

# **CHESHIRE EAST COUNCIL**

## **REPORT TO: RIGHTS OF WAY COMMITTEE**

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**Date of meeting:** 7 September 2009  
**Report of:** Greenspaces Manager  
**Subject/Title:** Highways Act 1980 – Section 119  
Application for the Diversion of Public  
Footpath No. 4 (Part) Parish of Brereton

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### **1.0 Report Summary**

- 1.1 The report outlines the investigation of an application to divert Public Footpath No. 4 in the Parish of Brereton. This includes a discussion of consultations carried out in respect of the application and the legal tests for a diversion order to be made. The application has been made by the landowner concerned. The report makes a recommendation based on that information, for decision by Members as to whether an Order should be made to divert the footpath.

### **2.0 Recommendations**

- 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 Brereton as illustrated on Plan No. HA/012 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 paragraphs 11.4 and 11.5 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 There are no objections to this proposal. It is considered that the proposed footpath will be more enjoyable than the existing route and that the new route is not 'substantially less convenient' than the existing route. It will also be of benefit to the landowners in terms of their privacy. It is therefore considered that the proposed route will be more satisfactory than the current route and that the legal tests for the making and confirming of a diversion order are satisfied.

#### **4.0 Wards Affected**

4.1 Congleton Rural.

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

5.1 Councillor Les Gilbert  
Councillor Andrew Kolker  
Councillor John Wray

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

6.1 Not applicable.

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

7.1 Not applicable.

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

8.1 Not applicable.

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

9.1 Legal issues are contained within the report.

**10.0 Risk Management**

10.1 Not applicable.

**11.0 Background and Options**

11.1 An application has been received from Mr and Mrs H McCormick of Barn 2 Dairy House Farm, Brereton ('the Applicant') 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 Brereton.

11.2 Public Footpath No. 4 Brereton commences at its junction with Restricted Byway No. 8 Brereton at OS grid reference SJ 7784 6456 and runs in a generally northerly direction to Dairy House Farm, it then turns in a generally north westerly direction to join the A50 Newcastle Road. The section of path to be diverted is shown by a solid black line on Plan No. HA/012 running between points A-C. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-B-C.

11.3 The applicants own part of the land over which the current path runs, the remaining part belongs to the owner/occupier of Barn 1. The land over which the proposed diversion runs is partly owned by the applicants and partly owned by Mr and Mrs Harris of Dairy House Farm. Mr and Mrs Harris have written to confirm they have no objection to the diversion of the footpath onto their land. 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 applicant to make an order diverting the footpath.

11.4 The current definitive line of footpath no. 4 (A-C) takes the public diagonally across the gardens of the applicant's property and Barn 1. When purchasing the property it was only in the very late stages that the applicants were made aware that the path entered the property in this way. The path is inconvenient and affects the applicant's privacy as they spend time as a family outside and their children play in this

area. The line walked on the ground is not the same as the legal line; the legal line also affects the garden of Barn 1 but the walked line is solely within the garden of the applicants. Therefore the owner/occupier of Barn 1 was presumably also unaware of the path when they purchased their property.

- 11.5 The diversion (A-B-C) would benefit the landowners as the public would no longer need to walk through their garden. The proposed diversion is already in place as a permissive route. From the current route it continues along a short paved section, then it goes around the outside of the garden, along a 3 metre wide compact stone track with post and rail fencing each side. At each end of the track there are currently two bollards to prevent vehicle access, these will be removed and a fence and kissing gate installed at the northern end of the track (point B); this is to make the field to the north stock proof. At the end of the track the proposed route then turns in a westerly direction to join the current route, this section is a grass surface. The proposed route is similar in length and offers easier access with only one kissing gate rather than two pedestrian gates on the current route.
- 11.6 The local Councillors have been consulted about the proposal, no objections have been received.
- 11.7 Brereton Parish Council has been consulted about the proposal; no response has been received.
- 11.8 The statutory undertakers have also been consulted and have 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.
- 11.9 The user groups have been consulted. The Peak and Northern Footpaths Society has indicated they have no objection. No further comments have yet been received.
- 11.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals. Natural England has been consulted and has indicated they have no comment to make at this time.
- 11.11 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 will have no detrimental affect on use of the way.

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

- 12.1 Not applicable.

### **13.0 Access to Information**

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

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