

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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<b>Date of Meeting:</b>	16 <sup>th</sup> June 2014
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Highways Act 1980 Section 119: Application for the Diversion of Public Footpath no. 53 (part), Parish of Alderley Edge

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### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.53 (part) in the Parish of Alderley Edge. 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.53 Alderley Edge by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/094 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 improve privacy and security to applicant's 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 Alderley Edge

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

5.1 Councillor Frank Keegan

#### **6.0 Policy Implications**

6.1 Not applicable

#### **7.0 Financial Implications**

7.1 Not applicable

#### **8.0 Legal Implications**

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 & Mrs P Gouge of Bracken Hill, Mottram Road, Alderley Edge, Cheshire, SK9 7JF requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 53 in the Parish of Alderley Edge.
- 10.2 Public Footpath No. 53, Alderley Edge, commences at its junction with Mottram Road at O.S. grid reference SJ 8591 7833 and runs in a generally southerly direction along the access drive of the property, Bracken Hill to then pass it to the east along a narrow enclosed path that continues in the same southerly direction and then in a generally east, north easterly direction before leaving the enclosed path to enter onto woodland owned by the National Trust. At this point, it follows an easterly direction which gradually curves to a generally southerly direction to the parish boundary where it terminates at O.S. grid reference SJ 8601 7802. The section of path to be diverted is shown by a solid black line on Plan No. HA/094 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points D-E-F-C.
- 10.3 The land over which the current path and the proposed diversion run belongs to Mr Gouge. 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 Referring to Plan No. HA/094, the section of Public Footpath No. 53, Alderley Edge to be diverted runs along the access drive of the applicant's property, Bracken Hill (points A-B), and then passes through a gap in a hedge (point B) onto an earthen path which it then follows adjacent to the property boundary in a generally south, south easterly direction to terminate at point C just after passing the final outbuilding of Bracken Hill.

Currently, this section of path takes users up the steep and narrow access drive that leads to the applicant's property and grounds. Users leave the drive just before entering the grounds as they pass through the gap to follow the property boundary.

The use of the drive and the closeness of the woodland path to the property give rise to concerns about privacy and security. Furthermore, there are safety concerns about users and vehicles on the narrow access drive. Diverting this section of path into an adjacent field to run along the eastern

field boundary would take users away from the property and the drive to improve privacy and security for the applicants.

Further to this, the applicant has planning permission to develop a natural garden within the field (area bounded by points A-B-C-F-E-D-A) and it is the intention in future to apply for change of use of this land to allow a more landscaped private garden. Consequently, the proposed diversion has been aligned to skirt the boundary of this development area (points D-E-F-C) so that users would not be required to pass through it from point D directly to point C.

- 10.5 The proposed new route (D-E-F-C on Plan No. HA/094) would start from Mottram Road (point D). It would then follow the eastern fence line in a southerly direction to point E and then in a south easterly direction to point F from where it would bear in a south westerly direction to cross the field to terminate upon joining the current route at point C.

The amended route would have a gap at point C and a pedestrian gate at point D to protect users at the junction with Mottram Road. It would be enclosed to a width of 2.5 metres and a stoned surface provided within this width.

In summary, the proposed new route would follow a line that would:

- Eliminate the need for users to negotiate vehicles on the steep narrow access drive (points A-B).
- Enable users to pass the property without needing to pass through private grounds.
- Allow greater privacy and security for the applicant.

This diversion would be made in the interests of the landowner.

- 10.6 The Ward Councillor was consulted about the proposal. No comments were received.
- 10.7 Alderley Edge Parish Council has been consulted and any comments 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. The Peak and Northern Footpath Society, East Cheshire Ramblers and Alderley Edge and Wilmslow District Preservation Society registered that they have no objections to the proposal although requested that a gate should be installed at the junction of the diversion route with Mottram Road and that the footpath should be surfaced to combat boggy sections that form in the field during wet weather. No other comments were received.

10.10 The Council's Nature Conservation Officer has been consulted and raised no objection to the proposals.

10.11 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 is not significantly 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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