

# 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 S119  
Application for the Diversion of Public Footpath No. 70  
(Part), Parish of Congleton

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### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert Public Footpath No. 70 in the Parish of Congleton. 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 in the interests of the public. 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 part of Public Footpath No. 70 Congleton by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/025 on the grounds that it is expedient in the interests of the public.
- 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 public 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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. Diverting the footpath onto the proposed route would create a more accessible footpath for users and open up a route that has been unavailable for many years. It would also provide a scenic and picturesque route for walkers and lead to considerable savings for the public purse. 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 Congleton Town East.

### **5.0 Local Ward Members**

5.1 Councillor D Brown, Councillor PMason and Councillor AThwaite.

### **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 The agreement of the landowner to the diversion of part of Public Footpath No. 70 in the parish of Congleton has been obtained following negotiations. Under Section 119 of the Highways Act 1980 the County Council may make a Diversion Order if it considers that it is expedient in the interests of the public.
- 10.2 Public Footpath No. 70 Congleton commences at its junction with Bath Vale at OS grid reference SJ 8718 6337 and runs in a generally easterly and then north easterly direction to OS grid reference SJ 8780 6364 and its junction with Public Footpath No. 58 Congleton. The section of path to be diverted is shown by a solid black line on Plan HA/025 running between points A-B. The proposed diversion is illustrated on the same plan between points A-C.
- 10.3 Mr Peter Hudson owns the land over which the current route and the proposed route would run. He has provided written consent and support for the proposal.
- 10.4 The existing line of Public Footpath No. 70 has been unavailable for many years, obstructed by mature hedges, and re-instating the footpath on the original alignment would be very expensive for the public purse. A bridge, six stiles or gates, plus steps down a steep bank to the canal towpath would be required.
- 10.4 The proposed route follows field boundaries in a westerly direction to the canal towpath (Public Footpath Congleton No. 58), providing a scenic and picturesque route for walkers, with pleasant views of the countryside. It would provide an increased width for users of 2 metres (except for where it is restricted by the kissing gates to 1.2 metres). Three kissing gates, as opposed to six on the original route plus a bridge and steps, would be required, providing improved accessibility for walkers.
- 10.6 Ward Councillors have been consulted about the proposal. No comments have been received.
- 10.7 Congleton Town Council have been consulted. No comments have been received.

- 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.

## **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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