

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 12 March 2012
Report of: Greenspaces Manager
Subject/Title: Highways Act 1980 s.119
Application for the Diversion of Public Footpath Nos 20 and 28 (parts), Parish of Kettleshulme

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No's 20 and 28 (parts), Parish of Kettleshulme. 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 each footpath concerned.
- 1.2 Members are required to consider all information in the report and make a decision as to whether the proposed footpath diversion is expedient based upon the legal tests prescribed in section 119 Highways Act 1980 set out in this report.

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 Footpaths No's 20 and 28, Parish of Kettleshulme by creating new sections of each public footpath and extinguishing the current path sections as illustrated on Plan No. HA/065 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 paths. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 10.5 to & 10.11 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 paths 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 paths 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 routes will not be 'substantially less convenient' than the existing route and diverting the footpaths will be of considerable benefit to the landowner in terms of enhancing the security and privacy of the property. It is considered that the proposed routes will provide a satisfactory alternative to the current routes and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Poynton East and Pott Shrigley

5.0 Local Ward Members

5.1 Councillor Jo Saunders
Councillor Howard Murray

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 received and not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/inquiry with objections being determined by the Secretary of State. 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 NJ Fogg, Tunstead Knoll Farm, Kettleshulme, High Peak, Cheshire, SK23 7RF requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no's 20 and 28 in the Parish of Kettleshulme.

10.2 Public Footpath No. 20 Kettleshulme, commences at its junction with Public Footpath No. 14 Kettleshulme at OS grid reference SJ 9862 7845 and runs in a generally east, south easterly direction through pasture land and then through the property of Coopershaw to OS grid reference SJ 9889 7840. At this point, it bears in a generally south, south westerly direction across a pasture field before passing through the property of Tunstead Farm to reach the farm access track where it bears in a an east, south easterly direction to terminate at OS grid reference SJ 9892 7827.

10.3 Public Footpath No. 28, Kettleshulme, commences at its junction with Public Footpath No. 20 Kettleshulme at OS grid reference SJ 9884 7829 and runs in a west, north westerly direction along the farm access track through a gate after which it follows the line of a track in a south, south westerly direction and then in a generally south westerly direction to terminate at its junction with Public Footpath No. 14 Kettleshulme at OS grid reference SJ 9857 7820.

10.4 Mr Fogg owns the land over which the current paths and the 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 footpaths.

10.5 The sections of each of Public Footpath No's 20 and 28 Kettleshulme to be diverted run through the property of the landowner giving rise to concerns relating to security and safety.

- 10.6 The proposed new route would be in two sections. Referring to the attached plan, HA/065:
- 10.7 The new route for Kettleshulme FP20 would, from point A in the pasture field, pass through a pedestrian gate (accessed via steps) to cross a second pasture field following a generally south easterly direction. On reaching steps, it would pass through a second pedestrian gate onto a stone surfaced track (point D) and would follow this track in a southerly direction to steps at point J. From here, it would skirt a garage building by following in an easterly direction to point K and then a south, south westerly direction to end by passing through sparse trees to terminate at point L on the metalled farm drive.
- 10.8 The new route for Kettleshulme FP28 would, from point F, leave the metalled farm drive to pass through a kissing gate and down steps into a pasture field to the south of the drive (point M). It would then cross the pasture field in a south, south westerly direction to pass through a metal kissing gate at point N before continuing in the same direction to terminate at point I.
- 10.9 The two new path sections would connect via a short stretch of the existing line of Kettleshulme FP20 (points L-F).
- 10.10 The new routes would have a width of 2m and would not be enclosed on either side except for the section between points D-J-K-L where it would be enclosed to a width of not less than 2.5m. One kissing gate and three pedestrian gates would be installed along with steps as appropriate on steeper gradients (points A, D, J and F).
- 10.11 Of benefit to the public, the new route would be significantly more enjoyable as it would pass through more open and scenic landscape (reducing the need to pass between the buildings of Tunstead Knoll Farm and along the private access track used by vehicles). Furthermore, the new route for Public Footpath No. 20 would be approximately 61 metres shorter than the current route.
- 10.12 Ward Councillors have been consulted about the proposal and their responses will be reported verbally.
- 10.13 Kettleshulme Parish Council has been consulted and did not register any objection.
- 10.14 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.
- 10.15 The user groups have been consulted and no comments have been registered.
- 10.16 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.

10.17 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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