

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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**Date of Meeting:** 13<sup>th</sup> June 2016  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 s.119  
Application for the Diversion of Public Footpath no. 5 (part),  
Parish of Broomhall

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### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.5 in the Parish of Broomhall. 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.5 by creating a new section of public footpath and extinguishing the current path as illustrated on Plan no. HA/105 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 10.7 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 will offer the most efficient land and stock management capability for the landowner on their smallholding. 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 Audlem

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

5.1 Councillor Rachel Bailey

#### **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 Peter Hollinshead of Honeysuckle Cottage, Heatley Lane, Broomhall CW5 8BA requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 5 in the Parish of Broomhall. The alignment of the current footpath has been inadvertently obstructed by the recent erection of an agricultural building designed for storage and potentially housing cattle. Honeysuckle Cottage comprises of a smallholding with attached grazing land. The building has been sited in order to best utilise the available land. A retrospective planning application was made to the Council and it was the consultation for this application that brought the matter to the attention of the PROW Unit. A site meeting was arranged with the landowner during which it became clear that the available route of the footpath had been slightly offline and hence the misunderstanding regarding the siting of the building. The application for planning permission has since been withdrawn until the diversion order has been processed.
- 10.2 Public Footpath No. 5 Broomhall commences at its junction with Heatley Lane (C 509) at O.S. Grid Reference SJ 6265 4654 and runs in a generally south westerly then southerly direction across pasture to its junction with Broomhall Footpath no. 8 and continuing south westerly to its junction with Newhall FP 14 at the parish boundary at Grid Reference SJ 6242 4581. The section of path to be diverted is shown by a solid black line on Plan no. HA/105 between points A-C. The proposed diversion is illustrated on the same plan with a black dashed line between points A-B-C.
- 10.3 The land over which the section of the current path to be diverted and the proposed diversion run belongs to Mr Hollinshead. 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. 5, Broomhall to be diverted commences at Heatley Lane (Point A on Plan no. HA/105). The footpath runs in a south-westerly direction across a field then via a stile, cutting across the corner of the hard standing area of the yard, where the building is sited, it then crosses by a second stile into a paddock continuing in a south westerly direction to

Point C on Plan no. HA/105 at Grid Reference SJ 6258 4642. It is shown as a bold black solid line between points A-C.

- 10.5 The proposed diversion for this part of Footpath no. 5 would run from Heatley Lane (Point A on Plan no. HA/105) also in a generally south westerly direction to the corner of the fenced yard area (Point B on Plan no. HA/105) at Grid Reference SJ 6260 4648; through a kissing gate and continue south south-westerly across the paddock to Point C on Plan no. HA/105 and its junction with the unaffected length of Footpath no. 5 at Grid Reference SJ 6258 4642. It is shown as a bold dashed line between points A-B-C (on Plan no. HA/105).
- 10.6 The new route would have a width of 2 metres and would not be enclosed; it would be a grass surface. There would be one kissing gate required at point B. On the current route there are 2 stiles to accommodate the path where it crosses the yard. Therefore in terms of accessibility the new route is considered no less easy to use than the original. The proposed route is approximately 135 metres in length; the current route is approximately 132 metres so in terms of convenience there is no negligible difference.
- 10.7 This diversion is therefore in the landowners' interest and required for land and animal management reasons. The diversion would also allow the landowner to improve security around the farm and would have benefits for the landowner's privacy.
- 10.8 The Ward Councillor was consulted about the proposal. No comments were received.
- 10.9 Sound and District Parish Council has been consulted and has responded to say that they unanimously support the proposal.
- 10.10 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.
- 10.11 The user groups have been consulted. At the time of writing no comments were received.
- 10.12 The Council's Nature Conservation Officer has been consulted; no comments have been received.
- 10.13 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Maintenance 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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