

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	24 September 2012
Report of:	Rights of Way Manager
Subject/Title:	Highways Act 1980 Section 119 Application for the Diversion of part of Public Footpath No. 28 in the Parish of Sandbach

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 28 in the Parish of Sandbach. 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 and of the landowners. 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. 28 in the parish of Sandbach by creating a new section of public footpath and extinguishing the current path (as illustrated on Plan No. HA/068 amended) on the grounds that it is expedient in the interests of the public and of the landowners.
- 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 and of the landowners 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 indicated that objections to an order are unlikely. The diversions will provide a more accessible route for walkers, twelve stiles and gates exist or are required on the existing lines of the footpath whereas the proposed routes require four. In addition, enhanced views of the surrounding countryside will also provide a benefit to users. Moving the footpath out of the farmyard will improve the security and privacy for the landowner at Brook Farm (between points B and C on plan no. HA/068 amended) and moving the footpaths out of the fields (between points D and E and between points F and G on plan no. HA/068 amended) will allow both landowners greater freedom in utilising the land. It is therefore considered that the proposed routes will be a satisfactory alternative to the current ones and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Sandbach Ettiley Heath and Wheelock.

5.0 Local Ward Members

5.1 Councillor Gail Wait.

6.0 Policy Implications

- 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 Council's objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Council's commitment to the Change4Life initiative.

7.0 Financial Implications

- 7.1 Not applicable

8.0 Legal Implications

- 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 Ian Witter of Brook Farm, Wheelock, Sandbach, Cheshire, CW11 3RZ ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 28 in the Parish of Sandbach.
- 10.2 The applicant owns the land up to the field boundary at point F on plan no. HA/068 amended. Mr D Witter owns the land over which the section of the footpath and the proposed diversion runs between points F and G on plan no. HA/068 amended and has provided written consent and support for the proposal. 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 or landowners to make an order diverting the footpath.

- 10.3 The current line of Public Footpath No. 28 Sandbach runs in a westerly direction from Crewe Road (C389) at OS grid reference SJ 7503 5893, through the yard at Brook Farm and then across agricultural land which is mainly arable, to its junction with Public Footpath Moston No. 11 at the parish boundary, at OS grid reference SJ 7371 5919. Its total length is 1.551 kilometres. The sections of path to be diverted are shown by solid black lines on Plan HA/068 amended running between points A-C, points D-E and points F-G. The proposed diversions are illustrated on the same plan between points B-C, points D-E and points F-G.
- 10.4 An initial consultation for the proposed diversion was sent out as illustrated on plan no. HA/068. The proposed diversion through the yard at Brook Farm was the same as on the second consultation (as shown on plan no. HA/068 amended) but the section of the diversion moving the footpaths out of the fields was initially proposed to run slightly further north and on lower ground (as shown on plan no. HA/068). The Ramblers Association had concerns that this section of the proposed route may be unsuitable for walkers during the winter months. The proposal was then amended and a second consultation sent out which moves this section of the path onto higher ground (between points D-E and points F-G on plan no. HA/068 amended).
- 10.5 Part of the definitive line of the footpath has been unavailable for a number of years and an unofficial diversion has been in place. This is fully furnished with stiles and signs etc . Whilst the origins of the unofficial route are not recorded it is thought that this was put in place by Cheshire County Council in order to provide a usable route on the ground for the public after unsuccessful negotiations with the previous landowner at that time.
- 10.6 It is proposed to divert three sections of the footpath. The first is the section which runs through the yard at Brook Farm (points A-C on plan no. HA/068 amended). Diverting the footpath out of the yard would be of benefit to the landowner in terms of farm management, as well as removing any risk of accidents between members of the public and the farm machinery. It will also allow the applicant to improve the privacy and security of his property.
- 10.7 The proposed diversion leaves Crewe Road approximately 71 metres south of the entrance into Brook Farm. It then crosses a field to the south of the farm for approximately 85 metres to rejoin with the existing line of the footpath (points B to C on plan no. HA/068 amended). It provides the public with open views of the surrounding countryside. In addition, it is proposed to install two '2 in 1' gates (a field gate with an integral pedestrian gate) for this section of the diversion. Walkers currently negotiate five gates on the existing line of the footpath through the farmyard, accessibility will therefore be improved.
- 10.8 The second and third sections of the footpath that it is proposed to divert are the parts of the footpath that cross fields which are currently used for crops (points D to E and points F to G on plan no. HA/068 amended). These are the sections of the route that are mentioned above and have been unavailable on the ground for a number of years.

- 10.9 The proposed diversions run across land to the north of the fields following the field boundaries, on permanent pasture grassland along a pleasant, scenic valley above the river Wheelock (also points D to E and points F to G on plan no. HA/068 amended). Moving the legal line of the footpath out of the fields will allow the landowner greater freedom in utilising the land. It will also provide a more easily accessible route for users as only two gates would be required on this section of the proposed diversion, whereas seven are required on the existing legal line at these locations.
- 10.10 The Ward Councillor has been consulted about the proposal. No comments have been received.
- 10.11 Sandbach Town Council has been consulted. No comments have been received.
- 10.12 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.
- 10.13 The user groups have been consulted. Congleton Ramblers Group have responded to state that they have no objection to the route as shown on plan no. HA/068 amended.
- 10.14 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.15 An assessment in relation to Equality Act 2010 Legislation has been carried out by the PROW Network Management & 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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