

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	16 th September 2013
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 Section 119: Application for the Diversion of Public Footpath no. 40 (part), Parish of Mobberley

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.40 (part) in the Parish of Mobberley. 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. 40 Mobberley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/089 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 privacy and security to the applicants' 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 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 An application has been received from Mr and Mrs L Nardo of Two Hoots Barn, Yew Tree farm, Knutsford Road, Mobberley, Knutsford, Cheshire, WA16 7BG requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 40 in the Parish of Mobberley.
- 10.2 Public Footpath No. 40, Mobberley commences at its junction with Knutsford Road at O.S. grid reference SJ 8092 7890 and runs in a generally north westerly direction along the metalled access drive to Yew Tree Farm and Two Hoots Barn. It then weaves between the property buildings of Two Hoots Barn before continuing across pasture land to terminate at its junction with Paddock Hill at O.S. grid reference SJ 8131 7923. The section of path to be diverted is shown by a solid black line on Plan No. HA/089 between points A-B-C-D. The proposed diversion is illustrated on the same plan with a black dashed line between points A-E-D.
- 10.3 The land over which the current path and the proposed diversion run belongs to Mr & Mrs Stubbs. 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. 40, Mobberley to be diverted runs through the property of the applicants giving rise to concerns relating to privacy and security. Diverting the footpath out of the property would offer improved privacy and security.
- 10.5 The proposed new route (A-E-D on Plan No. HA/089) would from point A, enter into the south eastern corner of a field to the west of the access track to the applicant's property. It would then cross this field in a north, north easterly direction to exit into north east corner (point E). It would then enter a second field which it would cross in an east, north easterly direction to then exit the field onto a grass track where it would immediately terminate as it rejoined the current route (point D).

The new route would be 2 metres wide throughout, be unenclosed and have three kissing gates. Within the field entered from point A, a section of the new route would be stone surfaced past Two Hoots Barn. This would guide users along the new route whilst creating equivalent path surfacing comparable with the section of the current route that runs along the access track and through the property (points A-B-C).

Of benefit to the public, the new route would take users away from the close proximity of the property buildings and the owners whilst maintaining views of Two Hoots Barn from a different perspective. It would be a more direct and pleasurable route across pasture land and would be more convenient having three kissing gates instead of stiles.

- 10.6 Ward Councillor was consulted about the proposal. No comments were received.
- 10.7 Mobberley Parish Council has been consulted and any comments received 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 Peak and Northern Footpath Society registered no objection to the proposal. 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 is an improvement on the old route since it has kissing gates instead of stiles.

11.0 Access to Information

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

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