

# **CHESHIRE EAST COUNCIL**

## **Public Rights of Way Committee**

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<b>Date of Meeting:</b>	<b>21 September 2010</b>
<b>Report of:</b>	<b>Greenspaces Manager</b>
<b>Subject/Title:</b>	<b>Highways Act 1980 Section 119 Application for the Diversion of Public Footpath No. 16, Parish of Lower Withington</b>

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### **1.0 Report Summary**

- 1.1 The report outlines the investigation to divert Public Footpath No. 16 in the Parish of Lower Withington. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as an 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 section of footpath concerned.

### **2.0 Recommendation**

- 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. 16 Lower Withington by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/024 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 landowner for the reasons set out in paragraph 10.4 & 10.5 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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. The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will be of benefit to the landowner in terms of privacy and security. It will also benefit walkers in terms of accessibility. It is therefore considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.

### **3.0 Wards Affected**

4.1 Alderley.

### **5.0 Local Ward Members**

5.1 Councillor C Andrews and Councillor F Keegan.

### **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, and 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 Mr and Mrs G C Brook of Lowndes Farm, Lower Withington, Macclesfield, SK11 9HT ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 16 in the Parish of Lower Withington.
- 10.2 Public Footpath No. 16 Lower Withington commences at its junction with Public Footpath Swettenham No. 16 at OS grid reference SJ 8223 6789 and runs in a generally easterly direction to OS grid reference SJ 8251 6794 and its junction with Public Footpath No.10 Marton. The section of path to be diverted is shown by a solid black line on Plan No. HA/024 running between points A-B. The proposed diversion is illustrated on the same plan again between points A-B.
- 10.3 The applicant owns part of the land over which the current route and proposed route run. Mr C R Kennerly owns the field to the west and east of Lowndes Farm over which part of the current path lies and part of the proposed diversion would lie. He has provided written consent and support for the proposal. 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 landowner or landowners to make an order diverting the footpath.
- 10.4 The existing line of Public Footpath No. 16 Lower Withington passes directly alongside the windows of the main living room of Lowndes Farm, allowing walkers unrestricted views into the applicant's home.
- 10.5 The proposed route would enter the applicant's land approximately 50 metres south of the existing route. It would provide easier access for walkers, the two stiles which users currently have to negotiate would be replaced with two kissing gates, paid for by the applicant. The new route would have a width of 2 metres, except for where it is restricted by the kissing gates to 1.2 metres. The surface is very similar to the existing route, for the most part grass/pasture, with the exception of where it crosses the driveway to Lowndes Farm. Although the new route is slightly longer than the existing route at 305 metres (the existing route is 286 metres), diverting the footpath would benefit the applicants in terms of privacy and security and walkers in terms of accessibility.

- 10.6 Ward Councillors have been consulted about the proposal. No comments have been received.
- 10.7 Lower Withington Parish Council have been consulted and have responded to state that they have no objection to the proposal.
- 10.8 The statutory undertakers have also been consulted and have raised 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.
- 10.9 The user groups have been consulted. Both the Ramblers Association and the Peak and Northern Footpaths Society have responded to state that they have no objection to the proposal.
- 10.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.11 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 Overview of Year One and Term One Issues**

- 11.1 Not applicable

## **12.0 Access to Information**

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

Name: Hannah Flannery  
Designation: Definitive Map Officer  
Tel No: 01606 271809  
Email: [hannah.flannery@cheshireeast.gov.uk](mailto:hannah.flannery@cheshireeast.gov.uk)  
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