

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. 12 (part),
Parish of Lower Withington

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.12 in the Parish of Lower Withington. 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 landowners concerned. The report makes a recommendation based on that information, for a 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.12 Lower Withington by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/120 on the grounds that it is expedient in the interests of the owners 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 landowners for the reasons set out in paragraph 10.8 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 This diversion is in the landowners' interest as part of the current route goes through their working dairy farm and within very close proximity to their residential properties. There has also been a long standing issue with a slurry tank obstructing part of the footpath through the farm yard. The alternative route is not substantially less convenient than the definitive path and the enjoyment of the path as a whole would be significantly improved. The section of path that runs through the farm yard is difficult to walk due to the number of gates, daily operations of the farm and the very close proximity of the cattle that are sometimes held within the yard. Following a full discussion of the costs and procedure Officers agreed to progress the application for a diversion of the footpath under the Highways Act s119; which is funded by the landowner. It is considered that this is the best way forward to hopefully resolving the problems currently affecting the route and to fully re-instating a safe and useable path for the public.

4.0 Wards Affected

4.1 Gawsworth

5.0 Local Ward Members

5.1 Councillor Lesley Smetham

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 or 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 submitted from Mr J Kennerley and Son of Shellmorehill Farm, Lower Withington requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 12 in the Parish of Lower Withington.

10.2 The land over which the section of path to be diverted, and the proposed diversion run, belongs to the applicants; 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 Public Footpath Lower Withington No.12 commences on Pitt Lane (UY1335) at O.S. Grid Reference SJ 8164 7021, and currently runs in a generally east north easterly direction for approximately 325 metres along a stone surfaced track to Shellmorehill Farm. The path then continues past two dwellings and crosses a holding area leading to a milking parlour, before passing through collecting and silage yards to exit through a slurry tank which obstructs the line of the path. The path then continues for approximately 23 metres over part of the field to the east of the tank where it meets the corner of a farm track before turning to run in a generally northerly direction for approximately 800 metres to connect with public footpath Nos's 18 and 19 Lower Withington at O.S. Grid Reference SJ 8164 7093

10.4 Within the farm yard area there are three large gates for controlling the movement of cattle between yards for milking that need to be opened and closed by users in order to walk the path. Walkers at this point come within very close proximity to waiting cattle, loader and scraper tractors.

10.5 Currently the definitive line of the footpath is partly unavailable on the ground. The unavailable section of the path is obstructed by industrial farm structures and a silage tank. To avoid the obstruction the public are currently using a

permissive path which comes within very close proximity to working machinery and cattle.

- 10.6 The section of path to be diverted is shown by a solid black line on Plan No. HA/120 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points A and J.
- 10.7 The proposed path commences at point A on plan No. HA/120 and runs in a generally north westerly direction for approximately 26 metres, through a field gate with pedestrian access at point D on plan HA/120 where it turns to a generally north easterly direction for approximately 28 metres to a kissing gate at point E on plan No. HA/120. The path then turns again to run in a generally north westerly direction for approximately 252 metres to a kissing gate at point F on plan HA/120. It then turns to run a generally north easterly direction at point G (on plan HA/120) taking a slightly more easterly direction at point H (plan HA/120) for 238 metres to the bridge shown on plan No. HA/120 before returning to a generally northerly direction to meet with a kissing gate at point J on plan No. HA/120 and it's junction with public footpath No.18 Lower Withington.
- 10.8 The applicant states that as the landowner it is in his interests to divert the path as 'it will improve the privacy and security of their homes, the farm, the animals and farming equipment and that it will also improve the safety of farm employees and animals by removing potential conflicts between passing farm vehicles, animals and walkers'. He states that 'cows cross the existing path to get to various parts of the farm and by diverting walkers away from the farm yards bio-security would also be improved for everyone'.
- 10.9 Mr Morrow, who also owns property over which the current public footpath runs, emailed the Rights of Way team on the 30th January 2018 supporting the application for the proposed diversion commenting, 'that the new route will bring benefits to all groups using the path including the public, the farmer and families such as his own, whose homes straddle the current route'. He states 'all will be safer and more secure, as the line of the current route shares the drive to and across his land and that it passes within 3 metres of his front door and two side gates'.
- 10.10 Mr Morrow states that the proposed diversion will have the following benefits: 'the safety of walkers when they encounter visitors' cars and delivery vehicles will be significantly improved. The security and privacy of their homes will be improved and that he endorses the proposed diversion and hopes it will be agreed by all parties'.
- 10.11 Mr and Mrs Mitchell who live next to the existing path wrote to Cheshire East Council on 29th January 2018 supporting the proposal to move the existing footpath.
- 10.12 The new route will have a width of 2.5 metres. The route will have a grass surface, will not be enclosed and will for the most part follow the line of field boundaries. The proposed path will require the installation of a footbridge

shown on plan HA/120 with a kissing or pedestrian gate at either end. There will also be a requirement for a field gate with pedestrian access at point C on plan No. HA/120 and three kissing gates to be installed along the path as shown at points E-F-J on the attached plan HA/120. Occasionally when stock is present in the field's temporary fencing will be installed enclosing the path to the agreed 2.5 metres width.

- 10.13 The Ward Councillor was consulted about the proposal. No comments have been received.
- 10.14 All other statutory undertakers have 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.
- 10.15 The user groups have been consulted. The Peak and Northern Footpath Society in an email dated 29th January 2018 comment they have no objection to the proposals. The East Cheshire Ramblers emailed the Local Authority with regard to the proposed diversion requesting a site inspection of the path as the diversion seems quite extensive. The Ramblers met with the applicant to walk the proposed path on 25th January 2018. The East Cheshire Ramblers in a letter dated 6th February 2018 responded to the consultation as being 'generally satisfied with the proposed diversion which will avoid an awkward section of path through the farm yard and silage pit'. The Ramblers also noted that there is a track immediately to the south of the farm and the existing public right of way which is way marked as permissive and 'is the route taken by most walkers'.
- 10.16 The Ramblers also noted that the proposed diversion replaces a right of way which is on a stone track, with the proposed path being described as 2.5 metres wide and a surface of grass throughout. The Ramblers have asked that 'measures be taken to ensure the path is well drained' and suggest 'that near the proposed gates and footbridge some stone be deposited to avoid the deterioration of the surface'. The Ramblers further stated that they understand that when the fields are grazed, 'the stock will be prevented from poaching the surface of the proposed path by a temporary fence' and that at all other times the fence will be removed.
- 10.17 As a final point the Ramblers request confirmation that if the diversion is confirmed, there will be clear permanent signs on both sides of the track directing walkers along the revised route 'as it will be some years before the OS maps show the diverted route and that this would be helpful to both the landowner and walkers'. The Cheshire East Council's Public Rights of Way team will ensure that if the Order is confirmed to divert the public footpath, clear and permanent signage will be installed at either end of the new route.
- 10.18 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.

10.19 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management 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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