

# **CHESHIRE EAST COUNCIL**

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

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**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. 8 (Parts) Parish of Baddington

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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. 8 in the Parish of Baddington. 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. 8, by creating a new section of public footpath and extinguishing the old part, as illustrated on Plan No. HA/015 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 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.
- 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 landowners 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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. It is considered that the proposed footpath will be as enjoyable as the existing route. The new route is not 'substantially less convenient' than the existing route and diverting the footpath will be of benefit to the landowners, particularly in terms of current and future land use. It is therefore considered that the proposed route will be as satisfactory as 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 Cholmondeley

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

5.1 Councillor Rachel Bailey, Councillor Margaret Hollins, Councillor Stan Davies

#### **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 Messrs Williamson via their agents Hibberts LLP Nantwich ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.8 in the Parish of Baddington.

11.2 Public Footpath No. 8 Baddington commences at its junction with French Lane at O.S. grid reference SJ 6499 4858 and runs in a generally north westerly direction along the farm drive to O.S. grid reference SJ 6491 4862 where it takes a 90 degree turn and continues in a north-easterly direction, past the farm buildings, and exits the applicant's property at OS grid reference SJ 6494 487. The sections of path to be diverted are shown by a solid black line on Plan No. HA/015 running between points A-B and C-D. The proposed diversions are illustrated with black dashed lines on the same plan, running between points A-B and C-D.

11.3 The Applicant owns the land over which the current path 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.

- 11.4 The first section of the current line of Public Footpath No. 8 Baddington to be diverted (A-B) runs in a north westerly direction across land which is currently used as a driveway, but which the applicant intends to turn back into garden, by realigning the driveway to the property. The applicant has received planning permission for the driveway alteration (reference P09/0004). The proposed new route for the footpath follows the realigned driveway.
- 11.5 The second section of Footpath No. 8 to be diverted (C-D) takes a slight diagonal line across the length of a paddock; this is undesirable in terms of land management and is problematic from the point of view of the applicant's wish to possibly extend gardens along the length of part or all of the paddock, from the farm buildings which may be converted into dwellings at a future date.
- 11.6 The proposed new route of this section of the path (C-D) takes a straight line along a wide, grass track to the edge of the applicant's property. It would exit into the adjacent field at a new point (D) where the applicant will install a new kissing gate. This would be more accessible for users than the current arrangement on the existing line of the path, which enters the field via a field-gate.
- 11.7 The local Councillors have been consulted about the proposal, no objections have been received.
- 11.8 Sound and District Parish Council have been consulted and no objection 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 has responded to state that it has no objection the proposal, as has the Mid-Cheshire Footpath Society.
- 11.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 11.12 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 a slight improvement on the old 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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