

# **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: Proposed Diversion of Public Footpath Nos. 33 And 34 (Parts) Parish of Gawsworth  
Highways Act 1980 Section 118: Proposed Extinguishment of Public Footpath No.41 Parish of Sutton

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### **1.0 Report Summary**

- 1.1 The report outlines the investigation of a proposal to divert parts of Public Footpath Nos. 33 and 34 in the Parish of Gawsworth, and to extinguish the cul-de-sac path Public Footpath No.41 in the Parish of Sutton. This includes a discussion of consultations carried out in respect of the proposal and the legal tests for a diversion order and an extinguishment order to be made. 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 and extinguish 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 parts of Public Footpaths No. 33 and 34 Gawsworth as illustrated on Plan No. HA/021 on the grounds that it is expedient in the interests of the owners of the land crossed by the path and of the public.
- 2.2 An Order be made under Section 118 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to extinguish Public Footpath No.41 Sutton as illustrated on Plan No. HA/021 on the grounds that it is not needed for public use.
- 2.3 Public Notice of the making of the Orders be given and in the event of there being no objections to the Orders within the period specified, the Orders 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 Orders 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 a Diversion 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 paragraph 11.1 & 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 indicate that there would be no objections to the diversion element of the proposal. It is considered that the proposed footpath will be more enjoyable than 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.

3.5 In accordance with Section 118 of the Highways Act 1980, it is within the Council's discretion to make an Extinguishment Order if it appears to the Council that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use.

3.6 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 3.5 above, have regard to:

- The extent to which it appears that the path or way would, apart from the order, be likely to be used by the public.

And

- The effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 of the Act as applied by section 121(2).

3.7 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 3.6 above.

3.8 Initial informal consultations have indicated that there would be one objection to the extinguishment part of the proposal, from the East Cheshire Ramblers' Association (see 11.10 below). However, it is considered that Public Footpath No.41 Sutton is not needed for public use, for the reasons described below at paragraph 11.6 and that the legal tests for the making and confirming of a diversion order are satisfied.

#### **4.0 Wards Affected**

4.1 Macclesfield Forest

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

5.1 Councillor M Asquith, Councillor L Smetham and Councillor H Gaddum

#### **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 There is no applicant in this case, the proposal having been sought “proactively” by the Public Rights of Way Team to resolve long-standing problems with the paths in question, and to create a more accessible, usable route on the ground for the public. There are slight benefits to the landowners involved, in terms of moving the legal line of FP33 away from the farm buildings and caravan associated with Rough Hey farm, but the principal driver for the proposal is the public interest.
- 10.2 The first section of Public Footpath No. 33 Gawsworth to be diverted commences at its junction with Public Footpath No. 32 Gawsworth, between Rough Hey Farm itself and its associated outbuildings. The legal line of the path travels in a generally northerly direction past the farm buildings and behind a caravan, and runs along the eastern side of a canal feeder. As it progresses along the canal feeder, the route becomes steeper and narrower until eventually, there is no discernable means of access on the east side of the feeder. The public tend to use the western side of the watercourse at this point instead, where there is a track.
- 10.3 The second section of Public Footpath No.33 Gawsworth to be diverted is located at the junction of Public Footpath No.33, 34 and Sutton No.41 at point C on the plan HA/021. It becomes Footpath 34 at point F near to a weir on the canal feeder. Here, the definitive line actually crosses the weir via a precarious and narrow platform, onto the weir bridge itself via a lifting handlebar. The definitive route then follows the narrow and uneven northern bank of the watercourse, before crossing sharply southwards and taking a straight line up a very steep, wooded bank. It is not possible to walking the definitive line up this bank without using one’s hands to climb up. The section to be diverted finishes at point D on plan HA/22, at the top of the slope.
- 10.3 The Public Rights of Way Team have secured the agreement to the proposal of both parties who own the land over which the current and the proposed alternative routes run. Under section 119 of the Highways Act 1980 the Council may make a Diversion Order if it considers it expedient in the interests of the public or the landowner to do so.
- 10.4 The definitive lines of FP33 and FP34 as described above are currently very difficult for the public to use by nature of the terrain and it is

possible that the paths were poorly recorded on the Definitive Map and Statement in the first place. In particular, the steepness of the slope between points F and D on plan HA/022 renders the definitive line of FP34 unusable to most people, and the weir crossing raises safety concerns.

- 10.5 The proposed new route for FP33 (A1-B) will follow an existing track to the west of the canal feeder for the majority of its length, which is already the preferred route for many walkers. It will be barrier-free save for a kissing gate to be installed beside the field-gate at point A1 on the plan HA/022, whereas the current route has a stile approximately 60m along from point A. The proposed new route for FP34 will cross a new footbridge over the canal feeder, rather than utilising the weir, and then take a line on the more level southern side of the water course. It then tacks up the slope following a more gentle gradient; this route will be subject to works to level it and shore it up where needed. From OS grid reference SJ 9255 6895 it joins (via what will be a kissing gate) an existing semi-surfaced track approximately 3m wide, all the way to point D on plan HA/0122. It is therefore considered that the proposal is in the interests of the public.
- 10.6 As the diversion proposal would leave the already “cul-de-sac” FP41 Sutton with no connecting highway at its southern end, it is proposed to extinguish this footpath on the grounds that it would not be needed for public use. The path serves no purpose at present, crosses steep terrain and there is no realistic possibility of connecting it with another highway. Furthermore, to access the footpath, the public must use the precarious weir crossing on FP33, and it is desirable that this is disposed of as part of the proposals.
- 10.7 The local Councillors have been consulted about the proposal, no objections have been received.
- 10.8 Sutton and Gawsorth 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 one objection has been received; the East Cheshire Group of the Ramblers’ Association requested a site visit with officers from the PROW Team to clarify the proposal on the ground. In particular, they wished to investigate the nature of FP41 Sutton and whether it could be linked to anything at its northern end. Having seen it on site, they concluded that they object to its extinguishment on the grounds that it could be used as a cul-de-sac path if it were cleared and signed and that they believe there is always the possibility of some connection in the future, which would be lost if

the path were extinguished. They do not, however, object to the diversion elements of the proposal.

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.

## **11.0 Access to Information**

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

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