

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
Application for the Diversion of parts of Public Footpath
No's 7, 8 and 26, Parish of Mottram St Andrew

1.0 Report Summary

- 1.1 The report outlines the investigation to divert parts of Public Footpath No's 7, 8 and 26 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 parts of Public Footpath No's 7, 8 and 26 Mottram St Andrew by creating a new section of public footpath and extinguishing the current paths as illustrated on Plan No. HA/041 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 paragraphs 10.7 to 10.10 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 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 and Mrs Holland, Woodside Cottage, Smithy Lane, Mottram St Andrew, Macclesfield, Cheshire, SK10 4QJ, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert parts of Public Footpath No's 7, 8 and 26 in the Parish of Mottram St Andrew.
- 10.2 Public Footpath No. 7, Mottram St Andrew, commences at its junction with Public Footpath No. 26, Mottram St Andrew at OS grid reference SJ 8862 7879 and runs in a generally north westerly direction over Mottram Golf course to terminate at its junction with Public Footpath No. 9, Mottram St Andrew at OS grid reference 8905 7915.
- 10.3 Public Footpath No. 8, Mottram St Andrew, commences at its junction with Public Footpath No. 26, Mottram St Andrew at OS grid reference SJ 8822 7766 and runs in a generally northerly direction over Mottram Golf course to terminate at its junction with Public Footpath No. 9, Mottram St Andrew in the grounds of Mottram Hall at OS grid reference 8853 7950.
- 10.4 Public Footpath No. 26, Mottram St Andrew, commences at its junction with Wilmslow Road at OS grid reference SJ 8802 7853 and runs in a generally north easterly and then easterly direction along the metalled drive of Smithy Lane to Woodside Farm (point A). Here, it continues in the easterly direction through the flagged yard of Woodside Farm and over grassed land between Woodside Cottage and out-buildings to terminate within an enclosed path section at OS grid reference SJ 8862 7879.
- 10.5 The section of path to be diverted is shown by a solid black line on Plan No. HA/041. The proposed diversion is illustrated on the same plan with a black dashed line between points A-B.
- 10.6 The current path and the proposed diversion run across land owned by Mr and Mrs Holland (applicants) and neighbouring landowners, Mr Carden of Woodside Farm, Smithy Lane, Mottram St Andrew, Macclesfield, Cheshire, SK10 4QJ and De Vere Hotels Ltd, owner of Mottram Hall, Wilmslow Road, Mottram St Andrew, Cheshire, SK10 4QT. Both adjacent landowners have registered their agreement to the proposed diversion. 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.

- 10.7 The section of Public Footpath No's. 7, 8 and 26, 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 living accommodation, adding to the need for increased privacy and security at the property.
- 10.8 The proposed new route (A-B) would follow a generally north easterly direction from the metalled road (point A on Plan HA/04), through a kissing gate and along a semi-surfaced track that dissects a pasture field. Once the track starts to bear easterly, the route would leave it to continue north easterly over the pasture field to a kissing gate in the northern fence boundary where it would cross Mottram St Andrew Footpath No. 8. It would then turn easterly along the boundary and beyond to bear north easterly following a mown grass path over Mottram Golf Course, terminating at point B where it would join Mottram St Andrew FP7.
- 10.9 The new route would have a recorded width of 2m and would not be enclosed on either side.
- 10.10 Of benefit to the public, the new route would be significantly more enjoyable as it would pass through more open and scenic landscape and would have fewer barriers (two kissing gates as opposed to three stiles, a pedestrian gate and a field gate). Furthermore, it would be less intimidating for users who are currently forced to pass between the buildings of Woodside Cottage and the busy livery yard that is Woodside Farm.
- 10.11 Ward Councillors have been consulted about the proposal. No comments have been received.
- 10.12 Mottram St Andrew Parish Council has been consulted and did not raise any objections.
- 10.13 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.
- 10.14 The user groups have been consulted. The Ramblers Association and the Peak and Northern Footpath Society registered no objections,
- 10.15 The Alderley Edge Wilmslow and District Footpath Preservation Society informed the Council that a claim had been submitted in April 2008 to upgrade Mottram St Andrew Footpath No. 26 to a restricted byway (Definitive Map Modification Order No MA/5/240). The applicants, Mr and Mrs Holland, are aware of the implications of this claim in relation to the proposed diversion of part of this path and have instructed the Council to continue.

10.16 No other comments were received.

10.17 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.

10.18 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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