a suitable solution to regularise the alignment' and are happy providing the furniture and work specified is undertaken.
- 10.10 Natural England has been consulted and has no comment to make 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:

Name: Clare Hibbert

Designation: Definitive Map Officer

Tel No: 01606 271823

Email: clare.hibbert@cheshireeast.gov.uk

PROW File: 315D/416