

CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

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. 26 (Part) Parish of Bollington

1.0 Purpose of Report

- 1.1 The report outlines the investigation of an application to divert part of Public Footpath No. 26 in the Parish of Bollington. 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. 26 Bollington as illustrated on Plan No. HA/028/FP26/002 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 Mrs C. Drake of Swanscoe Farm, Kerridge ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 26 in the Parish of Bollington.
- 6.2 Public Footpath No. 26 Bollington commences at its junction with Footpath No. 8 Higher Hurdsfield at OS grid reference SJ 9395 7594 and runs in a generally north westerly direction to join Public Footpath No. 39 Bollington at OS grid reference SJ 9376 7650. The section of path to be diverted is shown by a solid black line on Plan No. HA/028/FP26/002 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C. On the Plan the proposed diversion appears to run through a field boundary, however this is not the case, this boundary is not in place on the ground.
- 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 application has been made in the interest of the landowner due to security and safety concerns. The current line of footpath no. 26 (A-B) takes the public down the driveway towards Swanscoe Farm, it goes through the working farm yard, alongside a barn, then continues in a northerly direction along a field edge. The applicant has been the victim of burglary on a number of occasions and having already taken other preventative measures, now wishes to secure the area around the property and outbuildings. The applicant also has safety concerns about the public walking through the working farm yard. The existing path skirts around the corner of a barn, runners and walkers turn the corner to be confronted by a working farm yard with tractors and moving machinery being a potential hazard. The applicant also breeds a rare breed of sheep and the diversion would also be of benefit in terms of stock management.
- 6.5 A letter of support has been submitted with the application from Mark Cotton, Crime Reduction Advisor from Cheshire Constabulary. Mr Cotton has visited the property to discuss security arrangements with the applicant. He states, *'I note that the present location of the footpath allows any member of the public (regardless of intent) access to your farm and its buildings. This by its very nature gives persons a legitimate excuse to be on the grounds of your farm and increases their anonymity. It is clear that the proposed diversion, as you discussed*

with me carries no significant disadvantage to members of the public, whilst having a significantly high impact on the safety and security of your property. On this basis I support your application.'

- 6.6 The diversion (A-C) would benefit the applicant as the public would no longer need to walk through the farm yard. The proposed route is currently in use as a permissive footpath running through an adjacent field. It is similar in length, offers easier access with 2 pedestrian gates rather than field gates and stiles and provides a better view. Taken as a whole it is considered that the proposed diversion is not 'substantially less convenient' than the existing route.

7.0 Consultations

- 7.1 The local Councillors have been consulted about the proposal. No comments have been received.
- 7.2 Bollington Town Council have been consulted about the proposal. In a letter dated 13th May 2009 the Town Council recommend the proposed diversion for approval on the condition that the new footpath is constructed to the same standard as the existing path.
- 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. The only response came from The Ramblers Association who state they have no objection to the proposed diversion provided the surface of the path will be suitable for walking in all seasons.
- 7.5 The field in which the proposed footpath runs is regarded as a site of Biological Importance, however 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. Due to the natural terrain across the field between points A-C, there are some small sections where there is a steeper gradient than on the current route. The applicant is happy to do the necessary works to level the path where required, it is therefore 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, 6.5 and 6.6 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 is not 'substantially less convenient' than the existing route. It will also be of benefit to the landowner in terms of security and safety. It is therefore considered 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 028D/382