

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 15th June 2015
Report of: Public Rights of Way Manager
Subject/Title: Highways Act 1980 s.119
Application for the Diversion of Public Footpath No. 8 (part),
Parish of Crewe

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.8 in the Parish of Crewe. 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.8 Crewe by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/101 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 Crewe East Ward

5.0 Local Ward Members

5.1 Councillor D Newton
Councillor S Brookfield
Councillor C Chapman

Please note that Councillor M Martin, Councillor C Thorley and Councillor D Newton were consulted on the proposal detailed within this report since the informal consultation was undertaken prior to the recent elections.

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 S Wheeler of Race Farm, Waldrons Lane, Coppenhall, Crewe, Cheshire, CW1 4PT requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 8 in the Parish of Crewe.

10.2 Public Footpath No. 8, Crewe, commences at its junction with Waldron's Lane at OS grid reference SJ 7079 5787 and runs in a generally north, north easterly direction across four pasture fields to terminate at its junction with Groby Road at OS grid reference SJ 7101 5830. The section of path to be diverted is shown by a solid black line on Plan No. HA/083 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points D-C.

10.3 The land over which the current path and the proposed diversion run belongs to Mr S Wheeler. 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. 8, Crewe to be diverted enters a field (point A) and runs along the eastern boundary close to the applicant's property (points A-B) before entering a fenced section leading to an exit stile at the north eastern field corner (point C). Diverting this section of footpath to run along the northern field boundary would afford the applicant improved security and privacy by taking path users further away from his property buildings and adjacent land.

10.5 The new route would start at its junction with Waldrons Road from where it would enter into a fenced section of path via a kissing gate (point D). It would run along this fenced section in a generally east, south easterly direction along the northern field boundary to join the current footpath immediately before the stile at the north eastern field corner (point C).

The fenced section would have a width of 2.5 metres and have a grass surface.

A drain would be installed at the beginning of the new route from Walldrone Road (point D) to resolve current drainage issues and this would be covered and the path surface levelled.

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 Crewe Town Council has been consulted. No comments were received.
- 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. The members of the Peak and Northern Footpath Society registered that they have no objection to the proposal although their footpath inspector noted the need for regular maintenance of the footpath. 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 Legislation 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion is not substantially less convenient than the old route.

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: 344D/503