

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. 25 (part), Parish of Kettleshulme

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.25 in the Parish of Kettleshulme. 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 applied for by the landowner with the support of the Public Rights of Way Unit as a means of remedying a long standing anomaly whereby the Definitive line has been difficult to use. 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.25, Kettleshulme by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/035 on the grounds that it is expedient in the interests of the owner of the land crossed by the path and 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 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 landowner, particularly in terms of privacy and security and to the public in terms of accessibility and convenience. 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 Bollington and Disley 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 alignment of Footpath no.25 Kettleshulme (part) has been the subject of previous investigations by Cheshire County Council in the early 1990's who considered that the original recording of this section of the path was probably an anomaly and that a Definitive Map Modification Order might be necessary to rectify the situation; in the meantime a permissive path was put in on the ground that has been used by the public. The legal alignment has never been resolved, hence this current application from Mr Ketley, the landowner.

10.2 Public Footpath No. 25, Kettleshulme, commences at its junction with Dunge Lane (UW 2547) at OS grid reference SJ 39892 37827 and runs in a generally southerly direction along the access road to Dunge Farm then across fields to the parish boundary with Rainow FP no. 10 at OS grid reference SJ 39887 37726. The section of path to be diverted is shown by a solid black line on Plan No. HA/035 running between points A- B. The proposed diversion is illustrated on the same plan with a black dashed line also between points A-C-B.

10.3 Mr D Ketley owns the land over which the current path and the proposed path run. 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. 25, Kettlethulme to be diverted runs across steeply sloping terrain close to the rear of Dunge Farm and at the height of the first story window. This raises serious concerns with regard to privacy and security for the landowner and provides a very steep surface for walkers that is difficult to negotiate and liable to slippage. It is about 156 metres in length.
- 10.5 Following investigations by Cheshire County Council and in lieu of a modification order being made, the landowner with the Council's agreement signed a permissive route which runs to the west and front of the farm; this is the route that is now proposed as the diversion. It follows the driveway to the property for a short distance then crosses an open yard leading onto a grass/ stoned track that skirts the immediate property boundary and offers an attractive aspect over a small valley of rhododendron bushes. This is a part of Dunge Valley Gardens that is open to the public during the summer season. There is a small sleeper footbridge on the route over Hodgel Brook and kissing gates will be installed at two points where there are currently stiles, marked KG on Plan no. HA/035. This route is approximately the same length as the current one. For reasons of the privacy and security of the landowner and occupier of Dunge Farm and for the improved accessibility the route offers to the public; it is felt that the proposed diversion would be in the interests of both the landowner and the public.
- 10.6 Ward Councillors have been consulted about the proposal, no comments were received.
- 10.7 Kettlethulme Parish Council has 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 satisfactory as it is the route currently used and welcome the replacement of stiles with kissing gates.
- 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:

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PROW File: 170D/417