

# **CHESHIRE EAST COUNCIL**

## **Public Rights of Way Committee**

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**Date of Meeting:** 19 September 2011  
**Report of:** Greenspaces Manager  
**Subject/Title:** Highways Act 1980 Section 119  
Application for the Diversion of Public Footpath No. 51  
in the Parish of Rushton Spencer, County of  
Staffordshire, to become Public Footpath No. 83 in the  
Parish of Congleton

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### **1.0 Report Summary**

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 51 in the Parish of Rushton Spencer, County of Staffordshire, to become Public Footpath No. 83 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 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. 51 Rushton Spencer to become Public Footpath No. 83 Congleton, by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/055 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. Moving the footpath away from the farm and quarry will help the landowners with the running of their businesses (both of the farm and quarry) and allow them to increase the privacy and security of the site. The proposed route offers a less intimidating footpath for walkers and provides enhanced, panoramic views of the Cheshire countryside and, in addition, The Bridestones monument. The proposed route will not be 'substantially less convenient' than the existing route and taking walkers away from the farm yard may provide a health and safety benefit to users. 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.

#### **4.0 Wards Affected**

4.1 Congleton East.

#### **5.0 Local Ward Members**

5.1 Councillor David Brown  
Councillor Peter Mason  
Councillor Andrew Thwaite.

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

8.2 In this case, the existing footpath known as Footpath 51 Rushton Spencer is entirely within the area of Staffordshire County Council, which is a Highway Authority, as is Cheshire East Borough Council. The proposal, if approved will mean that the new footpath to be known as Footpath 83 Congleton will lie within the area of Cheshire East Borough Council, and the corresponding part of Footpath 51 Rushton Spencer, in Staffordshire, as shown in the plan, will be stopped up. Section 120 of the Highways Act 1980 makes additional provision in relation to the exercise of the powers of Highways Authorities under Section 119 in relation to the exercise of powers of making public path extinguishment and diversion orders. S120(1) provides that where a footpath lies partly within and partly outside the area of a council, the powers conferred under S119 extend (subject to S120(2)) to the whole of the path “as if it lay wholly within their area”. S120(2) requires consultation with , and the consent of, the council in whose area the other part of the path is. Paragraph 10.4 below sets out the process which has been followed in this regard.

## **9.0 Risk Management**

9.1 Not applicable

## **10.0 Background and Options**

10.1 An application has been received from Mr and Mrs C Goodfellow of Bridestone, Dial Lane, Congleton, CW12 3QJ (‘the Applicant’) requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 51 in the Parish of Rushton Spencer, County of Staffordshire, to become Public Footpath No. 83 in the parish of Congleton.

10.2 Public Footpath No. 51 Rushton Spencer commences at its junction with Dial Lane at OS grid reference SJ 9064 6211 and runs in a generally northerly direction to OS grid reference SJ 9059 6255 and its junction with the claimed route, Public Footpath No. 82 Congleton. The section of path to be diverted is

shown by a solid black line on Plan No. HA/055 running between points A-B. The proposed diversion is illustrated on the same plan between points C-B.

- 10.3 The applicant owns the land over which the current path lies and over which the proposed diversion would 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 footpath.
- 10.4 Following a site meeting with the landowners, user groups and a representative from Staffordshire County Council, it has been agreed that Cheshire East Council will act as the agent and progress the application.
- 10.5 Rushton Spencer FP51 was previously a cul de sac route. An application was received in April 2001 to add Public Footpath Congleton No. 82 to the definitive map. An Order was made and received a number of objections and a public inquiry was held in January 2011. The Order was subsequently confirmed by The Planning Inspectorate (PINS) subject to modifications. An objection was received to the modified Order based on a number of technical errors and this is currently being dealt with by PINS using the written representations procedure. Congleton FP82 creates a link between Rushton Spencer FP51 and Rushton Spencer FP50.
- 10.6 The definitive line of Rushton Spencer FP51 runs in a northerly direction, along the driveway to the quarry and Bridestones Farm. It then runs through a large pipe which was installed by the previous landowner a number of years ago (and is an illegal obstruction). Where the path leaves the pipe it then passes through a working farmyard where livestock is kept for six months of the year, particularly in the winter time. This can be intimidating for some walkers and causes issues with animal waste creating a muddy surface which is difficult to cross plus health and safety issues. The applicants have also had issues in the past with walkers wandering away from the definitive line of the footpath and entering the busy quarry yard. This is possibly due to the pipe on the definitive line which can cause confusion as to the correct route to follow. There is often large machinery operated in and around the farm and quarry and this can pose a health and safety risk for users. The length of the footpath to be diverted is approximately 375 metres.
- 10.7 The proposed route for the footpath leaves the driveway just south of 'The Bridestones' (point C on plan no. HA/055). A short section of the footpath will remain for approximately 16 metres north of this point to maintain public access to The Bridestones monument. 'The Bridestones' is the only authentic Neolithic burial chamber in Cheshire and the site is protected as a Scheduled Ancient Monument. As the proposed route leaves the driveway it runs in a north westerly direction along the field boundary for approximately 90 metres (to point D on plan no. HA/055). It then turns to run in a northerly direction through a wooded area for approximately 230 metres. It leaves the wooded area (point E on plan no. HA/055) and turns to run in a north easterly direction across a field to it's junction (point B on plan no. HA/055) with Public Footpath Congleton No. 82 (marked as 'claimed route' on plan no. HA/055). The length of the proposed route is 469 metres and the surface is earth with grass and natural vegetation.

- 10.8 Ward Councillors have been consulted about the proposal. No comments have been received.
- 10.9 Rushton Spencer Parish Council and Congleton Town Council have been consulted. No comments have been received.
- 10.10 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.
- 10.11 The user groups have been consulted. The Ramblers Association have responded to state that they have no objection to the proposal and 'look forward to the pleasure which will be gained by the walking public from walking the new route'. The Open Spaces Society have responded to state that they support the proposal. The Peak and Northern Footpaths Society have responded to state that the proposal has the Society's enthusiastic support.
- 10.12 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.13 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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