

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	13 th June 2016
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 s.119 Application for the Diversion of Public Footpath no. 5 (parts), Parish of Prestbury

1.0 Report Summary

- 1.1 The report outlines the investigation to divert parts of Public Footpath No.5 in the Parish of Prestbury. This includes a 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 landowners concerned; however the diversion is considered to be in the public interest. 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 sections of footpath concerned.

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 Footpath No.5 by creating new sections of public footpath and extinguishing parts of the current path as illustrated on Plan No. HA/109 on the grounds that it is expedient in the interests of the public.
- 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 public for the reasons set out in paragraph 10.4 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath would have no detrimental effect on the enjoyment of the route as a whole. 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 are satisfied.

4.0 Wards Affected

4.1 Prestbury.

5.0 Local Ward Members

5.1 Councillor Paul Findlow

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 An application has been received from United Utilities Plc, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert parts of Public Footpath no. 5 in the Parish of Prestbury.
- 10.2 The majority of the land over which the current path to be diverted, and the proposed diversion runs, belongs to the applicant; with the exception of approximately 23 metres of the proposed route between points A and B (on plan no. HA/109). This small section of the proposed route is on land belonging to Mr T. O'Connor, who has provided his written consent to the diversion. 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 public to make an order to divert the footpath.
- 10.3 Public Footpath No. 5 Prestbury is a long path to the north west of Prestbury, for most of its length it follows the River Bollin. The full length is approximately 2.84 kilometres, it runs from its junction with footpath no.19 Prestbury near to Bonis Hall Lane (road no.B5358) at O.S. grid reference SJ 8934 7975, and runs in a generally southerly direction to where it meets footpath no.15 Prestbury at Bollin Grove (road no.UW2780) at O.S. grid reference SJ 8995 7740. The sections of path to be diverted are mid way along the footpath adjacent to the United Utilities Sewerage works; they are shown by solid black lines on Plan No. HA/109 between points A-C; D-F and G-J. The proposed diversions are illustrated on the same plan with black dashed lines between points A-B-C; D-E-F; and G-H-I-J.
- 10.4 The current sections of Public Footpath no.5 to be diverted are partly not available on the ground; the River Bollin has moved alignment and the adjacent land has suffered erosion due to the active nature of the river. The sections shown with solid black lines are either not available at all due to the land slip or they run extremely close to the river bank. The diversion of the right of way is therefore in the interest of the public as it is needed on health and safety grounds; the proposal will ensure the safety of the general public by moving the footpath away from the edge of the river bank ensuring the continued enjoyment of this well utilised route.
- 10.5 The proposal is to divert the effected parts of the footpath onto a new route that is slightly further to the east of the current route; and therefore a safer distance away from the river bank.

- 10.6 The new route would be 1.2 metres wide and have a rolled gritstone surface for this width. The route would remain unenclosed as it is currently. The only requirement for furniture is at point B on plan no. HA/109, where a kissing gate is already in situ.
- 10.7 As stated above this diversion is in the interest of the public. To make the definitive route available would be impossible due to the effect of the river erosion. The landowners believe the alternative route is not substantially less convenient than the definitive path and that the enjoyment of the path as a whole is not affected.
- 10.8 The Ward Councillor was consulted about the proposal, no comments have been received.
- 10.9 Prestbury Parish Council has been consulted; at the time of writing no comments have been received.
- 10.10 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.
- 10.11 The user groups have been consulted. The Peak and Northern Footpath Society stated they had reservations about the proposed route being so close to the fencing which surrounds the sewerage works as they believe this makes the walk less enjoyable. Officers have acknowledged the comments; however, it is believed that because the section next to the fence is only a short distance compared to the full length of the route, this would not have a detrimental effect on the overall enjoyment of the route. Further, Officers believe this is the most suitable position for the proposed route to ensure the longevity of this very popular footpath, also the tree and foliage coverage on this section would make it difficult to divert the route elsewhere. The Peak and Northern Footpath Society have stated they would not object to the proposals. No further responses from the user groups have been received.
- 10.12 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.
- 10.13 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 would be no less convenient to use than the current route.

12.0 Access to Information

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

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