

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 119
Application for the Diversion of Public Footpath No.
13 (Part) Parish of Wrenbury Cum Frith

1.0 Report Summary

- 1.1 The report outlines the investigation of an application to divert part of Public Footpath No. 13 in the Parish of Wrenbury cum Frith. 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 Members as to whether or not 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. 13 Wrenbury cum Frith as illustrated on Plan No. HA/005 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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, moving the footpath out of the farmyard and the gardens of the new properties provides a less intimidating route for users. It also provides improved views. The new route is not 'substantially less convenient' than the existing route and will also be of benefit to the landowner and future inhabitants of the four dwellings in terms of security and 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 Cholmondeley

5.0 Local Ward Members

5.1 Councillor Rachel Bailey
Councillor Margaret Hollins
Councillor Allan Richardson

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 The 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 P B Hockenhull of Frith Farm, Wrenbury, Nantwich, CW5 8HN ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 13 in the Parish of Wrenbury cum Frith.

11.2 Public Footpath No. 13 Wrenbury cum Frith commences at its junction with the unnamed road (UX797) at OS grid reference SJ 5762 4921 and runs in a generally north easterly direction to join Public Footpath No. 7 Chorley at OS grid reference SJ 5786 4938. The section of path to be diverted is shown by a solid black line on Plan No. HA/005 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points C-B.

11.3 The applicant owns the land over which the current path lies and the proposed diversion would lie. 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 existing line of Public Footpath Wrenbury cum Frith No. 13 (A-B) runs along the rear of a range of traditional buildings which have recently been granted planning permission for four dwellings. After consultation with the Public Rights of Way Unit, a condition was placed on the planning permission that the applicant apply to divert the footpath under the Highways Act. The current line of the footpath would run through the gardens of the four dwellings and the proximity of the footpath to the dwellings would lead to a loss of privacy and security of the future inhabitants. The current line of the footpath has also been

partially obstructed by a slurry pit for a number of years and diverting the route would avoid this obstruction.

- 11.5 The beginning of the new route is approximately 40 metres south east of the current route. It follows the boundary of the adjacent field, in a north easterly direction, until it rejoins the existing line of the footpath. Moving the footpath out of the farmyard and the gardens of the new properties into open countryside would improve the security and privacy for the applicant and also provide improved views for the public.
- 11.6 The local Councillors have been consulted about the proposal. Councillor Margaret Hollins has responded favourably to the proposal.
- 11.7 Wrenbury cum Frith Parish Council have 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 have responded to state that they have no objection to the proposal.
- 11.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 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 is an improvement on the existing route.

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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