

Public Rights of Way Committee

Date of Meeting: 03 December 2018

Report Title: Highways Act 1980 s118 Application for the Extinguishment of Public Footpath No. 1 (part), Parish of Holmes Chapel

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to extinguish part of Public Footpath No. 1 in the Parish of Holmes Chapel. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for an extinguishment order to be made. The proposal has been put forward (following representations from the landowner) by the Public Rights of Way team to resolve an anomalous situation. 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.
- 1.2. The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

2. Recommendations

- 2.1. An Order be made under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No. 1 in the Parish of Holmes Chapel as illustrated on Plan No. HA/134 on the grounds that it is not needed for public use.

- 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. Reasons for Recommendations

- 3.1. In accordance with Section 118(1) of the Highways Act 1980 it is within the Council's discretion to make an Order if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use. It is considered that part of Public Footpath No. 1 in the Parish of Holmes Chapel is not needed for public use, as an alternative route is available via adopted footway FY342 as indicated on Plan No. HA/134.
- 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 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.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:
 - The extent (if any) to which it appears to him...that the path or way would, apart from the order, be likely to be used by the public, and
 - The effect which the extinguishment of the right of way would have as respects land served by the path or way, and
 - The material provision of any rights of way improvement plan prepared by any local highway authority which includes land over which the order would extinguish a public right of way.
- 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. Although there is currently an outstanding objection to the consultation on this proposal, the issues raised by the objector have no impact and do not relate directly to the proposed extinguishment. In addition, as discussed in paragraph 3.1, an alternative route is available and it is therefore considered that the path is not needed for public use.
- 3.5. The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer",

and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

4. Other Options Considered

- 4.1. Not applicable – this is a non-executive matter.

5. Background

- 5.1. Public Footpath No.1 in the Parish of Homes Chapel has been registered as an anomaly for a number of years. In early 2018 Mr R Morgan at 16 Lochmaben Close, Holmes Chapel submitted a planning application for a single storey side and rear extension to the property which would further obstruct the definitive alignment of Public Footpath No. 1 in the Parish of Holmes Chapel. In light of this application, after discussions with the landowner, it was agreed that the PROW team would take forward a proposal to extinguish this short section of footpath.
- 5.2. Public Footpath No. 1 in the Parish of Holmes Chapel commences on Chester Road at O.S. grid reference SJ 7609 6693 and runs in a generally south westerly direction for approximately 399 metres to Brereton parish boundary at O.S. grid reference SJ 7589 6660. The section of path to be extinguished is shown by a solid black line on Plan No. HA/134 between points A-B.
- 5.3. The majority of the land over which the extinguishment runs belongs to Mr R Morgan at No. 16 Lochmaben Close. A very short section of the route (approximately 1.5 metres) at the southern end of the route belongs to Cheshire East Borough Council.
- 5.4. The short section of Public Footpath No. 1 in the Parish of Holmes Chapel it is proposed to extinguish (points A to B on Plan No. HA/134) has been unavailable since the mid-1990s when the housing development between Chester Road and London Road in Holmes Chapel was built. It appears that Congleton Borough Council may have intended to divert the southern section of the footpath to follow the footway that runs through an area of greenspace adjacent to the property, but this legal process was not undertaken.
- 5.5. The majority of the length of path it is proposed to extinguish is obstructed by the property and garden at 16 Lochmaben Close. A short section of the route (approximately 1.5 metres) at the southern end crosses land owned by Cheshire East Borough Council. When the houses were built, the adopted footway was created, FY342, which the majority of the footpath follows. This footway is the route which users now follow and ensures that a legal route for the public is maintained. This subsequently means that

this short section of Public Footpath No. 1 in the Parish of Holmes Chapel is no longer required for public use.

- 5.6. The extinguishment has been sought by the Council to resolve a long-standing anomaly and provide clarity and certainty to the affected landowner.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. 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.

6.2. Finance Implications

- 6.2.1. If objections to the Order lead to a subsequent hearing/inquiry, this legal process would have financial implications for the Council.

6.3. Policy Implications

- 6.3.1. There are no direct policy implications.

6.4. Human Resources Implications

- 6.4.1. There are no direct implications for human resources.

6.5. Risk Management Implications

- 6.5.1. There are no direct implications for risk management.

6.6. Rural Communities Implications

- 6.6.1. There are no direct implications for rural communities.

6.7. Implications for Children & Young People

- 6.7.1. There are no direct implications for children and young people.

6.8. Public Health Implications

- 6.8.1. There are no direct implications for public health.

7. Ward Members Affected

- 7.1. Brereton Rural: Councillor Wray was consulted and no comments were received.

Dane Valley: Councillor Les Gilbert has responded to state that he has no comment to offer.

Dane Valley: Councillor Andrew Kolker was consulted and no comments were received.

8. Consultation & Engagement

- 8.1. Holmes Chapel Parish Council has been consulted and have responded to state that they raise no objection to the extinguishment.
- 8.2. The statutory undertakers have been consulted and have raised no objections to the proposed extinguishment. If an extinguishment order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 8.3. The Council's Nature Conservation Officer has been consulted, no comments have been received.
- 8.4. The user groups have been consulted. Peak and Northern Footpaths Society have replied to state that they have no objection to the proposal.
- 8.5. Sandbach Footpaths Group have been consulted and have responded to state that they have no objection to the proposal.
- 8.6. The local correspondent from the Open Spaces Society has objected to the proposal with the following comments:

1. Divert Brereton FP1 and FP2 onto the line shown on OS maps, thereby aligning the paths with the current footbridge over the river

Brereton Footpath Nos. 1 and 2 are currently on our anomalies list and it is intended to begin work on proposed diversions for these routes at some point in the near future. The outcome of these proposals has no impact and does not affect the proposed extinguishment of Public Footpath No. 1 in the Parish of Holmes Chapel.

2. Amend your interactive map to show "Footpaths and Footways", or to show "Footways" as a separate field. Footways would then appear in much the same way as footpaths appear now

A call has been logged with CEC IT; an option to view adopted footways on the interactive mapping is now available. The outcome of this has no

impact and does not affect the proposed extinguishment of Public Footpath No .1 in the Parish of Holmes Chapel.

3. Extinguish the entire length of Holmes Chapel FP1, including that part that lies between your points A and B

The majority of Public Footpath No .1 in the Parish of Holmes Chapel is not an anomaly and does not affect any householder. The current proposal aims to resolve an anomalous situation for the householder at 16 Lochmaben Close.

Although this objection is outstanding, none of the points raised by on behalf of the Open Spaces Society have any impact on, or affect, the proposal to extinguish part of Public Footpath No .1 in the Parish of Holmes Chapel.

9. Access to Information

- 9.1. The background papers of file No. 157E/568 relating to this report can be inspected by contacting the report writer.

10. Contact Information

- 10.1. Any questions relating to this report should be directed to the following officer:

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