

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 Nos.
14 and 15 (Parts), Parish of Mobberley

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath Nos. 14 and 15 the Parish of Mobberley. 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 part of Public Footpath Nos. 14 and 15 Mobberley by creating new sections of public footpaths and extinguishing the current paths as illustrated on Plan No. HA/027 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 routes will not be 'substantially less convenient' than the existing route and diverting the footpaths will be of significant benefit to the landowner in terms of privacy and security and in terms of farm management. It would resolve the longstanding issue of the obstruction of footpath No. 14, and in addition, the proposal has the added benefit of creating a useful link to the end of Gleavehouse Lane which is currently a cul de sac. It will also be an improvement to walkers in terms of safety. It is therefore considered that the proposed routes will be satisfactory alternatives to the current ones and that the legal tests for the making and confirming of a diversion order are satisfied.

3.0 Wards Affected

4.1 Bucklow.

5.0 Local Ward Members

5.1 Councillor G Walton, Councillor J Macrae and Councillor A Knowles.

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 Bilton Ward Developments Limited on behalf of Mr and Mrs W Brown of Gleave House Farm, Pavement Lane, Mobberley, Knutsford, WA16 7EH ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath Nos. 14 and 15 (parts) in the Parish of Mobberley.

10.2 Public Footpath No. 14 Mobberley commences at its junction with Town Lane (B5085) at OS grid reference SJ 7850 7962 and runs in a generally southerly direction to OS grid reference SJ 7833 7884 and its junction with Public Footpath No. 15 Mobberley at Gleave House Farm at OS grid reference SJ 7833 7884. The section of path to be diverted is shown by a solid black line on Plan No. HA/027 running between points A-B. The proposed diversion is illustrated on the same plan again between points A-D.

10.3 Public Footpath No. 15 Mobberley commences at its junction with Public Footpath No. 14 Mobberley at Gleave House Farm at OS grid reference SJ 7833 7884 and runs in a generally southerly direction to OS grid reference SJ 7823 7848 and its junction with Public Footpath No. 8 Marthall at OS grid reference SJ 7823 7848. The section of path to be diverted is shown by a solid black line on Plan No. HA/027 running between points B-C. The proposed diversion is illustrated on the same plan between points D-C.

10.4 The Applicant owns the land over which the current paths 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 footpaths.

10.5 The existing line of Public Footpath No. 14 runs in a southerly direction straight through the working farmyard where heavy machinery is regularly used, causing health and safety concerns for users, and in very close proximity to the landowners' home, creating privacy and security concerns. The current definitive line of footpath No. 14 is also obstructed by mature

hedges and fences and has been unavailable for many years, before the existing landowner purchased the property, and a permissive route was put in place.

- 10.6 The proposed route for footpath No. 14 would leave the existing line north of Gleavehouse Farm, running in a south westerly direction across fields to connect with Gleavehouse Lane. It provides improved, open views of the countryside and a width of 2 metres. It also has the added, significant benefit of creating a useful link to the end of Gleavehouse Lane (the road to the west of the farm), the adopted section of which currently ends approximately 233 metres before its junction with footpath No. 14.
- 10.7 The existing line of Public Footpath No. 15 runs in a southerly direction from its junction with footpath No. 14 at Gleavehouse Farm, again through the working farmyard and in close proximity to the landowners' home, creating concerns as stated in paragraph 10.5 above.
- 10.8 The proposed route for footpath No. 15 would connect to the newly diverted route of footpath No. 14 at Gleavehouse Lane, running along the field boundaries in a south westerly and then south easterly direction to rejoin with the existing line of footpath No. 15. Neither of the proposed routes require any path furniture, which offers easily accessible routes for users and in addition, the landowner has agreed to take on responsibility for maintenance of the proposed routes, leading to savings for the authority's maintenance budget.
- 10.9 Ward Councillors have been consulted about the proposal. No comments have been received.
- 10.10 Mobberley Parish Council has been consulted. No comments have been received.
- 10.11 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.
- 10.12 The user groups have been consulted. The Ramblers Association have responded to state that they have no objection to the proposal, provided that the terrain north of the brook is kept drained. As mentioned in paragraph 10.8 above, the landowner has agreed to take on responsibility for maintenance of the proposed routes and will ensure that the route to the south of Gleavehouse Farm is kept well drained and usable in all seasons.
- 10.13 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.14 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 diversions are an improvement on the old routes.

11.0 Access to Information

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

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