

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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**Date of Meeting:** 5<sup>th</sup> December 2016  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 s.119  
Application for the Diversion of Public Footpath No. 51 (part),  
Parish of Odd Rode

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### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.51 in the Parish of Odd Rode. 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 Providing landowner agreement is secured in writing, 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.51 Odd Rode by creating a new section of public footpath and extinguishing the current path as illustrated on HA/114 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will enable the applicant to undertake necessary strengthening works to a railway bridge. 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 Odd Rode

#### **5.0 Local Ward Members**

5.1 Councillor Rhoda Bailey and Councillor Liz Wardlaw

#### **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 Ms. Janet Yang on behalf of Network Rail Ltd, 1, Eversholt Street, London, NW1 2DN requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 51 in the Parish of Odd Rode.
- 10.2 Public Footpath No. 51, Odd Rode commences at its junction with Cinderhill Road at OS grid reference SJ 8362 5717 and runs in a generally south, south easterly direction across a pasture field to pass beneath a railway bridge before continuing to terminate at its junction with Public Footpath No. 14 Church Lawton at OS grid reference SJ 8392 5676. The section of path to be diverted is shown by a solid bold black line on Plan No. HA/114 between points A-B-C-D. The proposed diversion is illustrated on the same plan with a bold black dashed line between points A-E-F-D.
- 10.3 The land over which the current path and the proposed diversion run is divided between three landowners, the applicant, Network Rail, Mr and Mrs A Preston and Miss J Batchelor although the latter two have yet to submit their 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/114, the section of Public Footpath No. 51, Odd Rode to be diverted starts within a field to the north west of a railway line (point A) and follows a generally south, south easterly direction to a railway bridge beneath which it passes through the southern span (points B-C) to continue to its termination point in a field lying to the south east of the railway line (point D).

Following an inspection of the bridge foundations, staff from Network Rail concluded that this bridge needs to be strengthened. Infilling the southern span and diverting the footpath to run beneath the northern span would be required to effect this.

- 10.5 The proposed new route would also start within the field to the north west of a railway line at point A. However, from there, it would follow a generally south easterly direction to pass beneath the northern span of the bridge (points E-F) after which it would follow a generally southerly direction to terminate on re-joining the current route at point D in the field lying to the south east of the railway line.

The new route would be 2 metres wide and kissing gates would be installed at each side of the bridge span (at points E and F). The bridge span itself would be renewed as part of the planned works and would measure 2 metres wide x 2.1 metres high. Current overgrown vegetation would be cleared and measures put in place to ensure adequate drainage of the area.

The path surface would be grass except beneath the bridge where it would be brushed concrete. Note that either side of the concrete, a firm aggregate may be laid dependant on ground conditions. Otherwise, the natural surface of grass would remain.

The diversion would be made in the interests of Network Rail, the owner of the bridge and landowner.

- 10.6 The local councillors have been consulted about the matter. Councillor Bailey and Councillor Wardlaw registered that they did not have any comments to make or add.
- 10.7 Odd Rode Parish Council has been consulted and registered that members have no objection to the proposal. However, they have requested reassurance from Network Rail that all the work on the northern bridge span (clearing overgrown vegetation, providing adequate drainage, renewing the bridge span, etc.) will be completed before the path is actually diverted.

Parish Council members were assured that the diversion would not be certified by the Council as operable to the public unless all the works were completed.

- 10.8 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.
- 10.9 The user groups have been consulted. The members of the Peak and Northern Footpath Society registered that they have no objection to the proposal.
- 10.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.11 An assessment in relation to the Equality Act Legislation 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion is not substantially less convenient than the old 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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