

Public Rights of Way Committee

Date of Meeting: 03 December 2018

Report Title: Highways Act 1980 s.119: Proposal for the Diversion of Public footpath No.2 (part) in the parish of Eaton

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to divert part of Public Footpath No.2 in the Parish of Eaton. 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. This proposal has been put forward by the Public Rights of Way team in the interests of the landowners and makes a recommendation based on that information, for a quasi-judicial decision by Members as to whether or not an Order should be made or not to divert the section of footpath concerned.
- 1.2. The proposal contributes to the corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer” and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

2. Recommendation/s

- 2.1. An Order be made under section 119 of the Highways Act 1980, as ammended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.2 in the Parish of Eaton by creating a new section of Public Footpath and extinguishing the current path as illustrated on Plan No.HA/135 on the grounds that it is expedient to do so in the interests of the owner of the land affected by the Public Right of Way.
- 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 excise 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. Reasons for Recommendation/s

- 3.1. In accordance with section 119 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 owner for reasons set out in section 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 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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. 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. Other Options Considered

- 4.1. Not applicable this is a non-executive matter.

5. Background

- 5.1. An application has been submitted by Mr Bell of Wheelwrights Cottage requesting the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.2 in the Parish of Eaton.
- 5.2. The land over which the section of the current path to be diverted and the proposed path runs belongs to the applicant: under section 119 of the Highways Act 1980 the Council may accede to an applicant's request if it considers it to be expedient in the interests of the landowner to make an Order to divert the path.
- 5.3. The route to be closed is shown on Plan No. HA/135, as a bold black line running between points A-B-C-D-E. The proposed new route is shown as a bold black dashed line between points A-F-G-H-I-J-E.
- 5.4. The section of Public Footpath No.2 to which the application relates commences at its junction with Hulme Walfield Public Footpath No.5 at O.S. grid reference SJ 8565 6548 (Point A on Plan No. HA/135) and extends in a generally southwardly direction for approximately 135 metres through the middle of a cultivation field to O.S. grid reference SJ 8567 6535 (point B on Plan No. HA/135) where it enters the residential grounds and garden of Wheelwrights Cottage. The path at this point then runs in a generally south easterly direction for approximately 78 metres (Point C on Plan No. HA/135) before turning to a generally south westerly direction for a distance of approximately 33 metres before exiting the garden of the Cottage via a stile (shown at point D on Plan No. HA/135) at O.S. grid reference SJ 8568 6527. From that point the path then continues for approximately a further 115 metres in a slightly south south westerly direction to the kissing gate located O.S. grid reference 8567 6515 and identified at point E on Plan No. HA/135. The total length of the affected path is approximately 360 metres and the surface is grass and earth. The remainder of Public Footpath No. 2 is unaffected by the diversion application.
- 5.5. The proposed new path would commence at its junction with Hulme Walfield Footpath No.5 (point A on Plan No. HA/135) at O.S. grid reference SJ 8565 6548 and would extend in a generally south westerly direction for a distance of approximately 141 metres to O.S. grid reference SJ 8555 6537 shown at point F on Plan No. HA/135. The path would then take a south easterly direction for approximately 33 metres to O.S. grid reference SJ 8557 6535 (point G on Plan No. HA/135) the path would then extend in a generally south westerly direction for approximately 87 metres to O.S grid reference SJ 8554 6527 identified at point H on Plan No. HA/135. The path would then continue for approximately a further 10 metres to O.S. grid

reference SJ 8555 6526 shown as point I on Plan No. HA/135. From point I on Plan No. HA/135 the path extends in a generally south westerly direction for approximately 72 metres to O.S. grid reference SJ 8553 6519 before turning to take a generally south easterly direction for approximately 151 metres to point E on Plan No. HA/135. The proposed diversion would have a total distance of 492 metres.

- 5.6. The proposed path between points A-F on Plan No. HA/135 would be 2.5 metres wide and would run parallel to a stream bordered with trees and an earth embankment. The path would be 3 metres wide between points F-G-H-I-J-E and would be enclosed between a low post and wire fence with open views of the countryside. The path would have a grass and earth surface throughout.
- 5.7. The proposed diversion would be made in the interests of the landowner as it will divert walkers away from the middle of a cultivation field which would improve their land management, and away from the Cottage, residential garden and existing outbuildings, thus considerably improving the privacy and security of the property as a whole. At present there is a permissive path to the west of the definitive line that follows the garden boundary. The permissive path also runs in very close proximity to the Cottage. The applicant believes that the alternative path would not be substantially less convenient than the existing path and that enjoyment of the path as a whole would be improved as it will reduce a likely sense of intrusion and awkwardness when walking through the garden and private areas of the residential property.
- 5.8. The definitive line of the path has a number of obstacles in the form of two gates, two stiles and two kissing gates along the section of path proposed to be diverted (shown at various points on Plan No. HA/135). The proposed diversion would reduce the number of obstacles to one kissing gate at either end of the proposed route shown at points A & E on Plan No. HA/135, making the path more accessible to members of the public.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. 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.

6.2. Finance Implications

- 6.2.1. If objections to the Order lead to a subsequent hearing/inquiry, this legal process would have financial implications for the Council.

6.3. Equality Implications

- 6.3.1. 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 would be more accessible than the current route.

6.4. Human Resources Implications

- 6.4.1. There are no direct Human Resource implications.

6.5. Risk Management Implications

- 6.5.1. There are no direct Risk Management implications.

6.6. Rural Communities Implications

- 6.6.1. There are no direct implications for rural communities.

6.7. Implications for Children & Young People

- 6.7.1. There are no direct implications for children and young people.

6.8. Public Health Implications

- 6.8.1. There are no direct implications for public health.

7. Ward Members Affected

- 7.1. Gawsworth Ward Member Councillor Smetham and Brereton Rural Ward Councillor Wray have been consulted and no comments have been received.

8. Consultation & Engagement

- 8.1. Eaton Parish Council have been consulted and no comments have been received.
- 8.2. The statutory undertakers have been consulted and have also 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.

8.3. The user groups have been consulted. The Open Spaces Society objected to the proposal in an email dated 22nd October 2018. In that email the Society states that;

8.4. *"The proposed diversion is significantly less convenient and less enjoyable than the existing route ... and will be quoting PINS decisions which state that "The straightness of the route gives walkers a sense of purpose which is lost on a route which turns ..." and also "The diversion will result in a loss of historic continuity. Walkers appreciate that they are following an ancient route and the knowledge of the history adds to their enjoyment of the path"."*

8.5. The Society goes on to state that;

"the proposed route was less than 900mm wide... also that there was standing water on the route even during the recent dry summer" and that the "views from the proposed path are obstructed by earthworks".

8.6. The Open Spaces Society also comment that *"the proposed path can only be maintained at extreme cost"* and that the junction between Hulme Walfield footpath No.5 and Eaton footpath No.2 is obstructed at point A and that they *"will elaborate on their objections as this matter progresses to PINS."*

8.7. In response to those objections, the Planning Inspectorate decision to which The Open Spaces Society refers to is **The London Borough of Harrow Harrow School Playing Fields** FPS/M5450/4/1 & 4/3 & 6/1 & 6/2. That case applied to an application to divert a path in order to avoid a modern obstruction through a school which would have adversely affected the public's enjoyment of a path as follows;

... "leading to and with views ahead of, a historic destination adds to public enjoyment of the route, whereas, in contrast the diverted route leads away from the obvious desire line to skirt man-made features".

The key point being the diversion would have meant a loss of views in the loss of sight of a historical monument and sight of the desired destination. This is not considered relevant in this case.

8.8. With regards to the embankment, width and maintenance of the proposed diversion; it is agreed that the embankment does have the potential to affect the enjoyment of the path and the landowner is aware that he will need to remove it to prevent the likelihood of objections to the Order. The temporary fencing that has been installed on site may give the impression that the path

is 900mm wide however, the proposed widths are 2.5 and 3 metres. The Public Rights of Way Network Management and Enforcement Officer has surveyed the path and considers the proposal to be satisfactory. Maintenance of the path would also be ensured through normal path management and enforcement roles. However, should a Diversion Order be made the proposed path would not be confirmed or certified until the Cheshire East Borough Council is satisfied that the path is of a standard suitable for use by members of the public.

- 8.9. The Peak and Northern Footpaths Society in an email dated 12th November 2018 commented on the enjoyment of the path and the proposed diversion stating in particular that;

“it is difficult to see how this proposed new route is substantially as convenient as the existing route.” That *“it is noted that the termination points of the path have remained unchanged”* ... *“the proposed route is not as direct as the existing route”* and that *“the proposed new route does not offer the same quality of views along its length”*... *“these now being obstructed by an embankment”*.

- 8.10. The Society also commented on the width of the proposed route and state that *“to enclose the path gives the perception of narrowness and is uninviting”* and that the path will be difficult to maintain due to overgrowth that may obstruct passage.
- 8.11. In response to the comments the legal tests are set out in paragraph 3 to this report. In that context the proposed path should be “substantially as convenient” to the public where it reconnects to the highway, meaning that it should be ‘as good as or as close to that it makes no difference’. This part of the legal test applies to both the commencement and termination points of the proposed right of way and ease of use as opposed to the enjoyment of the path. In this instance the proposed diversion will commence and terminate at the same existing points thus satisfying that particular legal test.
- 8.12. A further test contained in the Act is that the proposed path should not be “substantially less convenient” to the public as a result of the diversion having regard to the effect of the diversion on the public enjoyment of the path as a whole. The test aims to balance the interests of the public with those of the applicant and implies that the path can be less convenient than the existing right of way provided that the public’s enjoyment of the path as a whole is not unreasonably compromised. The Proposed diversion will add a further 132 metres or 19% to the overall length of the path.

8.13. Although a more direct route maybe the preferred option in some instances extra distance, especially on a recreational walk as in this case, can be a positive factor rather than a negative one. (***The London Borough of Harrow Harrow School Playing Fields FPS/M5450/4/1 & 4/3 & 6/1 & 6/2.***)

8.14. With regards to the embankment, width and maintenance of the path this has been discussed at paragraph 8.8.

8.15. The East Cheshire Ramblers responded to the informal consultation in an email dated 19th November 2018. The Ramblers state that they are opposed to the proposed diversion as there is already an acceptable way to get around the garden of Wheelwrights Cottage, using the permissive path that has been there for some years and question why that path is not considered a suitable alternative. The Ramblers claim that the proposed diversion;

“is very long and substantially less convenient and less enjoyable than the current route.”

8.16. The Ramblers also seek assurances that the section of the path between points F to E will be 3 metres wide as the width to the current temporary fence line appears to be significantly narrower than the 3 metres quoted. They also request that the proposed path between points A-F be 2.5 metres wide to conform with Cheshire East Council requirements and not 2 metres wide it is at present as the path is enclosed on both sides either by a wire fence and a thick Hawthorn hedge. The Ramblers also comment that there is a ‘crossfall’ on the path that slopes towards the stream between points F to J which reduces the width for walking along that section of the path and they ask if those sections will be infilled to provide the specified width.

8.17. The Council would require the path to be a minimum of 2.5 metres wide should the path be enclosed. Furthermore and as stated at paragraph 8.8 the Council will not confirm or certify the Order unless satisfied that the path is suitable for use by the public.

8.18. The permissive path is not considered by the applicant as a suitable alternative to the proposed path as it is narrow in places and runs within very close proximity to the cottage giving rise to its own issues of privacy and security.

8.19. The Council’s Nature Conservation Officer has been consulted; no comments have been received.

9. Access to Information

9.1. Plan No. HA/135 is attached.

9.2. Further information may be obtained from the Officer named below and file reference No. 117D/572

10. Contact Information

10.1. Any questions relating to this report should be directed to the following officer:

Name: Sarah Fraser

Job Title: Public Paths Orders Officer

Email: sarah.fraser@cheshireeast.gov.uk

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