

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	16 September 2013
Report of:	Rights of Way Manager
Subject/Title:	Highways Act 1980 S118: Application for the Extinguishment of part of Public Footpath No. 29 in the Parish of Sandbach

1.0 Report Summary

- 1.1 The report outlines the investigation to extinguish part of Public Footpath No. 29 in the Parish of Sandbach. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for an Extinguishment order to be made. The proposal has been put forward (following representations from landowners) by the Public Rights of Way Unit to resolve an anomalous situation. 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 extinguish the section of footpath concerned.

2.0 Recommendation

- 2.1 An Order be made under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No. 29 Sandbach as illustrated on Plan No. HA/086 on the grounds that it is not needed for public use.
- 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 118(1) of the Highways Act 1980 it is within the Council's discretion to make an Order 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 Public Footpath No.29 Sandbach (part) as shown on plan HA/086 is not needed for public use, as an alternative route is available via the adopted footway between Milton Way and Moston Road, as illustrated on plan no. HA/086 by a dashed black line.
- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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:

- 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 Although there are currently outstanding objections to the consultation on this proposal, the path has not been available for use for at least 14 years and, to our knowledge, there has been no evidence of the public wishing to use the route since the late 1990's, when we received an inspection report from the Congleton Ramblers Association. As discussed in paragraph 3.1, an alternative route is available and it is therefore considered that the path is not needed for public use.

4.0 Wards Affected

4.1 Sandbach Ettiley Heath and Wheelock.

5.0 Local Ward Members

5.1 Councillor Gail Wait.

6.0 Policy Implications

6.1 None.

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/an 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 Frank Murry of Ipstones Developments Ltd, 54 St Edwards Street, Leek, ST13 8BZ ('the Applicant') requesting that the Council make an Order under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No. 29 in the Parish of Sandbach. The application is supported by two additional landowners also affected by this section of footpath.
- 10.2 The current line of Public Footpath No. 29 Sandbach runs in a generally south easterly direction from Moston Road to Elton Road. The short section of Public Footpath Sandbach No. 29 it is proposed to extinguish has been unavailable since the mid 1990's. The majority of Public Footpath Sandbach No. 29 was diverted in July 1994 by Congleton Borough Council under the Town and Country Planning Act 1990 to accommodate the housing development built between Moston Road, Elton Road and Salt Line Way. It appears that at that time, Congleton Borough Council had intended to divert the remainder of the footpath but this legal process was not undertaken.
- 10.3 An initial consultation for a proposed diversion of the footpath following the alignment originally proposed by Congleton Borough council was carried out in April 2013. The proposed diversion ran along an existing passageway between the rear of the houses on Chesterton Grove and the applicant's property for approximately 96 metres. This section had a width of 1 metre. There was then a short section of tarmac path which ran for approximately 33 metres along the footway between the properties at Nos. 17 and 19 Milton Way and rejoined with the existing line of the Public Footpath Sandbach No. 29, this section had a width of 1.9 metres. There were three objections to this proposal, from the Ramblers Association; one of the landowners affected and an adjacent landowner. The Council was unable to resolve these objections and it was felt that were the Council to proceed with the proposal to divert the footpath, it was likely that this would fail.
- 10.4 In view of this and after extensive discussions with two of the landowners, it was agreed that the Council would accept and progress an application to extinguish this section of footpath as it appears that it is no longer needed for public use.
- 10.5 The majority of the footpath it is proposed to extinguish crosses an industrial development site owned by the applicant, who also has concerns that this could be potentially dangerous for any walkers using the route.
- 10.6 Part of the remainder of the path crosses the gardens of two residential properties. Were the route to be reinstated or diverted as previously proposed, the landowners at No. 17 Milton Way and one of their neighbours have serious concerns in respect of their security and privacy. In addition, the landowners have previously been forced to seek the support of the police and the Congleton

Community Action Team due to groups of youths gathering on the path adjacent to their house (at point B on the enclosed plan no. HA/068) causing a nuisance with drugs, drinking and vandalism.

- 10.7 The Ward Councillor has been consulted about the proposal. No comments have been received.
- 10.8 Sandbach Town Council has been consulted and has objected to the proposal. They urge Cheshire East Council to revert back to the original proposal to divert the footpath but with improvements to be made to the footpath to make it accessible to wheelchair users and pushchairs. This would involve providing a greater width than 1 metre on the section of the route to the rear of the applicant's property, which formed part of the proposed diversion. The landowner is not prepared to provide this. At the date of writing the report, the PROW Unit was seeking discussions with the Town Council to talk about their concerns. If discussions take place before the committee, the outcome of this meeting will be reported verbally.
- 10.9 The user groups have been consulted. The Peak and Northern Footpaths Society has objected to the proposal. They do not consider the footway between Milton Way and Moston Road to be a suitable alternative route. They do not believe that the anti-social behaviour or the fact that the path crosses an industrial site is relevant to an application to extinguish the footpath under section 118. As discussed in paragraph 3.1, with Section 118(1) of the Highways Act 1980 it is within the Council's discretion to make an Order 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. Although the path may be used by the public if it were to be re-instated or diverted, it is not needed for public use as there is an equally convenient path nearby. For any walkers wishing to access Sandy Lane or Moston Road from Milton Way, an alternative route is available a short distance north of the existing path.
- 10.10 Congleton Ramblers Group has also objected to the proposal. They believe that the proposal fails to meet the requirements of section 118 of the Highways Act for the following reasons:
1. *They can demonstrate that they reported a temporary obstruction of this section of path in April 1993 and that a second report was made on 5th November 1998 due to the housing development.* This is correct but, to our knowledge, there have been no further requests to use the route since this date.
 2. *The public concern is not limited to user groups and this can be demonstrated by the public response to a petition.* At the date of writing this report, the only correspondence we have received in relation to this proposal is from the user groups, landowners and statutory undertakers. We have not received any correspondence from members of the public, nor a petition.
 3. *The alternative route is not acceptable as it is substantially inconvenient for users and less enjoyable.* Users travelling in a northerly direction will have a slightly longer distance to walk to access Milton Way, but, for those travelling in a

southerly direction the distance is reduced. Travelling along a quiet estate road and adopted footway could be considered less intimidating for walkers than crossing an industrial premises and two private gardens.

4. *CEC's failure to reopen the route is contrary to the council's objective of promoting walking as a sustainable form of transport.* The obstruction of this footpath has been inherited by Cheshire East Council and the current landowners, due to Congleton Borough Council's failure with the planning process in the 1990's. The removal of the path has no impact on objectives to promote walking, nor are there any ROWIP initiatives or objectives associated with the path. In addition, the path has no real connection with the rest of the network, the only use is at a very local level to get from the estate to Moston Road and, as previously mentioned, there is an alternative route available a short distance north of footpath No. 29. As the route has been unavailable for many years and, to our knowledge, there have been no other requests to use it, pursuing the extinguishment is regarded as reasonable

10.11 The statutory undertakers have also been consulted and have no objections to the proposed Extinguishment. If an Extinguishment order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

10.12 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.

11.0 Access to Information

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

Name: Hannah Duncan
Designation: Definitive Map Officer
Tel No: 01270 686062
Email: hannah.duncan@cheshireeast.gov.uk
PROW File: 262E/477