

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 11 June 2012
Report of: Greenspaces Manager
Subject/Title: Highways Act 1980 Section 119
Application for the Diversion of part of Public Footpath No. 14 in the Parish of Sandbach

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 14 in the Parish of Sandbach. 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 of the landowner at Heath Farm, Church Lane, Sandbach. 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 in the parish of Sandbach by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/064 on the grounds that it is expedient in the interests of the public and of the landowner at Heath Farm.
- 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 of the landowner at Heath Farm for the reasons set out in paragraph 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 the long-standing legal anomaly with the eastern end of the footpath not meeting a public highway. Diverting the footpath will provide a legal, usable route on the ground for the public thereby clarifying the situation for path users and the landowner at Heath Farm. It will also provide a more accessible route as it requires only one gate, whereas the current legal line requires two. 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 Sandbach Heath and East.

5.0 Local Ward Members

5.1 Councillor Sam Corcoran.

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 Council's objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Council's 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 The agreement of the landowners to the diversion of part of Public Footpath No. 14 in the parish of Sandbach has recently been obtained. 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 and/or of the owner, lessee or occupier of the land crossed by the path
- 10.2 Public Footpath No. 14 Sandbach commences on Hawthorne Drive (UY803) at OS grid reference SJ 7647 6079 and runs in a generally north easterly direction for approximately 1006 metres to OS grid reference SJ 7724 6116. The section of path to be diverted is shown by a solid black line on Plan HA/064 running between points A-B. The proposed diversion is illustrated on the same plan between points A-C.
- 10.3 Mrs Smith of Heath Farm, Church Lane, Sandbach owns the land over which the current route runs. Mr Davenport of Top O The Town Farm, Heatley Lane, Broomhall owns the land over which the proposed route would run. They have both provided written consent and support for the proposal.

- 10.4 The current definitive line of the footpath was diverted on 8th October 1963 under the Town and Country Planning Act 1962 as part of “The Stopping up of Highways (County of Chester) (No. 10) Order 1963”. Due to an error in this order, the eastern end of the diverted footpath does not meet with the public highway, it stops as it reaches a private access track, and there is therefore no legal public access through to Church Lane at the moment.
- 10.5 The proposed diversion will be in the interests of the public as it will resolve the issue of the footpath not meeting a public highway, thereby providing public access through to Church Lane. It is also in the interests of the landowner at Heath Farm as it will move the footpath out of the paddock and allow them greater freedom in utilising the land, as well as increasing privacy and security at the farm by moving the footpath away from their buildings.
- 10.6 The proposed route has been used as a permissive route for a number of years. It runs along an existing track south west of the present route to join with Church Lane. To re-instate the footpath onto the current legal line, two gates or stiles would be required (as illustrated on the length A to B on Plan No. HA/064). The proposed diversion requires only one kissing gate (as illustrated on the length A to C on Plan No. HA/064) at the eastern end of the track, and the path will have a width of two metres.
- 10.7 The Ward Councillor has been consulted about the proposal. No comments have been received.
- 10.8 Sandbach Town Council has been consulted and has responded to state that they have no objection to the proposal.
- 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. Congleton Ramblers have responded to state that they “are delighted to register our support for the proposed diversion”.
- 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 Equality Act 2010 Legislation has been carried out by the PROW Network Management & 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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