

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.
3 (Part) Parish of Mottram St Andrew

1.0 Report Summary

- 1.1 The report outlines the investigation of an application to divert part of Public Footpath No. 3 in the Parish of Mottram St Andrew. 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 quasi-judicial decision by 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. 3 Mottram St Andrew as illustrated on Plan No. HA/007 on the grounds that it is expedient and 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 Although there are objections to this proposal, it is considered that the proposed footpath will be more enjoyable than the existing route, providing improved views for walkers and a more easily accessible route. Moving the footpath out of the stud yard will benefit the landowner in terms of farm management and privacy and security. The new route is not 'substantially less convenient' and it will also provide a less intimidating route for walkers. 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 Prestbury and Tytherington.

5.0 Local Ward Members

5.1 Councillor Paul Findlow
Councillor Thelma Jackson
Councillor Bill Livesley

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 If objections are received to the published Order, any ensuing hearing or or Inquiry may find against any decision of the Committee and entail additional legal support and use of resources.

10.0 Risk Management

10.1 Not applicable.

11.0 Background and Options

11.1 An application has been received from Mr M Battersby and Miss R Fallows of Lower Gadhole Farm, Greendale Lane, Mottram St Andrew, SK10 4AY ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 3 in the Parish of Mottram St Andrew.

11.2 Public Footpath No. 3 Mottram St Andrew commences at its junction with Greendale Lane (QW1705) at OS grid reference SJ 8908 7789 and runs in a generally south easterly direction to join Public Footpath No. 6 Prestbury at OS grid reference SJ 8954 7784. The section of path to be diverted is shown by a solid black line on Plan No. HA/007 running between points A-E. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-E.

11.3 The applicant owns the land over which the current path lies and over which the proposed diversion would run. 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. 3 Mottram St Andrew runs through a busy working stud yard which is used for the breeding and training of young sport horses. Moving the footpath out of the yard would be of benefit in terms of farm management and also avoid any further conflict or risk of accidents between members of the public and the horses. Horses in training can be easily disturbed and upset and

this has led to injury to pedestrians in the past. Diverting the footpath should improve safety for users.

- 11.5 The proposed route runs along field boundaries to the south of the existing route, until it rejoins the existing line of the footpath. It would move the route out of the stud farm, allowing users views of the horses whilst avoiding physical contact with them. It would also provide enhanced views of the Cheshire Countryside. The current route is partly enclosed with a width of 1.5 metres. The proposed route will also be partly enclosed by post and rail fencing and will have a width of 2.3 – 2.5 metres. The surface of the new route will be part stoned and part pasture. The proposed route also offers easier access. It does not require any path furniture and would remove the need for the stile and gate which users currently have to negotiate.
- 11.6 The local Councillors have been consulted about the proposal. No comments have been received.
- 11.7 Mottram St Andrew 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. Following a site meeting the Peak and Northern Footpath Society have responded to state that they have no objection to the diversion of the footpath providing that the surface between points C and D is firm enough for walkers. The applicant has agreed to carry out any surfacing/drainage works necessary to bring the diverted route up to an acceptable standard.
- 11.10 The Ramblers Association have responded to state that “the line of the proposed diversion is likely to be acceptable subject to agreement of path widths and that the surface of the path is such that it can be walked in all seasons”. The width of the new route will be 2.2 – 2.5 metres and the surface will be stoned where necessary.
- 11.11 Mr Neil and Mrs Patricia Bridge who are neighbours of the applicant and reside at Woodend Farm House have responded to state that they object to the proposal for the following reasons:
 - “1. The original footpath does go through the yard, however the horses are kept in an enclosed area or stabling, on the many times my wife and I have used the path we have rarely seen any horse in the enclosed area.
 - 2. The majority of the horses appear to be kept in the fields which the path runs through and seem quite used to humans.
 - 3. The argument about privacy and security I feel is a non starter as the proposed diversion is as close to the new building and gives views

into the property, the original path is much lower and the views in to the property are restricted. The proposed diversion is very steep and older walkers of which there are many have told us they have difficulty going up and down the path especially in wet weather, it also allows walkers views into mine and my neighbours property which using the applicants argument is not good for our privacy or security.”

- 11.12 The current line of the footpath runs through a busy working stud farm. The proposed route would take walkers out of the yard which will enable the applicants’ to improve stud farm management and security and privacy of the yard. A small section of the proposed route is steeper than the current route (point A to B on Plan No. HA/007) but it offers much improved views of the surrounding countryside and the surface will be stoned to reduce the risk of it becoming wet and slippery.
- 11.13 Mr Philip and Mrs Katharine Chong are also neighbours of the applicant and reside at De Mottram Barn. They have also responded to state that they object to the proposal for the following reasons:
- That the diversion has direct views into their property, further compromising their privacy in favour of the applicants;
 - That this is a popular route and the diversion would be considerably steeper and more difficult for some walkers;
 - That the diversion has increased furniture and therefore is not as easy to use;
 - That the existence of the footpath was known when planning for the stud and dwelling was granted and that planning should not have been granted if the horses present a danger to the public
- 11.14 The proposed route is visible from Mr and Mrs Chongs bedroom window but it is not possible to see into their house. Although this small section of the proposed route is steeper than the current route (point A to B on Plan No. HA/007) it does offer improved views. As previously highlighted, the surface will be stoned to reduce the risk of it becoming slippery. There is no furniture on the proposed route, so easier access is provided. The Council cannot use the planning process that granted permission for the stud farm and house as a determinative factor in assessing the merits of an application. Account can only be given to the current situation and whether the legal tests are met. The relevant tests in this case, given the nature of the objections received to date appear to be whether the path is substantially less convenient to the public as a consequence of the diversion and the effect that the diversion would have on the enjoyment of the path or way as a whole. The applicant will meet the costs of any works required to bring the new route up to an acceptable standard and the Cheshire East 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.

11.15 Under the Highways Act 1980, an appropriate authority is empowered to make a Public Path Diversion order where it appears to be expedient in the interests of the owner, lessee or occupier of the land crossed by the path or of the public. In addition, in order that the Order is capable of confirmation, the authority must be satisfied that the path will not be substantially less convenient as a result of the diversion and regard must be paid to the effect of the diversion on public enjoyment of the path as a whole. It is considered that the proposal is in the interests of the landowner and is not substantially less convenient than the current route and, that in terms of enjoyment, it is an improvement on the current route.

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

11.17 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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