

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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**Date of Meeting:** 7<sup>th</sup> December 2015  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 s.119  
Application for the Diversion of Public Footpath No. 11,  
Parish of Basford

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### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert Public Footpath No. 11 in the Parish of Basford. 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 Public Footpath No.11 Basford by creating a new public footpath and extinguishing the current path as illustrated on Plan No. HA/102 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 No objections to the proposal have been received through the informal consultation process. The proposed route will not be 'substantially less convenient' than the current route and diverting the footpath will be of benefit to the landowner by concluding changes to the Public Rights of Way network that were required to enable a permitted planned residential development (Planning application: 13/0336N). The changes were necessary to preserve a public right of way between the A500 and Crewe Road.

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 Haslington and Shavington wards

#### **5.0 Local Ward Members**

5.1 Councillor S Edgar, Councillor D Marren and Councillor J Hammond

#### **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/an 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 P Heslop of Goodmans Real Estate (UK) Ltd, Nelton House, Central Boulevard, Blythe Valley Park, Solihull, West Midlands, B90 8BG requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 11 in the Parish of Basford.

10.2 Public Footpath No. 11, Basford, Public Footpath No. 11 Basford commences on Weston Lane (C504) at OS grid reference SJ 7161 5221 and runs in a generally north westerly direction to its junction with Public Footpath No. 2 Shavington cum Gresty at OS grid reference SJ 7108 5324.

The path to be diverted is shown by a solid black line on Plan No. HA/102 running between points A-B. The proposed diversion is illustrated on the same plan by a black dashed line running between points B-C.

10.3 Goodmans Real Estate (UK) Ltd own the land over which the current path 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 footpath.

10.4 In 2013, the part of Public Footpath No.11 Basford proposed for diversion, was to be diverted under the Town and Country Planning Act 1990 S.257 in response to the following planned development:

*Planning Application **Planning Application 13/0336N** - Outline application for residential development (up to 370 units), Offices (B1), local centre comprising food and non-food retail (A1) and restaurant/public house (A3/A4), hotel (C1), car showroom and associated works including construction of new spine road with accesses from Crewe Road and A500, creation of footpaths, drainage including formation of SUDS, foul pumping station, substation, earthworks to form landscaped bunds, provision of public open space and landscaping*

As resolved by the Rights of Way Committee in 2013 (see Rights of Way Committee Minute No. 18, 16<sup>th</sup> September, 2013), two unopposed Legal Orders were made that would extinguish Shavington cum Gresty FP2 and divert a short section of Basford FP11 such that it would link to the new spine road, 'John Mills Way', once this road was adopted by the Council.

The spine road has now been completed and adopted and, the landscaped bunds detailed above have been installed, including storm water balancing ponds. It was the intention that the unopposed legal orders would be confirmed and made operable at this point to conclude the necessary path changes required to preserve the public right of way between the A500 and Crewe Road. However, further consideration of the diversion route has resulted in the applicant submitting a new proposal that would allow the footpath to be better aligned through the landscaped area.

Although the previous extinguishment and diversion were progressed under the Town and Country Planning Act, Section 257, the legal test to enable development is not met by the circumstances of this new diversion and it must therefore be processed under section 119 of the Highways Act 1980.

- 10.5 Referring to Plan No. HA/102, the proposed new route (points B-C) would start at point B and would run in a generally westerly direction through a gap in a sound fence to continue to cross over a tarmac 'Y' shaped area to its junction with John Mills Way (point C) where it would terminate.

Since the new route would straddle the parish boundary, a short section of new footpath would be created in the Parish of Shavington cum Gresty that would take the new route to its junction with John Mills Way (Parish Boundary – point C).

The new route would be 2 metres wide and have surfaces of tarmac over the 'Y' shaped area and topsoil between the tarmac 'Y' and the current footpath (point C).

The diversion would be made in the interests of the landowner to complete the new public right of way between the A500 and Crewe Road using Basford FP11 (part) and the recently adopted road network (adopted August 2015).

- 10.6 Ward Councillors have been consulted about the proposal. No comments have yet been received. Received comments will be reported verbally.
- 10.7 Weston and Basford and, Shavington-cum-Gresty, Parish Councils have been consulted.

Members of Weston and Basford Parish Council have registered no objection to the diversion.

Received comments from members of Shavington cum Gresty Parish Council 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 and no objections have been received. However, the Peak and Northern Footpath Society referred to section 7.8 of the Rights of Way Circular which gives the following guidance:

'In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.'

The proposed diversion is not aligned along any estate roads and all other path changes in relation to offering a route along the adopted estate roads within the development have been concluded such that they can be confirmed and made operable.

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 Equality Act 2010 Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion is not substantially less convenient 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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