

CHESHIRE EAST COUNCIL

REPORT TO: RIGHTS OF WAY COMMITTEE

Date of meeting: 1 March 2010
Report of: Greenspaces Manager
Subject/Title: Highways Act 1980 – Section 119 and Section 25
Application for the Diversion of Public
Footpaths No. 3 and No. 4 (Parts) Parish of Wincle
and Creation of Public Footpath No. 41 Parish of
Wincle

1.0 Report Summary

- 1.1 The report outlines the investigation of an application to divert part of Public Footpaths No. 3 and No. 4 in the Parish of Wincle. 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 footpaths.

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 Footpaths No. 3 and No. 4 Wincle as illustrated on Plan No. HA/013 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 A creation agreement be entered into with the applicant under Section 25 of the Highways Act 1980 to create a new public footpath (No. 41) as illustrated on Plan No. HA/013 between points I–J.
- 2.3 Public Notice of the making of the Order be given and in the event of there being no objections to the Order within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts. There is no statutory objection process for the creation agreement.
- 2.4 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 landowners for the reasons set out in paragraphs 11.6 and 11.8 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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. It is considered that the proposed footpaths will be more enjoyable than the existing routes and the proposed dedication of a footpath will offer advantages to users, providing a very useful link to Minn End Lane (Winkle FP2). The new routes are not 'substantially less convenient' than the existing routes and diverting the footpaths will be of huge benefit to the landowners, particularly in terms of security and privacy and also in terms of farm management. It is therefore considered that the proposed routes will be more satisfactory than the current routes and that the legal tests for the making and confirming of a diversion order are satisfied.

3.5 Under section 25 of the Highways Act 1980 a local authority may enter into an agreement with any person having the capacity to dedicate a public footpath or bridleway.

- 3.6 It is considered expedient to enter into such an agreement with the applicant to create the desirable link I-J on plan No. HA/013. The new footpath would be "Public Footpath No. 41 in the Parish of Wincle".

4.0 Wards Affected

- 4.1 Macclesfield Forest

5.0 Local Ward Members

- 5.1 Councillor Marc Asquith
Councillor Hilda Gaddum
Councillor Lesley Smetham

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 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, which 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.

10.0 Risk Management

- 10.1 Not applicable.

11.0 Background and Options

- 11.1 An application has been received from Mr Simon Holding of Buttlerlands Farm, Wincle, Macclesfield, SK11 0QL ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpaths No. 3 and No. 4 in the Parish of Wincle.

- 11.2 Public Footpath No. 3 Wincle commences at its junction with Public Footpath No. 4 Wincle at Butterlands Farm, at O.S. grid reference SJ 9471 6710 and runs in a generally south westerly direction to join Public Footpath Wincle No. 2 (Minn End Lane) at O.S. grid reference SJ 9406 6635. The sections of path to be diverted are shown by a solid black line on Plan No. HA/013 running between points A-B and C-D. The proposed diversions are illustrated with black dashed lines on the same plan, running between points G-H and C-D.
- 11.3 Public Footpath No. 4 Wincle commences at its junction with Buxton Road (A54) at O.S. grid reference SJ 9465 6739 and runs in a generally southerly direction to join Public Footpath Wincle No. 8 at O.S. grid reference SJ 9491 6626. The section of path to be diverted is shown by a solid black line on Plan No. HA/013 running between points E-F. The proposed diversion is illustrated with a black dashed line on the same plan, running between points B-F.
- 11.4 The Applicant owns the land over which the current paths and the proposed alternative routes run. 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 applicant to make an order diverting the footpaths.
- 11.5 The first section of the current line of Public Footpath No. 3 Wincle to be diverted (A-B) runs in a south westerly direction immediately past the applicant's back door and kitchen windows, which creates a significant loss of privacy and can cause security issues for the applicant. The second section of Footpath No. 3 to be diverted (C-D) cuts across the corner of a field, this is undesirable in terms of farm management.
- 11.6 Part of the proposed route for Public Footpath No. 3 Wincle would become Public Footpath No. 3A Wincle (G-H). This would begin at Buxton Road (A54) and run in a south westerly and then south south easterly direction across fields and along the field boundaries, to rejoin Public Footpath No. 3 Wincle. This would move the beginning of the route (G) closer to Public Bridleway Sutton No. 28. Moving this section of the footpath would allow the applicant to improve the privacy and security of his property considerably.
- 11.7 The second section of the proposed route for Public Footpath No. 3 Wincle (C-D) would run in a west south westerly and then south westerly direction, along a farm track. This provides an improved surface for walkers and will be of benefit to the applicant in terms of farm management.
- 11.8 The current line of Public Footpath No. 4 Wincle (E-F) runs in a southerly direction along the driveway to the applicant's home and then through a very busy working farmyard which is used by heavy farm machinery, tractors and livestock. This too creates privacy and security

issues for the applicant and the various plant and machinery operated in and around the farm buildings can be hazardous for walkers

- 11.9 The proposed route for Public Footpath No. 4 Wincle (B-F) begins approximately 166 metres south west of the farm on Public Footpath No. 3 Wincle and runs in a southerly then south easterly direction to rejoin the existing line of Footpath No. 4. Part of the route is along an existing track, providing an improved surface for users. It also offers improved views of the valley. Diverting Public Footpath No. 4 Wincle would allow the applicant to significantly improve the privacy and security of his property, improve farm management and provide a safety benefit to users.
- 11.10 If a diversion order for footpath Nos. 3 and 4 is confirmed, the applicant has agreed to dedicate an additional footpath on his land (I-J). This would run in a south westerly direction, linking Footpath No. 3A Wincle and Public Footpath No. 2 Wincle (Minn End Lane). This would provide an extremely useful link for walkers wishing to access Minn End Lane.
- 11.11 The local Councillors have been consulted about the proposal, no objections have been received.
- 11.12 Wincle Parish Council have been consulted and have responded to state that they have no objection to the proposal.
- 11.13 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.
- 11.14 The user groups have been consulted. The Peak and Northern Footpaths Society have responded to state that they have no objection the proposals.
- 11.15 Following a site meeting, the Ramblers Association have responded to state that they believe that the proposals are acceptable provided; 1. The proposed dedication of the link to Minn End Lane is completed concurrently; 2. The path across the two northern fields (between points I-H on Plan No. HA/013) is improved such that it can be walked in all seasons by 'stoning or similar; 3. The new routes are signed and waymarked satisfactorily.

1. The applicant has confirmed in writing that if a diversion order for Public Footpath Nos. 3 and 4 Wincle is confirmed, he will dedicate the route as shown on Plan No. HA/013 as a Public Footpath and this report seeks approval to enter into a creation agreement with the applicant for this purpose; 2. the Cheshire East Borough Council would not issue the Article 2 'certificate of satisfaction' or confirm the Order until works have been carried out on the new routes, including

the surfacing, to bring them up to an acceptable and suitable standard;
3. The new routes will be signed and waymarked appropriately.

11.16 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.

11.17 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 diversions are an improvement on the old routes.

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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