

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	18 June 2013
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 s.119 Application for the Diversion of Public Footpath No.1 (part), Parish of Stapeley

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.1 in the Parish of Stapeley. 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 footpath concerned.

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 part of Public Footpath No.1 Stapeley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/082 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, 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will be of considerable benefit to the landowner in terms of offering enhanced security and privacy to his property. It is 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 Nantwich South and Stapeley

5.0 Local Ward Members

5.1 Councillor Peter Groves and Andrew Martin

6.0 Policy Implications

6.1 Not applicable

7.0 Financial Implications

7.1 Not applicable

8.0 Legal Implications

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 highway authority to confirm the order itself, and may lead to a hearing/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 T Moses of David Wilson Homes North West, 2nd Floor, 303, Bridgewater Place, Birchwood, Warrington, WA3 6XF requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 1 in the Parish of Stapeley.
- 10.2 Public Footpath No. 1, Stapeley, commences at the parish boundary at OS grid reference SJ 6569 5184 where it joins Public Footpath No. 26 Nantwich. From here, it weaves through a housing estate running in a generally easterly direction to its junction with Public Footpath No. 12 and then in a southerly direction to an open space through which it curves to then run through more housing in a generally south, south easterly direction to its junction with Peter Destapleigh Way. It crosses this road to then continue in a generally easterly, then southerly direction across grasslands before joining a metalled road which it follows in an easterly direction until it meets London Road at OS grid reference 6666 5145 where it terminates. The section of this path to be diverted is shown by a solid black line on Plan No. HA/082 between points A-B-C-D. The proposed diversion is illustrated on the same plan with a black dashed line between points A-E-C-F.
- 10.3 The land over which the current path and the proposed diversion run belongs to David Wilson Homes North West. 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 footpath.
- 10.4 The section of Public Footpath No. 1, Stapeley runs across a residential development site although it is not directly affected by any of the planned building works. However, diverting the path through a more landscaped area would create a more pleasant walking experience for future residents and the general public taking them through trees and grassed areas. The route would end at the start of a new road which, when legally adopted by the Council, users would use to reach London Road close to the point at which the current route joins it.
- 10.5 The new route would start at point A and follow a generally south easterly direction to point E before bearing in a south, south easterly direction to point C. It would then follow a easterly direction to terminate at its junction with the new metalled road within the residential development (point F). This road will be adopted as public highway which will provide pedestrian rights for users to London Road.

Throughout, the route would be 2 metres wide and would have a metalled surface (stoned or tarmacadem).

- 10.6 Ward Councillors have been consulted about the proposal. No comments were received.
- 10.7 Stapeley Parish Council has been consulted. Their response will be reported verbally.
- 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. No objections 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 Legislation 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion is no less convenient than the old 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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