

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 13th June 2016
Report of: Public Rights of Way Manager
Subject/Title: Highways Act 1980 s.119
Application for the Diversion of Public Footpath Nos. 12
(part), Parish of Goostrey

1.0 Report Summary

- 1.1 This report seeks to assist Members in the determination of an application to divert part of Public Footpaths No.12 in the Parish of Goostrey as shown on Plan 1 attached to the report.
- 1.2 The report includes the outcome of consultations carried out in respect of the proposal and the legal tests to be considered before a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit because an application has been made by the landowner concerned. The report makes a recommendation based upon the above information, to enable a quasi-judicial decision to be made by Members whether or not to make the requested Order.

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 Footpaths No.12 Goostrey by creating a new section of public footpath and extinguishing the current path as illustrated on Plan HA/110 attached to this report 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- 2.3 In the event of objections to the Order being received, and not subsequently withdrawn the Order be referred to the Secretary of State to be determined.

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 Section 10 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 to which:

- The diversion would have on public enjoyment of the path as a whole
- The effect on other land served by the path
- Any provisions for compensation
- Any material provision within a Rights of Way Improvement Plan
- The needs of agriculture and forestry; biodiversity; and disability discrimination legislation

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 increase the perception of both the security and privacy of the 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 can be satisfied.

4.0 Wards Affected

4.1 Dane Valley

5.0 Local Ward Members

5.1 Councillors Les Gilbert and Andrew Kolker

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 The application has been received from Robin Carr Associates (agents) on behalf of Mr & Mrs Dick of Swanwick Hall, Booth Bed Lane, Goostrey, Cheshire CW4 8NB. The application requests that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath Nos. 12 in the Parish of Goostrey as shown on Plan HA/110 attached to this report.
- 10.2 The land over which the current path and the proposed diversion run belongs to Mr & Mrs Dick. 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 The section of footpath proposed for extinguishment is the whole width of that part of Public Footpath, Goostrey No 12 shown by a solid black line on Plan HA/110 and commencing at O.S. grid reference SJ 37665 37041 (Point A) and running in a generally north easterly direction along the driveway to Swanwick Hall (passing over a bridge) and then through the farm yard (passing between the Hall and farm outbuildings) to a double hand gate structure at O.S. grid reference SJ 37674 37051 (Point B). The footpath then turns and runs along the field boundary in a generally south easterly direction, crossing a boardwalk with a hand gate at each end, and then again in the same general direction along the field boundary to O.S. grid reference SJ 37686 37046 (Point C). The length of this section of footpath (A – B – C) is approximately 265 metres.
- 10.4 The proposed new footpath is shown by a broken black line on Plan HA/110 and commences at O.S. grid reference SJ 37665 37041 (Point A) where it leaves the driveway to Swanwick Hall and passes through a hand gate before running along the field boundary in a generally south south-easterly direction to O.S. grid reference SJ 37671 37032 (Point D) where it turns in an arc and proceeds down a re-graded slope and runs in a generally north easterly direction crossing a footbridge over the brook and then continue up a further slope initially along the field boundary and then across the open field passing through a hand gate to O.S. grid reference SJ 37686 37046 (Point C). The length of the proposed new footpath is approximately 315 metres. The new route would be 2 metres wide and unenclosed. The surface of the new route

would be grass with some stoning/surface improvements on gradients and in the vicinity of any gate ways should this prove necessary.

- 10.5 The proposed new route was established in 2014 on a permissive basis (prior to a formal diversion application being submitted) in full consultation with the Goostrey Footpath Group and Officers of the Council. At this time the Footpath Group were broadly in favour of the proposal, but they did express reservations regarding issues surrounding access for people with mobility problems.
- 10.6 Following the submission of the application a number of objections were received, again relating to accessibility issues for people with mobility problems. These are discussed in more detail below. In response to these objections an access audit was commissioned by the applicant from a specialist in countryside access for people with disabilities. The subsequent "Access Report" (Appendix 1) recommended various improvements (including additional improvements to gradients etc) which have been implemented. The Access Report was circulated as part of a second consultation exercise on the revised proposal, which is the matter members are being asked to consider.
- 10.7 The current path runs immediately in front of the residential property and then between it and the adjoining barns/ farm buildings through what was originally an area of farm yard, but is now more akin to the driveway, parking area and garages to the house. Moving the footpath out of such an area will clearly increase the perception of both security and privacy of the property. As such the proposal is considered to be in the interest of the owner of the land and that the diversion of the footpath is a suitable and appropriate (expedient) means of addressing these issues.
- 10.8 Whilst the proposed new route is approximately 50 metres longer than the existing route, and any such increase in distance may be considered to have an impact on the convenience of the route, this must be considered in context taking into account factors such as the primary use that a path receives (e.g. to get to local amenities or recreation) and the overall length of the path or journey to be undertaken. In this instance the increased distance of 50 metres is not considered unreasonable given the rural setting of the footpath and the generally recreational use that it receives.
- 10.9 Consideration may also be given to the number of structures (e.g. stiles and gates etc) that have to be negotiated when using the route. The Access Report identified that the affected section of the existing footpath has a number of difficult structures (including a double gate structure and a difficult board walk) and, in part, a potentially problematic (gravelled) surface. The proposed new route will have only two gates, a footbridge which is more accessible than the board walk and better surface. In addition, work has been undertaken to improve drainage and gradients towards meeting acceptable access standards. In considering the proposal overall it is considered that the proposed new route is not substantially less convenient than the existing footpath.

- 10.10 With regard to the enjoyment of the route, the proposed new route affords walkers excellent views of the surrounding area, along with access down to the stream. Whilst views of the front of the Hall are lost, these are replaced by views of different aspects of the property and wildlife areas to its rear. On balance it is not therefore considered that the diversion will have a detrimental effect on the enjoyment of the path as a whole.
- 10.11 The land crossed by the existing and proposed routes is all in the same ownership and no private rights of access will be affected by the proposals. There is therefore no adverse effect on any land served by the footpath. Similarly, as the land is all in the same ownership, and the land owners are the applicants, no compensation issues should arise.
- 10.12 An assessment of the ROWIP for the Cheshire East Council area has been made and there are no material provisions within the document that adversely affect the proposals, and the proposal is not considered to have any detrimental effect on the needs of agriculture, forestry or biodiversity.
- 10.13 The Ward Councillor was consulted about the proposal and no objections have been received to the proposal.
- 10.14 Goostrey Parish Council has been consulted and no objections have been received to the proposal.
- 10.15 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.
- 10.16 The Council's Nature Conservation Officer has been consulted and raised no objection to the proposals.
- 10.17 A detailed and thorough assessment in relation to Disability Discrimination Legislation has been carried out, including an access audit and the production of an Access Report (Appendix 1). Overall and on balance it is considered that the proposed diversion offers an improvement over the old route.
- 10.18 The user groups have been consulted. Following the first consultation exercise the Peak and Northern Footpath Society objected as did the Ramblers Association and the Goostrey Footpath Group. The objections may be summarised as relating to:
- a) accessibility issues, and in particular the gradients on the proposed new route
 - b) loss of enjoyment and convenience as a result of the above;
 - c) loss of views of the 17th Century Hall; and
 - d) the proposed new route potentially running in part next to a proposed new housing development.
- 10.19 The objections raised in respect of accessibility issues prompted the applicant to commission the specialist access audit and Access Report, many of the

findings and recommendations of which have been implemented. Whilst walkers will not be able to view the front of the 17th Century Hall referred to in the objections however, views of different aspects of the Hall would be available from the new path. The merits or otherwise of a possible development on adjoining land are primarily a matter for the planning process and as the planning application is yet to be determined it should not be considered as part of this proposal. However if such development does take place it will not have an impact of views along the footpath or indeed over the stream etc. There will be an impact on views in a south westerly direction back towards the village but these will be no different than if the footpath remained on its current alignment.

10.20 Following completion of the Access Report a revised proposal was the subject of further consultation. The local representative of Ramblers Association has maintained his objections despite many of these being addressed. The Goostrey Footpath Group have suggested further changes including an alternative alignment for much of the length of the proposed route which the applicant has advised are not viable, nor indeed desirable in light of the findings of the Access Report. The Peak and Northern Footpath Society have not responded.

10.21 The Access Report (Appendix 1) assesses the requirements of the legislation in respect of public paths, assesses both the existing route and the proposed route and provides recommendations to improve both routes towards meeting recommended non statutory access standards. It then offers a subjective conclusion measuring the merits of both routes. It should be noted that there are no specifically measureable criteria required to be introduced by the legislation, (The Equality Act 2010). Rather the legislation requires that “reasonable adjustments” be made and “auxiliary aids” are provided to support equality of opportunity. It also makes it clear that landscape topography may well impact on what is deemed “reasonable”. When the merits of both routes are assessed from an accessibility perspective it is the view of officers that the proposed route is, overall, more acceptable than the current route. Therefore it is regarded that an objective assessment of the proposals suggests that the criteria of the legislation can be met, and that an Order, if made, is capable of confirmation.

12.0 Access to Information

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

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Background Paper -

Appendix 1: The Access Report by Phil Chambers Consultancy