

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.10 and 29 (Parts), Parish of Wincle

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No's 10 and 21 (parts), Parish of Wincle. 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 10 and 29, Parish of Wincle by creating new sections of each public footpath and extinguishing the current path sections as illustrated on Plan No. HA/079 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 (and their neighbour) in terms of enhancing the security and privacy of 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 Sutton

5.0 Local Ward Members

5.1 Councillor Hilda Gaddum

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 Mrs Lahelma-Barnsley, Hawkslee House, Minn End Lane, Cheshire, SK11 0NZ requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert parts of Public Footpath no's 10 and 29 in the Parish of Wincle.

10.2 Public Footpath No. 10 Wincle, commences at its junction with Public Footpaths No. 6, Bosley and No. 2 Wincle at OS grid reference SJ 9370 6545 and runs in a generally easterly direction across for approximately 2203 metres (approximately 1.36 miles) to terminate at its junction with Public Footpath No. 18, Wincle at O.S. grid reference SJ 9568 6531.

Public Footpath No. 29, Wincle, commences at its junction with Public Footpath No. 10 Wincle at O.S. grid reference SJ 9387 6533 and runs in southerly direction along Minn End Lane to its junction with Public Footpath No. 31, Wincle. Here it bears in an easterly direction to leave the lane and then follows a generally southerly and then easterly direction across fields to terminate at the parish boundary where it becomes Public Footpath No. 5, Bosley at O.S. grid reference SJ 9369 6497.

10.3 Mrs Lahelma-Barnsley owns the land over which the part of Public Footpath No. 29, Wincle proposed for diversion runs but not the land onto which it is proposed to be diverted. This is Public Highway and as such, the local authority agrees to the path being diverted onto it.

With respect to the part of Public Footpath No. 10 Wincle proposed for diversion, Mrs Lahelma-Barnsley owns part of the land over which this currently runs and her neighbours, Mr JHE Berry of Hawkslee Farm and Mr K Van Roy of Kiss Wood Farm, own the rest of this land. The proposed diversion for this footpath would run over land owned solely by Mr K Van Roy for which he has granted permission.

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 Diverting parts of Public Footpath No's 10 and 29, Wincle to form the new route would afford improved privacy and security to the residents of Hawkslee and Hawkslee Farm whilst eliminating the need for users to walk through the property gardens. Furthermore, users would be taken away from the current part of Public Footpath No. 10, Wincle that runs along the stream bed which is very slippery underfoot. This stream provides drainage for surface water on Minn End Lane and cannot be obstructed making it unavoidably wet and muddy all year round. The new route would follow a track that has a semi-surfaced section and a grassed section.

- 10.5 Referring to the attached plan, HA/079:

The new route for Public Footpath No. 10, Wincle would start on a semi-surfaced track (point D) and would follow the track in a generally southerly direction to terminate at its junction with Wincle FP31 (point E).

The new route for Public Footpath No. 29, Wincle would start on Minn End Lane at point F from which it would follow a generally north, north westerly direction along the lane to terminate upon meeting Wincle FP10 (point A).

The new diversion route would have a width of 2m and be unenclosed. The two new path sections would be connected by the current routes of Public Footpath No's 31 and 29, Wincle (points E-F).

It is appreciated that the new routes would result in a significantly longer footpath than the current routes offer but given the user benefits and the surrounding path network and terrain, it is considered that on balance, the new route would still bring a more improved walking experience for users than the current route as it would:

- be more enjoyable since it would offer more open and scenic views of the surrounding countryside.
- be more convenient as it would eliminate the need to pass through private property (gardens of the applicant and neighbour) and would pass over ground which is better underfoot than the current path section that runs along a wet, muddy stream bed. The new route would follow semi-surfaced and grassed track.
- Have no path furniture whereas the current route has three stiles, a sleeper bridge and five steps.

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

- 10.7 Wincle Parish Council has been consulted and has not registered 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 Group of the Ramblers Association, the Wilmslow and Alderley Edge Footpath Preservation Society and the Peak and Northern Footpath Society registered no objection.

Referring to Plan No. HA/079, The East Cheshire Group of the Ramblers Association and the Wilmslow and Alderley Edge Footpath Preservation Society requested that a boggy section on the new diversion route between points E and F be stoned and that the grassed surface along this stretch be treated as necessary in relation to rocks and steep gradients.

No other comments have been received.

10.10 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 would have no path furniture whereas there are three stiles, a sleeper bridge and five steps along the current path sections.

11.0 Access to Information

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

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