

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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**Date of Meeting:** 4<sup>th</sup> December 2017  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 s119  
Application for the Diversion of Public Footpath No. 49 (part),  
Parish of Rainow

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### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 49 in the Parish of Rainow. 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 in the interests of the landowners. 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. 49 in the Parish of Rainow by creating a new section of public footpath and extinguishing the current path as illustrated on Plan no. HA/117 on the grounds that it is expedient in the interests of the landowners.
- 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 10.6 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 proposed new path and its exit point are 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. Diverting the footpath would move the footpath away from the applicants home, thereby improving their privacy and security. In addition, there is no cross gradient to navigate on the diverted route, providing an easier walking surface for walkers. 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 Sutton

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

5.1 Councillor Hilda Gaddum

#### **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 and Mrs Weaire of Wayside Cottage, Hough Hole, Rainow, SK10 5UW ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 49 in the Parish of Rainow.
- 10.2 Public Footpath No. 49 Rainow commences at its junction with Public Footpath No. 47 Rainow at Hough Hole House, O.S. grid reference SJ 9470 7630 and runs in a generally north westerly direction to its junction with Public Bridleway No. 43 Rainow at O.S. grid reference SJ 9426 7671. The section of path to be diverted is shown by a solid black line on Plan no. HA/117 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C.
- 10.3 The majority of the land over which the section of the current path to be diverted and the proposed diversion run belongs to Mr W B Moss. Mr Moss has provided written consent for the proposal. Mr and Mrs Weaire own the remainder of the land (at Wayside Cottage).
- 10.4 The section of Public Footpath No. 49 Rainow to be diverted commences at O.S. Grid Reference SJ 9441 7643 (point A on plan no. HA/117) and runs in a generally north westerly direction, in very close proximity to the applicants property (Wayside Cottage) before exiting through a 2.5ft wicket gate onto the adjacent landowners' (Mr Moss) pasture. It then travels up a hill to meet Public Bridleway Rainow No. 43 at O.S. grid reference SJ 9426 7671 (point B on plan No. HA/117). The pasture has a cross gradient slope of approximately 1:3 – 1:4, with a slope of approximately 1:5, this makes for uncomfortable and sometimes difficult walking for users, especially in wet and windy weather. It is proposed to divert approximately 318 metres of the footpath (point A-B on plan No. HA117).
- 10.5 The proposed diversion runs along an existing track in a north westerly direction (from point A on plan No. HA/117) to meet Public Bridleway Rainow No. 43 at O.S. grid reference SJ 9427 7657 (point C on plan No. HA/117), to the west of and parallel to the current line of the footpath. It passes through a 10ft field gate (which will be replaced with a 2 in 1 gate if a diversion Order is made) to the south of Wayside Cottage, as indicated on the enclosed plan, and then climbs the hill at

a gradient of 1:5 but with no cross gradient for users to navigate it provides a much easier walking surface. The diverted route (point A-C on plan No. HA/117) is shorter than the current route, at approximately 201 metres, and then from point C to B on plan No. HA117 it is approximately 140 metres.

- 10.6 The proposal is in the interests of the applicants as it would move the footpath away from their home, thereby greatly improving privacy and security. It would also provide an easier walking surface for users.
- 10.7 The Ward Councillor has been consulted about the proposal. No comments have been received.
- 10.8 Rainow Parish Council has been consulted. No comments have been received.
- 10.9 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.
- 10.10 The user groups have been consulted. The Peak and Northern Footpaths Society has responded to state that it has no objection to the proposal.
- 10.11 The East Cheshire Ramblers responded with a number of queries:
1. *Does the adjacent landowner (Mr Moss) intend to move the circular livestock feeder (indicated on plan no. HA/117) to a location well clear of the diverted footpath as the area around the feeder is wet and boggy?* Mr and Mrs Weaire have contacted Mr Moss who has agreed to find an alternative location for the feeder.
  2. *What are the proposals for access through, or next to, the 10ft field gate?* Mr Weaire has confirmed that he will replace the field gate with a '2 in 1' gate (a pedestrian gate built into a field gate forming one structure) if a diversion Order is made.
  3. *A fingerpost, or waymarking post, is required at the northern end of the diversion at the junction with Rainow BR43.* If a diversion Order is made we will ensure that there is appropriate signage for the new route.
- 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.

## 11.0 Access to Information

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

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