

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 12 March 2018
Report of: Public Rights of Way Manager
Subject/Title: Highways Act 1980 Section 119
Application for the Diversion of Public Footpath No. 5 (part),
Parish of Adlington

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 5 in the Parish of Adlington. 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 That the decision to make the Order be delegated to the Head of Rural and Cultural Economy or his nominated delegatee who, in consultation with the Chairman of the Public Rights of Way Committee, consider the proposal together with any comments received from members of Poynton West and Adlington Parish Council, East Cheshire Ramblers and Peak and Northern Footpath Society.
- 2.2 If an Order is made, in accordance with Section 119(1) of the Highways Act 1980, 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 on condition that the diversion of Adlington FP5 is complete.
- 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3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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 away from the applicant's home, thereby improving their privacy and security. It is considered that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Poynton West and Adlington.

5.0 Local Ward Members

5.1 Councillor Michael Beanland; Councillor Mike Sewart.

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 Mrs Cox of Springbank Farm, Springbank Lane, Adlington, Cheshire SK10 4LD ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 5 in the Parish of Adlington.
- 10.2 Public Footpath No. 5 Adlington commences at its junction with Public Footpath No. 3 Adlington on Schoolfold Lane, O.S. grid reference SJ 9341 8097 and runs in a generally south westerly direction to Springbank Lane at O.S. grid reference SJ 9308 8051. The section of path to be diverted is shown by a solid black line on Plan No. HA/123 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points D-E-C.
- 10.3 The majority of the land over which the section of the current path to be diverted and the proposed diversion run belongs to Mrs C Cox. The section of the path to be diverted that runs (between points B and C on Plan No. HA/123) through the property known as The Hole belongs to Mr and Mrs Taylor, who have provided their written consent.
- 10.4 The section of Public Footpath No. 5 Adlington to be diverted commences at O.S. grid reference SJ 9323 8067, point C on Plan No. HA/123, just outside of the boundary of 'The Hole'. It then crosses a stile and runs in a generally westerly direction for approximately 68 metres through the garden of 'The Hole' passing very close to residential buildings. At point B (on Plan No. HA/123) the footpath exits the garden by crossing a stile. It then makes a turn in a generally south westerly direction for approximately 205 metres along a private track which also acts as a driveway for 'The Hole' and visitors to Springbank Farm and its stables. This track is surfaced and is used by vehicles and for the movement of horses. The footpath terminates at its junction with Springbank Lane at point A on Plan No. HA/123, O.S. grid reference SJ 9308 8051 after passing through a large gate.
- 10.5 The proposed diversion will commence at point C on Plan No. HA/123, just outside the boundary of 'The Hole' at O.S. grid reference SJ 9323 8067. It will then run in a generally south easterly direction for 209 metres. The footpath will pass through three field boundaries so a kissing gate will be installed at each. At point E the footpath turns in a generally westerly direction and follows

an existing track for approximately 31 metres to its junction with Springbank lane at O.S. grid reference SJ 9315 8047 (Point D on Plan No. HA/123). The new junction of Public Footpath No. 5 Adlington on Springbank Lane at Point D is approximately 80 metres from the original junction (Point A), this road is currently well used by walkers as a link between the Macclesfield Canal and the Middlewood Way. This section of road is relatively straight with good sightlines and has areas of verge which allows people to step off the road if necessary.

- 10.6 The proposed diversion will have a width of 2 metres within which a stone track will be laid along its whole length and will follow an alignment that provides an enjoyable view of the surrounding countryside to the current route. The total length of the proposed diversion will be approximately 240 metres which is a shorter and more convenient route if approaching the route from the canal. However it would be approximately 47 metres longer if using Adlington Footpath 43 or the Middlewood Way.
- 10.7 The proposed diversion is in the interests of the privacy and security of the applicant as it will enable the residents of Springbank Farm and The Hole to install a full security gate at point A as there is a history of burglaries at The Hole and also at the neighbouring Jepsonclough Farm. It will also enable higher levels of equine control for the stables at Springbank Farm as the current gate has a history of being left open, putting the horses and members of the public at risk.
- 10.8 The Ward Councillor has been consulted about the proposal and supports the comments made by the Parish Council as stated below.
- 10.9 Poynton West and Adlington Parish Council has been consulted, they raised concerns that *“the proposed diversion of Footpath 5 will compromise the safety of walkers because those using Footpath 43 (opposite point A on the attached plan) would have to walk along a stretch of highway, which has no pavement and can be busy, in order to join Footpath 5 to continue their journey, rather than simply crossing the road as is the case with the current route. The Parish Council was of the view that a preferable proposal would be for points A & D or A & E (on the attached plan) to be linked by a path inside the field, thereby avoiding pedestrians having to use the highway to continue on their route”*

After speaking with the Landowner a route between point A & D and A & E is not possible due to how she manages her horses. It has been explained to the Parish council that the road is already well used by walkers as a connection between the canal and the Middlewood Way. There are areas of verge next to the road which are large enough to allow walkers to step off the road if need be and the road is straight which allows good sightlines of traffic in both directions.

The highways department has also provided data on the number of injury collisions reported between 1st January 2012 and 30th November 2017 with no incidents reported in that time period.

10.10 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.

10.11 The user groups have been consulted. The Peak and Northern Footpaths Society has responded to state that it has objections to the proposal:
The current route is a very easy walk down the driveway with pleasant views to the East.

We were not able to walk the proposed new route, and only able to view the ground from either end.

From what we could see the ground is very uneven, with undulating terrain, as the straight line of the proposed route crosses from one side of the small meandering valley and back again. This would involve considerable increases of gradient from the current route, and also a less enjoyable route with regards to views from the lower ground. There is also considerable cross gradient along the proposed route.

It looks like there is a tendency for water to drain across parts of the route causing extremely soft conditions. The section D-E is also very boggy. Whilst the proposal is for a "stone surface", we question that this would be sustainable given the surrounding boggy conditions, and the action of the horses kept in the area could make the path impassable. It would be a pity if we end up with ongoing maintenance concerns and need for boardwalks etc as it's so poorly drained and churned up by hooves.

Also the current path links up nicely with Adlington 43 at point A. The new route requires walking along the narrow road with no footway to link, and will not be substantially as convenient.

Any diversion is an opportunity for improvement. It is not clear how this path will be an improvement on the existing path.

We are mindful of the desire for the residents privacy, and understand the requirement for a diversion, however, at this stage we feel that the Society should object to the proposed route if the Order is made.

A response was sent to The Peak and Northern Footpath Society further explaining the surfacing of the proposed path and information about walking along the road. The Peak and Northern Footpath Society have referred the issue to the Courts and Inquiries Officer for Cheshire East.

10.12 The East Cheshire Ramblers responded with a number of issues after a meeting with them and the landowner on site:

The proposed diversion appears to be potentially satisfactory however we would wish to see it extended north-west from point E to a point opposite the end of footpath FP 43 on Spring Bank Lane. The lane is subject to the continual passage of vehicles, both private and commercial, some travelling

fast, making it unsafe for pedestrians. Both FP 43 and FP5 are part of the designated North Cheshire Way long distance footpath which is shown on the Ordnance Survey map. As such, it might be expected to attract a significant number of walkers.

The route from E north-north-east to point C was considered and appeared to be very muddy, wet and uneven throughout. A substantial amount of work will be required to the surface to bring it up to a suitable standard such that it can be walked at all times of the year. We note that the current right of way between points A and C is on a stone track which can easily be walked at all times.

Please could we have sight of the specification for the work between E and C which could, for example, involve removing some of the mud and replacing with larger stones topped with finer material. We understand that three kissing gates will be provided and we note that there is no intention to fence eastern side of the proposed path between E and C.

A response was sent to the East Cheshire Ramblers highlighting that the stretch of road is often used by walkers as it connects the canal towpath to the Middlewood Way. The data from the highways department showing that there were no reported injury collisions between 1st January 2012 and 30th November 2017 was also highlighted.

No surface specification was sent to the East Cheshire Ramblers but it was emphasised that the proposed works will not be approved unless it has been constructed to a satisfactory standard.

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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