

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 19 September 2011
Report of: Greenspaces Manager
Subject/Title: Highways Act 1980 Section 119
Application for the Diversion of part of Public Footpath
No. 16 in the Parish of Aston by Budworth

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 16 in the Parish of Aston by Budworth. 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 in the interests of the public and in the interests of the owner of the land crossed by the path. 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. 16 in the parish of Aston by Budworth by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/053 on the grounds that it is expedient in the interests of the public and 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 public and in the interests of the owner of the

land crossed by the path for the reasons set out in paragraphs 10.3 to 10.6 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 Initial informal consultations have not indicated that objections to an order are likely. The diversion has been sought by the Council to resolve long-standing problems with the footpath. Diverting the footpath onto the proposed route would create a legal, accessible, usable footpath on the ground where none has existed for many years. It will also provide benefit to the landowners as moving the footpath away from the farm/yard will help them to improve the privacy and security of their property. It is considered that the proposed diversion follows the best possible route available. It is therefore 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.

3.0 Wards Affected

4.1 High Legh.

5.0 Local Ward Members

5.1 Councillor Steve Wilkinson.

6.0 Policy Implications including – Carbon Reduction - Health

- 6.1 The proposal supports the following policies and initiatives of the Cheshire East Rights of Way Improvement Plan 2011-2026:
- Policy H3: Public rights of way and green infrastructure: Protect and enhance our public rights of way and green infrastructure and endeavour to create new links where beneficial for health, safety or access to green spaces. Initiative: 'Leisure routes for cyclists, horse riders and walkers'
 - Policy H2: Promotion of active travel and healthy activities: Work in partnership to promote walking, cycling and horse riding as active travel options and healthy activities. Initiative 'Public information on the public rights of way network'
- 6.2 The development of new walking, cycling and horseriding routes for local residents and visitors alike is aligned with the health and wellbeing objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Health and Wellbeing Service commitment to the Change4Life initiative.

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 Mike Preston of 43 Redacre Close, Dutton, Cheshire, WA14 4JU ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 16 Aston by Budworth. Under Section 119 of the Highways Act 1980 the Borough Council may make a Diversion Order if it considers that it is expedient in the interests of the public or of the owner, lessee or occupier of the land crossed by the path.
- 10.2 Public Footpath No. 16 Aston by Budworth commences at its junction with Footpath No. 11 Aston by Budworth at Gravestones Farm at OS grid reference SJ 6823 7817 and runs in a generally north easterly direction for approximately 453 metres to Public Footpath No. 9 Aston by Budworth at

Walthall Farm at OS grid reference SJ 6861 7829. The section of path to be diverted is shown by a solid black line on Plan HA/053 running between points A-B. The proposed diversion is illustrated on the same plan between points A-C.

- 10.3 The Applicant owns the land over which the current paths and the proposed alternative route runs. 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 applicant to make an order diverting the footpaths
- 10.4 Public Footpath No. 16 Aston by Budworth runs across the land at Walthall Farm, Colliers Lane, Aston by Budworth, CW9 6NF. This was previously a County Farm which was sold to Mr and Mrs Michael Preston in November 2010. The legal line of the footpath has been obstructed by a slurry pit and fence for many years and a permissive route has been in place. A condition was placed in the sales particulars to the farm that the buyers must apply for a diversion of the footpath and the council will indemnify the new owners against the cost of the diversion.
- 10.5 As stated, the current definitive line of the footpath has been unavailable for several decades. It is obstructed by a slurry pit and fence on the southern side of the farm and then crosses the yard to join Colliers Lane/Public Footpath Aston by Budworth No. 9 (point B on plan no. HA/053). The section of the footpath to be diverted is approximately 106 metres
- 10.6 A permissive route has been in place for many years which runs in a north easterly direction across the field adjacent to the farm, before joining Colliers Lane/Public Footpath Aston by Budworth No. 9 approximately 7 metres south of where the existing route terminates. The existing stile will be replaced by a kissing gate (point A on plan no. HA/053). The length of the proposed route is 4 metres longer than the current route, approximately 110 metres.
- 10.7 The Ward Councillor has been consulted about the proposal. Councillor Wilkinson has responded to state that he has no objection and supports the proposal.
- 10.8 Aston by Budworth Parish Council have been consulted.
- 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 has been consulted.
- 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 would be no less easy to use than the existing 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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