

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 16th March 2015
Report of: Public Rights of Way Manager
Subject/Title: Highways Act 1980 s.119
Application for the Diversion of Public Footpath no. 13 (part),
Parish of Over Alderley

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.13 in the Parish of Over Alderley. 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.13 by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/099 on the grounds that it is expedient in the interests of the public and 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 both the public and the landowner for the reasons set out in paragraph 10.8 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 and diverting the footpath will offer improved privacy and security for the landowner and will be safer for the public by keeping them away from the quarry area. 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 Chelford and Prestbury.

5.0 Local Ward Members

5.1 Councillor G Walton and Councillor J P Findlow.

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. and Mrs. K. Oakes of Haymans House, Hocker Lane, Over Alderley, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 13 in the Parish of Over Alderley.
- 10.2 The land over which the section of the current path to be diverted and the proposed diversion run belongs to Mr and Mrs Oakes. 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. The first part of this proposed diversion is in the interest of the landowner, the second section is in the interest of the public.
- 10.3 Public Footpath No. 13 Over Alderley commences on Hocker Lane at O.S. grid reference SJ 8531 7604 (point A on plan no. HA/099) at the point where Over Alderley Bridleway no.23 and Nether Alderley Bridleway no.39 meet. It runs in a generally north easterly direction along the drive to the property, which is a semi-surfaced track. At point B the current definitive line of the footpath enters the adjacent field through a field gate at O.S. grid reference SJ 8547 7623. The section of path to be diverted is shown by a solid black line on Plan No. HA/099 between points A and B. The proposed diversion is illustrated on the same plan with a black dashed line between points F-G-H.
- 10.4 The proposed new route for this section is to the west of the current route, alongside the access track on the field side; it is shown as a bold dashed line between points F-G-H. From point F the proposed route follows a north easterly direction to point G and then continues in this direction to point H. It then re-joins the remainder of footpath no.13 at point B.
- 10.5 The proposed new route is currently used by the public as a footpath, and according to public rights of way records this section of footpath no.13 has been maintained in an offline position in the past by the previous authority, Cheshire County Council.
- 10.6 Discussions were held with the landowners in 2007/8; they were informed that the correct alignment, according to the Definitive Map, was along the access track (A-B). They had concerns in relation to their privacy and security if the

route were realigned, as long as they remember the route had always been in the field, along the field edge. They therefore agreed to apply for a diversion order. It has only recently come to light that even though works were carried out by Cheshire County Council to install new path furniture, the legal order diverting the route was not made.

- 10.7 The new route would have a width of 2 metres, except for one point where it is restricted to 1.3 metres between the fence and a tree. The route would not be enclosed and it would be a grass surface. There are currently three kissing gates at points F, G and H, and these would remain in situ. On the current route there are field gates. Therefore in terms of accessibility the new route is considered no less easy to use than the original.
- 10.8 This part of the diversion is in the landowners' interest as the current route goes along the driveway to the property; the diversion would allow the landowners to improve their privacy and security.
- 10.9 The second proposal is around the quarry area of footpath no.13 Over Alderley. It is proposed to divert this section in the interest of the public, as the definitive line of the footpath is within the boundaries of the quarry and at some point has been quarried away. To make this route available would be a danger to the public, due to the proximity of the path to the quarry.
- 10.10 Again referring to the attached plan (plan no. HA/099). The current definitive line is shown as a bold black solid line between points C-D-E.
- 10.11 It is proposed to divert footpath no.13 onto the route C-I-E, shown as bold dashed lines. The proposed route follows the line that is currently used by walkers. At point E there is a kissing gate and the proposed route re-joins the remaining section of footpath no.13. The route C-I-E keeps the line of the path within the field boundary and away from the quarry area, the footpath would be 2 metres wide and unenclosed; it has a grass surface.
- 10.12 The Ward Councillors were consulted about the proposal. No comments have been received.
- 10.13 Over Alderley and Nether Alderley Parish Councils have been consulted. Nether Alderley Parish Council has responded and has no objections to the proposal. No response has been received from Over Alderley Parish Council.
- 10.14 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.
- 10.15 The user groups have been consulted. The Peak and Northern Footpath Society has no objection to the proposals. The East Cheshire Ramblers also have no objection and state that the diversion appears to follow the path that has been walked for a number of years and appears to be in very good condition. No further responses have been received.

- 10.16 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.
- 10.17 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management 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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