

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	16 th June 2014
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 Section 119: Application for the Diversion of Public Footpath no. 4 (part), Parish of Marthall

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.4 (part) in the Parish of Marthall. 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.4 Marthall by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/095 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 land and stock management, 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 Chelford

5.0 Local Ward Members

5.1 Councillor George Walton

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 P Jenkins (agent) on behalf of Mr Lilley of Amplepaint Ltd, Pinfold Stables, Pinfold Lane, Marthall, Knutsford, Cheshire, WA16 7SN requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 4 in the Parish of Marthall.
- 10.2 Public Footpath No. 4, Marthall, commences at its junction with Pinfold Lane at O.S. grid reference SJ 7974 7702 and runs in a generally south westerly direction through fields, woodland and further fields to then enter woodland where it follows a generally westerly direction to terminate at the parish boundary (where it becomes Public Footpath No. 18, Ollerton) at O.S. grid reference SJ 7906 7654. The section of path to be diverted is shown by a solid black line on Plan No. HA/095 between points A-B-C-D-E. The proposed diversion is illustrated on the same plan with a black dashed line between points A-F-G-H-I-J-K.
- 10.3 The land over which the current path and the proposed diversion run belongs to Mr Lilley of Amplepaint Ltd. 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. 4, Marthall to be diverted runs through pastureland that is used to 'turn out' horses. Diverting the path would enable the applicant to better manage his land, livestock (horses) and operations within the grounds of his stables business whilst providing users with a more convenient route that is no less enjoyable than the current route but is more convenient as it has less path furniture to negotiate and also eliminates the need to negotiate the livestock.
- 10.5 The proposed new route (A-F-G-H-I-J-K on Plan No. HA/095) would follow a generally north, north easterly direction to exit the woodland onto a pasture field (point F) where it would then follow the woodland boundary in a generally north westerly direction to the south west field corner (point G) before bearing in a north easterly direction to its junction with Pinfold Lane where it would terminate (point K).

Along the north easterly section (points G-H-I-J-K), it would pass through an unenclosed pasture field to a gap leading onto a fenced grassed track (points H-I) that would run along the north western boundary of a second field. The track would become semi-surfaced as it entered a woodland section via a gap (point I) and would run through this woodland unenclosed. It would then exit

the woodland via a gap (point J) to pass into another fenced section that would take it along the edge of final fields before passing through a pedestrian gate to its termination point with Pinfold Lane (point J).

The new route would be 2 metres wide and unenclosed except for the sections between points H-I and J-K when it would be enclosed by fencing to a width of 2.5 metres. The surface of the new route would be grass and semi-surfaced track.

Of benefit to the user, the proposed new route would:

- be more convenient for users since it would have just one pedestrian gate rather than five stiles to negotiate
- be more enjoyable for users being easier to navigate
- eliminate the need for users to negotiate livestock (horses)
- enable the applicant to better manage land, livestock and business operations.

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

- 10.6 The Ward Councillor was consulted about the proposal and formally registered that he had no objections to the proposal.
- 10.7 Ollerton and Marthall 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 registered that they have no objection. 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 an improvement on the old route because it has just one pedestrian gate rather than five stiles to negotiate.

12.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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PROW File: 202D/490