

CHESHIRE EAST COUNCIL

REPORT TO: RIGHTS OF WAY COMMITTEE

Date of meeting: 10 June 2010
Report of: Greenspaces Manager
Subject/Title: Highways Act 1980 – Section 119
Application for the Diversion of Public
Footpath No. 29 (Part) Parish of Brereton

1.0 Report Summary

- 1.1 The report outlines the investigation of an application to divert part of Public Footpath No. 29 in the Parish of Brereton. 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. 29 Brereton, by creating a new section of public footpath and extinguishing the old part, as illustrated on Plan No. HA/016 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 huge benefit to the landowner. Moving the footpath away from the garden and house will allow the applicant to improve her privacy and security considerably. It will also deal with the long standing issue of the legal line of the footpath being partially obstructed. The proposed route also offers improved views 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 Congleton Rural.

5.0 Local Ward Members

5.1 Councillor Les Gilbert, Councillor Andrew Kolker and Councillor John Wray.

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 Section 119(1) of the Highways Act 1980 allows the council to make a public path diversion order as detailed within the body of this Report. The Order effectively creates a new way and extinguishes the old. Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the council's power 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 Mrs Emma Bromley-Davenport of Long Lane Farm, Davenport Lane, Brereton, CW11 2SR ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 29 in the Parish of Brereton.

11.2 Public Footpath No. 29 Brereton commences on Davenport Lane at OS grid reference SJ 7916 6337 and runs in a generally south westerly direction to Newcastle Road (A50) at OS grid reference SJ 7836 6289. The section of path to be diverted is shown by a solid black line on Plan No. HA/016 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, again running between points A-B.

11.3 The Applicant owns the land over which the current path and the proposed alternative route 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 footpath.

- 11.4 The existing line of Public Footpath Brereton No. 29 runs through the applicant's garden and extremely close to the applicant's house. The definitive line of the footpath has been partially obstructed for a number of years (before the current owner, Mrs Bromley-Davenport purchased the property). Diverting the footpath will deal with this long standing issue.
- 11.5 The proposed diversion would leave the driveway and pass through a small wooded area before entering the field to the south east of Long Lane Farm. It would run in a south south westerly direction along the field boundary and then in a westerly direction across the field to join the existing line of the footpath. The proposed diverted route for the footpath is slightly longer than the current route, however, it passes through open countryside providing better views than the current route. Moving the footpath out of the garden and away from the house would provide a less intimidating route for users and be of huge benefit to the landowner in terms of privacy and security.
- 11.7 The local Councillors have been consulted about the proposal. Councillor Gilbert has responded to state that he has no objection to the proposal.
- 11.8 Brereton Parish Council have been consulted about the proposal and have responded to state that they support the application.
- 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.
- 11.12 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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