

# **CHESHIRE EAST COUNCIL**

## **REPORT TO: Public Rights of Way Committee**

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<b>Date of Meeting:</b>	7 September 2009
<b>Report of:</b>	Greenspaces Manager
<b>Subject/Title:</b>	Highways Act 1980 section 118 -Proposed Extinguishment of Public Footpath no.17 (part) Sandbach.

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### **1.0 Report Summary**

- 1.1 The report outlines the investigation to extinguish part of Public Footpath No. 17 in the Parish of Sandbach. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for an extinguishment order to be made. The proposal has been put forward by the Public Rights of Way Unit to resolve an anomalous situation. 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 extinguish the section of footpath concerned.

### **2.0 Recommendations**

- 2.1 An Order be made under section 118 of the Highways Act 1980 to extinguish part of public footpath no. 17, Sandbach as illustrated on Plan No. HA/262/FP17/011 on the grounds that it is 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 an 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.17 (part) as shown on plan HA/262/FP17/011 is not needed for public use, as an alternative route is available via the

adopted footway between Laurel Close and the continuation of Footpath 17 and connecting Footpath no. 18.

3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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

3.4 There have been no objections to the consultation on this proposal. It is in the interest of the owners of properties nos. 2 to 8 Laurel Close affected by these rights of way that they are legally extinguished, to avoid the difficulties experienced when a house sale is in prospect. There has been no evidence of the public wishing to use the route in question and it seems clear that the original intention when the houses were developed was to divert the path onto the adopted highway network as had happened in the adjacent development. There is nothing in Cheshire East Council's 'Rights of Way Improvement Plan' that impacts upon this proposal.

#### **4.0 Wards Affected**

4.1 Sandbach East and Rode

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

5.1 Councillor Elsie Alcock  
Councillor Rhoda Bailey  
Councillor Andrew Barratt

#### **6.0 Policy Implications including - Climate change - Health**

6.1 None

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

7.1 None

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

8.1 There is no applicant for this order therefore the authority will bear the associated costs. These will amount to the cost of two adverts in a local newspaper i.e. approximately £200 each.

**9.0 Legal Implications (Authorised by the Borough Solicitor)**

9.1 The legal issues are contained within the report at 3.1- 3.4 above.

**10.0 Risk Management**

10.1 n/a

**11.0 Background and Options**

11.1 Part of Public Footpath no. 17 in Sandbach runs across the gardens and dwellings of four properties in Laurel Close which were constructed in the 1980's. The part of the path affected is shown on the attached plan number HA/262/FP17/011.

11.2 This situation was brought to light by a recent search on No. 4 Laurel Close which obviously caused concern to the potential purchaser. A thorough search of available documentation has shown that the path was not diverted or extinguished at the time of the development. The Planning Authority at the time would have been responsible for ensuring this was done. On the adjacent development a further section of the same path was legally diverted onto the highway network. It seems clear that the intention was to provide an alternative for this path as an adopted link path exists to accommodate the route.

11.3 In order to regularise this situation and to prevent further problems arising at the point of sale, it is proposed that Cheshire East Borough Council as successor authority to the district council, make an extinguishment order for this part of Footpath no. 17.

11.4 Consultations have been carried out with the local ward councillors. No comments have been received.

11.5 Sandbach Town Council have been consulted and had no specific comment on the proposal but did request updated signage on the connecting paths. This has been referred to the area maintenance officer who has the matter in hand.

- 11.6 The statutory undertakers have also been consulted and have no objections to the proposed extinguishment
- 11.7 The user groups have been consulted. No objections have been received.
- 11.8 The affected householders were consulted. One response was received, which expressed support for the proposal.

## **12.0 Overview of Year One and Term One Issues**

- 12.1 None

## **13.0 *Access to Information***

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

Name: Clare Hibbert  
Designation: Public Rights of Way Officer  
Tel No: 01606 271823  
Email: [clare.hibbert@cheshireeast.gov.uk](mailto:clare.hibbert@cheshireeast.gov.uk)