

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.6 and 21 (Parts), Parish of Smallwood

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No's 6 and 21 (parts), Parish of Smallwood. 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.
- 1.2 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 6 and 21, Parish of Smallwood by creating new sections of each public footpath and extinguishing the current path sections as illustrated on Plan No. HA/078 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 be an improvement to the existing route and diverting the footpaths will be of considerable benefit to the landowner in terms of enhancing the security and privacy of their property. 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 Brereton Rural

5.0 Local Ward Members

5.1 Councillor John Wray

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 WS Thompson, Spen Moss Farm, Spen Moss, Smallwood, Sandbach, CW11 2XB requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert parts of Public Footpath no's 6 and 21 in the Parish of Smallwood.

- 10.2 Public Footpath No. 6 Smallwood, commences at its junction with Pitcher Lane at O.S. grid reference SJ 8163 6184 and runs in a generally south easterly direction through fields to its junction with Public Footpath No. 21 Smallwood at O.S. grid reference SJ 8200 6121. It then follows a generally easterly direction across further fields, crossing lanes en route, to terminate at the Parish boundary where it becomes Public Footpath No. 6, Newbold Astbury at O.S. grid reference SJ 8235 6114.

Public Footpath No. 21, Smallwood, commences at its junction with Public Footpath No. 6 Smallwood at O.S. grid reference SJ 8200 6121 and runs in south, south, westerly and then south easterly direction through the property of Spen Moss Farm to join Spen Moss Lane. It then follows the lane in a south easterly and then southerly direction to terminate at its junction with Congleton Road at O.S. grid reference SJ 8205 6068.

- 10.3 Mr Thompson owns the land over which the current paths and the proposed diversion run except for the section of the proposed diversion that runs along a lane.

Research revealed that this lane is unregistered. If a landowner emerges claiming compensation due to loss caused by a public footpath on his/her lane, Mr Thompson has provided written agreement to compensate him or her accordingly.

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 section of Public Footpath No. 21, Smallwood, to be diverted runs through the property of Spen Moss Farm passing by a lake, close to the applicant's

home and also through areas where they keep livestock (horses). Diverting the path to a new route would offer greater privacy and security to the property and enable better management of livestock.

The section of Public Footpath No. 6, Smallwood, to be diverted runs through fields passing through a small paddock en route. Diverting this section out of the paddock would again aid with better management of livestock.

Furthermore, the proposed diversion route would by default, provide a more direct route across fields from the lane.

10.5 Referring to the attached plan, HA/078:

The new route for Public Footpath No. 6, Smallwood would start in a pasture field at point A. It would then follow a northerly direction for a short distance to enter into a pasture field to the north (point D). It would then cross this and a further field in a north westerly direction to terminate on the current route at the northern field corner (point C).

The new route for Public Footpath No. 6, Smallwood would start at point E along the metalled lane and would run in a north easterly direction forking left at a junction (point H) to then follow the unregistered lane in a northerly direction before terminating on the current route of Smallwood FP6 (point I).

The new diversion route would have a width of 2m and be unenclosed. Two kissing gates would be installed along its length. The two new path sections would be connected by the current route of Public Footpath No.6, Smallwood (points I-A).

Of benefit to the public, the new route would:

- Eliminate the need for users to pass through the applicant's property and livestock.
- would eliminate the need for boundary crossings on Public Footpath No. 21 Smallwood and would require negotiation of two kissing gates on Public Footpath No. 6, Smallwood instead of two stiles, a field gate and a pedestrian gate,
- Provide a more direct route along a lane and across fields.

10.6 The consultation period for this diversion is still running until Friday 8th March. However, to date, responses are as follows:

10.6.1 The Ward Councillor has been consulted about the proposal. No comments have been received.

10.6.2 Smallwood Parish Council has been consulted and have not yet registered objection. Any comments received will be reported verbally.

10.6.3 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.

10.6.4 The user groups have been consulted. The Peak and Northern Footpath Society registered no objections. No other comments have been received.

10.7 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion route is an improvement to the existing route since it has two kissing gates as opposed to two stiles, a field gate and a pedestrian gate and has fewer boundaries to negotiate.

11.0 Access to Information

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

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