

# **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</b>
	<b>Application for the Diversion of part of Public Footpath Nos. 12 and 33 in the Parish of Macclesfield Forest</b>

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### **1.0 Report Summary**

- 1.1 The report outlines the investigation to divert part of Public Footpath Nos. 12 and 33 in the Parish of Macclesfield Forest. 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 Nos. 12 and 33 Macclesfield Forest by creating a new section of public footpath and extinguishing the current paths as illustrated on Plan No. HA/038 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 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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. The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will be of benefit to the landowner in terms of privacy and security. 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 Sutton

### **5.0 Local Ward Members**

5.1 Councillor Hilda Gaddum

### **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

## **9.0 Risk Management**

- 9.1 Not applicable

## **10.0 Background and Options**

- 10.1 An application has been received from Mr C R Hobson of 27 Ryle Street, Macclesfield, SK11 8BQ ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath Nos. 12 and 33 in the Parish of Macclesfield Forest.
- 10.2 Public Footpath No. 12 Macclesfield Forest commences at its junction with Public Footpath Macclesfield Forest Nos. 30 and 14 at OS grid reference SJ 9724 7454 and runs in a generally south easterly direction for approximately 1144 metres to OS grid reference SJ 9758 7369 and its junction with Ankers Knowl Lane (C406). The section of path to be diverted is shown by a solid black line on Plan No. HA/038 running between points A-B. The proposed diversion is illustrated on the same plan again between points A-B.
- 10.3 Public Footpath No. 33 Macclesfield Forest commences at its junction with Public Footpath No. 12 Macclesfield Forest, at Higher Ballgreave Farm, at OS grid reference SJ 9715 7424 and runs in a generally south westerly direction for approximately 794 metres to OS grid reference SJ 9705 7353 and its junction with Buxton New Road (A537). The section of path to be diverted is shown by a solid black line on Plan No. HA/038 running between points C-D. The proposed diversion is illustrated on the same plan between points A-D.
- 10.4 The Applicant owns the land over which the current paths and the proposed alternative routes 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 footpaths.
- 10.5 The existing route of footpath no. 12 runs in a south westerly direction to the west of and to the rear of Higher Ballgreave Farm. It runs in very close proximity to the property which is undesirable in terms of privacy and security. Higher Ballgreave Farm is an old unoccupied property owned by Mr Hobson. Mr Hobson is preparing to renovate the property and is eventually intending to live there. The length of the section proposed to be diverted is 189 metres.
- 10.6 The current route of footpath no. 33 begins at its junction with footpath no. 12 to the rear of Higher Ballgreave farm, also in close proximity to the property. It

then runs in a south easterly direction along an existing rough farm track. The length of the section proposed to be diverted is 170 metres.

- 10.7 The proposed route for footpath no. 12 would run in a southerly direction to the east of and to the front of the property. Due to the natural gradient here, the route would not be visible from the property, it is on lower ground than the farm. Diverting the footpath onto this route would provide impressive views for walkers of the surrounding Cheshire countryside which are not visible from its current alignment. It has a slightly shorter length than the current route of 163.
- 10.8 The new route for footpath no.33 follows a natural terrace along the hillside which runs to the west of and to the rear of Higher Ballgreave Farm. This provides a more level surface for users and also improved panoramic views of the surrounding countryside. The length of the proposed route is 267 metres.
- 10.9 The Ward Councillor has been consulted about the proposal. No comments have been received.
- 10.10 Macclesfield Forest and Wildboardclough Parish Meeting have been consulted. No comments have been received.
- 10.11 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.
- 10.12 The user groups have been consulted. The Peak and Northern Footpaths Society have responded to state that they have no objection to the proposal. The Ramblers Association have responded to state that that have no objection to the proposal provided it is appropriately waymarked and remains walkable in all seasons.
- 10.13 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.14 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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