

CHESHIRE EAST COUNCIL

Cabinet Member for the Environment

Date of Report: 29th October 2013
Report of: Kevin Melling, Head of Environmental Protection and Enhancement
Report to: Councillor Topping, Environment Portfolio Holder
Subject/Title: Proposed creation of a new public right of way in the Parish of Cranage

1.0 Report Summary

1.1 This report presents a proposal to create a new public right of way in the Parish of Cranage.

2.0 Recommendation

2.1 That:-

- consideration be given to the identified risks of the proposal;
- approval be given to develop the project to create public rights of way in the Parish of Cranage;
- a capital project bid be developed for the delivery of the project; and,
- the decisions as to the legal processes required be put before the Public Rights of Way Committee for decision.

3.0 Reasons for Recommendation

3.1 The Ward Members, Councillors Gilbert and Kolker, have requested the proposal to be taken forward. The chronology of the concept dates back at least to 1998.

3.2 Due to the number of separate landholdings within the proposed route, there are a number of different legal processes which would need completing, some of which may be against the wishes of the landowner and therefore may open the Council to adverse publicity, and to the payment of compensation to those with an interest in the land.

3.3 The proposal is not currently identified as a project within the Council's capital programme and therefore a budget for costs of compensation, physical works and officer time, has not been allocated.

4.0 Wards Affected

4.1 Dane Valley Ward.

5.0 Local Ward Members

5.1 Councillor Gilbert and Councillor Kolker.

6.0 Policy Implications

- 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';
 - Policy S7: Work with stakeholders to improve facilities for walking so that it is attractive for shorter journeys; and,
 - Policy C8: Work with stakeholders to improve facilities for cycling so that it is attractive for shorter journeys.
- 6.2 The development of new walking and off-road cycling routes for local residents and visitors alike is aligned with the health and wellbeing objectives and priorities of the Council as stated in the Business Plan 2012/2015, in particular Priority 5 Ensure a Sustainable Future and Priority 7 Drive out the causes of poor health, and the Council's commitment to the Change4Life initiative.

7.0 Financial Implications

- 7.1 Should the landowner(s) be willing to dedicate their land for the public right of way, an agreement under section 25 of the Highways Act 1980 will be required. Under Section 25 of the Highways Act 1980, there is no statutory right for compensation by a person with an interest in the land. However, the terms of the agreement are negotiable and section 25 does allow compensation to be paid, where agreed between the parties.
- 7.2 Where the landowner(s) cannot be ascertained or they refuse to agree to the dedication of their land as a public right of way, a creation order under s26 of the Highways Act 1980 may be required. Under Section 28 of the Highways Act 1980, there is a statutory right for compensation, for loss caused by a path creation order, to be claimed by a person with an interest in the land. Compensation may include that for land used, disturbance and injurious affection and severance, and may include agents' fees. An estimate cost for compensation due, should this section of the Act be employed, has been given as £40k by the Asset Management Service.
- 7.3 Under Section 27 of the Highways Act 1980, the highway authority has a duty to bring the public right of way into a fit condition for use by the public. Approximately 110m of new track would need to be constructed and other relatively minor works be undertaken to make the route available to the public following the necessary legal processes. An initial estimate of £20k

has been given by the Asset Management Service for these works. Cheshire East Highways have estimated the cost of the bridge at £331k, including preparatory work, design, construction and installation.

7.4 An anticipated timeframe of resources, including legal order advertising costs, but excluding staff time, would be as follows:

	2013/14	2014/15	2015/16
Capital	£0	£65k	£331k

7.5 Thereafter, the public right of way created would be maintainable at the public expense. An estimate of annual maintenance costs has been given as under £500 by Streetscape. Periodic maintenance of the surface of the path would also be required.

8.0 Legal Implications

8.1 Under Section 25 of the Highways Act 1980, a local authority has a power to enter into an agreement with any person having the capacity to dedicate a public right of way.

8.2 Under Section 25 of the Highways Act 1980, there is no statutory right for objection to the proposal, although the Council's decision to enter into the agreement may be challenged by way of judicial review.

8.3 Under Section 26 of the Highways Act 1980, a local authority has a power to make a creation order to create a public right of way where it appears that there is a need, having regard to:

- a) the extent to which the path would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and,
- b) the effect which the creation of the path or way would have on the rights of persons with an interest in the land.

8.4 Under Section 26 of the Highways Act 1980, there is a statutory right for objection to the proposal, with objected orders being referred to the Secretary of State for determination.

8.5 The use of Section 26 of the Highways Act 1980 against the landowner's wishes, may create future enforcement issues should the landowner choose to continue to demonstrate their objection to the proposal.

8.6 Where an order is made pursuant to Section 26 of the Highways Act 1980, the landowners have a statutory right to compensation.

9.0 Risk Management

- 9.1 The identified risks to the Council are outlined in the sections of this report relating to financial and legal implications, but also include risk to reputation through use of legal powers against the wishes of a landowner, should Section 26 of the Highways Act 1980 be employed.

10.0 Background and Options

- 10.1 For a number of years, Cheshire East Council, Holmes Chapel Parish Council and Cranage Parish Council have been discussing means to improve access between the two communities. The road connecting the two communities is the A50, a route which has been designated as a hazardous route for school journeys due to the non-continuous pavement necessitating two crossings of the road.
- 10.2 A possible off-road route via the Cranage playing fields, over the River Dane, and then on to Holmes Chapel via the Dane Meadow public open space was identified.
- 10.3 The Asset Management Service, in partnership with the Holmes Chapel Partnership, Parish Council and other Borough Council departments, is leading on a project to improve access on the Holmes Chapel side of the river. This work involves the creation of public rights of way within Borough Council owned public open space.
- 10.4 One of these public rights of way is being created as a bridleway in order that it can be used by walkers, cyclists and horse riders. This is in recognition of the aspiration to create an off-road route for pedestrians and cyclists linking Holmes Chapel and Cranage via a bridge over the River Dane.
- 10.5 The Plan attached indicates the proposed alignment of the off-road, non-motorised route between the two communities. Those routes shown in blue on the plan are in the process of being created through a Deed of Dedication under the Local Government Act 2000.
- 10.6 The route on the northern, Cranage, side of the river is colour-coded into sections according to landownership.
- 10.7 The section of the proposed route shown in green on the plan (approximately 15m) is understood to be owned by a landowner who is prepared to support the project; an agreement for option over freehold property was drafted in 2007 between the landowner and Cranage Parish Council. The purchase price was given as £6,000, and the option period as two years from the date of the agreement. Whilst this period has now expired, it is understood that the landowner may still be willing to support the project. This could take the form of one of the following options, which are achievable through legal agreement and possible exchange of monies:

- a) Cranage Parish Council purchasing the freehold of the necessary strip of land, and dedicating a public right of way (through one of a number of legal process options); or,
- b) the existing landowner dedicating a public right of way under Section 25 of the Highways Act 1980, for which compensation may be offered.

10.8 The section of the proposed route shown in orange (approximately 275m) is on land for which the landownership is currently unknown (the extent of the CEBC asset ownership does not include the track already in existence along this route). The Asset Management Service is currently investigating sources of information to identify the landowner. This presents a number of scenarios:

- a) the landowner is identified and is willing to dedicate a public right of way under Section 25 of the Highways Act 1980, for which compensation may be offered;
- b) the landowner is identified and is not willing to dedicate a public right of way under Section 25 of the Highways Act 1980, and therefore the option to use a creation order under Section 26 of the Highways Act is available, for which compensation may be claimed by those with an interest in the land;
- c) the landowner cannot be identified and therefore the option to use a creation order under Section 26 of the Highways Act is available, for which compensation may be claimed by those with an interest in the land; or,
- d) an application for a Definitive Map Modification Order is submitted, assessed, prioritised and determined, to 'claim' a public right of way on the land through usage [note that i. applications are prioritised before investigation according to an agreed policy; ii. the likelihood of this process resulting in the addition of a public right of way to the Definitive Map would depend on the strength of the user evidence submitted; and, iii. the status of any public right of way arising from such a process would again depend on the evidence submitted, and may not therefore result in a route that may be used by pedestrians, cyclists and horse riders, as is desired under the proposed project]. No costs or compensation are payable through this process.

10.9 The section of the proposed route shown in red on the plan (approximately 100m) is on land in the ownership of a party who, it is understood, are not in support of the proposal. The Council's Asset Management Service has recently written to the landowner seeking their engagement in the project, but this has not received a favourable response. It is understood that Cranage Parish Council have also approached the landowner in the past, again to no avail. It therefore appears that the option available in this instance is:

- a) to use a creation order under Section 26 of the Highways Act, for which compensation may be claimed by those with an interest in the land.

10.10 The decision to create a public right of way under any of the above legal procedures would be taken by the Public Rights of Way Committee, in line

with the Constitution of the Council.

10.11 Colleagues in the Asset Management Service, Countryside Development, Parks Development and Streetscape area aware of the proposal.

10.12 Were public rights of way created on the Cranage side of the river, the remaining missing link on the proposed off-road route would be a bridge over the river to link the two sections. This would be a large (approximately 25-30m span) bridge and therefore require considerable investment. The Ward Members suggested that this funding could be sourced, at least partly, through external grant funding and Parish Council contributions.

Access to Information

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