

# **CHESHIRE EAST COUNCIL**

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

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**Date of Meeting:** 10 June 2010  
**Report of:** Green Spaces Manager  
**Subject/Title:** Highways Act 1980 Section 25 & Section 26  
Proposal to Enter a Creation Agreement and to Make a  
Creation Order for a Bridleway; Public Footpath No. 6  
Parish of Eaton

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### **1.0 Report Summary**

- 1.1 The report outlines a previous agreement reached with the landowner of a development site off Malhamdale Road, Eaton and Cheshire County Council, to create a bridleway over an existing public footpath, Eaton no. 6, in 2004. This agreement was never concluded. The current proposal is to enter into a new agreement on the same basis as the previous one and to seek Committee approval to do so. Approval is also sought to make a creation order for a short section of the path for which no landowner has been identified.

### **2.0 Recommendations**

- 2.1 That a creation agreement be entered into under Section 25 of the Highways Act 1980 to create a new public bridleway over public footpath no. 6 in the Parish of Eaton (as shown A-B-C on plan C011A at Appendix 1) and that public notice be given of this agreement.
- 2.2 That a Creation Order be made under Section 26 of the Highways Act 1980 to create a bridleway for an adjoining section of public footpath no. 6 (between point A and BOAT 8 on plan C011A at Appendix 1) on the grounds that there is a need and it is expedient that the path should be created.
- 2.3 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.
- 2.4 In the event of objections to the Creation Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

### **3.0 Reasons for Recommendation**

- 3.1 In accordance with Section 25 of the Highways Act 1980, the Borough Council has the power to enter into an agreement with any person/ landholding body having the capacity to dedicate a public right of way.

They also have the power to make a creation order where it appears there is a need for a public right of way over land in their area.

- 3.2 As can be seen from the previous report, there was originally a bridleway in this area that was closed to allow development in the 1960's; FP no. 6 was created as an alternative. The requirement for a horse route has been demonstrated by the application to upgrade the path and acknowledged by the County Council's Rights of Way Committee in 2004 by approving the making of a creation agreement and order.

#### **4.0 Wards Affected**

- 4.1 Alderley

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

- 5.1 Councillor Carolyn Andrews, Councillor Liz Gilliland and Councillor Frank Keegan.

#### **6.0 Financial Implications**

- 6.1 There may be a claim for compensation for loss caused by a public path creation order if it is shown that the value of an interest of a person in the land is depreciated. The area of land concerned in this case is currently a public footpath, enclosed between boundaries and with a width of 2 – 2.5 metres. It has no other productive use and is unregistered; therefore it is felt to be unlikely that a compensation claim of any significance would be forthcoming.

#### **7.0 Legal Implications**

- 7.1 Under Section 25 of the Highways Act 1980, a local authority has power to enter into an agreement with any person having the capacity to dedicate a public right of way. The path will become a public bridleway and maintainable at the public expense on a specific date as stated in the agreement.
- 7.2 The Highways Act 1980 requires the authority to have regard to the needs of agriculture and forestry (including the breeding and keeping of horses), and to the desirability of conserving flora, fauna and geographical and physiographical features. .
- 7.3 Under Section 25 of the Highways Act 1980, there is no statutory right for objection to the proposal.
- 7.4 Section 26 of the Highways Act 1980 gives the local authority the power to create footpaths or bridleways by order, imposing the path on the landowner. Before making the order, in addition to the duty referred to in paragraph 4.2 above, the Committee must be satisfied that it is expedient that the bridleway should be created after having regard
- 7.4.1 to the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and

7.4.2 the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation.

7.5 Compensation is payable in respect of an Order if a claim shows that the value of a person's interest in the land is depreciated or that the person has suffered damage by being disturbed in his enjoyment of the land, as a consequence of the order. The compensation payable by the council is equal to the amount of the depreciation or damage.

7.6 Once the order has been proposed, should any objections be received, if not withdrawn, it could lead to a public inquiry or hearing with attendant legal involvement and use of resources. If no objections are received, the local authority can confirm the order. In considering the confirmation of the order it must have regard to any material provision of the Rights of Way Improvement Plan.

## **8.0 Risk Assessment**

8.1 Not applicable

## **9.0 Background and Options**

9.1 Members will see from the previous Committee Report and Minutes appended (Appendices 1 and 2 respectively) that a creation agreement was originally pursued and approved following the investigation into a claim for a bridleway. The land changed hands and through negotiations with the developers of the site (Fairclough Homes), the creation of a bridleway was agreed. A formal agreement was drawn up and signed and sealed by the developers but was never signed and subsequently advertised by the County Council. The path was made up to a bridleway standard on the ground by the developers and has been used and accepted by horseriders for the past 5 years.

9.2 A short section of the public footpath fell outside the ownership of Fairclough Homes and a Land Registry search revealed it to be unregistered. This is a section approximately 15 metres in length and linking to Byway Open to All Traffic no. 8 (Havannah Lane).

## **10 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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