

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 No. 1
(Part) Parish of Peover Superior

1.0 Report Summary

- 1.1 The report outlines the investigation of an application to divert part of Public Footpath No. 1 in the Parish of Peover Superior. 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. 1 Peover Superior as illustrated on Plan No. HA/006 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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. The new route is not 'substantially less convenient' than the existing route and will be of benefit to the landowner. Moving the footpath out of the paddock will prevent walkers (and their dogs) distressing the stock, improving farm management. It will also improve accessibility for walkers, it does not require any further path furniture and removes the need for the two stiles which users have to negotiate on the current route. 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 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 Mr Leslie Taylor of Twin Oaks Farm, Sandy Lane, Over Peover, Knutsford, WA16 9ET ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 1 in the Parish of Peover Superior.

11.2 Public Footpath No. 1 Peover Superior commences at its junction with Public Bridleway Peover Superior No. 2 at OS grid reference SJ 7582 7456 and runs in a generally north westerly direction to the parish boundary at OS grid reference SJ 7531 7467. The section of path to be diverted is shown by a solid black line on Plan No. HA/006 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, again running between points A-B.

11.3 The applicant owns the land over which the current path lies and the proposed diversion would lie. 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 diverting the footpath.

11.4 The existing line of Public Footpath Peover Superior No. 1 (A-B) crosses a paddock, which is used for horses, foals and sheep grazing. In the spring it is used for lambs. The applicant has had frequent

problems with walkers and their dogs crossing the paddock and distressing the stock. The application has also been made in the interests of the privacy and security of the applicant as the proposed route for the eastern end of the path moves it further away from the applicant's house.

- 11.5 The majority of the proposed route follows the outside of the boundary of the paddock until it rejoins the existing line of the footpath and is presently in use as a permissive route. It has a part stoned/part earth and natural vegetation surface, with a width of approximately 1.5 – 2 metres. The part of the route that follows the paddocks boundary is enclosed by conifer trees, which serve as a windbreak for the paddock. The applicant keeps these trees cut back to prevent the route from becoming dark. Moving the footpath would also improve accessibility, it removes the need for the two stiles which users currently have to negotiate. The proposed route is slightly longer than the existing route, 153 metres, the existing route is 136 metres.
- 11.6 The local Councillors have been consulted about the proposal. No response has been received.
- 11.7 Peover Superior 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 and that the proposed route 'is a good line and avoids the house'.
- 11.10 The Ramblers Association initially objected to the proposal, on the basis that; "the proposed diverted line (marked as permissive on the ground) is between two lines of conifer trees and is dark with no views to the South". However, following a site meeting with the applicant, the Ramblers Association have withdrawn their objection stating; "if the two conifer hedges bordering the proposed diversion are kept in a similar state to today that the diversion would be acceptable".
- 11.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 11.12 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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