

# 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. 9 (part), Parish of Minshull Vernon

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### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.9 (part) in the Parish of Minshull Vernon. 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.9 Minshull Vernon by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/097 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 enable better management of the property improved privacy and security. 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 Bunbury

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

5.1 Councillor Michael Jones

#### **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 R Windsor (agent) of Windsor & Company Chartered Surveyors, on behalf of the Reverend P Goggins of St Peter's Church, Bradfield Green, Minshull Vernon, Crewe, Cheshire, CW1 4RD requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 9 in the Parish of Minshull Vernon.

10.2 Public Footpath No. 9, Minshull Vernon, commences at its junction with Middlewich Road at OS grid reference SJ 6818 5938 and runs in a generally westerly direction for approximately 156 metres following the access drive of "The Old Vicarage" before entering into and partially crossing a field. It then follows a north westerly direction for approximately 51 metres to exit this field into a second field which it crosses in a generally west, north westerly direction for approximately 533 metres to terminate at its junction with Eardswick Lane at O.S. grid reference SJ 6767 5950. The section of path to be diverted is shown by a solid black line on Plan No. HA/097 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C-D.

The length of Public Footpath No. 9, Minshull Vernon is 740 metres whereas the section of the path to be diverted and the proposed new route are 57 metres and 61 metres respectively.

10.3 The land over which the current path and the proposed diversion run belongs to St Peter's Church, Bradfield Green, Minshull Vernon, Crewe, Cheshire, CW1 4RD. 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. 9, Minshull Vernon to be diverted runs along the access drive of "The Old Vicarage". Diverting the path would improve management of the property by taking users along a fenced path aligned approximately 6 metres to the south of the current footpath so reducing interaction with vehicles using the drive. It would also offer improvement to the privacy and security to the property.

10.5 From point A on Middlewich Road, the proposed new route (A-C-D-B on Plan No. HA/097) would follow generally west, south westerly, then westerly and then north westerly directions to terminate on the current route immediately before a stile into the pasture field (point B).

The new route would have surfaces of semi-surfaced track and grass and would be enclosed to a width of 2 metres except between points C-D-B where it would be enclosed to a width of 2.5 metres. This fenced section would be entered via a gap at point C. The length of the new route would be approximately 61 metres.

The diversion would be in the interest of the landowner although it would also eliminate the need for users to share the access drive with vehicles.

- 10.6 The Ward Councillor was consulted about the proposal. Acknowledgement and registration of support for the proposal were received.
- 10.7 Minshull Vernon and District 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 Mid-Cheshire Footpath Society and Peak and Northern Footpath Society registered that they have no objection to the proposal. 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 substantially 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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