

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. 56,
Parish of Bollington

1.0 Report Summary

- 1.1 The report outlines the investigation to divert Public Footpath No. 56 in the Parish of Bollington. 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 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 Public Footpath No.56 Bollington by creating a new public footpath and extinguishing the current path as illustrated on Plan No. HA/112 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 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 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 No objections to the proposal have been received through the informal consultation process. The proposed route will not be 'substantially less convenient' than the current route and diverting the footpath will be of benefit to the landowner by improving privacy and security to her property, 'Berristall Rise'.

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 Bollington ward

5.0 Local Ward Members

5.1 Councillor A Stott and Councillor J Weston

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/an 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 Mrs A Theobald of 2, Berristall Rise, Bollington, Macclesfield, Cheshire, SK10 5RH requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 56 in the Parish of Bollington.
- 10.2 Public Footpath No. 56, Bollington, commences at its junction with Public Footpath No. 42 on Cocksheadhey Road (UW1355) at OS grid reference SJ 9404 7834 and runs in a generally west, north westerly direction passing through the garden of No 3 Berristall Rise, then crossing the unadopted road, Berristall Rise, before passing through the garden of No. 2 Berristall Rise (which is also called 'Berristall Rise') before exiting into a pasture field across which it continues in a generally north, north westerly direction to terminate at its junction with Public Footpath No. 55, Bollington at O.S. grid reference SJ 9393 7859.

The path to be diverted is shown by a solid black line on Plan No. HA/112 running between points A-B-C-D. The proposed diversion is illustrated on the same plan by a black dashed line running between points E-F-G-H-D.

- 10.3 Mr and Mrs A Theobald own the land over which part of the current path and part of the proposed diversion run. The remaining parcels of land over which the route runs are separately owned by Mr Kershaw of 3, Berristall Rise and Mrs Gray of 1, Berristall Rise both of whom have given written agreement to the proposed 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 landowner to make an order to divert the footpath.

- 10.4 Referring to Plan No. HA/112, the section of Bollington FP56 to be diverted starts at its junction with Cocksheadhey Road (point A). From this point, it runs in an west, north westerly direction through the garden of 3, Berristall Rise (points A-B), crosses the road, Berristall Rise, (points B-C) and then enters the garden of the applicant's property, Berristall Rise, which it crosses to its termination point immediately before a stile in the northern garden boundary (points C-D).

Diverting this section of footpath to run along Beristall Rise and then around the perimeter of the applicant's garden would afford the applicant improved security and privacy by taking path users further away from property buildings.

The new route would start at its junction with Cocksheadhey Road (point E) from where it would follow the unadopted road, Berristall Rise, in generally westerly, northerly and then north westerly directions to the applicant's property (point F). It would then follow parts of the eastern and northern perimeters of the property garden (points F-G-H-D), to terminate immediately before the stile (point D).

The new route would be 2 metres wide throughout and would have surfaces of tarmac and grass.

Of benefit to users, the proposed diversion route would follow a line that:

- would be easier to navigate as it would follow a road and then a garden perimeter rather than crossing through two gardens.
- would eliminate the unintentional use of the owners domestic steps to their house and the driveway leading to them.

This diversion would be made in the interests of the landowner.

- 10.5 Ward Councillors have been consulted about the proposal. Councillor J Weston registered that he has no objection to the proposal. Any further comments will be reported verbally.
- 10.6 Members of Bollington Town Council have registered no objection to the diversion. However, they requested that adequate signage be displayed on approach to the applicant's property to indicate to users the direction of the new route.
- 10.7 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. Several identified apparatus in the vicinity of the diversion and objected initially but withdrew once they understood that any works on the new route would not affect such apparatus.

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

- 10.8 The user groups have been consulted. The Peak and Northern Footpath Society and the East Cheshire Ramblers registered no objection. However, they did both request that adequate signage be displayed where the diversion route passes through the applicant's garden to ensure that users are clear about where to walk. No other comments were received.
- 10.9 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.

10.10 An assessment in relation to Equality Act 2010 Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion is not substantially less convenient than the current route.

11.0 Access to Information

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

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