

# 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. 46 (part),  
Parish of Mobberley

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### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.46 in the Parish of Mobberley. 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. 46 in the Parish of Mobberley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/121 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 10.6 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 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 would preserve the landowners privacy and security. 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 Mobberley

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

5.1 Councillor Jamie Macrae

#### **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 submitted from Mrs Uttley of Ivy House Farm Mobberley, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 46 in the Parish of Mobberley.
- 10.2 The land over which the section of the current path to be diverted, and the proposed diversion run, belongs to the applicant; 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 No. 46 in the Parish of Mobberley commences on Moss Lane (UW2144) at O.S. Grid Ref: SJ 8109 7999 (point A on Plan No. HA/121), and runs along the applicant's driveway in a generally south-easterly direction for approximately 39 metres to meet with a stile (point C on Plan No. HA/121). The footpath then continues over farm land for approximately 91 metres to another stile (point B on Plan No. HA/121) before continuing in the same south-easterly direction to meet with Paddock Hill Lane (UW2145) at O.S. Grid Ref: SJ 8166 7976. Approximately the first 130 metres of the public footpath is subject to the proposed diversion, the remainder of the path will be unaffected. The section of path to be diverted is shown by a solid black line on Plan No. HA/121 between points A-C-B from O.S. Grid Ref: SJ 8109 7999 to SJ 8119 7993. The proposed diversion is illustrated on the same plan with a black dashed line between points D-E-B from O.S. Grid Ref: SJ 8105 7996 to SJ 8119 7993.
- 10.4 The proposal is to divert approximately the first 130 metres of footpath No. 46 in the Parish of Mobberley away from the applicant's driveway from a new commencement point on Moss Lane to the pass through an old orchard approximately 50 metres to the southwest of its current position at OS Grid Ref: SJ 8105 7996 (as shown on the attached Plan No. HA/121 at point D). The proposed path will then run in the same south-easterly direction along the field boundary for approximately 70 metres before taking a more easterly direction at O.S. Grid Ref: SJ 8111 7992 (shown at point E on Plan No. HA/121) for approximately 80 metres across the field to meet with the stile shown at O.S. Grid Ref: SJ 8119 7993 (point B on Plan No. HA/121). The path will then continue to run on its previously recorded alignment.
- 10.5 The new route will have a minimum width of 2.5 metres. Approximately the first 25 metres of the proposed path will be partially surfaced with stone and

the remainder of the path will run across free draining dry land comprising of a stone, earth and grass surface. There is a requirement to add a kissing gate at the commencement point of the proposed path (point D on Plan No. HA/121).

- 10.6 This diversion is in the landowners' interest on grounds of privacy and security as the current route partly goes through their driveway. The landowners believe the alternative route is not substantially less convenient than the Definitive right of way and the enjoyment of the path as a whole will be improved.
- 10.7 The Ward Councillor was consulted about the proposal. No comments have been received.
- 10.8 The 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.
- 10.9 The user groups have been consulted. The East Cheshire Ramblers by email on 26<sup>th</sup> January 2018 responded to the consultation on the proposed diversion and stated they have no objections to taking the path away from the house and acknowledge that 'it has some advantage provided the new route has adequate signage and the installation of a new gate on Moss Lane'. The Ramblers also support the installation of a stone surface along the hedge line of the path. Having walked the proposed path the Ramblers also commented that 'although there were big puddles near by, the actual path line was fairly firm'. However, they also noted that there was 'a lot of evidence of horses which have broken up the ground quite considerably'. Stating that 'this can more easily become waterlogged especially at the stile at point B' they suggested that some 'stone surfacing near the stile would prevent this becoming a problem'. It is considered that there is no requirement at this time to add stone to the surface around the stile. No further responses from the user groups have been received.
- 10.10 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.
- 10.11 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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