

CHESHIRE EAST COUNCIL

REPORT TO: RIGHTS OF WAY COMMITTEE

Date of meeting: 7 December 2009
Report of: Greenspaces Manager
Subject/Title: Highways Act 1980 – Section 119
Application for the Diversion of Public Footpath Nos.
2 And 3 (Parts) Parish of Millington

1.0 Report Summary

- 1.1 The report outlines the investigation of an application to divert part of Public Footpath No's 2 and 3 in the Parish of Millington. 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 footpaths.

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's 2 and 3 Millington as illustrated on Plan No. HA/010 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 landowners for the reasons set out in paragraphs 11.6 and 11.8 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 footpaths will be more enjoyable than the existing routes. The new routes are not 'substantially less convenient' than the existing routes and will be of benefit to the landowners in terms of security and privacy and in terms of farm management. It is therefore considered that the proposed routes will be more satisfactory than the current routes and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Bucklow

5.0 Local Ward Members

5.1 Councillor Andrew Knowles
Councillor George Walton
Councillor Jamie Macrae

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 any objections are received to the published Order, any ensuing hearing 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 Dr Dylan Prosser, Sandhole Farm, Millington Hall Lane, Millington, Nr Altrincham, WA14 3RW ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No's 2 and 3 in the Parish of Millington.

11.2 Public Footpath No. 3 Millington commences at its junction with Millington Hall Lane (UW2104) at O.S. grid reference SJ 7277 8410 and runs in a generally north westerly direction to Boothbank Lane (C116) at O.S. grid reference SJ 7212 8485. The section of path to be diverted is shown by a solid black line on Plan No. HA/010 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 Public Footpath No. 2 Millington commences at its junction with Public Footpath No. 3 Millington at OS grid reference SJ 7269 8417 and runs in a generally westerly direction to Chapel Lane (C114/05) at OS grid reference SJ 7219 8402. The section of path to be diverted is shown by a solid black line on Plan No. HA/010 running between points D-C. The proposed diversion is illustrated with a black dashed line on the same plan, running between points E-C.

11.4 The applicant owns the majority of the land over which the current line of Footpath No. 3 runs, a small section at the northernmost end of the route runs on the adjacent landowner's land. The land over which both the current and proposed route for Footpath No. 2 and a section of the proposed route for Footpath No. 3 is owned by the adjacent landowner. As part of the proposed route for Footpath No. 3 is in the

adjacent landowner's field, the applicant has agreed to apply to divert part of Public Footpath Millington No. 2 concurrently with Footpath No. 3 on the adjacent landowner's behalf. 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 landowner(s) to make an order diverting the footpath.

- 11.5 The current line of Public Footpath No. 3 Millington (A-B) runs in a north westerly direction straight across the applicant's garden and past the outbuildings of Sandhole Farm. There are three stiles for users to traverse.
- 11.6 The proposed route for Public Footpath No. 3 Millington (A-B) would run in a west south westerly then north westerly direction, along the boundary fence of Sandhole Farm and then into the adjacent landowner's field until it rejoins with the existing line of Footpath No. 3. The application has been made in the interests of the privacy and security of the applicant, the proposal would move the footpath away from the applicant's home and garden. The proposed route would also require less path furniture, three stiles would be replaced with two kissing gates. The width of the proposed route would be two metres.
- 11.7 The current line of Public Footpath No. 2 Millington (D-C) runs straight across the middle of the adjacent landowner's arable field. This is undesirable in terms of farm management. It is a 'cross-field' footpath with a maintainable width of 1 metre.
- 11.8 The proposed route for Public Footpath Millington No. 2 (E-C) runs along the boundary of the field, this would be of huge benefit to the landowner in terms of farm management. It would also take walkers much closer to Millington Clough, providing a more attractive route along the edge of the woodland and blue bell copse. The wildlife and wildflowers of the clough cannot be viewed from the current route of Footpath No. 2. It would also provide an improved surface, the ground around the perimeter of the field (where the proposed route would run) is firmer than the current route where it can become waterlogged and muddy. There would be a usable width of two metres.
- 11.9 The local Councillors have been consulted about the proposal, no objections have been received.
- 11.10 Millington Parish Council have been consulted and have responded to state that they have no objection to the proposal.
- 11.11 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.

- 11.12 The user groups have been consulted. The Ramblers Association have no objection to the proposed route for Footpath No. 3 but have mixed opinions and views on the proposed route for Footpath No. 2. For users travelling from the West heading in an easterly direction intending to join Footpath No. 3 it could be considered that the route is less convenient. But for users travelling from the West in a North Westerly direction the proposed route could be considered to be more convenient. They also state that moving the footpath along the field boundary would lead to a loss of open views, but the proposed route along Millington Clough is a very attractive route, particularly in the Spring. As previously stated, it also has an improved surface and a width of 2 metres, the current route has a usable width of 1 metre. Consequently, they have stated that they are unlikely to object if an Order is made but ask that the committee consider the different points of view for themselves.
- 11.13 The applicant has canvassed the opinion of local people who regularly use the footpaths and has obtained 69 signatures in support of the application.
- 11.14 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 11.15 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 diversions are an improvement on the old routes.

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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