

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 8th December 2014
Report of: Public Rights of Way Manager
Subject/Title: Highways Act 1980, Sections 118 and 119
Application for the Diversion of Public Footpath No. 16 (parts), Parish of Brereton and public Footpath No. 9 (part), Parish of Sandbach and for the Extinguishment of Public Footpath No. 9 (part), Parish of Sandbach.

1.0 Report Summary

The report outlines the investigation to divert parts of Public Footpath No 16, Parish of Brereton and part of Public Footpath No. 9, Parish of Sandbach and to extinguish part of Public Footpath No. 9, Parish of Sandbach. This includes a discussion of consultations carried out in respect of the proposals and the legal tests to be considered for diversion and extinguishment orders to be made. The proposals have been put forward by the Public Rights of Way Unit as applications have been made by the landowners concerned. The report makes recommendations based on that information, for quasi-judicial decision by Members as to whether or not Orders should be made to divert or extinguish the section of each footpath concerned.

- 1.1 Members are required to consider all information in the report and make a decision as to whether the proposed footpath diversions and extinguishment are expedient based upon the legal tests prescribed in sections 118 and 119 respectively of the Highways Act 1980 as set out in this report.

2.0 Recommendation

- 2.1 Two Orders 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 16, Parish of Brereton (as proposed by Mrs Davenport)

Part of Public Footpath No. 16, Parish of Brereton and part of Public Footpath No. 9, Parish of Sandbach (as proposed by Cheshire East Council and Mr M Sloane on behalf of Archibald Bathgate Ltd., respectively)

Diversions to be made by creating new sections of public footpath, and extinguishing the current path sections as illustrated on Plan No. HA/098 on the grounds that it is expedient in the interests of the owners of the land crossed by the paths.

Subject to an Order being made to divert that part of Public Footpath No. 16 in the Parish of Brereton (proposed by Mrs Davenport) that a subsequent Order be made under Section 118 of the Highways Act 1980 to extinguish Public Footpath No. 9 (part) in the Parish of Sandbach (also proposed by Mrs Davenport) as illustrated on Plan No. HA/098 on the grounds that it will no longer be needed for public use.

- 2.2 Public Notice of the making of the Orders be given and in the event of there being no objections within the period specified, the Orders 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 Orders 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 within the Highways Act 1980, it is within the Council's discretion to make an Order:
- To divert a Public Footpath under Section 119(1) 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.
 - To extinguish Public Footpath under Section 118(1) if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use.

It is considered that the proposed diversions and extinguishment are in the interests of the landowners 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 a Diversion or Extinguishment Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to the following:

For diversions

- 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.

For Extinguishments

- The extent (if any) to which it appears to him...that the path or way would, apart from the order, be likely to be used by the public, and
- The effect which the extinguishment of the right of way would have as respects land served by the path or way, and

The material provision of any rights of way improvement plan prepared by any local highway authority which includes land over which the order would extinguish a public right of way.

- 3.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order(s) in accordance with the matters referred to in paragraph 3.2 above.
- 3.4 Overall, the proposed route for Public Footpath No. 16 (parts) Parish of Brereton will be a significant improvement to the existing route and diversion of the two sections to realign this footpath will be of considerable benefit to both the public and landowner involved, Mrs Davenport:
- The public will benefit from the Council's realignment of one section as it will make the public right of way available again for public use by resolving current obstruction issues.
 - The landowner, Mrs Davenport, who has proposed the diversion of the other section, will benefit in terms of enhancing the security and privacy of her equestrian business whilst promoting better land and stock (horses) management.

The diversion route for Public Footpath No. 9 (part) in the Parish of Sandbach proposed by Mr Sloane on behalf of Archibald Bathgate Ltd., will be an improvement to the existing route and will benefit this landowner in terms of enhancing privacy and security to their sand quarrying operations.

It is considered that the proposed routes will be satisfactory alternatives to the current ones and that the legal tests for the making and confirming of the relevant diversion orders are satisfied.

- 3.5 On condition that the section of Brereton FP16 proposed for diversion by Mrs Davenport is successful, then the section of Public Footpath No. 9 (part) Parish of Sandbach will no longer be needed for public use and it is considered that the legal test for the making and confirming of the extinguishment order is satisfied.

4.0 Wards Affected

- 4.1 Sandbach Heath and East Ward and Brereton Rural Ward

5.0 Local Ward Members

- 5.1 Councillor Sam Corcoran and Councillor John Wray

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 received and not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/inquiry with objections being determined by the Secretary of State. 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 Mrs J Davenport of The Old Vicarage, Chelford lane, Over Peover, Nr Knutsford, WA16 8UF requesting that the Council make an Order to divert part of Public Footpath no. 16 in the Parish of Brereton and on condition that this diversion is successful, to make an Order to extinguish Public Footpath No 9 (part) in the Parish of Sandbach under sections 119 and 118 respectively of the Highways Act 1980.

A separate application has been received from Mr Malcolm Sloane (agent) of Sloane Mead on behalf of Archibald Bathgate Group Ltd, Arclid Quarry, Congleton Road, Sandbach, Cheshire, CW11 4SN requesting that the Council make an Order to divert part of Public Footpath No. 9 in the Parish of Sandbach. Further, this landowner has given permission to allow the Public Rights of Way Team to request that the Council include within this Order a diversion of part of Public Footpath no. 16 in the Parish of Brereton. This diversion will be made in the interests of the Public and will be placed onto land owned by the Archibald Bathgate Group Ltd. Consequently, the two diversions will be dependent on each other so that the part of Public Footpath No. 16 in the Parish of Brereton is only diverted onto their land if the Council

will allow the diversion of part of Public Footpath No. 9 in the Parish of Sandbach that they request and vice versa.

- 10.2 Public Footpath No. 16 in the Parish of Brereton runs over a distance of 1439 metres. It commences at its junction with Holmes Chapel Road at O.S. grid reference SJ 7708 6269 and runs in a generally east, south easterly direction along a track into a pasture field. It then bears in a generally east, north easterly through further pasture fields before changing direction to follow a generally south easterly direction through a final field before entering into the grounds of Arclid Farm through which it follows the southern and then easterly boundaries in generally south easterly and then north easterly direction to terminate at its junction with Newcastle Road at O.S. grid reference 7832 6294.

Public Footpath No. 9 in the Parish of Sandbach runs over a distance of approximately 1494 metres. It commences at its junction with Holmes Chapel Road at O.S. grid reference SJ 7711 6197 and runs in a generally north easterly through pasture fields to change direction within the final field through which it passes. It runs across this in a generally east, south easterly direction to the eastern boundary which it then follows in a generally north easterly direction to terminate at the Parish Boundary at its junction with Public Footpath No. 16 in the Parish of Brereton at O.S. grid reference SJ 7818 6276.

Referring to Plan No. HA/098, the footpath sections to be diverted or extinguished are colour coded:

Cheshire East Council proposes to divert part of Public Footpath No. 16 in the Parish of Brereton between points A-B (shown by a solid black line) as it is believed that it would be in the public interest.

Mrs Davenport proposes to divert a part of Public Footpath No. 16 in the Parish of Brereton between points B-C-D (shown by a solid blue line) that follows on from the eastern end of the section that the Council propose for diversion and she also proposes to extinguish part of Public Footpath No. 9 in the Parish of Sandbach between points D-E-F (shown by a solid purple line) on condition that the diversion of Public Footpath No. 16 in the Parish of Brereton that she proposes (shown by a solid blue line) is successful.

Mr Malcolm Sloane on behalf of Archibald Bathgate Ltd., proposes to divert part of Public Footpath No. 9 in the Parish of Sandbach FP9 between points G-H-I-F (shown by a solid green line) concurrent with the Council's diversion such that either both succeed or both fail.

- 10.3 The land over which the section of Public Footpath No. 16 in the Parish of Brereton that Mrs Davenport proposes to divert (blue), belongs to Mrs Davenport between points C-D but between points A-B-C, it belongs to a different landowner, the Archibald Bathgate Group Ltd., who have granted permission to Mrs Davenport to divert this section of footpath as proposed.

The land over which the section of Public Footpath No. 16 in the Parish of Brereton that the Council proposes to divert (black), belongs in part to 'Safeguard Limited' and in part to Archibald Bathgate Ltd. Both landowners have granted permission for the Council to divert this section of footpath as proposed although permission from the latter remains conditional on the success of the diversion of part of Public Footpath No. 9 in the Parish of Sandbach (green). Permission from 'Safeguard Limited' was via their agent, Strutt and Parker.

Under section 118 and 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 landowners to make orders to respectively extinguish or divert the footpaths.

- 10.4 On Plan No. HA/098, routes to be 'stopped up' are shown by solid bold lines and proposed diversion routes are shown by dashed bold lines and corresponding existing and diversion routes are colour coded. Elaborating in more detail and with deeper reference to this plan:

Diversion of part of Public Footpath No. 16, Parish of Brereton – Cheshire East Council (shown in black on Plan No. HA/098)

The part of Public Footpath No. 16, Parish of Brereton proposed by the Council for diversion starts at point A and runs in a generally easterly direction along a hedge that forms the southern boundary of several fields, terminating in a field at point B. Currently, this path section is obstructed by ponds and in places by dense hedge growth. Diversion of this path section to run in a similar alignment but along the south of the hedge boundary starting at point A and terminating at point E, would resolve these issues.

Historically, it would appear that this part of Public Footpath No. 16, Parish of Brereton, may have been inaccurately recorded on the definitive map as the ponds are of some antiquity since it is unlikely that the path and ponds coexisted.

It should be noted also that resolving the obstructions by means of either removing the obstructions or legally moving the line of the footpath by a DMMO to a usable line, would prove costly to the Council and would take much longer to effect.

Diversion of part of Public Footpath No. 16, Parish of Brereton – Mrs Davenport (shown in blue on Plan No. HA/098)

Mrs Davenport has proposed to divert the part of Public Footpath No. 16, Parish of Brereton that starts at point B and runs through fields into the grounds of Arclid Hall Stud Farm at (point C). It then runs along the southern boundary of these grounds to terminate at the south eastern field corner (point D). Diversion of this path section to run across a pasture field (points D-F) that lies to the south of the property grounds would afford improved security and

privacy to the property buildings and to livestock (horses), whilst enabling better management of land and livestock.

The Council would welcome this diversion as it would resolve path obstructions along part of Public Footpath No. 16, Parish of Brereton (points B-C) that are similar to those along the part of this same footpath that the Council is seeking to divert. Further, it would resolve existing alignment issues.

Extinguishment of part of Public Footpath No.9, Parish of Sandbach – Mrs Davenport (shown in purple on Plan No. HA/098)

Mrs Davenport's proposed diversion route for Public Footpath No. 16, Parish of Brereton, would create a situation where two public footpaths cross the same field in close proximity to pass between points D-F as part of Public Footpath No. 9 in the Parish of Sandbach already crosses this field between points D-E-F. It starts at the north eastern field corner (point D) and runs in a generally west, south westerly direction to the western field boundary (point E) along which it then runs in a west, north westerly direction to terminate at point F just before a stile.

It is considered that two path sections providing similar routes are unnecessary. Therefore, since public Footpath No. 9 in the Parish of Sandbach is not as direct as the proposed diversion route of Public Footpath No. 16, Parish of Brereton (blue), it is proposed that this be extinguished on the basis that it is no longer needed for public use, on condition that the proposed diversion of Public Footpath No. 16, Parish of Brereton as proposed by Mrs Davenport (blue) is successful.

Diversion of part of Public Footpath No. 9, Parish of Sandbach – Mr Sloane for Archibald Bathgate Ltd (shown in green on Plan No. HA/098)

The section of Public Footpath No. 9, Parish of Sandbach proposed for diversion by Mr Sloane on behalf of Archibald Bathgate Ltd, starts along a grassed track (point G). It runs in a generally east, north easterly direction along this track before crossing a footbridge over a stream (point H) into a field to continue along the southern field boundary. On exiting into a second field (point I), it bears in a generally north easterly direction diagonally across the field to its termination at the north eastern field corner immediately before a stile (point F).

Diverting this section of Public Footpath No. 9, Parish of Sandbach, would improve the security and privacy of sand quarry workings and excavation areas by taking users further away from these areas.

The proposed diversion route would start at the same point as the existing section (point G) and would immediately leave the green track via a kissing gate into a field to the north. It would then follow the eastern field boundary in a northerly direction to exit through a gap into a second field (point J). It would then follow a short section in an easterly direction before again (point K),

running in a northerly direction along the eastern boundary of this second field to terminate at the north east field corner where it would join the section of Public Footpath No. 16, Parish of Brereton (shown by a black solid dashed line), if successfully diverted as proposed by the Council (point L).

The Council has agreed with Mr Sloane that the Council's proposed diversion of Public Footpath No. 16, Parish of Brereton (for reasons of public interest) will be dependent on the success of Mr Sloane's proposal to divert this section of Public Footpath No. 9, Parish of Sandbach, as the Council's diversion will place a longer stretch of public footpath on land owned by the Archibald Bathgate Group Ltd. Consequently, both orders must succeed or neither will be able to go ahead.

The proposed diversion routes for Brereton FP16 and Sandbach FP9 would have grassed surfaces and be a width of 2 metres throughout.

Of benefit to the public:

- Diversion of both parts as requested by Mrs Davenport and the Council, of Public Footpath No. 16, Parish of Brereton, would create a route that would be more direct and therefore easier to navigate and also, to negotiate as it would have kissing gates instead of stiles.

Further, the new route would provide a direct link with Sandbach FP9 that is not available at present.

- The section of Public Footpath No. 9, Parish of Sandbach proposed for diversion would also be placed on a more direct line that would be easier to navigate as it would be guided along field edges. Further, it too would have kissing gates instead of stiles and would no longer have a footbridge to negotiate.
- The overall strategic connectivity of the network from Newcastle Road where Public Footpath No's 20 and 29 in the Parish of Brereton connect to the Holmes Chapel Road by Public Footpath No. 16, Parish of Brereton and to the Congleton Road by Public Footpath No. 9, Parish of Sandbach, would be retained.

Other than the diversion of part of Public Footpath No. 16, Parish of Brereton by the Council in the interest of the public, the other diversions and the extinguishment would be made in the interests of the landowners.

- 10.5 It is important to note that the success of the diversions is interdependent such that if one should fail, all three would fail. This is due to the fact that the two diversion routes for each section of Public Footpath No. 16, Parish of Brereton must connect at point F. If this occurs, then the diversion route for Public Footpath No. 9, Parish of Sandbach, will be able to connect to the diversion route of public Footpath No. 16, Parish of Brereton at point L.

Further, for the extinguishment of part of Public Footpath No.9, Parish of Sandbach to legally meet the tests of section 118 of the Highways Act 1980, is dependent on the success of the diversion of part of Public Footpath No.16, Parish of Brereton, as proposed by Mrs Davenport (blue).

- 10.7 Ward Councillors have been consulted about the proposals. Councillor Corcoran registered agreement to the proposals. No other comments were received.
- 10.8 Brereton Parish Council and Sandbach Town Council have been consulted. Member's response(s) will be reported verbally.
- 10.9 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion or extinguishments. If diversion or extinguishment orders are made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.10 The user groups have been consulted. The Peak and Northern Footpath Society registered that they have no objection to the proposals.

The Congleton RA however, registered objection to the proposal made by Mr Sloane on behalf of the Archibald Bathgate Group Ltd. to divert part of Public Footpath No. 9, Parish of Sandbach (green) stating that the diversion route would be less convenient and enjoyable for pedestrians.

Although the Council has not responded to this objection, in considering convenience and enjoyability, the Officers of the Public Rights of Way Team concluded the following in their decision to support this diversion:

Regarding convenience:

- The current route crosses one field diagonally whereas the proposed diversion route would follow field boundaries that would make navigation easier for path users.
- There would be less and more easily accessible path furniture. The current route requires users to negotiate stiles and a footbridge whereas the new route would have 1-2 kissing gates depending on whether a gap could be left between the fields on the new route shown at point J on Plan No. HA/098.
- Looking at length, in isolation, the section of Public Footpath No. 9, Parish of Sandbach to be diverted would be reduced in length by 33.5% (equivalent to 125m) which would be considered as significant. However, looking wider at path length in total from Congleton Road to Newcastle Road via the current route along Public Footpath No. 9, Parish of Sandbach and Public Footpath No. 16, Parish of Brereton, and comparing this to the new route formed from the proposed diversions of these paths, the length of path to be walked between these two roads would be increased by just 8% (147m) which would not be considered as significant.

Regarding enjoyability:

- The new route for Public Footpath No. 9, Parish of Sandbach would not be significantly different in scenery to the current route as it would pass over similar pastureland offering similar views.
- Users are guided easily along the new route by hedged boundaries.
- Technically, the set of diversions as proposed would result in a more direct arrangement of both Public Footpath No. 9, Parish of Sandbach and public Footpath No. 16, Parish of Brereton and, would not significantly change or affect the user's ability to enjoy their legal right of passage between Congleton Road and Newcastle Road. This is illustrated on the plan entitled 'Overview of the Diversions and extinguishment'.

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

10.12 An assessment in relation to the Equality Act Legislation 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that overall, diverting both Public Footpath No. 16, Parish of Brereton and Public Footpath No.9, Parish of Sandbach, would be an improvement to the current routes with respect to the Equality Act 2010 since the resultant routes would have kissing gates instead of stiles or a footbridge and Public Footpath No.16, Parish of Brereton would be walkable again.

11.0 Access to Information

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

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