

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	9 th December 2013
Report of:	Greenspaces Manager
Subject/Title:	Highways Act 1980 Section 119: Application for the Diversion of part of Public Footpath No. 4 in the Parish of Rope

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 4 in the Parish of Rope. 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 in the interests of the landowners. 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. 4 in the parish of Rope, by creating a new section of public footpath and extinguishing the current path (as illustrated on Plan No. HA/092) on the grounds that it is expedient in the interests of the landowners.
- 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 landowners for the reasons set out in paragraph 10.6 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 Initial informal consultations have indicated that objections to an order are unlikely. The proposal would move the footpath away from the applicants' home and the proposed new dwelling thereby improving their privacy and security. Moving the footpath to the field boundary would also be of benefit in terms of farm/land management. It is therefore 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 Shavington.

5.0 Local Ward Members

5.1 Councillor David Brickhill.

6.0 Policy Implications

6.1 The proposal supports the following policies and initiatives of the Cheshire East Rights of Way Improvement Plan 2011-2026:

- Policy H3: Public rights of way and green infrastructure: Protect and enhance our public rights of way and green infrastructure and endeavour to create new links where beneficial for health, safety or access to green spaces. Initiative: 'Leisure routes for cyclists, horse riders and walkers'
- Policy H2: Promotion of active travel and healthy activities: Work in partnership to promote walking, cycling and horse riding as active travel options and healthy activities. Initiative 'Public information on the public rights of way network'.

- 6.2 The development of new walking, cycling and horseriding routes for local residents and visitors alike is aligned with the Council's objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Council's commitment to the Change4Life initiative.

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 and Mrs Shaw of Puseydale Farm, Shavington ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 4 in the Parish of Rope.
- 10.2 The applicant owns the land over which the current and the proposed route run. 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 diverting the footpath.
- 10.3 Public Footpath No. 4 Rope runs in a generally south easterly direction from Eastern Road at OS grid reference SJ 6870 5225 to its junction with Public Footpath Shavington cum Gresty No. 10 at OS grid reference SJ 6940 5147. Its total length is 1.2 kilometres. The section of path to be diverted is shown by a solid black line on Plan HA/092 running between points A-B. The proposed diversion is illustrated on the same plan by a black dashed line, again running between points A-B.
- 10.4 The legal definitive line of Rope FP4 is currently unavailable. It is obstructed by fences and has been for a number of years, before the current owners purchased the property. Walkers are currently using a route which runs parallel to the definitive line on land adjacent to Mr and Mrs Shaws property. This anomaly was brought to light when Mr and Mrs Shaw recently submitted a planning application for a new dwelling which, if approved, will be built on the definitive line of the public footpath (as indicated on plan no. HA/092).

- 10.5 To enable development to take place, under normal circumstances the footpath could be diverted under the Town and County Planning Act 1990 section 257. However, this legislation can only be used to divert the section of path directly affected by the development and Mr and Mrs Shaw wish to divert a longer section of the path than that which is directly affected. It is therefore proposed to divert the path under the Highways Act 1980 section 119.
- 10.6 The application, under the Highways Act, has been made in the interests of the privacy and security of the applicant. The proposal would move the footpath away from the applicants' home and the proposed new dwelling. Moving the footpath to the field boundary would also be of benefit in terms of farm/land management. Horses are kept in the paddocks to the north west of Puseydale Farm and moving the footpath to the paddock boundary will enable the landowners to separate walkers from the animals, removing the risk of conflict between members of the public and the horses. The diverted footpath would be unenclosed. It would have a width of two metres and a grass/natural earth surface.
- 10.7 The Ward Councillor has been consulted about the proposal. No comments have been received.
- 10.8 Rope Parish Council has been consulted. No comments have been received.
- 10.9 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.
- 10.10 The user groups have been consulted. The Peak and Northern Footpaths Society has responded to state that they have no objection to the proposal.
- 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 Equality Act 2010 Legislation has been carried out by the PROW Network Management & Enforcement Officer for the area and it is considered that the proposed diversion would be no less easy to use than the existing 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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