

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 14th March 2016
Report of: Public Rights of Way Manager
Subject/Title: Highways Act 1980 s.119
Application for the Diversion of Public Footpath no. 24 (part),
Parish of Bollington

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.24 in the Parish of Bollington. 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 landowners 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.24 by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/104 on the grounds that it is expedient in the interests of the owners 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 landowners for the reasons set out in paragraph 10.7 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 would allow the landowners to continue with their current quarrying permissions. 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 Bollington.

5.0 Local Ward Members

5.1 Councillor Amanda Stott; Councillor Jonathon Weston

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 A joint application has been received from Mr. and Mrs. Earl of Sycamore Quarry; and Mr Beardmore of Endon Quarry, Windmill Lane, Kerridge, Macclesfield, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 24 in the Parish of Bollington.
- 10.2 The land over which the section of the current path to be diverted, and the proposed diversion run, belongs to the applicants; with the exception of approximately 10 metres of the current route from point A (on plan no. HA/104). This small section of the route is on land belonging to Mr D. Tooth, who has provided his written consent to the diversion. 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.
- 10.3 Public Footpath No. 24 Bollington commences on Windmill Lane (road no. UW2053) at O.S. grid reference SJ 9380 7652, and runs in a generally south-easterly direction to point D (on plan no. HA/104), where it meets at a junction with four other public footpaths. Approximately the first 157 metres of footpath no.24 is unaffected and follows a track. The section of path to be diverted is shown by a solid black line on Plan No. HA/104 between points A-B-D. The proposed diversion is illustrated on the same plan with a black dashed line between points A-B-C.
- 10.4 The section of Public Footpath no.24 to be diverted commences at point A (on plan no. HA/104) and runs in a east north easterly direction for approximately 75 metres then turns in a generally south-easterly direction for approximately 270 metres to point D. The current definitive line of the footpath is partly not available on the ground. The first section is extremely steep and goes through a wooded area and a post and wire fence. Then a section of the route goes through the actual working quarry, and the route has been quarried away. The southern section also has a very steep gradient and is in close proximity to the edge of the working quarry area and large earth moving machinery.
- 10.5 The proposal is to divert the footpath onto a new route that is currently being used as a permissive path, although improvements will need to be made. From point A (on plan no. HA/104) the proposed route follows a southerly then easterly direction to point B. The first section ascends a flight of steps through the wooded area, the path then continues on a level gradient between two post and wire fences. This is the only section of the proposed route that will be enclosed and is for a length of approximately 75 metres. From point B the

path follows a generally easterly direction; it has a gradual then much steeper gradient climbing up to the ridge at point C where it joins Public Footpath no.46 Bollington at point C.

- 10.6 The new route would have a width of 2 metres. The route would be enclosed for approximately 75 metres of its length between post and wire fences and it would be a stone/earth surface. There is no requirement for any furniture on the route. The majority of work required would be to the section between points B-C; steps will be installed and resurfacing as required.
- 10.7 This diversion is in the landowners' interest as the current route partly goes through their working quarries or within close proximity; the diversion would allow the landowners to continue with their current quarrying permissions. To make the definitive route available would hinder their current practice due to the proximity of the path to the quarry face and heavy machinery. The landowners believe the alternative route is not substantially less convenient than the definitive path and that the enjoyment of the path as a whole is not affected.
- 10.8 To reinstate the footpath on its original line would be a very lengthy process, not cost effective and in the meantime this does not help the public as there is no legally recognised useable route. After considerable negotiations with the current landowners, officers agreed to progress this application for a diversion of the footpath under the Highways Act s119; which is funded by the landowners. It is considered that this is the best way forward to hopefully resolving the problem and re-instating a safe and useable path for the public.
- 10.9 The Ward Councillors were consulted about the proposal. No comments have been received.
- 10.10 Bollington Town Council have been consulted; their Footpaths Committee has responded. They state that this footpath has been a major issue for them for many years and it would be good to see a resolution. They convey their support for the application providing that the landowners carry out the necessary work as agreed to a satisfactory standard; in particular the section between points B and C which requires the installation of steps.
- 10.11 Councillor Ken Edwards (Bollington Town Council) has commented that reinstating a version of footpath no.24 would be beneficial. He does state however that the top footpath (footpath no.46 Bollington) is well worn, this proposal would encourage increased use of it and this is of concern to local users.
- 10.12 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.
- 10.13 The user groups have been consulted. The Peak and Northern Footpath Society has no objection to the proposals. The East Cheshire Ramblers have

stated they are prepared to accept the diversion of the footpath as proposed provided that no further extraction is proposed for, or carried out on, the upper levels (closest to the ridge); the new path from A to C is brought up to standard by the installation of steps and hard surfacing as necessary; if the length from B to C was to be fenced they would wish to see a width of 2.5 metres between the fence lines. Finally they state the surface of the length of Bollington FP46 from point C to D needs substantial improvement commensurate with its popular use. With regard to their comments, further extraction is not something the Public Rights of Unit would have control over; the landowners would have to apply for planning permission for this. The width of the new path and the required works are stated in paragraph 10.6 above. The condition of the surface of footpath no.46 is something the Network Maintenance Officer is aware of and will be monitoring. No further responses from the user groups have been received.

- 10.14 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.
- 10.15 Officers have received one complaint from a member of the public, Mr G. Williams. Mr Williams states that he used to use footpath no.24 before it was closed. He claims that the landowners closed this path, without permission, a number of years ago and have since quarried away some of the path for profit at the expense of the local population. He states that as it has now been closed for many years, either the Council has failed in its duty to preserve the public right of way, or the landowners have a blatant disregard for law or authority. Mr Williams refers to the permissive path, which is the route of the proposed diversion; he states this is very steep and potentially unsafe. He says the diversion forces people to walk along the ridge (FP46 Bollington) which is heavily used and constantly muddy. He has concerns for the beautiful views from footpath no.46, stating that the landowner may reduce or obliterate any views the public may have by moving earth into mounds, which has been done previously. He also states the view of the ridge from Bollington may also potentially be changed forever as a result of further quarrying that will most likely occur if the footpath is moved. Finally he is concerned that if the footpath is diverted it sends out the message that the landowner can do what he wants with regards to the right of way.
- 10.16 Officers have responded to Mr Williams and explained that the issues with footpath no.24 are very long standing. Since the early 1990's various attempts have been made to protect and make available this footpath, by a number of different officers. As it now appears that the footpath is beyond reinstatement, it is considered that a diversion is the best way forward to resolving the problem. If the proposed route becomes the definitive line of the footpath works would be required; Cheshire East Council would ensure that the gradient, surfacing, fencing and signage were to the required standard before the legal process of diverting the path was completed. With regard to Mr Williams' comments on the condition of the surface of footpath no.46, the Network Maintenance Officer will monitor this and take appropriate action if any surfacing works are required.

- 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.

12.0 Access to Information

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

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