

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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**Date of Meeting:** 11 June 2012  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 Section 119  
Application for the Diversion of Public Footpath no. 18 (part),  
Parish of High Legh

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### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.18 in the Parish of High Legh. 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.18 High Legh by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/071 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 High Legh

#### **5.0 Local Ward Members**

5.1 Councillor Steve Wilkinson

#### **6.0 Policy Implications including – Carbon Reduction - 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/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 MF Pallett, Stores Farm Barn, Swineyard Lane, High Legh. WA16 0SB, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 18 in the Parish of High Legh.
- 10.2 Public Footpath No. 18, High Legh, commences at its junction with Swineyard Lane at OS grid reference SJ 6699 8376 and runs in a generally southerly direction through the applicant's property to exit into a rotational arable field which it crosses in an increasingly south, south easterly direction to an old field boundary near the buildings of Mossoaks Farm. From here, it continues in the same direction to the west of the buildings to terminate at its junction with High Legh FP33 at O.S. grid reference 6712 8342. The section of path to be diverted is shown by a solid black line on Plan No. HA/071 between points A-B. The proposed diversion is illustrated on the same plan with a black dashedline between points C-D-B.
- 10.3 The land over which the current path and the proposed diversion run belongs to Mrs MF Pallett. 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 section of Public Footpath No. 18, High Legh to be diverted runs through the property of the landowner giving rise to concerns relating to security and safety.
- 10.5 The proposed new route (C-D-B) would enter a pasture field via a kissing gate at point D on plan HA/071 and would run in a south easterly direction to the southern field boundary at point D. It would then follow this field boundary in an east, north easterly direction terminate on the current path at point B just before a stile. The new route would have a recorded width of 2m and would be unenclosed between points C-D and enclosed to a width of 2.5m between points D-B.
- 10.6 Ward Councillors have been consulted about the proposal. No comments were received.

- 10.7 High Legh Parish Council has been consulted and registered that they have no objections.
- 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 North and Mid-Cheshire Ramblers Association expressed concerns that a stable and ménage (for which a planning application is duly being considered, planning reference: 12/1533M) if built, may cause damage to the surface of this alternative route and affect enjoyability. Following consideration of the response from the local authority, this concern was allayed since if the diversion was considered at a later date under the Town and Country Planning Act 1990, s257, the diversion route options would be less attractive to users. The current proposal would take users across a pasture field to the southern field boundary and then along that boundary between trees to the north of which is the proposed location for the ménage. Therefore, the ménage and stables would not affect the current proposal other than to force the need for a fenced section between points D-B.
- 10.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.11 An assessment in relation to Equality Act Legislation has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion is 'no less convenient' than 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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