

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

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| Date of Meeting: | 18 June 2013 |
| Report of: | Public Rights of Way Manager |
| Subject/Title: | Highways Act 1980 s.119 Applications for the Diversion of Public Footpath No.13 (part) and Extinguishments of Public Footpaths No.11a, 13 (part) and 13a/1 Parish of Mobberley |

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.13 and to extinguish Public Footpath No's 11a, 13 (part) and 13a/1 in the Parish of Mobberley. This includes a discussion of consultations carried out in respect of the proposals and the legal tests to be considered for diversion and extinguishment orders to be made. The proposals have been put forward by the Public Rights of Way Unit as applications have been made by the landowner concerned. The report makes recommendations based on that information, for quasi-judicial decision by Members as to whether or not any Orders should be made to divert and/or extinguish the sections of the footpaths 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.13 in the Parish of Mobberley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/084 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.

Orders are made under Section 118 of the Highways Act 1980 to extinguish Public Footpath No's 11a, 13 (part) and 13a/1 in the Parish of Mobberley as illustrated on Plan No. HA/085 on the grounds that they are not needed for public use.

- 2.2 Public Notice of the making of the Orders be given and in the event of there being no objections within the period specified, the Orders be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to any 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 within the Highways Act 1980, it is within the Council's discretion to make an Order:

- To divert a Public Footpath under Section 119(1) 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.
- To extinguish Public Footpath under Section 118(1) if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use.

It is considered that the proposed diversion and extinguishments are 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 a Diversion or Extinguishment Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to the following:

For diversions

- 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.

For Extinguishments

- The extent (if any) to which it appears to him...that the path or way would, apart from the order, be likely to be used by the public, and
- The effect which the extinguishment of the right of way would have as respects land served by the path or way, and

The material provision of any rights of way improvement plan prepared by any local highway authority which includes land over which the order would extinguish a public right of way.

- 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 diversion route for Public Footpath No. 13 (part) in the Parish of Mobberley will be an improvement to the existing route since it is level underfoot, without barriers and has steps and a footbridge to enable descent and ascent of the steep banks that flank the small stream. 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.
- 3.4 The proposed extinguishments are in the interests of the landowner to legally meet the requirements first identified when the industrial site was built. There has been no evidence of the public wishing to use the routes in question.

4.0 Wards Affected

- 4.1 Mobberley

5.0 Local Ward Members

- 5.1 Councillor Jamie Macrae

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 Applications have been received from Mr R Dingle of LPC Living Ltd (“agent”) on behalf of Mr T Hamon of Argonaught Holdings Ltd., Third Floor, Elizabeth House, Ruettes Brayes, St Peters Port, Guernsey (“applicant”) requesting that the Council make an Orders to divert part of Public Footpath no. 13 and to extinguish Public Footpath No’s 11a, 13 (part) and 13a/1 in the Parish of Mobberley under sections 119 and 118 respectively of the Highways Act 1980.
- 10.2 Public Footpath No. 13, Mobberley, commences at its junction with Public Footpath No. 5 Mobberley at O.S. grid reference SJ 7818 8038 and runs in a generally south westerly, then easterly and then southerly directions around the perimeter of an industrial site to terminate at O.S. grid reference 7825 7983. A separate section of this footpath commences at O.S. grid reference SJ 7822 7993 and runs in a generally east, south easterly direction to terminate at O.S. grid reference 7826 7992.

Public Footpath No. 11a, Mobberley, commences at its junction with Mobberley FP11 at O.S. grid reference SJ 7813 8043 and runs in a generally west, south westerly direction across the site to terminate at O.S. grid reference SJ 7809 8014.

Public Footpath No. 13a/1, Mobberley, commences at OS grid reference SJ 7809 8009 and runs in a generally west, north westerly direction across the site to terminate at its junction with Public Footpath No. 13 Mobberley at O.S. grid reference SJ 7825 7984.

The section of Public Footpath No. 13 Mobberley to be diverted is shown by a solid black line on Plan No. HA/084 between points A-B-C-D-E. The proposed diversion is illustrated on the same plan with a black dashed line between points A-F-E.

Public Footpath No’s 11a, 13 (part) and 13a/1 in the Parish of Mobberley to be extinguished are shown by solid black lines on Plan No. HA/085 between points A-B, C-D and E-F respectively.

- 10.3 The land over which the current paths and the proposed diversion and extinguishments run belongs to Argonaught Holdings Ltd. Under section 118 and 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 respectively extinguish or divert the footpaths.
- 10.4 The section of Public Footpath No. 13, Mobberley to be diverted is unavailable at present due to steep gradients, boundaries and over growth. Furthermore, part of it runs along a river bank and is at risk of potential flooding. Diverting it to align along an existing path that follows the site boundary would resolve these issues and reinstate public right of passage.
- 10.5 The proposed new route (A-F-E on Plan No. HA/084) would leave the current footpath at point A to follow an existing footpath as it curved around the

perimeter fence in a northerly, north westerly and then westerly direction to point F. It would then follow a north westerly direction to terminate as it rejoined the current footpath at point E. To cross the stream, the existing route descends from the perimeter fence via 'earth and timber' steps to cross the stream using a 3 metre sleeper footbridge and then ascends 'earth and timber' steps to rejoin the perimeter fence along which it continues to the termination point (point F).

The new route would be 2 metres wide throughout except where it crossed the footbridge.

Of benefit to users, public right of passage would be reinstated on a more convenient route that is already available.

- 10.6 The sections of Public Footpath No's 11, 13 and 13a/1 to be extinguished run across an industrial site but are obstructed by buildings and no longer of use to the public. Historically, the proposal to extinguish them was planned at the time of the site development but the orders were never made. Therefore these proposals, if approved, would rectify this situation whilst protecting the security of the site that is desired by the applicant.
- 10.7 Ward Councillors have been consulted about the proposals. No comments were received.
- 10.8 Mobberley Parish Council has been consulted. Member's response(s) will be reported verbally.
- 10.9 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion or extinguishments. If diversion or extinguishment orders are made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.10 The user groups have been consulted. No objections have been received.
- 10.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.12 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 an improvement to the old route since it is level underfoot and has 'earth and timber' steps and a sleeper bridge to enable descent and ascent to the bridge to enable users to cross a stream. Also, there are no barriers required on the diversion 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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PROW Files: 210D/472

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