

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 12th March 2018
Report of: Public Rights of Way Manager
Subject/Title: Highways Act 1980 Section 119
Application for the Diversion of Public Footpath No. 41 (part),
Parish of Haslington

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 41 in the Parish of Haslington. 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. 41 in the Parish of Haslington by creating a new section of public footpath as illustrated on Plan No. HA/124 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 off the driveway of the Fields Farm property and ensure privacy and security for the landowner and their livestock is increased. 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 Haslington

5.0 Local Ward Members

5.1 Councillors John Hammond and David Marren

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 Victoria Webb-Johnson, Fields Farm, Sydney Road, Crewe, Cheshire, CW1 5LT ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 41 Haslington.
- 10.2 Public Footpath No. 41 Haslington commences at its junction with Sydney Road at O.S. grid reference SJ 7221 5581 and runs in a generally easterly direction for approximately 85 metres before turning in a generally northerly direction for approximately 114 metres. At point A (on Plan No. HA/124), Public Footpath No. 41 Haslington meets Public Footpath No 22 Haslington and turns and runs along the driveway for Fields Farm in a generally east, south easterly direction for approximately 245 metres. At point B (on Plan No. HA/124) it makes a turn in a northerly direction for approximately 17 metres, then at point C it makes a turn in a generally east, south easterly direction for approximately 26 metres until it's junction with the A534. Public Footpath No. 41 then continues for a short distance on the easterly side of the road to its termination at its junction with Public Footpath No.38. The section of path to be diverted is shown by a solid black line on Plan no. HA/124 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points D-C.
- 10.3 The land over which the section of Public Footpath No. 41 Haslington to be diverted and the proposed diversion runs belongs to 'the Applicant', Victoria Webb-Johnson.
- 10.4 The section of Public Footpath No. 41 Haslington to be diverted commences at Point A, and runs between A-B-C on plan no HA/124. From point A, at it's junction with Public Footpath No. 22 Haslington, it runs in a generally south easterly direction along the driveway to Fields Farm for approximately 245 metres. It has a stone surface and is approximately 3m wide. It then turns in a generally north easterly direction for approximately 17 metres crossing an area of grass. There is currently a pedestrian gate at point C (on Plan No. HA/124), which will remain the same under the new proposals. It is proposed to divert approximately 262 metres of the footpath.

- 10.5 The proposed diversion will run between points D and C on Plan No. HA/124. It will commence at O.S. grid reference SJ 7233 5595 at a new junction with Public Footpath No. 22 Haslington which is approximately 12 metres north of the existing junction at point A on Plan no. HA/124. It will then continue in an east south easterly direction for approximately 247 metres to point C at O.S. grid reference SJ 7256 5587. The path will run along the northern boundary of the property and will be 2.5 metres wide within which there will be a stone surfaced width of at least 1.2 metres. The Applicant intends to enclose the path for livestock management and personal security and is intending to use a post and rail fence similar to other fences that are already on site. A new pedestrian gate will be installed at point D to allow the new diversion to connect with Public Footpath No. 22 Haslington.
- 10.6 The proposal is in the interests of the applicant due to reasons of privacy and security. By moving the path to the north of the landowners' boundary it moves it away from the residential buildings and improves privacy and security for the occupants. It will also provide better security and land management for grazing livestock. By moving the path from the access drive it removes any risk from the interaction of walkers and vehicles.
- 10.7 The Ward Councillor's have been consulted about the proposal and have confirmed their support for the footpath diversion.
- 10.8 Haslington Parish Council has been consulted and has confirmed they have no objections to the proposal.
- 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. The South Cheshire Ramblers have been consulted, no comments have been received.
- 10.11 The Council's Nature Conservation Officer has been consulted, no comments have been received.
- 10.12 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:

Name: Laura Brown

Designation: Public Path Orders Officer

Tel No: 01270 686053

Email: laura.brown@cheshireeast.gov.uk

File No: 146D/549