

# 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. 3 (part),  
Parish of Cranage

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### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.3 in the Parish of Cranage. 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 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.3 by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/119 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 is 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath would allow the landowner to protect the privacy and security of their home and business premises. 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 Dane Valley

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

5.1 Councillors Les Gilbert and Andrew Kolker

#### **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 M Gibson, Glebe Farm, Holmes Chapel, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 3 in the Parish of Cranage.
- 10.2 The land over which the section of 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 applicants' 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. 3 Cranage commences on Knutsford Road (A50/DB/01) at O.S. grid reference SJ 7567 6783,(Point A on Plan no. HA/119) and runs in an easterly direction to point B, (Grid Ref SJ 7574 6785) where it meets the unaffected part of Footpath No.3 at the junction with Cranage public footpath No. 15. Approximately the first 86 metres of footpath No.3 is affected by the proposed diversion. The remaining section of the footpath is unaffected by the proposed diversion. The section of path to be diverted is shown by a solid black line on Plan No. HA/119 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points B-C.
- 10.4 The section of Public Footpath No.3 to be diverted commences at point A (on plan No. HA/119) and runs in an easterly direction for approximately 86 metres. The path runs through the applicant's driveway and yard access for approximately 8 metres where it passes within very close proximity to both business and domestic premises. Beyond this point the path narrows from approximately 8 metres wide with an even gradient to approximately 1.5 metres wide at its widest point, narrowing to approximately 1 metre wide with an uneven gradient. The path at this point is also enclosed for approximately 78 metres creating a corridor effect to its junction with Public footpath No. 15.
- 10.5 The narrow width and uneven gradient of this part of the route makes this section of the path difficult to walk which is further compounded by the often wet and muddy conditions caused by the frequent flooding of two natural underground springs that flow directly under the footpath.
- 10.6 The proposal is to divert that part of the footpath shown between points A-B (on Plan No. HA/119). The proposed route will commence at its junction with Knutsford Road (point C on Plan No. HA/119) approximately 61 metres to the northwest of the current path and will follow the natural line of the field

boundary to re-join the unaffected part of Footpath No.3 at its junction with Public footpath No. 15. The proposed path will follow a north easterly direction for approximately 35 metres turning to a east south easterly direction at point D (SJ 7565 6791) and a more southerly direction at point E (SJ 7575 6788) to re-join the unaffected part of Footpath No. 3 at its junction with Footpath 15 at point B.

- 10.7 The new route will have a minimum width of 2.5 metres. The route would be enclosed between post and wire fencing and it would have a grass surface. There is no requirement for any furniture on the route.
- 10.8 This diversion is in the landowners' interest as part of the route currently goes through their driveway and yard access and within close proximity to their business and domestic premises; the diversion would allow the landowners a greater degree of privacy and security and more control over how they run their businesses. The landowner believes the alternative route is no less convenient than the definitive right of way and that the proposed path will have better accessibility and will also improve the enjoyment of the public when using the path as a whole.
- 10.9 In support of the application to divert the path the applicant has stated the present path is at times unpassable due to flooding spring water and high water tables. He further states that he and the Parish Council receive weekly complaints from walkers using the current path. The applicant comments that the removal of the path from its current location would benefit walkers, enabling them to walk all year round without the dangerous conditions frequently complained about. He states the proposed path would be more scenic and would be easier to use making for a more enjoyable walk.
- 10.10 He also states that at present the path goes through his farm yard meaning he cannot secure the premises or property from theft or vandalism, which they have been the victims of at least four times during the last year. The suggested path would mean that the applicants' house, farm yard and animals would be secure as he has had dozens of animals stolen, injured or killed by dogs. He states his signs for the farm have been pulled down, windows broken, tools stolen and vehicles damaged. The applicant goes on to say he has had people in his garden at all hours, has had vegetables stolen and destroyed and has had several confrontations with drunken teenagers of which both the Police and Council are aware.
- 10.11 Cranage Parish Council was consulted about the proposal. Julie Mason the parish clerk replied to the consultation by email on 23<sup>rd</sup> January stating that from a walker's perspective there is no downside to the diversion as the current pathway is prone to flooding, is generally poorly maintained and is difficult to pass in the summer due to the nettles. The clerk also commented that provided the diverted pathway is in good condition then it can only be of benefit to walkers. They requests that the existing footpath not be closed until the proposed one is in a good walkable condition. The Clerk further comments that the proposed footpath is running through generally wet farm land and unless properly prepared similar challenges will emerge. The clerk

further states the proposed footpath should have a minimum width of 2.5 metres as the existing one is only a metre wide and gives no room for deviation if flooded

- 10.12 The Holmes Chapel Parish Council in an email dated 13<sup>th</sup> February 2018, commented on the diversion as Holmes Chapel residents regularly use the footpath. The Parish Council Committee considered the consultation on the proposed diversion of the footpath and resolved to make no objection.
- 10.13 The Ward Councillors were consulted about the proposal. Councillor Les Gilbert replied to the consultation by email on Thursday 11<sup>th</sup> January 2018 stating that as a member of the Public Rights of Way Committee he would not make any comments in advance of the committee meeting.
- 10.14 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.
- 10.15 The user groups have been consulted. The Peak and Northern Footpath Society in an email dated 29<sup>th</sup> January 2018 comment they have no objection to the proposals. The Ramblers Association in an email dated 11<sup>th</sup> February 2018 comment, that they have no objections to the proposed diversion of part of Cranage footpath No.3 they also went on to state that the proposed diversion “would help to improve the security for private and retail premises and avoid a very muddy and rather unpleasant section of existing path.”
- 10.16 The Council’s Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.
- 10.17 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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