

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. 45 (part),
and Public Footpath No. 44 (part) Parish of Bollington.

1.0 Report Summary

- 1.1 The report outlines the investigation to divert parts of Public Footpath No. 45 and Public Footpath No. 44 in the Parish of Bollington. 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 parts of Public Footpath No. 45 and Public Footpath No. 44 in the Parish of Bollington by creating a new section of public footpath and extinguishing the current paths as illustrated on the Plan no. HA/122 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 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 out of the new development of Cold Arbour Farm ensuring future residents' privacy and security 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 Bollington

5.0 Local Ward Members

5.1 Councillors James Nicholas and Amanda Stott

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 Jones Homes (North West) Limited, Emerson House, Heyes Lane, Alderley Edge, SK9 7LF ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert parts of Public Footpath No. 45 and Public Footpath No. 44 in the Parish of Bollington.
- 10.2 Public Footpath No. 45 Bollington commences at its junction with Public Footpath No. 38 Bollington at O.S. grid reference SJ 9195 7628 and runs in a generally westerly direction for approximately 203 metres until it meets point C (on Plan no. HA/122) at O.S. grid reference SJ 9214 7628 where it turns in a generally southerly direction and runs for approximately 67 metres to O.S. grid reference SJ 9212 7621. It then turns in an approximately westerly direction before arcing round and running in a generally southerly direction to its junction with Public Footpath No. 48 Bollington at O.S grid reference SJ 9218 7611. The section of path to be diverted is shown by a solid black line on Plan no. HA/122 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points A-D-C.
- 10.3 The section of Public Footpath No. 45 Bollington to be diverted commences at O.S. grid reference SJ 9207 7629 and runs in a generally easterly direction to O.S grid reference SJ 9214 7626 as shown between points A-B-C on Plan No. HA/122. It begins at point A (on Plan No. HA/122) runs along a private driveway and passes through an open set of gates. The footpath then crosses over an area of landscaped garden to the north of the gates to join a temporary surfaced path over the garden that leads to a pedestrian gate in the fence line. The path then leaves the Cold Arbour Farm development and crosses a further grassy area and then along a paved path to Point C (on Plan No. HA/122) It is proposed to divert approximately 90 metres of the footpath.
- 10.4 Public Footpath No. 44 Bollington commences at its junction with Clarke Lane at O.S grid reference SJ 9208 7642 and runs in a generally southerly direction for approximately 18 metres until the Silk Road bisects it. The footpath resumes at O.S. grid reference SJ 9209 7632 and runs in a generally southerly direction for approximately 32 metres to it's junction with Bollington

FP 45 at O.S. grid reference SJ 9208 7629. The section of path to be diverted is shown by a solid black line on the Plan between points D-B.

- 10.5 The section of Public Footpath No. 44 Bollington to be diverted commences at O.S. grid reference SJ 9209 7630 (Point D on Plan No. HA/122) and continues in a southerly direction for approximately 12 metres until it meets Public Footpath No. 45 Bollington at Point B.
- 10.6 The land over which the sections of Public Footpaths Nos. 44 & 45 Bollington to be diverted and the proposed diversion run belongs to Jones Homes.
- 10.7 The proposed diversion would follow a permissive route that is already constructed and well used by the general public, this runs between points A-D-C on the Plan No. HA/122. At O.S. grid reference SJ 9207 7629, point A on the Plan, the footpath makes a northerly turn for approximately 5 metres and then continues in a generally easterly direction crossing Public Footpath No. 44 Bollington at point D and then continues in a generally easterly and then south easterly direction to point C at O.S. grid reference SJ 9214 7626. The Developers Plan of Cold Arbour Farm also shows the proposed diversion but alongside the current layout of the new houses. The proposed diversion has a Breedon gold gravel topped surface laid on MOT stone with timber edgings and is approximately 2 metres wide throughout. The diverted route is very similar in length to the current route, at approximately 95 metres.
- 10.8 The proposal is in the interests of the applicants as it would make the housing development at Cold Arbour Farm more private and secure for future residents.
- 10.9 The Ward Councillors have been consulted about the proposal. No comments have been received.
- 10.10 Bollington Parish Council has been consulted. No comments have been received.
- 10.11 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.
- 10.12 The user groups have been consulted. The Peak and Northern Footpaths Society has responded to state that it has no objection to the proposal.
- 10.13 The Council's Nature Conservation Officer has been consulted, no comments have been received.
- 10.14 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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