

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	9 December 2013
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 Section 119: Application for the Diversion of Public Footpath no. 72 (part) Parish of Rainow, and Public Footpath no. 13 (part) Parish of Macclesfield Forest

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.72 in the parish of Rainow and part of Public Footpath No.13 in the parish of Macclesfield Forest. 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 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 divert the sections 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.72 Rainow and part of Public Footpath No.13 Macclesfield Forest by creating a new section of public footpath and extinguishing the current paths as illustrated on Plan No. HA/091 on the grounds that it is expedient in the interests of the owner of the land crossed by the path and of the public.
- 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 both the landowner and the public for the reasons set out in paragraph 10.3 and 10.9 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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, diverting the footpaths will resolve an anomaly and offer improved land and stock management capability for one of the landowners. 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 Sutton

5.0 Local Ward Members

5.1 Councillor Gaddum

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 This application has been initiated by the Borough Council as complaints have been received from members of the public that the definitive line of the footpath is not available on the ground, an alternative route is in use but this situation is confusing for users of the footpath. There are three affected landowners; the current definitive line of footpath no.72 Rainow is on land belonging to Mr Charles Pickford of Dane Bent Farm, Rainow. The proposed diversion would mean moving the footpath onto land belonging to Mr Colin Pickford of Thornsett Farm, Rainow. The two landowners are related and both are in agreement to the proposal.
- 10.2 The current definitive line and the proposed diversion of footpath no.13 Macclesfield Forest are on land belonging to Mr John Illingworth of Wickenford Farm, Macclesfield Forest.
- 10.3 It is proposed to divert these paths in the interest of the public as it is believed to be due to a drafting error during the Definitive Map process that the path available on the ground is not consistent with the route shown on the Definitive Map. At the point where the two paths meet on the parish boundary (point C on plan no. HA/091) the definitive line is not available; on the ground there is a very steep embankment and a stream with no means to cross and it would appear unlikely that this point would have been used by the path. Further south (point K) is where it is believed that historically the crossing point has always been, here the path is easier to negotiate and there is currently a stile and stepping stones to cross the stream.
- 10.4 Referring to plan no. HA/091, the current definitive line of footpath no.72 Rainow changes from the western side of the field boundary to the eastern side (point A). It then continues in a south-easterly direction along the field edge, it then turns in an easterly direction on the north side of the field boundary (point B) and continues to the parish boundary (point C). The current definitive line is shown as a bold black solid line between points A-C.
- 10.5 It is proposed to divert footpath no.72 onto the western side of the field boundary at point A, so the path will continue in a south-easterly direction in the same field. At point H the proposed path turns in an easterly direction on the southern side of the field boundary for approximately 59 metres. From point I the path turns in a

south-easterly direction and diagonally crosses the field to point J. At this point it is proposed to install a pedestrian gate into the field boundary fence. The proposed route then descends an embankment in a south south-easterly direction to point K where it meets the parish boundary. It is proposed to install an 8 metre bridge to enable pedestrians to cross the stream. At this point there is currently a stile and stepping stones.

- 10.6 It is believed that this is the route that pedestrians have been using, although they have found it difficult to use with no means of crossing the field boundary fence at point J. The landowner has informed the Council that he has suffered damage to his fence at this point. The Footpath Preservation Society Map which was produced at the same time as the parish walking survey's in the early 1950's, shows the line of this path on this proposed route.
- 10.7 The current definitive line of Footpath no.13 Macclesfield Forest begins at point C and follows an easterly direction to point D, it then turns in a generally southerly direction to point E. This section of the definitive line is not available on the ground, as stated above it follows a very steep embankment with dense vegetation. From point E the definitive line follows an east south-easterly direction to point F; this section crosses a grass field. From point F the route follows a south-easterly then south south-easterly direction to point G. This section is also partly unavailable as it crosses a very boggy overgrown area and then through a row of trees; the landowner has a manège for training horses and the definitive line appears to go through it, although the landowner has left a gap between the manège and the boundary. The remainder of the definitive line goes through a tree and foliage area and then finally a grass field edge to point G.
- 10.8 The proposed route follows the line that is currently used by walkers and is similar to the description in the walking survey schedule. From the footbridge at point K the route climbs the embankment in a generally north then easterly direction. It is proposed to replace an existing stile with a kissing gate, the route then crosses the grass field in an east south-easterly direction to point L, and the existing field gate will be replaced with a two-in-one field/pedestrian gate. From point L the route follows an east south-easterly then south south-easterly direction along a roughly stoned surface around the perimeter of the manège area. The route then follows an incline to a grass field, it is proposed to install steps at this point; the route then continues across the grass field in a south-easterly direction to an existing pedestrian gate. At point G the proposed route re-joins the remaining section of footpath no.13 and footpath no.32 Macclesfield Forest.
- 10.9 This diversion is partly in the landowners' interest as the current route appears to go through the manège area; the diversion is therefore required for stock management reasons. There appears to have been confusion over the exact line of this footpath for considerable time, in the farm yard opposite the house, there is an old finger post pointing in a westerly direction. This would indicate that at some point in the past users of the footpath continued further along the driveway to the farm (from point G on plan no. HA/091) and into the farm yard itself.

- 10.10 The Ward Councillor has been consulted about the proposal. No comments have been received.
- 10.11 Rainow Parish Council and Macclesfield Forest and Wildboardclough Parish Council have been consulted; Comments have been received from Rainow Parish Council in the email circulated to members. Discussions will be undertaken with the Parish Council to incorporate as many of their suggestions as possible to the proposed routes.
- 10.12 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.
- 10.13 The user groups have been consulted. At the time of writing no comments were received.
- 10.14 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.
- 10.15 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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