

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	7 December 2015
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 s.119 Application for the Diversion of Public Footpath Nos. 1 & 9 (parts), Parish of Henbury

1.0 Report Summary

- 1.1 This report seeks to assist Members in the determination of an application to divert parts of Public Footpaths No.1 and No 9 in the Parish of Henbury as shown on Plan 1 attached to the report.
- 1.2 The report includes the outcome of consultations carried out in respect of the proposal and the legal tests to be considered before a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit because an application has been made by the landowner concerned. The report makes a recommendation based upon the above information, to enable a quasi-judicial decision to be made by Members whether or not to make the requested Order.

2.0 Recommendation

- 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 parts of Public Footpaths No.1 and No 9 Henbury by creating a new section of public footpath and extinguishing the current path as illustrated on Plan 1 attached to this report 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- 2.3 In the event of objections to the Order being received, and not subsequently withdrawn the Order be referred to the Secretary of State to be determined.

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 Section 10 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 to which:

- The diversion would have on public enjoyment of the path as a whole
- The effect on other land served by the path
- Any provisions for compensation
- Any material provision within a Rights of Way Improvement Plan
- The needs of agriculture and forestry; biodiversity; and disability discrimination legislation

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 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will increase the perception of both the security and privacy of the property as well as reduce the chance of unintentional trespass. It is considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order can be satisfied.

4.0 Wards Affected

4.1 Gawsworth

5.0 Local Ward Members

5.1 Councillor Lesley Smetham

6.0 Policy Implications

6.1 Not applicable

7.0 Financial Implications

7.1 Not applicable

8.0 Legal Implications

- 8.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

9.0 Risk Management

- 9.1 Not applicable

10.0 Background and Options

- 10.1 The application has been received from Robin Carr Associates (agents) on behalf of Mr & Mrs Harrison of Sandbach Farm, Henbury, Macclesfield SK11 9PL. The application requests that the Council make an Order under section 119 of the Highways Act 1980 to divert parts of Public Footpaths Nos. 1 & 9 in the Parish of Henbury as shown on Plan 1 attached to this report.
- 10.2 The land over which the current path and the proposed diversion run belongs to Mr & Mrs Harrison. 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 landowner to make an order to divert the footpath.
- 10.3 The section of footpath proposed for extinguishment is the whole width of those parts of Public Footpaths, Henbury No 1 and 9 shown by a solid black line on Plan 1 and commencing at Grid Reference 38640 37213 (Point A) then running in a generally northerly direction across the open field to Grid Reference 38636 37241 (Point B). The length of this section of footpath (A – B) is approximately 300 metres.
- 10.4 The proposed new footpath is shown by a broken black line on Plan 1 and commences at Grid Reference 38640 37213 (Point A) then runs in a generally north north-easterly direction along the eastern side of the field boundary to Grid Reference 38648 37235 (Point C) where it turns and runs along the southern side of the field boundary in a generally west north westerly direction to Grid Reference 38636 37241 (Point B). The length of the proposed new footpath is approximately 376 metres.
- 10.5 As part of the proposals the stile at Grid Reference 38640 37213 (Point A) will be replaced with a kissing gate and a new kissing gate will be installed at Grid Reference 38648 37235 (Point C). The gating arrangements at Grid Reference 38636 37241 (Point B) will remain unchanged. It should be further noted that, as part of the works to bring the path into being, the cattle watering trough located in the hedge line between Points C and B will be relocated away from the alignment of the new footpath. The new route would be 2 metres wide and unenclosed. The surface of the new route would be grass with some stoning in the vicinity of any gate ways should this prove necessary.

- 10.6 The proposal will move the footpath further away from the new property and its access drive. Moving the footpath will increase the perception of both the security and privacy of the property and reduce the chance of unintentional trespass. As such the proposal is considered to be in the interest of the owner of the land and that the diversion of the footpath is a suitable and appropriate (expedient) means of addressing these issues.
- 10.7 Whilst the proposed new route is approximately 76 metres longer than the existing route, and any such increase in distance may be considered to have an impact on the convenience of the route, this must be considered in context taking into account factors such as the primary use that a path receives (e.g. to get to local amenities or recreation) and the overall length of the path or journey to be undertaken. In this instance the increased distance is only 76 metres which will only add perhaps a minute to any journey. This is not considered unreasonable given the rural setting of the footpath and the generally recreational use that it receives.
- 10.8 Consideration may also be given to the number of structures (e.g. stiles and gates etc) that have to be negotiated when using the route. The affected section of the existing footpath has two gates plus a stile. The proposed new route will have only two kissing gates meaning that there are therefore fewer structures on the proposed new route. Overall it is considered that the proposed new route is not substantially less convenient than the existing footpath.
- 10.9 With regard to the enjoyment of the route, the proposed new route affords walkers excellent views of the surrounding area and there are fewer structures (and no stiles) to negotiate. It is not therefore considered that the diversion will have a detrimental effect on the enjoyment of the path as a whole.
- 10.10 The land crossed by the existing and proposed routes is all in the same ownership and no private rights of access will be affected by the proposals. There is therefore no adverse effect on any land served by the footpath. Similarly, as the land is all in the same ownership, and the land owners are the applicants, no compensation issues should arise.
- 10.11 An assessment of the ROWIP for the Cheshire East Council area has been made and there are no material provisions within the document that adversely affect the proposals, and the proposal is not considered to have any detrimental effect on the needs of agriculture, forestry or biodiversity.
- 10.12 The Ward Councillor was consulted about the proposal and no objections have been received to the proposal.
- 10.13 Henbury Parish Council has been consulted and no objections have been received to the proposal.
- 10.14 The statutory undertakers have also been consulted and have raised 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.

- 10.15 The user groups have been consulted. The Peak and Northern Footpath Society and the Ramblers Association have no objection to the proposal, but have requested that the new route be waymarked and maintained appropriately. No other comments were received.
- 10.16 The Council's Nature Conservation Officer has been consulted and raised no objection to the proposals.
- 10.17 An assessment in relation to Disability Discrimination Legislation has been carried out and it is considered that the proposed diversion offers an improvement over the old route due to there being few structures and the replacement of a stile with a kissing gate.

11.0 Access to Information

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

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