

CHESHIRE EAST COUNCIL

REPORT TO: RIGHTS OF WAY COMMITTEE

Date of Meeting:	7 September 2009
Report of:	Greenspaces Manager
Subject/Title:	Highways Act 1980 – Section 118 Extinguishment of Footpath No. 4 And Restricted Byway No.6 (Part) Middlewich

1.0 Report Summary

- 1.1 The report outlines the proposal to extinguish Public Footpath No. 4 and Restricted Byway No.6 in Middlewich. This includes a discussion of consultations carried out in respect of the proposal and the legal tests for an extinguishment Order to be made. The report makes a recommendation based on that information, for decision by Members as to whether an Order should be made to extinguish the routes described.

2.0 Recommendations

- 2.1 An Order be made under Section 118 of the Highways Act 1980 to extinguish Public Footpath No.4 and part of Restricted Byway No.6 Middlewich, as illustrated A-B-C on Plan No. HA/207/FP4_RB6/004 on the grounds that they are not needed for public use.
- 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 118(1) of the Highways Act 1980 it is within the Council's discretion to make the Order 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 Public Footpath No.4 and Restricted Byway No.6 (part) as shown on plan HA/207/FP4_RB6/004 are not needed for public use, as alternative

access is available between the same points, via the adopted road network of the housing estate.

3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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:

- 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 in accordance with the matters referred to in paragraph 8.2 above.

3.4 There are no objections to this proposal. It is in the interest of all the owners affected by these rights of way that they are legally extinguished, to avoid any future attempts at conveyance being jeopardised. There is no evidence of the public wishing to have the legal lines of the routes reopened for use and no realistic possibility of doing so on the ground. There is nothing in Cheshire East Council's 'Rights of Way Improvement' to contradict this view.

4.0 Wards Affected

4.1 Middlewich

5.0 Local Ward Members

5.1 Councillor Peter Edwards
Councillor Michael Parsons
Councillor Simon McGrory

6.0 Policy Implications including - Climate change - Health

6.1 None arising.

7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)

7.1 None arising.

8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)

- 8.1 As there is no applicant in this case, the costs of advertising the Order recommended would be borne by Cheshire East Council. These would be approximately £200 each.

9.0 Legal Implications (Authorised by the Borough Solicitor)

- 9.1 The legal issues are contained within the report.

10.0 Risk Management

- 10.1 n/a

11.0 Background and Options

- 11.1 Public Footpath No.4 and Restricted Byway No.6 (part) Middlewich are currently obstructed by a large housing estate, constructed sometime in the 1960s by Middlewich Estates Limited. See plan HA/207/FP4_RB6/004 A-B-C.
- 11.2 The obstruction of these rights of way clearly occurred because the Planning Authority of the time failed to ensure that the proper legal processes were followed and did not make a stopping-up order to legally extinguish the line of the footpath/restricted byway, prior to the development being carried out. As a result, a total of 41 properties on the estate are affected in terms of having the legal line of the footpath/restricted byway running either through their house or garden.
- 11.3 This situation came to the County Council's attention in 2006 when an owner of an affected property attempted to sell their house and the vendor's solicitor conducted a legal search to see if it was affected by a public right of way. At that time, the Council confirmed to all parties concerned that no enforcement action would be taken on the legal lines of these routes. Despite this, the sale fell through.
- 11.4 It was therefore agreed that Congleton Borough Council, as the successor Planning Authority, should take responsibility for the matter and undertake to legally extinguish the lines of the public rights of way affecting the properties, under section 118 of the Highways Act 1980. Congleton Borough Council began that process in 2007. The Borough Council got as far as consulting the affected property owners and drafting further letters to consultees, but progressed the matter no further.
- 11.5 Following Local Government Reorganisation in April 2009, the Public Rights of Way Team wrote to all the former Borough Council legal teams to ask that they forward any future public rights of way work

relating to development under the Town and Country Planning Act 1990 direct to them.

- 11.6 Although this case is an extinguishment under section 118 of the Highways Act 1980, the legal officer from Congleton Borough Council who was dealing with it felt it would be more properly dealt with by the Public Rights of Way Team. The letter referred to above at 11.5 therefore prompted the legal officer to forward the case to the Public Rights of Way Team.
- 11.7 Consultations were carried out in April 2009. The local Councillors have been consulted about the proposal. Councillor Mike Parsons telephoned to express strong support for the proposal and said that it would be very welcome on the part of the householders affected.
- 11.8 Middlewich Town Council has been consulted and confirmed that it supports the proposal.
- 11.9 The statutory undertakers have also been consulted and have no objections to the proposed extinguishment
- 11.10 The user groups have been consulted. No objections have been received.
- 11.11 Natural England has been consulted and had no comments to make regarding the proposal.
- 11.12 The affected householders were consulted. Only one response was received, which expressed support for the proposal.

12.0 Overview of Year One and Term One Issues

- 12.1 None arising.

13.0 Access to Information

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

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