

# **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. 20 (Part) Parish of Sutton

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### **1.0 Report Summary**

- 1.1 The report outlines the investigation of an application to divert part of Public Footpath No. 20 in the Parish of Sutton. 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. 20 Sutton as illustrated on Plan No. HA/284/FP20/003 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 applicant's garden and away from his home 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 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 Macclesfield Forest

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

5.1 Councillor Marc Asquith  
Councillor Hilda Gaddum  
Councillor Lesley Smetham

#### **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. The report has correctly identified in 11.10 that no confirmation of the Order must take place until all works have been certificated as the implication for confirmation of the Order prior to works being completed will leave a route which will no longer be recorded on the Definitive Map.

**10.0 Risk Management**

10.1 Not applicable.

**11.0 Background and Options**

11.1 An application has been received from Mr and Mrs Egerton of Hartsgrove Cottage, Hollin Lane, Sutton, Macclesfield, SK11 0NN ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 20 in the Parish of Sutton.

11.2 Public Footpath No. 20 Sutton commences at its junction with Hollin Lane (C402) at OS grid reference SJ 9416 6938 and runs in a generally north easterly direction to join Meg Lane (UW2636) at OS grid reference SJ 9496 6983. The section of path to be diverted is shown by a solid black line on Plan No. HA/284/FP20/003 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-B.

11.3 The applicant owns the land over which the current path runs and the majority of the land over which the proposed diversion would run. A small section of the proposed route at the easternmost end of the proposed route runs in the adjacent landowner's field. Written consent to the proposal has been provided by the adjacent landowner. 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 line of Public Footpath No. 20 Sutton (A-B) takes walkers in very close proximity to the applicants' home (Hartsgrove Cottage)

and immediately past the windows of the property. It forms part of the Gritstone Trail and is a well used route.

- 11.5 The proposed diversion is already in use as a permissive route. It takes walkers away from Hartsgrove Cottage, leaving the driveway and passing through an attractive paddock to the south east of the current route, following a stream along a very attractive valley. It then rejoins the existing line of Public Footpath No. 20 Sutton in the field adjacent to Hartsgrove Cottage. The new route avoids the applicants' garden and the driveway which is also used by vehicles. The section of footpath proposed to be diverted is approximately 143 metres, the proposed route for the diversion is slightly shorter, approximately 139 metres. In addition, the proposed route provides improved views for walkers.
- 11.6 The local Councillors have been consulted about the proposal, no objections have been received.
- 11.7 Sutton 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 Ramblers Association responded to state that subject to the following, the proposed diversion appears satisfactory: the path's surface needs to be improved as it is prone to muddiness; the path needs raising at the lower end where it is almost at the level of the stream, above the occasional flood level; a kissing gate is desirable where the path meets the access lane; the width should be 1.5 – 2.0 metres (although they recognise that this will not be achievable throughout); any tree felling or thinning should not interfere with access to the path (the definitive route will be used while the improvement works are carried out). The applicant has responded to confirm that assuming that the diversion is agreed, every effort will be made to carry out all work to a suitable standard. Also, the Cheshire East Borough Council would not issue the Article 2 'certificate of satisfaction' or confirm the Order until works have been carried out on the new path to bring it up to a suitable standard.
- 11.11 Paul Sorenson, from the Byways and Bridleways Trust, has responded to strongly commend the proposal and comments that "I have personally used the proposed diversion route many times and consider it far more attractive to the public than the 'Definitive' route".

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

11.13 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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