

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

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. 60
(part), Parish of Wilmslow

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.60 in the Parish of Wilmslow. 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.60 Wilmslow by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/070 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 offering enhanced security and privacy once the land over which the path runs is sold for development of a private dwelling. Planning permission for this development has been granted (see Planning Reference: 10/1798M). 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 Wilmslow East

5.0 Local Ward Members

5.1 Councillor Rod Menlove

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 Mr R Fowler (“agent”) of MBW Developments on behalf of Mr RN Scott (“applicant”) of Moat Hall Farm, Chelford Road, Marthall, Nr Knutsford, Cheshire, WA16 8SU, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 60 in the Parish of Wilmslow.
- 10.2 Public Footpath No. 60, Wilmslow, commences at its junction with Prestbury Road at OS grid reference SJ 8666 8018 and runs in a generally south westerly direction through fields, then through the grounds of Oak Hollow Farm and Hollow Barn, then around the north western edge of a small lake and then through more fields to its junction with Hough Lane at OS grid reference 8566 7958. The section of path to be diverted is shown by a solid black line on Plan No. HA/070 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C-B.
- 10.3 The land over which the current path and the proposed diversion run belongs to Mr R Fowler of MBW Developments and the intention is that ownership will transfer to the buyer, Mr Scott on whose behalf Mr Fowler is acting upon. 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. 60, Wilmslow to be diverted skirts around the north western edge of a small lake. A private dwelling will be built on the land over which the path runs giving rise to concerns relating to security and safety.
- 10.5 The proposed new route (A-C-B) would skirt the small lake starting at point A and would run in a southerly direction to point C and then in a westerly direction to terminate at point B. The new route would have a recorded width of 2m and would be unenclosed although it would be bounded by a hedge to the east between points A-C.
- 10.6 Ward Councillors have been consulted about the proposal. No comments were received.

- 10.7 Wilmslow Parish Council has been consulted. Although they registered an objection to the proposal but this is under reconsideration and their final response will be reported verbally.
- 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.
- 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 the 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 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:

Name: Marianne Nixon
Designation: Public Path Orders Officer
Tel No: 01270 686 077
Email: marianne.nixon@cheshireeast.gov.uk
PROW File: 355D/449