

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	18 th March 2014
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 s.119 Application for the Diversion of Public Footpath no's 12 (part) and 12A, Parish of Hough

1.0 Report Summary

- 1.1 The report outlines the investigation to divert Public Footpath No.12A and part of Public Footpath No.12 in the Parish of Hough. 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 sections of the footpaths 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's 12A and 12 Hough by creating new sections of each public footpath and extinguishing the current path sections as illustrated on Plan No. HA/093 on the grounds that it is expedient in the interests of the owner of the land crossed by the paths.
- 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 paths. 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 paths are 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 paths or ways as a whole.
- The effect that the coming into operation of the Order would have as respects other land served by the existing public rights of way.
- The effect that any new public rights 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 be an improvement to the existing route since it would have less path furniture to negotiate than the current route. 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 Wybunbury

5.0 Local Ward Members

5.1 Councillor Janet Clowes

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 E Wight of the Hollies Farm Kennels & Cattery, Birch Lane (off Cobbs Lane), Hough, nr Crewe, CW2 5RH requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert Public Footpath no. 12A and part of Public Footpath no. 12 in the Parish of Hough.

- 10.2 Public FP No. 12A, Hough, commences at Birch Lane at O.S. grid reference SJ 7156 5053 and runs in a generally south easterly direction through the rounds of Hollies Farm Kennels & Cattery to terminate at its junction with Public Footpath No. 12 at O.S. grid reference SJ 7161 5049. The section of the path to be diverted is shown by a solid black line on Plan No. HA/093 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points A-E-F-G-H.

Public Footpath No 12, Hough commences at its junction with Public Footpath 12A, Hough at O.S. grid reference SJ 7161 5049 and runs in a generally south easterly direction through a pasture field. Immediately after exiting this field, the path bears in a south westerly direction firstly across pasture fields and then along the access drive of Yew Tree Farm to terminate at its junction with Cobbs Lane at O.S. grid reference SJ 7150 5030. The section of the path to be diverted is shown by a solid black line on Plan No. HA/093 between points B-C-D. The proposed diversion is illustrated on the same plan with a black dashed line between points H-I-D.

- 10.3 The land over which the sections of the current paths to be diverted and the proposed diversion run belongs to Mr Wight. 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 footpaths.
- 10.4 Public Footpath No 12A, Hough, to be diverted, passes close to the business buildings and the house of the applicant's property and then across their garden to terminate at a field gate where it joins Hough FP12. Diverting this path away from the applicant's kennel/cattery business and home would enable better management of livestock (dogs) within their business whilst affording improved privacy to their home and greater security for both.

The consequence of diverting Public Footpath No.12A Hough would be that Public footpath No 12 Hough to which it connects would become a cul de sac path. Therefore, by default, to keep the paths connected and so preserve the right to walk between Cobbs Lane and Birch Lane, this path must be moved too. Again, diverting it to the proposed alignment would provide better stock and land management for the applicant.

- 10.5 Referring to Plan No. HA/093, the proposed new route (A-E-F-G-H-I-D) that would be formed from the new section of Public Footpath No's 12A (A-E-F-G-H) and part of 12 (H-I-D) in the parish of Hough. From point A, the new route would run along the tarmac surfaced Birch Lane into a pasture field (point E). It would follow the north and west boundaries of the first field (points E-F-G) skirting a wet area in the south west corner (points G-H) before reaching a kissing gate (at point H) leading to a second field. It would then follow the north and west boundaries of the second field (points H-I-D) to terminate just before the kissing gate in the south west corner where it would rejoin the current alignment of Public Footpath No. 12, Hough (point D).

The route would be 2 metres wide throughout and apart from the tarmac road section along Birch Lane, would have a grassed surface.

Of benefit to users, the new route would offer the following improvements:

- More easily navigable and enjoyable as it would not require users to weave between property buildings.
- Less intimidating to use. The applicant's business deals with dogs. Taking users out of the area where these animals are located would reduce interaction between the two.
- More convenient to use since it would have less path furniture to negotiate than the current route (two kissing gates rather than the two kissing gates and two field gates).

- 10.6 The local Ward Councillor was consulted about the proposal. No comments were received.
- 10.7 Hough and Chorlton 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. No comments were received.
- 10.10 The Council's Nature Conservation Officer has been consulted and 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 an improvement to the current route since it has less footpath furniture to negotiate than the current route ((two kissing gates rather than two kissing gates and two field gates).

11.0 Access to Information

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

Name: Marianne Nixon

Designation: Public Path Orders Officer

Tel No: 01270 686 077

Email: marianne.nixon@cheshireeast.gov.uk

PROW File: 161D/489