

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	11 March 2013
Report of:	Greenspaces Manager
Subject/Title:	Highways Act 1980 Section.119: Application for the Diversion of Public Footpath No. 7 (part) Parish of Goostrey

1.0 Report Summary

- 1.1 The report outlines the investigation to divert two parts of Public Footpath No.7 in the Parish of Goostrey. 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. 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 sections 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.7 Goostrey as illustrated on Plan No. HA/077 by creating two new sections of public footpath and extinguishing two sections of 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 paragraphs 10.3 to 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 Following the consultation no objections have been received to this proposal. 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 farm management. 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 Dane Valley

5.0 Local Ward Members

5.1 Councillors Les Gilbert and Andrew Kolker

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 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 S Lea of Foxwood Farm, Over Peover requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert two parts of Public Footpath No. 7 in the Parish of Goostrey.
- 10.2 Public Footpath No. 7 Goostrey commences at the Peover Eye Brook just to the north of point A on Plan No. HA.077 and runs in a generally southerly direction to join Red Lane at point D. The sections of path to be diverted are shown by solid black lines on Plan No. HA/077 running between points A-B and C-D. The proposed diversions are illustrated with black dashed lines on the same plan, running between points A-B and C-E.
- 10.3 The existing alignment of the first section (solid line A-B) follows a southerly then south-south-easterly direction to the corner of the field (point B). The length of the path to be closed is approximately 177 metres in length. The proposed new route for this section would follow an existing farm track similar in length. The new route would have a width of 3 metres and would not be enclosed; the track is part concrete and part grass surface. There would be no gates or stiles on this new section of path.
- 10.4 The landowner believes that the public already use the farm track. It is the preferred route as it is a more level gradient and partly surfaced, as opposed to the undulating existing route which follows dense vegetation to the field edge, and then cuts across the grass field in which there is a shallow hollow. It is also preferable to the landowner if the public walk on the track rather than across the grass field which is used for grazing.

- 10.5 The second section is at the southern end of Footpath No.7. At point C (on Plan No. HA/077) the path currently changes direction and goes into the next field. There is currently a stile into the field and the path follows an easterly then southerly direction to meet Red Lane, where there is another stile (point D). The length of the path to be closed is approximately 112 metres in length.
- 10.6 The proposed new route is a continuation of the current route in the same field, so from point C the footpath would continue along the field edge to point E, a length of approximately 86 metres. The proposed new path would not be enclosed, the surface is grass and the width will be recorded as 2 metres. A new kissing gate would be required at point E; this would be opposed to the two stiles on the existing route. The existing route cuts across a field that is used for crops, in terms of farm management it is in the interest of the landowner that the path is diverted.
- 10.7 The local Councillors have been consulted. Councillor Gilbert has commented that from the information provided the proposals seem reasonable.
- 10.8 Goostrey Parish Council has commented that this seems to be a sensible diversion which does not detract in any way from enjoyment of the route and actually makes it easier and more convenient to use. They state they support the diversion provided that the proposed gate, which would form the new access from Red Lane, is kept in good working order.
- 10.9 The statutory undertakers have also been consulted and have no objections to the proposed diversions. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.10 The user groups have been consulted. The Peak and Northern Footpaths Society has stated they support this proposal. No further comments have been received.
- 10.11 Natural England has stated the path order would not affect a statutory site for nature conservation or designated landscape; they therefore have no comment to make.
- 10.12 An assessment in relation to the Equality Act Legislation 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversions are an improvement on the existing routes.

11.0 Access to Information

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

Name: Jennifer Tench
Designation: Definitive Map Officer
Tel No: 01270 686158
Email: jennifer.tench@cheshireeast.gov.uk
PROW File: 132D/465