

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

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| Date of Meeting: | 13 June 2011 |
| Report of: | Greenspaces Manager |
| Subject/Title: | Highways Act 1980 Section 119: Application for the Diversion of Public Footpath Nos 1, 2, 3 and 11 (parts), Parish of Mobberley |

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath Nos 1, 2, 3 and 11 (parts), 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 each 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 parts of Public Footpaths No's 1, 2, 3 and 11, Parish of Mobberley by creating new sections of each public footpath and extinguishing the current path sections as illustrated on Plan No. HA/049 on the grounds that it is expedient in the interests of the owner of the land crossed by the paths.
- 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 paths. 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 paths are 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 paths 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 rights of way.
- The effect that any new public rights 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 The proposed routes will not be 'substantially less convenient' than the existing route and diverting the footpaths will be of considerable benefit to the landowner in terms of enhancing the security and privacy of the property. It is considered that the proposed routes will be a satisfactory alternative to the current routes and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Mobberley

5.0 Local Ward Members

5.1 Councillor Jamie Macrae

6.0 Policy Implications including

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/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 A Edgar, Vale Wood Farm, Smith Lane, Mobberley, Cheshire, WA16 7QE, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no's 1, 2, 3 and 11 in the Parish of Mobberley.

- 10.2 Public Footpath No. 1, Mobberley, commences at its junction with Hobcroft Lane at OS grid reference SJ 7585 8092 and runs in a generally south westerly direction across pasture fields and then through a barn in the yard of Vale Wood Farm to terminate at OS grid reference SJ 7827 8048.

Public Footpath No. 2, Mobberley, commences at its junction with Church Lane at OS grid reference SJ 7891 8033 and runs in a generally north westerly direction along a track and then in a generally south westerly direction along the eastern boundary of a pasture field and then in a generally north westerly direction along the southern edge of a second pasture field to terminate in the yard of Vale Wood farm at OS grid reference SJ 7827 8048.

Public Footpath No. 3, Mobberley, commences from the drive to Bridge Farm at OS grid reference SJ 7802 8094 and runs in a generally south easterly direction across pasture fields to terminate in the yard of Vale Wood farm at OS grid reference SJ 7827 8048.

Public Footpath No. 11, Mobberley, commences at its junction with Town Lane at OS grid reference SJ 7800 7979 and runs in a generally northerly direction across a sports ground and then along the boundaries of property gardens and along the edge of Smith Lane before bearing in a generally easterly direction across pasture land to the drive of Vale Wood Farm which it then follows to terminate in the farm yard at OS grid reference 7827 8048.

- 10.3 Mr and Mrs A Edgar own the land over which the current paths and the proposed diversion 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 landowner to make an order to divert the footpaths.
- 10.4 The sections of each of Public Footpath No's 1, 2, 3 and 11 Mobberley to be diverted run through the property of the landowner giving rise to concerns

relating to security and safety, especially since Mobberley FP1 also runs through a barn.

10.5 The proposed new route would be in two sections:

- From point F on plan HA/049, the route would run across pasture land along field boundaries to terminate at point C.
- Via a pedestrian gate at point E, the route would cross a pasture field to enter a second field via an unlocked field gate at point H and terminate after exiting the second field via another unlocked field gate at point A.

The new route would have a recorded width of 2m and would not be enclosed.

Of benefit to the public, the new route would be significantly more enjoyable as it would pass through more open and scenic landscape and would be easier to navigate as it simplifies passage past the farmyard and buildings.

10.6 The Ward Councillor has been consulted about the proposal and no other comments were received.

10.7 Mobberley Parish Council has been consulted and did not raise any objections.

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. The Peak and Northern Footpath Society and the Vale Royal and Knutsford Ramblers Association registered no objections. However, a request was made by the Ramblers Association in relation to the current line of Mobberley FP11 which is unavailable to the south of Vale Wood Farm since a bridge is missing that would allow passage over a stream. This is a mapping anomaly. The legal line is not clear and the Council are working to resolve this.

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 Access to Information

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

Name: Marianne Nixon

Designation: Public Path Orders Officer

Tel No: 01606 271843

Email: marianne.nixon@cheshireeast.gov.uk

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