

# CHESHIRE EAST COUNCIL

## RIGHTS OF WAY COMMITTEE

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**Date of meeting:** 1 June 2009  
**Report of:** Mike Taylor, Greenspaces Manager  
**Title:** Highways Act 1980 – Section 119  
Application for the Diversion of Public  
Footpath No. 1 (Part) Parish of Batherton

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### **1.0 Purpose of Report**

- 1.1 The report outlines the investigation of an application to divert Public Footpath No. 1 in the Parish of Batherton. This includes a discussion of consultations carried out in respect of the application and the legal tests for a diversion order to be made. The 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 an Order should be made to divert the footpath.

### **2.0 Recommendations**

- 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. 1 Batherton as illustrated on Plan No. HA/043/FP1/001 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 Financial Implications**

- 3.1 None

### **4.0 Legal Implications**

- 4.1 None

### **5.0 Risk Assessment**

- 5.1 N/A

## **6.0 Background and Options**

- 6.1 An application has been received from Mr G Horton of Millbank Farm, Batherton ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 1 in the Parish of Batherton.
- 6.2 Public Footpath No. 1 Batherton commences at its junction with Footpath No. 28 Nantwich at OS grid reference SJ 6553 5085 and runs in a generally south easterly direction to join Public Bridleway No. 3 Batherton at OS grid reference SJ 6591 4978 at the River Weaver. The section of path to be diverted is shown by a solid black line on Plan No. HA/043/FP1/001 running between points A-B-C. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C.
- 6.3 The applicant owns the land over which the current path runs and also the land over which the proposed diversion would run. 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 footpath.
- 6.4 The current definitive line of footpath no. 1 (A-B-C) runs through the applicant's garden and is currently obstructed by a wall and fence. The applicant constructed the wall and created his garden many years ago without realising this was the definitive line of the route; as people have always walked diagonally across the field as a more direct route. It was only recently that he was made aware of the correct line of the footpath.
- 6.5 The proposed diversion (A-C) would benefit the applicant as the garden to his property would then remain private. It would be inconvenient for the applicant and undesirable for the public to have to walk through the private garden if the definitive line was reinstated. The proposed diversion runs along the outside of the garden wall then cuts diagonally across the field to rejoin the definitive line. It is a more direct route and is currently in use by walkers.

## **7.0 Consultations**

- 7.1 The local Councillors have been consulted about the proposal. Councillor Brickhill responded by asking questions to which Officers have replied. He asked whether the applicant owns the field onto which the path is to be diverted; the applicant has confirmed that he does own this field. It was asked if the field is in the flood plain of the River Weaver; the applicant states it is not as the proposed route is ascending between points A and C on Plan No. HA/043/FP1/001, it is the other side of the river that is in the flood plain. It was asked if crops are ever planted in the field; the field is currently used to graze sheep and the applicant has no intention of this changing. Finally Councillor Brickhill asked how it is proposed to mark this new footpath; Officers stated the new footpath should not require any new signage except for a new waymarker near to point A on Plan No. HA/043/FP1/001.

- 7.2 Stapeley and District Parish Council have been consulted about the proposal; no response has been received.
- 7.3 The statutory undertakers have also been consulted and have 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.
- 7.4 The user groups have been consulted. No comments have been received.
- 7.5 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals. Natural England has been consulted and has indicated they have no comment to make at this time.
- 7.6 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 will have no detrimental affect on use of the way.

## **8.0 Reasons for Recommendation**

- 8.1 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 paragraphs 6.4 and 6.5 above.

- 8.2 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 8.1 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.

- 8.3 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 8.2 above.
- 8.4 There are no objections to this proposal. It is considered that the proposed footpath will be more enjoyable than the existing route due to the existing route being obstructed and that the new route is not 'substantially less convenient' than the existing route. It will also be of benefit to the landowner in terms of his privacy. It is therefore considered that the proposed route will be more satisfactory than the current route and that the legal tests for the making and confirming of a diversion order are satisfied.

***For further information:***

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***Background Documents: PROW file 043D/383***