

# **CHESHIRE EAST COUNCIL**

## **Public Rights of Way Committee**

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<b>Date of Meeting:</b>	<b>19 September 2011</b>
<b>Report of:</b>	<b>Greenspaces Manager</b>
<b>Subject/Title:</b>	<b>Highways Act 1980 Section 119 Application for the Diversion of part of Public Footpath No. 11 in the Parish of Mobberley</b>

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### **1.0 Report Summary**

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 11 in 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 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. 11 in the parish of Mobberley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/052 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 10.6 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 diversion has been sought by the Council to resolve long-standing problems with the footpath and to create an accessible, usable route on the ground where none has existed for several decades. It is considered that the proposed diversion follows the best possible route available. 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 Mobberley.

### **5.0 Local Ward Members**

5.1 Councillor Jamie Macrae.

### **6.0 Policy Implications including – Carbon Reduction - Health**

6.1 The proposal supports the following policies and initiatives of the Cheshire East Rights of Way Improvement Plan 2011-2026:

- Policy H3: Public rights of way and green infrastructure: Protect and enhance our public rights of way and green infrastructure and endeavour to create new links where beneficial for health, safety or access to green spaces. Initiative: 'Leisure routes for cyclists, horse riders and walkers'

- Policy H2: Promotion of active travel and healthy activities: Work in partnership to promote walking, cycling and horse riding as active travel options and healthy activities. Initiative 'Public information on the public rights of way network'

- 6.2 The development of new walking, cycling and horseriding routes for local residents and visitors alike is aligned with the health and wellbeing objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Health and Wellbeing Service commitment to the Change4Life initiative.

## **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. 11 in the parish of Mobberley has been obtained. Under Section 119 of the Highways Act 1980 the Borough Council may make a Diversion Order if it considers that it is expedient in the interests of the public.
- 10.2 Public Footpath No. 11 Mobberley commences at its junction with Town Lane (B5085) at OS grid reference SJ 7800 7978 and runs in a generally northerly and then generally north easterly direction for approximately 1154 metres to OS grid reference SJ 7827 8048 and its junction with Public Footpath Nos. 1, 2 and 3 Mobberley at Valewood Farm. The section of path to be diverted is shown by a solid black line on Plan HA/052 running between points A-C. The proposed diversion is illustrated on the same plan between points A-C.
- 10.3 Mr and Mrs A Edgar own the land over which the current route and the proposed route would run. They have provided written consent and support for the proposal.
- 10.4 Members may recall that a report was taken to the Public Rights of Way Committee on 13 June 2011 with a proposal to divert part of Public Footpath Nos. 1, 2, 3 and 11, as illustrated on plan no. HA/049. This new proposal has no impact on that application.

- 10.5 The current definitive line of the footpath has been unavailable for approximately 20-30 years. It is difficult for the public to use due to the nature of the terrain and it is possible that the path was originally incorrectly recorded on the Definitive Map and Statement. Re-instating the footpath on its definitive alignment would be very costly to the public purse. An 8 metre foot bridge across Mobberley Brook plus steps up a very steep bank would be required, costing in the region of £15-20,000. In addition, a stile would need to be installed where the path crosses the driveway and enters the field at the northern section of the route.
- 10.6 The proposed route would run through a pleasant wooded area (points A – B on plan no. HA/052) with open views of the Cheshire Countryside to the west. It would then require steps, surfacing and revetment as it runs adjacent to the river then descends a slope to join the access track. Stone steps would be installed on the descent, providing a low maintenance, long lasting and resilient surface. It then follows the access track (points B – C on plan no. HA/052) across the existing bridge to Valewood Farm. This has an easily traversable compacted stone surface. No path furniture i.e. gates or stiles, would be required. The works on the proposed route will cost approximately £5000.
- 10.7 The Ward Councillor has been consulted about the proposal.
- 10.8 Mobberley Parish Council has been consulted.
- 10.9 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.
- 10.10 The user groups have been consulted. The Peak and Northern Footpaths Society responded to state that ‘the proposal has the Society’s enthusiastic support’. The Ramblers Association have responded to state that ‘the diverted route as proposed is totally acceptable to the Ramblers’.
- 10.11 The Council’s Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.12 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 would be no less easy to use than the existing 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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