

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 13 June 2011
Report of: Greenspaces Manager
Subject/Title: Highways Act 1980 Section 119:
Application for the Diversion of Public Footpath No. 4
(part), Parish of Peover Inferior

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.4 in the Parish of Peover Inferior. 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 No.4 Peover Inferior by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/047 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will be of considerable benefit to the landowner in terms of management of land that is being developed for free range chicken farming. It is 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.

4.0 Wards Affected

4.1 Chelford

5.0 Local Ward Members

5.1 Councillor George Walton

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 B Wharfe, Whitehouse Farm, Plumley Moor Road, Knutsford, Cheshire, WA16 0UF, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 4 in the Parish of Peover Inferior.
- 10.2 Public Footpath No. 4, Peover Inferior, commences at its junction with an unclassified road, UW2157/A, at OS grid reference SJ 7409 7534 and runs in a generally southerly direction along the western boundary of a pasture field to a pond where it bears in a generally easterly and then south easterly direction across the pasture field to exit the field into a hedge enclosed section before joining passing Smithy Green to terminate at OS grid reference 7430 7467. The section of path to be diverted is shown by a solid black line on Plan No. HA/047. The proposed diversion is illustrated on the same plan with a black dashed line between points A-D-C.
- 10.3 The land over which the current path and the proposed diversion run belongs to Mr SR Wharfe. 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 footpath.
- 10.4 The section of Public Footpath No. 4 Peover Inferior to be diverted runs across a pasture field on which will be developed a free range chicken farm (see appended plan). For effective livestock management, the applicant requires that the path be diverted to separate livestock from path users.
- 10.5 The proposed new route (A-D-C) would follow the eastern boundary of the pasture field from point A on plan HA/047 to point D and continue along the southern field boundary to a gap between a hedge and fence to terminate just before a stile at point C. 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 as enjoyable as it would pass through similar scenic landscape.
- 10.6 The Ward Councillor has been consulted about the proposal and no comments were received.

- 10.7 Peover Inferior 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. No comments have been received to date.
- 10.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.11 Objections were received from Mr JA Jackson and Mr and Mrs S Wade who live in The Smithy and Orchard Lea respectively at Smithy Green, Lower Peover, Knutsford, Cheshire, WA16 9PW. Both centred on the loss of scenic enjoyment if the footpath was diverted to follow the field edge rather than passing across the field and then through the enclosed section of hawthorn hedge and oak trees. However, development of the chicken farm will alter the landscape and subsequent scenic enjoyability. A hedge will bisect the field so it will no longer be the expanse of open space. Furthermore, the current path alignment would force users to enter the chicken farm in order to follow the legal line. Diverting the path around the field edge will benefit users by separating them from the livestock whilst still providing scenic views.
- 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 current route since it will have no barriers whereas the current route has a stile and will have two kissing gates once the development has taken place.

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
PROW File: 262D/428