

# **CHESHIRE EAST COUNCIL**

## **REPORT TO: RIGHTS OF WAY COMMITTEE**

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**Date of meeting:** 1 March 2010  
**Report of:** Greenspaces Manager  
**Subject/Title:** Highways Act 1980 – Section 119  
Application for the Diversion of Public  
Footpath No. 46 (Part) Parish of  
Congleton

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### **1.0 Report Summary**

- 1.1 The report outlines the investigation of an application to divert part of Public Footpath No. 46 in the Parish of Congleton. 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 footpath.

### **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 Footpath No. 46 Congleton as illustrated on Plan No. HA/014 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 paragraphs 11.4 and 11.5 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 There are no objections to this proposal. The new route is not 'substantially less convenient' than the existing route and will be of benefit to the landowners. Moving the footpath away from the applicant's and adjacent landowners properties will allow them to improve their privacy and security considerably. The section of the diversion in the field (between the two kissing gates) is also in the interests of the landowner, moving the footpath will improve the security of his land around the reservoir. It will also provide an improved surface for users. It is therefore considered that the proposed route will be more satisfactory than 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 Bucklow.

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

- 5.1 Councillor Andrew Knowles  
Councillor George Walton  
Councillor Jamie Macrae.

**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 James Morton of Pool Bank Mill, Weathercock Lane, Timbersbrook, Congleton, CW12 3PS ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 46 in the Parish of Congleton.

11.2 Public Footpath No. 46 Congleton commences on Weathercock Lane at OS grid reference SJ 8923 6292 and runs in a generally south westerly direction to Brookhouse Lane at OS grid reference SJ 8868 6236. The section of path to be diverted is shown by a solid black line on Plan No. HA/014 running between points A-D. The proposed diversion is illustrated with a black dashed line on the same plan, again running between points A-B-C-D.

11.3 The applicant owns part of the land over which the current route and proposed route run. He is in the process of purchasing the land in front of Pool Bank Mill from Messrs P and B Dean (the adjacent landowners) to construct a new driveway for access to his property. They have provided written consent and support for the proposal. Mr G Robinson owns the field to the south west of Timbers Brook over which part of

the current path lies and the proposed diversion would lie. He has also provided written consent and support for the proposal. 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 or landowners to make an order diverting the footpath.

- 11.4 Public Footpath Congleton No. 46 forms part of a promoted route, the Gritstone Trail, and is a well used route. The existing line of the footpath runs directly in front of the applicants' home and immediately past the windows of the property. It also runs in very close proximity to the two adjacent landowners properties, Pool Bank Cottage and Pool Bank House. The section of the footpath to be diverted on the south western side of Timbers Brook runs across a field owned by Mr G Robinson.
- 11.5 The proposed route would run along a new driveway that the applicant is building for access to his property. It would leave the existing driveway approximately 50 metres west of Weathercock lane, running in a south westerly direction to Timbers Brook. This section of the footpath will have a stoned surface and be enclosed by post and rail fencing on both sides of the route. The width will be 5 metres between points A-B and 3.5 metres between points B-C, as indicated on Plan No. HA/014. It would then pass through a pleasant wooded valley and over Timbers Brook, providing further, improved views of Timbers Brook. The width of the short section of the footpath through the valley would be 1-1.2 metres with a 1 metre wide footbridge over Timbers Brook. Moving this section of the footpath would allow the applicant and two adjacent landowners to significantly improve the privacy and security of their properties.
- 11.6 The proposed route then crosses the adjacent landowners' field, Mr G Robinson. This section of the diversion is also in the interests of the landowner, moving the footpath south of the current line of the route would take users away from the reservoir area where Mr Robinson has encountered problems with people damaging fencing as they attempt to enter this area. It would provide an improved surface for users as the land over which the proposed route would run in this field is much dryer and less boggy than where the current route runs. The width for this section of the proposal would be 2 metres.
- 11.7 The local Councillors have been consulted about the proposal. No response has been received.
- 11.8 Congleton Town Council have been consulted about the proposal. No response has been received.
- 11.9 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.

- 11.10 The user groups have been consulted. The Peak and Northern Footpaths Society have responded to state that they have no objection to the proposal.
- 11.11 The Ramblers Association initially objected to the proposal as they believed that the width of the section of the proposed route across Mr Robinsons field would be 1 metre. However, they have been assured that this section of the route would be 2 metres and have now withdrawn their objection.
- 11.12 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 11.13 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 diversion is an improvement on the existing route.

## **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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PROW File: 090D/396