

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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<b>Date of Meeting:</b>	<b>17 March 2011</b>
<b>Report of:</b>	<b>Greenspaces Manager</b>
<b>Subject/Title:</b>	<b>Highways Act 1980 s.119 Application for the Diversion of Public Footpath No 39 (part), Parish of Wincle.</b>

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### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No 39 in the Parish of Wincle. 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 39 Wincle by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/044 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 10.5 to 10.9 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 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 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, 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 E Stubbs, Tolls Farm, Danebridge, Nr Macclesfield, Cheshire, SK11 0QE, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No 39 in the Parish of Wincle.
- 10.2 Public Footpath No. 39, Wincle, commences at its junction with Barlow Hill at OS grid reference SJ 9645 6521 and runs in a south westerly direction along the semi-surfaced track to point A where it turns right to arc in a westerly direction passing through the yard and between buildings of Tolls Farm (the applicant's property) and Pear Tree Cottage to then run along a concrete path separating the houses beyond (Chapman's Row Cottages) from their gardens and terminating at OS grid reference 9629 6518 where it joins with Public Footpath No.38, Wincle (point B).
- 10.3 The section of path to be diverted is shown by a solid black line on Plan No. HA/044. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C.
- 10.4 The current path runs across land owned by Mr Stubbs (applicant) and neighbouring landowners, Mr & Mrs Blythe of Pear Tree Cottage and Mr A Hine, Mr D Riley, Mr F Cocker and Mr & Mrs N Heald who own cottages 1, 2, 3 and 4 respectively along Chapmans Row. All adjacent landowners have registered their agreement to the proposed diversion. The proposed diversion runs across land owned solely by Mr Stubbs. 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.
- 10.5 The section of Public Footpath No 39, Wincle to be diverted runs through the property of the landowner (Tolls Farm), through the property of adjacent Pear Tree Cottage and between the houses and gardens of the properties along Chapmans Row, giving rise to concerns relating to security, safety and privacy.
- 10.6 The proposed new route (A-C) would follow a south westerly direction along a semi-surfaced track through a pasture field from point A on Plan HA/044 to point C, bypassing a cattle grid at point A by entering the field via a field gate to the south and then re-joining the track.
- 10.7 The new route would have a recorded width of 2m and would not be enclosed on either side.

- 10.8 Of benefit to the public, the new route would be significantly more enjoyable as it would pass through a more open and scenic landscape bringing users closer to the River Dane and taking away the need to pass between houses and corresponding gardens.
- 10.9 It would be shorter in length by 78m and easier to navigate having only one surface type (semi-surfaced track), being relatively flat and unobstructed except for a field gate. The current route presents several surface types (concrete, dirt and grass), gradients, 11 steps, a field gate and two pedestrian gates. Furthermore, to reach point C, users of the current route must follow Wincle FP38 which descends via more steps and passes through two kissing gates.
- 10.10 Ward Councillors have been consulted about the proposal. No comments have been received.
- 10.11 Wincle Parish Council has been consulted and registered unanimous support.
- 10.12 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.
- 10.13 The user groups have been consulted. The Ramblers Association and the Peak and Northern Footpath Society registered no objections. No further comments were received.
- 10.14 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.15 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: Marianne Nixon  
Designation: Public Path Orders Officer  
Tel No: 01606 271843  
Email: [marianne.nixon@cheshireeast.gov.uk](mailto:marianne.nixon@cheshireeast.gov.uk)  
PROW File: 320D/422