

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 Public Footpath No 128 (part), Parish of Wilmslow

1.0 Report Summary

- 1.1 The report outlines the investigation to divert parts of Public Footpath No 128 in the Parish of Wilmslow. 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 128 Wilmslow by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/042 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 10.5 to 10.7 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 Wilmslow North

5.0 Local Ward Members

5.1 Councillor J Crockatt, Councillor D Stockton and Councillor P Whiteley

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 R Hurst, Dairy House Farm, Dairy House Lane, Woodford, Cheshire, SK7 1RA, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No 128 in the Parish of Wilmslow.
- 10.2 Public Footpath No. 128 Wilmslow covers a total distance of 1149m. It commences on a metalled drive at OS grid reference SJ 8774 8398 and runs in a southerly direction before crossing the A555 to follow the length of the metalled road opposite (Dairy House Lane) in a south south westerly direction to reach Dairy House Farm (point B on Plan No. HA/042). Here, it bears west south westerly and then southerly across pasture fields to terminate at OS grid reference SJ 8730 8297, its junction with Bridleway No. 92 Wilmslow that runs along Blossoms Lane.
- 10.3 The section of path to be diverted is shown by a solid black line on Plan No. HA/042. 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. 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 128, Wilmslow to be diverted runs to and through the busy working yard of Dairy House Farm, giving rise to concerns relating to security, safety and privacy.
- 10.6 The proposed new route would leave the metalled track at point A on Plan HA/042 to enter the adjacent western field via a gap. It would then continue westerly along the northern field boundary and then southerly along the western field boundary to terminate at the south west field corner at point C. The new route would have a width of 2m, a length of 162m and would not be enclosed on either side.
- 10.7 Of benefit to the public, the new route would take path users away from the busy working yard and would be unobstructed.

- 10.8 Ward Councillors have been consulted about the proposal. No comments have been received.
- 10.9 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.
- 10.10 The user groups have been consulted. The Ramblers Association have suggested that the surface of the proposed route across the field should be treated with stone. The council's position is that as the current route to be diverted crosses pasture, and then continues into pasture until its termination, it would not be reasonable or necessary to expect the applicant to provide a stone surface for the new route. The resolution of this issue will be verbally reported at the committee meeting on 17th March.

No further comments were received.

- 10.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.12 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
PROW File: 645D/426