

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

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.
13 Spurstow (Part) and No.5 Brindley (Part)

1.0 Report Summary

- 1.1 The report outlines the investigation of an application to divert part of Public Footpath No. 13 in the parish of Spurstow and part of Public Footpath No.5 in the parish of Brindley. 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. 13 in the parish of Spurstow and part of Public Footpath No.5 in the parish of Brindley as illustrated on Plan No. HA/022 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 paragraph 11.3 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 Cholmondeley

5.0 Local Ward Members

5.1 Councillor R Bailey, Councillor SDavies and Councillor M Hollins

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

10.1 Not applicable.

10.0 Background and Options

10.1 An application has been received from Thorn Construction Project Management on behalf of their client (High Ash Farm 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. 13 in the parish of Spurstow and part of Public Footpath No.5 in the parish of Brindley.

10.2 The section of path to be diverted is shown on plan HA/022 with a solid black line. The existing line of Public Footpath No. 13 Spurstow starts at a point north-west of High Ash Farm at OS grid reference SJ5755 5467 (point A on plan HA/022) and runs in a generally south-easterly direction across pasture. At the parish boundary the path becomes Footpath No.5 Brindley, and then passes through High Ash Farm, where it is obstructed by a slurry lagoon and farm buildings. It joins Footpath No.13 Brindley at OS grid reference SJ5776 5439 (point B on plan HA/022).

10.3 The proposed new route begins at the same point (point A on plan HA/022) and takes a south-easterly line across pasture fields, joining Footpath No.13 Brindley at OS grid reference SJ5785 5445 (point C on plan HA/022). It will have a natural/grass surface, a width of 2m and will be furnished with kissing gates at the 3 field boundaries it crosses. The proposed new route is shown with a dashed black line on plan HA/022.

10.4 The long-standing obstructions to the existing route were inherited by the applicant when they purchased the property recently. The applicant has planning permission to develop the farm into a high-intensity dairy facility (09/3274N & 09/3722N) and is keen to resolve the obstruction of the footpath at the same time as implementing their planning permissions. The proposed new route for the footpath

therefore takes an alignment that will keep the public well clear of the development, resolves the obstruction issues, yet still maintains a direct route to Footpath No.13 Brindley.

- 10.5 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. The proposed new route (A-C) will reduce the potential for conflict between the public and the development works whilst they are underway, and the future farm operations in general. It is therefore considered to be in the interests of the applicant for the management of the land. The existing route, notwithstanding the fact that it is obstructed, would require at least 5 stiles or structures where it crosses boundaries. The proposed new route only requires 3 structures and these are to be kissing gates. It is therefore considered that the proposed new route would be slightly more accessible than the existing route. In terms of length, the proposed diversion is approximately 130m longer than the existing route for walkers travelling south, but approximately 80m shorter for walkers travelling south then east.
- 10.6 The local Councillors have been consulted about the proposal, no objections have been received.
- 10.7 Spurstow and Brindley 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. The Mid-Cheshire Footpaths Society asked whether a link could be provided between Footpath No. 13 Brindley and Footpath No. 14 Spurstow. This was discussed with the applicant, but they stated they could not consider this addition, due to the fact that the thrust of the diversion is in consideration of public safety in and around a newly acquired farm that will be subject to modernisation and intensification. A field of stock will also be using the field in which the proposed link would run. The request was therefore declined, but nonetheless the Mid-Cheshire Footpaths Society have not objected.
- 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 a slight 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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