

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	16 th June 2014
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 Section 119: Application for the Diversion of Public Footpath Nos. 4 and 5 (parts), Parish of Smallwood

1.0 Report Summary

The report outlines the investigation to divert part of Public Footpath Nos. 4 and 5 (parts), Parish of Smallwood. 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 each footpath concerned.

- 1.1 Members are required to consider all information in the report and make a decision as to whether the proposed footpath diversion is expedient based upon the legal tests prescribed in section 119 Highways Act 1980 set out in this report.

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 parts of Public Footpaths No's 4 and 5, Parish of Smallwood by creating new sections of each public footpath, and extinguishing the current path sections as illustrated on Plan No. HA/096 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 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 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 not be 'substantially less convenient' than the existing route and diverting the footpaths will be of considerable benefit to the landowner in terms of enhancing the security and privacy of property and promoting good land and stock (horses) management. It is considered that the proposed route will provide a satisfactory alternative to the current route and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Brereton Rural Ward

5.0 Local Ward Members

5.1 Councillor John Wray

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 received and not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/inquiry with objections being determined by the Secretary of State. 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 Mrs J Darlington of The Dairy, Bears Head Farm, Newcastle Road, Smallwood, Cheshire, CW11 2GB requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No's 4 and 5 in the Parish of Smallwood.

10.2 Public Footpath No. 4 Smallwood, commences at its junction with Newcastle Road at O.S. grid reference SJ 8044 5909 and runs in a generally north, north easterly direction through the grounds of Dairy House farm and then across two fields. Upon entering a third field, the footpath starts to arc in generally north, north easterly, then northerly and then north, north easterly directions as it passes through two further fields and then along a track adjacent to Smallwood House to terminate at its junction with Church Lane at O.S. grid reference SJ 8060 6011.

Public Footpath No. 5 Smallwood, commences at its junction with Newcastle Road at O.S. grid reference SJ 8049 5884 and enters into a field to the east which it crosses in a north, north easterly direction to then run in a generally north, north westerly direction parallel to the eastern field boundary before entering a paddock which it crosses in the same general direction before following a generally northerly direction over the final few metres to its termination at its junction with Smallwood FP5 at O.S. grid reference SJ 8049 5914.

The section of Public Footpath Numbers 4 and 5, Smallwood, required to be diverted are shown by solid black lines on Plan No. HA/096 and the proposed diversions for these paths are illustrated with a black dashed lines on the same plan, running between points A-I-J-H and between points H-K respectively.

Note that there is a small section of path between points K-L that is not named. This path section will form a new footpath in the Parish of Betchton.

10.3 Mrs Darlington owns the land over which the current paths and the proposed diversion 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 to divert the footpaths.

10.4 The sections of each of Public Footpath No's 4 and 5 Smallwood to be diverted are currently unavailable for public use but if made available, the applicant would benefit from their diversion to a new route to enable better management of land and livestock (horses). Diverting the footpaths to a new route would also offer greater privacy and security to the applicant's property, "Dairy House Farm".

10.5 Referring to the attached plan, HA/096:

The new route would follow a grass track between fences that would skirt the boundary of the fields through which the current paths run. From point A, it would run in a generally southerly direction from the stile curving to then follow generally south, south easterly and then west, south westerly directions (A-I-J-K) along the track terminating at its junction with Newcastle Road (point K).

The path section between points A-I-J-H would become the new route for Smallwood FP4, the path section between points H-K would become the new route for Smallwood FP5. Since the new route crosses the parish boundary between Smallwood and Betchton before reaching the Newcastle Road, the path section between points K and L would form a new path within the parish of Betchton.

The new route would be enclosed between fences, have a grass track and be 2.5 metres wide. There would be kissing gates at points A, H and L.

In summary, the proposed new route would follow a line that would:

- be more convenient for users since it would have kissing gates instead of a solid electric gate and would run in a more direct route through the applicant's property that would reduce interaction between users and the applicants and their livestock (horses).
- enable the applicant to better manage their land and livestock.

This diversion would be made in the interests of the landowner.

10.6 The Ward Councillor has been consulted about the proposal. No comments were received.

10.7 Smallwood and Betchton Parish Councils have been consulted and did not register any objection. Members of Betchton Parish Council formally registered that they did not have any objection.

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 other comments have been received.

10.10 The Council's Nature Conservation Officer has been consulted and has 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 will not be 'substantially less convenient' than the existing route.

12.0 Access to Information

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

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