

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	11 March 2013
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 Section 119: Application for the Diversion of Public Footpaths No. 5 and 19 (Parts), Parish of Prestbury

1.0 Report Summary

The report outlines the investigation to divert part of Public Footpaths No. 5 and 19 (parts), Parish of Prestbury. 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.

- 1.1 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 5 and 19, Parish of Prestbury by creating new sections of each public footpath, and extinguishing the current path sections as illustrated on Plan No. HA/076 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 10.4 & 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 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 property and promoting good land management. 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 Prestbury

5.0 Local Ward Members

5.1 Councillor Paul Findlow

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 A Ellis ("agent") of Dowd Town Planning on behalf of Mr Tom O' Conner ("applicant") of Unit 10, Sandfold Lane, Levenshulme, Manchester, M19 3BJ requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No's 5 and 19 in the Parish of Prestbury.

10.2 Public Footpath No. 5 Prestbury, commences at its junction with Public Footpath No. 19 Prestbury at OS grid reference SJ 8928 7973 and runs in a generally south, south easterly direction to follow the River Bollin through pasture land to terminate at its junction with Prestbury FP15 at OS grid reference SJ 8995 7740.

Public Footpath No. 19 Prestbury, commences at its junction with Wilmslow Road at OS grid reference SJ 8895 8047 and runs in south, south easterly direction through pasture land to reach the access track of Top o' 'he Hill Farm where then runs in an easterly direction along the access road to terminate at its junction with Bonis Hall Lane at O.S. grid reference SJ 8935 7975.

10.3 Mr O'Conner 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.

10.4 The sections of each of Public Footpath No's 5 and 19 Prestbury to be diverted run close to and between the buildings at Top o' 'he Hill Farm. It is the intention to redevelop farm buildings to provide two dwellings and to use surrounding land for agricultural purposes. Diverting the footpaths to a new route would offer greater privacy and security to the new properties and take users away from the access track on which vehicular use is likely to increase.

Furthermore, providing a route along field edges would allow for better land management and easier navigability for path users.

10.5 Referring to the attached plan, HA/076:

The new route for Prestbury FP19 would, from point A in the pasture field, pass through into an adjacent field to the east. It would then skirt the field boundary in a south, south easterly and then north, north easterly direction to exit onto the metalled access track to Top o' the Hill Farm (point D), where it would terminate.

The new route for Prestbury FP5 would, from point D, leave the metalled access track to enter a field where it would run in a southerly direction to follow the eastern field boundary to an 'old' redundant track (point H). At this point, it would bear in a west, south westerly direction to point I and then in a south, south westerly direction along the track to a field boundary (point J) which it would cross before terminating at its junction with the current route of Prestbury FP5 (point F).

The new route would have a width of 2m and would not be enclosed except between points H-I-J where it would be enclosed to a width of 2.5m. Five kissing gates would be installed along its length. The surface of the enclosed section between points H-I-J would be improved to meet the standard required by the local authority. The field section between points C-D would be surfaced.

Of benefit to the public, the new route would:

- Eliminate the need for users to pass closely between the buildings of the applicant's property.
- Take users away from the access drive on which vehicular use is likely to increase following conversion of the farm buildings into residential dwellings.
- Provide an easily navigable route through the fields.
- Have kissing gates rather than stiles.

10.6 The Ward Councillor has been consulted about the proposal. No comments were received.

10.7 Prestbury Parish Council has been consulted and did not register any objection.

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 East Cheshire Ramblers Association requested that boggy sections of the diversion route be surfaced appropriately or raised above the waterline if necessary and they also

questioned the need for a kissing gate at point H on Plan No. HA/076. The Peak and Northern Footpath Society registered no objections. No other comments have been received.

- 10.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.11 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion will not be 'substantially less convenient' than the existing route.

11.0 Access to Information

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

Name: Marianne Nixon
Designation: Public Path Orders Officer
Tel No: 01270 686 077
Email: marianne.nixon@cheshireeast.gov.uk
PROW File: 248D/461