

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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**Date of Meeting:** 14<sup>th</sup> March 2016  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 s.119  
Application for the Diversion of Public Footpath No. 3 (part),  
Parish of Alpraham

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### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.3 in the Parish of Alpraham. 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.3 Alpraham by creating a new section of public footpath and extinguishing the current path as illustrated on HA/107 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 aiding with land management, livestock ( keeping of horses) around their stables and offering enhanced security and privacy to their 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 Bunbury

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

5.1 Councillor Michael Jones

#### **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 Claire Goodman (Public Rights of Way Consultant) on behalf of Carol Hutchison, Elm Tree Cottage, Alpraham, Cheshire, CW6 9JQ requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 3 in the Parish of Alpraham.
- 10.2 Public Footpath No. 3, Alpraham commences south west of the dwelling of Elm Tree Cottage at its junction with Public Footpath No 5 Alpraham at OS grid reference SJ 5845,5996 and runs in a generally north, north easterly direction across pasture fields to terminate at its junction with Pinfold Lane at OS grid reference SJ 5868,6009. The section of path to be diverted is shown by a solid bold black line on Plan No. HA/107 between points A-B-C-D-E. The proposed diversion is illustrated on the same plan with a bold black dashed line between points A-F.
- 10.3 The land over which the current path and the proposed diversion run belongs to Carol Hutchison. 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. 3, Alpraham to be diverted starts immediately after a stile at the south west corner of a pasture field (point A). From here, it follows across the field in a north-easterly direction before crossing a short section of a smaller field (B-C) to exit into a third field. It continues through this field in the same direction to exit onto a surfaced driveway (point D) which it then follows to its termination point at its junction with Pinfold Lane (point E). Diverting the path would enable the applicant to better manage land, livestock (horses) and operations within the grounds of their stables whilst providing users with a more convenient route that would be no less enjoyable than the current route but would be more convenient as it would have less path furniture to negotiate and also eliminate the need to negotiate the livestock.
- 10.5 The proposed new route would start at Point A and would follow a generally easterly direction to the north of an existing hedge boundary to exit onto a lane, Hilbre Bank, where it would terminate (point F).

The entire length of the new route would have post and rail fencing installed along one side and be bounded by an existing hedge along the other. The whole section would have a minimum width of 2.5 metres and have a grass surface.

Existing rank vegetation would be cut back and trees pruned or removed (including stumps) where necessary. The applicant has indicated that they would agree to undertake future maintenance of this footpath with respect to overgrowth of surrounding vegetation and trees.

The pedestrian gate on the new route at point F would be set back from the lane to give users an area of verge from which to stand and view oncoming traffic. It would also be graded sufficiently so that there was no steep drop onto the area of verge.

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

- 10.6 The local councillor has been consulted about the matter and fully supports the proposal.
- 10.7 Alpraham Parish Council has been consulted and members fully support the proposal stating they believe it would make the footpath more accessible.
- 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. The South Cheshire Ramblers also have no objection to the proposal as long as (i) the height difference between the road and field at Point F is addressed by a steady incline as a result of works done if proposal successful and (ii) suggest that redundant kissing gates on existing route could replace stiles on part of proposed route.
- 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:

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