

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 17 December 2012
Report of: Greenspaces Manager
Subject/Title: HIGHWAYS ACT 1980 s.119
Proposed Diversion of Public Footpath No.10 (part)
Parish of Chorley

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.10 in the Parish of Chorley. 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 applied for by the landowners following the discovery that the definitive path ran through the garden of the property and not adjacent to it as was revealed on the local search. 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 & Countryside Act 1981, to divert part of Public Footpath No.10 Chorley as illustrated on Plan No. HA/057 by creating a new section of public footpath and extinguishing the current path 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 and not resolved, 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 An objection was received from Chorley Parish Council to the proposal with regard to a leylandii hedge that borders the proposed route; however this has now been overcome by the landowners agreeing to remove part of the hedge along the narrowest section and take the width to an existing fence set behind the trees, allowing a greater width for the public. The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will be of benefit to the landowner, particularly 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.

4.0 Wards Affected

4.1 Wilmslow West and Chorley

5.0 Local Ward Members

5.1 Councillors Wesley Fitzgerald and Gary Barton

6.0 Policy Implications including – Carbon Reduction - Health

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 horse riding routes for local residents and visitors alike is aligned with the health and wellbeing objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Health and Wellbeing Service commitment to the Change4Life initiative.

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 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 D Hobbs ('the Agent') on behalf of Mr & Mrs Sarwar ('the Applicant and Landowner') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 10 in the Parish of Chorley.
- 10.2 Public Footpath No. 10 Chorley commences at the Knutsford Road (B5085) at OS grid reference SJ 8198 7873 and runs in a generally northerly and north easterly direction to its junction with Bridleway no. 30 Chorley at OS grid reference SJ 8208 7961. The section of path to be diverted is shown by a solid black line on Plan No. HA/057 running between points A-B. The length of the path to be closed is approximately 68 metres in length. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C-B.
- 10.3 The existing alignment of the footpath runs directly through the garden of Rush Cottage. This alignment has not been available to the public for many years. An alternative route has been available to the public between the boundary of the garden and the boundary of the adjacent property, Gore Lane Farm. It is this second route that was revealed as the definitive line of the

footpath on a search undertaken with Macclesfield Borough Council when the property was bought. Mr & Mrs Sarwar had been of the belief that this was the correct route until it came to the attention of the Network Management and Enforcement Officer that the definitive line was unavailable.

- 10.4 Mr & Mrs Sarwar feel that to re-open the definitive line would greatly detract from the privacy and security of the property. They also feel that they had the search done in good faith and consequently Cheshire East Council, as successor authority to Macclesfield Borough Council, have undertaken to process this diversion order at no cost to the applicant.
- 10.5 The proposed route for the footpath is approximately 75 metres long and would move the footpath to the route that commences to the south of the property and then runs outside the easterly boundary of the garden and rejoins the original line of the footpath to the north east of the garden boundary at an existing stile. The path runs between boundary hedges and has an earth surface. A stile at the southern end of the route will be removed to leave a gap.
- 10.6 The local Councillors were consulted at the time the original consultation was undertaken in March 2011, however since then the ward boundaries and Councillors have changed. Consequently, Councillor Fitzgerald and Councillor Baron have recently been consulted.
- 10.7 Chorley Parish Council originally objected to the proposal on the grounds that the proposed route was too narrow and bounded on one side by high leylandii trees which encroached onto the path. They considered that the trees needed to be removed to make the proposal acceptable. Lengthy negotiations ensued with the agent and the landowner and several site visits were held however the landowners were very reluctant to remove the trees as they believed it would affect their privacy and security. Eventually a site meeting was held with representatives from the Parish Council to put forward a compromise agreed with the Agent. This involves the removal of a section of the trees at the narrowest point of the path for a length of approximately 22 metres therefore allowing additional width and removing the problem of future encroachment. The Parish Council agreed to withdraw any objection to a forthcoming order on the basis of this agreement.
- 10.8 The statutory undertakers have also been consulted and have 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 Rambler's Association also expressed concern about the encroachment of the trees but said they wouldn't object to the proposal.
- 10.10 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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