

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 24 September 2012
Report of: Greenspaces Manager
Subject/Title: Highways Act 1980 Section.119:
Application for the Diversion of Public Footpath No.13 (part),
Parish of Warmingham

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.13 (part) in the Parish of Warmingham. 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.13 Warmingham by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/074 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will enable:

- better land and stock management,
- safer control of operational machinery and vehicles in a busy farmyard
- improved privacy and security to property in the farmyard
- resolution of a current obstruction issue caused by a building in the farmyard

It is 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 Brereton Rural

5.0 Local Ward Members

5.1 Councillor John Wray

6.0 Policy Implications

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/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 D Cough of Axis (agent) on behalf of Mr H Torrence of TATA Chemicals Europe Ltd., PO Box 4, Mond House, Winnington Lane, Northwich, Cheshire, CW8 4DT requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 13 in the Parish of Warmingham.

10.2 Public Footpath No. 13, Warmingham, commences at its junction with Warmingham Road at OS grid reference SJ 7086 6111 and runs in a generally west, north westerly direction along an unclassified road to a junction where it then follows the access track to Hill Top Farm in a generally north westerly direction. Upon reaching the farm yard, it passes through the farm in a “dog leg” first in a westerly and then northerly direction to exit into pasture field. It then continues in a generally northerly direction crossing this field to exit onto a track which it then follows for approximately 332 metres. At this point, the path bears in a generally westerly direction across a field to terminate at its junction with Public Footpath No.7, Warmingham at O.S. grid reference SJ 6987 6219. The section of path to be diverted is shown by a solid black line on Plan No. HA/074. The proposed diversion is illustrated on the same plan with a black dashed line between points A-F-G-H-E.

10.3 The land over which the current path and the proposed diversion run belongs to TATA Chemicals Europe Ltd. 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 footpath.

10.4 The section of Public Footpath No. 13, Warmingham to be diverted runs through a farmyard where it is obstructed by a building and it then runs across a pasture field that is significantly uneven underfoot due to heavy usage by cattle. Diverting the path would resolve the obstruction issue and take users away from the farmyard along a route that would be better underfoot and more convenient.

- 10.5 The proposed new route (A-F-G-H-E on Plan No. HA/074) would start immediately after the stile in the pasture field to the north of Hill Top Farm (point A) and would follow the northern field boundary in a north, north easterly direction to the north eastern field corner (point F). A pond is located in the field corner and the new route would skirt it in a south, south easterly direction and then easterly direction to cross a sleeper bridge over a ditch to reach a kissing gate in the eastern field boundary (point G) leading into a second pasture field. It would then continue in a south, south easterly direction for approximately 190 metres to follow the western field boundary first across pasture land and then along a gravelled farm track. Approximately 35 metres after leaving the farm track, at the south western field corner (point H), the route would pass through a kissing gate onto the farm access road along which it would continue in a south, south westerly direction to meet the current route at (point E).

The new route would have a width of 2m and would not be enclosed and two kissing gates and a sleeper bridge would be installed.

Of benefit to the public, the new route would be more enjoyable for users by reducing the need to pass through a yard busy with large livestock and plant/vehicular machinery private garden and more convenient since it would not be obstructed and have a more even surface.

- 10.6 The Ward Councillor was consulted about the proposal. No comments were received.
- 10.7 Warmingham Parish Council has been consulted and any comments will be reported verbally.
- 10.8 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.
- 10.9 The user groups have been consulted. The Mid-Cheshire Footpath Society and Peak and Northern Footpath Society registered that they have no objection to the proposal. No other comments were received.
- 10.10 The Council's Nature Conservation Officer has been consulted and raised no objection to the proposals.
- 10.11 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 because it has kissing gates instead of stiles and is not obstructed.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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