

# **CHESHIRE EAST COUNCIL**

## **Public Rights of Way Committee**

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**Date of meeting:** 21 September 2010  
**Report of:** Greenspaces Manager  
**Subject/Title:** Highways Act 1980 – Section 119  
Application for the Diversion of Public Footpath No. 2  
(Part) Parish of Lea

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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. 2 in the Parish of Lea. 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's 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. 2 as illustrated on Plan No. HA/020 on the grounds that it is expedient in the interests of the owner of the land crossed by the path and of the public.
- 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 and of the public 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 Initial informal consultations have not indicated that objections to an order are likely. 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, in terms of current and future land use, and of the public, in terms of accessibility. 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 Doddington

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

5.1 Councillor D Brickhill, Councillor R Walker and Councillor J Hammond

#### **6.0 Policy Implications including - Climate change - Health**

6.1 Not applicable.

## **7.0 Financial Implications**

7.1 Not applicable.

## **8.0 Legal Implications (Authorised by the Borough Solicitor)**

8.1 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, 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.

## **9.0 Risk Management**

9.1 Not applicable.

## **10.0 Background and Options**

10.1 An application has been received from Halletec Environmental, 52 Cheshire Street, Market Drayton, Shropshire on behalf of their client (Anthony Construction Ltd, 'the Applicant') requesting that 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 Lea.

10.2 Public Footpath No. 2 Lea commences at a point on Public Bridleway No.6, near Lea Forge Farm (point A). It crosses a stile and then travels in a generally northerly direction past the derelict farm buildings, and is then obstructed by the quarry workings for much of its length; the public use the track running parallel to the definitive line as an alternative route. Approximately 80m south of point B, the definitive route crosses the track used by the public, and ascends a steep grass bank to another stile, before descending again into a boggy area and crossing a stream, proceeding to point B. The total section of path to be diverted is shown by a solid black line on Plan No. HA/020 running between points A-B. The proposed diversion is illustrated with black dashed lines on the same plan, running between points C-B. It follows the existing semi-surfaced track for the majority of its length which is used by the public as an alternative to the obstructed definitive line. Towards point B, the route takes a right-angled turn to circumvent the boggy area affecting the existing route. It will be barrier-free apart from one pedestrian gate which will be installed next to the field gate at point C.

10.3 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 footpath.

- 10.4 The section of Public Footpath No. 2 Lea to be diverted (A-B) has for some years been partially obstructed by the quarrying operation at Hough Mill Quarry. It also passes the derelict buildings of Lea Forge Farm, which are unsightly and pose a potential hazard to the public. The applicant has applied for planning permission<sup>1</sup> to extend the period allowed to restore the site which allows an opportunity to resolve these problems and to achieve a diversion which fits in with the proposed restoration process for the site; on completion of the restoration process, the applicant's aspiration is for the site to become a nature reserve.
- 10.5 The proposed new route (C-B) will follow a semi-surfaced track for the majority of its length and will have a minimum recorded width of 2m throughout. It will be barrier-free save for one pedestrian gate beside the field-gate at point C on the plan, whereas the current route has a stile at point A and south of point C. The existing route also has a very steep bank which poses a problem for people with mobility difficulties; the proposed new route avoids this feature and is generally more accessible in terms of gradient and terrain. It is therefore considered that the proposal is in the interests of the public as well as those of the landowner.
- 10.6 The local Councillors have been consulted about the proposal, no objections have been received.
- 10.7 Wybunbury and Hough & Chorlton Parish Councils have been consulted and no objections have been received.
- 10.9 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.
- 10.10 The user groups have been consulted and no objections have been received.
- 10.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.12 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 an improvement on the old route.

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<sup>1</sup> 10/1149W - To be determined by Cheshire East Council's Southern Planning Committee late September 2010

## **11.0 Access to Information**

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

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