

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

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| Date of Meeting: | 16 th September 2013 |
| Report of: | Public Rights of Way Manager |
| Subject/Title: | Highways Act 1980 s.119 Application for the Diversion of Public Footpath No. 16 (part), Parish of Betchton |

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.16 (part) in the Parish of Betchton. 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.16 Betchton by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/088 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 offer improved land and stock (horses) management capability for the landowner. 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 & Mrs K Beattie of Randle Rode Farm, Newcastle Road, Betchton, Sandbach, Cheshire, CW11 2TQ requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 16 in the Parish of Betchton.
- 10.2 Public Footpath No. 16, Betchton commences at its junction with Newcastle Road at O.S. grid reference SJ 7801 5948 and runs in a generally south, south easterly direction across pasture land, over a footbridge and then across further pasture land to terminate just before a field boundary at O.S. grid reference SJ 7808 5914. The section of path to be diverted is shown by a solid black line on Plan No. HA/088 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points A-E-D-C.
- 10.3 The land over which the section of the current path to be diverted and the proposed diversion run belongs to Mr & Mrs Beattie. 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. 16, Betchton to be diverted is enclosed between temporary fencing and bisects a field used for livestock, yet the area of this field to the east of the path is currently not used. Diverting the path to the eastern field edge would enable better use of the field in terms of livestock (horses) management and would also separate the livestock from the public.
- 10.5 The proposed new route (A-E-D-C on Plan No. HA/088) would run across flat land along the top of the wooded embankment that drops down to Dean Hill Road and be separated from the pasture field by its current eastern boundary fence. From point A, the new route would follow the field boundary firstly in a south easterly direction to point E and then in a southerly direction to point D before bearing westerly for several metres to terminate at point C.
- At its narrowest, the route would be 1.75 metres wide.
- 10.6 Ward Councillor was consulted about the proposal. No comments were received.
- 10.7 Betchton Parish Council has been consulted and members' comments 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.

The Congleton Ramblers Association submitted photographs of the proposed diversion route showing it is currently overgrown and they have registered an objection based on concerns that:

- in the event of the path being diverted out of the grazed area then the entire length of the path would require to be maintained to a reasonable standard.

The landowner's agent has agreed in principal to the implementation of a maintenance agreement. In the absence of a management agreement, it would fall to the Council to maintain it and cut back any overgrowth.

- The land to the east of the existing fence is indeed 1.7 metres wide, but only in part. The path is very much narrower in places.

The minimum width of the path will be 1.75 metres wide. Whatever the width of available flat land is at the moment, if an Order is made and confirmed, then the path will be put in on the ground at the width specified in the order and that will be 1.75m. The Council assures that it will not certify the path as 'fit for public use' unless it accurately reflects the Order specifications including path width. If the land available for the path is narrower in places at present, where this is the case, the Council will require it to be widened either by moving the fence back or some other means.

- The path has a steep drop to the east.

There is no requirement for the Council to request a fence on this land since it is private. However, the landowner has a barbed wire fence boundary (currently hidden in the undergrowth) that should prevent any path users venturing onto the slope and the nature of the slope is a woodland embankment.

- If the proposal is accepted the stiles into and out of the field become redundant, and should be removed.

It is our intention that stiles will not be required on the proposed diversion as the alignment will be outside the area with livestock.

Due to the current overgrowth on the proposed diversion route at present, members of the Congleton Ramblers Association also questioned if there would be consultation once the path was put in place. In response, it was explained that the legal process allows for consultation before a diversion

order is confirmed and before the path is put in place. Thereafter, there are no further opportunities to make comment on the diversion itself.

Given that the Congleton Ramblers Association feel unable to properly assess the footpath diversion due to the overgrowth on the path, they are sustaining their objection. It is not clear exactly which of the above comments are justifying their sustaining their objection although clarity has been requested.

Should any further comments be received from the Congleton Ramblers Association, they will be reported verbally.

The Peak and Northern Footpath Society have stated that they may well register similar objection to those of the Congleton Ramblers Association but no further comments have been received from them. Any further comments will be reported verbally.

No other comments were received.

- 10.10 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.
- 10.11 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current 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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