

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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<b>Date of Meeting:</b>	18 June 2013
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Highways Act 1980 s.119 Application for the Diversion of Public Footpath No. 3 (part), Parish of Swettenham

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### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.3 in the Parish of Swettenham. 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.3 Swettenham by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/083 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 Brereton Rural

#### **5.0 Local Ward Members**

5.1 Councillor John Wray

#### **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 M Dentith (agent), Latium Management Services, on behalf of Mr B Kennedy (applicant) of Swettenham Hall, Swettenham, Cheshire, CW12 2J2 requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 3 in the Parish of Swettenham.
- 10.2 Public Footpath No. 3, Swettenham, commences at its junction with Davenport Park Lane at OS grid reference SJ 8010 6715 and runs in a generally south, south easterly, then easterly and then east, north easterly directions across pasture land and finally through the grounds of Swettenham Hall to terminate at OS 8104 6710 close to where three roads meet (Swettenham Road, Congleton Road and Swettenham Lane). This point is also the access entrance into the hall grounds. The section of path to be diverted is shown by a solid black line on Plan No. HA/083 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points A-D-E.
- 10.3 The land over which the current path and the proposed diversion run belongs to Mr B Kennedy. 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. 3, Swettenham to be diverted enters the grounds of the applicant's property, Swettenham Hall, immediately adjacent to the entrance and metalled access drive that leads to the hall causing some users to walk along the metalled access drive to the hall, all of which is the private property of the applicant, instead of following the footpath. Moving the crossing point further east of the entrance would clearly separate the footpath from the access drive. This would ensure that path users were clear that the route of the footpath was not along the access drive whilst reinstating the privacy and security required by the applicant. The footpath alignment would be diverted accordingly to make a route across the grounds from the new crossing point.
- 10.5 The entry point of the proposed new route (A-D-E) would be at point E. Therefore, from point A, the new route would follow a linear route in a north easterly direction to the fenced boundary of the grounds (point D) which it would cross via a kissing gate to then run through a woodland verge until it reached Swettenham Lane where it would terminate (point E).

The new route would have a width of 2 metres and would be unenclosed.

Of benefit to users, any ambiguity experienced in relation to the direction of the footpath would be reduced.

- 10.6 Ward Councillors have been consulted about the proposal. No comments were received.
- 10.7 Swettenham Parish Council has been consulted. Although they registered an objection to the proposal but this is under reconsideration and their final 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 not substantially 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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