

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 14th March 2016
Report of: Public Rights of Way Manager
Subject/Title: Highways Act 1980 s.119 and s25
Application for the Diversion of Public Bridleway No 5 and Public Footpath No 9 (parts) and Creation of a New Public Footpath, Parish of Marthall

1.0 Report Summary

- 1.1 This report outlines the investigation to divert parts of Public Bridleway No 5 and Public Footpath No 9 and to create a new public footpath, linking existing public rights of way, in the parish of Marthall. This includes discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as an 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 section of each path concerned.
- 1.2 Members are required to consider all information in the report and make a decision as to whether the proposed path diversions are expedient based upon the legal tests prescribed in section 119 of the Highways Act 1980 set out in this report. A separate Creation Agreement would be entered into with the owners of the land for the creation of a new public footpath in accordance with the Highways Act 1980 section 25.

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 Bridleway No 5 and Public Footpath No 9 in the parish of Marthall by creating new sections of each path and extinguishing the current path sections as illustrated on Plan No. HA/108 on the grounds that it is expedient in the interests of the owner of the land crossed by the paths.
- 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.

- 2.4 An agreement under Section 25 of the Highways Act 1980 be entered into with the landowner, Mr R Brighthouse, to create a length of public footpath as detailed in this report and as illustrated on Plan No. HA/108.

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 paths, or both. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 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 of State will, in addition to the matters discussed at paragraph 3.1 above, have regard to: -

- Whether the paths are 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 paths or ways as a whole.
- The effect that the coming into operation of the Order would have as respects other land served by the existing public rights of way.
- The effect that any new public rights 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 Diverting sections of the bridleway and footpath will be of considerable benefit to the landowner in terms of enhancing the security and privacy of the property. It is considered that the proposed routes will provide a satisfactory alternative to the current routes and, as such, that the legal tests for the making and confirming of a diversion order are satisfied. The applicant has also offered to create, by Agreement, an additional length of public footpath that would provide a very useful addition to the local public rights of way network.

4.0 Wards Affected

- 4.1 Chelford

5.0 Local Ward Members

5.1 Councillor George Walton

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 received and not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing / inquiry with objections being determined by the Secretary of State. 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 An application has been received from Mike Walker Ltd (a Public Rights of Way Consultant) on behalf of the owner, Mr R Brighthouse of Mount Pleasant, Marthall, Knutsford, WA16 7SS requesting that the Council makes an Order under section 119 of the Highways Act 1980 to divert parts of Public Bridleway No 5 and Public Footpath No 9 in the Parish of Marthall.

10.2 The existing route of Public Bridleway No 5 Marthall commences just south of the parish boundary with Great Warford at O.S. grid reference 7922 7809 and runs generally south west partly through a field and partly enclosed by fencing, across the frontage of Mount Pleasant Farm, and turns to run generally south, enclosed between fences, to where it joins the access track to Ryecroft Farm along which it continues to terminate at its junction with Pedley Land at O.S. grid reference 7908 7743. The section of path to be diverted is shown by a solid bold black line on Plan No. HA/108 between points A-B-C-D-E. The proposed diversion is illustrated on the same plan with a bold black dashed line between points A-K-L-E.

The existing route of Public Footpath No 9 Marthall commences at its junction with Public Bridleway No 5 Marthall at O.S. grid reference 7918 7804 and runs generally westerly across fields, skirting the boundary of Mount Pleasant Farm and passes through a variety of stiles and kissing gates to terminate at its junction with Public Footpath No 8 Marthall at O.S. grid reference 7816 7818. The section of path to be diverted is shown by a solid bold black line on Plan

No. HA/108 between points F-G-H-I-J. The proposed diversion is illustrated on the same plan with a bold black dashed line between points A-M-N-J.

- 10.3 Mr Brighthouse owns the land over which the current paths and the proposed diversions 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 landowner to make an Order to divert the paths.

- 10.4 Mount Pleasant Farm has been demolished and has permission for the erection of a substantial new single residential dwelling to occupy the site, together with garaging, stables, a ménage and small golf course. Both public rights of way pass very close to the property.

The existing section of Public Bridleway No 5 Marthall to be diverted passes across the frontage of the property and directly crosses, what will be, dual access roads to the house and its facilities. Diverting the path to a new route offers greater privacy and security to the property as well as increasing the safety for users by removing potential conflict with vehicles crossing at two separate access points in front of the property.

The existing section of Public Footpath No. 9 Marthall to be diverted runs through fields and passes adjacent to the northern side of the new dwelling and then across fields behind. Diverting this section would also afford greater privacy.

- 10.5 Referring to the attached plan, HA/108:

The new route for Public Bridleway No. 5 Marthall (points A-K-L-E) would pass through a pasture field in its entirety from point A, generally following the line of Pedley Brook to meet with the access drive to the house at point E

The new route for Public Footpath No 9 Marthall would start at a kissing gate at point A at its junction with Public Bridleway No 5 and run through a pasture field north westerly to a kissing gate at point M, and then continue south westerly through a pasture field to a kissing gate at point N and continue south westerly to a kissing gate at its termination point at the junction with Public Footpath No 6 Marthall (point J).

A new section of public footpath will be created which would start at a kissing gate at point M at its junction with the proposed new route of Public Footpath No 9 Marthall and run north westerly through a pasture field to a kissing gate at point O and then continue north westerly through a pasture field to its termination point at the footbridge at its junction with Public Footpath No 6 Marthall at point P.

The new route of Public Bridleway No 5 will be created with a width of 4 metres with no requirement for any gates. For part of its length it has a stone-based surface.

The two new sections of public footpath will have widths of 3 metres, with kissing gates provided at points A, M, N, J and O.

The existing footpath crosses land that will be developed for the personal use of the occupier of the dwelling and requires diverting to secure the privacy and enjoyment of the property.

The new routes of the paths would afford improved privacy and security to the occupants of the new dwelling, given that the existing bridleway passes across the frontage of the new dwelling and crossing (what will be) two separate vehicular access points to the dwelling and to the stables / ménage which raise issues of safety and could constitute potential hazards to path users as well as to the occupiers and visitors of the property.

The proposal has benefits for the public in that the proposed new route of the bridleway passes through an almost parkland-style setting and has a partially hardened surface, covered by grass. It overcomes any safety concerns about crossing the access points to the new house and its facilities. Furthermore, whilst the existing bridleway passes through three bridle gates, the new route has no need for any gates. It will also have a width of 4 metres, which is wider than the current route and wider than the Council's normal minimum requirement of 3 metres.

The public will benefit with the new route of the footpath following more level ground through the pasture before returning to re-join Footpath No 6 Marthall. The footpath will have a width of 3 metres, a metre wider than the Council's normal minimum requirement of 2 metres.

A new section of footpath will also be created to link the diverted footpath to more conveniently connect with Marthall FP6 at the parish boundary. This also assists in providing a convenient circular walk from the village. The footpath will also have a width of 3 metres. This will assist walkers travelling in north westerly or south easterly directions.

The proposals provide for easier access to walkers with the existing footpath having two kissing gates and two stiles, whilst the new footpath will have three kissing gates, with a further new kissing gate replacing the existing stile at point J.

The development itself, which has been granted planning permission by the Council for residential use, will also greatly tidy and enhance the land in question and be visually more attractive, so improving the outlook for all users (riders, cyclists and walkers).

In summary, the proposed new routes would follow a line that would: -

- Be solely for the use of horse riders, walkers and cyclists, removing their interaction with the current property and allowing for the development as a residential dwelling to secure greater privacy, and be in the interests of the current and future owners.

- Provide accessible, improved routes taking account of the Council's duties under the Equality Act 2010 by removing three bridle gates from the bridleway and four stiles from the footpath network on the land.
- Be as convenient for use by the public and having no detrimental effect on the paths as a whole.
- Give opportunity to create a new direct link to Marthall FP6 at the parish boundary with Great Warford.

10.6 The consultation period for these diversions closed on 12th February 2016 and the following replies were received: -

- The Ward Councillor is happy with the proposed changes as long as the parish council is in agreement.
- Ollerton and Marthall Parish Council has been consulted and has not raised objection.
- The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If an Order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected in any event.
- User groups have also been consulted. Responses were received from The North Cheshire Riders Bridleways Group, The Peak and Northern Footpath Society, and The Ramblers with no objections being raised. No other responses have been received.

10.7 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion routes are improvements to the existing as they have fewer limitations of gates and stiles, and with new kissing gates being provided for the footpaths.

11.0 Access to Information

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

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