

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 52,
Parish of Bollington and Nos 35 (part) and 48, Parish of
Adlington

1.0 Report Summary

- 1.1 The report outlines the investigation to divert Public Footpath No. 52, Parish of Bollington and Nos 35 (part) and 48, Parish of Adlington. 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 Public Footpath No's 52, Parish of Bollington and No's 35 (part) and 48, Parish of Adlington by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/040 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 10.11 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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
Bollington and Disley

5.0 Local Ward Members

5.1 Councillor H Davenport, Councillor M Davies, Councillor D Thompson, 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 S Wall, Tip Farm, Lodge Brow, Bollington, SK10 5SN requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert Public Footpath No's 52, Parish of Bollington and 35 (part) and 48, Parish of Adlington .
- 10.2 Public Footpath No 52, Parish of Bollington commences at its junction with Sugar Lane at OS grid reference SJ 9313 7813 and runs in a west north west direction through woodland to OS grid reference SJ 9312 7814.
- 10.3 Public Footpath No 35, Parish of Adlington, commences at OS grid reference SJ 9312 7814 and runs in a west north westerly direction continuing through the woodland, over a pasture field and bearing south westerly before turning north north westerly to pass between buildings through the yard of Tip Farm. Upon meeting a wall (point B), the path turns west and then north into a second pasture field to follow a generally north north westerly direction along the western field boundary crossing the Middlewood Way to continue in a generally north westerly direction across three further fields to its junction with Holehouse Lane at OS grid reference SJ 9240 7882.
- 10.4 Public Footpath No 48, Parish of Adlington, commences at OS grid reference SJ 9308 7826 and runs in a south westerly direction through woodland and along the metalled drive of Tip Farm, to terminate at OS grid reference SJ 9301 7817.
- 10.5 The sections of these paths to be diverted are shown by solid black lines on Plan No. HA/040. The proposed diversion is illustrated on the same plan with a black dashed lines.
- 10.6 Mr and Mrs S Wall own the land over which the current paths 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.
- 10.7 The sections of Public Footpath No's 52, Parish of Bollington and No's 35 (part) and 48, Parish of Adlington to be diverted lead to and run through the property of the landowner. To provide security and privacy to the applicant's

property, the proposed diversion route will take path users away from the applicant's house and out-buildings and will allow better land management in relation to livestock.

- 10.8 The proposed diversion route would start at point A on plan HA/040, rising up steps in a northerly direction to a gap in the fence. From this point, it would be fenced to a width of 2.5m as it continues in a north north westerly direction alongside the eastern side of the first pasture field to leave the field via a slope to a second gap that leads onto the farm drive.
- 10.9 The route would then cross the farm drive to enter the next field via a third gap. This section would be similarly fenced to a minimum width of 2.5m and would continue in a northerly direction along the eastern side of the pasture field to terminate at fourth and final gap (point G) where it would join Adlington FP36.
- 10.10 Further to this, the current route of Adlington FP48 that follows the farm drive would be shortened to start at the third gap. The route would run parallel to the drive along the northern grass verge and terminate at point F gradually bearing north westerly over the final 11m (approx.). It would be fenced to a width of 2.5m.
- 10.11 Of benefit to the public, the new route would link Adlington FP35 with Adlington FP36 increasing user safety by providing a path parallel to but away from the narrow road, Lodge Brow. Furthermore, it would be more accessible to users since there would be no barriers.
- 10.12 Ward Councillors have been consulted about the proposal. No comments were received.
- 10.13 Bollington Town Council and Adlington Parish Council have been consulted and did not raise any objections.
- 10.14 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.
- 10.15 The user groups have been consulted. The Ramblers Association and the Peak and Northern Footpath Society registered that they do not object to the proposal. No further comments were received.
- 10.16 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.17 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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