

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 13 June 2011
Report of: Greenspaces Manager
Subject/Title: Highways Act 1980 Section 119:
Application for the Diversion of Public Footpath Nos. 4
and 5 (parts), Parish of Great Warford

1.0 Report Summary

- 1.1 The report outlines the investigation to divert parts of Public Footpath Nos. 4 and 5 in the Parish of Great Warford. 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 Nos. 4 and 5 in the Parish of Great Warford by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/045 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 & 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 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 Mobberley

5.0 Local Ward Members

5.1 Councillor Jamie Macrae

6.0 Policy Implications including

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 Mrs Byrom, Little Moss Farm, Chelford Road, Great Warford, SK9 7TS, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert parts of Public Footpath nos. 4 and 5 in the Parish of Great Warford.
- 10.2 Public Footpath No. 4, Great Warford, commences at the Parish Boundary at OS grid reference SJ 8213 7783 and runs in a generally south easterly and then south westerly direction over pasture land and then a semi surfaced track to its junction with Public Footpath No. 5 Great Warford at OS grid reference SJ 8215 7758.

Public Footpath No. 5, Great Warford, commences at the Parish Boundary at OS grid reference SJ 8241 7765 and follows the metalled drive to Little Moss Farm in a south westerly direction before turning west north west and then west south west as it passes between the farm buildings to reach the corner of a field. Here, it continues west south west across fields to its junction with Merrymans Lane at OS grid reference SJ 8142 7724.

The section of path to be diverted is shown by a solid black line on Plan No. HA/045. The proposed diversion is illustrated on the same plan with a black dashed line between points A-E-F-G-C.

- 10.3 Mrs Byrom owns 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 sections of Public Footpath No. 5 in the Parish of Great Warford 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 leisure facilities adding to the need for increased privacy and security at the property.
- 10.5 The proposed new route (A-E-F-G-C) would follow Great Warford Footpath No. 3 from its junction with Great Warford Footpath No 5 on the metalled drive of Little Moss Farm (point A) in a north north westerly direction along the

eastern boundary of a pasture field to point E. Here, it would turn easterly across the southern boundary of a second pasture field to meet the semi-surfaced track of Great Warford Footpath No. 4 at point F. It would then run along this track along the western boundary of An arable field in a southerly direction to point G and then run in a south easterly direction to re-join Great Warford Footpath No. 5 at the western end of the buildings of Little Moss Farm at point C.

- 10.6 The Ward Councillor has been consulted about the proposal. No comments were received.
- 10.7 Great Warford Parish Council has been consulted and registered an objection to the length of the proposed diversion route.
- 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. No objections have been received. The Ramblers Association, Peak and Northern Footpath Society and Alderley Edge Footpath Society have walked the proposed diversion route and accept it providing the surface of the section across pasture land between points E and F on plan HA/045 is treated to prevent water-logging and the route is appropriately waymarked.
- 10.10 Neighbouring landowners, Stuart & Alison Carthy, Chelford Road, Alderley Edge, Cheshire, SK9 7TJ support the diversion proposal. Great Warford Footpath Number 3 crosses their land.
- 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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