

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 12th September 2016
Report of: Public Rights of Way Manager
Subject/Title: Highways Act 1980 s.119
Application for the Diversion of Public Footpath No 13 (parts), Parish of Moston and Public Footpath No 8 (part), Parish of Warmingham

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No 13 (parts), Parish of Moston and Public Footpath No 8 (part), Parish of Warmingham. 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 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 footpath concerned.
- 1.2 Members are required to consider all information in the report and make a decision as to whether the proposed footpath diversion is expedient based upon the legal tests prescribed in section 119 Highways Act 1980 set out in this report.

2.0 Recommendation

- 2.1 Providing that landowner agreement is secured, that 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 13, Parish of Moston and part of Public Footpath No 8 (part), Parish of Warmingham, by creating new sections of each public footpath and extinguishing the current path sections as illustrated on Plan No. HA/111 on the grounds that it is expedient in the interests of the owners of the land crossed by the paths and 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 paths. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 10.4 & 10.5 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 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 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 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 The proposed route would be an improvement to the existing route and diverting the footpaths would be of considerable benefit to the landowner and public.

An area of land within a field over which runs part of Public Footpath No 13, Parish of Moston P13 currently suffers seasonal flooding. Diverting the footpath to run in a different direction across a drier area within this field would assure its availability for use during wetter seasons.

Diversion of two further parts of Public Footpath 13, Parish of Moston and a section of Public Footpath No 8, Parish of Warmingham, would re-align them onto the currently walked route.

It is considered that the proposed new route resulting from diversion of these path sections, would provide a more satisfactory alternative to 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 Brereton Rural Ward

5.0 Local Ward Members

- 5.1 Councillor John Wray

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 Mr D Hancock of Brook Farm, Clay Lane, Moston, Sandbach, CW11 3QY requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No 13, Parish of Moston.

Further along this footpath, two short sections have been walked for a considerable period of time on a different alignment to the definitive alignment so the Council proposes to divert these sections composed of parts of Public Footpath No 13, Parish of Moston and Public Footpath No 8, Parish of Warmingham, such that they align along the walked route.

- 10.2 Public Footpath No 13, Parish of Moston, commences at its junction with Public Footpath No 12, Parish of Moston along Brook Farm Lane at O.S. grid reference SJ 7264 5931 and runs in a generally west, south westerly direction through a pasture field to cross Clay Lane before continuing across more pasture fields in generally west, south westerly and then south westerly directions to terminate at the parish boundary at its junction with Public Footpath No 8, Parish of Warmingham at O.S. grid reference SJ 7198 5895.

Public Footpath No 9, Parish of Warmingham, commences at its junction with Public Footpath No 13, Parish of Moston at the parish boundary at O.S. grid reference SJ 7198 5895 and runs in a generally west, south westerly direction across pasture fields to terminate at the parish boundary at its junction with Public Footpath No 11, Parish of Crewe at O.S. grid reference SJ 7122 5864.

- 10.3 Mr Hancock owns the land over which run parts of the current route of Public Footpath No 13, Parish of Moston and their proposed new routes. Mr A Whittaker owns the land over which run the remaining parts of this footpath proposed for diversion, and their proposed new routes. Both these landowners have given their written consent to diverting this footpath as proposed.

Mr JR Derbyshire owns the land over which runs the part of Public Footpath No 9, Parish of Warmingham, proposed for diversion and its proposed diversion route. However, written consent from Mr Derbyshire is still awaited.

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) and the public, to make an order to divert the footpaths.

- 10.4 An area of land within a field owned by Mr Hancock, over which part of Moston FP13 currently runs suffers seasonal flooding. Diverting the footpath to run in a different direction across a drier area within this field would assure its availability for use during wetter seasons.

Further along this footpath, two short sections are walked on a different alignment to the definitive alignment so the Council proposes to divert these sections composed of parts of Public Footpath No 13, Parish of Moston and Public Footpath No 8, Parish of Warmingham, such that they align along the walked route.

- 10.5 Referring to Plan No. HA/111, the section of public Footpath no 13, Parish of Moston, proposed for diversion by Mr Hancock starts along a hedge boundary within a field (point A) from where it follows a generally east, north easterly direction to Clay Lane which it crosses to then enter a second field where it continues in the same direction, crossing the field to terminate near its junction with Brook Farm Lane (point B).

The proposed diversion route would start at the same point as the current route, at a hedge boundary within a field (point A). From there, it would then follow a generally east, south easterly direction to Clay Lane which it would cross to enter the second field where it would continue in the same direction across the field to terminate at its junction with Public Footpath No 12, Parish of Moston FP12 (point C).

The new route would be 2 metres wide throughout and have a grass surface except where it crossed Clay Lane when it would be tarmac.

Of the two path sections proposed for diversion by the Council, referring to the attached plan:

- The first is a section of Public Footpath No 13, Parish of Moston, which starts within a field at a hedge boundary (point D) and immediately crosses the hedge boundary to then follow it in a generally north, north westerly direction for approximately 45 metres before crossing back into a different field where it terminates (point E).

From the same start point (point D), the proposed diversion route would follow the hedge boundary in the same general direction to the same termination point (point E) but without crossing it. It would, however, cross a field boundary en-route (point F).

- The second is composed of short sections of Public Footpath No 9, Parish of Warmingham and Public Footpath No 13, Parish of Moston as it spans the boundary of these two parishes. It starts within a field in the Parish of Warmingham (point G) and follows a generally easterly direction, crossing the parish boundary and a brook, to immediately bear in a generally north easterly direction (point H), crossing a field boundary to then continue to its termination point by the brook (point I).

From the same start point (point G), the proposed diversion route would follow a generally north easterly direction to a different part of the parish boundary (point J). It would then cross the brook to continue alongside it in a generally easterly direction to the same termination point (point I).

Both proposed diversion routes would have grass surfaces with the exception of the footbridge across the brook, and be 2 metres wide throughout.

Diversion of the ascribed path sections of Public Footpath No 13, Parish of Moston and Public Footpath No 9, Parish of Warmingham would be in the interests of both the public and the landowner.

10.6 The consultation period for this diversion is still running until Friday 8th March. However, to date, responses are as follows:

10.6.1 The Ward Councillor has been consulted about the proposal. No comments have been received.

10.6.2 Moston and Warmingham Parish Councils have been consulted and have not yet registered objection. Any comments received will be reported verbally.

10.6.3 The statutory undertakers have been consulted and, with the exception of National Grid, have raised no objections to the proposed diversion. National Grid have placed a holding objection pending further information about any work on the new diversion routes. No works will be required in the vicinity of their apparatus so it is anticipated that this objection will be withdrawn. The final outcome will be reported verbally.

If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

10.6.4 The user groups have been consulted. The Peak and Northern Footpath Society registered no objections. No other comments 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 route is an improvement to the existing route since it will place part of Public Footpath No 13, Parish of Moston, onto an area of land that is less susceptible to water logging during the wetter seasons.

12.0 Access to Information

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

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