

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	16 th March 2015
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 s.119 Application for the Diversion of Public Footpath No. 21 (part), Parish of Lower Withington

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.21 in the Parish of Lower Withington. 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.21 Lower Withington by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/100 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 10.4 & 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 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 be of considerable benefit to the landowner in terms of offering enhanced security and privacy to his property. 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 Gawsworth

5.0 Local Ward Members

5.1 Councillor Lesley Smetham

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 Anthony Cotter (agent) of Midas Investment Management Ltd, Basement Office, 21 Brompton Square, London, SW3 2AD on behalf of Mr Mark Sheppard whose family own Mallerstang, Congleton Lane, Chelford, Cheshire, SK11 9AG requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 21 in the Parish of Lower Withington.
- 10.2 Public Footpath No. 21, Lower Withington, commences at its junction with Congleton Lane at O.S. grid reference SJ 8260 7314 from where it enters a hedge bound grass track via a stile which it follows in a generally north easterly direction to then pass through arable fields in generally east, north easterly and north easterly directions to enter woodland within which a pedestrian footbridge takes it across a stream to its termination point at the Parish boundary where it joins Chelford FP13. The section of path to be diverted is shown by a solid black line on Plan No. HA/100 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points C-D-E-F-G.
- 10.3 The land over which the current path and the proposed diversion run belongs to Mr Mark Sheppard's family. 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 Virtually the entire length of Public Footpath No. 21, Lower Withington detailed in section 10.2, is to be diverted with the exception of the stretch running over the pedestrian footbridge and on to the Parish boundary. As it runs through the arable fields, this section of Lower Withington FP21 runs in close proximity to the applicant's property and diverting it would afford improved privacy and security for the applicants by taking users further away from their property.
- 10.5 The new route would follow a generally south, south easterly direction from the bridge over the stream towards Mill Lane. The new route would follow a woodland path skirting a pond en route and then ascending to a more grassed surface along the edge of a field. It would follow this for a short section before descending to cross an 8m timber footbridge over a boggy area past a second pond. It would then ascend once more to reach the boundary

fence between the woodland and adjacent field to the west and would run along this fence line within the woodland. On reaching 5 'earth and timber' steps, it would descend to Mill Lane where it would terminate.

The new route would be 2 metres wide throughout except for over the footbridge and at the steps where it would be approximately 0.9 metres and 1 metre respectively. The surface of the new route would be woodland earthen path and grass.

Although not currently certified as meeting Council standards, the new proposed route has been installed on the ground by the applicant and is currently private although by permission, may be used by the public. Consequently, the impact of water logging has been taken into account when designing this new route and drainage solutions put in place (installation of a pipe drain, raising the path as appropriate, installation of a footbridge, etc.).

The landowner has agreed to provide a sum of money to provide for the future increased maintenance liability of the path due to the increased length and structures present.

It is recognised that the proposed new route would be much longer than the length of the current path section to be diverted. However, looking at the wider path network (see plan entitled 'Rights of Way Network around Lower Withington FP21'), this new route would provide users with an alternative to having to use Congleton Lane to reach Lower Withington BR8 and Lower Withington FP22, and would be of a similar distance.

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

- be more convenient since it would be a 'barrier free route' whereas the current path has four stiles.
- be more enjoyable as it would pass through natural woodland that would be more scenic and interesting from a wildlife perspective, than the current route through the fields.
- provide an alternative link for users to connect with Lower Withington BR8 or Lower Withington FP22 rather than having to walk along the metalled Congleton Lane for approximately 0.5km with moving traffic.
- Afford improved privacy and security for the applicant.

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

- 10.6 Ward Councillors have been consulted about the proposal. No comments were received.
- 10.7 Lower Withington Parish Council has been consulted. No comments have been received to date and will hereafter 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 objections have been received. Following inspection, the East Cheshire Group of the Ramblers Association and the Alderley Wilmslow and District Footpath Preservation Society registered their approval for the new route. The latter found it to be very enjoyable and attractive providing satisfactory links with other footpaths in the area.
- 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 Legislation 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that despite being longer, the proposed diversion is an improvement on the current route as it does not have any path furniture whereas the current route has four stiles. It has steps and a footbridge but the current route also has steps and the footbridge on the proposed diversion route is easily negotiated being open at both ends. Further, the proposed diversion route provides more varied scenery and offers a more convenient link to the southern path network compared to the current link along Congleton Road where walkers must remain mindful of traffic.

11.0 Access to Information

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

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