

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. 6
and Bridleway No. 1(parts), Parish of Congleton

1.0 Report Summary

- 1.1 The report outlines the investigation to divert parts of Public Footpath No.6 and Public Bridleway No.1 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 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 and bridleway 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 Footpath No.6 and Public Bridleway No.1 in the Parish of Congleton by creating new sections of path and bridleway and extinguishing the current path and bridleway as illustrated on Plan No. HA/051 on the grounds that it is expedient in the interests of the owner of the land crossed by both the path and bridleway.
- 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 and bridleway. 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 and/or bridleway 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 path and/or bridleway 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 route will not be 'substantially less convenient' than the existing route. Diverting the footpath will be of considerable benefit to the landowner in terms of enhancing the security and privacy of the property. Diverting the bridleway will resolve an outstanding alignment issue. It is considered that the proposed routing 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 Congleton West

5.0 Local Ward Members

5.1 Councillor Gordon Baxendale
Councillor David Topping
Councillor Roland Domleo

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 P Chadwick, Moreton Meadows Farm, Waggs Road, Congleton Cheshire, CW12 4DA, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 6 and part of Public Bridleway No. 1 in the Parish of Congleton.

- 10.2 Public Footpath No. 6, Congleton, commences at the Stoney Lane along Waggs Road at OS grid reference SJ 8539 6245 and runs in a generally southerly and then south westerly direction along the broken metalled lane to its crossroads with Congleton Bridleway No. 1. It continues in a generally south westerly direction through the grounds of Moreton Meadows Farm and out through a pasture field to terminate at OS grid reference 8516 6188 immediately before a stile.

Public Bridleway No.1, Congleton, commences at its junction with Fol Hollow at OS grid reference SJ 8479 6204 and runs in a generally easterly direction along varied surfacing to pass along Lamberts Lane to its junction with Wolstenholme Close. The bridleway then bears south to the junction with Falmouth Road and then east to terminate at the junction with Leek Road at OS grid reference 8677 6196.

The sections of path and bridleway to be diverted is shown by a solid black line on Plan No. HA/051. The proposed diversion is illustrated on the same plan with a black dashed line between points E-A-F-G-D.

- 10.3 Mr P Chadwick owns the land over which the current path, bridleway and 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 footpath and bridleway.
- 10.4 The section of Public Footpath No. 6, Congleton to be diverted runs through the property of the landowner giving rise to concerns relating to security and safety. The section of Public Bridleway No. 1, Congleton to be diverted will realign it to the currently used line so resolving an outstanding alignment issue.

- 10.5 The proposed new route (E-A-F-G-D) would run from point E along the currently used line of the bridleway to the crossroads with Congleton FP1 at point A. Here it would enter a pasture field via a kissing gate crossing the field to a hedge boundary at point F and then follow this boundary to point D just before the stile into the next field. The section between A-F-G will be treated with sand/hardcore since this stretch can become boggy.

The new routes would have recorded widths throughout of 3.5m along the bridleway and 2m along the footpath. The bridleway would be enclosed on both sides. The path would not be enclosed. Of benefit to the public, the alignment issue in relation to the bridleway would be resolved and the new footpath would be significantly more enjoyable as it would pass through more open landscape.

- 10.6 Ward Councillors have been consulted about the proposal and Cllr Gordon Baxendale and Cllr Roland Domleo did not register any objections. No other comments were received.
- 10.7 Congleton Parish Council has been consulted and have not raised 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 objections were received although concern was expressed from the Borders and Bridleways Association (BBA) in relation to whether the bridleway was going to physically change on the ground or if the diversion was administrative realignment of the legal line to reflect the route currently used. Once the latter was confirmed, the BBA registered no objection to the diversion. The Peak and Northern Footpath Society also registered no objection. No further comments were received.
- 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:

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