

# **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 Nos. 3 and No. 9 (Part) Parish of Henbury

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### **1.0 Report Summary**

- 1.1 The report outlines the investigation of an application to divert Public Footpath No. 3 and part of Public Footpath No. 9 in the Parish of Henbury. 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 Public Footpath No. 3 and part of Public Footpath No. 9 Henbury, by creating new sections of public footpath and extinguishing the old parts, as illustrated on Plan No. HA/017 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 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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, providing much improved open views of the Cheshire countryside. The new routes are not 'substantially less convenient' than the existing routes and diverting the footpaths will be of huge benefit to the landowner, 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.

#### **4.0 Wards Affected**

4.1 Alderley

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

5.1 Councillor Carolyn Andrew, Councillor Liz Gilliland and Councillor Frank Keegan.

#### **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 Mr Simon Taylor of Henbury House, Pexhill Road, Henbury, Macclesfield, SK11 9PY ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert Public Footpath No. 3 and part of Public Footpath No. 9 in the Parish of Henbury.

11.2 Public Footpath No. 3 Henbury commences at its junction with Public Footpath No. 9 Henbury at Sandbach Farm, at O.S. grid reference SJ 8627 72210 and runs in a generally south westerly direction to join Public Footpath No. 1 Henbury at O.S. grid reference SJ 8619 72211. The section of path to be diverted is shown by a solid black line on Plan No. HA/017 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points C-D.

11.3 Public Footpath No. 9 Henbury commences at its junction with School Land (C410) at O.S. grid reference SJ 8648 7259 and runs in a generally south westerly and then south easterly direction to join Public Footpath No. 1 Henbury at O.S. grid reference SJ 8634 7209. The section of path to be diverted is shown by a solid black line on Plan No. HA/017 running between points E-F. The proposed diversion is

illustrated with a black dashed line on the same plan, running between points E-G.

- 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 Public Footpath No. 3 Henbury (A-B) runs in a south westerly direction from Sandbach Farm to Public Footpath No. 1 Henbury. If a diversion order for Public Footpath No. 9 Henbury is made and is successful this would result in Footpath No. 3 becoming a cul de sac route. This is very undesirable in terms of the public rights of way network. It is therefore proposed to divert Footpath No. 3 concurrently with Footpath No. 9.
- 11.6 The proposed route for Footpath No. 3 would run in a north westerly direction across open pasture, north of Sandbach Farm, creating an extremely useful link between Footpath No. 9 and Footpath No. 5 (Lingards Farm), where none has existed before. It would exit the field approximately 120 metres north of Lingards Farm on Fanshawe Lane. Leaving the field at this point avoids users having to traverse a steep bank down onto Fanshawe Lane. Presently, the nearest footpath link to Footpath No. 5 is Footpath No. 1 (near Fanshawe Cottage), which is approximately 370 metres south of Lingards Farm. If a diversion order is made and is successful the distance that users have to walk along Fanshawe Lane would be significantly reduced.
- 11.7 The existing section of Public Footpath No. 9 Henbury to be diverted (E-F) follows the driveway to Sandbach Farm, passing through the farmyard, very close to the house and then across the field to Henbury Moss. Planning permission has recently been granted (application no. 08/1005P) to redevelop Sandbach Farm. Sandbach farm will be reconstructed, together with a new pond and equestrian facilities. The line of the existing footpath will pass through the garden and pond of the new property and very close to the equestrian facilities, where the breeding and training of horses will take place.
- 11.8 The proposed route for Public Footpath No. 9 Henbury (E-G) would leave the driveway north of Sandbach Farm, running in a generally south easterly direction across a field to join Public Footpath No. Henbury. It crosses slightly higher ground than the existing route and provides much improved open views of the Cheshire countryside. It will run adjacent to a new landscaped area of woodland to the east of Sandbach Farm, also providing pleasant woodland views for walkers. Moving the footpaths away from the house and yard would allow the applicant to significantly improve the privacy and security of his property. It would also be of benefit in terms of farm management and

in addition, avoid any conflict or risk of accidents between members of the public and the horses.

- 11.9 The local Councillors have been consulted about the proposal, no objections have been received.
- 11.10 Henbury Parish Council have been consulted and have responded to state that “the minor change in route at the Lingard’s farm end is an improvement, and we support the proposal with enthusiasm”.
- 11.11 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.
- 11.12 The user groups have been consulted. The Peak and Northern Footpaths Society have responded to state that they have no objection the proposals.
- 11.13 The Council’s Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 11.14 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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