

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. 73 (part), Parish of Rainow

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.73 in the Parish of Rainow. 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.73 by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/090 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 10.7 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 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 Sutton

5.0 Local Ward Members

5.1 Councillor Hilda 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 An application has been received from Mr Colin Pickford of Thornsett Farm, Pedley Hill, Rainow, SK10 5UA requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 73 in the Parish of Rainow.
- 10.2 Public Footpath No. 73 Rainow commences at its junction with Church Lane (Road no. B5470) at O.S. grid reference SJ 9531 7627 and runs in a generally southerly direction across pasture land to terminate to the south of Thornsett Farm at the junction with Footpath No. 72 Rainow at O.S. grid reference SJ 9527 7545. The section of path to be diverted is shown by a solid black line on Plan No. HA/090 between points A-B-C-D-E. The proposed diversion is illustrated on the same plan with a black dashed line between points A-F-G-E.
- 10.3 The land over which the section of the current path to be diverted and the proposed diversion run belongs to Mr C Pickford. 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. 73, Rainow to be diverted commences to the north of Thornsett Farm (Point A on plan no. HA/090). The footpath follows a southerly direction along a rough track to point B, where there is a two-in-one field gate which is closed across the track when livestock are being moved. The path then descends along a surfaced path into the farm yard (point C). The path continues through the farm yard in a south south-westerly direction past several outbuildings (to point D), it then turns in a south south-easterly direction along a stoned track (to point E). It is shown as a bold black solid line between points A-E.
- 10.5 The proposed new route for this section would be to the east of the current route; it is shown as a bold dashed line between points A-F-G-E (on plan no. HA/090). From point A the proposed route follows a south south-easterly direction to point F and then continues in this direction to point G. It then turns in a south-westerly direction to re-join the remainder of footpath no.73 at point E, near to where it meets footpath no.72 Rainow.
- 10.6 The new route would have a width of 2 metres and would not be enclosed; it would be a grass surface. There would be two pedestrian gates required at points F and G. On the current route there are 5 field gates which are used to control livestock around the farm yard. Therefore in terms of accessibility the

new route is considered no less easy to use than the original. The proposed route is more elevated than the current route and offers superior views.

- 10.7 This diversion is in the landowners' interest as the current route goes through the farm yard; the diversion is therefore required for farm management reasons. The diversion would also allow the landowner to improve security around the farm and would have a benefit to his privacy.
- 10.8 The Ward Councillor was consulted about the proposal. No comments were received.
- 10.9 Rainow Parish Council has been consulted and has provided a detailed response, (circulated to members); discussions will be held with the Parish Council to accommodate the points raised wherever possible. The Parish Council have commented on a permissive footpath which runs just to the east of the definitive line between points B-D (on plan no. HA/090), just inside the field boundary. This route is currently used by walkers on a permissive basis as an alternative to the definitive line through the farmyard. The landowner believes that the definitive route may have been wrongly recorded and that the permissive route is actually the route that walkers have always used, there are two stiles built into the dry stone walls at each end of the field which would support this suggestion. However in making this application the landowner has identified the proposed route as his preference for the diversion. Although the current permissive route takes walkers out of the farmyard it does not address the landowners' privacy and security concerns, therefore he would prefer the path to be further away from the farm. In comparing the current and proposed routes for the purpose of this application, it is the definitive line through the farmyard which must be considered as the current route rather than the permissive route.
- 10.10 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.
- 10.11 The user groups have been consulted. At the time of writing no comments were received.
- 10.12 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.
- 10.13 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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