

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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**Date of Meeting:** 12<sup>th</sup> March 2018  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 Section 119  
Application for the Diversion of Public Footpath no.31 (part),  
Parish of Kettleshulme

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### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.31 in the Parish of Kettleshulme. 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.31 by creating a new section of public footpath and extinguishing the current path as illustrated on Plan no. HA/118 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- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 increased privacy and security and more efficient land and stock management capability for the landowner on his farm. 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 Kettlethulme

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

5.1 Councillor H Murray and Councillor J Saunders

#### **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 John Hodgson of Black Hill Gate Farm, Kettlethulme SH23 7EH requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 31 in the Parish of Kettlethulme. The alignment of the current footpath is along the driveway and then in very close proximity to the front of the cottage at Blackhill Gate Farm. This has a significant impact on the privacy and security of the property. A permissive alternative route has been in place which takes the path away from the immediate frontage of the cottage and has been in use for many years.
- 10.2 Public Footpath No. 31 Kettlethulme commences at its junction with footpath no.22, Kettlethulme and runs in a generally north north easterly direction along the drive of the cottage at Blackhill Gate and passes immediately in front of the windows and sunroom. The path then runs through a small pasture area where it is proposed to construct an extension to an existing livestock barn and fence in a secure area for handling cattle. The current footpath would run through the fenced area. A planning application for this barn extension was submitted to the Peak Park planning department in September 2017 and has since been given approval. The path then continues in a north westerly direction diagonally across an open field to a pedestrian gate and then continues generally northerly and north westerly to its junction with Clayholes Road (UW 2546). The route to be diverted is indicated on the attached plan between points A-B-C.
- 10.3 The land over which the section of the current path A-B (on plan no. HA/118) and the proposed section E-D runs, is owned by Mr J Hodgson. Where the current section B-C and the proposed section D-C runs, the land is owned by Mr A Hodgson who has given his written consent to the proposal. 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. 31, Kettlethulme to be diverted commences at its junction with Kettlethulme footpath no. 22, just to the west of the County boundary with Derbyshire at Grid Reference SJ 9960 7887 (Point A on Plan no. HA/118). It runs in a generally north north easterly direction along the driveway to the cottage and then within a metre of the front windows of the property and continues across the garden area. It passes through a pedestrian gate and crosses a small paddock that is intended to become a holding area for livestock within the curtilage of the proposed extension to a current livestock shed. It then passes through a second

pedestrian gate at grid reference SJ 9962 7894 (point B on Plan No. HA/118) and turns to run generally north westerly across a pasture field to the north east corner at grid reference SJ 9955 7903 (point C on Plan No. HA/118). It is shown as a bold black solid line between points A-B-C.

- 10.5 The proposed diversion for this part of Footpath no. 31 would run from its junction with Kettlethulme Footpath No. 22 at grid reference SJ 9957 7888 (point E on Plan No. HA/118) approximately 37 metres to the west of its current location, through a pedestrian gate in a dry stone wall. It then runs in a generally northerly direction across a small pasture field to point D (on Plan No. HA/118) at grid reference SJ 9958 7895 and continues generally north north westerly across a second pasture field to Point C (on Plan No. HA/118) and its junction with the unaffected section of the footpath. It is shown by a bold dashed line between E-D-C on Plan No. HA/118. The route of the proposed diversion is currently available for use by the public as a permissive alternative and has been for approximately 30 years. The landowner has found that walkers tend to prefer the alternative route as the current definitive footpath is so potentially intrusive to the occupants of the cottage.
- 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 two pedestrian gates as described at points E and D. The existing gate at point B would be re-used and re-sited at point D. In terms of accessibility the new route is considered no less easy to use than the original and given the rough and sometimes boggy nature of part of the current footpath, the alternative surface of pasture is an improvement. The proposed route is approximately 167 metres in length; the current route is approximately 189 metres so in terms of convenience there is very little difference. It would be beneficial for walkers and the landowner for the path not to run through the area proposed for holding livestock adjacent to the new barn extension.
- 10.7 This diversion can be demonstrated to be in the landowners' interest for reasons of privacy and security with regard to the current footpath's proximity to the cottage and also for reasons of land and animal management due to the current planning permission to extend the livestock shed. The diversion would allow the landowner to significantly improve security for the cottage and would have benefits for farm working practices.
- 10.8 The Ward Councillors were consulted about the proposal. No comments were received.
- 10.9 Kettlethulme Parish Council has been consulted and no response has been received.
- 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. East Cheshire Rambler's have responded to say that they support the proposal as it will take the path away from crossing a private garden and put in pedestrian gates on the new route.
- 10.12 The Council's Nature Conservation Officer and the Peak Planning Board have 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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