

# 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</b> <b>Application for the Diversion of Public Footpath no. 14</b> <b>(part), Parish of Wildboarclough</b>

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### **1.0 Report Summary**

- 1.1 The report outlines the investigation to divert part of Public Footpath No.14 in the Parish of Wildboarclough. 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.14 Wildboarclough by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/039 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 10.4 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 Although concerns were expressed about the proposed route during the initial consultation process, these were resolved following a site visit where agreement of the reasons for the selected route was reached and a slight amendment to the proposed new route made at the request of the landowner. The amended route did not trigger any objections during a second informal consultation exercise.

3.5 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 and Mrs J Pollard, Goosetree Farm, Wildboarclough, Macclesfield, Cheshire, SK11 0BH, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 14 in the Parish of Wildboarclough.

10.2 Public Footpath No. 14, Wildboarclough commences at OS grid reference SJ 9908 6634 and follows a metalled track in a south easterly direction to turning south westerly (point A) and becoming stone and grass track as it passes between the farm buildings of Goosetree Farm, turning south at point B. From here, the route continues in a southerly direction down a steep grass track and then bears east south easterly (point C) to pass through a field gate into a pasture field. It continues into a second pasture field and then bears south easterly and then southerly and then easterly for the to terminate at OS grid reference SJ 9934 6609. The section of path to be diverted is shown by a solid black line on Plan No. HA/039. The proposed diversion is illustrated on the same plan with a black dashed line between points A-D.

10.3 Mr and Mrs J Pollard own 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. 14, Wildboarclough to be diverted runs through the property of the landowner giving rise to concerns relating to security and safety. The proposed diversion route would take path users away from Goosetree Farm along a more direct route that is already available as a permissive path.

10.5 Starting at point A on plan HA/039, the proposed new route would enter a field via a kissing gate and continue across the field in a south south easterly direction close to the western field boundary to terminate at point D. The new

route would have a recorded width of 2m and would not be enclosed on either side. The route is already used by walkers as a permissive path and affords pleasant, open views of the countryside. The applicant would carry out surfacing improvements on the route by installing steps where necessary, building up the surface with stone where it is soft, and by removing some of the large stones in the surface of the route.

- 10.6 Ward Councillors have been consulted about the proposal and Councillor Smetham responded to register that she has no objection. Councillor Gaddum queried the need to contact the National Trust. No further comments were received.
- 10.7 Macclesfield Forest & Wildboardclough Parish Council has been consulted and did not raise any objections.
- 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. The Ramblers Association and the Peak and Northern Footpath Society registered that they have no objection. No further comments were received.
- 10.10 The Council's Nature Conservation Officer has been consulted and has raised no objection 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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